# LAND TENURE AND LAND LAW REFORMS

# IN PENINSULAR MALAYSIA

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C O N T E N T S

## ABSTRACT

This study is an overview of land tenure and land law reforms in Peninsular Malaysia. Its scope is confined to an account of the past development as well as the various land law reforms that have taken place since the inception of modern land law and land administration in the Malay states. Examinations of the various land laws in relation to land policies are made in order to determine their strengths and weaknesses, particularly in the areas of land ownership, land disposal, land use, and agricultural policy.

It is observed that the present system of land law and land administration in Peninsular Malaysia represents a heritage of its past legacy as developed in the former Federated Malay States. The introduction of the National Land Code (NLC) to replace the various state land laws has significant effects on the overall land tenure system and its land policies. The changes, initiated with the view of achieving national development objectives, was set out under the various Malaysian development plans. In this context, land laws are seen as instruments of growth as well as equitable distribution of wealth.

Rapid economic and social development affected and changed both the land and planning legislations. The land ownership policy, on the other hand, remained unchanged over the years except for the planned alienation of land and FELDA's land ownership by shares.

Land policies were not contained in the legislations enacted but often left open ended at the discretion of the individual state governments. Such practice is contrary to the spirit and purpose of the uniformity of law and policy as advocated through the implementation of the National Land Code.

Implementing agencies faced various problems in carrying out and enforcing their land and planning laws. Obviously, such handicaps weaken the utility of land and planning legislations as a means of land use control, leading to problems of under-utilisation of agricultural land and breaches of conditions.

Reflecting on the national agricultural policy, it was discovered that little has been done to improve the land ownership pattern for the peasants. As such the incidence of poverty has persisted among the peasants, mainly due to the small and uneconomic size of their land holdings.

Finally, the study examines the efficiency of the land administration system. It is observed that while the Torrens System of land legislation was suited to the Malaysian land tenure system, its efficiency was affected by the machinery responsible for its implementation.

In line with the findings outlined above, the study also attempts to suggest some recommendations towards improving the efficiency and effectiveness of the land tenure system and its associated land laws.

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Nik Mohd.Zain Yusof

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## *GLOSSARY OF ACRONYMS*

| | | |
|---|---|---|
| ASN | = | Amanah Saham Nasional, (National Unit Trust Scheme) |
| BPM | = | Bank Pertanian Malaysia, (Agriculture Bank of Malaysia) |
| DARA | = | Perbadanan Pembangunan Pahang Tenggara (Pahang Tenggara Development Authority) |
| FAMA | = | Federal Agricultural Marketing Authority |
| FELCRA | = | Federal Land Consolidation and Rehabilitation Authority |
| FELDA | = | Federal Land Development Authority |
| FIC | = | Foreign Investment Committee |
| FLC | = | Federal Lands Commissioner |
| FMS | = | Federated Malay States |
| FOA | = | Farmers Organisation Authority |
| GDP | = | Gross Domestic Product |
| GNP | = | Gross National Product |
| IADP | = | Integrated Agriculture Development Programme |
| IBRD | = | International Bank for Reconstruction and Development |
| INRO | = | International Natural Rubber Organization |
| KADA | = | Kemubu Agricultural Development Authority |
| JENGKA | = | Jengka Regional Development Authority |
| KEDA | = | Kedah Development Authority |
| KEJORA | = | Johore Tenggara Development Authority |
| KESEDAR | = | Kelantan Selatan Development Authority (South Kelantan Development Authority |
| KETENGAH | = | Trengganu Tengah Development Authority |
| MADA | = | Muda Agricultural Development Authority |
| MARDEC | = | Malaysian Rubber Development Corporation |
| MARDI | = | Malaysian Agricultural Research and Development Institute |
| MBSB | = | Malaysian Building Society Berhad |
| MMC | = | Malaysian Mining Corporation |
| PERDA | = | Penang Regional Development Authority |
| PERNAS | = | Perbadanan Nasional, (National Corporation) |
| RISDA | = | Rubber Industry Smallholders Development Authority |
| RRIM | = | Rubber Research Institute of Malaysia |
| SADC | = | State Agriculture Development Corporation |
| SEDC | = | State Economic Development Corporation |
| | | Officers Housing Company |
| UDA | = | Urban Development Authority |
| UIA | = | Universiti Islam Antara Bangsa (International Islamic University |
| UMS | = | Unfederated Malay States. |
| UNDP | = | United Nations Development Programme |
| UPM | = | Universiti Pertanian Malaysia, (Agriculture Univesity, Malaysia |
| USM | = | Universiti Sains Malaysia (University Science Malaysia) |

## *LIST OF ABBREVIATIONS*

| | | |
|---|---|---|
| ACLR | = | Assistant Collector of Land Revenue |
| ADO | = | Assistant District Officer |
| ADLA | = | Assistant District Land Administrator |
| AG | = | Attorney General |
| AH | = | After Hijrah (Muslim Calendar Year) |
| AIR | = | All India Report |
| CLM | = | Commissioner of Lands and Mines (State) |
| CLR | = | Collector of Land revenue |
| DLA | = | District Land Administrator |
| DO | = | District Officer |
| DOA | = | Department of Agriculture |
| EXCO | = | State Executive Council |
| EMR | = | Entry In Mukim Register |
| FC | = | Federal Court |
| FIC | = | Foreign Investment Committee |
| FLC | = | Federal Lands Commissioner |
| FMS | = | Federated Malay States |
| f.o.b | = | Free On Board |
| FRIM | = | Forest Research Institute of Malaysia |
| GM | = | Grant Mukim (Mukim Grant) |
| GN | = | Gazette Notification |
| GSA | = | Group Settlement Areas |
| GSA (Act) | = | Land (Group Settlement Areas) Act, 1960. |
| HMS | = | Hak Milik Sementara, (Qualified Title) |
| ICU | = | Implementation and Co-Ordination Unit |
| INTAN | = | Institut Tadbiran Awam Negara, (National Institute of Public Administration) |
| ITC | = | International Tin Council |
| JMBRAS | = | Journal of Malayan Branch Royal Asiatic Society |
| JSBRAS | = | Journal of Singapore Branch Royal Asiatic Society |
| KPTG | = | Ketua Pangarah Tanah dan Galian, (Director General of Lands and Mines, Malaysia) |
| KTM | = | Keretapi Tanah Melayu, (Malayan Railway) |
| LA | = | Legal Adviser |
| LO | = | Land Office |
| LPN | = | Lembaga Padi & Beras Negara, (National Padi and Rice Authority |
| LMS | = | Lesen Menduduki Sementara (Temporary Occupation Licence) |
| MAMPU | = | Manpower Administrative Modernisation Unit |
| MARA | = | Majlis Amanah Rakyat, (Council of Trust for Indigenous People) |
| MLJ | = | Malayan (Malaysian) Law Journal. |
| MOA | = | Ministry of Agriculture |
| NLC | = | National Land Code |
| NEB | = | National Electricity Board |
| NEMR | = | New Entry in Mukim Register. |
| NEP | = | New Economic Policy |
| MCA | = | Malaysian Chinese Association |
| MG | = | Mukim Grant |

| | | |
|---|---|---|
| MIC | = | Malaysian Indian Congress |
| MLJ | = | Malayan Law Journal |
| MOA | = | Ministry of Agriculture |
| DLA | = | District Land Administrator |
| PTG | = | Pengarah Tanah & Galian, (State Director of Lands and Mines) |
| PAS | = | Pan Malaysian Islamic Party |
| PU | = | Pemberitahu Undang-Undang (Legal Notification) |
| PWD | = | Public Works Department |
| Q.T | = | Qualified Title |
| RDA | = | Regional Development Authority |
| RS | = | Requisition for Survey |
| SG | = | Solicitor General |
| SO | = | Settlement Officer |
| SPPK | = | Syarikat Perumahan Pegawai-Pegawai Kerajaan, (Government Officers Housing Company) |
| TOL | = | Temporary Occupation Licence |
| UMNO | = | United Malays National Oganisation |
| UMS | = | Unfederated Malay States |
| 2MP | = | Second Malaysia Plan. |
| 3MP | = | Third Malaysia Plan |
| 4MP | = | Fourth Malaysia Plan |
| 5MP | = | Fifth Malaysia Plan |

## WEIGHT, MEASURES AND CURRENCIES

Weights:

| | | |
|---|---|---|
| 1 gantang | = | 1 English gallon (4 litres) |
| 1 kati | = | 1.33 lb. |
| 1 pikul (picul) | = | 133.33lb. / 100 katies. |

Measurements:

| | | |
|---|---|---|
| 1 acre | = | 0.6 hectare |
| 1 relong | = | 0.75 acre |
| 1,000 depa | = | 1 acre |
| 640 acres | = | 1 square mile |
| 1 chain | = | 22 feet |

Currencies:

1 sterling pound = Malaysian Ringgit $4.50 (1988 rate of exchange)

1 U.S. dollar = Malaysian ringgit $2.20 (1988 rate of exchange.)

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# INTRODUCTION

Land, being an essential factor of production, is important in the economic development of a country particularly in a developing country like Malaysia. Land also plays a very significant role in our everyday livee. We feel that a study in the laws governing various aspects of land, land tenure systems and the administrative machinery relating to land are the basis of any systematic land tenure system. Any study on any land tenure system and land law reforms will be neither complete nor of much significance, if the foundation thereof, the land policies, are not critically studied. This is because land laws and the land policies on which they are predicated are meant to deal with the actual problems faced by the people and society. Land law deals not only with possession and ownership of land, but also the rights and obligations of the owner and occupier. In short, the formulation of land law requires an understanding of the concept of land, its definition, land tenure systems and land administration machinery that makes the system tick and of other laws relating to land. Land policies on the other hand, will ensure that land is governed and administered systematically for the benefit of society.

In Peninsular Malaysia, the laws relating to land, which formerly existed in forty three different types of legislation, both Federal and State, have been consolidated into one - The National Land Code, 1965 (NLC), which was adopted by all the eleven states in Peninsular Malaysia in 1966.[1]

The National Land Code (NLC) was enacted pursuant to Article 76(4) of the Federal Constitution for the sole purpose of ensuring uniformity of law and policy with respect to land tenure, registration of titles relating to land, transfer of land, leases and charges in respect of land and easements and other rights and interests in land.

The need for a systematic uniform land law throughout Malaya (now Peninsular Malaysia) was felt as early as 1954, when the Mission organised by the International Bank for Reconstruction and Development made a proposal to the Government to have one single land code and this was followed by the Reid Constitutional Commission, which also recommended a uniform land law for the whole Federation.

*OBJECTIVE OF STUDY*

The main objective of this study is to examine the present land tenure system and the related land laws, particularly the NLC. In this regard, we shall be investigating whether the existing system of land tenure and land law in Peninsular Malaysia are adequate in achieving the national development objectives, particularly the New Economic Policy (NEP). We will also examine the strengths and weaknesses of the related land laws, particularly the NLC in the light of the National Land policy and propose remedial measures where necessary. To reduce this vast subject to manageable proportions, the study is limited, in the main, to the eleven States of Peninsular Malaysia and to certain aspects of land policy, land laws, planning legislations and the administration thereof. Accordingly, this study consists of:

(a) An Overview of the Land Laws and Land Administration.

(b) The Land Ownership Policy

(c) The Land Disposal Policy

(d) The Land Use Policy

(e) The National Agricultural Policy

(f) Recommendations.

The foregoing will be discussed in the order above after certain introductory observations have been made.

Each of the above policy areas is examined in order to determine how the existing policies are being implemented and to examine the extent of the British colonial influence on land policies in the Malaysian land laws and land tenure system. This study is devoted to identifying the land related problems in Malaysian development activities as they relate to land laws and land administration. It is for this reason that the background, nature and characteristics of Malaysian land policies are discussed in detail in this study.

Land laws, in effect, are an instrument of land policy and must be seen as such in the context of Malaysian land tenure system. Furthermore, the principal objective of Malaysian land policy currently seems to run in consonance with the declared 'New Economic Policy' (NEP) of the government. Therefore, whatever new policies formulated by the states must be consonant with the NEP. In this respect, the 'restructuring of society' seems to be the goal of Malaysian land policy. Land law however, is used by politicians to bring about social and economic change. Hence, this study, while adopting a policy orientation, attempts to view law as an instrument which

determines the future management of land resources.

This study also compares the provisions of the NLC relating to land with those found in the earlier land legislation and especially that of the Federated Malay States (FMS), (FMS Land Code Chapter 138) to determine how the NLC overcome the former and other related land laws.

It also seeks to identify the shortcomings in the present system under the NLC and to recommend legal and administrative reforms to rectify the same.

There appears to have no indepth study of the strengths and weaknesses of the NLC, the major land law in Malaysia since 1966. This study attempts to fill the vacuum by undertaking a critical analysis of the law relating to land tenure and land laws and administration in the eleven states of Peninsular Malaysia.

*Land Tenure in Malaysia*

Under the NLC in Peninsular Malaysia, all land is vested in the state. The state may alienate land to an individual, either in perpetuity or for a term of years, who becomes the owner thereof. The term 'owner' is, however, misleading for the state never divests itself of ownership. The true nature of the relationship between the state and the individual to whom the state alienates the land is indicated by the requirement that the individual must pay the state an annual quit rent for the land alienated to him. As the land alienated to the individual can be forfeited by the state in the manner prescribed by law for failure to pay the annual quit rent, what the individual acquires is tenure, not ownership. This tenurial system, granted certain exceptions, is that of landlord and tenant. Land tenure in this

study refers to the system of private ownership, such as it is described above and individual transactions between the state and private landowners.

*Historical Background*

Each chapter of this thesis will begin by presenting the relevant historical background to provide an understanding of the basic structure of the present system, its characteristics and problems. Next, each chapter provides a comparative juristic analysis of the system and its underlying concepts and principles. As the present system of land tenure and land law in Peninsular Malaysia is historically the product of British colonial rule, constant references are made to the principles and underlying concepts of English land law.

*The Development of Land Tenure System*

In the various chapters, it will be shown that the co-ordinated system of land administration into which the Land Tenure system in Peninsular Malaysia has developed was once mentioned merely as an administrative record mainly for revenue purposes, by the state as landlord of the holdings of its tenantry. Upon the introduction of Torrens System, the pre-existing system was integrated with a system of registration of titles and dealings in land. Consequently, the Torrens System has had a significant effect on the legal relationship between the state and private land holders. Given this link between the operation and effect of the Torrens System with land tenure in Peninsular Malaysia, the link is given particular attention in this study.

In developing the FMS, the colonial regime established

a sound administrative system, expanded the economy and introduced other progressive changes including the new system of land law. The NLC, 1965, is essentially a continuation and development of the previous more advanced land legislation in the former FMS. Accordingly, this study will trace the main stream of past development (including the various reforms that have taken place since the inception of the modern land law and land administration in the Malay States) to the present day. Although land in Malaysia is governed by the NLC, the contemporary system of land is governed by custom and principles of Islamic law, particularly the law of succession.

*The Powers of State On Land Matters*

Malaysia is a federation but the federal constitution reserves certain rights for the states (the state list). Each state has its own legislative and executive powers and can make laws which are not inconsistent with the laws of the federation. Land and local government are two of the most important matters on the state list under Article 76 of the Federal Constitution. Nevertheless, under Article 76(4) of the Federal Constitution, the Federal Government may make laws with respect to land matters in a state if such laws are enacted to ensure uniformity of laws and policy in respect of land matters in all states in Peninsular Malaysia. The NLC 1965 was enacted under Article 76(4) of the Constitution. The NLC itself reserves the power for each state to deal with the following which are the subject of this study:

(a) Land tenure, relation of landlord and tenant;
registration of land titles and deeds relating to land;
colonisation, land improvement; rent restriction;

(b) Malay Reservations;

(c) Permits and licences for prospecting minerals;

(d) Compulsory acquisition of land;

(e) Transfer of land, mortgages, leases and charges in respect of land; easements; and

(f) Except with respect to Federal Territory, Agriculture and Forestry, including:

(i) Agriculture and Agriculture loans,

(ii) Forests.

The above matters will be considered in terms of State-Federal relationship and the impact thereof on the land tenure system and land policies in general.

This study contains six chapters, each of which discusses various aspects of land policies in relation to the land laws currently in force in Peninsular Malaysia.

Chapter one discusses the Torrens System of land registration which has had a great impact and influence on the land tenure system in Peninsular Malaysia since 1896. Other related land laws which have greatly influenced the national land policies are the Malay Reservations Enactment; the Land (Group Settlement Areas) Act, 1960 (GSA Act 1960); Padi Cultivators (Control of Rent and Security of Tenure) Act, 1967, (Padi Cultivators Act, 1967), National Land Consolidation and Rehabilitation Act, 1966 (FELCRA Act 1966), the Land Acquisition Act, 1960; and the Small Estates (Distribution) Act, 1955. There are, however, more than 120 laws which are related to land administration in Malaysia.[2]

The roles of the National Land Council, the State Authority, Federal Lands Commissioner, the District Land Administrators as

well as the objectives and functions of the land offices are observed in terms of their effectiveness in implementing the various responsibilities assigned to them. Some management problems of the land office are also discussed.

Chapter Two discusses the land ownership policy from the pre-colonial period, through the British Colonial Administration to the post-independence *(merdeka)* era. This chapter tries to analyse the changes that have taken place from the pre-colonial period to the present day in the field of land ownership policy. This chapter will establish how various factors established the formulation of the colonial land ownership policies, for Malaysia (Malaya then) and how these policies, particularly the policy of reserving land for Malays have affected the patterns of land ownership in Malaysia. This chapter also outlines the various rights accorded to land owners under the Constitution and the National Land Code (NLC).

Following independence (merdeka), the urge for development resulted in various land development schemes which incorporated properly planned and systematic alienation of land through the GSA Act, 1960. This chapter outlines the various land development programmes undertaken by the public and the private sectors.

Chapter Three discusses the NLC and the related land laws from the point of view of alienation of state land for various uses: agriculture, housing, commercial; and industrial. In this discussion, the meaning of alienation, methods of alienation, reservation of land for various public purposes and the controversy over Temporary Occupation Licences (TOLs), are incorporated. The Malay Reservations Enactments are also examined

in terms of the original objectives thereof: the protective policy and the policy of ensuring that Malays live an agricultural life.

Chapter Four discusses land use policy in detail. Land use is seen here in relation to land development and the effect that planning and land legislations have on the land use policy of the country. Thus, this chapter analyses the role of these laws and the State Authority as well as the National Land Council in shaping the land use policy of the country. Early forms of land use control and restrictions under the land and planning legislations pertaining to alienated land are some of the matters considered in this chapter. This chapter also includes an account of the machinery of land use control under land and planning legislations.

Chapter Five focuses on the subject of the National Agricultural Policy (NAP) and whether this policy would be able to change the present position of the small farmers in terms of the present patterns of land ownership and their income level. This chapter tries to establish the validity of the allegation that it is not clear how the guidelines formulated under the National Agricultural Policy and the NEP itself can alleviate poverty. This chapter also attempts to assess the role of different laws in shaping the patterns of agricultural development and the NAP in Malaysia.

The study ends by proposing in Chapter Six, various reforms to improve the land tenure system and land laws in Peninsular Malaysia.

NOTES

1. National Land Code, Act 56 of 1965. An Act to amend and consolidate laws relating to land and tenure, the registration of title to land and of dealings therewith and the collection of land revenue therefrom within eleven states of West Malaysia and for purposes connected therewith.

2. For a list of laws connected with land administration, see Manual for Land Administration, Government Printer, Kuala Lumpur, 1980, pp. 423-431.

# CHAPTER 1

## AN OVERVIEW OF:

## LAND LAWS AND LAND ADMINISTRATION IN PENINSULAR MALAYSIA

### *HISTORICAL BACKGROUND*

Before independence in 1957, Malaya comprised :

(a) The Straits Settlements, including Singapore Island (with Christmas Island and the Cocos-Keeling group), Penang (with Province Wellesley), and Malacca. These areas were British Territory and were administered as Crown Colonies.

(b) The Federated Malay States (F.M.S.) of Perak, Selangor, Negri Sembilan and Pahang.

(c) The Unfederated Malay States (U.M.S) of Johore, Kedah, Perlis, Kelantan, and Trengganu. The Federated and Unfederated Malay States were British-protected states ruled by Sultans who were juridically independent, although politically dependent on the British Crown.

### *THE STRAITS SETTLEMENTS*

In the later part of the 19th century, all the Federated and Unfederated Malay States and Malacca recognised the early Malayan customary land tenure of landholding whereby any person who cleared waste land was entitled to occupy it provided he cultivated it and handed over one-tenth of the produce to the State. Penang, on the other hand, was already subjected to English land law as a result of the passing of the First Charter of Justice in 1807. It is to be noted that it was the four states of Perak, Selangor, Negri Sembilan and Pahang, which

later became the Federated Malay States, that first enacted the land legislations introducing Torrens title[1] of land registration.

In the Straits Settlements, with an area of only 1,357 square miles and a population density of 1,000 to the square mile, the land problems were of an urban rather than an agricultural character. Land titles were in the form of leases for 999 years, until 1838 when leases for 99 years were introduced. Land was also obtainable on short-term leases, but from 1845 onwards, because flourishing agriculture led to the demand for greater security of tenure, grants in freehold were issued for lands outside the limits of the town.

In 1867, after the transfer of the Settlements to the control of the Colonial Office, the titles for land, both in town and country, were in the form of leases for terms of 99 or 999 years, but in 1886, an ordinance (No. II) which was the Crown Land Ordinance,[2] introduced a statutory form of Crown title, a grant in perpetuity, subject to quit rent and subject also to various implied conditions and convenants which hitherto had to be expressly provided for in the document of title itself. This statutory grant continued to be the usual form of title issued. However, the latter was to restrict the issue of grants in perpetuity, substituiting as far as possible leases for terms not exceeding 99 years.

Under the Crown Land Ordinance, (in special circumstances) grants in fee simple were also issued and revision of rent was also provided for (after 1st January 1915, at the end of every thirty years). However, in such revision, improvements made

by the landholder or his predecessors in title were not taken into account.

The premium payable on alienation of Crown land varied depending on the category of land. For agricultural land a premium of $50 to $100 per acre was charged in the years before the war (1940), with quit rent at $1 to $2 per acre. The government also issued permits, renewable yearly, for the temporary occupation of Crown Land. The effect of this policy was to keep the small cultivators (small fruit and vegetable growers) on the land. There was also an ordinance to prevent illegal occupation of Crown Lands.

In Penang and Province Wellesley, land was held, as in Singapore, by grant or lease from the Crown. In the early period, much confusion and misunderstanding surrounded land transactions, and this resulted in a great variety of tenures.[3] There was little idle land left in the Settlements.

In Malacca, in the last quarter of the 19th century the tenure of a considerable part of the land in the town was what it had been since the days of Dutch suzerainty (1641-1866). In many cases, possession was evidenced by documents of title in Dutch. The remainder of the land in the town was mostly held under Crown leases for 99 years, but there were a few leases for 999 years, and also some statutory grants. In the country, alienated land was generally held under statutory grants or leases from the Crown for 99 years, but smallholdings owned by Malays were held under customary tenure, which was governed by two ordinances, namely, the Malacca Land Customary Rights Ordinance which later became Cap. 125 of the Revised laws of the Straits Settlements

1936. and the Mutations in Titles to Land Ordinance (Cap.126). The transfer of customary land was only valid if made to an individual qualified to become a customary land-holder, that is a Malay domiciled in Malacca and any person holding a certificate from the Resident Councillor of Malacca that he is qualified to hold customary land. Every customary land-holder had a permanent, heritable and transferable right of use and occupancy, subject to :

(a) the payment of rent or assessment as imposed by law;

(b) the reservation in favour of the Crown of all minerals and of the right of making roads and so on;

(c) the liability to give free labour for the performance of certain customary duties 'for the common benefit of himself and the other customary landholders' (including the duty of preparing the *sawah* for planting and the simultaneous planting of rice); and

(d) certain restrictions regarding the planting of crops considered to be exhausting to the soil. Customary land which has not been cultivated for a period of three years reverted to the Crown, and if it appeared that the land had been used mainly for building purposes rather than for agriculture, the Governor in Council could declare that the land was no longer held under customary tenure.

In Malacca, the rights of a customary land-holder were registered in the *Mukim* Register, and every registered holder could charge his interest in the land, by way of mortgage, which must be registered at the land office. Sales of land for the payment of mortgage debts must be held at the land office. All

transfers had to be registered and when transfers were made, the *ketua kampung* (or two other reliable witnesses) must attend so as to ensure that there was no impersonation or fraud. If the land-holder was a Muslim, his land must descend according to the Muslim law of inheritance, except in the states of Negri sembilan and part of Malacca where *adat perpateh* was practised. In these states, Muslim law could be varied by local custom.[4] All land transactions were supervised by the Collector of Land Revenue. The Collector had wide general powers under the Ordinance so much so that there was a bar to the jurisdiction of Courts relating to claims in respect of which jurisdiction was given to the Collector - except where there was express provision to the contrary.

*THE FEDERATED MALAY STATES (FMS)*

The FMS which came under British protection by virture of treaties concluded in the 1870's and 1880's were not technically British Territory, and the inhabitants did not rank as British subjects. Under the aforesaid treaties, the rulers of the Federated Malay States agreed to the appointment of a British Resident responsible to the Governor of the Straits Settlements whose advise they had to accept in all matters, except those relating to Malay custom and the Muslim religion.

The first land tenure legislation introduced was the General Land Regulations 1879 of Perak. This was followed by the General Land Regulations 1882 of Selangor, the General Land Regulations 1887 of Negri Sembilan and the General Land Regulations II of 1889 of Pahang. Hpwever, these early laws were subsequently replaced by the various Land Enactments and Registration of

Titles Enactments, all of which were later repealed and reenacted in 1903. The FMS Land Enactment of 1911 and the Registration of Titles Enactment of 1911 repealed the Registration of Titles Enactments then in force. These 1911 Enactments continued in force until their repeal by the FMS Land Code of 1926.[5]

Land tenure in the FMS was regulated by:

(a) the Land Code of 1926;[6]

(b) The Mining Enactment,[7] as the Land Code did not apply to mining land;

(c) the Land Acquisition Enactment;[8]

(d) the Malay Reservations Enactment;[9] and

(e) the Customary Tenure Enactment.[10]

There was a Land Office in each of the districts, and in cases, where districts were sub-divided, there could be more than one Land Office known as sub-district.

All land not held under title (state land) was vested in the ruler of the state, but state land could be converted into private ownership by the British Resident of each state, acting on behalf of the Ruler and in the manner prescribed by the Code. The Resident could acquire any land needed for public purpose. He could declare any land a reserve, and, with the approval of the Ruler, he could acquire land for residential or factory purposes, for vegetable gardens and for leasing as mining land. He could delegate certain of his powers to Collectors. In most districts, for example, Collectors could, as delegates of the Resident alienate to Asiatics country land of up to ten acres, and could also permit the temporary occupation of state land under licence or pending the registration of title.

There were five classes of land, namely:

(a) town land;

(b) village land;

(c) country land exceeding ten acres in area;

(d) country land not exceeding ten acres in area; and

(e) foreshore and sea bed.

Town and village lands were generally alienated by auction, the conditions of the auction and the reserve price being fixed by the Resident. The document of title was either a grant or a lease, and the word 'grant' was defined as including a lease of state land in perpetuity or for a term of not less than 999 years.[11] The Code made the rent of all land alienated after 31st December 1909 subject to periodic revision, at intervals of not less than thirty years. In fixing the new rent the Resident could not take into account any improvements made by the proprietor or his predecessors. The revisable rent system was an obvious means of protecting the rights of the state, of enabling it to share in the increased value of land, and of preventing the excessive accumulation of land by single individuals.[12] The rent revision could result either in enhancement or reduction. Unlike the rest of Malaya, in the FMS, that legislation did not prescribe the percentage by which rent could be increased.

For country land exceeding ten acres, a document of title, whether grant or a lease was issued. For holdings of country land of less than ten acres (land of the small-holders), title was established by an entry in the *Mukim* Register, or a grant or lease of state land. Such land was subject to an implied condition that the land had to be continuously cultivated in a

proper manner, to the extent of one-half of the total area and the proprietor in default in this regard for a period of three years lost his ownership rights. Premium was at the Resident's discretion, and quit rent was at the rate of $1 for the first six years, and thereafter, the rate was $4 per acre. For land less than ten acres the premium varied, and the quit rent was $1.60-$4.00 per acre for first class land. The Resident could impose other conditions on the cultivator such as specifying the particular crop to be cultivated or the Resident could make rules compelling the proprietors or occupiers of rice lands to give their labour free for the performance of such works and duties as could be for the common benefit. The Resident could also declare an area of land as an 'irrigated area' which could only be used for rice cultivation.

C.K.Meek[13] observes that in the FMS, the land system has not developed along the lines originally projected. In other British dependencies such as Uganda, it was originally considered that there should be two distinct types of title: one suited to European and commercial interests, and the other suited to native occupiers. To meet the needs of the former, a system of registration based on the Torrens system was introduced and a form of registered title was provided which conferred the fullest measure of ownership considered compatible with the rights reserved to the government. Thus an accurate survey of the landholdings was required. In the case of native holdings no such elaborate procedure was necessary and the only test recognised was that of occupancy. Thus, a special register of land held according to native law and custom was introduced, and

any person registered therein obtained a permanent right of use and occupancy in his land. This right, although transferable and transmissible, fell very far short of ownership in the English sense,[14] and since it was no more than a right of occupancy it did not confer the right to lease or charge the land. The land was not accurately surveyed and transfer was carried out by merely altering the name in the Collector's record. This simple system was adequate to the requirements of the country.

There was no significant difference between the dual system of the customary title and a registered title. The occupant of land held by native custom was now the owner of land held by entry in the *Mukim* Register. He possessed a document of title which could be charged or leased, its area was surveyed, dealings had to be executed in a statutory form duly attested, and the instrument had to be registered before it became effective. The only difference between the native grant and the registered title was that in the case of the latter, the registration was metropolitan, while in the case of the former it was local.[15]

It could be said that the new system was a signal success. The early difficulties created by unsurveyed land had disappeared and it was said that not one percent of the transactions involving registration called for the intervention of a lawyer. But others maintain that assimilation of the native customary title to that of the European registered title has not been an unmixed blessing; it conferred on the peasant a title the value of which he did not understand, except as a means of raising cash, and so made him an easy prey to the Chinese and Indian moneylender.[16] The introduction of the Malay Reservations

Enactment in 1913,[17] first in the FMS and later the Unfederated Malay States (UMS) was aimed at curbing the activities of the non-Malays from buying Malay lands indiscriminately. It was a measure for securing the land interests of the native population. Under this law, the British Resident with the approval of the ruler of the state in Council, could declare any area of land within the state to be a Malay Reservation. Any state land, reserved forest, land reserved for public purposes or alienated land, could be included in such Reservation. No state land included within a Reservation could be sold, leased or otherwise disposed of to any person other than a Malay, and there were general restriction on transfers, charges, and leases to person other than Malays. There were restrictions as to dealings in holdings by attorneys, and also as to caveats. No lien by deposit of the issue document of title for any Malay holding as security for a debt is capable of being created in favour of any person; no Malay holding in a Reservation may be attached in execution of a decree or order of any Court; and no Malay holding in a Reservation shall vest in the Official Assignee on the bankruptcy of the proprietor. Reservation lands may, however, be charged to the Government, and to approved co-operative societies and some financial institutions.

Another feature of the land legislation of the FMS was the Enactment which deals with Customary Tenure (Cap.215). The concern of the Enactment was the customary land law of Malays belonging to certain districts of Negri Sembilan.[18] Among these

tribes, land was customarily held by females and the enactment provided, *inter alia*, for the rectification of registers in which males had in the past been wrongly entered as customary holders of land. Under the Enactment, no customary land or any interest therein may be transferred, charged, transmitted or otherwise dealt with except in accordance with the custom. It was not possible, therefore, for a grant to be issued for any customary land, nor could customary land be transferred or leased to any person other than a female member of any of the tribes specified, and there was a special provision permitting the charging of customary land to the Collector (now District Land Administrator (DLA)) or to a recognised local co-operative society. The restrictions against leasing was also relaxed in respect of the leases not exceeding twelve months.

Before the land could be transferred, charged or leased, the consent of the *lembaga* or headman of the tribe was required; but the Collector may override the *lembaga* when the latter unreasonably refuses consent or appeared to give a consent which was contrary to custom. The Collector was also empowered to give a life occupancy of land to a son, or a maternal uncle of a deceased holder, who, though having left a female customary heir, has left no female issue, or no issue nor maternal sister. The customary heir becomes the registered owner of the land, but the life-occupant and the registered owner become jointly responsible for the rent due to the State. Where the deceased left no customary heir, the Collector may order the estate to be sold and the proceeds paid to the deceased's son or maternal brother, or in their absence, to the Islamic Religious Fund (*baitul-mal*).)

As regards ancestral land and acquired land, there is a clear distinction between them, although the latter in due course becomes ancestral land.[19] This distinction has been significantly made clear by the development of rubber and other plantation crops which illustrate the principle of all native systems of landholding that all land-holders should be free to dispose of the results of their own individual efforts. Rubber land has now become heritable by males as well as females, and the claims of children are preferred to those of the matrilineal kin. A similar development occurred in the Gold Coast with regard to cocoalands.[20] Formerly a husband in Negri Sembilan had no rights in land, nowadays, he has right to a half share of rubber land which has been acquired and developed jointly by himself and his wife. This is known as *harta sepencharian* [21] This is a radical reform, since it makes it possible for tribal land to be held by persons who are not members of the tribe. In this regard, it is to be noted that by native law the sale or mortgage of ancestral land outside the kin or tribe was strictly forbidden, and if the holder of the ancestral property, to which there were no immediate heirs, wished to dispose of it, she [22] had to grant an option to her own clan or tribe before seeking a purchaser elsewhere. This situation seems to have changed and would not in any case apply to plantation land.

In the case of land held under *adat perpateh* in Negri Sembilan, they were regulated by Negri Sembilan Laws [23] and they were now governed by the Customary Tenure Enactment (Cap 215) of the FMS. Under the Small Estates (Distribution) Act, 1955, special provisions were laid down to regulate dealings in and succession

to such customary land.

By the Charter of Justice 1826, Penang and Malacca saw the introduction of English land law based on the deeds system, subject to local circumstances and customs. The Indian Act of 1839 (commonly known as the Straits Land Act) was enacted and continued in force until the passing of, *inter alia*, the Conveyancing and Law of Property Ordinance and the Registration of Deeds Ordinance in 1886. In Malacca, provisions had to be made to deal with the then existing land tenure in order to bring it in line with the English deeds system being practised in Penang. Legislation was passed to abolish rights in respect of lands granted by the government of Malacca to private individuals prior to British occupation and also to regulate and preserve the incidents of Malay customary tenure then in practice. The Conveyancing and Law of Property Ordinance later became Chapter 118 of the Revised Laws of the Straits Settlements 1936 while the Registration of Deeds Ordinance became Chapter 121 of the Revised Laws of the Straits Settlements 1936. It is to be noted that the Registration of Deeds Ordinance (Cap 121) and the Conveyancing and Law of Property Ordinance (Cap 118) were not applicable to customary land in Malacca. These two Ordinances were finally replaced by the National Land Code (Penang and Malacca Titles) Act 1963 (as amended)[24] which provided the framework for conversion of the deeds system then in force in Penang and Malacca to the Torrens System in force in the Malay States.

As for land held under *Naning custom*,[25] the incidents of tenure were not regulated by the substantive provisions of the

Malacca Lands Customary Rights Ordinance IX of 1886 then in force.[26] But the said Ordinance acted as a mechanism for having *adat Naning* disputes taken to court.[27] Under the new NLC (Penang and Malacca Titles) Act 1963, such incidents of tenure under *Naning custom* are now included and preserved. Thus under the 1963 Act, all customary lands in Malacca are now governed under part VIII of the said Act which provides that such lands, formerly registered in the *Mukim* Register maintained under the 1886 Ordinance, are to be so endorsed on the Malacca Customary Land Register[28] maintained thereunder. Thus, the pre-existing legislation dealing with customary lands in Malacca is now repealed. We now turn to the situation in the Unfederated Malay States (UMS).

*THE UNFEDERATED MALAY STATES (UMS)*

Generally, the land legislation of the Unfederated Malay States gradually assimilated that of the FMS but an examination of some of the legislations of the former is nonetheless useful.

In the Unfederated Malay States, (UMS) land tenure took the form of early Malay customary tenure influenced in some instances, particularly in the northern states by Siamese law. By the late 19th and early 20th century, Torrens legislation similar to that of the FMS were introduced. These as amended from time to time, were finally replaced and consolidated by the National Land Code 1965 which was passed with the objective of introducing a uniform system of land law and land administration in the whole of Peninsular Malaysia.

Lands held under the Malay custom of *adat temenggong* [29] in

both the FMS and UMS were regulated by the aforesaid laws then in force in each state. With their conversion and classification under the aforesaid laws as either *mukim* or Malay reserve land, they were now governed by the relevant provisions of the National Land Code 1965 (NLC), and the respective State Land Rules and also by the respective Malay Reservations Enactments in force.

*Johore*

Johore came under British influence beginning in 1895 when the Sultan of Johore undertook to receive a British Agent exercising the functions of a Consular Officer. In 1914, the Sultan agreed to receive a British Resident General Adviser whose advice must be asked and acted upon in all matters affecting the general administration of the country except those relating to Malay religion and custom.

In Johore, prior to 1910, small holdings were occupied by Malays and Chinese under an unwritten customary law, which conveyed a limited right of ownership. The clearing of land created for the occupier a proprietary tenant right, transferable and heritable. But this right was conditional on certain personal services, the maintenance of cultivation and the payment of a royalty on produce to the state. Large holdings were taken up by Europeans, Chinese and others, under leases or permits granted by the Sultan, and the conditions of tenure included reservation of mineral rights and certain powers over forest lands, provision for re-entry for public purposes, and a cultivation clause.[30] In 1910, land legislation similar to that of the FMS was introduced and this, with numerous amendments, was consolidated as Chapter 1

of the 1935 revised edition of the laws of Johore. The right to alienate state land was reserved to the Sultan in Council and there were the usual provisions regarding the revision of rent, although an enactment in 1943 made it possible for the Sultan, upon application by the proprietor of any land, to rescind any previous condition in the document of title, to impose any new condition, and to reserve a fresh rent. State land could be leased for a term not exceeding 100 years, and there was a general provision that, after any land had been alienated for agricultural purposes under permanent title, no right to mine the land could be granted except with the special sanction of the Sultan. There were penalties for the illegal occupation of state land or of land alienated for mining and public purposes.

Country lands of 100 acres and less could be alienated under grant or lease or under title by entry in the *Mukim* Register, and no claim to land was valid unless registered - the Collector was required to keep all record of transactions.[3]

In 1936, the Malay Reservations Enactment was enacted with a view to preventing interests in land from passing out of the hands of the Malay people. Its provisions are similar to those of the corresponding act of the FMS which has been described above. Under the Labour Code (Amendment) Enactment 1936, employers were required to set aside land (one-sixteenth of an acre for each labourer who has dependents) suitable for use as allotments or grazing land.

Land taxation in Johore took the form of a premium on alienation varying from $1 to $100 an acre for agriculture or for mining purposes, and from 10 cents to 50 cents a square foot for

residential or commercial purposes (unless the land is auctioned) and an annual quit rent varying from 60 cents to $4 an acre on all land (except in a few cases where titles are rent free).

***Kelantan***

Prior to 1909, the states of Kelantan, Trengganu, Kedah, Perlis and adjacent islands were under the suzerainty, protection, administration, and control of Siam. In 1909, the Siamese government through the Anglo-Siamese Treaty transferred all powers over the states to Great Britain. In 1910, under Article 2 of a treaty concluded between Great Britain and the Sultan of Kelantan whereby the Sultan agreed to receive a British adviser whose advice was to be followed in all matters of administration other than those relating to the Islamic religion and local Malay custom. The Sultan also agreed not to enter into any agreement concerning land or to grant any concession to, or by, any individual or company other than a native or natives of Kelantan, without previously obtaining the consent of His Majesty's Government; provided that, should the area of the grant or concession not exceed 5000 acres of agriculture land or 1000 acres of mining land, the written consent of the Adviser thereto would suffice.[32] In 1939, 32,000 acres of rubber land were owned by registered companies or large private owners, and the whole of the remaining cultivated area was owned by small agriculturalists.

There were no land registers kept prior to 1881 in Kelantan, the disposal of land being in the hands of local headmen acting on behalf of the Sultan. But in 1881, greater security of tenure was made possible by the introduction of a system of registration

of changes of tenure. In 1926, a Land Enactment was brought into force embodying the principles of the Torrens System of registration of title, but this was superseded in 1938 by a new Enactment (No.26). However the principles of the Torrens System were retained.

All lands, including state land were vested in the Ruler, who could alienate it in the manner authorised by the Enactment and not otherwise. The Ruler could impose any restrictions in interest on the alienation as he considered fit. The Sultan in Council could delegate to his Adviser of Land and Mines and also to District Officers his powers as regards alienation and occupation of land. He could alienate under lease any state land for mining purposes on any terms that he considered fit and, with the consent of the proprietor of any land alienated for agricultural purposes, he could alienate the whole or any part of such land under lease for mining purposes. All tin, gold, coal, petroleum and other minerals were the property of the state and no document of title other than certain specified mining titles conferred any right to remove such minerals. The Sultan could reserve any land for public purpose.

In Kelantan, land was divided into the same classes as in the FMS and there was also provision for the revision of rent at intervals of fifteen years, although no such revision could increase the rent by more than 25%. Other conditions were similar to those in the FMS land enactment except that a significant feature is the restriction placed on the sub-division of lots. The minimum area into which a piece of land could be sub-divided was one quarter of an acre,[33] although the Sultan could, in any

particular case, authorize a smaller sub-division.

With regard to land dealings, all registered land-holders were given the rights to transfer, charge, or lease their land, but leases could not be for a period longer than thirty years. Another significant clause was section 104 which provided that "the Land Registrar shall not register any transfer, charge, or lease of land by a native of Kelantan to a party who is not a native of Kelantan until such transaction has received the sanction of the Sultan in Council, subject to the imposition of such restrictions in interest and such conditions in the document of title and such terms of rent therein as he may think fit. Any such transfer, charge or lease shall be null and void unless the previous sanction of the Sultan in Council shall have been obtained".

One stringent provision under the Enactment was that in the case of any breach or default in the observance of the conditions (express or implied) of any document of title, the District Officer could, re-enter the land, and, upon registration of such re-entry, the land was forfeited to the Ruler and the title of the land extinguished. In addition, the failure of the proprietor of any land (which did not exceed ten acres in area), to cultivate it continuously, could result in the land being re-possessed by the District Officer. Failure to pay the land rent empowered the District Officer to re-enter the land and finally the land could be sold by auction, (section 179).

As in other Malay states, the Kelantan Malay Reservations Enactment (No.18 of 1930), had the usual restrictions on the alienation of reservation land to non-Malays.

However, Malays could grant a month-to-month tenancy to a non-Malay of land, which is situated within the boundaries of a town. With the approval of the Sultan, a Malay could grant to a non-Malay a tenancy of not more than three years of land within the boundaries of a town. Flexibility modification was introduced by amendment No.8 of 1940, which empowered the Sultan to approve the alienation, transfer or transmission of any reservation land to any person who was not a Malay. This policy could have negative effect on the overall Malay reservations policy unless a set of procedure or rules were laid down to guide the Ruler in Council from the indiscriminate use of the Sultan's power. However, this power was used cautiously by the Sultan.

*Kedah*

As the land tenure legislation for the State of Kedah was similar in principle to that of the FMS, it need not be described here in detail. However, it had a few outstanding features which merit elaboration.

All lands in the state were vested in the Sultan. Certain powers of alienation could be delegated by the President of the State Council to the Land Alienation Board, the Director of Lands or any Land Officer. The Board was empowered, if all its members agreed, to alienate country land of up to five hundred *relongs*.[34] A Land Officer could alienate land to a Malay only for rice cultivation. No state land could be alienated until it had been surveyed.

Titles to town land or country land exceeding fifty *relongs*, was known as *Surat Putus Besar*, or Lease of State Land: whereas land title issued to any country land not exceeding fifty

*relongs* was called a *Surat Putus Kechil*. These were titles issued by the sultans [35] of Kedah. Land alienated under grant could, subject to rental and cultivations conditions be held in perpetuity. In the absence of any restriction in interest in the land title, a proprietor had the right to transfer, charge, or lease his land. If he is a Muslim, then on his death his property will devolve according to the Muslim law of inheritance (*hukum faraid*). The Kedah Malay Reservations Enactment (No.63) differed from the Malay Reservation Enactment of other states in that in Kedah, state land could be alienated to a Siamese as well as to a Malay, provided the Siamese was certified by the Director of Lands to be an agriculturalist permanently resident in the state and no land owned by a Siamese could be transferred to a person who was not either a Malay or a Siamese. All documents of title could be charged to any one; but, if the chargor did not pay the money due, the land, if owned by a Malay could be sold only to a Malay, and if owned by a Siamese, could be sold only to a Malay or a Siamese. A lease could be granted by the owner to 'any person' for a period of not more than three years, but *bendang* or rice land could not be leased by a Malay to any other than a Malay, or by a Siamese to any other than a Malay or a Siamese. The definition of a Malay in the Kedah Malay Reservations Enactment, however, has been revised and a Malay is now defined as "a person professing the Muslim religion and habitually speaking the Malay language, of whose parents one at least is a person of Malayan race or of Arab descent." [36]

*Perlis*

A British Adviser was accepted by the Raja of Perlis in 1909 as a result of a treaty concluded between Great Britain and Siam. In 1930, a treaty was signed by which the Perlis Government agreed to continue to be under the protection of Great Britain, which exercised the right of suzerainty. The state was governed by the Raja of Perlis with the assistance of a State Council. As a matter of policy, the state in encouraging cultivation of rice, adopted a lenient attitude to the unauthorised occupation of state land.

Land was alienated in 1916 and afterwards entered in the *Register of Milik* or register of approved applications, pending demarcation or survey. When the Second World War broke out the old grants and the entries in the *Register of Milik* were replaced under the Land Code of 1937, by entries in the *Mukim* Register for country land not exceeding fifty *relongs*,[37] and by Large Grants for town-village and for country land exceeding fifty *relongs*.

The consolidating legislation was the New Land Code (No.11 of 1356 A.H.) which amended the previous law relating to land, registration of title, and the collection of land revenue. It declared the entire property in and control of state land to be vested solely in the Raja. The president of the State Council was given the power to alienate land, in accordance with the provisions of the enactment. Every document of title to land, other than a lease of State land was deemed to be in perpetuity.

The right over waters of whatever nature was vested in the Raja, and the right to all mines, minerals and jungle produce on

alienated land was reserved to the Raja.

The Perlis Malay Reservations Enactment (No.7 of 1353 A.H amended by No.11 of 1354 A.H) similar to the Malay Reservations Enactment of Kedah as described above. However, the main difference is that the Perlis Enactment prohibits the lease of reserved land to any one for a period of up to three years. No reservation land held under a document of title by any Malay may be mortgaged, charged, or leased to any person who is not a Malay or Siamese. In addition, no Malay or Siamese holding in reservation may be attached in execution of a decree or other order of a Court.

*Trengganu*

The revised land legislation of Trengganu (by Enactment No.3 of 1357 A.H.), came into force on the 1st January 1939. The most significant change introduced by the new enactment was the safeguarding of Malays from the loss of their land, by the provision prohibiting *Mukim* Register titles from being transferred or charged to other than Malays. In addition, the distribution of small estates was transferred from the Courts to the Collectors so as to ensure speedy settlement of distribution suits. In the past, failure to distribute the estates of deceased persons according to the provisions of the law had been one of the chief weaknesses of land administration in Trengganu particularly and in other states generally.

The new Land Enactment followed generally the legislation of the FMS, but with some differences. The entire property in, and control of state land, was vested solely in the Sultan, who could delegate many of his powers to the Commissioner of Lands. There

were five forms of document of title.[38]

In Trengganu, country land under ten acres was divided into two classes, namely, *Mukim* land[39] and land held under a *Grant Kechil*. The proprietor of *Mukim* land was deemed to have permanent, heritable and transferable right of use and occupancy, subject to certain cultivation condition and other conditions. In terms of dealings, he could only transfer or lease his holding to a person or persons entitled to hold *Mukim* land and in the case of a lease the period could not exceed three years. *Mukim* land could not be charged except with the express permission of the Sultan in Council and then only if the charge was in favour of the government or of a person entitled to hold such land. *Mukim* land was not liable to attachment by order of the Court, and no court could recognise or give effect to any equitable mortgage, charge or lien made by deposit of document of title in favour of any person not qualified to hold *Mukim* land, nor would any court deal with or determine any matter relating to *Mukim* land in accordance with any principle of equity in favour of any such person. One disadvantage in relation to *Mukim* land is that it could not be planted with commercial crops and in default of this condition, the Sultan in Council could cause it to be forfeited or could approve the issue of a *grant kechil* in exchange.

Having discussed the varied land tenure systems practised before the introduction of a unified and modern land tenure system in Peninsular Malaysia, it is now proposed to see the birth of a more unified and modern system of Land Administration in the Peninsula.

*THE BIRTH OF A UNIFIED SYSTEM OF LAND ADMINISTRATION AND LAND LAW*

From the above discussion, it can be seen that there are now two main separate legislations governing land matters in Peninsular Malaysia, and these are the NLC (Penang and Malacca Titles) Act 1963 which is applicable only to Penang and Malacca and the National Land Code 1965 which is applicable to the whole of Peninsular Malaysia. The introduction of the National Land Code (NLC) in 1966, unified the whole system of the land law and land administration in the Peninsula. As for Sabah and Sarawak, the Sabah Land Ordinance and the Sarawak Land Code apply in the two states respectively. The operation of the two major laws in Peninsular Malaysia which provide for the Torrens system of title registration in Malaysia is supplemented by the various subsidiary legislation passed by the respective states in Peninsular Malaysia. The two main legislations as stated above not only make provisions for a system relating to registration of dealings in land but also for the substantive law governing such dealings and interest in land.

Notwithstanding the fact that land is a state matter,[40] under Article 76(4) of the Federal Constitution, the Federal Government may make laws with respect to land matters in a state if such laws are enacted to ensure uniformity of laws and policy in respect of land matters in all states.[41] However, this Article has been challenged unsuccessfully, in the Federal Court as in the case of *East Union (Malaya) Sdn Bhd v. Government of The State of Johore & Government of Malaysia.*[42] In this case, the applicant company applied for a declaration that section 100 of the NLC enacted by the Federal Parliament is void on the ground

that it is *ultra vires* Article 76(4) of the Federal Constitution in that the section deals with a subject with respect to which it has no power to legislate. However, the Federal Court dismissed the suit on the following grounds:

> ..."The sole test is simply this: does the impugned provision enacted by Parliament ensure uniformity of law and policy? If it does, it is constitutional, regardless of the position previously. If it does not, it is unconstitutional. By this test, the impugned section is within the power of Parliament to enact."

Such powers of the Federal Parliament are not exercisable with regard to the States of Sarawak and Sabah [43].

With regard to land held under the English deeds system in Penang and Malacca, such lands are now in the process of being converted to Torrens title similar to that under the NLC, 1965. In the case of land held under customary tenure (Malacca and Negri Sembilan), they are recognised and preserved as such under section 4(2)(a) of the NLC, the respective provisions of the NLC (Penang and Malacca Titles) Act 1963 and the Customary Tenure Enactment (FMS Cap 215). With the exception of Penang and Malacca, all states in Peninsular Malaysia have Malay Reservations laws which operate independently of the NLC and will prevail over the latter in cases where the provisions of the latter are inconsistent with those of the former.[44] Under the present NLC, the validity and past operation of anything done under any previous land law are preserved provided that, unless provisions to the contrary are expressly provided for, any right, obligation, privilege or liability existing at the commencement of the present land legislation by virtue of any such previous land law will now be subject to the respective provisions of the present land legislation.

***AN OVERVIEW OF THE NATIONAL LAND CODE, 1965.***

Under the NLC, all lands alienated by the state under the provisions of the Code, which have been surveyed, will be held either under a Registry Title (for town or village land or for country land exceeding four hectares (ten acres) or Land Office Title, (for country land less than ten acres or less than four hectares) both of which are documents of final title.

The Malaysian legal system, adopts the principles of English law. However, section 6 of the Civil Law Act 1956 which is applicable to the whole of Malaysia, categorically excludes the application in Malaysia of English land tenure which would embrace all rules of law including English equitable principles relating to the incidents of land tenure. This can be seen in the observation made by the Privy Council in *United Malayan Banking Corporation Bhd & Anor v Pemungut Hasil Tanah, Kota Tinggi* [45] as follows:

> The National Land Code is a complete and comprehensive code of law governing the tenure of land in Malaysia and the incidents of it, as well as other important matters affecting land there, and there is no room for the importation of any rules of English law in that field except in so far as the Code itself may expressly provide for this, as in *Tan Wee Choon v Ong Peck Seng.*[46]

However, the foregoing observation of the Privy Council, notwithstanding, the better view is that the prohibition imposed by section 6 of the Civil Law Act 1956 may not be absolute.

While the National Land Code professes to be a complete and comprehensive code of law governing the tenure of land in Malaysia and its incidents, it does not, however, make provision for certain matters relating thereto.[47] In the matter of private dealings for example, the NLC provides for the regulation of the rights and obligations of the respective parties only from the stage of registration onwards but not for the period prior to registration. Accordingly, in the absence of any provision, express or implied, prohibiting the application of English equitable principles relating to land tenure, it may be appropriate that resort be had to such English equitable principles as regards the nature and incidents of the various kinds of dealings in land in respect of the period prior to the registration.[48] Such application should, however, not be in conflict with the stated aims and objectives of the Torrens system (see also *Haji Abdul Rahman & Anor v Mohamed Hassan; Devi v Francis; and Chin'Choy & Ors v Collector of Stamp Duties*).[49]

***POWERS OVER LAND***

Before we describe who has the power over land matters in the Peninsula, it is important that we trace the history of the subject to which we now turn. Before Independence a subject could be wholly federal or state or partly federal or partly state. In the case of the latter, the federal legislature had power to make law, but such law had to confer executive authority on the states and Settlements. In particular, under clause 48 of the Federation of Malaya Agreement, the Federal Legislature had power to legislate with respect to compulsory acquisition of land[50]; land legislation to the extent of ensuring a common policy and a

common system of administration, but having regard to customary tenure and usage and other necessary variations in any state or settlement; conveyancing and law of property; registration of titles and registration of deeds; mortgage and charges interest restriction[51]; and Malay Reservations to the extent of ensuring common policy,[52] such federal laws had (except so far as matters of policy common to two or more states or settlements were involved) to confer on states and settlements executive authority over the subject of the legislation.

However, the Federal legislature did not use the power to make uniform land laws for the whole country. As a result, there still existed in 1956-57 separate land enactments for both UMS and FMS and for the two settlements.

The Royal Commission headed by Lord Reid,[53] appointed in 1956 to draft a Constitution for independent Malaya, considered the position unsatisfactory. While recommending that land should after *Merdeka* remain a state subject, they commented in paragraph 84:

> ...but...it is desirable with regard to many State subjects that the laws in force in the various States should be as uniform as possible. We therefore recommend...that parliament should have power to pass an Act on any State subject but that such an Act should not come into force in any state until it has been adopted by an Enactment of the State Legislative Assembly, and that in adopting such an Act the State Legislative Assembly should be entitled to make such modifications as it deems appropriate....In making this recommendation we have particularly in mind legislation with regard to land and kindred subjects....

With regard to land, the Commission observed that the existence of so many land enactments was far from satisfactory.

One of the members of the Commission, Sir William McKell, then Retired Governor-General of Australia, pointed out that the National Land Code, making provision for uniform land law, is of

such importance to the future of Malaya that the federal Parliament should, after consultation between the federal and state governments, have power to apply the Code in any state or states that fail to adopt it.

Eventually, the government published a White Paper setting out their views and decisions. With regard to federal power to legislate on land, the White Paper said the intention was that Parliament should have power to make laws with respect to land only for the purpose of ensuring uniformity of law and policy. A number of drafting amendments have been made to the recommendations of the Commission with regard to the division of legislative and executive powers between the Federation and the States. In general, however, the White Paper stated that the recommendation of the Commission as set out in the Sixth Schedule to their draft Constitution for the Federation would be accepted.

With regard to land, the scheme of the Federal constituition currently in force may be summarised as follows:

(a) Land is a State subject (item 2 of the State List in the Ninth Schedule). Revenue from land is assigned to states, (item 2 part III of the Tenth Schedule).

(b) The general rule now is that legislative and executive authorities always go together. Thus, over land, states have both legislative and executive authority. Only the State Legislative Assembly may legislate with respect to it: Parliament may not. And states also have executive authority over land [Article 74(2) and 80(1) & (2))].

(c) Notwithstanding the general rule that Parliament may not legislate with respect to state subjects, under Article

76, Parliament may exceptionally do so for the two purposes set out in paragraphs (a) and (b) of clause (1) of that Article or if so requested by the Legislative Assembly of any state, subject to restrictions in clause (2) thereof. However, any such federal law does not come into force in any state until it has been adopted by the legislature of that state which may make such modifications as it likes or even repeal it.

(d) There is, however, a special provision with regard not, to land generally, but to the following aspects of land namely: 'land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land.' With regard to these matters, Article 74(4) expressly provides that Parliament may make laws, for the purpose only of ensuring uniformity of law and policy: and that these laws come into force in states without the necessity of being adopted by their Legislative Assemblies and that the latter have no power to modify them.

(e) Article 80(2) provides that with certain exceptions the executive authority of the Federation does not extend to state subjects, and by Article 76(3) which deals specifically with land, that so far as federal law made under Article 76(4) makes provision conferring executive authority on the Federation, it shall not operate in any

FIGURE 1.1

MALAYSIA AND ITS ADJACENT TERRITORIES


SOURCE : KEVIN YOUNG - A WORLD BANK COUNTRY ECONOMIC REPORT, 1980

FIGURE 1.2 PENINSULAR MALAYSIA :
POLITICAL AND ADMINISTRATIVE DIVISIONS &
AREAS UNDER MALAY RESERVATIONS


Source: IBRD, John Hopkins - 1954.

state, unless approved by resolution of the Legislative Assembly of that state.

Under the Federal Constitution of Malaysia, land is thus a state subject[54] and the Federation has no power over land matters except under Articles 83, 84, 85, 86, and 88 of the Constitution, that is in relation to the reservation and dispositions of land held for Federal purposes.[55] However, the Federation at present has powers to legislate[56] to the extent of ensuring common policies on land matters and a common system of land administration and such powers have been exercised in the legislation of uniform land laws, namely: the NLC Act 56 of 1965, the Small Estates (Distribution) Act, 1955, the Land Acquisition Act, 1960, and the Land (Group Settlement Areas) Act, 1960.

The states own and control the land within their respective state boundaries. The executive functions pertaining to land matters are vested in the states and the supreme authority in each state on questions of land administration is the Ruler-in-Council. Therefore, land administration is one of the most important functions of state governments in Peninsular Malaysia, but due recognition[57] of that fact is not apparent in all quarters. Revenue from land taxation accounts for a major part of the state's annual income[58] as shown in Appendix 1.2. The products from land, chiefly rubber, oil palm, tin, cocoa, and coconuts, have contributed to the economic development and prosperity of Malaysia, in the form of export taxes. Therefore, the correct utilisation of land and the proper administration thereof is essential to ensure the future prosperity of the country. However, direct revenue derived by the states from

land premia and land rents are not nearly as substantial as they could be with effective land administration.[59]

***BACKGROUND TO MODERN MALAYSIA: LAND ADMINISTRATION***

The nation state of Malaysia was formed in 1964, comprising thirteen states with a total land area of 127,316 square miles. It is divided into three parts:

(a) Peninsular Malaysia, also known as West Malaysia and formerly known as Malaya;

(b) Sabah, formerly known as North Borneo;

(c) Sarawak.

Both Sabah and Sarawak are often referred to as East Malaysia or 'Borneo Territories' (a term used in the Malaysian Constitution). In terms of land administration, the East Malaysian states do not form an administrative entity and have little in common. However, both the Peninsular Malaysia and East Malaysian states have adopted the Torrens system of land registration. The two regions of West and East Malaysia are separated by about 400 miles of the South China Sea. Figure 1.1 shows Malaysia and its adjacent territories. Political and administrative divisions of Peninsular Malaysia [Malaya] including Malay Reservations, are shown in Figure 1.2.[60]

Malaysia is a monarchy and the sovereign, known as the Yang di Pertuan Agong, is elected for a five year term from among the Sultans (Rulers) of West Malaysia. Each state of Peninsular Malaysia has a Sultan,[61] except for the states of Malacca and Penang; the latter, like Sarawak, each has a Yang di Pertua.[62] The Head of Sabah is designated Yang di Pertuan Negara. Legislative powers at the Federal level rest with the *Dewan*

*Rakyat* (House of Representatives) and *Dewan Negara* (Senate). The states have their own State Legislative assemblies which have the powers to pass laws on matters described and reserved in the Federal Constitution that is the State List. The Federal Constitution is a modified and extended version of the 1957 Constitution of the Federation of Malaya, (Persekutuan Tanah Melayu) and each state has its own written Constitution. The Prime Minister heads the government of Malaysia and the state governments are headed by the Menteri Besar (Chief Minister) known in the case of Penang, Malacca, Sabah and Sarawak, as Ketua Menteri, (Chief Minister).

For the purpose of administration, Peninsular Malaysian states are divided into districts,[63] and each district[64] is headed by a District Officer (D.O) drawn from the Malaysian Administrative and Diplomatic Service [65] or the respective State Administrative Service.[66] In all states except Johore, the D.O is at the same time appointed by the State Authority[67] as Collector of Land Revenue (CLR) now known as District Land Administrator (DLA)[68] and head of the land office of the district. In the state of Johore, the District Office has been separated from the Land Office even before independence in 1957 and the DLA controls the Land Office.

The District Officer's functions are manifold and include the co-ordination of all district departments, chairmanship of local government authorities, of the District Security Committee, and of various voluntary organisations. Besides his land and municipal duties, all District Officers are by virtue of their office, Magistrates of the First Class. Bigger districts are

further sub-divided into one or more sub-districts with limited autonomy, headed by an Assistant District Officer.[69]

The creation of new districts in various parts of the Peninsula generates administrative and legal problems in land administration. In the first place, the provisions of the NLC (prior to the 1984 amendments) do not give power to the State Authority to sub-divide the district. Secondly, there is no procedure laid down by the NLC as to the transfer of land titles from one district to a new district. Section 11 of the NLC empowers the State Authority to divide the states into districts but it has no enabling provision empowering the State Authority to further divide existing districts. Thus, the procedure to be adopted by the Land Officers in such cases is absent in the NLC. The NLC Revision Committee (1982) recommended that special provisions and procedures should be included in the NLC to cope with such anomalies[70].

The smallest administrative units in West Malaysia are known as *Mukims*.[71] The head of a *Mukim* administration is known as *Penghulu* (in Kelantan, *Penggawa*) who is directly appointed by the Sultan and usually drawn from the State Administration Service. All land titles under the NLC are categorised into *Mukim* lease or *Mukim* grant and state lease or state grant. *Mukims* are further sub-divided into *Kampung* (villages) and the position of a headman (or *Ketua Kampung*, *Penghulu*, in Kelantan) is an honorary one.

***SOCIO-POLITICAL-ECONOMIC ENVIRONMENT***

Malaysia is a multi-racial nation, 55.3%[72] of the population are Malay Muslims (6,315,600), 33.8% are Chinese (3,865,400), and 10.2% are Indians (1,171,100). Most of the Chinese are Buddhists,

Taoists and some of them are Muslims and Christians. The majority of the Indians are Hindus and some of them are Muslims. According to the 1980 census, the population of Malaysia was 13.7 million people and of this total 11.4 million were in Peninsular Malaysia; 1.0 million in Sabah and 1.3 million were in Sarawak, [see Appendix 1.1].

The Malays are predominantly paddy cultivators and agricultural smallholders living mostly in rural areas. The Malays occupy high positions in the civil service, particularly in the administrative and legal service but in the technical, medical and professional services, the Chinese and Indians dominate,[73]. The main sphere of economic activity of the Chinese is industry and commerce and they control the entire private money market. The majority of Indians are employed in plantations (as workers) and in transportation services, but many of them are also in such learned professions as the law, medicine and teaching in schools, colleges and universities. According to the 1980 census, 50.6% of all Chinese and 11.3% of the Indians but only 37.4% of the Malays live in urban areas, [see Appendix 1.1].

In Peninsular Malaysia, about 73% of the total land area is under primary or secondary jungle or is covered with swamp forest. In 1975, more than two-thirds of the agricultural land in Peninsular Malaysia was under rubber, especially in the southern states of Johore, Malacca and Negri Sembilan. Oil palm is the second largest agricultural export for Peninsular Malaysia and it is the fourth largest foreign exchange earner after rubber, tin and timber. By the end of 1982, a total of 16,439,107 acres[74] of land had been alienated to various groups of

people, companies and corporations and 3,708,439 titles had been registered and surveyed.[75] About an equal number of titles were registered under qualified titles by various land offices. About 180,000 temporary occupation licences (TOLs) were issued to individuals for temporarily making use of the land for purposes of agriculture and semi-permanent dwelling houses.[76]

About 10% of the total area under agricultural use is planted with wet paddy (sawah). Malaysia produced 86.3% of its domestic rice requirement in 1973. At present, Malaysia domestic rice production is only sufficient to meet 75.4% of domestic requirement, and it is aiming at 80% self sufficiency in the near future.[77]

***THE TORRENS SYSTEM IN PENINSULAR MALAYSIA***

Land administration is the oldest form of local government administration in Malaysia. As discussed earlier in the Chapter, it can be traced as far back as 1786 when Penang was colonised by Sir Francis Light. However, the Dutch too had set up a system of land administration during their rule of Malacca from 1641. When the British took over Malacca from the Dutch in 1825, they also took over a mass of land problems.[78]

A more systematic kind of land administration was introduced in 1879. From 1879 to 1890 the states of Perak, Negri Sembilan, Selangor and Pahang had a new system of land registration known as the 'Torrens System'.[79]

The effect of the system was to place the land on the register in such a way that the estates and interests in it, so long as the land remained on the register, are held therefrom by indefeasible title, which can only be created and transferred by

the appropriate entry on the register.[80] The earliest legislation in Malaya was the Perak General Land Regulations 1879, repealing Regulation 1 of 1877. In Penang and Malacca, English land law influenced the states' land administration by recognising customary tenure in Malacca and the passing of the Bengal Regulation 1, 1831 which remained in force until it was repealed in 1837.

Under the deeds system of English land law, [Penang and Malacca] the register of deeds is not a register which conveys a conclusive title. It is not a register of title to land, but a register of deeds affecting title to land. Although the English system of conveyancing is designed to protect the purchaser and also to protect the rightful owner, the disadvantage of the English system was that it tended to make title uncertain. Its advantage was the great freedom of disposition which it gave to land owners. The incursion of equity which is administrative, declaratory and protective and of 'notices' in the English land law tends to make title to land still more uncertain[81].

***The Fundamental Principles of The Torrens System***

The Torrens system of land registration is certain, reliable and cheap and land transaction can be carried out expeditiously at minimum cost. No solicitor is necessary if the parties choose not to engage one for the transaction. The register is the key to the title. It furnishes all the necessary information; the name of the proprietor for the time being; the actual land alienated; its area and location as described in the document of title; the survey plan inscribed therein shows its boundary limits. Such a plan can be checked for its accuracy by a

personal inspection of the boundary stones as marked on the ground at the time of survey on which the title is based. As the document of title is deemed to alienate only the land within such boundaries, if the boundary stones are destroyed or altered, authority has been conferred on the CLR, the Survey Officer and the Settlement Officer to restore the boundary marks.[82]

There are three main principles the first two of which were adopted from the Torrens system. The first principle is the mirror principle under which "the register reflects all facts material to the registered proprietor's title to land". It confers indefeasible title, with its security, plainness and simplicity. This makes it, for the purpose of personal credit, easily convertible into cash and as useful and negotiable as the ordinary scrip of a joint stock company.[83]

The second principle is the curtain principle[84] which emphasises that the intending purchaser of a piece of land is solely concerned with the register which, in the contemplation of the law,"is the only source of information about the legal title so that he neither need nor may look behind it." The main difference between the Torrens System as codified in the NLC and in other jurisdictions is that the NLC does not recognise a possessory title to land; adverse possession of alienated land by a third party for whatever length of time does not extinguish the title of the registered proprietor nor does it in any way fetter his right to possession as in *Sidek bin Haji Muhammad & 461 Ors v Government of the State of Perak & Ors.*[85] Equities affecting the land have no place in the system upon a *bonafide* transfer for value on the registration of the title to the land, except to the

right of the tenant if any, for a term not exceeding one year, in other words, once the land is transferred, equities under English law have no effect except in relation to the right of a prior tenant (see for example *Meenachi Sundram & Anor v Kunjan Pillai*).[86] This is the only unregistered statutory [87] encumbrance recognised by the NLC.

The third principle of the Torrens system is the assurance principle, by which a contribution to the Assurance Fund is levied upon initial registration of land and upon registration of transmission in consequence of the death of a registered proprietor. This fund is to be used to compensate for the loss caused through the operation of the Torrens Statute. The third principle is not present in the Malaysian Torrens System as each state government is responsible for any loss or damage its officers might cause to others in the course of carrying out their duties.[88]

***LAND LAWS IN PENINSULAR MALAYSIA***

The Torrens system established a new system of land registration. It also established a new mode of conveyancing whereby the title to land and interests in land depends upon registration and upon instruments *inter partes*. Such instruments (such as an agreement to sell or charge the land and so on) can be used as means for obtaining registration, but do not affect the land title until registered [see for example, *Mohammad b Buyong vs Pemungut Hasil Tanah, Gombak & Ors* [89].]

Before the coming into force of the NLC in January 1966, throughout Peninsular Malaysia, land laws and land administration were somewhat diversified and complex, varying from state to

state and also varying within the two Settlements of Malacca and Penang. The four former Federated Malay States (FMS) of Perak, Selangor, Pahang and Negri Sembilan had a common land code, but each of the other states and settlements had its own land laws. There were differences in procedure, but the differences in the land laws of the various states, though considerable, were not of a fundamental nature. The Settlements differed considerably from the states in the laws relating to land. The two Straits Settlements of Malacca and Penang based their land laws on the deeds system of English land law as discussed earlier in this chapter.

With the introduction of the NLC, all the states' and settlements' land laws were unified under one land law and under one system of land registration [90] based on the Torrens system. Under the old Land Code, each state practised varied systems and procedures and issued different types of land titles to the land as shown in Appendix 1.1a. More than 40 land laws of the former Malay States and Straits Settlements have been streamlined and codified under one single law which can be considered a great achievement in Malaysian land law reform. Basically, the NLC is a change of form rather than content for the principles of earlier laws remain largely unchanged. The main achievement of the NLC is two-fold. Firstly, it establishes a uniform, clear-cut system of land tenure and dealings in place of the previous unorganised systems, and secondly, it incorporates new provisions required by modern national development objectives.

Besides the NLC, there are about 125[91] other laws in Peninsular Malaysia relating to land administration. A number of

separate federal and state land laws continue to exist and are not affected by the Code. These are laws relating to Malay Reservations, Mining and Forest Enactments, Customary Tenure Enactment, Sultanate lands, laws relating to *Wakaf* (land bequeathed for religious purposes) or *baitul-mal* (General Endowment Fund), the Kelantan and Trengganu Land Settlement legislations, the Land (Group Settlement Areas) Act, the Land Acquisition Act, the Small Estates (Distribution) Act, Padi Cultivators (Control of Rent and Security of Tenure) Act and other related land laws.

***FEDERAL ROLE IN LAND ADMINISTRATION***

The role of the Federal Government in land administration is very limited as shown in the organisational chart in Appendix 6.3. However, the Federal Government can play quite a substantial and influential role in shaping the land policies throughout the states through the National Land Council, the office of the Federal Commissioner of Lands, Federation of Malaya, and the Regional Development Authorities (RDAs). However, the Federal Commissioner has no executive functions and he acts in an advisory capacity only. He also has authority to inspect land offices throughout Peninsular Malaysia (with the approval of the State Commissioner)[92] but he has no authority to enforce his directions. He is only able to control or sufficiently influence land policy and administration through the State Commissioners of Lands and Mines that is by convening a regular meeting of the State Commissioners.[93] The Federal Lands Commissioner is in a better position to influence the land affairs of the federation as a large number of the federal officers of the Administrative

and Diplomatic Service and the General Administration Service are made available by the Federal Government to work in the senior and sub-senior posts in the office of the Director of Lands and Mines and the District Land Offices.[94] However, the Federal Government also maintains a number of technical services and scientific officers whose assistance and advice are available to the states. The cost of such services is mainly met by federal revenue. One such department which has a direct link with land administration is the Survey Department.[95]

***THE NATIONAL LAND COUNCIL***

Through the National Land Council,[96] the Federal Government may influence the state Governments in the formulation of a national land policy, as provided by Article 91 of the Constitution, [see Appendix 1.3]. The National Land Council consists of a minister (normally the Deputy Prime Minister) as chairman who has a vote but not a casting vote, one representative of each of the states appointed by the Ruler or Governor (the Yang Di Pertua), normally the Menteri Besar or the Chief Minister and not more than ten representatives appointed by the Federal Government.

The resolutions of the NLC are treated as policies agreed by the states of Peninsular Malaysia by virtue of Article 95E of the Constitution, [see Appendix 1.3a] but the governments of Sabah and Sarawak are not required to follow such policy unless they so choose. Since the decisions are not binding on them, their representatives to the Council are without votes.[97] The Council has a minimum of one meeting per year.[98]

*FUNCTIONS AND POWERS OF THE NATIONAL LAND COUNCIL*

By virtue of Article 91(5) of the Federal Constitution, the National Land Council's function and responsibility is:

> "to formulate from time to time in consultation with the Federal Government, the State Governments and the National Finance Council, a national policy for the promotion and control of the utilisation and control of land throughout the Federation for mining, agriculture, forestry or any other purpose and for the administration of any laws relating thereto, and the Federal and State Governments shall follow the policy so formulated."

The Ministry of Lands and Regional Development acts as the Secretariat for the National Land Council and the Secretary General of the Ministry is the Secretary of the Council.

By virtue of Article 91(6) of the Constitution, the Council, in addition to giving direction and exercising the power of control over utilisation of land, may give advice to the governments both the federation and the states, in respect of utilisation of land or any proposed legislation dealing with land or the administration of any such law, and it shall be the duty of the National Land Council to advise that government on any such matters.

The NLC, under Section 9, strengthened this provision of the Constitution by providing the machinery for the execution of the resolutions passed by the Council. The Minister for the time being charged with the responsibility for lands (currently the Minister of Land and Regional Development) on behalf of the Council, must notify the government or governments concerned, of the policy made or advice given. The power of the Minister is limited to only the making of enquiries for the purpose of keeping the Council informed as to the implementation of policy or the adoption of advice.[99]

Since its establishment in 1958, the Council has been active in formulating major policies covering land administration, land alienation and land development, land use planning, agricultural policy and the adoption of a uniform NLC for Peninsular Malaysia. The new policies formulated by the Council are dealt with in various chapters of this study.

Although policies formulated by the Council are binding on the state governments, the Council has no means to enforce its decisions, except through the Courts. Such action has not yet been taken to date. When the Pan-Malayan Islamic Party (PAS) which ruled Kelantan from 1959 to 1973, refused to implement such National Land Council decisions, as that the Kelantan Land Development Board, as a local development agency be dissolved, no action was taken. The Council, in 1974, also agreed in principle, to reorganise land administration by *inter alia* separating the land offices from the district offices. However, only a few states followed this decision[100] and no action was taken against the others.

Several major land law reforms such as the proposal for a new National Mining Code to unify the existing varied state mining enactments have been rejected by the Council.[101] The majority of the state governments rejected the proposal as an infringement by the Federal government of state rights over land matters. It was submitted that this would transfer the power over mining matters from the states to the federal government. This position, however, ignored the fact that the proposed National Mining Code vested power over mining matters in the respective state authorities. The Federal Government's intention in

proposing the National Mining Code was only to unify the varied and outdated state mining enactments to make them responsive to national development objectives. The misunderstanding on the part of the state governments was perhaps caused by the proposal being abruptly put forward in the Council without proper prior consultation with the state governments.

The present structure of the National Land Council can only work if there is understanding and goodwill on the part of the governments at both the federal and state level.

***STATE AUTHORITY AND LAND ADMINISTRATION***

Sections 11 and 14 of the NLC give wide powers to the State Authority in matters relating to land, (see Appendix 6.3.). This includes the powers to divide the territory of the state into districts, sub-districts, *mukims* and to declare any area of the state to be a town or a village.[102] The state authority is also empowered to appoint such Land Officers for the state as the State Land Commissioner, a Registrar of Titles, District Land Administrators, a Chief Surveyor and other Officers.[103]

The State Authority can also make State Land Rules and Regulations for carrying out the objects and purposes of the NLC within the State. Currently, each state has its own set of Land Rules made under Sections 14, 435 and 445 of the NLC.

The Ninth Schedule of the Federal Constitution distributes Legislative powers between the Federal Parliament and the State Legislative Assemblies as follows:[104]

(a) A Federal list exclusively for the Federal Parliament;

(b) A State list exclusively for each State Legislative Assembly;

(c) A Concurrent list in relation to which the Federal Parliament can legislate only with the concurrence of the state governments. Land is the major item in the State list.[105]

However, pursuant to its national development and the New Economic Policy, the federal government has increasingly used its strong financial position to intervene in land development projects through the Federal Land Development Agency (FELDA), the Federal Land Consolidation and Rehabilitation Agency (FELCRA) and the various Regional Development Authorities (RDAs).[106] Appendix 1.3b shows the amount of expenditure provided by the Federal Government for the various land development programmes according to state.

The states permit the use or occupation of state land under a title, temporary occupation licence or extraction of rock materials under a permit. Basically, upon alienation of land and on registration of the title thereto, the rights over the land passes from the state to the person or body named in the title subject to certain conditions set out in Part Five of the NLC and discussed in detail in Chapter 3.

***THE STATE EXECUTIVE COUNCIL (EXCO)***

Land as a state matter is the chief subject of state administration, (see Appendix 6.3). The State Executive Council or EXCO, a state cabinet analogous to the Federal Cabinet, is collectively responsible to the State Legislature. The EXCO is the main political body with executive power to decide on everyday land policy. The Chairman of the EXCO is the Menteri Besar or the Chief Minister of the state with the other EXCO

members being 'State Ministers' though not termed as such except in Sabah and Sarawak, where they are titled 'ministers'. They are assigned special functions and are in charge of one or more state departments. The State Secretary, the State Legal Adviser and the State Financial Officer who are civil servants are ex-officio members of EXCO. The Director of Lands and Mines is not an ex-officio member of EXCO, though land is one of the major concerns of the State EXCO as is indicated by the fact that usually more than three quarters of the papers discussed by an EXCO meeting are devoted to land matters. It is submitted that the State Director of Lands and Mines, a professional officer responsible for the entire land administration of the state should be an *ex-officio* member of the State EXCO. As all the EXCO papers on land matters issue from the office of the Director of Lands and Mines, he is as the state's land expert and the man on the ground, in the best position to know and explain the actual facts of every case submitted to the EXCO. However, the EXCO has nearly absolute powers to decide on any land matters and provided that the decisions do not contravene federal or state land laws or land policies agreed upon in the National Land Council, it can overrule the advice tendered by the head of any of the state's technical departments.

There have been instances of papers prepared by the Land Administrators,[107] being overlooked by the State Director of Lands and Mines and the State Secretariat, whose function it is to scrutinise them before they are submitted to the EXCO. Such errors when they involved land titles after registration had to be rectified by the High Court especially if a title had been

issued to the proprietor of the land. Less grave errors can be resubmitted to the EXCO for rectification.

There have been calls that the Federal government be given greater power over land matters to ensure effective land administration and a uniform land policy. However, if land matters were taken away from the state governments, the EXCO would have little work and be left with no power. State governments will never agree to transfer their power over land matters to the Federal Government as this is the only political instrument that the state politicians have to justify their existence in the state political arena. In fact, land is the only issue with which the local politicians can woo their constituents during the election campaigns. The fact that land matters are sensitive is indicated by the downfall of several state governments in Trengganu and Kelantan on account of land problems.[108]

*THE FEDERAL LANDS COMMISSIONER*

Under the Federal Lands Commissioner Ordinance No. 44/1957, (now Act 1957) a Federal Lands Commissioner was appointed for Peninsular Malaysia. After 1970, he became known as the Director General of Lands and Mines, Federation of Malaya. Section 8 of the NLC has the effect of making the Federal Lands Commissioner only a liaison officer between the Federal and State Governments. His powers are spelt out in Sections 6 and 8 of the NLC which *inter alia* includes: (for detail see Appendix 1.4)

(a) the consultation and correspondence with any State Commissioner;

(b) requiring the State Commissioner to furnish returns,

reports and other information as required by the Federal Commissioner;

(c) convening meetings of the State Commissioners;

(d) entering within and inspect the records of any Land Registry or Land Office in any state, (with the approval of the State Commissioner);

(e) issuing circulars relating to the administration of the NLC;

(f) acting in accordance with any direction given to him by the Minister.

His administrative responsibilities is shown in Appendix 1.5.

As stated above, the Federal Commissioner is required to execute any direction given to him by the Minister as long as it does not contravene the provisions of the NLC or other related laws. Under the Federal Lands Commissioner Act, 1957, the Federal Lands Commissioner is the custodian of the Federal Government's immovable property. He can sue and be sued on behalf of the Federal Government. His other administrative functions include registration and maintenance of federal lands and federal reserves (including all lands belonging to or occupied by federal departments), and land settlement in Kelantan under the Kelantan Land Settlement Scheme Ordinance,1955, the updating of the registers and properly bringing under the Torrens System of Land Registration[109] and ensuring that the states comply with the requirements of the provisions of the NLC and other related land legislations in the interest of uniformity.

***THE STATE COMMISSIONER OF LANDS AND MINES***

Each state has a State Commissioner of Lands and Mines (CLM).

The posts of State Commissioners were originally federal posts, but at present, some of the states obtained Federal Government permission to convert them into state posts, filled by State Civil Service Officers. In other states, the State Commissioners post are still federal posts, with Administrative and Diplomatic Service officers [110] filling the positions.

The State Commissioner is appointed by the State Authority under Section 12 of the NLC. His responsibility is to the State Authority for the due administration of the provisions of the NLC, and not to the Federal Lands Commissioner or to the Federal Government. He executes directions of the State Authority and has all the powers conferred upon the Registrar and a DLA under the Code. He is responsible for the effective supervision of the officers and staff of the Land Offices in the state.

The State Authority may delegate to the State Commissioner, Registrar or DLA, of any powers or duties conferred or imposed on the State Authority by the Code, except the powers to make rules or any powers conferred on the State Authority to act by itself. Sections 15 to 18 of the NLC spell out the various powers of the State Commissioner, as shown in Appendix 1.4. One main drawback is that, though the Land Administrators are the heads of land offices in the districts, their allegiance is divided between the State Secretary and the Director of Lands and Mines.[111] Very often the directives given by the CLM are not taken as seriously as the directives given by the State Secretary. Therefore, until and unless the Land Department is separated from the District Office, this situation will continue indefinitely.

*The District Land Administration*

The District Officer [D.O.] was at one time the focus of local administration. During the colonial period, the D.O generally combined the basic functions of government, the raising of revenue and the maintenance of law and order. More importantly, he was the Land Administrator of the District and was then empowered to alienate state lands. He is looked upon by the 'rakyat' (citizens) as the 'Raja' or at least as a representative of the government in the district. However, with development especially after Independence in 1957, the District Officer became a Jack of all trades. The power of the District Officer has been and is being eroded and he is today more of a co-ordinator than an administrator,'[12] with little of the authority he had in the past.

Although the D.O is the head of the land administration of the district, the latter occupies only a little of his attention. Land administration work is assigned to the D.O's most senior assistant as the District Officer is tied up with a plethora of such other functions as development, security, social activities, magistrate, applications for citizenship, civil marriages, education and other miscellaneous duties. All in all he is on the committees of no less than 25 organisations and attends about 500 meetings a year or on an average of 1.4 meetings per day.'[13]

The issue whether the District Office and the Land Office should be separate departments has been the subject of long debate and was raised in the National Land Council first in 1958 and later in 1974.'[14] It has been argued that since the other

work of the D.O has increased enormously, he should be relieved of land administration work. This was put forward in the report of the Land Administration Commission in 1958,''[5] which though outdated has some views worth considering. One member of the Land Administration Commission Mr Chandra, held that a Land Department separated from the general administration of the district officer, be established in every state as soon as possible''[6], [see Appendix 1.6]. Mr.Chandra was supported by Mr Mitchell. Only Mr W.L.Payne was of the opinion that there was no difference between a separate land department and a land department within the District Office''[7] under the charge of the District Officer. The majority of the members of the Commission (2 out of 3), proposed a separate land department from the District Office. Their views are still being pursued by the Federal Lands Commissioner's Office.

***Functions Of a District Land Office***

Every land office in the country deals with the following land administration matters:

(a) land alienation for agricultural, residential, commercial and industrial purposes;

(b) enforcement of conditions of land after alienation;

(c) registration of titles (Land Office titles) and such instruments of dealings as transfers, charges, and leases, and the registration of such other documents as prohibitory and distribution orders;

(d) collection of land revenue; land premium, land rents, water and drainage rates, and temporary occupation licence (TOL) fees and other charges;

(e) distribution of small estates in respect of the estates of deceased persons;

(f) acquisition of alienated lands for public purposes and for government departments;[118]

(g) issuing of prospecting licences and permits, leases and TOLs and permits to remove rock materials;

(h) planning of new land settlements on undeveloped areas other than areas being developed by FELDA, FELCRA and RDAs;

(i) enforcement of laws against illegal occupation of state land, illegal mining and illegal removal of rock materials;

(j) processing of applications for change of conditions of land use that is conversion, sub-division, partition and amalgamation;

(k) preservation of natural resources and conservation of land under the Land Conservation Act, 1960.

*PROBLEMS OF LAND OFFICE MANAGEMENT AND LAND ADMINISTRATION*

Land administration in Peninsular Malaysia is charged with the above-mentioned functions. Each district has a Land Office which is responsible for the land administration in the district. There are altogether 102[119] Land Offices in Peninsular Malaysia and 11 Registeries of Titles at the CLM Offices in the state capitals, making a total of 113 land titles registries. Titles relating to small-holdings are all held in a Land Office. Titles for town and village lands and for country lands exceeding ten acres (4 hectares) are registered in a State Registry. In addition to the duties listed above, the State Registry and the

DLA in a land office (district land registry) are responsible for the preparation and registration of land titles, the registration of all land dealings and other land transactions as well as other duties as mentioned above. Currently, there are about 3,708,439 land titles being kept in the various land offices in the country, [see Appendix 1.6a].

In carrying out the above-mentioned functions, land administration in Peninsular Malaysia is beset by enormous problems at different levels, as follows:[120]

(a) Problems in the Land Office management.

(b) Problems in the office of the Commissioner of Lands and Mines.

(c) Problems at the EXCO level.

(d) Problems at the policy making level.

(e) Problems at the political level.

***Problems In Land Office Management***

**Collection of Land Revenue**

Reports issued by the government auditor and in consequence of an investigation made by the management audit teams of the Ministry of Land and Regional Development show that the quality of work of the revenue collection sections of most Land Offices is poor and unsatisfactory. The weaknesses include:

a) failure to collect arrears of rent, amounting in some cases to millions of *ringgit* as shown in Appendix 1.2.

b) failure to enforce the forfeiture of land under section 100 of the NLC[121] for failure to pay the arrears of quit.

c) failure to keep proper accounts of land revenue collected. (A number of land offices are not in a

position to state the actual amount of arrears of revenue for any period and most Land Offices could not prepare the reconciliation statement for land rent for the preceding ten year period).

d) numerous errors in accounting records and the repetition of such errors.

The above problems arise because of inadequate work knowledge and experience and ineffective leadership of the insufficient number of officers and clerical staff. Although the volume of work has increased tremendously in the last 20 years, the number of staff has not been increased [122] proportionately to cope with the increased volume of work.

**Application for land**

Delays in the processing and approving of land applications resulted in there being more than 220,455 applications awaiting processing in March 1983 as shown in Table 3.5.[123] Delays occur at the following stages:

a) in identification of land by the Settlement Officers.

b) in processing and submitting the application for consideration by the State Authority.

c) in the State Authority giving its decisions.

d) in the Land Administrator (DLA) conveying approval.

e) in the registration of qualified title.[124]

f) getting the land surveyed for the purpose of registering final title.

The inferior quality of land alienation work is evidenced by various mistakes and omissions occurring at various stages: maintenance and up-dating of land records being unsatisfactory;

instances of reserved land being alienated; erroneous rent and premium computations; inapplicable express conditions and restrictions in interest being imposed'[25] and provisions of the law regarding qualifications to hold land being overlooked. It must be noted that errors, omissions and irregularities committed by a Land Officer will render the State Authority liable to an action for damages. However, as stated earlier in this chapter, there is no known case of an aggrieved landowner having sued the government.

**Registration of title and maintenance of Register Document of Title (RDT).**

A land title is a very important document because it is evidence of ownership and it contains information relating to property. Documents of title are prepared for registration by recording the nature of title, and description'[26] of the land. Cases of delay in the registration of qualified titles are common and final titles have not been registered even though title forms were supplied by the Survey Department. Numerous mistakes have been committed in the preparation and registration of titles.'[27] Errors in determining the area, the nature of title and cancelled and erased entries are quite common. About 10,000 '[28] damaged land registers in various Land Offices and Registries were not replaced as required under the NLC.

**Registration of Dealings, Transmission Orders and Other Documents.**

One of the most important tasks of the DLA and the Registrar is the registration of dealings. The NLC, being a procedural law, contains stringent and specific provisions to ensure that all

instruments of dealings are checked for fitness before they are considered fit for registration. This is to prevent fraud or improper dealing. To determine the fitness of an instrument, the prescribed form, its contents, its execution, correct amount of stamp fees, registration fees and qualification of parties to deal, must be thoroughly checked. An omission or failure in respect of any of these details may found a claim in damages against the State Authority.

Delays in the registration of dealings are found to be alarming especially in the large Land Registry at the CLM office. The backlog causes a delay in the registration of dealings.

Serious irregularities include registration of defective or unfit instruments, improper rejection of instruments, failure to record the rejection of an instrument in the presentation book, registration of an instrument when the land is subject to a caveat and an instrument executed on the date later than the date of presentation.[129]

**Variation of Conditions, Restrictions and Categories**

The change of condition of land use from agriculture[130] to building (residential) for example, can take more than five years. This hinders development especially when lands are urgently needed for housing, commercial complexes or industrial estates. Delays in the processing of application seeking a change of condition is likely to result in the illegal use of the land and the government loses revenue in the form of additional premium and higher quit rent. The various technical departments contribute to this delay by the time they take to supply the

required advice.[131]

**Sub-division, Partition and Amalgamation of Land**

The Land Office is responsible for processing applications for the sub-division, partition and amalgamation of land which require planning advice as well as references to other technical departments before they can be approved. Delays in giving approval occur at various stages. Various administrative and legal irregularities are not unknown.[132]

**Land Acquisition**

Delays occur at various stages of processing; the greatest backlog being in the preparation of new titles in continuation in respect of the remaining unacquired portion of the original land area. Requisition for survey were delayed and appeals to the courts have been delayed for five or more years.[133]

**Enforcement of Conditions of Land Use and Controlling of Illegal Occupation of State Land**

The task of checking and enforcing conditions of land use is not normally allocated to any section or branch of the Land Office. Hence there is no set programme for identifying and dealing with the same. The incidence of conditions of land use being breached has increased and the government has lost revenue which would otherwise have accrued by way of additional premium and high quit rent.[134] More and more state land has been illegally occupied especially in town areas where housing sites are badly needed. Thousands of acres of agriculture lands are being occupied illegally in the country as shown in Table 3.2[135]

**Distribution of Small Estates**

The responsibility for distributing small estates[136] of value

of not more than $600,000 is vested in the Land Office to ensure the inexpensive and expeditious settlement thereof as compared to the large estates which have to be settled by the High Court. However, in 1974 there were 35,000 small estates to be distributed. In the same year, the responsibility of settling the small estates was transferred to the Ministry of Land and Regional Development. Federal Officers were sent to the states and districts to do the work and by the end of 1988 the number has been reduced to about 10,000 cases.[137] Delays in settling the small estates distribution hinder land dealings or development of the land.

**Reasons For the Inefficiency And Ineffectiveness Of the Land Office**

Various factors have contributed to the inefficiency and ineffectiveness of the land office :

(a) Weak and ineffective leadership at the district level.

(b) Lack of adequate knowledge of land law and land administration procedures among the officers and subordinate staff.

(c) Shortage of staff.[138]

(d) Lack of adequate modern facilities, equipment and office space.

(e) Delay in decision making by the EXCO, State Commissioner, Land Office and by other technical related departments.

***Problems In the Office of the Commissioner of Lands and Mines***

Problems found in this office are similar to those besetting the district land office. The ideal requirement for the post of

State CLM is the knowledge of land law (preferably a law degree) and land administration acquired through at least ten years of experience at the state and federal levels.

The State CLM as it stands, does not have direct supervisory power over the DLAs, who are also District Officers. As DOs they report to the State Secretary who assesses their work and determines their promotion. Consequently, the satisfaction and approval of the State Secretary is more important to the DOs /DLAs than that of the CLM.

***Problems At The EXCO Level***

Until recently the emphasis of the state government has been development *per se* although more than three quarters of the matters discussed at State EXCO meetings deal with land matters. Each State EXCO meets once in fortnight and discusses between 25-30 papers out of an average total of more than three quarters are papers on land, many land cases requiring the approval of the EXCO are deferred. One is not allowed to complain about delays at the EXCO level except through the political channels. A recent directive[139] (1983) by the then Deputy Prime Minister in the form of a resolution of the National Land Council requiring all Land Offices to submit all land cases to the State EXCO within three months of their receipt will have little effect, if the EXCOs are not directed to make quick and fast decisions of such cases. The EXCOs will (as they already are), be burdened with a backlog of land cases and the Land Office will take the blame.

***Problems At The Policy Making Level***

Policy decisions on land matters are made both by the State

Authority (EXCO) and the National Land Council. Decisions made by the EXCO are being followed closely by the executives but decisions and resolutions made by the National Land Council are often not taken seriously by the state. This impairs the implementation of any national policy on land administration.

***Problems At The Political Level***

Land matters have been much politicised both by government and opposition politicians.[140] Questions on land matters often become popular subjects and have always been raised in the State Legislative Assemblies and in both Houses of Parliament.

However, land officers at the state and district levels have been complaining of political interference in their duties. Action to implement various provisions of the NLC and related land laws has often been hampered by the politicians who interfere with the task of land officers especially where the eviction of squatters or illegal occupiers of state land or the recovery of arrears of quit rent from the land owners through forfeiture of land are concerned.

The present system of land administration is considered to be the best system that the country has had. It is the clearest cut of all systems of registration of titles. It depends entirely on its simplicity and speed and clarity based on two fundamental requirements: that any particular piece of land can be exactly identified and delimited beyond doubt and that, that title to that piece of land is established beyond any doubt by its entry in the Register of Titles. It is a system of perfection without compromise and if perfection is lacking, there follows inefficiency and confusion. The arrears of work in the land

offices for example, is due not to the present system of land administration (Torrens system) *per se*, but the weakness of the machinery or those who implement the system.

Land administration is a skilled profession, requiring intensive training and long experience. To achieve professionalism in land administration, a separate land service department in each state, providing a career for officers therein is therefore the answer towards achieving specialisation in land administration.

***LAND TENURE AND LAND LAW REFORMS***

With the introduction of the NLC, major changes have taken place in the land tenure and land law in Peninsular Malaysia. Besides unifying the varied land laws in the eleven states of the Peninsula, the NLC has brought about administrative and political reforms in terms of land matters. Under the NLC, the powers of the state and federal governments are clearly defined and so are the powers of federal and state officers as regards land matters. The rights and powers of the State Authority, such as those relating to the disposal of state land[141] and the extent of disposal of minerals, rock material and forest produce are also clearly defined.[142]

The main features of land tenure and land law under the NLC are as follows:

(a) Traditional, customary and religious practices will not be affected and recent laws to facilitate development or to control use of land will be saved, (Section 4, Part I).

(b) The Federation has limited but definite powers of

intervention in land matters:

(i) Under the Constitution,[143] the National Land Council has a responsibility to advise the states on land matters if asked and to formulate land policies. The provisions of Section 9 of the NLC confer on the Minister such powers as are necessary to enable these constitutional responsibilities to be effectively discharged. Sections 7 and 8 of the NLC are more or less ancillary to section 9 and enables routine action to be delegated to and performed by the Federal Lands Commissioner.

(ii) The Survey Department is given the overall responsibility for the proper surveying of all lands and is to be made a federal department under the control of a Minister. Section 10 enables the department to discharge its duties within the states.

(iii) Under Section 52 of the NLC land is classified into three categories:[144] agriculture, building and industry. The state therefore, controls the use of land. On alienation, the land is made subject to special terms and conditions (specified in Part VII of the NLC) to each category.

The effect of this new category provision is to ensure that land shall at all times be fully and properly used for the purpose for which it was alienated and shall at no time be used for any other purpose.

The two conditions should facilitate state control of planned development.[145] However, sections 53-56 permit the extension of

similar controls to lands alienated under previous land laws in two stages:

By section 53 of the NLC, at the date of commencement of the Act, all such lands will become subject to a negative condition that is their use for improper purposes will be prohibited.

By section 54 of the NLC, the government can after the coming into force of the Act, reclassify such land into an appropriate category, and thereupon the land will become subject to a positive condition that is their use for the purposes for which they were alienated.

(c) The NLC introduced a new kind of land title known as 'Qualified Title' (Q.T).[146] It is a substitute for the earlier 'approved occupation (A.A.) in expectation of title' - now abolished. The purpose of the Q.T is to permit a land applicant to go into occupation of approved land prior to its final survey. The fundamental difference between a Q.T. and a final title is that the former is issued before the boundaries of the land to which it refers to have been determined by survey. Notwithstanding this, a Q.T is a title as fully indefeasible and as capable of being charged, leased or otherwise dealt in as a final title. It is inferior to final title only in that the land to which it refers has not been subject to final survey and that it is not capable of being sub-divided, partitioned, or amalgamated until a final title is issued[147] unless it is a Q.T in continuation of final title. The other purpose of Q.T is to facilitate sub-division, partition or amalgamation of

land which are already held under the final title. Delay in survey and in the preparation of final sub-divisional titles may be severe especially where a large area of land is being fragmented into a great many small lots in the case of housing estates. The use of Q.Ts in such cases will be a great convenience both to developers and purchasers.[148]

(d) The proprietor of the land may surrender his title (partially or wholly) where the part to be surrendered is required for a religious, educational, charitable or public purpose.[149] If proprietor of adjacent lands held under land office title wishes to amalgamate them solely for the purpose of making an immediate sub-division according to boundaries different from the original, he may surrender his lots on the understanding that the land in question will be realienated to him, free of premium. The object is to expedite and simplify the work of survey.

(e) Tenancies (and sub-tenancies) for terms not exceeding three years (previously one year) are exempted from registration; they replace the 'leases for a term not exceeding one year' provided by the FMS code. A great burden of registration is avoided by this change since most urban letting is for periods of up to three years. There is provision for verbal tenancies but no tenancy, verbal or written, is binding on any person other than the grantor unless it is protected by an endorsement on the Register Document of title to the land.[150]

(f) Remedies of chargees by possession may not be taken

of any land held under land office title (or Q.T corresponding to land office title) may not resort to the remedy of taking possession under the NLC. This is so because almost all such land is occupied by peasant proprietors. For lands under Registry title (or corresponding to Q.T) two forms of possession are provided - by receiving rents when there is a lease or tenancy and by going into occupation where there is none. In case of town or village land under Registry title, the powers specified above are exercised only in so far as the land is actually occupied by the chargor.

(g) Enforcement of conditions and forfeiture has been greatly simplified by virtue of Sections 103; 125-129, relating procedure in cases of breach to the nature of the condition instead of to the nature of the breach as is the case in the FMS Code. Every condition must by definition in Section 103, inevitably be either one which 'requires continuous performance' or one which 'is subject to a fixed term'. The distinction is a simple one to make and the appropriate procedure is never in doubt. Failure to remedy a breach after due notice results in the automatic forfeiture of the land.

(h) Sections 130 - 134 provide a single simple procedure to effect the registration of a reversion to the state whether the act of forfeiture arises from non-payment of rent or from breach of condition. The dispossessed proprietor may appeal against or obtain annulment of the forfeiture.

(i) As for the land rent or land revenue, there have been three fundamental changes. Rent as a 'first charge' on land and sale by auction in default of payment has been abandoned.[161] Instead, non-payment of rent is now treated as a breach of the basic consideration of alienation and action to enforce payment is analogous with that for the enforcement of any other condition. Failure to pay after service of a notice of demand results in the automatic forfeiture of the land.[162] Sections 97 and 100 of the NLC thus have made a fundamental change in that failure to pay no longer results as in the pre-NLC period, in the land being put up for sale by public auction. Secondly, by section 98, provision is made to safeguard the rights of innocent parties adversely affected by a proprietor's failure to pay rent. The notice of demand is to be served not only on the proprietor but also on every chargee, lessee, or tenant so that, should the proprietor default, any of these latter parties may preserve their interest by paying the rent themselves and later recovering it from the proprietor. Thirdly, by section 101, all lands, irrespective of their dates of alienation are now made liable to periodic revision of rent; each such revision is to be on a uniform date in all states. The period between successive revisions is reduced from 30 years to 10 years.[163] However, by section 102, a revision has been provided in respect of lands which bear no rent or bear rent at sub-standard rates. But such a rent may be

the full prevailing rate.

(j) Proprietors of land no longer enjoy a prescriptive right to sub-divide, partition or amalgamate their lands at will. All such action is now under the Code,[154] subject to state control. New and stringent conditions must be satisfied before sub-division is approved. The same criteria[155] are respectively applied to cases of partition and amalgamation. The power of approval is with the State Commissioner or the DLA,[156] but the State Authority may by direction reserve that power to itself.[157] In relation to disputes between co-proprietors, the power to resolve the same has been transferred from the DLA to the Court.[158]

(k) A significant new provision of the NLC is in the introduction of a new chapter on the sub-division of buildings. Its purpose is to enable large multi-storey buildings to be sub-divided internally into 'parcels' so that separate title may be issued to individual flats, apartments, office-suites and so on. The sub-division of multi-storeyed buildings (of two or more storeys above), will make the development of new high rise buildings much easier and legally less cumbersome.

(l) The provision for easements which was not present in the previous land law. An easement, in essence, is a right which one proprietor acquires over the land of another such as the 'easement of way' [159] is to allow the proprietor of one land to make use of someone else's land to reach a main road or other exit.[160] However, easement has to be registered.

(m) The wide meaning given to the term 'dealing' under the FMS Code has been greatly restricted by the NLC. Under the FMS Code,[161] dealing included transactions such as alienation, and reservation as well as transactions involving the alienated land itself. The term is now restricted to transaction which[162] are in respect of alienated land only, and are of a kind which are authorised by the provisions of Division IV, such as transfers, charges, leases, easements, (lien and tenancy are unregistered dealings which are protected by way of the entry of a lien-holder's caveat[163] or of an endorsement respectively on the register document of title. Therefore, dealings recognized and capable of being created under the NLC may be divided into those which are capable of registration and those which are not.

(n) The machinery of caveats[164] is another important aspect of the NLC. Generally the function of a caveat is to give any person claiming an unregistered interest in land an opportunity to prevent his interest from being unjustly overriden by a subsequently created adverse registered interest in respect of the same land. This system of caveats under the Torrens system seeks to do away with the doctrine of notice, especially the concept of constructive notice, applicable under the deeds system which has given rise to insecurity and uncertainty of title. Without such a system of caveats, persons acquiring rights under any transaction which has yet to be registered, would be in an extremely precarious position.

(o) Another significant aspect of the NLC is that alienated

land will revert to the state in the circumstances specified in Section 46(1) of the NLC and that there can be no adverse possession against the state[165] nor against the registered proprietor of land or any person entitled to a registered interest therein,[166] for any period whatsoever.

(p) Another reform effected by the NLC (Penang and Malacca Titles) Act 1963 is the provision for the conversion of the system of registration of deeds practised in Penang and Malacca prior to January 1,1966 to the Torrens system provided for in the NLC, 1965. The 1963 Act makes provisions for all land ownersip and interests existing therein prior to January 1, 1966 to be noted in the Interim Register provided for in the 1963 Act.[167] Replacement titles issued under the 1963 Act and evidencing such land owership and interests therein which have become indefeasible under the 1963 Act will ultimately be cancelled and replaced with final documents of title provided for in the NLC,1965.[168]

*LAND LAW REFORMS UNDER THE STRATA TITLES ACT, 1985*

A separate Strata Titles Act was passed by Parliament in April 1985.[169] The main objective of this new law on Strata Titles is to enact a separate legislation for strata titles and to repeal and amend the relevant provisions in the NLC pertaining to sub-division of buildings and the registration and issue of separate subsidiary titles, (commonly known as strata titles) to the individual parcels contained therein. This new legislation for strata titles contains provisions taken from the NLC, with certain additions and amendments aimed at overcoming the weaknessess and improving the procedures in processing

application for strata titles in order to meet current development and socio-economic needs.[170] In this new Act,[171] several new concepts were introduced namely 'accessory parcels' for utility units like car parks, stores, servants quarters to be tied to main parcels and 'provisional blocks' to allow for phased developments of strata schemes. Provisional strata titles'[172] are issued to provisional blocks which are proposed to be erected or are in the course of being erected on the land. Another new feature is the special provision for low-cost buildings. Here the management corporation (MC) is given the option to decide whether to manage the building by itself or to apply to the State Authority to appoint a person or body to manage the building.[173] The State Authority is empowered to appoint a person or body to exercise the powers of the management corporation.[174] In cases where the management corporation failed to function, the Court is empowered to appoint a person or body as an administrator for the purpose of managing the MC.

*THE PADI CULTIVATORS ACT, 1967*

In an attempt to provide for the security of tenure to the tenants especially in the rice growing areas of the North and East Coast regions, the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955, was enacted in 1955. However, various weaknesses led to the repeals of the Ordinance in 1967 and its replacement by the Padi Cultivators (Control of Rent and Security of Tenure) Act, 1967. As a result of a report prepared by E.D. Smith and P.R. Goethals,[175] more practical and effective legislation on tenancy problems in Malaysia was required. As a result of this report, a committee was set up to

draft the present legislation.

The Act's two main objectives are to regulate and control of farm rent (paddy land) and to provide for the security of tenure.

The Act envisages that with the fixing of a maximum rent and the security of tenure it offers, farmers will be motivated to produce more. However, this has not come to pass as tenancy legislation alone cannot lead to the desired productivity. It must be accompanied by other facilities such as high yield rice, fertilisers, irrigation canals and paddy land of an economic size. The Act was not successful though several enforcement officers were charged with ensuring that farmers and land owners conform to the provisions of the Act. However, the Act does help to control the rent and provide some security of tenure. The Act also makes the tenants more aware of their rights and responsibilities in dealing with their landlords. If it is duly enforced, the Act can be a weapon to stabilise the price of land through rent control. As the Act is definitely a tenant-biased piece of legislation, most landlords try to avoid letting their farm lands to tenants at controlled rents and create tenancies outside the scope of the Act. Some of the main features of the Act are in Appendix 1.7.

However, from the conditions imposed on the landlords by the Act, [see Appendix 1.7], it is extremely difficult for the landlord to recover possession of his land. The Act reinforces the foregoing by setting out offences that may be committed by the landlord as shown in Appendix 1.8.

The offences for which the landlord can be brought to book, as in Appendix 1.8, demonstrates that the Act does attempt to

provide the security of tenure for a tenant farmer. The landlord cannot evict the tenants at will as the tenants can resort to the enforcement officers for help. The tenant too can bring an appeal to the Rent Tribunal set up under the Act and free legal aid is available for poor farmers.

However, the Act has its weaknesses. The general weaknesses of the Act are as follows:

(a) The Act is too tenant-biased. The income of a tenant from paddy yield is much more than the gross income of landlord.[176]

(b) The landlords are not willing to co-operate and they try to evade provisions of the Act by having unwritten tenancies outside the scope of the Act. A written tenancy agreement will mean a reduction in their income and also increase the risk of their being subjected to civil litigation.

(c) In the Muda Agricultural Development Authority (MADA) area, for example, where almost all the lands are under double-cropping with modern agriculture techniques, the production and yield per acre is 1,200 *gantang*. Tenant farmers who have capital take advantage of the Act by renting more lands at a rent higher than that prescribed by the Act.[177] In such a transaction, both parties, the tenant and landlord, benefit by having dealings outside the scope of the Act. Finally, the poor farmers become the rich tenants' labourers. Although section 8(i) of the Act limits the maximum land area which may be rented through a tenancy agreement, there has been no move to

enforce this restriction as yet. The number of tenancy agreements between the landlords and the paddy tenants in Peninsular Malaysia at the end of 1983 was very small compared to the number of paddy tenants. Out of approximately 123,000 tenant paddy farmers only 3,013 agreements were registered as of 1982 - 2,471 in Kedah, 352 in Perak, 96 in Kelantan and 94 in Perlis.[178] Thus, this Act falls far short of its objectives.

***THE LAND (GROUP SETTLEMENT AREAS) ACT, 1960***

Another law which is reformatory in nature is the Land (Group Settlement Areas) Act, 1960. This Act opens the way for the planned development of land as opposed to the *ad hoc* land alienation under the NLC which is discussed in detail in Chapter Three.

This Act was promulgated to enable the government to solve the physical land problems and also to alleviate poverty[179] in the rural areas through the opening up of economic-sized land holdings. FELDA is the agency mainly responsible for the implementation of this Act. Under this Act, the state authority may designate or declare a vast area of virgin land to be a group settlement area and offer it to selected landless farmers who are brought to the land schemes to work it.[180] The implementation of this Act is discussed in detail in Chapter Five.

***THE NATIONAL LAND REHABILITATION AND CONSOLIDATION AUTHORITY ACT, 1966 (FELCRA ACT, 1966)***

The FELCRA Act, 1966 is meant solely for the rehabilitation and development of any abandoned land scheme in any state of Peninsular Malaysia. FELCRA has no power under the

Act to consolidate fragmented small lots of land in the country.[181] To enable FELCRA to embark on land consolidation, the State and Federal Governments have to agree upon, through the NLC, and enact appropriate legislation. It will have to make sure that such legislation is not *ultra vires* Article 13 of the Malaysian Constitution, as the legislation will involve both the compulsory acquisition of land and adequate monetary compensation as well as compensation by way of reallocation to the landowner. Questions relating to rights of inheritance under the distribution of estates laws, the *Faraid* law and the law relating to testate succession will also have to be borne in mind when drafting such legislation. Such law if enacted, should not conflict with the provisions of the NLC. Many countries such as France, Western Germany and the Netherlands, India, Japan and Pakistan have today carried out land consolidation programmes through consolidation legislations.[182]

***THE LAND ACQUISITION ACT, 1960***

This Act, enacted under Article 76(4) of the Federal Constitution, vests the State Authority with the power to acquire alienated (private) lands for public purposes or by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility or for the purpose of mining or for residential, agricultural, commercial or industrial purposes.[183]

This Act mainly consolidates the pre-existing and different land acquisition laws of the various states. Under the Act, land owners whose lands are compulsorily acquired are assured of fair and adequate compensation with market value[184]

of the land. This conforms to Article 13(2) of the Federal Constitution.[165]

This Act, especially by Sections 3(a) and (c) has far-reaching implications for future land reforms. In fact, under Section 3(a) and (c) of the Act, the State Authority may compulsorily acquire land from the landlords to distribute to the landless peasants. The opposition of the thus expropriated could be ameliorated by paying them adequate compensation.

Under Section 8(i) of the Act, State Authority may declare that it needs any area of agricultural land for the the purpose of agriculture.[166] On completion of the acquisition process which would include a full enquiry into the value of the land in question and the payment of compensation in the terms of the Act, the land then becomes state land[167] which the State Authority may alienate to the landless peasants.

However, for the purposes of land reform it would be desirable to have a separate piece of legislation - as is the case in Taiwan or Japan.[168]

***THE SMALL ESTATES (DISTRIBUTION) ACT, 98 of 1955.***

This Act was first enacted in 1955 as an Ordinance. This legislation in particular section 3(2) therein which contains the definition of small estate[169] has been amended several times.

This Act can be considered reformatory because it posseses powers of distributing the estates of deceased persons from the High Court to the DLA of the districts in which the estate is situated. This is meant to expedite the settlement of claims without the claimants having to incur the expenses of engaging a counsel. The beneficiaries do not have to

travel to the state capital as cases are heard in the districts or in the *kampung* where the lands are situated.'[190]

**SUMMARY**

The above discussion shows that Land Tenure and Land Laws in Peninsular Malaysia was influenced greatly by Islamic jurisprudence'[191] in many ways, particularly in the aspect of *faraid* laws. Even in the early concept of ownership, Islamic influence was significantly clear. Under Islamic law of property, land belongs to *Allah* (God) and whoever cultivates the land, the land belongs to the cultivator. This concept was practised under the Malay Customary tenure. However, under the British rule, the land laws had undergone many changes in response to the rapid economic and social development. These changes were made solely for efficient land development and the proper management and utilisation of scarce land resources to achieve the equitable distribution of land for the increasing population.

Administratively, the Torrens system of registration is the best system so far for this purpose provided it is properly implemented. However, the system depends on demarcation and registration which is not properly done. Nonetheless, with the use of computers and the most modern method of scientific management, the system should be able to overcome the problems that now beset it.

NOTES

1. See Meek, C.K. *Land Law and Custom in the Colonies*, Frank Cass & Co. Ltd. 1968, p.34.
2. Cap.113 of the Laws of the Straits Settlements, Revised Edition, 1936.
3. See C.K. Meek, *op.cit.* p.35. In 1935 there were 11 types of titles. The earliest title in Penang derive from the East India Company.
4. *ibid.*, p.36.
5. See David S.Y.Wong, *Tenure and Land Dealing in the Malay States*, Singapore University Press, 1975, reprinted 1977.
6. Cap.138 of the 1926 Laws of the Federated Malay State.
7. *ibid.*Cap.147.
8. *ibid.*Cap.140.
9. *ibid.*Cap.142.
10. *Cap.215.*
11. The usual form of wording in a grant is 'to hold forever subject to the payment thereof of the annual rent of ...dollars,- until revision takes place'.
12. See C.K. Meek, *op.cit.* p.39.
13. *ibid.*, p.40
14. *ibid.*, p.40.
15. *ibid.*, p.41.
16. *ibid.*, p.41.
17. The Malay Reservations Enactment of 1913 and it was later superseded by The Malay Reservations Enactment of 1933, (Cap.142).
18. For further readings of the Customary Land Laws of Negri Sembilan, see M.B.Hooker, *Adat Laws in Modern Malaya*,O.U.P. Kuala Lumpur, 1972, particularly Part 1,chapters 3, pp. 51-68 and Part II, Chapter 5, pp. 91-111.
19. Acquired property entres the category of ancestral property when it has been inherited by the granddaughters of the person who acquired it. Under Islamic law, there is no distinction between ancestral and self-acquired property, between movable and immovable property.
20. See C.K. Meek, *op.cit.* p.43.
21. See M.B. Hooker, *Adat Laws in Modern Malaya*, Oxford University Press, Kuala Lumpur, 1972, pp.228-47.
22. Ancestral property descends to daughters.
23. These laws include: General Land Regulations 1889. The Land Enactment 1903, and the Customary Tenure Enactment 1909.
24. The conversion from the deeds system to the Torrens system of land registration began in Penang in 1963. It is deemed to be completed in 1985. No further extension by the State.
25. *Adat Naning* is another aspect of *adat perpateh*. In *adat matters, Naning* is ruled by a penghulu usually referred to as *Dato' Naning*. His position is expressly recognized in the Malacca State Constitution, Part IV of which provides that the *Dato' Naning* shall be appointed by the Governor of the State in accordance with the rules of the *Adat Perpateh Naning* - Art.34(1). See M.B.Hooker, *op.cit.* pp.93-102.
26. This custom refers to certain *Naning* area in Malacca. Under this custom, rights of succession may be exercised in favour

of males in certain situations. See section 5 of the 1886 Ordinance which was later cited as Cap.125 of the Revised Laws of the Straits settlements 1936.

27. One case which was referred to the Court was *Munah v Isam* (1936) MLJ 42.
28. See NLC (Penang and Malacca Titles) Act,1963, sections 94-97. See also the latest amendment to the NLC (Penang and Malacca Titles) (Amendment) Act 1984 (Act A 597) which provides that any Malay proprietor of any alienated land may apply for the endorsement of the title as a Malacca Customary Land.
29. This term is used to describe any *adat* which is not *adat perpateh*. There are set rules as to its geographical distribution. It does not constitute a system in the same sense as *adat perpateh*. For detailed discussions, see M.B.Hooker *op.cit*. pp.2, 28-30, 246.
30. *Handbook of British Malaya 1935*, p.107.
31. Land registration is provided by Part V of the Land Enactment (Cap.1) but important amendments are contained in Enactment No.3 of 1941. In 1936, a law (No.18) was enacted for the abolition (on application) of old titles and the issue of new ones in conformity with the Land Enactment.
32. The State of Kelantan has an area of 5,750 square miles, of which in 1939, 4,320 are state land, 80 are forest reserve and 1,350 are alienated land. The breakdown figures in 1939 were as follows: Rice: 145,000 acres; rubber: 91,000 acres; coconuts: 60,000 acres; areca-nuts: 7,000 acres. A typical smallholding is between 3 to 5 acres of rice land and an acre of highland for residential purpose and an acre or so for rubber land at some distance from their house.
33. One acre = 1,000 depa or 43,560 square feet. One quarter of an acre = 250 depa, whereas a relong = 0.71 of an acre.
34. They were originally decisions of judges on land disputes, counter signed by the Sultan, which eventually developed into a system of protective certificates issued independently of any dispute.
35. See C.K. Meek, *op.cit*, pp.49-54.
36. See Kedah Malay Reservations Enactment 9 of 1354, Section 2.
37. one relong equals to approximately 0.71 acres, see note 33.
38. (a) a grant or lease of state land (for town or village land); (b) Entry in the *Mukim* Register (for any *mukim* land); (c) Grant Kechil (small-holding grant) or a lease of state land, (for country land not exceeding ten acres and not being mukim land); (d) Grant Besar (large-holding grant) or a lease of state land (for country land exceeding 10 acres); (e) A lease of state land (for fore-shore or sea-bed, the lease is for a period not exceeding 21 years.
39. *Mukim* land is defined as country land not exceeding ten acres in area other than land wholly or mainly planted or held under conditions allowing it to be planted with a commercial crop, the proprietor of which is a person belonging to any Malayan race who habitually speaks any Malayan language and professes the Muhammadan religion or who has obtained the special permission of the Sultan-in-Council to be registered as a proprietor of such land.
40. See Section 5, NLC (definition of State Authority). Under

Part 1, section 1(1) of the Eight Schedule of the Federal Constitution 1957, the Ruler or Governor, as the case may be must act on the advice of the State Executive Council in carrying out the duties entrusted to him under the respective legislation.

41. Federal Constitution 1957, Article 76(4).
42. [1981] 1 MLJ 151 (Federal Court). In this case, the applicant company applies for a declaration that s.100 of the NLC enacted by the Federal Parliament is void on the ground that it is *ultra vires* Article 76(4) of the Federal Constitution in that the section deals with a subject with respect to which it has no power to legislate. However,the Federal Court dismissed the suit on the following grounds as discussed in Chapter 1.
43. Federal Constitution, 1957, Article 95D.
44. NLC, 1965 s.4(2)(b).
45. [1984] 2 MLJ 87 (Privy Council), *infra*, at pp.63-66.
46. In *Tan Wee Choon v Ong Peck Seng* [1986] 1 MLJ 322, Wan Yahya J, expressed the view that rights arising out of common law or the rules of equity which relate to land matters are no longer applicable in Malaysia since the passing of section 3(1) and section 6 of the Civil Law Act 1956 and the NLC, 1965 respectively.
47. Teo Keang Sood, *et al. Land Law in Malaysia* Singapore Butterworths,1987, p.9.
48. *ibid.*
49. *ibid.* See also the following cases: *Haji Abdul Rahman & Anor v Mahomed Hassan*,[1917] AC 209 (Privy Council); *Devi v Francis*,[1969] 2 MLJ 169 (High Court,Perak); *Chin Choy & Ors v Collector of Stamp Duties*,[1981] 2 MLJ 47 (Privy Council); *Pemungut Hasil Tanah, Kota Tinggi v United Malayan banking Corporation Bhd* [1981] 2 MLJ 264 (Federal Court).
50. See Clause 48 of the Federation of Malaya Agreement, 1948, first column of the Second Schedule, item 100.
51. *ibid.*, item 101.
52. *ibid.*, item 102.
53. The Reid Commmision was headed by Lord Reid, a distinguished 'Lord of Appeal in ordinary'. The Commission duly submitted its report on 21st February 1957. On the basis of their recommendations the new Federal Constitution was promulgated on 31st August, 1957, thus the Federation of Malaya became an independent sovereign country.
54. Federal Constitution, Ninth Schedule, (Article 74,77), List II, paragraph 4.
55. "Federal Purpose" is defined under s 2(1), paragraph 27A, *Interpretation and General Clauses Ordinance, 1948* as "includes the purposes of the federation in connection with matters enumerated in the concurrent list and with any other matters with respect to which Parliament has power to make laws otherwise than by virtue of Article 76 of the Constitution," such example as land for schools, hospitals, police stations and the like.
56. Article 76(4) of the Federal Constitution provides that: "Parliament may, for the purpose of only ensuring uniformity of law and policy, make laws with respect to land tenure, the

relations of landlord and tenant, registration of titles and deeds relating to land transfer of land, mortgages, leases and charges in respect of land, easements and other rights in land, compulsory acquisition of land, rating and valuation of land, and local government; and clauses (1) (b) and (3) shall not apply to any law relating to any such matter".

57. See Report of Land Administration Commission, 1958, p.12, paragraph 54.
58. The states' annual income from direct land taxation comes mainly from quit rent, (received yearly), land premium (received on first alienation of land and on approval of conversion, and fees on partition, sub-division or amalgamation of land. Revenue from quit rent constitutes of about 5 to 20% of state revenue, depending on the total areas of alienated land in the states.
59. See Land Administration Commission Report, 1958, p.12 paragraph 55. The report proposed that a three-year programme to collect arrears of quit rent, calling in at least two years arrears at a time, and immediate action against arrears after 1 April; the continued imposition of "late fees" should be implemented. This recommendation still holds good today.
60. See also *Land Resources Report, 1974/1975*, Economic Planning Unit, Prime Minister's Department, p.34.
61. For the state of Perlis, the ruler is known as the Raja of Perlis.
62. The Yang di Pertua (Governor) is appointed by the King (Yang di Pertuan Agong) for a term of 5 years.
63. Currently, the total number of districts in Peninsular Malaysia is 94. Each state is divided into an average of 6 to 8 districts. Under Section 11(a), the State Authority may by notification in the gazette divide the territory of the state into districts. However, some states such as Kelantan, Pahang and Perak have created new districts. This action was done not in accordance to any of the existing provisions, as such it is contrary to the NLC. However, to remedy this situation, new amendment was made to the NLC enabling the state authority to create new districts, see Section 11(ca), *vide* NLC (Amendment) Act, 1984, Act A 587. "The State Authority may by notification in the Gazette - vary or alter the boundary of any district, sub-district, *mukim*, town or village."
64. District in Kelantan is known as *Jajahan* and a few *Daerah* will make up a *Jajahan* and a few *mukims* will make up a *Daerah*.
65. Previously known as Malaysian Civil Service. Officers from this service fill up the majority of posts in the former FMS (Perak, Selangor, Negeri Sembilan, and Pahang). In 1980, the states of Penang, Malacca, and Perlis have their state officers being absorbed into the Federal service known as Administrative and Diplomatic Service (ADS). All of the federal officers serving in various ministries of the federal government are taken from ADS.
66. Other states, except those mentioned above (note 65), have their own State Civil Service officers and they are transferable within the state. As regards federal officers serving the state, their salaries are being paid by the state government.

67. The appointment is made under section 12 (1) (b), NLC.
68. The designation, Collector of Land Revenue (CLR) is used interchangeably with the new designation, District Land Administrator (DLA), *vide* NLC (Amendment) Act 1984, Act A 587.
69. In recent years, a few districts have been re-divided into two districts such as Temerloh and Jerantut; Rompin; Termerloh and Maran (Pahang), Ulu Kelantan was divided into Kuala Krai and Gua Musang, Tanah Merah (Kelantan) was divided into the District of Jeli. In Perak, the districts of Kuala Kangsar, Dindings and Hilir Perak were redivided and a new district of Perak Tengah has been created. In Negeri Sembilan, a new district of Jempol was created. In Kedah, a new district of Pendang has been created.
70. See also note 63 above. Special procedures which were absent prior to the amendment, were included in order to solve the problems of new districts which have been created by the State Authority. Now the DLA of a new district shall have jurisdiction over land within the boundaries of the new district, thus the powers of DLA of a new district in respect of land registers were clearly defined under the new amendment, see NLC (Amendment) Act 1984, Act A 587, new Sections 160A, 160B and 160C.
71. *Mukims*, however, do not have a specific function in connection with land administration, other than the categorisation of land titles.
72. Department of Statistics Malaysia, *Population and Housing Census*, 1980.
73. See Fifth Malaysia Plan (5MP), pp.100-101, and *ibid.*, table 3-7, p.105.
74. Computed from Census of Agriculture, 1977, (Statistics Department) and Land Resources Report, 1978/79 (Economic Planning Unit, Prime Minister's Department), Malaysia.
75. Survey Department, Ministry of Land and Regional Development, (unpublished report, 1982.)
76. State Directors of Lands and Mines, as reported to the Federal Lands Commissioner Office, Ministry of Land and Regional Development, 1982.
77. This is based on an estimated level of 1,515,000 tonnes in 1985. Under the National Agriculture Policy (NAP), policy no.26, Malaysia is aiming at 80% and 85% of the national requirement. However, in the face of high domestic cost of production, the current policy of 80-85% self-sufficiency in rice is being reviewed by the government and the new target set is 60% self sufficiency in rice (see NAP document, 1984, policy no.26 and Information Malaysia Year Book, 1986, pp.550-551).
78. See David S.Y.Wong, *op.cit*, p.79.
79. For discussions on the Torrens System see S.K.Das, *The Torrens System in Malaya*, Malayan Law Journal Ltd., Singapore, 1963. The system originated in South Australia. It was first introduced in South Australia in June 27, 1858 by Sir Robert Torrens, who was a Collector of Customs at Port Adelaide in South Australia. The system was based onthe Merchant Shipping Act of 1854 and the Admiralty Rules(which came into force in 1859) then under revision.

80. The register is the key to the system. See *ibid.*, pp.95-109.
81. See *ibid.*, p.21.
82. See Section 405, NLC.
83. See S.K.Das, *op.cit.* p. 97.
84. *ibid.*, p. 97.
85. *ibid.*, p. 97, see also s. 48 NLC. This principle was incorporated into the NLC vide s.48, by which it provides that no title to state land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever, i.e. no adverse possession against the state. See also the Federal Court decision made in *Sidek bin Haji Muhammad & 461 Ors v Government of the State of Perak & Ors*, [1982] 1 MLJ 313 (Federal Court).
86. See [1955], MLJ 128 at p.130. See FMS Land Code, Cap.138, s.42. This section provides that the title of a proprietor, chargee or lessee shall be indefeasible except that in the case of fraud, misrepresentation or the title has been obtained by forgery or by means of an insufficient or void instrument, such registration shall be void.
87. See Section 223 NLC. The proprietor of any alienated land may grant tenancies (or sub-tenancies) for a period not exceeding three years without having the same registered. It may be granted either by word of mouth or by a written instrument in any form whatsoever. However, under the Padi Cultivators (Control of Rent and Security of Tenure) Act,1967, s.3(1), any tenancy agreement must be in writing and in the form prescribed in form A of the 1st Schedule of the Act. Even though tenancies are not required to be registered under the NLC (s 213(2)(b),it may be protected by an endorsement in the register document of title (RDT) to the land persuant to chapter 7 of part Eighteen of the NLC, (see s. 213(3)(b) and s.316(1). Procedure of registration of endorsement of exempt tenancies are provided under ss. 316-318 NLC.
88. See ss. 16(3), and 21, NLC. See also ss. 386 and 434, NLC. The assurance principle has been introduced in Singapore under Land Titles Ordinance, 21/1956, however, it was absent in Malaysian Torrens System for the following reasons:
    (a) In the Malay States where modified Torrens System was first introduced, state land suitable for alienation was plentiful,land transactions were few, work load in land offices were very small and possibility of error in making memorials was then easily avoided. Forged transactions were unknown.
    (b) The issue of indefeasible titles under the new system did not in fact disturb known existing rights under the ancient customary tenure for these were comparatively few and ascertainable. Thus it was felt then that an *Assurance Fund* would add to the liability of owners, was neither necessary nor desirable and insignificant under the development of the country and exploitation of its resources.
    (c) There were almost unknown case of suit against the state governments as a result of negligence on the part of the State Authority or its officers arising out of land transactions or related land matters.

89. See [1982] 2 MLJ 53 (High Court Selangor).
90. Under the old Land Code, each state has its own land code with varied systems and procedures and each state issued different type of titles to the land as shown in Appendix 1.1a.
91. For list of land laws related to land administration, see *Manual for Land Administration*, Federal Lands and Mines Department, Government Printer, Kuala Lumpur, 1980, pp.423-431.
92. See NLC, s.8(1)(d). Throughout the thesis for the words 'Commissioner of Lands and Mines' substitute 'State Director of Lands and Mines, vide Amendment Act A587/1984 and Act A615/1985.
93. *ibid.*, s.8(1)(c).
94. Currently, all the officers of the office of the Directors of Lands and Mines (including the Directors themselves) and the District Land Offices in the former FMS and the former Straits settlements and Perlis, are from the Federal Government Service, whereas the officers and staff in the former UMS are state officers and they are from the State Service. The salaries of all officers and staff in the Land Offices are paid by the state governments.
95. The Survey Department is a Federal Department separated from the land offices but directly involved in the surveying of land in the states and is responsible for the partial preparation of land title forms.
96. The National Land Council is established under Article 91 of the Federal Constitution.
97. See Federal Constitution, Article 95E(2).
98. *ibid.*, Article 91(3).
99. See NLC, s.9(1).
100. This was the result of the Second Land Seminar for Peninsular Malaysia held in 1973 and some of the resolutions passed were as follows:
    (a) There should be a land department, one at the Federal level and one in every state; (b) the Federal Director General of Lands and Mines should be given the task to administer a personnel programme for all the federal officers in land administration especially in matters pertaining to their transfer within the land administration; (c) the state Land Department should be given the power to control estimate of the expenditure for the whole of land administration in the state; (d) management of every land office should be the responsibility of a land administrator; and (e) priority should be given by the state government in the construction of new buildings for land offices and in the provision of adequate furniture and equipment. The above resolutions were discussed by the National Land Council at its 25th and 26th meetings in 1974 and 1975 and at at the 26th meeting, the council decided to approve in principle, the proposal of the reorganisation of land administration and recommends

that the Task force established at the Ministry of Lands and Mines should continue visiting the states from time to time to give further explanation, if necessary, and to advise the state governments as far as possible so that the reorganisation programme could be implemented smoothly. The Ministry of Land and Regional Development took necessary actions to implement the above resolution but faced some problems of convincing the state administration on the time and method of implementation. In the early seventies, a number of land offices were separated from the district administration but the decision was reversed in some states. In actual fact the Seminar's decision is not new as the National Land Council as far back as 1958 had already decided thus (see National Land Council paper No.3/1958)

101. See National Land Council, 33rd meeting, 13th December, 1980, minute no.11.1.2.

102. See NLC, s. 11.

103. *ibid.*, s. 12 (1) (a) and (b).

104. (a) A Federal list, listing out matters on which only the Federal Government can make laws. (b) A State list under which only the state can have power in such listed matters. (c) A Concurrent list where laws can be made by Parliament only with the concurrence of the respective state governments.

105. Besides land, the other state jurisdiction are Muslim laws and Malay customs (including the State Religious Departments), agriculture and forestry, mining, local government (other than the Federal Territory), protection of wild life (games reserves), town and country planning (other than Federal Territory) drainage and irrigation, rehabilitation of mining land, land and soil conservation and State land development schemes.

106. This is particularly evident,if we were to look at the amount of money spent on the various land development projects undertaken by various government agencies such as FELDA, FELCRA, and RDAs: [KESEDAR, KETENGAH, KEJORA, KEDA, PERDA, DARA and KEDA]. In the Fourth Malaysia Plan (4MP) for example, M$7,991.72 million (16.3%) and 5MP, allocation was M$8,714.43 million (11.76%) of the total public development expenditure in 1981-1985, see p.226, 5MP, table 7-2.).

107. Report of the Federal Lands Commissioner, Malaysia, 1977. There were cases where DLA recommended approval of land alienation to those not within s.43, NLC, such as in the District of Ulu Selangor, (see P.T.U.S. 2/880/74).

108. See Dorothy Guyot, *The Politics of Land: Comparative Development in two states of Malaysia,* Pacific Affairs, Vol. XLIV, No.3, Fall, 1971.

109. The Kelantan Land Settlement Ordinance,1955 was first tried in the District of Pasir Mas, Kelantan in 1955. Upon successful implementation, the Ordinance was enforced throughout the state. The main objective of the Ordinance is to provide for revision of registers, recording of interest in land, settlement of claims,

determination of owners, possessory title to land, and issue of documents of title to land, in areas from time to time declared in Kelantan, and to amend the Land Enactment, 1938, of Kelantan. Until 1986 the settlement work covered all ten Districts. Pasir Mas, Kota Bharu, Tumpat and Bachok were totally settled with the issue of 281,691 land titles. Settlement work in the other six Districts have also been completed and a total of 147,466 titles are expected to be registered and issued with, [87,251 titles have been received from the Survey Department], see *Laporan Kemajuan Pejabat Penyelesaian Tanah Kelantan, 1955 sehingga 31 Julai, 1986*

110. The main reason for the CLM posts being converted into state posts was pressure from the State Civil Service Association for higher posts to be filled by their own members, as higher posts were limited in the state. The Federal Government is reluctant to allow the posts to be filled by state officers because federal officers will have allegiance to the federal government over the state government. At least they will be more responsive in terms of various policy implementation and directives issued by the federal government from time to time.

111. This is so because the State Secretary is responsible for their job reviews.

112. See J.H. Beaglehole, *The District, a Study in Decentralization in West Malaysia*, pp. 100-112.

113. A Study carried out by the Ministry of Lands and Mines in 1980, found that about 90% (one and a half meeting per day) of the DO's time was spent presiding at meetings of the various committees. The same findings were concluded by MAMPU and INTAN.

114. See note 100.

115. Report of The Land Administration Commission, 1958, Govt. Press, Kuala Lumpur, 1958.

116. *ibid*,. pp. 69, paragraph 10.

117. *ibid.*, p.76, para 11 and 12.

118. The work includes investigation, enquiry and settlement of claims for compensation. However, officers from the Special Mobile Unit of the Ministry of Land are sent to all the states except Johore and Kedah to carry out land acquisition work for federal departments. Johore and Kedah entrust their own officers to handle the land acquisition cases without any intervention from federal officers. Land affairs, particularly the process of land acquisition is a sensitive political issue in the states.

119. Some of the larger districts are further re-divided into sub-districts and one or two Assistant DLAs are appointed for each sub-district.

120. Such problems were encountered by the writer during the writer's tenure of office at the Federal Lands Commissioner Office from 1975 to 1983.

121. Under s.100 of the NLC, the State Authority is empowered to forfeit the land for non-payment of quit rent after a notice of demand in Form 6A has not been complied with by the Land Owner (s.97 NLC). However, there were few cases

of such action being taken for various political, social and economic resons. Under the FMS Land Code, Cap.138, s.205, land which is in arrears of quit rent would be auctioned to the public, however, this has been abolished by the NLC.

122. Land Office staff has not been increased proportionately with the increase of work load. See Md.Yob Bin Busu, *A Survey of the Land Administration in the State of Johore*,, Occasional Paper No.3, June, 1974, Malaysian Centre for Development Studies, Malaysia, p.31.

123. To speed up the processing of land applications, the National Land Council,in its 35th meeting decided that all land applications and applications for conversion, sub-division, partition, and amalgamation be submitted to the state EXCO within three months of their receipt. The Council also directed all State Authorities to include the period of three months in their respective State Land Rules.The problem now lies with the EXCO itself. They can take as long as they wish before decisions are made on any application and there is no specific time set for the EXCO to deal with such applications. See 35th Council Meeting, minute no. 13.1.2, dated 28.8.82.

124. Under the previous s.180, NLC, the land owner has to apply for a Qualified Title (Q.T) before it can be issued, to enable him to make use of the land before a final title is issued. However, under the amended s 180, registration of a Q.T is mandatory. The rationale of the new provision is that, previously, many lands approved for alienation have not been issued with land titles (final) by land offices. In these circumstances, quit rent cannot be collected unless the land title is registered, (vide s.78(3), NLC). The land in the meantime has been occupied by the applicant to whom the approval has been given, perhaps for more than 10 years without the payment of any rent by the land owner.

125. See Abdul Manaf Mohd.Nor (Datuk),*Problems In Land Office Management*, Federal Lands Commissioner Office, May, 1977 (unpublished)

126. The description includes situation, lot no., areas, name of owner, annual rent, category of land use, express condition and restriction in interest). These particulars are transferred from the letter conveying approval of alienation by the Ruler-in-Council (State EXCO). The task must be done with great care to avoid mistakes being made which will lead to litigation.

127. As per note 107.

128. See Abdul Manaf Mohd.Nor (Datuk), *op.cit.,1977.*

129. *ibid.*

130. A Survey carried out by Research Division of the Ministry of Land and Regional development,1982 (unpublished).

131. The change of condition from one category to another is required by s.124 of the NLC. Failure to comply with this provision may result in the land which has breached the condition of use being forfeited by the State Authority

under s.127, NLC. Upon approval of the change of condition, the proprietor is required to pay an additional premium [s.124(5)(a) NLC] set out by the State Land Rules. For Wilayah Persekutuan e.g., the premium for conversion of agricultural land to building (residential), is 20 % of the market value of the land as determined by the government, [s.13, Federal Territory, Land Rules, 1975]. However, the additional premium may be remitted in whole or in part or by varying the rate of further premium in any particular case or cases as it thinks fit.

131. Other related departments involved in giving advice to land offices on various technical aspect include Agriculture, Town and Country Planning, Department of Irrigation and Drainage, Local Authority, Health, Civil Aviation, National Electricity Board, and Public Works Department, see *Manual for Land Administration*, Ministry of Land, *op.cit.*p.208.

132. See Abdul Manaf Mohd.Nor (Datuk), *op.cit.*, 1977.

133. *ibid.*, pp.2-19.

134. *ibid.*

135. Under s. 425(1) NLC, unlawful occupation of state land is an offence and liable on conviction to a fine not exceeding M$10,000 or imprisonment for a term not exceeding one year or to both. This stringent measure was incorporated by NLC (Amendment) Act,A264. In the same way, any person, who without lawful authority, extracts, removes, or permits the extraction or removal of rock material from any land shall be guilty of an offence and liable on conviction of a similar punishment s 426(1) NLC. However enforcement is weak, and few cases have been brought to Court. It is also a political issue as many involved in clearing large areas of jungle land for cultivation purposes are the big 'corporations' with strong political backing.

136. The distribution of small estates is given by the Small Estates (Distribution) Act,(SEDA) 98, of 1955. A small estate is defined by s.3(2) of the Act as "an estate of a deceased person consisting wholly or partly of immovable property situated in any state and not exceeding six hundred thousand dollars in total value.[vide A702, w.e.f 9.6.88]. Estate of a deceased Muslim is distributed in accordance with Islamic law *(hukum faraid)*. In Negri Sembilan, if the estate is in respect of customary land as defined in the Customary Tenure Enactment (FMS Cap.215),its distribution is to be done in accordance with that Enactment and not SEDA. However,in respect of the estate being in part tribal land as stated in the Customary Enactment, if situated in Jelebu, Kuala Pilah, Rembau and Tampin, is dealt with by the SEDA subject to part III (ss. 20-25) of the Act. For estates valued at more than $600,000,the jurisdiction is the High Court and the Probate and Administration Act, 1959 is applied. If the estate is wholly of movable property (excluding land), then such an estate will have to be dealt with in

accordance with *Probate and Administration Act,1959*. The estate of a deceased non-Muslim is dealt with under the Distribution Ordinance,1958.

137. See Federal Lands Commissioner Annual Report,1982.

138. See 35th meeting of the National Land Council, held on 28.8.82. As at August 1982, there were 21 vacancies of group A officers and 144 in group D and C staff(Settlement Officers, Clerical Officers and labourers). These vacancies were for all the land offices in Peninsular Malaysia

139. See NLC 35h Meeting, dated 28th August,1982.

140. See, for example, Dorothy Guyot, *op.cit.*, 1971. The writer did an extensive studies in Johore and Trengganu as regards the relationship between land and politics.

141. NLC, s. 42.

142. NLC, s. 45.

143. Federal Constitution, Article 91(1), 91(5) and 91(6).

144. NLC, s. 52(1), see also Notes Upon the NLC, by The Commissioner of Land Legislation, pp.19-20.

145. *ibid.*,p.20. See also the NLC Bill, 9 August, 1965, pp. 1585 - 1586.

146. *ibid.*, p.73-74. See also NLC Bill 9 August, 1965, pp.1583-1584. The main purpose of a Q.T is to mitigate the inconvenience arising from inevitable delays in survey, [see ss. 176-194 NLC]. Under the new amendment to the NLC, it is now mandatory for the DLA to issue Q.T, [s. 80(3)], NLC (Amendment) Act,1 984, Act A 587. Q.Ts are fully indefeasible title in which the state retains no power of intervention except to the extent of modifying the boundaries once survey is completed. This is the only respect in which Q.T differs from final title.

147. NLC, s. 176(2)(b). However Q.Ts in continuation if final titles may be sub-divided, [see ss 135(i),140(i),146(i)]

148. NLC Bill, 9 August 1965, pp.1583-1584.

149. NLC, s.195(1).

150. See s. 213(3)(b) NLC.

151. Under s.205 of the FMS Land Code, Cap.138, failure to pay quit rent would result in the land being be sold by public auction. However, by s. 100 of the NLC, non-payment of quit rent after due notice has been served on the proprietor would render the land liable to be forfeited to the State Authority.

152. NLC, ss. 98 and 100.

153. The first rent revision was in 1970 and the second revision was made in 1985. Sectin 101 NLC was amended in 1982 to shorten the period of rent revision was shortened from 15 years to 10 years. [vide NLC (Amendment) Act, 1982 A 542.].

154. NLC s. 135-139.

155. *ibid.*, Ss. 140 - 150.

156. *ibid.*, s. 135.

157. *ibid.*, s. 136 (1) (c) (iii).

158. *ibid.*, s.145. With the latest amendment to s.141 (now 141A), any co-proprietor holding the majority share in

the land may apply to the CLM or DLA for approval to partition the land, vide NLC, Amendment Act 1984, Act A 587.

159. See s. 282 NLC. For rights, powers of a proprietor to grant easement, the effect of grants and enjoyment of easements, see ss 283, 285, 287 NLC.

160. Such an easement is similar to Collector's right of way which is only available in rural areas. An easement is a type of land dealing but it differs only in that the interest can be expressed only in relation to both pieces of land which are now bound together in a "dominant" and 'servient' capacity. Easement is a dealing and applicable to any land, and as such pertinent to the development of lands in towns which do not have an eccess due to uncontrolled subdivision in the past or to the conversion to building land, of small agricultural lots.

161. See s.2 FMS Land Code, Cap. 138.

162. See s.205(1) NLC.

163. For detailed discussion on caveats see, David S.Y. Wong, *op.cit.*, pp.415-7, 419-20, 452-53, 421, 422-3, 417-20, 414-5418-9, see also Judith Sihombing, *National Land Code, A Commentry*, M.L.J., 1981. pp.570-638. See also Teo Keang Sood, *et.al.*, *Land Law in Malaysia*, *op.cit.*, pp.286-349.

164. *ibid.*

165. See s. 48, NLC.

166. *ibid.* See also Judith Sihombing. *op.cit.* p.258.

167. See s. 93 NLC. Under the 1963 Act, once the interest has been proved, the quality of indefeasibility is conferred after expiry of six months from the date of the publication of a notice in Form I in the absence of any competing claim being made to the land or interest in question (s.85). In the case of any title or interest which has not been duly examined pursuant to the relevant provisions of the 1963 Act, the quality of indefeasibility only attaches after the expiry of 12 years from January 1, 1966 or within such extended period as the State Authorities may direct, provided that no caveat or claim made under the 1963 Act is then outstanding in respect of such title or interest. (See s.88(1) and s.53. See also *Sin Siang Hong & Anor v Mau Yoon Swee* [1985] 1 MLJ 422.

168. *ibid.*

169. The Strata Titles Act, 1985 (Act 318).

170. The various provisions in the NLC pertaining to sub-division of building were repealed / amended by the Strata Titles Act 1985. The new Act has incorporated most of the NLC provisions with additions / amendments to make it a more development oriented piece of legislation.

171. This Act came into force on 1 June 1985 and was gazetted as Act 318.

172. Strata Titles Act, 1985, s.10(4)(d).

173. *ibid.*, s.65(5).

174. *ibid.*, s 67. See also provisions s.50(2) and (3) as regards expenditures incurred and the appointment of officers to exercise the powers of management corporation

(MC). See also s.51, by which the Court is empowered to appoint an administrator to exercise the powers of the MC.

175. E.D.Smith and P.R.Goethals, *Tenancy Among Paddy Cultivators in Malaysia*, p.35.

176. See Salmiah Alias, *Tenural Institution and Paddy Cultivators Act, with Special Reference to MADA Areas*, LLB dissertation, University of Malaya, 1975.

177. *ibid.*, p.62.

178. *ibid.*

179. Land (Group Settlement Areas) Bill,27 April, 1960, p.757.

180. Land (Group Settlement Areas) Act,1967 [GSA,Act] s.20(4).

181. See National Land Rehabilitation and Consolidation Authority (Incorporation) Act,22/1966,[FELCRA Act]. There is no provision in the Act which enables the government to consolidate small agricultural lots into bigger economic-sized holdings except by way of mutual agreement between the proprietor and the authority concerned,such as *in-situ* project in Teratak Batu, in Kelantan. However, with the new amendment to the NLC, s.129, the State Authority is now empowered to take temporary possession of the land for the purpose of remedying the breach of condition and after effecting the remedy, possession shall be returned to the proprietor with the requirement that the land be maintained in a satisfactory state. [See s.129, NLC, Amendment Act, 1984, A 587.

182. See P.Moral-Lopez, *Principles of Land Consolidation Legislation* FAO, Rome, 1962, pp.4-60.

183. Land Acquisition Act, 1960, s. 3.

184. *ibid.*, See s.2, and see also s.12(1), and First Schedule.

185. *ibid.*, ss.37 and 49.

186. See s. 8(1).

187. *ibid.*, s.23(a).

188. For detailed discussions on Land Reforms in Taiwan and Japan, see Chen Cheng, *Land Reform in Taiwan*, China Publishing Co.,1961; Martin M.C.Yang,*Social Economic Results of Land Reform in Taiwan*,, East West Center Press, Honolulu, 1979; R.P.Dore, *Land Reform in Japan*, O.U.P,London, 1959; M.Kajita *Land Policy after Land Reform in Japan*,, The Development Economies, March, 1965; T.Ugura, *Recent Agrarian Problems in Japan*, The Developing Economies, Tokyo, 1966; T.Takigawa, *Historical Background of Agricultural Land Reform in Japan*, The Developing Economies, Tokyo, 1966.

189. SEDA, 1955, s. 3(3), vide SEDA (Amendment) Act, PN(U) 1075 w.e.f.18.10.79. Originally, a small estate was defined as having its value to the amount of $5,000. However, it was raised several times, from $10,000 in 1955 to $300,000 in 1979. On 9 June 1988,it was raised to $600,000,[vide A709.] The main reason for increasing the value of a small estate to the present amount was due to the rapid increase in land value.

190. Ministry of Land, Small Estates Distribution Division, Annual Report, 1988,(unpublished). As at 1988, there is a backlog of 10,000 cases of unsettled distribution suits

pending hearing in all the land offices in the country. The Ministry of Lands and Regional Development took over the responsibility of settling the small estates distribution with the establishment of the Small Estates Distribution Division in 1974. Currently, there are 40 officers assigned to do the job in various districts. There are various reasons for the backlog of cases and among others are the attitudes of the beneficiaries themselves, who do not attend the distribution enquiry and thus leaving the cases postponed indefinitely. Another factor is the increase in the number of applications without a proportionate increasing in the number of officers and staff, as a result, the existing number of officers could only settle the in coming applications leaving the backlog cases untouched.

191. Islam is not merely a system of religious beliefs but also includes a well developed body of jurisprudence and a complete way of life. See M.B.Hooker, *The American Journal of Comparative Law, Vol.19,1971, op.cit., p.265, at fn. 5.* Islam also encompasses political, economic, social, and legal systems. However, its status in Malaysia is limited to family relationships, inheritance, and religious rituals during official ceremonies. Its status in Malaysia is rather parallel to the position of canon law in medieval Europe. (see M.B.Hooker, *op.cit.*,p.265). Islam is the established religion of the Malaysian state and is entrenched in both the federal and state constitutions (see Article 3 of the Federal Constitution). In addition, it possesses its own system of courts and legislation known as *Mahkamah syariah* (Islamic court). Its powers include the right to impose various sanctions and the source of reference as regards the distribution of properties according to *faraid* law *(Kathi's* certificate setting out the Islamic fractions to which each claimant is entitled) arising from the distribution of small estates by the DLA. *Adat* (custom) on the other hand is generally (with the exception of Negri Sembilan) localised, confined to matters of land tenure and its sanctioning powers have been taken over by the national legal system.

Under the *faraid* law, the right to succession is founded on four bases: kinship, marriage, patronage, and religion, and in default of heirs of certain degrees *(asabah)*, under the Shafii *mazhab* in Malaysia, property passes to the Baitul-Mal, the state religious fund. For further readings on Islam, and Adat laws see M.B.Hooker, *Law, Religion And Bureaucracy In A Malay State: A Study In Conflicting Power Centers*, The American Journal Of Comparative Law Vol.XIX, Spring 1971, No.2.

## CHAPTER 2

## LAND OWNERSHIP POLICY IN PENINSULAR MALAYSIA

This chapter is intended to explain the land ownership policy in Peninsular Malaysia and how it affects the present patterns of land ownership. This chapter will also seek to explain the circumstances leading to the formulation of the Malay Reservations Policy and how this policy has affected the patterns of land ownership in the Malay community. There will be a comparison of land policy during the colonial period and the post-independence policy.

In order to understand the present patterns of land ownership, it is necessary that the previous British policy be examined. This is because the colonial regime laid the foundation for the pattern of land ownership of the country through such policies as the Malay reservation policy, the rubber restriction schemes and the policy of rice self-sufficiency for the country. It will be shown in this chapter too that all these policies were responsible for the present trend of land ownership in the country.

Before discussing the land ownership policy *per se*, the conceptual aspect of land ownership and its nature merit elucidation.

### *LAND OWNERSHIP AND ITS NATURE*

Land can be regarded as a lasting indestructible commodity which is capable of being bought and sold. It is an immovable commodity and as such it cannot be physically transferred

from one person to another; nor can it be possessed in the same way as chattels. Under the Malaysian NLC[1] and English law, land is not regarded as comprising merely the surface but also all the substances therein; all vegetation and other natural products; all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface; and land covered by water, i.e even the sea-bed is land. Thus, the alienated land which was surveyed say one hundred years ago in Malaysia, is still the same today; the individual proprietorship units into which it was divided may have changed completely but today's parcels are made up of the same land, and the change is one of 'mutation' which is what we call the process of changing the boundaries of parcel.[2] It is this permanent nature of land that requires it to have a special recording system in the form of registration of land titles. The owner of other property can remove or destroy it, but the owner of land can neither move it nor, in the legal sense, destroy it. The proprietor's power is limited to the enjoyment or disposition of rights in or over it. This is equally true whether the ownership is recognised in law as absolute (title in perpetuity) or whether the owner holds the land under a lease-hold title or the owner is called a 'tenant in fee simple', as is in English law. English law does not recognise the ownership of land but only the ownership of estates or interests in land, though in practice the 'fee simple' denotes absolute ownership.[3]

Some of the examples of rights of ownership in land which are absent in other goods are:

(a) An easement. It is a right enjoyed by the owner of land (the dominant land) over the land of another (the servient land). For example, dominant land might be in the centre of servient land and the owner of the servient land and the owner of the dominant land might have acquired the right to cross over the servient land to reach a road. Such an owner would have acquired an easement of way/access.[4]

(b) Land also is capable of being offered as security for a loan or for the performance of some obligation without its possession being surrendered.[5]

Even though the owner or proprietor of land has all the rights bestowed upon him by the state or State Authority, there is a general qualification of land ownership which is unaffected by land registration despite the wording of some registration statutes. Under modern day land legislations, the owner's rights over land as regard its use has, as will be discussed later in the chapter been restricted by statute.

As the world population increases, pressure on land grows, the State increasingly acquires more power to ensure the proper use of land, regardless of who owns it. Even the right to sell which might be regarded an essential attribute of ownership is often witheld or curtailed when public policy demands that land should not be allowed to fall in the wrong hands.[6] The State on the other hand has always had the power of compulsory acquisition, the right of 'eminent domain' and this itself encroaches upon the rights of private land ownership. It has been universally accepted that really no absolute ownership

of land exists, notwithstanding the use of that term in some enactments providing for registration of title. An owner's right to use his land is subject to public interest. The State in whom all land is jurisprudentially vested always asserts special authority over land, no matter how democratic the system of the government it practises. Without such control, the State would lose its basic asset.

***LAND OWNERSHIP AND SECURITY OF TENURE***

The basic principle of owning land is the concept of 'security of tenure'. This is so because proper development depends on 'security of tenure' rather than on ownership, which can be 'empty' of the right to use, and even of the power to control that use.[7] 'Tenure' is derived from the Latin *tenere* meaning 'to hold', and a 'tenant' is simply 'one who holds'. What we mean by security of tenure is that a person has security of tenure if he is secure or safe in his *holding* of land. However, when a land owner ordinarily speaks of security of tenure, what he means is the security of 'possession' or 'occupation' and not of 'tenure'.

In a developing country like Malaysia for example, when we speak of security of tenure, we are talking about the relationship between a registered proprietor of land (the owner) and a tenant, that is landlord-tenant relationship. This is so because to encourage or even permit development, security of tenure need not amount to ownership, nor need it last for all time. A lessee for example, has security for the term of his lease and, for as long as he complies with its conditions, the law will give him complete protection even against his landlord,

the proprietor of the land.[8] In most countries today, including Malaysia, security of tenure is governed by legislation[9] which gives the tenant a right to remain in occupation, thus depriving the landlord, so far as occupation is concerned, of the benefit of *his* security of tenure.

A landowner in undisputed occupation of his land will not require a document if he does not want to deal with it in any way. As soon as he does want to deal with it he needs a document of title to prove his ownership. However, in the modern world, for purposes of economic activity, evidence of title to land is vital to raising a loan with any financial institution.

***OWNERSHIP OF LAND IN ENGLAND AND MALAYSIA - COMPARISON***

In English legal theory, only the sovereign can own land, and in Malaysia, the same is true for land in Malaysia is vested in the state. In the eyes of the law of yore, a private person could be nothing more than a tenant of land and a person's right depended upon his observance of the tenurial services and incidents. With the disappearance of these, however, tenure can now be regarded only as an academic conception.'[10] In England, the feudal system which the Norman kings extended and developed after the conquest in 1066, all land was considered to be 'held' either directly or indirectly from the King. No land was 'allodial' (owned absolutely without acknowledging any overlord) because it was never granted outright but only in return for military or other services. These services were rendered to the king if the land was held directly (in which case the holder is called a 'tenant-in-chief') or to a 'mesne' (intermediate) lord, if the tenant-in-chief in turn had granted part of his land in return

for services to be rendered to him. The basic feudal unit in England was the 'manor' which can be said to have been the political unit of landlordship. Each manor was a kind of petty kingdom within itself, with its own 'Court Baron' for civil disputes between lord and tenant or between the tenants themselves. Thus, in the context of feudalism, the word 'tenure' is used in antithesis to ownership and the expression 'allodial tenure' is a contradiction in terms.'[11] The word 'tenant' appears to be misnomer to the layman when used in the context of ownership as he usually associates it with the relationship of landlord and tenant arising out of a lease. In fact, the ordinary English houseowner will be surprised to hear that legally he is a '*tenant*' in fee simple though such is the oddity of English usage, he is himself quite likely to describe the nature of his ownership as being 'freehold *tenure*' without any realisation at all of its feudal origin or that it was so called to distinguish it from 'unfree tenure'.'[12] 'Leasehold' on the other hand had no place as a tenure in the feudal plan of society, for the relationship of lessor and lessee was then regarded simply as a personal contract.'[13]

Another concept which should be distinguished is the concept of freehold tenure, or under the Torrens system 'title in perpetuity'. Under the English feudal system it was the nature of the services which determined the tenure. Military services for example, were considered to be of a free and honourable nature, whereas working on the land at the will of the overlord were deemed unfree and servile. Thus, freehold originally meant the land was held by services of a free nature and not that it

was free from all rent and conditions, as its name seems to imply. The present meaning can be regarded as synonymous with absolute ownership. By the end of the 15th century most of the feudal services had been commuted for regular money payments, often known as 'quit rents' for the tenant thereby went 'quit' or free from his services. With the fall in the value of money, these rents ceased to be worth collecting and so the relationship with the overlord was gradually lost.

The concept of unfree tenure came about after the Norman conquest whereby much of England was held in 'villeinage', as the unfree or servile tenure came to to be termed. Later, the villein tenant came to hold not merely at the will of the lord, but 'according to the custom of the manor'. Each manor had its own court, and these courts eventually recognised that a tenant, even if his tenure was unfree, should not lose his land without just cause; they also recognise his customary heirs. Thus, the tenure in villeinage became 'tenure by copy of the court roll' or 'copyhold', for it was in the manorial court rolls that the tenant's name was inscribed. Transfer of copyhold was effected by 'surrender and admittance'; the transferor 'surrendered' his lands to the lord who then 'admitted' as tenant the person nominated by the transferor, that is a conveyance was effected by entry in a 'register'. Thus, a copyhold had the essential element of a register of title in that a transfer could only be effected by registration, whereas freehold titles had to be proved by investigating past events and transactions evidenced only by deeds, with all the difficulties of proof.

However, the system of copyhold tenure ended with the reforming legislation of 1922-1925. After 1925, the greater part of English land was held by socage tenure, a considerable part was subject to copyhold tenure, while the remainder was held either in grand sergeantry or in frankalmoin, or was affected by the peculiar customs of gravelkind, borough-English or ancient demense. The Law of Property Acts 1922 and 1925 converted copyhold and ancient demense into socage tenure; they abolished gravelkind, borough-English, and all other customary modes of descent: and they purported to abolish frankalmoin.'[14] Thus the law of tenure is now both simpler and of less significance than it was before 1926, with only one form of tenure - namely socage. It is of less significance because all the tenurial incidents (including escheats) have been abolished, so that there is no inducement for private individual to prove that he is the lord of land. The theory of tenure now becomes of academic interest despite the great part that it has played in the history of English land law. It no longer restricts the tenant in his free enjoyment of the land.'[15]

Under earlier English law, it was difficult if not impossible to regard either the tenant or his lord as the owner of the land itself. The land could not be owned by the tenant, since it was recoverable by the lord if the tenurial services were not performed; it could not be owned by the lord, since he had no claim to it as long as the tenant fulfilled his duties.

The truth is that English law has never applied the conception of ownership to land. 'Ownership' in this context signifies a title to a subject-matter, whether movable or immovable, that is good against the whole world. This position is illustrated by the Roman doctrine of *dominium*, under which the *dominus* was entitled to the absolute and exclusive right of property in the land. Possession on the other hand was regarded as fundamentally different - *nihil commune habet proprietas cum possessione* - and though it was adequately protected, the remedies available were personal, not real. Thus English law, in analysing the relation of the tenant to the land, has directed its attention not to ownership, but to possession, or, as it is called in the case of land, *seisin*. Thus, all titles to land are ultimately based upon possession in the sense that the title of the man seised prevails against all who can show no better right to *seisin*. *Seisin* is the root of title, and it may be said without undue exaggeration that so far as land is concerned there is in England no law of ownership, but only a law of possession.[16]

> "...'seisin'... is an enjoyment of property based upon title, and is not essentially distinguishable from right".[17] Thus the English actions for the recovery of land, called in early days *real actions*, have consistently and continuously turned upon the right to possession. All that the plaintiff need to do is prove that he has better right to possession than the defendent, not that he has a better right than anybody else. If for example, he is ejected by the defendent, he will recover by virtue of his prior possession, notwithstanding that a still better right may reside in some third person.[18]

***THE PRE-COLONIAL LAND OWNERSHIP POLICY IN MALAYA***

Before the British intervention into the Malay states, land ownership therein was based on customary tenure system. The phrase 'customary land tenure' is widely used but seems to have no universally accepted definition. Legislatures for example,

define the term as 'current customary usage','customary law', or 'native law and custom'. These expressions, however, themselves require definition. Ghana for example, defines customary law as "rules of law which by custom are applicable to particular communities..."[19] — there still remain many unanswered question, particularly the meaning of custom. The Malawi Land Act, 1965 defines customary land as "land held, occupied or used under customary law". The Kenya Land Adjudication Act 1968 in defining 'groups' also refers to "land under recognised customary law ". The preamble to the Land Tenure Ordinance of the Northern State of Nigeria contains the phrase: "Whereas it is expedient that existing native customs with regard to the use and occupation of land should ... be preserved ".[20]

A law lexicon defines 'custom' as "unwritten law established by long usage",[21] but the question is how long must a custom be used before it is established as a law ? In England for example, to have the force of law a custom must have existed for so long as that "the memory of man runneth not to the contrary ".[22] Although custom is an important source of law in early times, its importance continuously diminishes as the legal system grows, and in many countries custom has already been largely replaced by case law or statute. According to S.Rowton Simpson,[23] this process is inevitable but is seldom recognised in developing countries because many people tend to regard as customary law what is in reality case law or statute; the historical source or origin of law is confused with the legal source from which it obtains its sanction.

Law obtains its sanction from three legal sources: it is enforced because it is customary law, or case law, or enacted law. Customary law tends to become case law and then enacted law.[24] At the beginning, customary law was enforced in the customary courts, or even merely by social pressure as it is recognised as legitimate by the community. As a formal court system develops the custom will derive its legal force from precedent, that is from the fact that the court has already decided that particular issue in a certain way. Historically, the law remains 'custom', but legally it becomes 'case law' or 'precedent'. This is a normal process of evolution. In a number of countries (Northern Nigeria, Ghana, Sierra Leone, Tanzania, among others), express provision has been made for the declaration of customary law by the appropriate traditional body or local authority.[25] These declarations when they have been gazetted, have the force of law which is, of course, 'enacted law', though it is still called customary law. In the modern day legal system, this procedure is not really suitable for producing land law suited to modern condition. It cannot provide a substitute to the uniform national land law which we will discuss later in the Chapter. In short, it can be concluded that any attempt to define customary law is bound to be very confusing. For this reason it will be safer, and less confusing if the essential nature of customary land tenure were to be described - a task to which we will turn.

'Customary tenure' is sometimes called 'communal tenure', because of this 'community owership', but land in customary tenure is seldom communally occupied and used by the group as a

whole, except in respect of grazing rights. There are certain rights which are attributed to customary land. Some of the examples of these rights are the right to build a house, the right to grow crops and above all, the right to exclude all other persons from the land. In strict customary law, such rights as these may be individually exercised with the consent of everyone else in the group; in practice, the group works out a method of giving this consent - usually through the head of the group or its land authority - and as development advances, the individual tends to acquire more and more freedom from group control until it may be said that individual ownership has been established.[26]

Customary tenure is in a constant process of evolution. The trend is usually towards a greater concentration of rights in the individual and a corresponding loss of control by the community as a whole. In this regard, Lugard described the process as follows:

> "In the earliest stage the land and its produce is shared by the community as a whole; later the produce is the property of the family or individual by whose toil it is won, and the control of the land becomes vested in the head of the family. When the tribal stage is reached, the control passes to the chief, who allots unoccupied lands at will, but is not justified in dispossessing any family or person who is using the land. Later still, especially when the pressure of population has given to the land an exchange value, the conception of proprietary rights in it emerges, and sale, mortgage, and lease of the land, apart from its user, is recognized...These processes of natural evolution, leading up to individual ownership, may I believe, be traced in every civilization known to history."[27]

This description, however, has been challanged and, in fact, it has been suggested that in some societies, tenures have in fact actually evolved from the opposite direction, from individual to communal rights.[28]

It can be generally accepted that in their earliest beginnings all societies regarded land as belonging corporately to the social group, whether this was a tribe, village, lineage or family. In Malaysia, for example, due to the rapid pace of political, social, and economic change, it is necessary to replace customary tenure because it impedes development, particularly where individualisation is already well advanced. In the case of customary land in Negri Sembilan and Malacca, for example, the form of title preserves the individual rights of the community in its lands.

In 1891, Sir William Maxwell introduced two forms of title registration, one for 'European lands' and the other for lands held under customary tenure; the latter was little more than the recording of occupation (with the quit-rent payable) by the Collector, with a record office in each district. The right conferred by such recording, although transferable and transmissible, was merely a right to the occupation of the land and could not be leased or charged. The *Mukim* Register, as this record was called, was introduced in 1897 and from that date the tenure of these lands has tended to appropriate to that of the Europeans lands (where the system introduced was free of the complexities of English land law). To-day, there is no essential difference between the two, and a person registered in the *Mukim* Register can charge or otherwise deal with his land as he wishes.

In some countries such as Ethiopia, Kenya and Lesotho (formerly Basutoland), the insecurity of tenure which results from the uncertainty of customary land law, is often a major

obstacle to development.[29] Without security of tenure there is no incentive to develop or improve agricultural techniques; and there may even be a positive disincentive as, for example in Lesotho[30] where, if a cultivator improves the productivity of his land, he may find that his land allotment is then reduced. Another disadvantage is that the uncertain arrangements of customary land law impede the extension of agricultural credit, for although there may be official agencies which will advance loans on the security of the farmers character or his chattels, commercial banks will insist on land as a security and this can be provided only by registered title.

For customary land to be securely owned by the holder there should be some control of dealing thereof by the owner although freedom of disposition is regarded as an essential attribute of ownership. One of the principal merits of registration of title is it makes dealing simple, cheap, and certain, and thus promotes 'mobility' in land transfer. However, this freedom must be denied, or at least severely restricted, if peasants are not to lose their lands. It has been shown that there is no more certain way of depriving a peasant of his land than to give him a secure title and make it as readily negotiable as a bank-note. In India, Burma, and the United States for example, where no control was exercised when individual ownership was first introduced amongst the indigenous people, much lands were lost to non-customary land holders. In the United States, land in Indian ownership, individual or tribal declined from 138 million acres in 1887 to 48 million acres in 1934.[31] In New Zealand and Malaysia, the passage of customary laws to restrict land dealings within

customary areas introduced an element of control by prohibiting such lands being transferred to non-natives or to those who are not entitled to hold land under the customary enactment.[32] In Sudan, it was provided in 1905 that native land could not be sold without the approval of the administrative authorities. In Uganda, Kenya and Malawi, similar provisions were confined to transfers to non-natives.[33]

In Malaya, these customary rules were derived from long established practices which were related to the acquisition, use and disposal of agriculture land. Under these rules, every member of the community had the right to make use of land so long as it was not being cultivated by someone else and the exactions demanded by the Sultan, Chief and some other authority, were paid.

According to Maxwell[34], the right of ownership to the land was absolute, as long as occupation continued or as long as the land bears signs of cultivation or the land was 'brought alive' *(tanah hidup)*.[35] The *kampung* was made up of individual holdings and communal ownership in cultivation of land did not exist. The size of a holding was determined by the needs of the family and rarely exceeded two or three acres of paddy land and an orchard of a few coconut trees. Once the land was abandoned or remained uncultivated, it would be forfeited. The Sultan too could seize either crops or land for non-payment of rents on cultivated land. There were regional sultanates and the cultivators became subjects of their local *rajas* and were required by custom to pay him one-tenth of their crops. Their usufruct rights remained in effect as long as they paid their

regular dues.[36]

There were differences in the above principles of land ownership from state to state. In Negri Sembilan and part of Malacca, for example, land ownership and use were controlled by the *suku* or clan under the *Adat Perpateh* system, which originated from Sumatra,(See Chapter 1 pp. 21-23). In Kelantan, land ownership was more individualised. However, in areas of permanent settlement, there was the development of the concept of proprietary rights from the original notion of usufructuary rights.[37] These local permutations of Malay customary land tenure found common ground in that they were consonant with the non-monetised, subsistence agricultural character of the economy in which land was primarily used and understood as a factor of production rather than as a commercial commodity for sale or exchange[38].

In the pre-colonial period there were two types of land ownership. Firstly, land was owned by the aristocracy that is the chief who owned the land including waterways and mineral contents, in the territory he had authority over. Any outsider who wanted to trade or open up land for mining had first to obtain permission from the chief and then pay all dues imposed. The chief could also have any area within the territory worked by some members of his entourage, particularly the slaves and debt-bonds-men and collect all produce therefrom.[39] In addition, he collected gifts, surpluses and revenues from the people living under his jurisdiction. In this case, the right to make collections was actually not a result of real ownership of land, but was an incident of the political control he had over

his territory. In fact his right to make the collection was a *quid pro quo* for maintaining order and providing protection and security to his subjects. Secondly, the land was owned and operated by the peasants. Under this system, a peasant owned as much land as he could cultivate. In those days land was abundant and there was no social or religious basis for insisting on the right to any particular piece of land. A peasant could always move to another place to look for more fertile land in the territory under the same chief, or he could even move to another territory under another chief where he felt he could get more peace and security. Therefore, the concept of land ownership was then a loose one. In contrast with the present time, a peasant at that time had no motivation to own more land than what he needed to work for the subsistence of his family.

*THE EARLY COLONIAL LAND OWNERSHIP POLICY*

British intervention in the Malay states began in 1873, first in Perak and later in Selangor, Negri Sembilan and Pahang. As a result of British intervention and the subsequent imposition of British rule in the four Malay states, later known as the Federated Malay States (FMS), immigrants from the Malay Archipelago, China, India and elsewhere began to immigrate and settle in the protected Malay states. This situation changed completely the political, economic and social conditions of Peninsular Malaysia.

The immigrant population took to mining, plantation and other commercial activities associated with a developing colonial type capitalist economy. Before the influx of the immigrants, land in the Malay economy had been utilised in small

ways by Malay peasants, but now it was rapidly taken up and opened for large-scale mineral and agricultural exploitation.

The British established an elaborate administration, staffed by British officers and Asian subordinates in order to encourage activity in land, health, law and other matters. By 1895, road and railways were built in Perak, Selangor and Negri Sembilan linking the main towns and villages within each state and the states to one another.

The British colonial government pursued flexible policies on land and taxation, as well as immigration in order to attract capital and labour. Alienation of land on easy terms commenced in Selangor when it came under British rule in 1874. As regards land policies, the Sultan of Selangor, through his proclamation on 12th December 1874,[40] encouraged Europeans, Chinese and others in the state, to *inter alia* open tin or gold mines and to undertake agricultural activities. Lands were granted free of premium and taxes on the produce were waived for a term of three years.

Following this proclamation, the Sultan of Perak proclaimed a similar policy on land and other matters in 1875.[41] These proclamations were of course, made on the advice of the British Residents in the Malay states.

Tin dominated and contributed wholly to the development of the new colonial economy of the FMS. The realisation that dependence on tin alone was a risky economic strategy led to the planting of coffee, sugar, pepper, tobacco and other tropical crops to supply both British and European markets. It was hoped that the concomitant of such economic diversification, the

introduction of new or larger factors of production and the stimulation of subsidiary industries would have a beneficial spread effect on the whole economy.[42] The failure of the European capitalists in the tin industry led to new investment in plantation agriculture and a capital export-oriented agricultural land policy by the British administration. However, the government did encourage non-European and particularly Chinese enterprise into the agricultural sector. Planters were accorded incentives to invest in the Malay States. They were given large areas of land at a nominal premium and the minimum of restrictions. Immigration policy was relaxed to allow the flow of labourers from India and China into the Peninsula. Other incentives to the planters included government loans, the construction of a network of roads and railways to service the plantations and the establishment of the planters' experimental agricultural stations in 1920.

The British Administration believed that Malay land tenure system was unsuitable for the commercial and industrialised capitalist economy that they created. Accordingly, in 1891 the British Administration introduced a Western-type tenure system to regulate land ownership and land dealings in the Malay states. Under the new land tenure system, agricultural land was alienated in the form of a lease for a term of years and the owners had to pay the land premium, survey fees and a fixed quit rent to the government. Initially, documents of land titles based on the deeds system of English land law were issued. These titles provided land holders with permanent, heritable and transferable rights to the land. Beginning from 1896, the Torrens system

was introduced to replace the obsolete deeds system of the English land law.[43]

The first attempt to protect the Malay peasants from losing their land to other commercially more experienced other racial groups was the enactment of the Selangor Land Code in 1891. The Code sought to ensure that no other community could buy or have any rights to the land held by the Malay peasants and the rights of transmission of which would be confined only to Muslims. The framers of the legislation felt that to provide the Malays with full proprietary rights would result in the misuse of these rights or their divestment to other groups with money. They argued[44] that everything should be done to prevent Malays mortgaging their holdings and then in default of payment, being ejected and their places taken by Chinese, Chettiers and others. They feared that such an eventuality might transform the inhabitants of Selangor for whose benefit the British purportedly intervened in the state into a class of vagrants[45] in their own country. However, in 1891, after W.E.Maxwell's departure from Selangor, the protective provision was repealed with the introduction of Land Regulations 1897, common to the four FMS states. The issue of a special tenure for the Malays was not raised again until 1910 with the introduction of the Malay Reservations Enactment.

## *FACTORS INFLUENCING THE LAND OWNERSHIP POLICY DURING THE COLONIAL PERIOD (1890-1956)*

### *The Influx of Immigrants*

The influx of immigrants led to the increase in non-Malay population. The first census of 1891 revealed a population of

418,527 in the four FMS,[46] a three-fold increase over the estimated population prior to British intervention. The Chinese in Selangor outnumbered the Malays two to one, while in Perak and Sungai Ujong, the Chinese equalled the Malays. By 1891, the non-Malay population in the FMS accounted for 44% of the total population, out of which the Chinese alone constituted 39%.[47] The immigrant population was involved in varied economic activities which were alien to the Malay states, such as in mining, plantation and other commercial endeavours associated with an emerging colonial-type capitalist economic system.

In the pre-colonial Malay economy land had been used in small lots by groups of Malay peasants, but with the introduction of a capitalist economic system by the British, a great deal of land was quickly taken up and opened for large-scale mineral and agricultural exploitation. New settlement with new town centres emerged and old ones were re-developed. These new settlement patterns were greatly different from those of a traditional Malay *kampung* (village).

The 1901 census showed the total population of the FMS as 678,595, an increase of 62% over the 1891 figure.[48] By 1905, the population was 850,000[49]. Thus, the influx of immigrants into the Malay states changed the patterns of land ownership in Peninsular Malaysia.

***Influence of plantation agriculture***

The second great influence on land ownership policy during the early colonial period was the plantation agriculture. In the 1890's, the failure of coffee and gloomy prospects of the other established crops, together with the continuous high price of

rubber, led the government to offer land on generous terms for rubber plantation. Thus, large areas of land were planted with rubber, either in its own newly opened estates or interplanted with other crops on the older plantations. By 1905 it was estimated that more than 40,000 acres[50] were under rubber.

It was agriculture, however, which brought in greater revenues to a large number of people than tin mining. It was this additional income provided by agriculture, which enabled the pace of development in the colonial economy begun by tin activity to be sustained. The Malays then regarded land as a source of a subsistence crops and did not regard land as a commercial asset until the scramble thereafter reached its height during the plantation rush.

The popular myth that only a body of Europeans could bring brains, energy and money to undertake the agricultural development of the Malay states resulted in an earnest plantation rubber rush. There ensued frantic activity as planters, speculators, adventurers and an assortment of other people, flooded the western states, buying and selling land and planting new fields and converting old ones. In the years 1905 and 1909, rubber acreage in the FMS increased seven-fold and at the end of 1909 there was a total of 377 estates with a combined area of half-a-million acres.[51] During this period, land was alienated at very low premium although land rents and premium were adjusted upwards twice between 1904 and 1906 to bring prices nearer to the actual market value. However, the new land rates were still lower than the government prescribed one and actually benefited many planters by burdening them least during the first

years of cultivation and heavy costs. The Planters Loan Fund which was set up in 1904 made large amounts of capital cheaply and easily available to the planters. In this way, more rubber estates were developed and the estate sector used up most of the good and fertile land. Good lands with road frontage were alienated to plantation. Many peasants sold their land to the estate sector which needed them for rubber plantations. Numerous land brokers scoured the countryside and many peasants were lured into selling their lands. Some of these sales were made by peasant immigrants who obtained land with the intention of disposing of the same for quick fortune. Some of the peasants sold their traditional paddy fields to take advantage of the economic boom as land prices peaked.

As the sale of agricultural land by the Malay peasants was contrary to the British administration plan of a settled peasantry, the Malay Reservations Enactment was passed in 1913.

***Tin Mining Industry***

A third and major influence on the colonial land ownership policy was the development of the tin mining industry.[52] The remarkable development of tin industry in the FMS greatly affected the land ownership patterns of the four Malay states and benefitted the state governments financially.

In 1895, the revenue of the governments of Perak, Selangor, and Negri Sembilan from tin amounted to more than one million dollars. Though Pahang earned less from tin mining, tin was also an important contributor to its revenue. In 1895, tin exports amounting to $27,714,492 accounted for 89% of the value of total export trade of the FMS.[53] Therefore, tin constituted the

financial base upon which the colonial capitalist edifice of the FMS was constructed.

Tin mining required large amounts of capital. As a result, the miners were mostly the Europeans and Chinese miners, who had the necessary capital. There were very few Malays in the tin trade because they lacked capital.

In tin areas, employment in the mines was often more profitable than working in the fields, resulting in many instances of non-cultivation of alienated agriculture land. Furthermore, peasants' lands which were likely to have tin deposits were taken over by the government for alienation to the miners. Peasants owning such land were also induced to sell them to the miners.

There were important structural changes in the tin industry over the years. Initially, the industry was dominated by Chinese miners who possessed the labour resources, financial support and entrepreneurial ability to operate tin mines. By the beginning of the 20th century, however, labour became scarcer and more expensive. Rich surface deposits suitable for intensive mining by Chinese labourers began to run out and the Chinese miners were also adversely affected by the new government fiscal and mining policies. Chinese tin operations were replaced by Western mining enterprise with superior technology and a greater capital which contributed 23% of the 43,149 tons produced in the FMS in 1910. Beginning from 1910 tin was the most important source of revenue of the state governments.

By the 1890's, the situation had become so serious that the British Administration took the first step to protect peasant

agriculture from mining activities by introducing a Mining Code in 1895.

The Perak Mining Code, 1895 was aimed at extending the powers of the administration over the mining industry to introduce more scientific and less wasteful mining techniques and to ensure that the granting of water licences to miners would not interfere with the rights of paddy planters and irrigation works.

In 1899, there was passed a Federal Mining Enactment which extended the Perak Mining Code to all the other FMS. While the Perak Mining Code prohibited the government from interfering with agricultural holdings or handing them over to miners whilst large tracts of uncultivated lands were still available, section 96 of the FMS Land Code[54] circumvented this protective provision by empowering the State Council to decide when mining should have priority over agriculture.

*Self-Sufficiency In Rice Production*

The fourth factor which influenced the Colonial policy on land ownership was the need for self-sufficiency in food production for the growing population in the Malay states. As a result of the mining and plantation industries and the flexible policy on immigration, the population of the FMS increased by leaps and bounds; by 1921, it was 1,324,890 and in 1931 it stood at 1,713,100.[55]

The only way of feeding the increased population without spending foreign exchange on the import of food was to encourage the local population to grow sufficient food.

To achieve self-sufficiency in rice production, the colonial

government sought to stimulate peasant agricultural development by offering them various incentives. One of the incentives was making land easily available at a very low land premium to cultivators. The other incentives were rent exemption for a number of years followed by low rates of land rent fixed in perpetuity, long term leases and light taxation of agriculture produce.[56]

The foregoing incentives notwithstanding, the Chinese and Indians preferred to work in tin mines and rubber estates respectively for reasons mentioned above and the Malays continued to cultivate paddy sufficient in quantum to support their own families only. As a result, the colonial objective of obtaining rice self-sufficency failed, rice still had to be imported from Thailand, Bengal, and Burma. Incidently, it may be noted that the British policy of providing Malays with incentives to cultivate only paddy, has led to the Malays being rural inhabitants to this day.

*The Threat Of Non-Malays*

The fifth factor which influenced the colonial land ownership policy was the threat that the British perceived the non-Malays posed to the Malay land-owning community.

Following British intervention, the composition of the population of Malaya changed in consequence of the influx of immigrants from other countries. The immigrants, more capitalistic-minded than the Malays, engaged in mining, plantation and other commercial activities associated with a developing colonial-type capitalist economy. Following the formation of the FMS in 1896, the immigrant population, besides

having the state governments alienate land to them on easy terms and low premium, also began buying up the peasant lands especially plantation land and many peasants moved out of their farms to work in the rubber plantations which were owned by non-Malays. The Malays did not own much rubber land during this period because the colonial government, considering rubber cultivation unsuitable for the peasantry, particularly for the Malays discouraged rubber cultivation by the peasants. However the widespread sale of peasant land alarmed the British [57] The extent of the land sales and transfers of Malay Lands to non-Malays can be seen in Appendix 2.1. Various proposals to stem a process which would be disastrous to British plans for a settled peasantry were put forward by British officials.

One of the steps taken by the colonial administration to discourage potential buyers of Malay land was to endorse on the land title an 'express condition' that no rubber was to be planted thereon. This was done in respect of all the newly alienated land and it was first implemented in Selangor. The imposition of this express condition was to the disadvantage of the peasant landholders, the majority of whom were Malays. The rationale for this move was that the peasant would be encouraged to turn to crops, other than rubber, which were considered as more suitable for the peasantry. In order to encourage paddy, orchard and coconut cultivation, the British administration also imposed a higher rental on rubber land and a lower rent on land other than rubber.

The Malay ownership of land was also threatened by the *chettiars* (money lenders) who provided needy peasants with easy

credit with, however, high interest which sometimes reached 36% or more per annum. The *chettiars'* existence and their popularity with the peasant bespeaks the inadequacy of government efforts to provide credit to the peasants.[58] Peasants lost their lands to *chettiars* when the latter foreclosed on the peasants' defaulting in settling their loans.

In 1913, land hunger was already present in some areas. In parts of Negri Sembilan, villages had reached their maximum size and peasants were migrating in search of land. In Selangor, only two districts were left with considerable tracts of unalienated land and peasants were hard put to obtain suitable alternatives. It was these circumstances that led to the colonial administration seeking ways and means of preventing the ownership of land held by Malay peasants from being whittled away by the non-Malays.

***MALAY RESERVATIONS AND ITS EFFECT ON LAND OWNERSHIP POLICY***

***The Need for Malay Reservations Enactment***

The first Malay Reservations Enactment was enacted in 1913 [59] with the main objective of protecting the land ownership rights of the Malays from being transferred to non-Malays.

The preamble to the legislation contains a brief explanation of the objective of the legislation and the circumstances leading to its enactment and also the reassurance that the colonial government did not intend to curb legitimate land activity or to prevent the Malay from profiting from sale of land. The Enactment, it was declared, was solely aimed at protecting the 'birth right and inheritance' of the Malay peasants. It pointed out that provisions to protect the natives already existed in

legislations in the Netherlands East Indies, the Punjab and New Zealand. In fact the concept of reserving land for the natives was not an original one for in such African countries as the Northern Territories of the Gold Coast, Northern Nigeria, Tanganyika, Uganda, Sudan, Kenya, and Malawi there existed statues which had the effect of declaring all lands in the given parts thereof native lands.[60]

Dealing in land had to be controlled to protect the land owners against those who are not only more astute but are also in a much stronger bargaining position economically and to protect the land from dealings which could adversely affect its use.[61] The former, the main reason for the enactment of the Malay Reservations Enactment, will be discussed later, while the latter will be discussed in Chapter 4.

*Circumstances Leading To The Formulation Of The Malay Reservations Enactment 1913*

The colonial administration hoped that the passage of the Malay Reservations Enactment of 1913 would, through the implementation thereof, simultaneously achieve the two objectives of preserving Malay land ownership by reserving specific areas of land to the Malays alone and of ensuring continued Malay settlement in rice areas to produce enough food for the ever increasing population in the Malay states, particularly in the Federated Malay States.

The colonial governments' enacting a law to protect and perpetuate the rights of the Malays in land ownership marked a departure from its commitment to the until then reigning ideology of economic laissez-faire posited on the free play of market

forces without government intervention in economic activities. However, the change had taken place especially pertaining to land ownership, earlier in 1910 or some thirty years after British intervention in the region. At the time of British intervention, the Malays had been subsistence farmers in rice. The subsequent development in the mining, rubber plantation and other sectors did not benefit the Malays who remained concentrated in the low income sector of the economy - rice cultivation. Instead the introduction of rubber had a deleterious impact on their ownership of land as foreign and local rubber companies opened up large areas of virgin land, purchased lands for the rubber plantation from the local population including selected peasant land which were potential areas or land along lines of communication or close to population centres. Initially, the British administration believing in economic laissez-faire did not interfere with the free market system of land sales. However, the vast numbers of the peasants who sold their land for quick money during the first rubber boom aroused fears among the British that if unchecked this would be disastrous for the indigenous peasantry. There resulted several attempts to enact a Malay Reservations law - in 1908 and in 1910. The Federal Secretariat drew the attention of the states to the absorption of Malay holdings into rubber plantations and inquired about the possibility of preventing the alienation of such lands. The Resident himself[62] and the District Officer of Ulu Langat were among British officials who advocated land ownership control as they regarded the absence of the same detrimental to the peasants, the plantation sector and the government.

The plantations by acquiring the small peasant land-holdings would be making an uneconomic purchase and by permitting the transaction, the government would be defeating its objective of a permanent agricultural population. Birch, in supporting the idea of a special reservation for Malay land ownership commented:[63]

> "To say that it is impossible ... is to forget that these are Malay states and that the people have only taken from us a document to evidence title."

A Committee established by the governments of Selangor and Perak in 1911 was of the opinion that unless remedial measures were introduced quickly, there would be disastrous consequences to the permanent settlement of Malays in the states. The Committee thought the problem could be solved:[64]

(a) By establishing Malay reserves where alienation would be limited to persons of the Malay race and Muslim religion only.
(b) By imposing a restrictive condition to be called an *'ancestral condition'* to ensure that no transfer to a non-Malay could take place without the written consent of the Collector.
(c) By enabling Malays who held land outside the reserve to exchange these lands for reserve land.

The Committee recommended that as an inducement to the Malays to take up reserve land, the rent thereon be reduced without the enactment of any legislation for this purpose. However, if the foregoing proposals did not achieve the desired ends, the committee recommended that fresh legislation be enacted along the lines of section 23 of the 1891 Selangor Land Code which prohibited Malays from disposing of land below the irreducible minimum of one acre for each member of the family.

The above recommendations were accepted in 1911 and the

'ancestral condition' was imposed on selected Malay lands of Ulu Langat, Klang and Selangor. There were, however, conflicting views as to whether the Malay Reservations policy, should be implemented through legislation or administrative action. Negri Sembilan already had legislation in the form of Customary Tenure Enactment which protected and legitimised the indigenous Minangkabau land system in Kuala Pilah and Tampin, the two areas of traditional settlement. Prior to the Enactment, the land laws of the FMS made no reference to the local land customs which form the basis of the Minangkabau social structure in Negri Sembilan and the 1909 enactment had been passed as much to prove the good faith of the British as to supplement the Federal laws. The Enactment regulated all dealings in customary land in accordance with the *adat* of the tribes and in doing so it prohibited the disposal of customary lands to non-Malays.

In Pahang, the problem was not yet evident, possibly because of the slower rate of development. In 1911, a conference of Residents agreed to cause to be prepared a draft of a law necessary to prohibit the sale of ancestral Malay lands to non-Malays. The reason for the sudden change was not clear but whatever the reason, the decision of the Residents led to a new concept of land ownership in the Malay states.

Finally, the Malay Reservations Enactment was passed in 1913. This enactment directly contradicted the principle of economic liberalism in the vital matter of land. The operation of the free market system in relation to the sale of land in Malay reservation areas was thus restricted.[66]

*LAND OWNERSHIP PROTECTION UNDER THE MALAY RESERVATIONS ENACTMENT*

The first draft legislation of the Malay Reservations Enactment of April 1912 provided that no Malay could dispose of his *kampung* land to any non-Malay except in the manner permitted by the Enactment. There were several amendments to the draft before it was passed by the Legislative Council.

The Malay Reservations Enactment, 1913 safeguarded the ownership of land by the Malays in the following ways:

(a) The Resident was given the power to declare any land within the state Malay reserve land by virtue of section 3 of the Malay Reservations Enactment, 1913.

(b) The Malay landowners, whose lands were within the Malay reservation area, gazetted under section 3 of the Enactment, were prohibited from carrying out private dealings in favour of non-Malays.[66]

(c) The disposal or alienation of Malay reserve land were restricted to Malays by virtue of sections 8, 9, and 10 of the Enactment.

(d) To deter potential non-Malay purchasers of Malay reserve land, any dealings in land within the reservation area by non-Malays was declared to be null and void.

*Restraints On Dealings On Malay Reservations Land*

The Malay Reservations Enactments of the respective Malay States seek to secure to the Malays their interests in land. The prohibition imposed by the Malay Reservations Enactments of each State can be classified into prohibition against disposition by the state and against private dealings. The present Malay reservation policy of the states is to provide for exceptions to

the prohibition by permitting alienation and dealings in favour of certain specified persons and bodies approved by the Ruler-in-Council of each state. As to the meaning of the decision of the Ruler-in-Council, see *Hanisah v Tuan Mat.*[67] The Malay Reservations Enactment of each state renders any dealing in contravention of its terms null and void.[68] Each Enactment further provides that such dealing, disposal or attempt[69] and no rent[70] or money paid or valuable handed over[71] is recoverable in court. However, in *Foo Say Lee v Ooi Heng Wai*[72], the court held that any dealing effected in favour of a non-Malay by a method provided in the Enactment itself is not contrary to the provisions of the Enactment and is therefore not null and void. The Malay Reservations Enactment of each state also prohibits the attachment in execution of any Malay reserve land or holding owned by a Malay[73] as in *Kapoor Singh v Haji Ibrahim bin Haji Mohamed Noor.*[74] Each Enactment also prohibits dealings in such land or holding by way of a power of attorney executed in favour of a person who is not a Malay[75] as in *Idris bin Mohamed Amin v Ng Ah Siew.*

In regard to section 7(1) of the Kelantan Malay Reservations Enactment 1930, there is conflicting judicial opinion as to whether a charge, created by a Malay owner of Malay Reservation land in favour of a person who is not a Malay, constitutes an interest in such land so as to be caught by the prohibition section[76] (see *Ho Giok Chay v Nik Aishah*[77] and *T Bariam Singh v Pegawai Pentadbir Pesaka Malaysia).*[78] As has been stated earlier there is no provision in any of the Malay Reservations

Enactments restricting to Malays dealings in land owned by non-Malays which is subsequently included within a Malay reservation (see Article 89(4) of the Federal Constitution and *Tan Hong Chit v Lim Kim Wan.*[79]

The many similarities between the provisions of the different Malay Reservations Enactments notwithstanding, there are significant differences between them.[80]

***THE EFFECTS OF MALAY RESERVATIONS POLICY ON THE MALAYS***

Before explaining the effects of the Malay reservation policy on the Malays, the efficacy of the provisions of the Malay Reservations Enactment relating to the reservation of land for Malays is examined below.

***The Extent of Reserve Land Since 1913***

Beginning in June 1914, various tracts of land of different sizes were by publication in the gazettes declared 'Malay Reservations'.[81] The result of such publication was that dealings in land within Malay Reservations (transfer of ownership, leasing and charging thereof for loans) were only allowed to Malays as defined under the Enactment. (See Appendix 2.2 for definition of a Malay) This was in sharp contrast with the freedom of land owners of non-reservation land to engage in land dealings with whosoever they wished. The extent to which these provisions were enforced varied from state to state.[82]

The rapidity with which the early reservations were declared is quite deceptive. [83] Most of the reservations consisted of unoccupied land in the upland regions of the state of less interest and value to the Malays themselves.[84] By the end of 1923, there were approximately 2,782,994[85] acres of Malay Reserve

TABLE 2.1

ESTIMATED AREAS OF MALAY RESERVATIONS AND ORANG ASLI RESERVES, AT 1979
(areas in acres)

| State | Malay Reserves | Orang Asli Reserves | Total land area |
|---|---|---|---|
| Johore | 147,706 | 9,880 | 4,702,386 |
| Kedah | 248,235 | - | 2,290,678 |
| Kelantan | 1,664,286 | - | 3,663,998 |
| Malacca | 10,745 | 247 | 401,869 |
| N.Sembilan | 74,347 | 16,796 | 1,635,387 |
| Pahang | 482,885 | 23,218 | 8,800,610 |
| Pulau Penang | - | - | 244,530 |
| Perak | 1,231,295 | 15,808 | 5,081,531 |
| Perlis | 11,856 | - | 199,823 |
| Selangor | 101,038 | 5,928 | 2,017,990 |
| Trengganu | 5,187 | 2,470 | 3,175,432 |
| Peninsular Malaysia | 3,966,835 | 74,347 | 32,214,234 |

*Source:* Land Resources Report of Peninsular Malaysia, 1974/75 Economic Planning Unit, Prime Minister's Department, Malaysia, p.34.

*Note:* 1. In Malacca, there is no Malay Reserves. The figure for Malacca shows Malacca Customary Land. In Trengganu, land under Malay holdings are not included.
2. The total for Peninsular Malaysia does not include Malacca Malay Customary Land (10,745 acres).

land in the FMS or 15.58% of the total area of the states and it was estimated that every family of five Malays in 1983 would have eight acres of land, assuming that all Malays would then be living in reservations and that the Malay population increased by 9% every decade.[86]

Similar Malay Reservations Enactments were passed by Kelantan in 1930,[87] Kedah in 1931,[88] Perlis in 1935,[89]

Johore[90] in 1936 and Trengganu in 1941.[91] With the passing of the Enactments, states began to reserve land for use by the Malays. Table 2.1 shows the extent of Malay reserve land in the states of Peninsular Malaysia to date.

***Problems In Implementing The Malay Reservations Policy***

The implementation of the reservation policy was not without problems. The reservation of land for the group in a multi-racial situation was itself a sensitive issue and to the colonial administrators must be attributed the fact of tact and rational argument for the Chinese and Indian communities did not press for its abolition. The Chinese and Indian members of the Council agreed with the proposal to restrict non-Malay interests, but objected to the establishment of a high ratio of reserve land in the states. However, the non-Malay community, especially the Chinese, were not strongly against the reservation policy, primarily because by the time it was introduced the Chinese already owned vast areas of land. By 1931, non-Malays owned more than two million acres of agricultural and mining land.[92] Also areas where non-Malay interest in land existed, were carefully excluded from the reservation proposals. In Selangor for example, in 1919, instructions [93] were issued that reservations need not avoid areas where there were non-Malay holdings.

In 1919, a careful investigation was carried out on the instruction of the government before reservation proposals were submitted to the State Council to be discussed, debated and amended by vested economic interests. All these processes meant that non-Malay capitalist interests were safeguarded.[94]

One problem faced by the administrators of the reservation

policy in 1920's was the conspicuous lack of participation by the Malays themselves. Those Malays who opposed the reservation policy contended that reservation would as it in fact did, immediately reduce the value of lands affected. The value of land to be reserved fell, by as much as 50% [95] and Malay landowners who stood to lose financially often petitioned the administration for their lands to be excluded from the proposal.[96] The Malay elite however, called for a more extensive areas to be reserved for Malays.

Non-Malay interest over reserved land, were protected by the 1913 legislation which permitted existing interest in land held by non-Malays in Malay reserve areas to continue to be held by non-Malays. This was provided by section 8(1) of the 1913 Malay Reservations Enactment, by which, reserved land could be leased to non-Malays for any term not exceeding three years.[97] This provision was, however, amended in 1933, following a report in December 1931 by the Committee set up by the Chief Secretary.[98] The report rejected the protection of a backward Malay peasantry as the basis of the reservation policy and explained that the policy was territorial and whatever the individual capacity of the Malay may be, he could not, as a race, compete with the far more populous peoples of other races who were attracted to Malaya. The report concluded that what was involved was a question of numbers and if the future of the Malay was to be assured, he had to have room for expansion and that required land to be reserved. The Committee therefore recommended that a ratio of not less than 60% of the total land area of each state be set aside for reservations. As regards the non-Malay

All area figures are expressed in acres.

TABLE 2.1

LAND ALIENATION AND GAZETTEMENT BY STATES, 1979

| *State* | *Stateland* | *Agricultural Land* | *Mining Land* | *Malay Reserves* | *Grazing Reserves* | *Orang Asli Reserves* | *Forest Reserves* | *Game Reserves* | *Urban Land* | *Other Government Reserves* | *Total* |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Peninsular Malaysia | 6,569,474 | 11,840,940 | 410,26 | 3,966,835 | 55,575 | 74,347 | 7,462,574 | 1,546,714 | 221,065 | 66,443 | 32,214,234 |
| Perlis .. .. | 7,163 | 136,097 | 1,482 | 11,856 | 247 | — | 42,237 | — | 494 | 247 | 199,823 |
| Kedah .. .. | 34,580 | 1,165,677 | 5,187 | 248,235 | 10,868 | — | 802,419 | — | 21,736 | 1,976 | 2,290,678 |
| Pulau Pinang .. | 16,055 | 194,636 | — | — | — | — | 14,820 | — | 17,537 | 1,482 | 244,530 |
| Perak .. .. | 266,760 | 1,629,459 | 207,233 | 1,231,295 | 8,398 | 15,808 | 1,671,449 | 8,892 | 38,779 | 3,458 | 5,081,531 |
| Selangor .. | 235,653 | 991,892 | 70,395 | 101,038 | 247 | 5,928 | 536,267 | 22,477 | 40,755 | 13,338 | 2,017,990 |
| Negri Sembilan | 52,117 | 948,727 | 9,880 | 74,347 | 4,940 | 16,796 | 516,971 | — | 8,151 | 3,458 | 1,635,387 |
| Melaka .. .. | 18,772 | 346,047 | 1,976 | — | — | 247 | 21,242 | — | 6,175 | 7,410 | 401,869 |
| Johor .. .. | 687,648 | 2,478,381 | 44,707 | 147,706 | 7,410 | 9,880 | 1,114,234 | 157,092 | 30,875 | 24,453 | 4,702,386 |
| Pahang .. | 3,572,855 | 2,173,600 | 51,623 | 482,885 | 7,904 | 23,218 | 1,567,956 | 896,610 | 15,314 | 8,645 | 8,800,610 |
| Trengganu .. | 1,442,727 | 888,212 | 16,055 | 5,187 | 4,199 | 2,470 | 582,920 | 201,799 | 31,863 | — | 3,17 5,432 |
| Kelantan .. | 235,144 | 888,212 | 1,729 | 1,664,286 | 11,362 | — | 592,059 | 259,844 | 9,386 | 1,976 | 3,663,998 |

Source: Land Resources Report of Peninsular Malaysia, 1974/1975, p. 34

interests in reservations, the Committee forwarded a comprehensive list of recommendations designed to limit these interests to a bare minimum.

The 1913 Malay Reservations Enactment has been abused by both Malays and non-Malays as is evidenced by the many infringements thereof.[99] To plug the loopholes, the Enactment was amended in 1933 particularly to make all powers of attorney given by a Malay to any non-Malay null and void. The Malay Reservations Enactment as amended in 1913 was thus totally unfavourable to the Malays.

While the amendments were designed to protect Malay interests, they had the long-term effect of discouraging completely the use of reservation land as security for loans and this was a serious obstacle to Malay economic development. In this respect, the conclusion of the Committee's report had to be seen in terms of future economic and political development of the Malays.[100]

The reservation policy which economically entrenched Malays in the unprofitable activity of paddy production was a major factor in impeding the economic development of the Malays. Those peasants protected by reservation policy, seemed in the short term, to benefit thereby. However, in the long run, by discouraging them from embarking on more profitable economic activities and by segregating them from other communities the reservation policy prevented their fuller integration into modern commercialised Malaysian society.[101]

***The Positive Aspects of the Malay Reservation Policy***

As discussed above, the dual objectives of establishing Malay reservations were to preserve Malay interests in land and

to promote permanent settlements based on agricultural production. These objectives were to have important implications on the economic development of the reservations.

In terms of the acreage brought under reservation as a means of safeguarding Malay ownership of land in rural areas, the reservation policy may be considered a success. The question is whether ownership of land alone by itself without considering the economic effectiveness thereof justifies regarding the reservation policy a success.

As stated above, in terms of the total acreage reserved, the success was undisputable. Figures from the four FMS[102] showed that on 1st January 1931, there were 778,711 acres of agriculture land owned by Malays of which 516,479 acres (66%) were in reservations. At the same time, the non-Malays owned more than two million acres of agriculture and mining land, as shown in Appendices 2.3 and 2.4. It was computed by the Commissioner of Lands then that if all the unalienated state land was reserved, it would be possible to achieve a 46-54% parity between Malay and non-Malay land interests in Selangor, a 60-40% in Negri Sembilan and a 70-30% parity in Perak.[103]. The most positive effect of the Malay reservation policy was that it prevented non-Malays from owning lands in reservation areas by prohibiting the transfer of land from Malays to non-Malays (sections 7 and 8, FMS Malay Reservations Enactment). The immediate effect of this amendment was to make irrecoverable all money paid by non-Malays for dealings in reservations. A later amendment rendered null and void even attempted dealings in land in reservation area by non-Malays.[104]. As a result of the reservation policy, it is

estimated today that there are about 3,966,835 acres of land reserve for Malays as shown in Table 2.1. Table 2.2 shows the areas of Malay reserve by state and by status of the land whether they are alienated land, state land, mining land or forest reserve.

The Malay Reservation Policy, however, had a negative effect not because the law was bad, but because the implementation and spirit thereof had been curbed by interpretation which rendered it unable to adjust to the needs of modern social, economic and political conditions.

***The Negative Aspects of the Malay Reservation Policy***

One of the negative effects of the Malay Reservation Policy was the result of the express condition imposed on reservation land that no rubber was to be planted thereon. The original objective of the policy was to make lands less attractive and thus discourage their sale to non-Malays. This was a concomitant of one of the objectives of the earlier reservation policy - the protection of traditional *kampung* land. The effect of this policy was that in Selangor for example, as a result of strict enforcement of 'no rubber' condition, the Malay peasant planted rubber on alienated lands other than in a reservation or proposed reservation.'[105] Thus, the original goal of preserving land by restraining on dealings therewith and by limiting the use thereof by restricting cultivation rights, threatened the objective of the reservation policy itself.

As rubber cultivation yields higher profitability than paddy, Malay participation in rubber plantation increased greatly and by 1916 it had reached its peak.'[106] The after effect of the 'no

rubber' condition was that Malay peasants either applied for lands outside the reservations or violated the cultivation conditions and as a result the administration was compelled to modify the policy to permit a certain proportion of reservation land to be planted with rubber. Some of the effects of the British Administration's policy of discouraging Malays from planting rubber were as follows: [107]

(a) Those who intended to plant rubber had to pay higher prices for their land.

(b) The Malays were obstructed in their efforts to obtain land in some districts.

(c) They were discouraged by officials who campaigned to impose the 'no rubber' cultivation on new peasant land titles.

(d) TOL lands found to be planted with rubber were cancelled as the result of the introduction of a prohibition on rubber cultivation within certain areas.

(e) Peasants who had violated the conditions were generally penalised only by an enhanced rent and premium and in some areas they were refused a change of condition or compelled to remove the rubber trees from their land.

Even though there was strict control of enforcing the 'no rubber' condition, the peasant rubber development continued vigorously.

Another negative effect of the early reservation policy arose from the British policy of alienating land with some road frontage to the estate or plantation sector only. This discriminatory policy was institutionalised by a circular sent in 1926 to the Selangor District Officers'[108] authorising them to

discourage applications for land of less than 25 acres in size where such land possessed a road frontage, except where the land itself was unsuitable or unlikely to be required for estate cultivation. Thus, the bias of policy of land alienation continued in favour of the estate sector. This prevented the peasants from obtaining land suitable for estate planting and confined them to certain areas usually comprising 'inferior land'. Whatever the reason'[109] given by the British Administration, the fact remains that the peasants were deliberately denied ownership of good agricultural land which was given to the European planters.

The effects of these discriminatory policies left the peasants with lands less valuable and less suitable for agriculture and deprived them of the broader social benefits arising from public works. This also explains why only a small proportion of the alienated land in the developed districts accessible by road and rail were owned by the peasants.

Towards the end of the period, the administration did try to balance the needs of the peasants but the damage to the peasants were irreparable. It was found that many plantations had acquired vast areas of land far in excess of their short-term requirements, long before reservation was seriously pursued.'[110] However, inspite of these disadvantages, the reservation policy did prevent some land from being placed on the market and thus forestalled a new generation of planters from buying up land while conserving a peasant resource.

Another negative effect of the reservation policy was that lands in reservation areas command a lower market price than non-

reservation holdings. This came about because of two main factors: first, these holdings were inadequately developed and secondly, dealings in them are confined to a closed market of Malay individual and institutions. However, the market value of reservation land has appreciated with time.'[1] Another negative effect is that the insistence that the Malay peasants continue subsistence farming, especially in paddy areas, condemned settlers in Malay reservations to a way of life characterised by few wants and a standard of living that was comparatively low compared with rubber smallholders, who possessed greater opportunities for material advancement as a result of their integration in the cash economy.'[2]

Lastly, since Malay reserve lands were mostly in the upland areas and were not suitable for agriculture, these lands were often left idle and had a relatively low value in the market compared with the land outside the Malay reserve. This deters owners from reclaiming the abandoned plots. Therefore, the replacement of subsistence crops by rubber offers a way of bringing the affected communities into the main stream of modern agriculture production for the export market.

***SOME REFORMS TO THE MALAY RESERVATIONS ENACTMENT***

With the declaration of independence in 1957, a new written constitution was formulated for the Federation of Malaya (1964-Malaysia). This Constitution, and particularly Article 89(1) and (2) thereof strengthened and enforced the Malay Reservations Enactment, (See Appendix 2.5). By Article 89(1) any state may declare any land which has not been developed, to be a Malay reservation, only if an equal area of land in the state can

be made available for general alienation and the total area declared as such reservation shall not exceed the total area for general alienation. This is a constitutional safeguard against a state declaring all the land comprising it a Malay reservation without taking into account the interest of other communities as provided for under Article 153.'[13] However, Malays are not prevented from applying for and owning land in areas made available for general alienation.

The aforesaid Article 89(1) indirectly infringes the state's rights to deal with land as it deems fit. (Land, it will be recalled, is a state matter). Article 89(1), in fact, empowers Parliament to subject the legislative powers of the states to legislative restrictions with which the states have to comply. It is through this constitutional provision that the Federal Government not only has power to intervene, but also to advise and to formulate policies, through the National Land Council.

Article 89(1) of the Constitution'[14] emphasises the 'sacredness' of the Malay reservation by providing that any law modifying, changing or amending Malay reservations be passed by a majority of the total number of members of the legislative asssembly (of that state) and by votes of not less than two thirds of the members present and voting, and by a further two-thirds majority of both Houses of Parliament. The provision of Article 89(1) are in contrast to the pre-independence provision whereby the *Menteri Besar* of the state had the power to degazette a Malay reservation area.

The aforesaid provision of Article 89(1) ensures that any law must eliminate racial considerations from coming into play in

decisions affecting the sensitive issue of reservations and to prevent arbitrary amendments. Fundamentally, Article 89(1) is meant to prevent the states from depriving Malays of their rights in land ownership.

The Constitution further strengthens the Malay reservation law by Article 89(3) which empowers the government of any state, in accordance with the existing law to declare as Malay reservation:

> "...(a) Any land acquired by that government by agreement for that purpose:
> (b) On the application of the proprietor, and with the consent of every person having a right or interest therein, any other land;
> (c) In a case where any land ceases to be a Malay reservation, any land of a similar character and of an area not exceeding the area of that land to be reserved as Malay reservation."

The phrase *in accordance with the existing law* limits the power of the states which have no Malay reservation enactments, (Penang and Malacca),[115] to declare any land as Malay reservation.

Under Article 89(3)(a) the state government may purchase land belonging to a non-Malay for the purpose of declaring it Malay reservation land which Article 89(3)(b) permits Malay land owners to apply to the State Authority to have such land declared as Malay reservation. If such an application is approved then the State Authority has under Article 89(2), to reserve for general alienation, an area equal to the area reserved for Malay reservation. However, in making the declaration under clause (3), the state's power is limited by Clause (4) that is, the State Authority shall not declare as a Malay reservation any land which at the time of the declaration is owned or occupied by a non-

Malay, in order to protect the legitimate interests of non-Malays as provided for under Article 153. However, many state governments have not complied with Article 89(3)(c), particularly in cases where large areas of land have been acquired [Appendix 4.6] and degazetted as Malay reservations without being replaced as required by Article 89(1)(c).

Article 89(5) of the Constitution provides that any state government may, in accordance with law, acquire land''[6] for the settlement of Malays or other communities and establish trusts for that purpose. This is not a provision favouring just one racial group for the Article provides, for the settlement of 'Malays or other communities'.''[7] However, before such a project is to be undertaken by the government, a law must first be enacted and a trust established. The distinction between clause (5) and clauses (2) and (3) is that under the former, there is no necessity to have an existing law or 'reservation', but under the latter, there must be an existing law before the state can declare an area to be Malay reservation.

Another point to be noted is that land owned by non-Malays prior to the inclusion thereon in a Malay reserve are not affected by the enactments; similarly, land which was the subject of a charge may be sold to the chargee if the charge was executed prior to the land being declared part of a Malay reserve.

Malay reservations are further protected by the passing of the Sedition Act 1960 (revised 1969) and the Constitution (Amendment) Act of 1971. Any questioning of the rights, status, positions, privileges, sovereignty or prerogatives established to

protect the special position of the Malays is prohibited and punishable under the aforesaid legislations.

As for land declared to be 'Customary land' under the Customary Tenure Enactment 1909,[118] the Constitution institutionalises the same by Article 160 which defines law to include "any custom or usage having the force of law in the federation or any part thereof".[119]

Only three states in Peninsular Malaysia, namely Negri Sembilan, Malacca and Trengganu have customary tenure or holding. Article 90 of the Constitution reads:

> "Nothing in this Constitution shall affect the validity of any restrictions imposed by law on the transfer or lease of customary land in the state of Negri Sembilan or the state of Malacca or of any interest in such land".

By providing that the provisions of the constitution do not override the provisions of any law relating to customary land in Negri Sembilan and Malacca it perpetuated the same. It is a provision which 'saves' the Customary Tenure Enactment of 1926 of Negri Sembilan which provides, *inter alia*, that land shall only be transferred to a female member of one of the recognised *suku* and no dealings shall be effected except with the assent of the territorial chief.[120]

As for the state of Trengganu, there is no Malay reservation as such except Malay holdings. However, Malays have special privileges under the Trengganu Malay Reservations Enactment, 17/1360 (A.H.). Malay holdings were declared in Trengganu around Besut, Kuala Trengganu, Dungun and Kemaman.

The Constitution provides, by Article 90(2) that the law relating to Malay holdings in Trengganu which existed immediately before *Merdeka* shall continue in force until it is amended or

replaced by a law to be passed in accordance with Article 89(1)(a) and (b).

However, Article 90(3) of the Constitution empowers the Legislature of the State of Trengganu to make provision for Malay reservations corresponding with the existing law in force in any other state of a ruler and in such a situation the said Article 89 shall have effect in relation to Trengganu, subject to the following modifications, namely:

(a) in Clause (1) for the reference to land which immediately before *Merdeka* was a Malay Reservation in accordance with the existing law, there shall be substituted a reference to land which immediately before the passing of the said Enactment was a Malay holding; and

(b) subject as aforesaid, any reference to the existing law shall be construed as a reference to the said Enactment.

Therefore, if the government wishes and also to provide uniformity of laws, the Constitution empowers the state to pass a law on Malay Reservation in place of Malay holdings. The State Legislative Assembly of Trengganu may, therefore, at anytime convert Malay holdings into Malay reservations. However, such a law should be valid only if it has been passed by a two third majority vote of the total number of members in both the State Legislative Assembly and in both Houses of Parliament in accordance with Article 89(1) of the Constitution.

However, in Trengganu, some alienated lands are subject to the restrictions imposed by the Trengganu Malay reservations Enactment even though they are situated outside a Malay Reservation area. These lands too come within the definition of

Malay holding in the Enactment. As such in Trengganu, a Malay holding can be within or outside a Malay reservation area. In the states of Penang and Malacca there were no Malay Reservations Enactments.

In Malacca, no Malay reservation exists, but Malays of Malacca 'domicile' were protected under the *Malacca Lands Customary Rights Ordinance* of 1886 until it was repealed and was replaced by the NLC (Penang and Malacca Titles) Act, 2/1963. Though not as comprehensive as the Negri Sembilan legislation relating to customary law - for example, the Malacca Customary law does not forbid the charging of land to outsiders,[121] - in essence, it is a Malay reservation law. Compared with other states, it is stricter in that only specified local Malays enjoy the privileges of the Ordinance.

Section 108 of the above Act provides that Malacca Customary Land subject to the category 'agriculture' can only be transferred, leased or transmitted to a Malay who was born in Malacca or one of whose parents or grandparents was born in the state.[122] Similarly, no lien in respect of such lands can be created in favour of any person other than such a Malay; [123] nor can a private or trust caveat be entered against such lands where the caveator is not such a Malay;[124] nor can there be such a trust, express or otherwise, of such land for a non-Malay;[125] nor a non-Malay personal representative with regard to such land.[126] Furthermore, no power of attorney in respect of such land can be created in favour of a non-Malay.[127]

On the other hand, in respect of Malacca Customary land subject to the category 'building' or 'industry', the above

restrictions do not apply to a Malay who was born in Malacca or whose parents or grandparents were not born in Malacca, provided that he professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and was before *Merdeka* Day born in the Federation or is on that day, domiciled in the Federation or is the issue of such a person.[128] The charging of such land to non-Malays is allowed under the law.[129] Thus far, about 1,500 acres[130] of Malacca customary land have been charged to non-Malays and physically the non-Malays are in occupation of the land. Such land has in fact been 'sold' to non-Malays, though legal transfer has not been effected because of restriciton imposed by section 108 of the Act. Several attempts to amend the Act through the National Land Council failed,[131] and finally, the Council had agreed to amend [132] Article 90(1) of the Malaysian Constitution and this enabled section 108 of the National Land Code (Penang and Malacca Titles) Act, 1963 to be amended. Thus, non-Malays are prohibited from having any dealings (including charges) with all Malacca Customary land.

Certain parts of Negri Sembilan and Malacca follow a matrilineal system of land tenure called *Adat Perpateh* which has been explained in Chapter one. Briefly, the basic principle of *Adat Perpateh* is that all ancestral land is vested in the female members of the *suku* (clan) and it can only be inherited or transmitted to the female issues or sold to women of the same *suku*.

The Customary Tenure (Lengkongan Lands) Enactment, 1960 enacted in 1960 was meant to encompass customary tenure of tribes in Negri Sembilan other than those covered by the

Customary Tenure Enactment Cap. 215. This Enactment was modelled on Cap. 215 and the provisions of the two enactments are, save for variations to accomodate differences between the customs of the two groups of tribes, identical.[133]

However, in Negri Sembilan, prior to the introduction of the Customary Tenure Enactment 1909, any person including a tribal Malay who held land under the statutory system of land tenure could freely sell his land. It was only after 1909, that a tribal Malay could not sell outside the tribe without first offering the land to the tribe at a fair price.[134] Under the Customary Tenure Enactment, such land might be sold to a person outside the tribe[135] should the tribe fail to exercise the option to purchase it.

In 1935, amendments to the 1926 Enactment was made and it is now called the *Customary Tenure Enactment, Cap. 215.* This Enactment does not seek to ensure the observance of the custom in respect of all lands which are subject to the custom. Its application is confined to a statutorily defined class of land called 'Customary land', which means 'land held by an entry in the *Mukim* Register' which has been endorsed with the words 'customary land' under section 4 of the Enactment or section 2 of the previous enactment. The Enactment too imposes an almost absolute prohibition on any dealing in such land in favour of any outsider.[136] Thus, the Customary Tenure Enactment adopted the policy of giving its protection to customary rights only where their existence was indicated by an endorsement on the register.

Under the custom, not all lands are subject to the customary restrictions on the alienability of land. As a general rule, land

newly acquired by an individual otherwise than by way of succession *tanah charian* [137] may be freely disposed of or dealt with by its owner and only land which had devolved according to the custom *tanah pesaka* [138] becomes tied up by the restrictions. There are, however, certain circumstances in which land which, strictly speaking, cannot be regarded as ancestral land, may also be subject to the restrictions. [139] The said circumstances include that lands 'occupied subject to the custom' need not necessarily be confined to lands occupied immemorially. [140] Acquired land *tanah charian* may be converted into ancestral land *tanah pesaka* under the custom. [141] 'Customary land' under the Enactment meant ancestral land as opposed to acquired land thereby, implying that only ancestral land is capable of becoming 'Customary land' by way of endorsement in the *Mukim* Register. [142] Therefore, those non-ancestral lands which may be subject to the customary restrictions would fall outside the Enactment. [143]

It appears in such a situation that not all lands which are subject to the customary restrictions are capable of being brought under the operation of the Enactment.

In the distribution of estates of deceased persons to their beneficiaries, the non-customary land of the Malays are subject to Islamic law of succession *faraid law* [144] and those estates within the customary land are distributed according to *adat laws*. [145]

*RIGHTS TO PROPERTY AND PROPRIETARY RIGHTS TO LAND OWNERSHIP UNDER THE CONSTITUTION*

Article 13 of the Malaysian Constitution protects the individual's property rights. This protection is, however qualified and not absolute for Article 13 states that:

> "(1) No person shall be deprived of property [146] save in accordance with law;
> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

Article 13(1) of the Constitution is really negative in that it prevents the executive from doing certain things except under authority of the law. It does not restrict Parliament from enacting legislation to deprive a person his property; the article only restricts the executive powers of the government from acting arbitrarily, that is, it protects against executive action, but not against legislation.[147]

Essentially, Article 13 of the Constitution simply codifies the English common law principles as to private property whereby the executive could not deprive private property without the authority of the law. The words 'due process' used in the Fifth Amendment in the U.S Constitution have been left out by adopting the phrase 'save in accordance with law', and all the elements of the American concept of eminent domain are not to be found in Article 13(2). The concept of 'public use' or 'taking' have been avoided and the concept of 'adequate compensation' has been adopted in Malaysia. The terms 'deprived', 'property', 'save in accordance with law' and 'adequate compensation' are not defined in the Constitution. However, as regards the terms 'property' in *Selangor Pilot Association v Malaysia*, Suffian, L.P approved

*Ulster Transport Authority v James Brown and Sons Ltd*, where it was held that the loss of goodwill of the plaintiffs' furniture transporting business was a loss of property and the plaintiffs were awarded compensation. The Federal Court referred to several Indian cases'[148] prior to 1955 to construe Article 13 and the word 'property' widely.'[149]

However, Article 13(2) of the Constitution authorises the government to acquire land compulsorily provided it has enacted a law for that purpose. Parliament has acted under Article 76(4) to pass the Land Acquisition Act 1960. Under the latter Act, the government can acquire land compulsorily for public purposes. In this respect, Article 31 of the Indian Constitution is similar to the Malaysian Constitution. Under the Indian Consitution, no property can be compulsorily acquired unless it is for public purposes.'[150] Suffian L.P was of the opinion that Malaysian Constitution is modelled on the Indian Constitution and the nearest provision which is similar to Article 13, is the Indian Article 31, prior to its amendment in 1955.

The word 'deprive' in Article 13 has been given a wide meaning on the analogy of the word 'deprived' in Article 31 in Indian Constitution. The Federal Court followed the meaning given in *Dwarkadas Shrinivas v Sholapur Spinning & Weavif Co. Ltd., & Ors* in which it was held that the expression, 'shall be taken possession of or acquired' in Article 31(2) 'implies such an appropriation of the property or abridgement of the incidents of ownership as would amount to a deprivation of the owner.' The cases in India clearly show that a person may be deprived of his property by his property being acquired or taken into possession

by the state. The same is true even though there has been no actual acquisition or taking over of property by transfer of ownership of that property to the state or other state statutory bodies. In the above cited case, it was held by the Court that section 35A of the Land Acquisition Act did not provide for adequate compensation and therefore it contravened Article 13 of the Constitution. The Court thus laid down that even for deprivation of property as distinguished from 'acquisition' by the state, compensation is payable. By doing so, the Court adopted the view expressed by the Indian Supreme Court before the amendment of Article 31 in 1955.

With regard to compensation, the Courts in Malaysia have followed the view of the Indian Courts prior to 1955 whereby compensation means the fair and full value of the property taken. In the United States, the compensation for land acquisition must be 'just compensation'. The United States Court here [15] held that the word 'compensation' means 'equivalent of property' and it is the duty of the courts to see that the expropriated owner obtain the equivalent of his property even if the word 'just' were omitted from the constitutional provision.

The main problem encountered by the Land Administrators when acquiring land is the question of 'adequate compensation'. There is always a dispute between the DLA and the affected landowner over the value of the land acquired. Generally, this often leads to 'haggling' over the price of the land. In such a situation, the DLA has to strike a balance between the interests of the landowner and that of the government which is responsible for the payment of the compensation. If the landowner is dissatisfied

with the amount awarded by the DLA, he may bring the case to court by way of an appeal. The term 'fair market value' has not been defined in the Act. However, in *Nanyang Manufacturing Co. v C.L.R. Johor*, the Court defined market value as :

> "...the price that an owner willing, and not obliged to sell, might reasonably expect to obtain from a willing purchaser with whom he was bargaining for sale and purchase of the land."

The above proposition was approved by Suffian L.P in *Aik Hoe and Co. Ltd. v Superintendent of Lands and Surveys Sarawak.*[152]

***Proprietary Rights of Land Ownership Under The NLC***

As explained in Chapter 1, the Peninsular Malaysian land system is based on the Torrens system of land registration which establishes and certifies under the authority of the state government, the ownership of an indefeasible[153] title to land and simplifies, hastens and cheapens all land dealings.

The FMS Land Code brought about the registration of titles to all private lands under the Torrens system, but various provisions of the FMS Land Code needed to be changed. Accordingly, the NLC 1965, consolidated all the previous land laws and it has made conspicuous improvements especially in relation to the land ownership policy. The NLC has also introduced a new concept of proprietorship (land ownership) through the registration of subsidiary title to the parcels in buildings which have two or more storeys.[154]

The NLC completes the assimilation of the ownership of land held under the *Mukim* Register to that held under the registry title in that there is now no basic difference between them.[155] Section 92 of the NLC protects all registered land holders through the issuing of indefeasible land titles; once the title

is registered, the person named in the land register is the legal owner of the land.

The title thus registered cannot be made void unless it is obtained through fraud. Sub-section (2) of the same section spells out the rights exercisable by the land holder which include *inter alia*, the right to effect transfers, leases, charges, surrenders and any other dealings permitted under the NLC subject to its provisions.[156]

The FMS Land Code, defined widely the term 'dealing' which included transactions such as alienation and reservation as well as transactions with alienated land itself. However, under the NLC, the term 'dealing' is restricted to transactions which are in respect of alienated land only and are of a kind which are authorised by the provisions of Division IV, Parts 13 to 17 of the NLC.[157] Therefore, it can be concluded that under the NLC various rights to dealings in land and to the use of land are given to the land holder, be it under the Customary Tenure Legislation or under the NLC itself.

However, as seen earlier, these rights of dealings or other rights of use of land are not absolute and are subject to limitations imposed by the NLC and other laws currently in force. These laws include the Malay Reservations Enactments, the Customary Tenure Legislations, the Customary Tenure Enactment Cap. 215 and the Customary Tenure (Lengkongan Lands) Enactment 1960. All these legislations provide special means for recording on the register documents of title of the relevant pieces of land the restrictions of ownership to which they are subject to safeguard all the rights affected by these special legislations

against the overriding effect of the registration of any dealings in such lands.

However, under the NLC itself, there are various restraints on dealings which limit the owners' rights to use their land. Such restraints on dealings include various types of caveats'[158] (Registrar's Caveats, private caveats, lien-holder's caveats and trust caveats) and prohibitory orders issued by the High Court. Besides the above constraints on land dealings, there are conditions and restrictions in interest imposed on alienated land at the time it is first alienated. Such restrictions do not vitiate the indefeasibility of the registered title *per se* but merely reflects the quantum of that indefeasibility.

> The expression 'indefeasibility':
> "...is a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. The conception is central in the system of registration. It does not involve that the registered proprietor is protected against any claim whatsoever;...there are provisions by which the entry on which he relies may be cancelled or corrected, or he may be exposed to claims in person. These are matters not to be overlooked when a total description of his rights is required; but as registered proprietor, and while he remains such, no adverse claim (except as specifically admitted) may be brought against him."[159]

By section 120 of the NLC, the imposition of express conditions and restrictions is unlimited except that it must be 'conformable to law'.[160] The proprietor may apply, pursuant to section 124, for the variation of these conditions, but unless and until so varied they must be observed and performed.[161] So far, we have shown that with the coming into force of the Federal Constitution (1957) and the NLC, (1966), the rights to own land have been further protected.

*POST INDEPENDENCE LAND OWNERSHIP POLICY (1957 - 1986)*

Between 1924 and 1956, the land ownership policy, especially in relation to agriculture between 1942 and 1956 was very vague, on account of the Second World war, the emergency (from 1948) and pre-independence political struggle. However, mention should be made briefly on the political struggle and the nationalist movement of this period because of its influence on post independence land ownership policy.

The nationalist movement of the pre-war and post-war periods were basically communal. The United Malays National Organisation (UMNO) formed in 1946 opposed vehemently the Malayan Union proposals. Other ethnic groups such as the Chinese and Indians were apathetic towards politics except for the Communists, who started an armed struggle in 1948. Later, UMNO, MCA, (Malayan Chinese Association) and MIC (Malayan Indian Congress) merged into the Alliance. In order to maintain political stability, the Alliance had to show its ability through the implementation of social and economic development projects. The Government emphasized rural development'[62] so as to lessen the gaps between the economically and socially well off Chinese and the poor Malay peasants, who are mostly in the rural areas.

During the 'Emergency' period (1948-1960) some 500,000 Chinese farmes were re-located in New Villages'[63] which were provided with modern amenities. This contrasted sharply with the position of the Malays in the rural areas who received no government aid and was the source of friction between the two races. Further, some of the 'new villages' were located in Malay reservations. The Chinese were issued Temporary Occupation

Licence (TOL) to Malay reservation lands upon the payment of a token premium payable yearly to the state government.[164] Later, the Chinese in some of the new villages were issued with land titles (*Mukim* grant or *Mukim* lease) mainly because of the political pressure of the MCA. The Chinese were thus relatively more prosperous than the Malays.[165]

***Land Ownership Policy Through FELDA Schemes.***

The Federal Land Development Authority (FELDA), which was established in 1956, is a land development agency with the objective of promoting economic and social advancement through rural resettlements and to provide land for the landless. FELDA has introduced three types of ownership: that is the Individual Ownership, the Group Ownership and the Share System Ownership. Studies reveal that individual ownership and group ownership suffer from some defects. The former creates a disparity *inter se* in income as a result of differences in input factors and field conditions, and the latter is beset by the problems of getting the block members to work together and cooperate among themselves. Both do not give the maximum returns. Under the individual ownership system, each settler family is given eight to ten acres of land; two acres for planting fruit trees (orchard land) and one quarter of an acre for constructing a house (housing lot). At the end of the repayment of the consolidated annual charge (CAC) which includes the premium on lands, development costs, survey fees and so on, each settler will be issued with a land title *Mukim* Grant.[166] This will normally take about 15 years from the date when the scheme becomes productive. Generally, the average settler income has

been satisfactory, [see Table 3.3.].

The share system of land ownership for FELDA settlers is a new concept of land ownership officially proposed by FELDA in 1984[167] and officially implemented from January 1985, for new settlers.[168] The government hopes that the new system will ensure a steady income for settlers.[169]. The collection, utilisation and management of land through the share ownership system seems the most favourable solution to overcome these weaknesses of the other two systems mentioned above, to boost productivity and to facilitate modernisation efforts. Under this system, the plantation will be run by corporate style management similar to the commercial estate and the settlers are given the title to the land for the housing lot. The ownership of the plantation land is evidenced by the share certificates given by FELDA after recovering the cost of development which is to be amortised and repaid within a period of 15 years. The settlers will work in the plantation and get wages for the work done. In addition to that they will be getting dividends and bonus from the annual surplus, if any at the end of each year. The government views the share system of land ownership, as a new way of introducing the settlers to a modern way of estate management and replacing the old concept of land as a 'sentimental' property, which in the past has been the phenomenon among the rural Malays. It is felt that this share system can also be extended to the small-holders outside FELDA scheme to overcome the problems of preventing optimum utilisation of land - under or unutilised, uneconomic-sized and low productivity and to enable the participants to benefit from the advantages of the

corporate-style management of a plantation. The acreage developed by FELDA and other agencies is shown in Table 3.6.

***LAND OWNERSHIP POLICY IN MINING***

The capital employed in this industry was almost entirely British and Chinese during the 1920's to 1930's. The Malay miners worked surface deposits only and their output was small. The British and Chinese miners, on the other hand, carried out their opencast mines. Later, the Chinese miners resorted to gravel pump mining.

Land for mining during the period was leased for periods of fairly short duration. British and Chinese miners however, enjoyed an advantage over the Malay miners in that they had more capital. For this reason, large tracts of mining lands were leased to them by the government for mining purposes. Once mining was completed or when the lease is expired, such mined land reverted to the state government.[170] With the coming into force of the Mining Enactments of each state,[171] mining land was leased more systematically. Mining Department was established to supervise and control mining operations.

As demand for houses increased and land became scarce, especially in the 1970's, former mining lands particularly in Selangor, Wilayah Persekutuan, Perak and Negri Sembilan, were covered and alienated for residential purposes. This is possible because mining lands were leased for a definite period of time until the tin ore is exhausted. This enables the government to recover land in respect of which mining leases have expired and redistribute them for agricultural, building, or industrial purposes.

As regards reforms in the Mining Enactment of the various states, an attempt by the Federal Government to have a unified National Mining Code was rejected by the majority of the members of the National Land Council in 1980.[172]

However, with the present uncertainty about the future of the mining industry [173] uniformity in mining law is inevitable in the near future.

***Malay Participation In Mining***

After independence in 1957, various policies and programmes were formulated to enable Malays to breach the monopoly exercised over the mining sector by the Chinese and foreign companies. Various policy decisions were made by the National Land Council to give Malays access to the mining industry.

In 1958, the National Land Council adopted a policy[174] requiring the state governments to give priority to Malays in owning and working their own mining land, especially in Malay reservation areas. The Council also agreed that such mining land, once owned, could not be transferred or leased without the approval of the Ruler-in-Council. To ensure success, the Council also adopted a policy of sending Malays to various institutions of higher learning at home and abroad for training in mining engineering.

Another resolution passed by the Council was that all future mining leases be granted only on condition that not less than 50% of directors of the mining concern be Malaysian citizens, that the majority of the shares be owned by the government and that at least 75% of the work force should be citizens. Further measures to encourage the Malays to go into mining industry were left to

TABLE 2.3

OWNERSHIP OF MINING LAND AS AT SECOND QUARTER OF 1986

| OWNERSHIP | PROSPECTING PERMITS | | MINING LEASES | |
|---|---|---|---|---|
| | No. | Area (hectare) | No. | Area (hectare) |
| Bumiputra (individual) | 281 | 29,942 | 779 | 16,567 |
| Bumiputra & Non-Bumiputra (Joint Venture) | 85 | 7,371 | 191 | 5,340 |
| Public Authority | 19 | 77,874 | 47 | 3,251 |
| Public Companies with Bumiputra Participation | 6 | 17,086 | 288 | 20,266 |
| Public Companies without Bumiputra | 41 | 678,234 | 138 | 13,613 |
| Private Limited Co. with Bumiputra & Public Authorities | 13 | 488 | 232 | 17,076 |
| Private Limited Co. without Bumiputra | 9 | 736 | 971 | 20,828 |
| Non-Bumiputra (individual) | 31 | 2,863 | 1,308 | 27,863 |
| | 485 | 814,594 | 3,954 | 124,804 |

*Source*: Mining Department, Malaysia, Kuala Lumpur, 1986 (unpublished report).

TABLE 2.4

LAND STATISTICS IN THE FEDERATED MALAY STATES, 1 JANUARY 1931
*figures in acres*

| | Perak | Selangor | Negri Sembilan | Pahang | All States |
|---|---|---|---|---|---|
| Country land owned by Malays | 361,159 | 157,310 | 119,837 | 140,405 | 778,711 |
| Country land owned by non-Malays | 561,080 | 603,794 | 418,353 | 256,233 | 1,839,460 |
| Town and village land owned by Malays | 667 | 752 | 455 | 281 | 2,155 |
| Town and village land owned by non-Malays | 1,948 | 3,736 | 1,816 | 727 | 8,227 |
| Area occupied under T.O.L by Malays | 8,631 | 6,328 | 944 | 944 | 18,475 |
| Area alienated under Mining Enactment | 112,151 | 55,319 | 7,354 | 216,984 | 391,838 |
| Forest and other reserves | 1,689,651 | 575,836 | 517,269 | 1,946,662 | 4,729,418 |
| Total area alienated | 2,740,162 | 1,415,394 | 1,069,338 | 2,564,966 | 7,789,860 |
| Area unalienated | 2,217,041 | 671,646 | 567,644 | 6,553,654 | 10,009,985 |
| Area of State | 4,957,203 | 2,087,040 | 1,636,982 | 9,118,620 | 17,799,845 |

*Source:* Lim Teck Ghee, *Peasants and Their Agricultural Economy in Colonial Malaya, 1874-1941, p.259, appendix 8.1.*

the individual state governments to formulate and implement. The National Land Council has not adopted any other resolution regarding Malay participation in or owning mining lands.

As will be shown in Chapter 3, Malay participation in mining industry has not yet reached the targetted objectives of the 1958 National Land Council resolution. Table 2.3 shows the extent of mining land held/owned by each race in 1986 by ethnicity. Compared with Appendix 2.6, the acreage owned by Malays had not increased significantly by 1986. However, the number of Malays qualified as mining engineers has increased since the 1958 resolution was passed.[175]

The future of the Malays in the mining industry does not seem to be very bright as the Malays do not have the large capital that mining requires. (See Table 2.3)

*Patterns of Land Ownership*

Between 1894 to 1938, the land ownership pattern[176] featured Malay and Chinese ownership with the latter dominant but with very little actual transfer of land[177] from one group to another. Table 2.4 shows land ownership patterns in the four FMS as at January 1931. This table shows that the non-Malays were the dominant land owners in the four FMS especially in Selangor and Perak. The non-Malays owned a total of 1,839,460 acres of country land compared with 778,711 acres owned by Malays. Land in town and village was held mostly by non-Malays too, with a total area of 8,227 acres compared with 2,155 acres held by Malays. The reason for this disparity in the acreage held by Malays and non-Malays has been discussed earlier in this chapter.

In respect of the Malay reservation areas for the four FMS, alienated land figures are shown in Appendix 2.3, that is, ownership of agriculture and mining land in 1938 by race. Though the Malay Reservations Enactment was meant to protect Malay rights in land ownership, those non-Malays owning land prior to the declaration of reservation could still own them. Appendix 2.3 shows a total of 75,916 acres of such land owned by non-Malays compared with 516,479 acres of reserved land owned by Malays.

The ownership of agricultural and mining lands by race in the FMS on 1st January 1938 is depicted in Appendix 2.4, which shows that plantation sector, especially rubber estates, was dominated by Europeans with a total area of 1,042,946 acres in the three FMS of Perak, Selangor and Negri Sembilan. In agriculture, the Malays owned 641,402 acres and the Chinese and Indians owned 377,506 and 168,252 acres respectively. [178]

***FIVE YEAR DEVELOPMENT PLANS AND LAND OWNERSHIP PATTERNS***

The five year development plans implemented by the government since the First Malaya Plan in 1960 to the Fourth Malaysia Plan (1981-1985) have not greatly altered the land ownerhsip patterns among the various ethnic groups in Peninsular Malaysia as shown in Appendices 3.10, 3.11, and 3.12. Table 3.6 shows acreage in FELDA schemes, the majority of which is owned by Malays. Appendix 2.7 shows the acreage owned by rubber smallholders according to ethnicity. Comparatively, the FELDA acreages and that of the smallholder are very much smaller than those owned by non-Malays as shown in the above appendices.

The change of ownership[179] through individual efforts by way of transfer of ownership of land from one ethnic group to another

does not indicate that the ownership pattern will change to a great extent.

The present pattern of land ownership has been set by the British Colonial land policy since the early years of 1900. This pattern, once set, cannot be changed easily except through a massive land reform programme. However, as far as can be ascertained, no study has been undertaken to determine the overall changes of land ownership patterns for the whole of Peninsular Malaysia. Nevertheless, a few studies on land ownership patterns for particular districts in Peninsular Malaysia exist and though they do not present a true picture of the actual national situation, they do, nonetheless provide a cross section of the changes that have occurred among the various ethnic groups in terms of patterns of land ownership and land ownership changes.

Voon[180] in his studies in *Mukims* of Semenyih and Ulu Semenyih, in Selangor, in 1976, showed that land ownership under Chinese planting companies and Malays was more permanent than that under Indian, *Chettier* and European ownership. For results of Voon's study, see Appendix 2.8 [181]

In Johore Barat (Johore) area, a massive transfer of land resulted from development being brought into the area,[182] see Appendix 2.9. The result of the study shows that there was very little transfer of land from non-Malays to Malays. However, 57.4% of the transfers were from non-Malays to non-Malays and 29.9% from Malays to Non-Malays.

In the MADA area, there is moderately high degrees of concentration of ownership of paddy land and this indicates the

possible existence of a rich landlord class.[163] There are about 8,600 paddy land owners with ten *relong* (3.5 acres) or more who together own 145,773 *relong*[164] or 42% of total paddy land. However, of those who own 30 *relong* or more of paddy land in the Muda region, only 6% claimed to be active paddy farmers. They tended to own on an average about as much other agricultural land as they did paddy land. Compared to a random sample of ordinary paddy farmers, the large paddy landowners[165] scored much higher on every socio-economic indicator. There are about 700 big paddy landlords in the Muda region and they own about 34,000 *relong* of paddy land (about 10% of the total paddy land in the scheme). Therefore, redistribution of ownership of this land to small farmers and landless agricultural labours in economic holding would bring about a substantial reduction in the concentration of land ownership in Muda region. This in turn would bring about a substantial reduction of poverty in the area, though it would not be enough to eradicate it.

The hypothesis that the Malaysian development plans do not substantially alter the pattern of land ownership among the Malays is borne out by a comparison of the various appendices and tables cited above with that of the progress achieved under the various land development schemes implemented under the five-year development programmes as shown in Tables 2.1, 2.3, 2.4 and 3.6 and Appendices 2.3, 2.4, 2.6, 2.7, 3.10, 3.11, and 3.12.

***SUMMARY.***

From the above discussion it can be summarised that in Peninsular Malaysia, especially after *Merdeka*, besides the government's policy of land ownership through land development

schemes, there is no other major reform in land ownership policy. The Malay Reservations Policy, which has been a major land ownership policy formulated by the colonial administration is still being maintained without real policy improvements.

The British colonial land policy has affected the present pattern of land ownership especially among the Malays to this day. The Malays were left in the paddy cultivation areas where poverty persists, whereas the majority of the Chinese were in the more lucrative sectors of rubber and mining industries, thus leaving the Malays in an economically disadvantaged position. This pattern of land ownership however, has not changed much even after twenty five years of development plans and despite the implementation of the New Economic Policy.

In terms of land ownership by ethnic groups, the present patterns of land ownership among the Malays, Chinese and Indians do not reflect the population patterns of the country. The Non-Malays own much more land particularly in the estate and mining sector than the Malays, (see Appendices 2.6 and Table 2.3; and Appendices 3.10, 3.11, and 3.12).

Although the Malays are protected by the Malay Reservations Enactments of the states, the benefits thereof are illusory. This is because in terms of physical land acreage, 60% of the lands reserved are of the low quality and are not suitable for cultivation.[186]

In terms of ownership in mining land, the Malays too are at the disadvantage, firstly because of the lack of capital to

operate the mines and secondly, due to lack of experience in the mining industry.

FELDA's concept of land ownership by shares is a new approach towards propelling the Malays into the modern economic sector. If the settlers could be convinced to participate in it the new system would materially be more profitable than the existing one. However, the fact remains that the ownership by 'title' has the advantage of security and a source of getting financial help in times of hardship, as a financial resource which permits the charging and leasing of the land to money lenders. Thus, land ownership by shares has not found favour with the settlers. However, if this system is able to increase the settlers income, then the shift from the old system to the new concept of land ownership by shares is a worthwhile venture.[187]

NOTES

1. See definition of land in the NLC, s.5.
2. See S.Rowton Simpson, *Land Law and Registration*, Cambridge University Press, 1976, p.6.
3. See Magarry & Wades, p.68.
4. This is provided for under the NLC, see for example ss. 282-288, NLC.
5. See S.R.Simpson, *op.cit.* p.6.
6. See the Malay Reservations Enactments of Peninsular Malaysia (except Penang, as for Malacca see the Malacca Customary Tenure Enactment).
7. See S.R.Simpson, *op.cit.* p.8
8. See for example s.7 of the Padi Cultivators (Control of Rent and Security of Tenure) Act, 43/1967.
9. *ibid.*
10. See S.R.Simpson, *op.cit.* p.26.
11. See *ibid.*, p.27.
12. See *ibid.*, p.27.
13. See *ibid.*, p.28-29.
14. See E.H.Burn, *Cheshire's Modern Law of Real Property*,11th ed. Butteworths, London, 1972, p.26.
15. *ibid.*, pp.26-27.
16. *ibid.*, pp.28.
17. Plucknett, *Concise History of the Common Law* (5th Edn.), p.358, as quoted in Cheshire's, see *ibid;* p.28.
18. *Asher v. Whitlock* (1865), L.R. 1 Q B 1; M & B. p.692, as quoted in *ibid.*, p.29.
19. Interpretation Act, 1960 s 18(1), as quoted in S.Rowton Simpson, 1976 *op.cit.* p.220.
20. See *ibid.*, p.220.
21. Motion *The Pocket Law Lexicon* p.110.
22. See S.Rowton Simpson, *op.cit.* p.220.
23. *ibid.*, p.221.
24. *ibid.*, p.221.
25. *ibid.*, p.223.
26. See *ibid.*
27. See Lugard as quoted in S.Rowton Simpson, *op.cit.* p. 226.
28. See *ibid.*, p.226.
29. *ibid.*, p.230.
30. *ibid.*, p.230.
31. See *ibid.*, p.236.
32. See for examples the Customary Land Tenure Enactment - FMS Cap. 215: The Aborigines People Act - Laws of Malaysia Act, 134; the Malay Reservations Enactment F.M.S. Chapter (Cap.) 142 and the Native Lands Act, (1862) (New Zealand).
33. See *ibid.*, pp.237-238.
34. W.E.Maxwells, *The Laws and Customs of the Malays with special reference to the Tenure of Land*(1884),13, JSBRAS, pp. 75-200.
35. *ibid.*
36. *ibid.*
37. J.M.Gullick, *Indigenous Political Systems of Western Malaya*, London, 1958. See also David S.Y.Wong, *op.cit.*1977, pp.13-20.
38. See Lim Teck Ghee, *Peasants And Their Agricultural Economy in Colonial Malaya, 1874-1941*, Oxford University Press, Kuala Lumpur, 1977, p.13.
39. J.M.Gullick, *op.cit.* 1958.

40. see Lim Teck Ghee, 1977 *op.cit.* (Proclamations by the Sultan of Selangor, 12th December,1874), p.13.
41. See *ibid.* See also David S.Y.Wong, 1975 *op.cit.* pp.22, 24-25.
42. See *ibid.*, pp.14-15.
43. For detailed description of the Torrens System, see S.K.Das, *Torrens System in Malaya*, Malayan Law Journal Ltd.,1963, see also Baalman, *The Torrens System In Singapore, Government Priter Singapore, 1961.*
44. see Lim Teck Ghee, 1977 *op.cit.* p. 18.
45. As a result of Selangor Land Code, 1891, peasants' lands were protected, but it was short-lived as after William Maxwell's departure (Senior British Official who was responsible for the legislation), the enactment was amended in 1891 which repealed the vital clauses protecting the peasant.
46. Lim Teck Ghee, 1977, *op.cit.* Malaya, 1874-1941, p.16.
47. *ibid.*, p.12.
48. *ibid.*, p.28.
49. *ibid.*
50. *ibid.*, p.32.
51. *ibid.*, p.72.
52. Wong Lin Ken, *The Malayan Tin Industry to 1914* (Tucson, 1965) pp.1-54.
53. see Lim Teck Ghee, 1977,*op.cit.* 1977 p.14.
54. The Perak Mining Code, 1896, s. 96.
55. Lim Teck Ghee, 1977 *op.cit* p.245, Appendix 1.2.
56. *ibid.*, p.17.
57. Memorandum sent by the District Officer of Ulu Langat to the State Government of Selangor,28th July,1910.See ibid., p.107.
58. *ibid.*, pp.84-87.
59. F.M.S. Malay Reservations Enactment,1913.
60. C.K.Meek.*Land Law And Custom In The Colonies*,*op.cit.* p.xxiv.
61. *ibid.*
62. See Lim Teck Ghee, 1977, *op.cit.* p.108.
63. *ibid.*
64. *ibid.*, p. 108.
65. The first draft was meant to impose limitations on the disposal of *Kampung* lands. The objective of the final draft was to impose limitations on land within a gazetted Malay reservation and appears to have worked on the assumption that all the Malay lands were not necessarily *Kampung* land. Thus, protection would only be required within certain selected localities and that the Malays should be able to take up certain land within a view of disposal at some later time.
66. See David S.Y.Wong, 1977, *op.cit* pp.510-511. See e.g ss. 7 and 8, F.M.S. Malay Reservations Enactment, Cap.142.
67. See *Hanisah v Tuan Mat* [1970] 1 MLJ 213.
68. See the F.M.S. Malay Reservations Enactment, [Cap.142] 28/1936, ss.7 & 8.
69. *ibid.*, s. 19.
70. *ibid.*, s. 19.
71. *ibid.*, s. 14.
72. See *Foo Say Lee v Ooi Heng Wai* [1969] 1 MLJ 47.
73. as per note 68, see s. 13.
74. See *Kapoor Singh v Haji Ibrahim bin Haji Mohamed Noor*, [1948] MLJ 29.

75. as per note 68, s. 9.
76. The Kelantan Malay Reservations Enactment,18/1930, s.6 & 7.
77. See *Ho Giok Chay v Nik Aishah* [1961] MLJ 49.
78. See *Bariam Singh, T v Pegawai Pentadbir Pesaka, Malaysia,* [1983] 1 MLJ 232.
79. See *Tan Hong Chit v Lim Kin Wan* [1964] MLJ 113.
80. See Lim Teck Ghee, *op.cit.* pp.166-167.
81. See *ibid.*, p.167.
82. See *ibid.*
83. See Lim Teck Ghee, *op. cit.* p.113. See also pp. 165-166.
84. Majority of the land under Malay reservations are of the fifth class soil. Out of 4,032,077 acres of unalienated Malay reservations land, 2,937,077 acres of the 5th class type, which are not suitable for cultivation, 288,722 acres class four, 308,009 acres class 3,539,448 class 2, and only 19,513 acres class 1, [see *Land Resources Report of Peninsular Malaysia, 1974/75,* Economic Planning Unit, Prime Minister Department, Malaysia, p.72, Table 4C.
85. This was followed by Krian, Kuala Kangsar, Upper Perak, Lower Perak and Batang Padang. In Negri Sembilan, initial programme in reservation was just as rapid, but the early reservations consisted mainly of occupied lands in Kuala Pilah and Tampin which came under the Customary Tenure Enactment and provided a logical basis for reservation. On completion of the reservation of occupied land, the government gazetted about 400,000 acres of Malay Reservations in unoccupied areas in 1918. This accounted for about 2/3 of all the unalienated land in the state. In Port Dickson and Seremban, a vast area of lands within predominantly non-Malay areas were also gazetted as Malay Reservations.
    Selangor state government did not gazette any land for Malay reservation purposes until 1916, as it thought that the state did not have the money to be paid out in expectation of claims resulting from the implementation of the Enactment. However, by 1917, there were 35 Malay reservations throughout the state that were gazetted, but the majority of the reserved areas were small in acreage, the largest being 3,700 acres in Kelang. Reservation in Pahang was very slow as it was not a matter of urgency. Pahang began its reservation in 1917 and by 1920 about 200,000 acres, were gazetted as Malay reservations. In 1918, as a result of food shortage crisis, reservations of land had slowed down temporarily. However, in 1921, the reservation policy was continued again as a result of new threat posed by non-Malay interest in land acquisition. This new policy of extending the Malay reserve land was initiated by both the Chief Secretary and the Commissioner of Lands and Mines, Selangor. Further reservations were continued in Selangor.
86. See Lim Teck Ghee, *op.cit* 165-166.
87. Malay Reservations Enactment Kelantan, 18/1930.
88. Malay Reservations Enactment Kedah, No.63 (1931)
89. Malay Reservations Enactment, Perlis 7/1353.
90. Malay Reservations Enactment Johore 1/1936.
91. Malay Reservations Enactment Trengganu 17/1360.
92. See Lim Teck Ghee, *op.cit* p.210. See also Table 1.7 at p.248, Table 8.2 at p.260, Table 8.3 at p.261,Table 8.4 at p.261.
93. See Lim Teck Ghee,*op.cit.* pp.166-167.

94. *ibid.*, p.167.
95. *ibid.*
96. The administration's reply was that those who opposed the reservation policy had no interest of the Malay community at heart and warned them that their requests would disrupt Malay settlement and paddy cultivation. [See *ibid.*, p.167].
97. Most of the infringements to the provisions of the Malay Reservations Enactment pertain to the leasing of Malay lands to non-Malays for more than three years through ordinary private agreements which were not registered at the Land Office. Another form of evasion was the granting of powers of Attorney by the Malay land owners to the non-Malays which enabled a non-Malay to occupy the land. Section 8(ii) of the Malay Reservations Enactment prohibited the grant of irrevocable Powers of Attorney. This prohibition could be evaded as it was not necessary for Powers of Attorney to be registered in the Land Office. Since private arrangements were difficult to detect, the evasions were mainly of unregistered nature.
98. *ibid.*, for detail discussion on the report, see p.211.
99. As a result of the infringements, the 1913 enactment was amended making it null and void all Power of Attorney retrospective to 1913.
100. See Lim Teck Ghee,1977, *op.cit.*
101. The thinking of the government then was, it is better to have more Malay reservation before it was too late.
102. Lim Teck Ghee.,1977, *op.cit.* pp. 209-216.
103. Adams, the Resident of Selangor, was the most radical resident who supported strongly the Malay reservation policy. Disturbed by the large size of non-Malay land interests in the state, he proposed that the whole of unalienated state land be converted to reservations. He also proposed that forest areas should not be excised from forest reserves for alienation to non-Malays. *See ibid.*
104. See Lim Teck Ghee,1977, *op.cit* p.213. The major portion of the losses was borne by money lenders and small Chinese traders. Before the amendment was made, the government estimated that there was almost $5 million in debts secured on reservation land. As the amendment was made retrospective to 1913, this rendered all powers of attorney made by the non-Malays null and void.
105. *ibid.*, *op.cit.*
106. *ibid.*, *op.cit.*
107. *ibid.*
108. Lim Teck Ghee, 1977, *op.cit.*
109. The reason given was that peasants did not need to market their produce, therefore they did not need access. Further, peasants' land would harbour contagious disease, and the peasants too might finally sell their land to planters. See Lim Teck Ghee, 1977,*op.cit.* pp. 91-92.
110. See *ibid.*, p.93.
111. This increase in the land value is attributed partly to an increase of pressure on land with increasing population and partly to the decreasing purchasing power of the Malaysian currency. See *ibid.*

112. See Phin-Keong Voon, *Rural Land Ownership and Development in the Malay Reservation of Peninsular Malaysia*, Journal of S.E.A. Studies, Vol.15, No.4, March, 1978.

113. Article 153 of the Federal Constitution. This article provides that:
"It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of the states of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article".

114. Federal Constitution, Article 89.

115. Federal Constitution, article 89(1). This article provides that:
"Any land in a State which immediately before Merdeka Day was a Malay reservation in accordance with the existing law may continue as a Malay reservation in accordance with that law until otherwise provided by an Enactment of the Legislature of that State, being an Enactment -
"(a) passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting; and
(b) approved by resolution of each House of Parliament passed by a majority of the total number of members of that house and by the votes of not less than two-thirds of the members voting".

116. *ibid.* Article 89(5) provides that:
"Without prejudice to Clause(3), the Government of any State may, in accordance with law, acquire land for the settlement of Malays or other communities, and establish trusts for that purpose".

117. *ibid.* Article 89(2)(a) and (b) which provides that:
"a) where any land in a State is declared a Malay reservation under this Clause, an equal area of land in that State which has not been developed or cultivated shall be made available for general alienation and ;
b) the total area of land in a State for the time being declared as a Malay reservation under this Clause shall not at any time exceed the total area of the land in that State which has been made available for general alienation in pursuance of paragraph (a)".

118. Customary Tenure Enactment, 1909 was later repealed by 1926 Enactment, Cap.215.

119. Article 160 defined 'law' to include:
written law, the common law in so far as it is in operation in the Federation or any part thereof, and any customs or usage

having the force of law in the federation or any part thereof".

120. For further readings on Customary Land Tenure, see M.B.Hooker,(ed.) *Readings in Malay Adat Laws*, University of Singapore Press,1970. See also *The Interaction of Legislation and Customary Law in A Malay State*, The American Journal of Comparative Law, Vol.16 No.3. See also, R.J.Wilkinson, *Malay Law* in Papers on Malay Subjects, Law, Part 1,1 (1908) ; P.E. De Josselin De Jong, *Minangkabau and Negri Sembilan* (1951) and R.O.Winstedt, *Negri Sembilan, the History, Polity and Beliefs of Nine States*, 12 J.M.B.R.A.S, Part III, 35 at 81 (1934).

121. NLC, (Penang And Malacca Titles) Act 2/1963, section 108. The amendment to this section was finally agreed by the National Land Council after Article 90(1) of the Malaysian Constitution was amended, (vide minute of the National Land Council, 3.3, at its 37th Meeting on 30th January, 1984).

122. NLC, (Penang and Malacca Titles) Act 1963, s.108(1) & s.94(1)(2). However, this situation has changed as a result of an amendment vide A731/89 by which 'Malay' is defined according to the Constitution.

123. *ibid.*, s.108(1)(b).

124. *ibid.*, s.108(1)(c).

125. *ibid.*, s.108(1)(d).

126. *ibid.*, s.108(1)(e).

127. *ibid.*, s.108(1)(f).

128. *ibid.*, s.94(2). See note 122. However, s 94(2) was deleted by an amendment vide A731/89.

129. *ibid.*, s.108(2).

130. A total of 1,500 acres of Malacca Customary land has been charged to non-Malays up to 1982. Although legally the land has been charged,in actual fact these lands were being sold to non-Malays without any legal transfer of ownership. (vide minute no.4.1 of the 35th National Land Council meeting of 28th August,1982.)

131. *ibid.* In the National Land Council meeting (1982), the Malacca state government proposed to amend Section 108 of the Act to forbid the charging and the giving of lien of such land to non-Malays and to restrict the registration of trust, caveat, grants of letters of administration and grant of probate to non-Malays and to restrict the registration of trust, caveat, grants of letters of administration and grant of probate to non-Malays. However,the National Land Council rejected the proposal on the ground that such proposal was in conflict with Article 90(1) and Article 8 of the Malaysian Constitution. See also 36th National Land Council meeting on 25.3.83, minute No.3.6.(conf.).

132. 37th Meeting of the National Land Council on 30.1.84, minute No.3.3 (conf.). Article 90(1) of the Constitution was amended and thus s.108 of the NLC (Penang and Malacca) Act, 1963 was amended vide Act No.A 597 on 30.9.84, see minute 38th Council meeting on 21.9.84. Thus

prohibiting the charging of Malacca Customary land to non-Malays.

133. See David S.Y.Wong, *Tenure And Land Dealings In The Malay States*. p.480. The Customary Tenure (Lengkongan Lands) Enactment was passed in 1960, to deal with the custom of certain *suku* (tribes) other than those covered by the Customary Tenure Enactment, Cap.215. It is modelled on Cap.215, and their provisions are almost similar except with some variations because of the differences between the customs of the two groups of *suku*.

134. *ibid.*, p.492.

135. *ibid.*, pp.478-479. *Customary Tenure Enactment* Cap.215, FMS, revised laws, 1935, sections 7(1); 7(ii) and 7(vi).

136. *ibid.*, pp.478-479.

137. See M.B.Hooker, (ed.) *The Malay Adat Laws*, *op.cit*. pp.111-126. *Tanah Charian* is property acquired by an unmarried man, it is called *carian bujang*, and if it is from his own earnings, he has power to dispose of it at will. Generally the property of *Carian bujang*, of either sex, reverts on death to the *waris* of the deceased.

138. *Tanah Pesaka* refers to the inheritance under any system of law. But in Negri Sembilan refers also to ancestral land which is entailed and subject to options on sale. The term is used here in opposition to *carian*. For detailed discussion see M.B.Hooker, (ed.), *The Malay Adat Laws*, *op.cit* pp. 129-133.

139. See David S.Y.Wong, *op.cit* p.479.

140. *ibid.*, pp.479-480 as quoted by David S.Y.Wong.

141. *ibid.*, p.480. See also M.B.Hooker, *op.cit* pp.126-133.

142. *ibid.*

143. See David S.Y.Wong, *op.cit* p.480.

144. See M.B.Hooker, (ed.) *The Malay Adat Laws*, *op.cit*. pp.237-242. The fundamental principle of the *faraid* is to divide up the property among the heirs giving to each his or her agreed or ascertained share. However, according to Islamic law of succession, each issue of a deceased muslim has her or his share fixed [the general principle is: widow 1/8th; father 1/6; son double share each, daughter single share each] unless the issues agreed to divide the property according to *adat kampung*, i.e based on mutual agreement. However, if one of the issues disagree to divide according to *adat kampung* the property shall be divided according to *faraid* law. See also Abdullah Yusof Ali, *Text, Translation and Commentary of the Qur'an*, surah 4, verse 11 & 12.

145. David S.Y.Wong, *op.cit*. For detailed discussion see pp.482-491.

146. The word 'property' includes both movable and immovable estates in land, building, chattels and equitable interests and the right to enjoy property is conditioned by the obligation which the law imposes upon the owner or occupier thereof. 'Immovable property' means land and any interest in, right over or benefit arising or to arise out of land. (See s.3, Interpretation Act, 1967). Under s.2(3), of the Interpretation and General Clauses

Ordinance, 1948, 'Immovable property' includes land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

147. L.A.Sheridan and H.E. Groves, *The Constitution of Malaysia*, New York, 1967, chapter 3. See also Nik A.Rashid, *Land Law and Land Administration*, a mimeograph, Faculty of Economics and Administration, University of Malaya, 1971 p.10.

148. a) *State of West Bengal v Subodh Gopal*
b) *Dwarkadas Shrinivas v Sholapur Spinning & Weaving Co.,and Ors.* In this case property was defined as "connoting a bundle of rights exercisable by the owner in respect thereof, and embracing within its purview both corporeal and incorporeal rights."
c) *Saghir Ahmad & Anor v State of U.P.*
d) *Deep Chand & Anor v State of U.P.*

149. See note 148 (b).

150. See Article 31, Indian Constitution.

151. See e.g. *Hurley v Kincaid* (1932) 285 US 29,

152. 1968 1 MLJ 293.

153. Ss. 92 and 340 of the NLC. For detailed discussion on 'indefeasibility' of title see David S.Y.Wong, 1977 *op.cit* pp. 322-393.

154. A new Act for Strata Titles has been enacted, known as *The Strata Titles Act* ,1985.

155. See David S.Y.Wong, 1977 *op.cit.*, p.121.

156. S. 92(2) NLC.

157. See sections 205, 214, 221, 241, 281 & 283 of the NLC. See also Commissioner of Land Legislation, *Notes Upon National Land Code*, pp.3-4. Other rights enjoyed by a land owner under the NLC includes:
The right to sub-divide or partition the land, or amalgamate it with other land, subject to and in accordance with the provisions of the NLC.
(a) The right to sub-divide any building thereon in accordance with the provisions of the Strata Titles Act,1985.
(b) The right to effect transfers, leases, charges, surrenders and any other dealings permitted under Division IV of the Code;
(c) The right to dispose of the land, or any undivided share therein, by will, subject to the provisions of his personal law and of any other law relating to the disposition or devolution of property on death. [Pertaining to rights to transfer see s.214, for leases see s.221, for charges see s.241, for lien see s.281 and easement s.283].

158. See sections 319-339 of the NLC. For detailed discussion on caveats, see David S.Y.Wong, 1977, *op.cit* pp.414-468. See also Judith E.Sihombing, *National Land Code, A Commentary*, pp.570-650.

159. See, *Frazer v Walker* (1967)1 ALL E.R.649 at p. 652 as quoted from Judith S.Sihombing. p.261.

160. Section 120(1), NLC. However, the State Authority has the

ultimate power to impose conditions and restriction in interest at the time when any land is approved for alienation. See also section 120(2), NLC.

161. Failure to observe the conditions of alienation would result in forfeiture of the land by the State Authority, vide s. 127, NLC.

162. Hence, the Ministry of Rural and National development was established immediately after *Merdeka* with the objective of bringing development to rural areas, particularly land development schemes.

163. See Wolfgang Senftleben, *Background To Agricultural Land Policy in Malaysia*, Wiesbaden: Harrassowitz, 1976, pp. 62-64.

164. *ibid.*

165. *ibid.*

166. As at 1984, 1612 settlers had received land titles. 7951 had fully discharged their loan obligations and their land titles are being prepared by Land Office, see FELDA Annual report, 1984, p.10.

167. Minutes of the 38th National Land Council Meeting, 21st September, 1984, p.14, based on paper entitled *Rancangan Tanah Sistem FELDA by FELDA*. See also minutes of the 34th National Land Council Meeting, 8th December, 1981, pp. 17-19. However, in 1989, the Federal Government decided to discontinue the 'share system' because of pressures by the settlers.

168. See FELDA Annual Report, 1984. p.2.

169. See note 167 above.

170. The date of expiry of the Mining Lease will be stated in the Mining Lease title.

171. Mining Enactment Johore No.69.
Mining Enactment Kedah No.67.
Mining Enactment Kelantan No.10/1939.
Mining Enactment Perlis No.1/1340.
Mining Enactment Trengganu No.51/1356.
Mining Enactment F.M.S.Cap.147.

172. Minute of the 33rd. National Land Council Meeting, 13th December, 1980, minute No.11.1, paper No.1/80. The proposal was rejected by the Council on the ground that amendment to Article 76(4) with the inclusion of Article 2(c) of the state list, under Schedule 9 of the Federal Constitution had to be made. The members of the Council representing the State Governments felt that by having to amend Article 76(4) and include in it Article 2(c) Schedule 9 of the state list, it would mean that there is an element of transferring the power on mining matters from the states to federal government. Thus the State Governments did not agree with this concept of a unified Mining Code. However, there were some states which accepted the proposals.

173. See Bank Negara Malaysia, *Quarterly Economic Bulletin*, September, 1984, Vol.17, No.3, p.48.

174. National Land Council Resolution, Paper No.11/1958.

175. See Fifth Malaysia Plan, (5MP), p.105, Table 3-7.

176. Phin-Keong Voon, *Evolution of Ethnic Patterns of Rural Land Ownership in Peninsular Malaysia, A Case Study*, S.E.A.Studies, Vo.15, No.4, March, 1978.
177. *ibid.*
178. Lim Teck Ghee, *op.cit.* p.261.
179. Phin-Keong Voon, *Rural Land Ownership and Development in Malay reservation of Peninsular Malaysia*, Journal of S.E.A.Studies, Vo.14, No.4, March, 1977. In respect of urban land, a survey of 15 towns in 1977 showed that over the years, bumiputra sold 1,335.2 hectares against a purchase of 1,101.9 hectares, implying a net loss of 233.3 hectares. The Indians sold 651.1 hectares and purchased 514.2 hectares, incurring a net loss of 136.9 hectares. The Chinese experienced a net gain of 598 hectares. The net loss for bumiputra was significant since their holdings in the towns surveyed were already small, and more importnt such urban lands were highly valued especially for commercial and industrial purposes. See 4MP, p.63.
180. *ibid.*
181. *ibid.*
182. See minute of 32nd National Land Council meeting, 12.3.1979. The survey was carried out by Ministry of Agriculture in 1979 on the extent of land transfers in Johore Barat projects from 1975 to 1979.
183. D.S.Gibbons, Lim Teck Ghee, et.al., *Land Tenure in the Muda Irrigation Area: Universiti Sains, Malaysia*, Final Report, Part 2: Findings, pp.189 & 193.
184. *ibid.*
185. *ibid.*
186. As in note 33.
187. The share system was revoked by the Malaysian government in 1988 as a result of political pressure and demands by the settlers to have the individual titles issued to them.

## CHAPTER 3

## LAND DISPOSAL POLICY IN PENINSULAR MALAYSIA

This Chapter attempts to explain how state lands are disposed of to the public and to examine the various policies of the state governments as regards the disposal of state lands; whether such policies are compatible with the present pace of economic, political and social development; and the extent to which the land disposal policy has contributed to the achievement of the New Economic Policy (NEP) set by the government. Various land disposal legislations will be examined in this Chapter but before that a survey of the early land disposal policy before and after the British intervention into the Malay states is presented to facilitate an understanding of the present land disposal policy.

### *Historical, Administration and Legal Perspectives of the Early Land Disposal Policy*

In the early period of British rule, prior to the introduction of the Torrens system of land administration into the Malay States, existing native holdings were left on their own as most of them were situated in the remote part of the country beyond the administrative control of the government. Only those new holdings held near mining areas, around towns or along accessible roads were brought under the leasehold system. Some Malay peasants took up occupation of land without the knowledge of the government land officers and they continued to clear and occupy new lands according to their customs. This increased the number of native or Malay holdings, old and new, lying

outside any form of land administration. The first attempt to deal with the problem of native holdings came with the passing of the General Land Regulations in each state which contained identical provisions relating to 'land in the occupation of natives under Malay tenure'. Under the Regulations, all such lands were to be registered and after registration the claim of the occupier was undisputed, the occupier would be given a certificate 'confirming his title' to the land. This land certificate had the force of an agreement for a lease for a term of a few years which was to be superseded by a lease for 999 years or in perpetuity after the land had been surveyed. Once this was done, the occupier has to pay an annual quit rent to the government. It is noted that the Malay customs relating to land tenure were to some extent recognised in that *de facto* occupation, according to the custom, was accepted as the basis for the issue of a formal lease in future. However, the customary system was gradually replaced by the leasehold system. In the early phase of the colonial administration, the government did not have the administrative capacity to cope with the work of surveying and issuing leases for mining and newly developed areas. The attempt to impose quit rent on native land was strongly opposed by the local residents and in some places the 'rebellion' had to be suppressed by force.[1] While the quit rent swelled the coffers of the British colonial administration the regime failed to set up a systematic form of land registration and the whole land administration in respect of native holdings became a mass of confusion.[2]

The first step towards a systematic form of land registration

was formulated by W.E.Maxwell who was appointed the British Resident in Selangor in 1889. From 1883-1886, Maxwell was responsible for a series of reforms in Malacca which was afflicted by similar problems of native holdings.[3] The first step taken by Maxwell was to divide the state into districts and each district into smaller units known as *mukim*. Occupiers of the land were ascertained and disputes as to occupancy and boundaries were settled and each occupier's title or right of occupancy was documented. From this information, a rent roll was compiled *mukim* by *mukim* to show the locality of every occupied plot by reference to its 'survey serial number', its approximate area, the rent assessment due in respect thereof, and the name of the occupier who was liable to pay the rent. Such a revenue record was in fact intended to serve as a register of native landholdings as it would show whether the land was held under a lease or other authority or merely under a customary claim. With the aim of effecting a radical change in land tenure policy, Maxwell drafted a set of land regulations which were subsequently enacted as the Selangor Land Code of 1891.[4] This Land Code consolidated and improved on the existing leasehold system and it also purported to provide for a different kind of land tenure for the native holdings. A new concept known as 'waste land', meaning in effect state land was introduced by the Code [5] By the passing of the Code,'Customary land' was legally recognised and the code provided that customary land could be held by a 'Muhammadan' either under a grant, lease or agreement from the government or as a 'customary landholder'. Under the Code, any Muhammadan "who has been without written authority for ten years continuously in

possession of any agricultural land in respect of which the revenue due thereon (if any) to the state has been regularly paid, shall be deemed to be on the expiration of that period a customary land holder in respect of such land." Any Muhammadan applicant for waste land may acquire the 'status of a customary landholder' if the District Officer recognised him as such. The landholder who had not been in continuous occupation for ten years would also apply to the District Officer to have the land subject to a customary land holder. A customary land holder's rights include a permanent transmissible and transferable right of use and occupancy.[6]

Maxwell's land law reform succeded in introducing a better and more efficient system of revenue-cum-land administration, which adopted two systems of administration - a more sophisticated one for land under the leasehold system and a summary one for native holdings. By this system, there was no accurate land survey of native holdings which were to have only rough demarcation and instead of being issued leases, native holdings only had to be registered.

However, Maxwell's effort to reform the native land tenure was not appreciated by the colonial officers, particularly the then British Resident in Perak. The latter believed that in the Malay States there was no such readily recognisable native system of land tenure and that the whole problem about native holding really boiled down to that of administrative facilities and efficiency. However, Maxwell's initiative did open the door to the future development of land tenure and land law reforms in the Malay states.

After Maxwell's departure from Selangor, the Selangor Land Code was amended by the Acting Resident of Selangor with the support of the Governor of the Straits Settlements. The effect of the amendment was that any person of any nationality could apply to become a customary holder.[7]

A further development occurred in 1897, soon after the formation of the FMS, with the introduction of a new land enactment for and by each of four states.[8] The four 1897 Land Enactments of the FMS were identical in effect. Under these 1897 Land Enactments, lands were classified into:

(a) Town lands;

(b) country lands of 100 acres in area or under and;

(c) country lands exceeding 100 acres in area.

Lands under classes (a) and (c) were to be held under the leasehold system and in case of class (b) lands were to be held under a local register now known as *Mukim* Registers.[9]

The 1897 Enactment dropped customary tenure, and the word 'customary' was deleted from the Enactments. These Enactments however, adopted Maxwell's formulation with some modification which *inter alia* stated that the proprietor of the land held under *Mukim* Register was deemed to have permanent, transmissible and transferable right, interest and occupancy in his land.[10] He was also to hold the land subject to the same terms as in a landholder holding under a lease with only one exception or rather variation in the cultivation conditions:[11] abandonment of land under the *Mukim* Register, for three consecutive years, would render it liable to forfeiture by the state.[12] Further,

the system of *Mukim* Registers was established as the general system for all smallholdings not exceeding 100 acres in area, which were only to be roughly demarcated and to be alienated by the state simply by registration.[13]

The dual system of land administration and its corresponding dual system of land tenure endured in law until 1926.

The leasehold system of land tenure which was introduced by Maxwell was further developed by the 1897 Enactments which can be said to have completed its formative period. Under these Enactments, state land could be granted or alienated to private persons only for such interest and in such manner as was authorised therein and not otherwise.[14] Town and country lands exceeding 100 acres in area, could be alienated under a grant in perpetuity[15] which was in fact a lease for an indefinite period. This precluded the necessity of making any special grant such as grant in 'fee simple' and finally settled the leasehold form of landholding as the exclusive form in those two classes of lands. It is to be noted that the Enactments did not provide for the grant of land under a lease for a fixed duration. However, the grant of such leases was revived by an amendment[16] in 1909 after the 1897 had been repealed and re-enacted in 1903[17]. In 1911, there was another repeal and amendment. This 1911 Enactment remained in force until the passing of the 1926 Land Code.

The 1926 Land Code brought about the assimilation of land law and land administration in the FMS providing a uniform law for all private landholdings. Under this Code, the owners of land held under the *Mukim* Register and leasehold ownership had the same right; what was formerly described as some sort of permanent

right of occupancy in the former case was treated as a grant in perpetuity.

The most important reform introduced by the FMS Land Code was the extension of the Torrens system to lands held under the *Mukim* Register. It declared as 'indefeasible' the title of a 'proprietor', that is, the registered owner of any land held under a grant or certificate of title or entry in the *Mukim* Register. Likewise, all private dealings in land registered in any form became subject to the Torrens system. The effect of 'indefeasibility of title' was not mentioned in the Land Code. The Code also made redundant differentiation between original grants and certificates of titles'[8] under the previous Registration of Titles Enactments.

The land tenure system in the Malay States has been developed alongside a coordinate system of land administration which was at one time no more than administrative recording, mainly for revenue purposes. Later, it became integrated with a system of registration of titles and dealings in land as a result of the introduction of the Torrens system into these states. The Torrens system is primarily concerned with private dealings with land, and the registration of titles to land held from the state under the system. This also has brought about some substantive consequences in the sphere of the legal relationship between the state, as landlord and private land-holder, as tenant.

***LAND DISPOSAL POLICY DURING THE COLONIAL PERIOD***

The British colonial rule was extended to Perak, Selangor and Negri Sembilan in the last quarter of the 19th century for the purpose of securing and exploiting the tin resources in these

states. The civil wars which broke out in Perak and Selangor and the feudal politics in Negri Sembilan had hindered the development of the colonial mining enterprise. All this led to the setting up of direct local colonial government in the form of the Residential System. Later, the success of agricultural enterprises in the Malay states especially following the opening up of rubber plantations provided the British with a continuing impetus to establish and extend their rule.

The colonial economic policy of developing both tin mining and export agricultural industries in the Malay states rendered necessary the introduction of a new system of private land ownership that would suit and foster the capitalist or commercial exploitation of land resources. Such a new system was required because the Malay system of land tenure based on subsistence agriculture was unable to cope with the new needs of the time. It was to serve the Chinese and attract European investments that a modern land law and a new system of land disposal policy was established by the colonial government in the early part of the 19th century (see also Chapter 5).

The early colonial policy was to introduce a new kind of private land ownership in the form of a grant of land by the government subject to the payment of annual rent and certain other conditions reserving to the government certain power of control over the land. Later, a new form of private land ownership (including grants in perpetuity), was introduced beginning with the few protected Malay States after they came under colonial rule. This was followed by the leasehold form of ownership which was later accepted as a permanent feature of the

Malaysian land disposal policy. Under the new system introduced by the 1897 Enactment, land is only capable of being owned by a private individual as a tenant or lessee from the state who is the landlord or lessor. It was the Sultan or Malay ruler of a Malay state who was in theory and in name the landlord of all private land holders in the state. However, his ownership and power with respect to land has become as nominal as that ascribed to the Crown under English law by reason of his constitutional status; in fact it is the ruling government which actually acts as the overlord of all private land holders. In the rest of this Chapter, the 'state' is regarded as an entity in its legal relationship with private persons with respect to land. In the context of the system of land tenure in Peninsular Malaysia the expression 'private ownership' is used in a qualified sense to refer to only those rights pertaining to land which are given to a private person. Only the state is capable of having absolute ownership of land.'[19] As this new system of land tenure was established in the Malay States by the 1897 legislation, the exact nature of the relationships between the state and the private land holders and the particular incidents of the private leasehold ownership must be ascertained according to the relevant statutory provisions.[20] In the Malaysian land law system then, the state being the landlord of all private land holders is really in a much stronger position than a private party to a leasehold title.

As will be seen in Chapter 5, the land disposal policy during the early colonial period was very flexible. In Perak, for example, land was given free of any charge or duty during the

first three years of occupancy, and at the end of that time a land title was given in perpetuity.[21] In Selangor, every one was given the opportunity to own agricultural land for cultivation, by making the necessary taxes, whether on the land, its produce, or minerals as light as possible, and by giving land titles after three years of free occupation. In 1877, the State Council of Selangor passed a set of rules entitled 'Rules for the Disposal of Lands in Selangor' which provided only for leasehold grants by the government in all cases.[22] Under the foregoing Rules, land was broadly classified into lands for agricultural purposes, for building and for special purposes. Land for agricultural purposes was to be leased for 999 years, unless otherwise authorised by government. As for other classes of land, there was no prescribed duration. Agricultural land was leased subject to the express condition that the whole lot would revert to the state government should one-fourth of any lot not be cultivated within six years, or should more than three fourths of it go out of cultivation for upwards of six years, or should the whole of it be at any time, abandoned for three years. The objective of this condition was to ensure that alienated land would actually be brought under cultivation. The need to impose this sort of condition was one of the main reasons for the adoption of the leasehold form of ownership.

In Perak, plantation agriculture was encouraged on liberal terms. If an individual could prove that he was a *bona fide* cultivator, the government would 'reserve' for him a selected block of land not exceeding 10,000 acres for a period of ten years. However, the individual was required to commence

occupation and cultivation thereof within eighteen months, failing which his claim to the land would lapse.[23]

The duration of lease of agricultural land in Perak and Selangor was further changed in 1879. Under the 'Special Regulations for the Leasing of Waste Lands', agricultural land was to be held under a lease which was reduced in duration to only 99 years. It was also made subject to the payment of premium and quit rent.

It is therefore clear that as early as 1879, the states of Perak and Selangor favoured a system of leasehold holdings in agricultural land. This system was, in fact, meant to apply only to grants of land to small planters and peasant settlers and the policy in such cases was to grant leases for only 99 years. As there was no big planters at that time; policy as to the nature and terms of plantation holdings had yet to be formulated.

In Perak, the 1879 Special Regulations were replaced in 1897 by the Perak General Land Regulations. The General Land Regulations were distinguished by their dealing not only with agricultural land but also with town and village land as well as mining land. The provisions relating to agricultural land were in *pari materia* with those of the former Special Regulations save for the cultivation conditions; at least one-quarter of the total area of any land had to be cleared by the end of six months from the date of the lease, and more than three quarters of the total area of any land could not remain uncultivated for six consecutive years. A breach of either rendered the whole or any part of the land liable to be resumed by the government. In addition, if all the land was abandoned for three consecutive

years it was subject to forfeiture by the state government. The duration of lease remained 99 years, but this general rule was 'subject to modification in the case of the first *bona fide* introducers of agricultural industries into Perak who may obtain special terms from the government'.

In 1882, Selangor replaced its Special Regulations with its first General Land Regulations of 1879 one which differed from the Perak General Regulations in enabling the government to grant agricultural land under a lease for 999 years or in perpetuity.

In Perak, the 1879 General Regulations were replaced by a similar set of General Land Regulations in 1885, which now provided for 999 year leases and grants in perpetuity in place of 99 year leases. Negri Sembilan adopted similar Regulations and so did Pahang in 1889.[24]

From these developments, it is observed that the Perak and Selangor Regulations paved the way towards the introduction of a general system of leasehold land holdings as the new system of land tenure for the whole of Peninsular Malaysia.

***MEANING OF ALIENATION***

Alienation is used in the NLC to mean the 'giving away' of state land[25] in perpetuity or for a term of years. In other words, alienation is one form of disposal of state land by the state. Disposal, on the other hand, refers to the granting of certain kinds of rights, whether proprietary or otherwise, by the state in respect of state land and in favour of private individuals or bodies.[26]

*LAND ALIENATION UNDER THE NATIONAL LAND CODE*

Land alienation is the most important part of land resource management. It is the alienation of state land[27] that enables an applicant to use or occupy a piece of land under a title, Temporary Occupation Licence (TOL) or by way of reservation under NLC or to undertake the extraction of rock material under a permit. Alienation of land by the state is possible only if the land applied for by a person or body is state land. Therefore, a land title can be issued by the District Land Administrator (DLA) only after the application for a piece of state land has been approved by the State Authority. Under the Torrens system of land registration once the title to the land alienated by the state is registered, the right over the land passes from the state (as landlord) to the person or body named in the title (tenant) subject to implied and express conditions such as the payment of a land premium, and annual land rent. The provisions relating to the alienation of land are largely provided for in Part V of the NLC.

All unalienated land is state land vested in the respective state governments. This fact is reaffirmed by the Federal Constitution under List II in the Ninth Schedule. Thus, the State Authority is vested with the entire property in all state lands within the territories of the state and all minerals and rock material[28] within and upon any land in the state, the rights to which it has not disposed.[29] With the coming into force of the National Land Code, the State Authority is accordingly vested with powers to dispose of land in a manner provided therein, as well as in the Mining Enactment (Cap 147) and the Forest

Enactment (Cap 153) together with all such rights in reversion and other similar rights conferred on it under the aforesaid laws.

*DISPOSAL OF STATE LAND*

The State Authority has the power to dispose of state land, mining land and reserved land to private individuals in the following ways:

(a) by alienating state land in a lease form of title for a term not exceeding 99 years or in perpetuity;[30]

(b) by granting leases of reserved land for periods not exceeding 21 years[31];

(c) by issuing licences for the temporary occupation of state land[32] (to be discussed later);

(d) by granting mining leases (under the Mining Enactment Cap.147);

(e) issuing permits for the extraction, transportation and removal of rock material from state land, alienated land, mining land and reserved land;[33];

(f) by issuing permits for the use of air space above state land or reserved land for periods not exceeding 21 years in respect of the erection, maintenance, and occupation of structures on or over such land as adjuncts to any structures on adjoining land;[34]

(h) by granting a forest licence under the Forest Enactment (Cap.53) for the purpose of removing forest produce from state land.

With regard to the disposal of state land through alienation, such alienation takes effect only upon registration of a register document of title (RDT) to the said land and it shall remain state land until registration notwithstanding that its alienation has been approved by the State Authority,[35] (see *Dr Ti Teow Siew & Ors v Pendaftar Geran-Geran Tanah Selangor).* However, the approval of the alienation will lapse upon failure of the applicant to pay the items of land revenue within the specified time in Form 5A[36] (see *Teh Bee v K Maruthamuthu).*

***Application for State Land***

Section 43 of the NLC lists out persons or bodies who may apply for alienation of state land.[37] The State Authority is only empowered to dispose of state land to the following categories of persons and bodies, namely;

(a) natural persons[38] other than minors.

(b) corporations having power under their constitutions[39] to hold land;

(c) sovereigns, governments, organisations and other persons authorised to hold land under the provisions of the Diplomatic and Consular Privileges Ordinance 1957;[40] and

(d) bodies expressly empowered to hold land under any other written law such as government statutory bodies.[41]

However, under the new amendment to the NLC[42] in the case of land subject to the category 'agriculture' or to any condition requiring its use for any agricultural purpose, no disposal in favour of a non-citizen or a foreign company can be effected by the State Authority. In the case of land subject to the category 'building', alienation can be effected in favour of a non-

citizen or foreign company only upon the prior written approval of the State Authority.[43]

Before the introduction of the planned type of alienation, the individual had to initiate the process to get a piece of land from the state by *inter alia* indicating the land for which he wished to apply. However, planned alienation recommended by the National Land Council in 1958 has altered that process.[44]

*Conditions of Alienation of State Land*

The process of alienation of state land involves legal and administrative requirements that need to be fulfilled. Legal requirements are laid down in the NLC.[45] The many steps that a Land Officer must take in planned and unplanned alienation of land are set out respectively in Appendices 3.1 and 3.2.

Under the various Malay Reservations laws[46] an application from a non-Malay cannot be accepted if it is in respect of land within Malay reservations. Nevertheless, there are exemptions to this requirement. Under the Malay Reservations Enactment (FMS Cap. 142) for example, bodies exempted from this requirement are contained in the Third Schedule to that Enactment. These include the Federal Lands Commissioner, Co-Operative Societies, National Electricity Board, Majlis Ugama (Religious Council), Bank Bumiputra (except Negri Sembilan), and FELDA (except Negri Sembilan) and so on.[47]

State land alienated by the State Authority under section 76 NLC may be alienated in perpetuity (but not foreshore or seabed) or for a term of years not exceeding 99 years.[48] In fact, it has been the practice of every state government when alienating state land to the general public, to subject it

to all the conditions stated in section 76 of the NLC.

To provide security of tenure, the State Authority issues land titles to those whose applications for state land it approves.

*Types of Land Titles Issued To Land Holders*

The land titles under which state land may be alienated are:

(a) Final title;[49]

(b) Qualified Title (Q.T).[50]

The main difference between a qualified title and a final title is that, land held under qualified title cannot be sub-divided, partitioned and amalgamated and no building can be subdivided if it is situated on land held under Q.T, unless the Q.T is issued as a result of the title in continuation. This is because the area of the land under a Q.T is only provisional as it has not been final surveyed and shown on a certified plan issued by the Survey Department. A Q.T however, confers the same right as the final title, other than those restrictions mentioned above. The policy of issuing a Q.T as provided in the NLC is to enable land to be alienated in advance of survey upon alienation or to enable title to be issued in advance of survey to the individual portions upon sub-division or partition of land or to the combined area upon amalgamation. Therefore, the main objective of a Q.T is to enable the approved applicant (in the case of alienation) and the proprietor of the individual portions of land upon subdivision or partition or of the combined area upon amalgamation, to transfer, charge or lease in respect of the land before the completion of survey.

Final title, on the other hand, is divided into Registry title and Land Office title. Registry titles are issued in cases of town or village land or country land exceeding ten acres in area[51] and any part of the foreshore or sea bed. Land Office titles are issued in cases where any lot of country land does not exceed ten acres in area.

Under the previous Land Code, a register of Approved Application (A.A) was maintained by the Land Office under rules made by the previous land laws.[52] As soon as the land had been surveyed, final titles were then registered in the names of the holders of A.As. However, the A.A holders were, before getting final titles, disadvantaged because they could not transfer, charge, lease or otherwise deal with the land. Until and unless the A.A land was surveyed, no final title could be registered and the A.A holder was only entitled to work on the land without any legal claim as to the title of the land.

Under the previous state land laws, various types of land titles (as shown in Appendix 1.1a) were issued by the state authorities which are still being recognised today. However, most of them have been converted to the land titles issued under the National Land Code (NLC).

***Matters To Be Determined By The State Authority On Alienation***

When a piece of land is approved for alienation by the State Authority, various matters shall be determined. These include the period of alienation; the form of final title; the rate of premium per acre; the rate of rent to be charged; the category of land use; and the express conditions and restrictions in interest (if any) to be imposed.[53] Upon the approval of the

alienation, it is mandatory for the DLA to prepare, register and issue a Q.T[54] in respect of the land. In addition, the State Authority may if it thinks fit direct that any state land be sold by auction; and in any such case, the State Authority shall, on acceptance on its behalf of any bid for the land, be deemed for the purposes of the NLC to have approved the alienation thereof to the person or body.[55]

However, alienation of state land by auction is very rare in any state, because the state feels that only those with money would benefit from the sale of land. Where any land is alienated by public auction the premium is the price obtained at the auction, which is the market price. This market price is inevitably very much higher than the premium that would have been paid had the land been alienated through ordinary alienation. Therefore, the sale of state land by auction does not benefit the poor and the landless.[56]

*INDIVIDUAL OR UNPLANNED TYPE OF ALIENATION*

The other method of alienating state land is called 'individual alienation' or 'unplanned type of alienation' by which the applicant, on his own initiative, applies for a piece of land through the District Land Office on a prescribed form, giving a sketch showing the position of the land, and stating the purpose for which he requires it. The form is then passed on to a clerk who makes out a minute paper and enters particulars regarding the application in the Record of Application for land. The form goes to the Tracer for charting on the Litho Sheet. The Settlement Officer then inspects the land together with the applicant and the *ketua kampung*. The application is

then referred to other relevant departments for their comments. It may be months or years before the comments are finally received by the land office. The application is then submitted to the EXCO for final decision. Approval may come a few years later. Upon approval and upon payments of all fees due, a Qualified Title (Q.T) is prepared and issued to the proprietor of the land.

***PLANNED ALIENATION OR ALIENATION UNDER THE LAND (GSA) ACT, 1960***

By this method, an area of land is selected and after a feasibility study as to its soil suitability, applications are then invited from suitable persons. Selections are made by a special committee set up by the State Authority.

In the planned type of alienation, applications are made by the individuals in response to a call made by the Land Office or by a land development agency. This was made possible as a result of the enactment of the Land (Group Settlement Areas) Act,1960, (GSA Act). This Act enables the State Governments to alienate large areas of land by planned alienation. This was the result of the Report of the Land Administration Commission appointed to enquire into and make recommendations for the improvement of land administration in the Federation of Malaya in 1957. The Commission's recommendation as regards land alienation was to discourage and to avoid as much as possible, haphazard settlement and it advocated that radical reforms in land alienation methods be introduced.

Under the GSA Act 1960, areas of land suitable for alienation were located and a rough design of the land in economic units were made by the land and survey offices acting together. This highly significant Act affected the existing land holding and

alienation policy relationships between the federal and state governments and made it possible for the federal government to undertake large scale development schemes. Furthermore, there was an increasing demand for land throughout the country and the various land offices were inundated with applications for new land and it was desirable that the government should evolve a simplified procedure by which land can be alienated to people. Following an agreement between the federal and the various state governments that future land development, as far as possible, would be alienated in group settlements, the GSA Act was the result.

In short, the main purpose of the Act was to establish group settlement areas which also required a uniformity of law and policy with respect not only to the establishment of group settlement areas but also to the conditions of alienation and occupation of such lands. Under the GSA Act, the State Authority [57] may permit the Development Authority such as FELDA, to develop any state land as a group settlement area for which purpose the State Authority may make an agreement with the Development Authority relating to various conditions[58] as provided for under the Act. Therefore, when the State Authority declares an area to be developed as a Group Settlement Area, under Section 34(2) of the GSA Act, 1960, the land so declared is vested in the Federal Authority. The Authority (normally FELDA) then proceeds with the development of the area. The Authority maintains a record known as a Register of Holdings which contains the names of all the settlers.[59] The title to the land is not issued to the settler until such time as the

settler has paid his loan and other debts in full.[60]

Sections 14, 15 and 16 of the Act require that there shall be one single proprietor for a holding and prohibit the sub-letting, sub-division or fragmentation of the holding in any situation. While sections 8, 13 and 20 provide for the waiver of charges, the cost of initial clearing of land and of the agricultural materials is recouped through a subsequent enhanced rent known as 'Consolidated Annual Charge' (CAC).[61] Section 19 sets out the qualification required of one who would be a settler in the land development scheme. Under section 19 settlers will not be considered unless they are virtually landless and this means that they must own less than two acres of land as provided under section 19(2)(a) of the Act, unless, it is for the purpose of supplementing existing uneconomic small holdings, in which case they can own up to a maximum of six acres. Section 19(1) provides that only Malaysian citizens will be accepted as settlers within the Group Settlement areas. This is so because these schemes are subsidised by government and the government cannot subsidise the opening up of land for non-citizens.[62] This provision, however, will not apply to land which has already been alienated or to land to be alienated in the ordinary way. For land alienated in the ordinary way, the existing NLC will apply.

One important reform provided by Section 16 of the Act is the prohibition upon the death of a holder, of the distribution of a holding among a number of beneficiaries. It will be necessary for the beneficiaries to agree that the interests should be assigned to a single holder and in default of such assignment, the DLA has the right to close the holding and

dispose of the proceeds. It was argued that this provision will not infringe the principles of Islamic law, as the land before alienation is already subject to this condition and therefore, the settlers when they take up the land must accept the land together with the pre-existing condition.[63] Further, on the death of the holder, the beneficiary, who is the new holder of the land, must pay compensation based on the market value of the holding, to the other beneficiaries.

Specific preventive measures are therefore embodied under Section 16 of the Act against sub-division of holding. As stated earlier, land under this Act is alienated only to one individual person and no co-proprietorship is permitted. Moreover, no land comprised in a rural holding[64] can be sub-divided at any time and no rural holding can either be held by way of undivided shares or leased or sublet in whole or in part as provided under section 15 of the Act.

*Land Under Temporary Occupation Licence*

The issuing of a Temporary Occupation Licence (TOL) [65] to a person is one of the ways the State Authority allows certain land to be occupied or used temporarily under section 42(i) of the NLC. TOLs can be issued in respect of a state land; mining land not for a time being used for the purposes of mining; reserved land not for a time being used for the purposes for which it was reserved. A TOL thus permits occupation of a defined piece of land for a specific purpose at a fixed fee lapsing at the end of the calendar year. A TOL therefore must be renewed annually at the beginning of the following year if the occupier wishes to continue using the land. There is, however, no

obligation on the part of the Land Administrator to grant a renewal of a TOL for any subsequent year.[66] In terms of use, TOL land can be used only for planting temporary [67] crops or for the erection of a temporary building. Unlike land held under a land title such as Grant *Mukim* or Grant *Negri*, land held under a TOL is not capable of assignment and the rights thereto terminates on the death of the TOL holder and the land is not subject to distribution. In *Papoo v Veeriah* [68] it was held that,

"...It [the TOL land] is not part of the the estate at all; and it cannot pass on intestacy and it cannot be transmitted by the will of a testator. The licence is personal to the holder; it dies with the holder...".

The holder of a TOL has only an exclusive possessory and not proprietary right to the land which enables him to bring an action in trespass for any infringement to such right.[69] In addition to the exclusive possessory right to the land, the TOL confers on the holder the right to the things thereon but not ownership thereof, as was held in the case of *Mohamed v Kunji Mohidin.*[70] It is also to be noted that a temporary occupation licence confers a personal right on the holder and therefore any transaction amounting to a transfer or assignment of any rights under the licence is null and void as is demonstrated by the case of *Hee Cheng v Krishnan.*[71] A TOL holder has no right to deal with his land. However, a holder of a TOL may deal with his licence in any way so long as such a transaction does not amount to an assignment of the licence, (see *Govindaraju v Krishnan.*[72] In *Cheo Lean How v Fock Fong Looi,*[73] the Supreme Court ruled that a holder of a temporary occupation licence

cannot legally confer, in respect of the state land, any right in favour of a third party which the holder does not possess in law or in equity. Another aspect which needs mention is that TOLs for different purposes may be issued in respect of the same land to different holders, (see *Mohamed v Kunji Mohidin* )[74]. In another case, the court ruled that except as otherwise expressly provided, a temporary occupation licence holder is not entitled, upon the expiry or cancellation of his licence, to any compensation whether from the State Authority or from any subsequent holder or proprietor, (see for example, *Teh Bee v K Maruthamuthu).*[75] However, in a proper case, where the right of a third party to remain on the land does not violate section 68 of the NLC, the Court will invoke the principle of equitable estoppel against the temporary occupation licence holder as in the case of *Paruvathy d/o Murugiah v Krishnan s/o Doraisamy.*[76]

***Problems of Temporary Occupation Licences***

Most Land Officers however, do not really understand the true concept of TOL and the spirit behind the TOL as envisaged by the NLC. A TOL is only a licence and does not confer ownership. It licenses what would otherwise be illegal occupation and TOLs do not contribute in any way towards solving the problems of land administration under the Torrens System.[77] On the contrary, TOLs often add to the problems of land administration. Often, the issue of a TOL tends to delude the licensee into thinking he has some claim to the land especially if the land to which it relates is large in size and it perhaps lulls the Land Officer into supposing he has settled the problem.[78]

The existence of over 20,000 TOLs in Malaysia has become a

serious problem to the land administration.[79] In East Malaysia, TOL is not a problem because the state governments are more generous in granting individual titles to land than their Peninsular Malaysia counterparts as these states are still under-populated. In 1971, 3.0% of all holdings and 1.5% of agricultural areas in Peninsular Malaysia were cultivated under TOL.[80] The problem is most urgent in Selangor and Federal Territory of Kuala Lumpur where most of the areas surrounding the Federal Capital is under TOL. Further, most state lands near town areas have been occupied illegally for dwelling houses. In Perak, large areas of potential mining land are not alienated in the eventuality that they may one day be mined. Such lands are issued with TOLs. States in which the Chinese constitute a high percentage of the population usually have more land under TOL and until recently most of the land in and around Chinese new villages[81] was under TOL, especially in Perak,[82] Selangor and Johore.

In most instances, TOL holders plant their land with permanent crops like rubber, coconut and fruit trees although land under TOL may, by law, not be used for planting of permanent crops. In the Federal Territory, for example, the majority of the TOL holders built semi-permanent or permanent buildings for dwelling houses. In Johore, Kedah, Kelantan and Pahang, quite a large acreage of land held under TOL were planted with permanent crops. Many of these holdings were illegally planted during the post-war rubber boom that is, during the Korean War, (1951) and the authorities decided as a policy, to grant TOLs. Since TOL lands do not have land titles, such lands do not qualify for replanting grants from RISDA.

Table 3.1.

ESTIMATED LOSS OF REVENUE TO ILLEGAL OCCUPIERS OF STATE LAND

| State | Premium ($) | Rent ($) |
|---|---|---|
| Perlis | 1,497,400 | 119,792 |
| Perak | 5,500,000 | 690,000 |
| Kelantan | 2,000,000 | 360,000 |
| N. Sembilan | 10,300,000 | 226,500 |

*Source:* Federal Lands Commissioner Office, 1976.

The problems of illegal occupation of land and TOL are very similar. Illegal occupation or squatting appears to be the first stage of acquiring land under TOL. In the Federal Territory, about 660 acres of prime city lands are illegally occupied for the erection of dwelling houses, as low cost houses are in short supply for the low income groups.

In 1980, the squatter population in the Federal Territory was estimated by City Hall at 243,200 persons, comprising 48,709 households living in 40,934 [83] dwelling units. The total area occupied or cultivated illegally for the whole Peninsular Malaysia in 1976 was 266,115 acres for agriculture land and 9,659 acres for the erection of dwelling houses.[84] The estimated loss of premium and rents from the illegally occupied land for the four states of Perlis, Perak, Kelantan and Negeri Sembilan is shown in Table 3.1:

Some states such as Pahang have taken positive steps at eliminating illegal occupation of state lands through a new state

land policy. The recent policy decision by the Pahang State Government on illegally occupied state land declared that areas of over 10,000 acres be given to FELDA to develop and new settlers be brought in. Areas of 5,000-10,000 acres were given to FELCRA to develop and anything less than 5,000 acres were given to individual applicants. It is to be noted that the majority of the large areas which have been illegally occupied were carried out by big syndicates[85] with vast capital outlay. The result of Pahang government's stern policy towards illegal occupiers of state land has not shown much result as yet.

However, the problems of the illegal occupation of state land cannot be solved through the issuing of TOLs, as various studies have shown. Both the Land Administration Report 1958[86] and the Second Land Administration Seminar 1973[87] found that TOLs create more problems than they solve:

> "It is widely recognised that the issue of TOLs is one of the major hazards to efficient and effective land administration. As a rule, the issue of such licences is therefore inadvisable. There are, however, circumstances where the issue becomes quite desirable.[88]"

The 1973 Land Seminar recommended three situations where the issue of TOL can be fully justified:

(a) The State Authority may issue a TOL to enable the farmer to start immediately with the cultivating of the land, as it may take as long as 10 years or more for land applications to be approved due to backlog of work in the Land Offices;

(b) The related land might contain minerals or the land may be required by the government for infrastructure, drainage and irrigation works, for urban, industrial or

TABLE 3.2

ILLEGAL OCCUPATION OF STATE LAND
BY STATE, 1983 (FEBRUARY), PENINSULAR MALAYSIA

| State | Area Occupied | No. of squatters | | Purpose (Land Use for) | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Individual | group | agriculture | | Building | | Industry | |
| STATE | (hectare) | | | No. of cases | area | No. of cases | area | No. of cases | area |
| Johor | 13,496 | 12,831 | - | 6,557 | 13,236 | 6,274 | 260 | - | - |
| Melaka | 11 | 220 | - | 67 | 10 | 153 | 2 | - | - |
| N. Sembilan | 1,779 | 3,035 | - | 1,466 | 1,603 | 1,533 | 194 | 36 | 3 |
| Selangor | not available | | - | - | | - | - | | - |
| Wilayah Persekutuan | 1,059 | 13,820 | - | - | | 13,820 | 1,059 | - | - |
| Perak | not available | | - | - | | | - | - | - |
| Penang | 62 | 1,282 | - | - | | - | 1,282 | 62 | - |
| Kedah | 12,150 | 12,150 | - | - | | - | - | - | - |
| Perlis | 150 | 1,930 | - | 96 | 106 | 1,854 | 44 | - | - |
| Kelantan | 12,837 | 6,595 | - | - | 12,837 | - | - | - | - |
| Trengganu | 8,083 | 1,298 | 576 | 1,742 | 7,942 | 410 | 136 | 3 | 1 |
| Pahang | 9,057 | 2,120 | 30 | 635 | 8,750 | 547 | 237 | - | 4 |
| TOTAL | 58,705 | 55,281 | 606 | 10,563 | 31,647 | 25,873 | 1,993 | 39 | 8 |

*Source:* Federal Lands Commissioner, Malaysia, 1983.

land development; in such instances a TOL is appropriate.

(c) Sometimes the Agriculture Department may raise objections as to the soil suitability or, where there is the possibility of hilly land being eroded or where land near a river bank may become susceptible to flooding and silting, a permanent title may not be allowed.

The main reason for the extensive existence of TOL is the reluctance of the state governments to alienate single individual

parcels of land to smallholders. The other reason is the slow pace at which the State Authority approves an application for a piece of state land; the approval for many applications for land in respect of those with no complications takes years. Table 3.5 on page 251 shows the number of land applications awaiting approval in the Peninsula. This is one of the reasons which contributed to the wide spread illegal occupation of state land. There are eight main steps or processes in alienation of state lands as shown in Appendices 3.1 and 3.2.

Table 3.2 on page 217 shows the extent of illegal occupation of state land in Peninsular Malaysia as at 1983.

*LEASING OF RESERVED LAND*

Another mode of disposal of State land is through the grant of a lease of reserved land. Such land cannot be so leased until and unless revocation of the reserved land has been effected under section 64 of the NLC as discussed above; otherwise the reserved land will continue as such. Compliance with this statutory provision as a prerequisite to revocation has been held to be mandatory before a revocation can be said to have effect vide *Government of Negri Sembilan & Anor v Yap Chong Lan & 12 Ors.*[89]

Reserved land can be leased out under section 63 of the NLC for a period of 21 years. It is to be noted that only land reserved for public purpose under section 62 of the NLC or the corresponding provision in the previous land laws may be leased under section 63 of the NLC and this includes land reserved for railway under the previous land laws. The purpose of such a lease is to enable the reserved land not in use at the time, to be

used for other purposes instead of being left idle and economically unproductive.

Thus, if any person does not get any permission to occupy state land, reserved land and mining land, his occupation thereof is unlawful and is an offence punishable by a fine and / or imprisonment.[90] It is further reiterated by section 48 of the NLC that no title to state land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever. Therefore, title to state land can only be acquired by the process of alienation and no other. Such alienation must be effected in accordance with the provisions laid down in the relevant statue only. This provision has been tested in *Sidek Bin Haji Muhammad & 461 Ors v Government of State of Perak & Ors.*[91] It is to be noted also that the doctrine of equitable estoppel may not be raised against the State Authority where to do so would be to establish against it, rights in respect of state land which it is prevented by statue from creating other than in the prescribed manner, vide *Government of Negri Sembilan & Anor v Yap Chong Lan & 12 Ors.*[92]

It has been said that the occupier of state land without lawful authority may be evicted by the state[93] but actual possession of land, even where it is unlawful as against the state, is not totally devoid of any effect as between private persons. In *Senik v Hassan & Anor* [94] it was held that a person who is in unlawful occupation of state land may maintain an action for trespass against another person who subsequently dispossesses him and who also has no authority from the state to occupy the land.

*Leasing Of Railway Reserved Land*

There have been disputes between the states and the Railway Administration as regards the leasing of railway reserved land. Since the colonial days the Malayan railway has been issuing TOLs to its reserved lands to various persons and bodies under the FMS Land Code.[95] It has also leased out reserved land to various persons and bodies under Section 22 of the Malayan Railway Ordinance 1948,[96] These actions provoked serious protest from the state governments who maintain that land is their prerogative.

The Attorney General in 1961[97] was of the opinion that sections 21 and 22 of the Railway Ordinance, 1948, which empowered the General Manager to lease railway reserved land, did not prohibit the issuing of TOL. This opinion was, however, changed with the coming into force of the NLC and in a letter to the State Legal Adviser[98] of Selangor, (see Appendix 3.5), the Solicitor General opined that, as a result of the Federation of Malaya Agreement on 1st February, 1948, the provision of section 22 of the Malayan Railway Ordinance, 1948 became inconsistent with the Federation of Malaya Agreement and therefore as from that day there was no question of the General Manager or the Chief Secretary or his Successor, the Federal Lands Commissioner, having the power to grant leases to reserve land. From this opinion, it follows that the authority which could grant leases of Railway Reserve should be the authority specified by section 24 of the FMS Land Code, namely the Ruler-in-Council.

It was therefore the Solicitor General's view [98a] that the lease of railway reserves must be governed by the NLC.

However, the Counsel of the Malayan Railway argued that:[99]

> "The provision of the National Land Code, 1965, is general in nature whereas the Railway Ordinance, 1948, is promulgated solely for the purpose of the Railway Administration, as such the provision for the land contained therein relates solely to the requirement of the Malayan Railway Administration".

Prof. Ahmad Ibrahim was of the opinion that the provisions of the Railway Ordinance in relation to land held or reserved for federal purposes must be read subject to the Federal Constitution (see Appendix 3.6). He pointed out the decisions of the Privy Council in *Surinder Singh Kanda v Menteri Besar Johore* (1969). In that case, the Privy Council ruled that where there is a conflict between the Railway Ordinance and the Federal Constitution then the Federal Constitution must prevail. Further, the provisions of the NLC deal with reserved land and not land held for a public purpose. He therefore concluded that railway reserves are lands reserved for federal purpose and therefore can be dealt with under section 22 of the Railway Ordinance,1948.[100]

***The Present Position Of Railway Reserved Land***

In some states, the reserves were given outright to the Malayan Railway Administration in the form of land grant or deed, [Appendix 3.6a]. In the states of Kedah, Perlis and Kelantan, grants were issued for the purpose whilst in Province Wellesley and Malacca the railway reserves were issued with land titles. In Singapore, the Malayan Railway Administration holds the land in the form of title leases. It is only in the states of Johore, Perak and Selangor and Negri Sembilan that lands were given to the Railway Administration in the form of reserves, [Appendix 3.6a]. Therefore, it appears that most of the land held by the Malayan Railway for the railway purpose are in the form of

absolute title. By virtue of the previous interpretation of 'railway purposes', the Malayan railway has taken various actions as regards its reserves.[101] Appendix 3.6a shows the extent of areas of land reserved or alienated to the railway administration.[102]

Based on the above arguments, the Malayan Railway Administration holds the view that the Railway Reserve is a special reserve by which the Malayan Railway acquires proprietary rights by having land title. The Malayan Railway Administration argues that the adoption of the definition of 'railway purpose' which had been in force prior to the opinion of the Solicitor General of 6th May 1969, [Appendix 3.5], would vest the interest of such land with the Railway Administration for as long as the land is required for railway purpose.

The matter was further discussed by the then Solicitor General and the Railway Administration on 16 June 1972,[103] and the Solicitor General expressed the opinion that the word 'vest' in Clause 145 would only be applicable if the ownership of the land was in the Railway Administration. In the case of Railway reserve, the ownership of land was in the hands of the state governments and the Railway Administration is only *'in control'* and empowered to make use of such land and no more.

To end the conflict between the Railway Administration and the state governments, a meeting of the State Secretaries and the Secretaries General of Federal Ministries,[104] held on 23rd March 1980, decided that the railway administration must stop the practice of leasing and issuing TOL and the status of railway reserve was to be revised. From 1st January 1980, the railway

administration has stopped issuing TOLs and it has also stopped collecting revenue from such lands. A new problem arises as to the status of those people living on the railway reserve. At present, they are still living on the land without any authority or payment and this poses the problem of evicting them therefrom.

To end the disputes between the railway administration and the state governments, it is proposed that the Railway Ordinance, 1948, should be reviewed so that it will not conflict with the Federal Constitution and the NLC. It is further proposed that, a Committee should be established to study the status of railway reserves and its implication from the legal and administrative point of view. Whatever the findings of the Committee, the power of disposal of railway reserve should be in the state governments, with a prior consultation of the railway administration as the controller of the reserve. However, the better view would be that since land is a state subject therefore the power of disposal *vis-a-vis* leasing of reserve land should be the prerogative of the state governments. Thus, section 63 of the NLC should be applied when leasing railway reserve, that is, the State Authority may grant leases of the whole or any part of reserved land for any period not exceeding 21 years upon the recommendation of the officer who is in control of the reserved land.

***LEGAL PROBLEMS AS TO DISPOSAL OF RESERVED LAND***

The question of issuing TOLs and leases to statutory bodies and individuals have posed the problem of legal power and procedure of disposal. Article 85 of the Constitution stipulates the methods by which lands reserved for federal purposes is to be

disposed if such lands are no more required for the purpose of which they have been reserved. Article 86 of the Constitution empowers the Federal government to dispose of any interest in land which is vested in the Federation. So long as the provisions of this Article are complied with, it would appear that lands held for federal purposes can be disposed of, if they are no longer required for the purposes reserved.[105]

The recent proposal by the City Hall to have the land acquired by the Federal Territory for public purpose alienated or disposed of to private persons or private bodies has met with some constitutional constraints. This situation arises because Article 86(2) (b) and (3) of the Constitution requires disposal of such land to a person other than a public authority to be made by the process of an order of the Yang di Pertuan Agong approved by both Houses of Parliament. This is a lengthy and time-consuming process since Article 86 of the Constitution applies also to land held by the Federal government in the Federal Territory for federal purposes; the only way to overcome the provision of Article 86(2)(b) and (c) of the Constitution was to enact a federal law under paragraph (a) of Clause (2) of Article 86. Consequently, Article 86 of the Constitution was amended on 13th April 1984 (Act A585) by which land held for federal purpose in the Federal Territory may now be alienated or disposed to a private person or body. However, such private persons will not be able to further dispose of such land to any person or authority other than the Federal government. As for federal lands held in the other states the approval of the various state governments is necessary before the land can be disposed of. However, with the

amendment of Article 86 of the Constitution, such approval is not necessary.

*DISPOSAL OF STATE LAND - MALAY RESERVATIONS*

The Malay Reservations Enactments prohibit the disposal of state land within a Malay Reservation to any person who is not a Malay.[106]

The term *'Malay'* is subject to various interpretations such as under the Constitution and under the various Malay Reservations Enactments, (see Appendix 2.2). In the FMS Malay Reservations Enactment, a 'Malay' is defined as:

> a person belonging to any Malayan race who speaks any Malayan language and professes the Muslim religion; and includes; (a) the Majlis Ugama Islam; (b) the Official Administrator or trustee of a deceased Malay.

Whereas under Article 160(2), a Malay is defined as:

> " a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and -
> (a) was before Merdeka born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or
> (b) is the issue of such a person.

In the former FMS the term 'Malay' is defined more liberally.

It can therefore be seen that the term 'Malay' is defined differently under the Constitution, and under the various Malay Reservations Enactments, (see Appendix 2.2). Under Article 160(2) as quoted above, there are four requirements for a person to be a Malay, while under Article 89(6) a 'Malay';

> "includes any person who, under the law of the state in which he is resident, is treated as a Malay for the purposes of the reservation of land."

Thus, the above condition entitles him to be a Malay. As for the meaning of 'Malay Reservations', see Appendix 3.8.

The Malay Reservations Enactment of Kelantan has the most restrictive definition of 'Malay'. The rigidity of the definition, however, is only apparent because a non-Malay may be treated as a Malay in Kelantan by virtue of Section 2(e) of the Kelantan Malay Reservations Enactment. In Kelantan, any person (of whatever race) who was born in Kelantan and whose father (of whatever race) also was born in Kelantan, comes within the definition of 'native of Kelantan'. Similar provisions are found in the Kedah and Perlis Enactments which treats a person of Siamese origin as a Malay for purposes of land alienation. Therefore in Kelantan, even if a Malay who is not a native of Kelantan will be prohibited from owning Malay reserve land in the state. Accordingly, the Kelantan state alienation policy prohibits the alienation of any state land to any person who, albeit a Malay, is not a native of Kelantan[107] without the approval of the Sultan-in-Council.

Looking at Section 2(e)[108] of the Kelantan Malay Reservations Enactment closely, it is doubtful whether the said section conflicts with Article 160(2) of the Constitution. This is so because section 2(e) may defeat the spirit of the Malay Reservations Enactment (Kelantan)[109] because a Chinese or an Indian who may not be able to speak Malay and do not profess Muslim religion may own land in Kelantan so long as he was born in Kelantan and his father was born in Kelantan. Thus in Kelantan, a non-Muslim may own land in the state other than Malay reserve land provided that he was born in Kelantan and his father was born in Kelantan.

The Federal Constitution safeguards the rights and privileges

of the Malays and other indigenous people in the Borneo Territories. (The State laws, especially the Malay Reservations Enactments protect the right of Malays in land ownership.)

Among the rights and privileges protected by the Constitution and the State laws are the following:[110]

(a) reservation of land;

(b) reservation of quotas in respect of services, permits, scholarships, educational and training facilities.

The main reason for the special rights accorded to Malays and other indigenous groups (including Orang Asli) is that the Malays and other indigenous groups are economically backward. Even with such protection, despite the implementation of the Five Year Development Plans (1956-1985) aimed at improving the economic position of the Malays and other indigenous people (as discussed in the Chapter), the economic and social gap between the Malays and the non-Malays still exist.

***LAND FOR FEDERAL GOVERNMENT***

Although land is a state matter, most states co-operate with the Federal government with regard to land alienation for public purposes. However, as strategic state land in towns and development centres are not readily available, alienation of land from the states to the federal government is limited. Most of the land required by the Federal Government are compulsorily acquired under the Land Acquisition Act. Nevertheless, states alienate state land to the federal government by issuing a title in perpetuity and the premium charged is based on the market value of the land. Land rent is fixed by the Land Rules of the states. Land required by the federal government can be reserved

for public purpose by the states. State land can be alienated to the Federal Lands Commissioner for the use of the public.[111] Section 5 of the NLC defines *'reserved land'* as: "the land for the time being reserved for a public purpose in accordance with the provisions of section 62 or of any previous land law."[112]

Land reserved for railway purpose under the provision in the state land law is also reserved land as defined in the NLC. Reserved land is normally maintained by officers of the State or federal departments or by officers of the statutory and local authorities.

The difference between reserved land and other reserves is that reserved land *(for public purpose)* is created under Article 83(7) of the Federal Constitution and section 62 of the NLC or the corresponding provision in the previous state land laws which creates other reserves such as grazing reserve. Malay reservation is created under the various Malay Reservations Enactments, reserved forest under the various Forest Enactments, aboriginal reserves, under the Aboriginal Peoples Act, 1954 and wild life reserves under the Protection of Wild Life Act, 1972.

***Revocation of Reserved Land***

Land reserved for public purpose (whether under Section 62 of the NLC or under the provisions of the previous land laws) may be revoked either wholly or partially at any time after steps prescribed by section 64(2)[113] of the NLC have been taken.

In the same way, revocation of reservation is necessary if the land reserved is to be alienated or if it is to be reserved for other purposes. It is to be noted that in order to revoke reserved land maintained by a federal department (school reserve,

police station reserve, hospital reserve, Malayan Railway reserve) the land must first be released in accordance with Article 85 of the Federal Constitution, (see Appendix 3.4)

In some instances, other conditions and precedents must be complied with before action is taken to release reserved land under Article 85 of the Federal Constitution. For example, under section 19 of the Railway Ordinance 1948, the consent of the Minister concerned has to be obtained and gazetted before any action is initiated under the aforesaid Article 85.

***Reserved Land Under Article 166 of the Constitution***

Reserved land as defined in the NLC does not include land under Article 166(3) and (4) of the Federal Constitution. Land under Article 166(3) is to be used for a certain federal purpose only and it is not to be used for other federal purposes without the consent of the respective state governments and it is also not to be used for purposes other than the federal purposes without the consent of the Federal Government, whereas land reserved under Article 166(4) is to be used for federal purposes only. Under Article 160 of the Constitution, *'federal purposes'* includes all purposes in connection with matters enumerated in the concurrent list and with any other matter with respect to which Parliament has power to make laws otherwise than by virtue of Article 76.'[14]

The said Article 166 (3) and (4) is shown in Appendix 3.3.

Article 166(4) was repealed vide (Amendment) Act No. 25/1963, but by virtue of section 13(b) of the Interpretation and General Clauses Ordinance, 1948, the repeal does not affect reservations effected thereunder before its repeal.

TABLE 3.3

NET SETTLER INCOME IN FELDA SCHEMES, 1983, 1984, PENINSULAR MALAYSIA

| Lot Size Hectares (acres) | 1983 Oil Palm Schemes ($) | 1983 Rubber Schemes ($) | 1984 Oil Palm Schemes ($) | 1984 Rubber Schemes ($) |
|---|---|---|---|---|
| 2.4 (6) | - | 415 | - | 460 |
| 2.8 (7) | - | 443 | - | 456 |
| 3.2 (8) | - | 529 | - | 529 |
| 4.4 (10) | 748 | 459 | 1,202 | 493 |
| 4.9 (12) | 867 | 1,123 | 1,401 | 1,183 |
| 5.7 (14) | 1,018 | - | 1,720 | - |
| AVERAGE | 765 | 484 | 1,231 | 505 |

*Source:* Felda Annual Report,1984, p.18.

TABLE 3.4

AREA DEVELOPED BY STATE AND CROP
AS AT 31.12.1984, PENINSULAR MALAYSIA

| States | No.of Schemes | Type of Crop (Hectare) Oil Palm | Rubber | Cocoa | Sugar-Cane | Total | Town/Village | Total | % |
|---|---|---|---|---|---|---|---|---|---|
| Pahang | 144 | 188,604 | 49,458 | 8,416 | - | 246,478 | 17,184 | 263,662 | 40.2 |
| Johor | 71 | 93,008 | 27,652 | 3,480 | - | 124,140 | 8,646 | 132,786 | 20.2 |
| N.Sembilan | 51 | 20,836 | 68,588 | - | - | 89,424 | 5,809 | 95,233 | 14.5 |
| Trengganu | 21 | 31,448 | 5,660 | - | - | 37,108 | 1,950 | 39,058 | 6.0 |
| Sabah | 23 | 26,738 | - | 6,109 | - | 32,847 | 1,883 | 34,730 | 5.3 |
| Perak | 17 | 17,529 | 12,324 | - | - | 29,853 | 1,750 | 31,603 | 4.8 |
| Kelantan | 15 | 19,053 | 2,499 | - | - | 21,552 | 1,744 | 23,296 | 3.6 |
| Kedah | 11 | 283 | 11,309 | - | 1,123 | 12,715 | 783 | 13,498 | 2.1 |
| Selangor | 6 | 6,394 | 3,483 | - | - | 9,877 | 709 | 10,586 | 1.6 |
| Perlis | 3 | - | 1,877 | - | 3,995 | 5,872 | 434 | 6,306 | 0.9 |
| Melaka | 5 | - | 4,746 | - | - | 4,746 | 324 | 5,070 | 0.8 |
| TOTAL | 367 | 403,893 | 187,596 | 18,005 | 5,118 | 614,612 | 41,216 | 655,828 | 100.0 |
| % | | 61.6 | 28.6 | 2.8 | 0.7 | 93.7 | 6.3 | 100.00 | |

*Source:* FELDA Annual report,1984, p.9.

It is noted that land reserved under Article 166(3) and (4) of the Federal Constitution cannot have its status changed by revocation under Section 64 NLC. It will cease to enjoy that status only if the land is released under Article 85 of the Federal constitution.

*POLICY ON INDIVIDUAL ALIENATION*

Land was alienated before Independence in 1957 on the basis of individual application. From 1905 to 1930, more than three million acres were alienated and brought under permanent cultivation in Peninsular Malaysia. From 1931 to 1956, 854,000 acres were alienated to individual smallholders.[115] Since land alienation was based on the application received by the land office, the administration in all the states were unable to cope with the bulk of land application received and in those days it took several years before an approved application (A.A) was registered. The Korean war (1951) boom was the main cause of the rush for land applications besides other reasons such as the lifting of restrictions imposed during the War, the loss of records and official documents during the Japanese Occupation [1941-1945] and the population explosion in the post-war period.[116]

The power to alienate land during the colonial days and immediately after independence was given to the CLR [now DLA] for agricultural lands below 10 acres in area. Though this power is still available under the NLC[117] the State Authority has not delegated it to the DLA as land alienation is a highly sensitive political issue. In almost all the states of Peninsular Malaysia, land officers are only the agents for processing land

applications, as the applications have to be forwarded to the State Executive Council (EXCO) for final determination.''[18]

'Pocket land,' which is defined as any vacant state land surrounded by alienated land or reserved land and is situated outside either a gazetted town or village land can be alienated to individuals by the Land Office. These 'pocket lands' were land not alienated by the Colonial Administration or are lands which have reverted to the State Authority because they have been forfeited in default of payment of quit rent. The applications for the alienation of 'pocket land' are not widely publicised; only the inhabitants of *kampung* or *mukim* in which the lands are situated are informed about it through circular letters or through verbal communications by the *Penghulu* or *Ketua Kampung*. Most states in Peninsular Malaysia implement a policy of alienating 'pocket lands''[19] to the small holders with the view that this should enlarge existing uneconomic holdings. In most states, the recipients are selected directly by the EXCO or a District Selection Committee which makes recommendations to the EXCO for approval. The average area approved for alienation is normally small in size, ranging from one to three acres. The area alienated through this policy is comparably small and comes to approximately 1% of the overall land alienation.

***Controlled Land Alienation***

Controlled Land Alienation is another form of planned alienation schemes. It is the most simple type of land development schemes, as government expenditure is limited to the provision of the minimal infrastructure required. Such schemes are often called unsubsidised schemes. Through such a policy, the

land is alienated to individuals in larger blocks and in order to help the poor settlers, the government may defer the payment of land premiums and survey fees until the land is in production. But, until premium is paid fully[120] to the Government the land is deemed to be state land and legal alienation is only recognised or takes place when a document of title is registered by the DLA under Section 88 (3) of the NLC.

The main problem faced by the land office and the land applicant in the existing individual and controlled alienation schemes is the delay in getting approval from the appropriate authority. Land applicants sometimes have to wait for years before the final titles are approved. The Land Office faces the problem of backlog of land applications numbering 220,455 cases,[121] (Table 3.5). In most states, selection is done directly by the EXCO or a District Selection Committee which makes recommendations to the EXCO for approval. The average area approved for alienation is normally small, ranging from one to three acres. The area of land alienated through this policy is comparably small and account for approximately 1% of the overall land alienation. The number of applications awaiting approval continues to increase. Table 3.5 shows the extent of the backlog of land applications by states.

The main reason for such a great backlog of land applications is the cumbersome procedure for alienation of land. It has been found that an average alienation application passes through the office not less than 107 times[122] under the previous Land Code. However, under the NLC, the procedure has been simplified. At present, there are 8 main steps [123] through which

an application has to pass before final approval, [see Appendices 3.1 and 3.2].

As far back as 1958, the Land Administration Commission recommended that:[124] individual alienation must be replaced by group alienation or alienation *en bloc*. Based on the recommendations of the Commission, the National Land Council, in its paper No. 12/1960, made the following policy decisions on alienation of land:

(a) States are not permitted by the National Land Council to alienate individual lots any more.
(b) To encourage development, land will be available free, i.e. no charges will be levied while the land is still under development and is bringing in no returns.
(c) The above assistance will be given in a form of a hire-purchase arrangement and will be recouped by easy payment over a term of years (up to 15 years).
(d) Land alienation, particularly in the vicinity of existing villages [*Kampung*] must be increased, because, to leave these areas unalienated will result in land being occupied illegally.
(v) In return for these benefits, settlers must accept a considerable degree of discipline and control by the District Administration (some states called this scheme "Control" or "Controlled Alienation").

In 1962, based on a paper entitled 'Controlled Alienation', the National Land Council adopted further policy requirements pertaining to the alienation of land which were binding on all states. These policy measures included; that blocks of land to be alienated should be of the size up to 2,000 acres and sub-divided into 10 acre lots; that such area of land should be gazetted under GSA (Act); that the land must be fully cultivated within five years of occupation; that express conditions on the land titles should be imposed; that only the landless were eligible for participation in the scheme and this included retired government servants whose income were less than $350 per month (see Appendix 3.9.)

Statistics on the extent and distribution of Controlled Alienation Schemes are not easily available as land officers are not statistics conscious and the scant data existing are sometimes not released because land alienation is a highly sensitive political issue. Nevertheless, from 1960 to 1970, there were about 520,000 acres[125] of land which were developed under the controlled land alienation schemes. These schemes are not homogeneous in type and concept, but are a medley of different concepts and vary considerably from one state to another. However, under the Second Malaysia Plan, development of Control Alienation Schemes seems to have been left out.

The state agencies charged with land developments, which include State Economic Development Corporations, State Agriculture Development Corporations, State Land Development Boards, State Agriculture Departments and District Offices, developed a total of 293,005 hectares[126] (including Sabah and Sarawak). With the exception of Penang and Perlis, Controlled Alienation schemes exist in all states of Peninsular Malaysia. The largest areas that have been alienated were in Johore and Perak, [see Table 3.4].

Such schemes are not restricted to Malays, a number of Chinese and Indians have joined the schemes.[127] However, the majority of the settlers in such schemes were Malays, because the Chinese and Indians were not particularly interested in living in the rural areas as they were economically better off engaging in business in town areas or at the fringe of the land development schemes.

The controlled alienation schemes under the GSA Act, 1960 had

very limited success mainly because the settlers did not have the financial means to develop their land. It is estimated that only about one-third of the total acreage alienated to farmers has been developed on their own expenses.

With regard to the policy of alienating land to government officers, it has been agreed by the Public Services Department, through Service Circular No. 19/1970, that government officers may by direct alienation from the state governments own up to 25 acres of agriculture land, two lots of which can be used for residential purposes. However, by circular No. 4/1971 of the Director General of Lands and Mines Malaysia, all lands alienated to government officers have imposed thereon, a restriction in interests to the effect that such land shall not be transferred except with the permission of the State Director of Lands and Mines, so long as the proprietor is in government service'[128]

***Individual Rights in Alienated Land***

Conditions '[129] and restrictions in interest'[130] are imposed variously on alienated land by the State Authority under section 120 NLC, at the time when the land is approved for alienation. These conditions or restrictions referred to in the document of title do not represent an attack on the indefeasibility of the registered title. It merely reflects the quantum of that indefeasibility.'[131] The conditions and restrictions in interest made under section 120 of the NLC are unlimited except that they must be 'conformable to law.'

As regards the policy of imposing restrictions in interest on land titles, (on new alienation), most state governments make use of section 120(1) of the NLC to restrict the transfer, lease or

charge of such lands to another person without the prior permission of the EXCO or the DLA. Such a policy is implemented to ensure that lands alienated to individuals will remain in their possession and such lands will not be made use of for speculative purposes in order to obtain quick profits out of the sale of the land. Most new alienation for agricultural and residential purposes have the restrictions in interest imposed on the land titles prohibiting the landowner from dealing in the land. However, the proprietor of the land may apply to the State Authority, pursuant to section 124, NLC for the alteration of any category of land use[132] or the recission of any express condition or restriction in interest.[133] But unless and until so varied they must be observed and performed. If the proprietor (occupier) fails to observe these conditions within the time specified, breach has occurred and the land is liable to forfeiture under section 127(1)(a) of the NLC. The effect of such conditions and restrictions is to impose land use planning on all alienated land with the overriding penalty of forfeiture for default. The imposition of sections 115 to 119 (implied conditions) is to ensure that the land is used for the purpose for which it was alienated.

As for lands alienated for federal purposes in the name of the Federal Lands Commissioner, they are alienated without the imposition of a category of land use, in order to avoid inconsistency with the provision of Article 83(2) of the Federal Constitution. Even here, the state is empowered to prescribe a category of land use under section 52(3) of the NLC.

Under Article 83(2) of the Constitution, the State Authority may require the federal government to pay a premium equal to the market value of the land if the title to be granted is one in perpetuity and contains no restrictions as to the use of the land. However, by resolution No. 20 of the National Land Council, the states agreed to charge the federal government only a nominal rate of premium and quit rent payable to the State Governments for lands alienated outside the local authority areas,[134] on condition that such lands are to be used for purposes which will have direct benefit to state governments,[135] such as for schools, hospitals, clinics and so on. As for lands in towns, villages and country lands within a local authority area, the rates of premium and quit rents to be charged is in accordance with that approved by the state governments.[136]

Recent attempts have been made by the federal government to have nominal premium and quit rents on all lands used for the benefits of both the federal and state governments irrespective of direct or indirect benefits.[137] However, no final decision has as yet been given by the state governments.

***POLICY ON ALIENATION OF LAND TO PRIVATE COMPANIES AND JOINT VENTURE***

Before Malaysia achieved independence in 1957, large areas of land in the country were alienated to private companies especially foreign plantation companies [Appendix 2.4]. However, after Independence alienation of land to private and foreign plantation companies on a large scale stopped. The figures for 1971 (rubber estates) is shown in Appendix 3.10. Appendix 3.11 shows the comparative figures of land alienated to foreign

companies in relation to Malaysian owned estates as at 1983.[138] There was even a call for the nationalisation of foreign-owned plantation estates due to nationalistic feelings. However, this call was ignored by the government which is very strongly committed to the western style of 'free enterprise' or which believed that nationalisation would discourage foreign investments into the country.

***Oil Palm Estates***

Foreign participation in the oil palm estate sector was even more pronounced than in the rubber estate sector. Foreign owned estates accounted for 73.2% (386,800 acres) of the total planted acreage in oil palm estates in 1971 and they produced the bulk of FFB (fresh fruit bunches) (86.4%) and Palm Oil (85.0%).[139] Acreage under British-owned estates was the highest owned by any single nationality totaling of 280,300 acres or 53% of the total estate.

These estates also produced the major part of both FFB and palm oil, [see Appendix 3.12]. Other foreign-owned estates cultivated coconuts and tea.[140] Comparative figures for 1981 and 1983 shown in Appendix 3.13, reveal a significant decline in foreign ownership due to the government's privatisation policy. However, the results of this policy remain to be seen.

***Alienation Under FELDA Schemes***

At the end of 1971, there were 60 FELDA rubber schemes and 40 oil palm schemes with acreages of 167,144 and 189,005 respectively.[141] By 1984, FELDA had opened up a total of 367 schemes with an area of 655,828 hectares and FELDA has emplaced a total of 87,946 families in 235 schemes, as shown in Appendix

3.14.[142] Another 132 schemes are still being developed.

It was not feasible for the Malaysian government to develop the huge areas of virgin jungle land on public resources. It required the participation of the private sector or joint venture companies. In the 1970s, the common phenomenon in the development of agricultural land was the case of private or foreign companies forming a joint venture enterprise with semi-governmental bodies rather than the government. Semi-governmental bodies were preferred because of the fear that the government might influence the policy of the estate.

FELDA established fully-owned corporations and branched into joint ventures. [143] Kilang Gula FELDA Perlis Sdn. Bhd., (a FELDA sugar factory) is one such example in which FELDA together with Perlis Plantation Bhd. mill and refine cane sugar grown in that region.[144] Besides joint venture activities, FELDA, as the biggest land development agency in the country has formed various corporations to carry out the economic activities of trading, marketing, transporting and milling and providing security services, agricultural services and construction works.

Thus, although the alienation of land to private and foreign plantation companies on a large scale stopped after Independence, applications for alienation of land for joint venture projects were still considered and approved by the state governments.

In considering such land alienation, the state's policy is to ensure that such alienation benefits directly, the smallholders and the state's population as a whole.[145] The joint venture companies on the other hand enjoy all the facilities necessary for the efficient management of their companies. Land

premiums, land rents and other related payments have often been waived or been reduced to nominal rates.

With the establishment of many more RDAs, however, it is unlikely that state government will agree to alienate lands for joint ventures in the future. It is felt that local resources can be pooled to encourage local participation rather than allowing lands to be alienated to foreign companies, especially when such joint ventures do not provide enough jobs for the rural agricultural sector.

***Alienation of Land for Mining***

Under the NLC,[146] the State Authority is given the power to issue permits for the removal of rock material from state land, alienated land, mining land or reserved land. In the case of alienated land, the DLA, on behalf of the State Authority, may issue a mining permit either to the proprietor of the land or any other person or body with the consent of the proprietor. Section 45(2) of the NLC prohibits the removal of any rock material or forest produce beyond the boundaries of the land, notwithstanding that the land has been alienated, except under licence or permit. The procedures and regulations governing the application and approval of mining certificates and mining leases are to be found in the respective mining enactment[147] of each state.

The census of Mining Industries in West Malaysia in 1970 showed a great disparity in land ownership for mining among the Malays, Chinese and Indians.[148] Foreigners owned a substantial part of mining industry.[149] This is discussed in Chapter 2. The extent of land alienated for mining in 1986 is shown in Table 2.3.

*THE STATES' LAND ALIENATION POLICY*

Having discussed the general alienation policy for Peninsular Malaysia, an examination of the land alienation policy of a few states is in order to show that every state has its own land alienation policy different from that of all other states.

Since the launching of the NEP in 1970 by the federal government, the state governments have instituted various measures to implement it. Land alienation is one of the main instruments by which the State Governments hope to achieve the objectives of the NEP. However, prior to the launching of the NEP, various policy decisions were made by the National Land Council with the main objective of improving the economic position of the rural population, predominantly Malay, through the land development programmes. Some of the decisions of the National Land Council in 1958 as regards land alienation were the adoption of planned land development for the purpose of establishing holding of economic size and rejecting applications for scattered holdings from other individuals (see Appendix 3.15).

According to the decisions made in 1960,[150] the National Land Council agreed to allow the federal and state governments to develop land through a planned alienation scheme known as the Group Land Settlement Schemes as discussed in Chapter 2. While Negri Sembilan and Pahang have their state's land policies published, the Federal Territory has written its own land alienation policy.[151] Other states have not published or distributed to the public their respective land alienation policies. In most states, land issues are politically sensitive.

The state land alienation policies for Wilayah Persekutuan, Pahang and Negri Sembilan are described below.

***The Federal Territory Land Alienation Policy***

The Wilayah Persekutuan (Federal Territory) of Kuala Lumpur is small in area, with its population concentrated in the city centre. It has geared its land alienation policy mainly towards its main objective of providing living accommodation for the low income group. Another objective is to give opportunity to Bumiputra entrepreneurs to be involved in commercial, housing and industry through a planned development of state land and to overcome the squatter problem through the construction of high-rise low-cost flats (see Appendix 3.16).

Some of the salient features of the policy include:[152]

(a) state land, ex-mining land and unreserved land or land not occupied or used by government, the land use zoning or site plan of which have been determined, may be considered for alienation;

(b) new applications for mining land cannot be considered. However, the renewals of the lease of existing mining land which is in operation and has potential for tin and which is profitable, may be considered ;

(c) any state land and ex-mining land which have been zoned may be parcelled out into smaller parcels not more than 50 acres each, to be considered for alienation to housing developers chosen to implement housing projects;

(d) 'pocket' land may be considered for alienation to any applicant but priority is to be given to government agencies and bumiputra individual applicants or

bumiputra companies. Further, applications for land will be given priority as follows:

(i) to government agencies;

(ii) to bumiputra companies;

(iii) to companies registered as bumiputra-owned.

Appendix 3.17 shows a detailed description of Land Alienation Policy in the Federal Territory.

In the Federal Territory, the land available for development has decreased *vis-a-vis* the needs of the ever increasing population. Most of the unalienated lands are being occupied by illegal squatters or they are mostly former mining lands which need to be reclaimed.

As in other states, the alienation of land in the Federal Territory is done on an *ad hoc* basis, that is according to the procedures set out in the NLC and based on the applications received by the Land Office. However, since this method of land alienation may cause unfairness and injustice, a new policy decision was made by the Land Executive Committee of Wilayah Persekutuan and approved by the Prime Minister on 20 August 1980 as explained earlier[153].

Almost all the states' land alienation policy have the objectives of the NEP as the criteria for any land development through their alienation policies.[154]

***Pahang Land Alienation Policy***

As for Pahang, the presence of vast jungle land enables the state to plan and develop the land in various ways.

Its policy as regards to the opening up of[155] large areas of land is to permit only the state and federal government agencies

to do that. With regard to land alienation under FELDA schemes, Pahang subjects are given priority. Other land alienation policies for Pahang are shown in Appendix 3.18, which *inter alia* include that applications for land within an area of twenty miles from Kuantan town are closed with certain exceptions to be determined by the State EXCO. Alienation of land to 'new villages' which have been created during the 'emergency' (1948) is to be continued. As regards the alienation policy under the GSA Act, three types of schemes are to be developed, namely: the rubber or oil palm scheme; village or orchard scheme; and housing scheme.

***Negri Sembilan Land Alienation Policy***

As for Negri Sembilan [156] its policy is to give priority to applications involving government projects and corporations or companies approved by the state government. As for vacant state land in towns, priority is given to bumiputra either through companies or co-operatives where the bumiputra share capital is more than 57% in absolute terms. Idle state land, however, especially unused lands in towns may, if suitable, be alienated to the authorities or bodies approved by the state government on condition that the transfer is controlled by the EXCO or they are declared Malay reserve land (see Appendix 3.19).

As for forestry, the productive areas are reserved for corporations, and bumiputra companies or kept as permanent forest reserve.[157]

The state government also creates 'mini-estates' for bumiputra as a means of achieving the objectives of the NEP.[158] State policies as regards the 'mini-estate' concept are described

in Appendix 3.20 which *inter alia* aim at ensuring that bumiputra may own rubber land in economic-sized holdings managed professionally by modern estate management.

The state government, however, is also concerned with the extent of vast areas of state land being transferred to central government agencies in various government schemes. Since state land is about to become scarce, the government of Negri Sembilan is reviewing this policy to safeguard the future interest of the state.[169]

***INADEQUACY OF THE PRESENT LAND ALIENATION POLICY***

It is almost a general policy amongst the states to restrict the alienation of land to their own subjects only. As a result some states are more congested than others although Peninsular Malaysia as a whole cannot be said to be experiencing population pressure. The division of power between the federal and state governments over land matters has also contributed to the present land problems in relation to population density. A federal government with complete authority in land matters could plan for or induce the migration of population from congested to less crowded land, from one state to another if necessary. However, this has not been possible because of the supremacy of the states in land matters.

Another important aspect of the land policy pertains to the disposal of state land to individuals and corporations. Even though section 43 of the NLC empowers the State Authority to dispose of state land to any person or body it deems fit, decisions and policies as to whom to dispose the land are made absolutely by the state EXCO. This is so because while section

40 of the NLC vests all the state land in the state government and makes it the owner thereof, section 41 of the NLC empowers the State Authority to dispose of such land. And the State Authority must, constitutionally, give effect to the advice of the state EXCO. As section 43 of the NLC does not prohibit the State Authority from alienating state land to foreigners or non-citizens, and public opinion is strongly against this policy, the State Authority should decide a definite policy on the alienation of state land to foreign companies and individuals who are not citizens of Malaysia.[160]

The survey carried out by the Ministry of Land and Regional Development in 1983 shows that [161] there were 3,797 land titles transferred to foreigners from 23 September 1976 to 31 December 1982, involving an area of 51,163.1 acres. In an earlier survey in 1976,[162] 992 titles with an area of 3,469.6 acres were transferred to foreigners.

Thus, transfers of land to foreigners (individuals and companies) within a period of six years (from 22 September to 31 December 1982) increased by 3,658 (369%) and the increase in terms of acreage involved was 50,514.9 (1,445%).

Johore had the most number of land titles transferred to foreigners, (3,707) of which 1,479 were for buildings (houses) and 1,461 were for agriculture. The balance is for other uses. Most of those foreigners who bought land in Johore were Singaporeans and the main category of land bought was for housing. Appendix 3.21 shows the extent of land transferred to foreigners.

As a result of the above problem, the NLC Review Committee

formed by the National Land Council in 1981 proposed that section 43 of the NLC should be amended to prohibit non-citizens from acquiring land in Peninsular Malaysia. The main objective of this proposal is to stop land speculation as a result of *'hot money'* coming in from foreign countries, so that Malaysian citizens would still be able to buy land for houses at reasonable prices. The Committee felt that this proposal would not jeopardise the Federal Government's initiatives to attract foreign investors in Malaysia because the main investors are interested in large scale commercial and industrial ventures. The transfer and ownership of land for industrial purposes are not prohibited by the amendment. Further, foreign entrepreneurs may rent houses for their employees.

Based on the the NLC Review Committee report, section 43 of the NLC was finally amended in 1984 with some modifications to the original proposal of the NLC Review Committee as shown in Appendix 3.22. The New amendment as Part Thirty Three A (sections 433A - 433E) prohibit non-citizens from acquiring land or an interest in land only after the prior approval of the State Authority, provided that no such approval shall be acquired in respect of any land which is subject to the category 'industry' and provided further that no such approval shall be granted in respect of any land subject to the category 'agriculture'. With intent and purposes the amendment was applauded by all the citizens, however, it was short-lived. In 1987, the whole of Part Thirty Three A was revoked (vide Amendment Act A658/1986), with effect from 1.1.1987. Johore again faces the previous problem of non-citizens purchasing land in the state.'[63]

## *LAND DISPOSAL AS AN INSTRUMENT OF THE NEP*

Before discussing the land disposal policy as a way of achieving the objectives of the New Economic Policy (NEP) it is necessary to examine the concept and aims of the NEP.

### *The New Economic Policy (NEP)*

The NEP, which was first outlined in the Second Malaysia Plan (SMP),[164] incorporates the two-pronged objectives of eradicating poverty irrespective of race, and restructuring Malaysian society to reduce and eventually eliminate the identification of race with economic function. It represents an important stage in the series of development plans designed to eradicate poverty among all Malaysians and to correct racial economic imbalance to create a dynamic and just society.

To achieve the overall objective of the national unity more than a high rate of economic growth is needed. Efforts aimed at achieving rapid economic development needs to be balanced by social justice, equitable sharing of income, growth and increasing opportunities for employment. Beginning with the SMP and now entering the Fifth Malaysian Plan (5MP), the plans aimed at the creation of a viable and dynamic commercial and industrial community of Malays and other indigenous people. In the implementation of this policy, the government should ensure that no particular group experiences any loss or feels any sense of deprivation.

The NEP was formulated to solve the socio-economic problems in Malaysia without consideration for their ethnicities. This was further reiterated in the 3MP.[165] The government also declared that:

> "in the implementation of this policy, the government will ensure that no particular group will experience any loss or feel any sense of deprivation." [166]

The two-prongs of the NEP are not mutually exclusive. They are in many respects, interdependent and mutually reinforcing. For example, the measures to raise incomes in rural areas, where Malays and other indigenous people predominate, will not only help to eradicate poverty but also serve the objective of correcting the racial economic imbalance. Similarly, projects to correct the racial economic imbalance by increasing the participation of Malays and other indigenous people in new urban activities will also contribute to the eradication of poverty by generating increased employment opportunities. Malaysia, with her NEP, is also acting to ensure a more equitable distribution of wealth and economic opportunities across ethnic groups.

The government has given itself twenty years ending at the end of 1990 to achieve the NEP's objectives. At the beginning, this was only specified for the wealth restructuring and the time-span was specified for employment-restructuring and poverty eradication. However, in the Mid-term Review of the 2MP, 1971-75, the twenty year period was made applicable to these two objectives as well. The machinery for the implementation of the NEP is the national development plan. [167]

In conclusion it can be said that the NEP is a socio-economic in nature. By itself the NEP is an inadequate tool for the task of integrating the nation. However, the policy's operating objectives of poverty eradication and social restructuring does inject some realism in the set objectives .

Both the Federal and the State governments have stressed the

TABLE 3.5
NUMBER OF ARREARS OF LAND APPLICATIONS
ACCORDING TO STATE AS AT FEBRUARY, 1983
PENINSULAR MALAYSIA

| State | No. of Applications |
|---|---|
| Johor | 42,166 |
| Melaka | 4,304 |
| Negeri Sembilan | 8,035 |
| Selangor | 36,833 |
| Wilayah Persekutuan | 7,616 |
| Perak | 50,700 |
| Penang | 948 |
| Kedah | 7,433 |
| Perlis | 17,500 |
| Kelantan | 13,000 (estimated) |
| Trengganu | 16,920 |
| Pahang | 15,000 |
| TOTAL | 220,455 |

*Source*: Directors of Land and Mines, Malaysia, (February, 1983), compiled by Federal Lands Commissioner Office, 1983.

TABLE 3.6

PENINSULAR MALAYSIA: PROGRESS IN LAND DEVELOPMENT, 1981-1985 AND TARGET, 1986-1990
(hectares)

| Agency/Programme | 4MP target 1981-1985 | Achievement 1981-1985 | Achievement (%) | 5MP target 1986-1990 |
|---|---|---|---|---|
| Federal Programmes | 212,470 | 202,470 | 95.3 | 175,500 |
| FELDA | 161,600 | 161,600 | 100.0 | 175,500 |
| FELCRA | 41,100 | 31,100 | 75.7 | - |
| RISDA | 9,700 | 9,700 | 100.0 | - |
| State Programmes | 217,200 | 57,100 | 72.7 | 93,700 |
| Joint Venture/private sector[1] | 100,000 | 57,100 | 57.1 | 17,500 |
| Total | 529,670 | 417,570 | 78.8 | 286,700 |

*Source:* Fifth Malaysia Plan, p.306.
note: 1. Refers only to land development in areas under RDAs.

importance of improving the economic position of the Malays through the distribution of land to the landless or to those owning uneconomic-sized holdings. Various measures were set into motion by the federal and state Governments to achieve this goal. Besides individual alienation of state lands to the landless, planned alienation schemes were implemented through various land development agencies such as the state Land Development Agencies, the Federal Land Development Authority (FELDA), and other Regional Land Development Authorities (RDAs) such as KESEDAR, KETENGAH, DARA, KEJORA, KEDA and PERDA. Table 3.4 shows areas developed by state and crop, as at 1984.

FELDA's role in land development is to undertake the planned settlement of landless farmers on jungle land. Other development authorities such as KESEDAR, KETENGAH, KEJORA, DARA, KEDA, and PERDA, are each established in the respective region with the objectives of concentrating land development work in the particular region of each state.[168] They are each established under the various Acts.[169] Appendix 3.8b shows the functions and responsibilities of the RDAs. At the same time, state enactments were passed in Johore[170], Pahang[171] Trengganu,[172] Kelantan,[173] and Penang,[174] to enable the Authorities to act as DLA under the NLC. In this capacity, they perform various functions of the DLA including the alienation of land with the approval of the State EXCO, and the collection of land rent and other charges on land. When town centres are established in the authority areas, the authority may also perform local government functions as a Town Board. The establishment of the regional authorities reflects the policy of decentralisation in land development adopted during the

Second Malaysian plan.

The present policy on land disposal / land alienation appears to assume that ownershsip *per se* leads to the attainment of higher settler income levels and living standards. The FELDA settlers and other settlers in the Regional Development Authorities cast doubts on the validity of this assumption. However, by comparison to a rubber smallholder or a paddy planter, the average income of the FELDA settler and their standard of living is higher.[175] The average monthly income of settlers on FELDA schemes ranged from $490-$810 in 1979[176] compared with incomes of only about $80-$120 from their previous occupation. The level of income has increased markedly in later years. The average net monthly income for oil palm settlers under block system was $1,231 in 1984 as compared to $765 in 1983, an increase of 60.9%.[177] The average net monthly income for rubber settlers increased[178] by 4.3% from $484 to $505 in 1984. However, income levels varied during the period depending on the prices, the crops grown and the size of holdings as shown in Table 3.3. But the increase in income and the standard of living is still low by comparison with those of such other sectors of the economy as mining, industry, construction, and commerce. Further, the present income level of those settlers is not permanent as it is subject to the price fluctuation of the world commodity markets, especially in rubber and palm oil.

Thus, the present approach to land development, which still operates on the assumption that land ownership is the key to success, should be seriously reconsidered and reviewed. The ideal land ownership policy would regard land as a factor of

production to be used for productive purposes and not as a store of value, to be used for speculative purposes. The rural Malays value land ownership *per se* and not as a production resource; consequently, their ownership is generally negative and unproductive. This is a source of conflict and creates problems both to the land owners and the land administrators.

Since the Fourth Malaysia Plan 4MP (1981-1985) and the New Economic Policy (NEP) (1969-1985), the focus on land alienation and disposal policy has changed greatly especially among the land development administrators. However, the rural population's sentimental ownership has not changed very much. FELDA's new 'share system' of land ownership to replace the present individual and group ownership may be a step towards changing the rural population's attitude with regard to land ownership. Although some state governments have opposed the share system, it has been accepted by the National Land Council,[179](see Chapter 2 on FELDA 'share system'). Table 3.6 shows progress in land development as at 1985 and the target for 1986-1990.

***SUMMARY***

Land alienation policy is not only a delicate and sensitive subject but also hinges on socio-economic and political considerations. To the farmers and the majority of the rural population, land is a source not only of income and economic security but also of emotional attachment.

It is ironic that there are about 2.2 million acres of idle alienated land [180] while thousands hungry for agricultural land are waiting for their applications to be processed by the Land Offices throughout the country. Therefore,

the problems of land alienation and its future must be continuously reviewed and improved within the framework of the NEP. The success of the NEP will depend largely on the policy by which land, as a scarce resource, is to be distributed so that land is owned not by those who have power and wealth but by those who till it to enable them to improve their lot in life in terms of economic and social advancement.

A more dynamic and radical land disposal policy is needed for the modernisation of agriculture to render incomes in modern agricultural occupations comparable to those in urban areas. Such a policy will also contribute to the integration of agriculture with modern activities in commerce and industry and thereby facilitate the development of a dynamic agricultural sector. Hence, land alienation can be made as an instrument for the implementation of the NEP which can succeed if the state governments would consider fixing a ceiling for the ownership of land through alienation. The size of the land-holding alienated must be economically viable to ensure that the owner-tillers thereof are able to earn enough to live above the set poverty line.'[8]

NOTES

1. For further readings, see David S.Y.Wong, *Tenure and Land Dealings in the Malay States*, Singapore University Press, 1975, pp.4-29.
2. See *ibid.* See also Lim Teck Ghee, *Peasants And Their Agricultural Economy In Colonial Malaya, 1874-1914*, Oxford University Press, Kuala Lumpur, 1977.
3. See *ibid.*, pp. 16-20.
4. See *ibid.*, pp. 21-29.
5. See *ibid.*, pp. 65-80.
6. See *ibid.*, pp. 471-497. See also C.K.Meek, *Land Law and Custom In The Colonies, O.U.P. London, 1949 (2nd ed.)*, p.36.
7. *ibid.*, p.72.
8. *ibid.*, p.72.
9. For further readings see W.E.Maxwell, *The Law and Customs of the Malays with reference to the Tenure of Land*, (1884) 13 JSBRAS, pp.75-200.
10. Selangor Order in Council, No.III of 1891.
11. See s.3 of the Selangor Land Code, 1891. This was defined in the Code as,"all lands in Selangor not being customary land which have not been or may not hereafter be reserved for or dedicated to any public purposes, or which have not been granted or leased, or agreed to be granted or leased, to any person...".
12. *ibid.*, s.23.
13. The word,'Muhammadan' was changed to 'any person' in those provisions relating to the acquisition of customary holdings by approval of the District Officers.
14. Perak Land Enactment, No.17 of 1897; Selangor Land Enactment No.XV of 1897; Negeri Sembilan Land Enactment, No.XXII of 1897; Pahang Land Enactment No.XXVIII of 1897.
15. *ibid.*, see s.25 of the respective State Land Enactments.
16. *ibid.*, s.27.
17. *ibid.*, s.27 (i) & (ii).
18. *ibid.*, s.28.
19. *ibid.*, s.29.
20. *ibid.*, s.3(iii) of the respective Land Enactments.
21. The term,"grant in perpetuity" was not used in the Enactments. Instead it was called "grant".
22. By Enactment No.3 of 1909 in Perak, No.4 of 1909 in Selangor, No.3 of 1909 in Negri Sembilan, No.8 of 1909 in Pahang.
23. Land Enactment 1903: Perak, No.13 of 1903; Selangor No.8 of 1903, Negri Sembilan, No.17 of 1903; Pahang, No.17 of 1903.
24. For further readings see David S.Y.Wong, *op.cit.*, pp.108-121.
25. Section 5 of the NLC defines *State land* as :
All land in the State (including so much of the bed or any river, and of the foreshore and bed of the sea, as is within the territories of the state or the limits of territorial waters),[*Under the Emergency (Essential Powers) Ordinance No.16 of 1969, Malaysian Territorial waters is up to the 12 nautical miles limit]*, other than (a) alienated land (b) reserved land (c) mining land (d) any land which is for the time being reserved forest.
26. See s. 43, NLC.
27. Section 5 of the NLC defines 'to alienate' thus:
"to dispose of State land in perpetuity or for a term of years, in

consideration of the payment of rent, and otherwise in accordance with the provisions of Section 76 or, when used in relation to the period before the commencement of this Act, to dispose of State land in perpetuity or for a term of years under a previous land law (not being a law relating to mining)"

28. See s.40, NLC.
29. See s.41, NLC.
30. See sections 42 & 76 of the NLC.
31. See s.63, NLC.
32. See s.65, NLC.
33. See s.70, NLC.
34. See s.75A, NLC.
35. See s.78(3), NLC.
36. See s.81(2), NLC.
37. Section 43 of the NLC was finally amended, after pressures from various sectors of the society. The effect of the amendment was to forbid foreigners from owning land in Peninsular Malaysia without the approval of the State Authority. (vide NLC Amendment Act, 1984, Act A 587, gazetted on 28th June, 1984). A new provision was inserted for the purpose of restricting non-citizens and Foreign companies from owning land in the country. This was included as part Thirty Three (A), section 433(A), (B), (C), (D) and (E). This provision was repealed vide A658. It was only effective from 25.3.85 till 31.12.86.
38. See s.43(a), NLC.
39. See s.43(b) NLC.
40. See s.43(c) NLC.
41. See s.43(d), NLC.
42. See s.433B, NLC. It was repealed vide A658/86 w.e.f. 1.1.87.
43. See ibid.
44. See National Land Council resolutions No.3/58 & 4/58.
45. See NLC, Division II Part IV, Sections 62 to 92.
46. See chapter 2 on the effects of Malay Reservations Enactment on non-Malays.
47. Malay Reservations Enactment, FMS Cap.142, section 7. Bodies exempted from the restriction are: the Federal Lands Commissioner, Co-operative Societies, National Electricity Board, Majlis Ugama (Religious Council), Bank Bumiputra (except Negri Sembilan) FELDA, (except Negeri Sembilan) and so on.
48. NLC, s. 52(1). Under this section, on alienating a piece of state land, the NLC allows three main categories of land use to be imposed, on the land title, i.e. *agriculture, building, and industry*. One of the conditions of alienation is that the land will be subject to one of the categories of land use under s.52(1), NLC. However, the State Authority may impose a nil category under s. 52(5) of the NLC if the use can be controlled s.120 of the same Act.
49. Final titles are issued under section 77(1)(a) of the NLC. Thus the alienation of state land under final title shall be effected upon the registration of a register document of title. Before this is done, even though the land is approved for alienation by the state authority, the land shall remain state land until that time (s 78 NLC). However, this amendment wad repealed vide A615. Section 77 has been amended (vide NLC Amendment Act, 1984, Act A 587) by which the titles under which state land may be alienated

under this Act are: (a) land office title and (b) registry title. For new alienation, the issuing of registry titles has been abolished (vide section 77(A) NLC). Final title is described in detail in ss. 77, 83-92 and ss. 158-175, NLC.

50. Qualified titles (Q.T) are issued under section 77(1)(b) of the NLC. However, Q.T may be converted to final title under section 189 of the NLC when the land has been duly surveyed in accordance with sections 190 to 194 of the NLC. Qualified Title is a land title issued under section 77(1)(b) and section 77(2) of the NLC. The main difference between the qualified title and final title is that lands under Q.T have not been surveyed in accordance with the provisions of section 396 of the NLC and thus the areas of land are provisional. However,in terms of security of tenure and land dealings, they are as good as final titles.Another restriction imposed on lands under Q.T is that such lands cannot be subdivided, partitioned or amalgamated as provided by ss 136 (subdivision),140 (partition) and 146 (amalgamation), NLC. However, Q.T in continuation of final title may be sub-divided, partitioned and amalgamated.
51. Section 77(3) of the NLC,. Under the new amendment to the NLC, alienation of land is under land office title only and the issuing of registry title is ceased. [vide new sections 77A(2)(a) and 77(A)(5) NLC (Amendment) Act, 1984, Act A 587, gazetted on 28 June, 1984]. Howver, s.77A was repealed vide A 615.
52. Register of A.A. was maintained under the rules made under previous land laws, e.g. Rule 6 of the Land Rules, 1930 (made under S 246 of the FMS Land Code, Cap.138.) Those whose names have been recorded in the register of A.A have the right to registration of titles, i.e. after the land has been surveyed,final titles are then registered in their names. The A.A holders may apply for registration of Q.T pending survey. However, under amendment Act vide A587, it is now not necessary for the A.A. holders to apply for Q.T. It is the responsibility of the land office to replace A.A for Q.T.
53. Section 79(2),NLC.
54. Section 80(3), NLC. This requirement has been abolished by the NLC Amendment Act,1984. Under the new amendment, it is now mandatory for the DLA to prepare, register and issue a Q.T in respect of the land once all required fees are paid, [vide s. 80(3) NLC (Amendment) Act, 1984, Act A 587, gazetted on 28 June,1984.].
55. Section 80(2) NLC.
56. *ibid.*, see also for example, s.10 of the Federal Territory Land Rules,1975.
57. State Authority is defined under s.5, NLC as the Ruler or Governor of the State, [as the case may be]
58. See section 3(1), Land (Group Settlement Areas) Act,1960.
59. Land (Group Settlement Areas) Act, 1960, No.13/1960, s.12(1).
60. The loans normally will be fully repaid within 15 years after the plantation is in production. Once the title is issued, the land is subject to the provisions of the NLC, thus the developed land is re-vested in the state.
61. CAC is imposed in accordance with s.20 of the GSA, Act in place of premium, rent, survey and other fees fixed in accordance with provisions under s.13(1). This is to cover the cost of clearing land and other development costs incurred by FELDA or development agency.

62. Land (GSA) Act, 1960, s. 19(1).
63. ibid,. ss. 14 and 16.
64. *ibid.*, s. 15.
65. See s.65, NLC.
66. See s.67(3). See also observations of Good, J in *Papoo v Veeriah* [1965] 1 MLJ at 128.
67. The NLC Review Committee [1982] recommended that TOL should only be approved to lands which are not suitable for alienation because of their physical conditions such as lands bordering roads, foreshores, rivers or unused mining lands.
68. [1965] 1 MLJ 127.
69. See ss.44 & 45 NLC, under a grant in perpetuity or for a term of years. This also applies to land under TOL. See also *Julaika Bivi v Mydin* [1961] MLJ 310 (High Court,Perak).
70. [1967] 1 MLJ 96.
71. [1955] MLJ 103.
72. [1962] MLJ 334.
73. [1985] 2 MLJ 440.
74. [1967] 1 MLJ 96.
75. [1977] 2 MLJ 7.
76. [1983] 2 MLJ 121.
77. Report of the Land Administration Commission, 1958, paragraph 99B, p.23.
78. *ibid.*
79. For detailed description of Torrens System, See Das, S.K, *Torrens System in Malaya*, Malayan Law Journal Ltd., Singapore, 1963.
80. Wolfgang Senftleben, *Background To Agricultural Land Policy In Malaysia*, Wiesbaden: Harrassowitz, 1976, p.61.
81. *ibid.*
82. *ibid.*
83. Dewan Bandaraya, Kuala Lumpur Structure Plan, 1984.
84. Pahang has the largest area of land being illegally occupied to the extent of 70,000 acres, followed by Kelantan 45,000 acres, Kedah 45,000 acres, Perak 40,000 acres and Perlis 29,948 acres. These were 1976 figures. For 1983 figures see Table 3.2.
85. Minutes of the State Land Commissioners Meetings: 1980-1982.
86. See *Report of The Land Administration Commission, 1958,* paragraph 99B and 99C.
87. Ministry of Land Development, Second National Land Seminar, *Land Administration in Peninsular Malaysia, A Study of Some Critical Areas*, Kuala Lumpur,1973.
88. as per note 86.
89. [1984], 2 MLJ 123.
90. See s.425, NLC. Illegal occupation of state land may be fined up to a maximum of $10,000 or imprisonment for a term not exceeding one year or to both.
91. See [1982] 1 MLJ 313.
92. See [1984] 2 MLJ 123.
93. See s. 425(2), NLC.
94. [1963] 29, MLJ 368. See also *Cheong Kee Teck v Quah Hoay Kwan*, [1964] 30, MLJ 224.
95. FMS Land Code, Cap.138, section 246(iv), which was gazetted on 22nd June, 1928 (G.N. No.3547.)
96. Railway Ordinance-Malayan Union Ordinance No.8/1948. Section 22 of the Malayan Railway Ordinance states that:

22(1): Notwithstanding the provisions of any written law:

(a) The General Manager may grant leases subject to such terms and conditions as he may think fit, in respect of the whole or any portion of a railway reserve for any term not exceeding thirty years; and;

(b) the Chief Secretary (now the Federal Lands Commissioner) may grant such leases for any term not exceeding ninety-nine years.

97. Quoted from paper prepared by Malayan Railway Administration of 21.1.80, vide PBK Sulit 558/1 (Conf.)

98. Opinion of the Solicitor General, Malaysia, to the State Legal Adviser, Selangor dated 6th May, 1969, vide PN 3309/E pt.11(73) (conf). However, the current view of the Solicitor General is that the General Manager, Malayan Railway is empowered to grant leases of Railway reserve.

99. Quoted from a paper prepared by Malayan Railway Administration 21st January,1980,vide PBK Sulit No.558/80 pp.4-8.(Conf.)

100. *ibid.*, p.8-10.

101. The Railway Administration has already leased their land to various persons and bodies such as the Lever Brothers Sdn. Bhd.,in Bangsar since 5th May 1949 and the lease does not expire until 4th May 2009 with an annual payment of $25,000.00. From 11th January 1980 the annual payment was increased to $70,458.30 per year. To this day, there is no registration of lease because of the existing legal and administrative problems involving such land. Leases were also given to Sim Lim Sdn. Bhd., in Brickfields and Tasik Cement Sdn Bhd. in Cheras. The process of renewing the lease will face difficulties until the status of such land and the authority on disposal is determined.

102. Keretapi Tanah Melayu, Kertas Kerja, *Kebenaran Pendudukan Sementara dan Status Tanah Rezab Keretapi*, 21.1.1980, PBK.Sulit No.558/1.(conf.)

103. *ibid.*

104. Minutes of meeting, *Mesyuarat Perhubungan Antara Kerajaan Persekutuan dan Kerajaan Negeri*, on 23.3.1980.

105. See Article 85, Federal Constitution of Malaysia.

106. See s. 7, Malay Reservations Enactment, FMS Cap. 142. Similar provisions are provided for under the Malay Reservations Enactments of other states.

107. By "Native of Kelantan", it means a person who falls within any of the following classes:-

(a) any person born in Kelantan whose father was a Malay;

(b) any person born in Kelantan whose mother was a Malay and whose father was a Muslim.

(c) any person wherever born whose father was a Malay born in Kelantan.

(d) any person wherever born both of whose parents were Malays and who has resided at least 15 years in Kelantan;

(e) any person who was born in Kelantan and whose father was also born in Kelantan.

108. Malay Reservations Enactment, Kelantan, 18/1930, s.7, see also s.104 Kelantan Land Enactment, 1938, (restriction on sale of land to non-Kelantanese). The specified persons are: the Minister of Finance, MARA, The Housing Trust, RISDA, Bank

Bumiputra, Cooperative Societies and so on.

109. *ibid.*, s.10.
110. Article 153, Federal Constitution of Malaysia.
111. Reserved land (or land reserved for public purpose) is created under section 62 of the NLC or the corresponding provision in the previous state land laws.
112. See s.5, NLC.
113. As provided by s.64(4), NLC. Any lease of reserved land which exists at the time of reservation is revoked shall continue in force not withstanding the revocation. The procedures of obtaining the release is set out in Federal Lands Commissioner circular No.24/1980.
114. See Article 85, Federal Constitution of Malaysia.
115. Wolfgang Senftleben, *Background to Agricultural Land Policy in Malaysia, op.cit;* p.204.
116. *ibid.*, p.205.
117. See NLC, s. 13. The power of approval of state land is with the State Authority. However, in some states, this power is delegated to the State Land Commissioner or the DLA. This power is also delegated to Menteri Besar/Chief Minister under the Delegation of Powers Ordinance, 1956.
118. Only the State of Trengganu still allows the DLA to approve land applications up to a maximum of 10 acres, though conflicting applications still have to be submitted to the Menteri Besar for final decision.
119. See for examples *Kertas Dasar Kerajaan Negri Sembilan,* bil.1,12 July, 1978; *Dasar-dasar Tanah Negeri Pahang,* 1.12.1982. *Kertas Dasar Kerajaan Negri Sembilan,* no.1/1982; Dasar Pemberian Tanah Kerajaan Kedah (PSU)(K) Sulit 24/1387.
120. *ibid.*, see s. 78(3).
121. Ministry of Land and Regional Development, Malaysia, Division of Land Law and Land Management, Malaysia, unpublished report, 1983. See Appendix 3.9. This procedure has not changed significantly since the report was written.
122. Land Administration Commission Report,1958, p.25, para.104.
123. Manual for Land Administration, pp.9-10.
124. Land Administration Report, 1958 p.34.
125. Wolfgang Senftleben, *Background To Agricultural Land Policy In Malaysia.* pp.208-212.
126. *ibid.*
127. A four thousand acre block in Lasah-Jalong (Sungei Siput, Perak) has been alienated mainly to 700 Chinese and Indians. Further, the Bilut Valley Scheme opened in 1958 proved that it was not a solely pro-Malay land ownership policy. The ethnic composition was Malays 65.3%, Chinese 26.6% and Indians 8.1%. See ibid.,pp.208-212.
128. If the proprietor is a serving officer and wishes to transfer his land to another person, he must first obtain the permission of the Director General of Public Services Department or of the State Secretary. When permission is granted, he may address his application to the State Commissioner of Lands and Mines for permission to transfer.
129. Condition as defined under s.5 NLC as "does not include any restriction in interest".
130. Restriction in interest is defined under section 5, NLC as any

limitation imposed by the State Authority on any of the powers conferred on a proprietor by Part Nine, or any any of his powers of dealing under Division IV, and any limitation imposed under any previous land law.

131. See sections 92, 176 and 340, NLC.
132. *ibid.*, section 124 (1)(a).
133. *ibid.*, s.124(1)(b).
134. National Land Council, paper No.20/1963, (conf.)
135. *ibid.*, paper No.14/1961 (14th meeting), (conf.)
136. *ibid.*, paper no.20/1963 (20th meeting), (conf.)
137. *ibid.*, 35th National Land Council meeting on 28th August, 1982, minute No.9.(conf.)
138. The position in the 1971 census of Rubber Estates was that a major part of rubber acreage was owned by foreigners, mainly the British Plantation Companies, [Appendix 3.10]. Appendix 3.11 shows that in 1983, there were only 154 foreign owned rubber estates as compared to 534 in 1971. Whereas the number of Malaysian residents owned estates was 1,441 with 4 joint ownership estates. This was due to the Malaysianisation programmes by which most of the foreign-owned estates were bought over by the Malaysian companies.
139. Department of Statistics, *Principal Statistics on Ownership and Participation in Commerce and Industry, West Malaysia, 1970/1971*, p.50. The average size of the foreign owned estates was 2,198 acres compared to the average size of Malaysian owned estates of only 653 acres. A total of 31,755 persons were employed in these foreign-owned estates and this accounted for 80.7% of total employment in oil palm estates covered by the survey, see Appendix 3.12.
140. *ibid.*, pp.44-45. In the rubber schemes, of the 14,860 settler families, 13,764 or 92.6% were Malays, 598 or 4.0% of Chinese, 465 or 3.1% Indian and 33 others. In the palm oil schemes, there were 8,194 settler families and of these 8,141, or 99.3% were Malays, 3 or 0.1% Chinese and 50 or 0.6% Indians.
141. FELDA Annual Report, 1984, pp. 2, 8-10.
142. FELDA Annual Report, 1980, pp.17-21.
143. *ibid.*
144. National Land Council, Paper No.4/1958, and 12, 13/1960, (conf.)
145. *ibid.*
146. NLC, s. 42(1)(d).
147. F.M.S. Mining Enactment, Cap.147, s 11.
148. Department of Statistics, *Principal Statistics On Ownership and Participation in Commerce and Industry, West Malaysia*, p.81.
149. *ibid.*
150. National Land Council, papers No.12, 13, & 14/1960, (conf.)
151. Procedures and Policies of Land Alienation in Wilayah Persekutuan, JPM(S) 16429/3/3 jld.1,1981. Such a policy was agreed to by the Prime Minister on 28th August 1980, (conf.)
152. *ibid.*
153. Dewan Bandaraya, Kuala Lumpur Master Plan, 1980, pp.35-50.
154. Kertas Dasar Kerajaan Negeri Sembilan, bil.1.12th July, 1978, (Negri Sembilan Policy Papers).
155. Dasar-dasar Tanah Negeri Pahang, 1.12.1982, (Pahang Land

Policies)

156. Kertas Dasar Kerajaan Negeri Sembilan, No.1/1982,(Negeri Sembilan Policy Papers)
157. *ibid.*
158. *ibid.*
159. Dasar Pemberian Tanah Kerajaan Kedah (PSU)(K) Sulit 24/1387 jld.iii),(conf.),(Kedah Land Alienation Policy)
160. NLC, s 43. This section stipulates that as long as a person is not a minor, irrespective of his citizenship status, may apply for alienation of state land. However, this provision is solely left to the discretion of individual state government. However, this provision has been amended, vide NLC (Amendment) Act, 1984, Act A587, see the text of the amendment in Appendix 3.23. This amendment was repealed w.e.f.1.1.1987, vide A658.
161. Ministry of Land and Regional Development,Administrative and Legal Division,(unpublished report 1982,),(conf.)
162. *ibid.*, 1976 report (conf.).
163. The whole of Part Thirty Three (A) was revoked vide Amendment Act A 658
w.e.f 1.1.1987. Thus non-citizens can now own any type of land without having to get any approval from the relevant authority.
164. See Second Malaysia Plan (2MP), 1970-1974, Govt., Printer, 1969.
165. See Third Malaysia Plan, (3MP), 1975-1979.
166. *ibid.*
167. *ibid.*
168. The term *region* refers to relatively contiguous land mass which is in a more or less uniform stage of development,has similar resources and economic activities and is dominated by a single metropolitan area. A region, therefore, may encompass an entire state or group of states. In this chapter, the country is taken as being composed of six regions: (a) Northern: Kedah,Perak,Perlis and Pulau Pinang. (b) Central: Federal Territory, Melaka, Negri Sembilan and Selangor. (c) Eastern: Kelantan, Pahang, and Trengganu (d) Southern: Johore.
169. The main objective of the establishment of the Regional Development Authorities is to reduce economic disparities among regions. Through regional development, a number of national objectives,including the provision,expansion,and modernization of public services to further improve the standards of living of the people in the less developed regions,are to be realized.These regional development objectives are to be achieved through the optimal utilization of natural, human, and financial resources, and planned urbanisation of selected areas. Migration of labour from resource-poor areas to areas with relatively high potential for growth facilitaes the attainment of the regional development objectives. Urbanisation also enables the provision of better services and facilities for the rural population in the hinterland, thereby allowing them to enjoy a better quality of life.
170. Johore Tenggara Regional Development Authority (KEJORA) Act,1972.
171. Pahang Tenggara Development Authority (DARA), Act, No.68/72.

172. Trengganu Tengah Development Authority (KETENGAH), Act 1973.
173. Kelantan Selatan Development Authority, (KESEDAR), Act No.203/1978.
174. Penang Regional Development Authority, (PERDA) Act 282 of 1983.
175. See Fourth Malaysia Plan, pp.36-37.
176. *ibid.*, p.37
177. FELDA Annual Report, 1984, p.18.
178. *ibid.*
179. National Land Council, 35th meeting, 28th August, 1982, minute No.7.1. However, in the 38th meeting of the Council, on 21st September, 1984, (minute no.5.4.), the government has changed the policy and agreed to implement the FELDA Share system. The policy was subsequently implemented by FELDA on 1st January, 1985. In 1988, the FELDA share system was revoked by the Government.
180. Ministry of Agriculture, Malaysia, *Lapuran Pembangunan Tanah-Tanah Terbiar*, Julai, 1980, typescript.
181. In 1978 the Economic Planning Unit revised the official poverty line downward from M$33 to $M29 per month in 1970 prices. The present poverty line is $350 a month in 1988 prices, (in Peninsular Malaysia). It is roughly estimated that about 43% of the population was in poverty in 1975 and in 1984 it declined to 18.4%. Some of the findings of the World Bank on poverty in 1978 were:
    (a) Poverty was more widespread in rural areas than in urban areas.
    (b) Among the three racial groups, the incidence of poverty was by far the highest among Malays. More than a quarter of rural Malays were below the low poverty line of M$15 a month.
    (c) For the low poverty line, 85% of all the poor were Malays; in rural areas this proportion was 90 %. For the high poverty line, M$33 a month, these proportions still were 73 % and 80%. In urban areas the incidence of poverty of Malays under three poverty lines was also higher than that of other races. See, Kevin Young, *et.al.*, A World Bank Country Economic Report, *Malaysia, Growth and Equity in a Multiracial Society*, pp.113-117. See also 5MP, 1986-1990, pp. 84-92.

# CHAPTER 4

## LAND USE POLICY IN PENINSULAR MALAYSIA

Land legislation and planning laws govern and define the parameters of the land use policy of Peninsular Malaysia. However, within the aforesaid parameters, it is the State Authorities (the state governments) and the National Land Council which determine the context and thrust of the land use policy actually implemented. This chapter examines the forms of land use control and the efficacy thereof from the early part of the 20th Century when land legislation and planning laws were first introduced in Peninsular Malaysia. The examination of land use control and land use restrictions are undertaken in an attempt to assess the role of planning and land legislation in shaping the present land use policy of the country. The latter necessarily involves an account of the development of the land legislation and planning laws in relation to land use control - which is presented next.

Policy on land use begins when the state government alienates a piece of land and issues a land title to a person or body under the Land Code.[1] The land granted under the Land Code, is subject to positive and negative conditions. Failure to observe these conditions renders the land liable to forfeiture by the government without any compensation whatsoever.[2] The land owner may apply for a change of use of his land.[3] He may also apply to sub-divide his land into portions to be held under separate land titles.[4] Within local authority areas where

planning legislation is also applicable, no development or use of land is allowed without permission from the local authority which is responsible for physical planning in its area.[5]

Nevertheless, conditions attached to land titles prevail over planning restrictions.[6] To avoid conflict, local authorities are consulted before the state government grants land or allows an owner's application for change of use.[7] For this reason, no land sub-division can be approved without the local authorities' consent. Outside local authority areas, control is exercised only through the land legislation, now the NLC.

*OBJECTIVES OF THE LAND USE POLICY*

In this chapter, 'land use policy' and 'land policy measures' refer to that part of development policy and development policy measures which are related to the role of land in the implementation of urban and regional plans.[8]

The main objective of land use policy in any country is to ensure that land needed for urban and regional development (either for public or private uses) is available in the needed quantities,[9] at the appropriate locations, for the appropriate tenure, at the right time and at the appropriate prices, having regard to efficiency and equity in the allocation of resources, in pursuit of targets in urban and regional plans.[10]

The current land legislation which sets out the land use policy for the country is contained in the NLC, 1966. The main objective of the land use provisions in the NLC is to ensure that land is used according to the conditions (express or implied) endorsed on the land titles.

The earlier land laws had some provisions on land use policy.

These provisions were intended to serve a number of purposes or objectives. One of the objectives was to ensure that land was not under-utilised. The Malays, for example, were given agricultural lands in the hope that their lands would be used for paddy cultivation.[11] However, the financial advantages of rubber cultivation have induced the Malay landowners in the Malay reservation lands to plant rubber.[12] The land use policy for mining in the earlier laws was meant, *inter alia* to exercise control over the mining operations by preventing silting of rivers and large ugly scars on the country side. Another control objective was and is to ensure safety in the mines.[13]

In the case of agricultural land, the policy against sub-division was adopted to ensure that each sub-division portion did not become an uneconomic holding leading to low productivity, under-employment and under-utilisation of land.

The provisions on land use and sub-division in earlier land laws covered all areas - within as well as outside local authorities. But the land laws did not provide for the preparation of land use plan.

***FACTORS INFLUENCING THE LAND USE POLICY***

Besides legislation, the land use policy of the country is also influenced, directly or indirectly, by political, social and environmental considerations which dictate the decisions of the EXCOs at the state level and the National Land Council at the federal level.

In deciding on the alienation of land, the State Authority acts on the advice of the State EXCO which in turn is guided by the recommendations of the development agencies. The identities

of the persons to whom state land is to be alienated, the extent or acreage thereof, whether it is to be used for agriculture or industry or building and the express or implied conditions to which it is to be subject are clearly political issues which fail to be determined as such economic considerations as the cost-benefit advantages. For example, the objectives of the National Agricultural Policy[14] have to be taken into account in the disposal of land for agricultural purposes. Fundamental to a sound land use policy would be the economic objective of maximising income from agriculture through the efficient utilisation of land in the light of current agricultural production.[15]

The land use policy also incorporates a social benefit dimension.[16] For example, in relation to agricultural land, it should seek to maximise farm income. As for land designated for residential, commercial or industrial use, the land use policy should be geared to ensuring the growth of these sectors to the overall economic development of the nation and to bringing about the equitable distribution of the benefits thereof - especially in relation to land and house ownership. The right use of land through a well balanced industrial and commercial policy optimising the use of the scarce industrial and commercial land will have direct social benefit of increasing employment in the commercial and industrial sectors. Enhancing the productivity of the agricultural, industrial and commercial sectors will serve not only to alleviate rural and urban poverty but also facilitate the retention of productive labour in agriculture and create more employment for the urban population.

The EXCO also determines the crops [17] which may be raised on the land to be alienated. This is a critical factor as it affects farm income and thereby stimulates farm development. Thus, except where the national interest indicates otherwise, the EXCO's decision as to the crops which may be raised on the land to be alienated will be determined by the income-generating potential thereof (see Appendix 5.5). However, the crops ultimately permitted will also be determined by such environmental factors as the location and extent of arable land and its geological, physiographic, climatic and soil suitability.

*THE INFLUENCE OF THE FEDERAL GOVERNMENT ON LAND USE POLICY*

The federal government, through the National Land Council, may influence the state governments on land policies pertaining, *inter alia* to the land use thereof.

One of the functions of the National Land Council is to formulate a national policy for the promotion and control of the utilisation of land throughout the country [18] regardless of whether the area is within a local authority's jurisdiction or not.

As land is a state matter, legally, it is through this Council that the federal government can have influence on land use policy within the states. Similarly, administrative bodies like the National Action Council and the National Development Planning Committee do not have legal power to influence the state Governments on matters of land use policy, except through the National Land Council.

There are, however, other administrative means by which the federal government can influence the state governments on the

land use policy. Since the federal government investment in the states is very substantial, (see Appendix 1.3b) it can use this to make the state to follow its policies on any matter including land use even though it does not have the legal power to do so.

*The Role of Ministries and Departments*

The ministries and some related government departments including the Ministry of Housing and Local Government, Ministry of Land and Regional Development, Ministry of Agriculture, Federal Town and Country Planning Department and the Economic Planning Unit of the Prime Minister's Department, are involved directly or indirectly with land use policy and control. The Regional Development Authorities too are involved in the formulation of land use policy.

The Ministry of Local Government and Housing is charged with ensuring that the states adopt the Town and Country Planning Act 1976, as soon as possible. The Ministry is also responsible for the Federal Town and Country Planning Department. This Department is responsible (though this is not provided by law) for co-ordinating physical planning for the whole country.

As far as land use policy is concerned, the Ministry and the Regional Development Authorities have to work closely with the state governments because under the law,[19] the State Government has the final say on policies pertaining to land use within its territory. Under the NLC, the Federal Lands Commissioner (FLC)[20] is empowered to convene meetings of the State Directors of Lands and Mines for the purpose of consultation on the administration of the NLC.[21] The Federal Lands Commissioner and through him,

the Federal Government is in a position to influence the state governments through the Directors of Lands and Mines Conference on all land matters including the land use policy.

*THE ROLE OF KELANG VALLEY REGIONAL PLANNING AUTHORITY*

This is a council set up in 1981 under the Prime Minister's Department under General Circular No. 2/1981. One of the functions of the Council is to consider important applications for planning permission which deviate from any policy strategy and plan approved by it (the Council). The plans to be approved by the Council include the regional perspective plan, regional strategy map and regional development plan. This Council is thus directly responsible for the land use policy and planning for the Federal Territory and four districts in Selangor (Gombak, Kelang, Petaling and Ulu Langat). As this is an administrative body, it has no legal force except through administrative persuasion. The Council is chaired by the Prime Minister and the deputy chairman is the Menteri Besar (Chief Minister) of Selangor. Hence, administratively, the Council may have great influence on the land use policy of the areas covered by the Council as the Chairman and the Deputy Chairman are the top executives of the government in power.

*HISTORICAL PERSPECTIVE OF LAND USE POLICY IN PENINSULAR MALAYSIA*

The effectiveness of land use policy is determined by the various laws that govern it. For the laws to be effective, there must be effective enforcement and effective legal and administrative control over the land use planning. As the effectiveness of the enforcement and control machinery plays a significant role in ensuring the success of the land use policy

of the country, the forms of control and the enforcement capability thereof from the time when land legislations and planning laws were first introduced in Peninsular Malaysia to the present are discussed next.

***EARLY FORMS OF LAND USE CONTROL AND RESTRICTIONS UNDER LAND LEGISLATION***

Among the early laws were the Crown Lands Ordinance,[22] 1886, the Land Enactment 1911 and the Registration of Titles Enactment 1911. The latter two laws were later consolidated into one law known as the Land Code 1926.[23] The Crown Lands Ordinance, 1886, was in force in Malacca and Penang whereas the Land Code 1926 was in force in the former Federated Malay States (FMS). Other Unfederated Malay states (UMS) had laws quite similar to FMS Chapter 138 (Cap.138).[24]

Under the FMS Cap. 138, the control of land use was effected through the imposition of conditions by the state government upon alienating land to an individual.[25] When a piece of state land was alienated, one of the two titles was issued: either a title in perpetuity (freehold) or title for a term of years (leasehold). A title in perpetuity was usually granted for agricultural land in rural areas. For town land, leasehold title was usually issued. Conditions endorsed on the title document itself were known as 'express conditions',[26] and those not endorsed on the title document but specified by law were known as 'implied conditions' [27] With regard to cultivation, the 'express conditions' usually specified the particular crop or class of crops which was to be cultivated and prohibited the cultivation of any particular crop or class of crops.

The express conditions could be either positive or negative. Positive conditions were related to things which the proprietor was to do on or to his land. He could, for example, be required to undertake drainage, levelling and terracing work, the erection of a particular type of building for a designated purpose within a fixed period, and the planting of specific crops such as rubber or fruit trees. Negative conditions required him to refrain from doing specific things on or to his land. For instance, the use of premises on the land could be restricted to personal occupation by the proprietor. Under the FMS Cap.138, 'express' and 'implied conditions' ran with the land and bound the grantee and subsequent proprietors thereof.[28] Breach of conditions could result in the land being forfeited.[29] The proprietor nevertheless could apply for a change of express conditions.[30] But when the approval was given, he could be required to pay a further premium and a higher annual rent if the new use enhanced the value of the property.[31]

FMS Cap.138 controlled the sub-division of land in that no separate title would be registered unless the sub-division had been approved under section 101 of FMS Cap. 138. Within a local authority area, there were provisions in FMS Cap. 138 [32] itself. For land within a local authority area, the Town Boards Enactment[33] provided that the sub-division had to be approved by a local authority before titles for the sub-division portions could be registered under the FMS Cap. 138.

Other laws provided for the control of mining and land conservation. In the former FMS, the relevant law was the Mining Enactment 1926 (FMS Cap.147). In Penang and Malacca, mining was

governed by the Mining Rules 1923, made under Crown Lands Ordinance, 1886 (SS Cap.113). Mining in the UMS was subject to State Enactments not substantially different from FMS Cap.147.[34] Under these enactments, the right to mine was granted by the state governments in the form of a lease subject to various conditions, either endorsed on the lease itself or implied in the mining laws. As in the case of land titles, the conditions could be positive or negative. Breach of conditions rendered the lease liable to forfeiture.[35]

Concerning land conservation in the former FMS, there was the Silt Control Enactment (FMS Cap.143) enacted before 1935. In Malacca and Penang, there was the Hill Lands Enactment 1951. In Kedah, there was Enactment No. 110 (Silt Control) enacted before 1935. There was also the Hill Lands Enactment 1951 of Pahang and the Prevention of Soil Erosion Enactment 1940 of Kelantan. Generally, the laws on silt control empowered the relevant authority to make an order prohibiting the land owner from doing certain acts which could cause soil erosion. With regard to laws on hill lands, the control took the form of prohibitions on the cultivation on or removal of trees (unless under a special permit) from any land in an area declared as hill land.

***EARLY FORMS OF LAND USE CONTROL AND RESTRICTIONS UNDER PLANNING LEGISLATIONS***

The earlier planning laws relating to local authorities were confined mainly to the control of buildings. The Sanitary Boards Enactment, 1916, which was one of the earliest planning laws is an example. The Enactment empowered the Sanitary Boards set up under it to regulate and control buildings and building

operations. In 1917, a Town Improvement Enactment was passed. It empowered the Sanitary Boards to carry out town improvement schemes known as a general improvement scheme.[36] In 1923, the first Town Planning Enactment (1923 Enactment) was passed to provide for the improvement and development of towns and other areas. The 1923 Enactment repealed the Town Improvement Enactment 1917. The 1923 Enactment provided for the declaration of any area within the state to be a town planning area.[37] The state government was empowered to appoint a Town Planning Committee.[38] The duties of the Committee included the modification and adoption of a general town plan, receiving and deciding on applications to lay out any land, erect any buildings or use any land.[39] Any person or public authority desiring to lay out any land, erect any buildings or use any land within a town planning area had to submit an application to the Town Planning Committee. If the application was rejected, the applicant could appeal to the state government.

The Town Planning Enactment 1927 updated the 1923 Enactment to provide for the planning of Sanitary Board areas. Most of the provisions of the 1927 Enactment were later included in the Sanitary Board Enactment 1929 as Part IX thereof. In 1935, the 1929 Enactment was revised to incorporate all the amendments to date and came to be known as the Sanitary Boards Enactment FMS Cap. 137. The provisions for town planning remained under Part IX of the Enactment.

The general town plan allowed to be prepared under Part IX of FMS Cap 137 was more or less similar to the one allowed under the 1923 Enactment. The plan could show the streets, railways and

other means of transportation; zones or districts set apart for use for residential, commercial, industrial, agricultural or other specific uses, reserves for government purposes[40] and parks, recreation grounds and similar open spaces. There were provisions requiring the plans to be publicised and objections to be heard before it was approved by the state government.[41] FMS Cap. 137, made the approval in writing of the Sanitary Board mandatory for the sub-division of land registered under land legislation.[42] In 1939, one of several amendments to Part 1X FMS Cap. 137 specified that the number of houses in any acre of land should not exceed the number indicated in the plan as the number of houses per acre permitted for a particular zone or district.

In 1946, the title 'Sanitary Boards' was changed to 'Town Boards' under British Military Administration Proclamation No. 31.[43] As a result, the Sanitary Boards Enactment FMS Cap.137 became the Town Boards Enactment FMS Cap.137.

It is to be noted that the above is an outline of the development of planning legislation only in respect of the former FMS comprising Negri Sembilan, Pahang, Perak and Selangor (1896 to 1946) whereas, Johor, Kedah, Kelantan, Trengganu and Perlis were each separately governed until 1946. Malacca and Penang were part of a political unit known as the Straits Settlements. It was for this reason that there were different laws in some states.

In Johore, the law on town planning was part IX of Enactment NO.118. In Kelantan, it was Part V1A of the Municipal Enactment 1938. In Trengganu, the law was Part IX of the Towns Boards Enactment 1936. Malacca and Penang adopted Part IX of FMS

Cap.137 in 1949, Perlis in 1952 and Kedah in 1956. From 1948, all the states were part of one political unit known as the Federation of Malaya which unit had, between 1946 and 1948, known as the Malayan Union. In spite of the political unification, there was no attempt to have a unified town planning law until very much later. By 1956, all states of Peninsular Malaysia had laws on town planning involving the preparation of a general town plan, the control of use and sub-division of land.

The objectives of control, since the First Town Planning Enactment of 1923, had extended beyond just safety and health. The zoning of land (on which control was based) for residential, commercial, industrial, agricultural and other uses in the general town plan was to ensure that there was sufficient land for the various uses and to prevent the mixing of incompatible uses. Further, the objective of sub-division control was to ensure that each sub-divided plot was suitable for building purposes and that the layout of a sub-division was suitable for future development of the area. Sub-division control was also intended to ensure that streets, back lanes and open spaces were provided when sub-division was approved. The basic objective of land use control as described above was to implement proposals and policies on the development and use of land as laid down in the development plans. In urban areas, these proposals and policies are aimed mainly at ensuring that there was sufficient supply of land available and at reasonable costs for all the necessary urban activities such as housing, industry, commerce, services, recreation and so on. Lands are also required for public facilities such as roads, hospitals, sewers and schools

and it was also to ensure that the activities and facilities were appropriately accessible to each other.[44] Specific objectives of land use control can be seen in the various types of development and use such as industrial, commercial and housing development, town centre development, development of rural areas and mining. The objectives of control in respect of industrial, commercial, housing, town centre and development in rural areas, are listed in Appendix 4.2.

## *THE PRESENT LAND USE POLICY IN PENINSULAR MALAYSIA*

### *Present Land Use Patterns*

Table 2.2 on page 144 shows the present land use for Peninsular Malaysia. Of the land alienated for agriculture, about 2.4 million acres have been identified as forests, swamp forests, shrub or grassland.[45] Forests alone covers over 1.7 million acres, including about 1.3 million acres on class 1, 2 or 3 soils. About 110,000 acres of land alienated for agriculture are under the categories of urban and associated areas, state buildings and tin mining. Of the total 11.2 million acres alienated for agriculture, only about 8.6 million acres are actually under crops.[46] Hence, there appears to be a substantial under- utilisation of the alienated land. Taking state land and unalienated Malay Reserves together, that is areas which may be regarded as unencumbered state land and readily available for development, out of a total area of about 10.9 million acres, about 3.4 million acres were class 1, 2, or 3 soils. About 550,000 acres are under crops.[47] These represent illegal occupation in part, but it is also due to lags in the land office records. It is to be noted that unalienated Malay reserves cover

about 4 million acres of which only about 800,000 acres were on class 1, 2 or 3 soils.

Forest reserves cover about 7.7 million acres with about 2.5 million acres on class 1, 2, or 3 soils. About 130,000 acres of forest reserves are under crops. As with state land or unalienated Malay reserves, they represent illegal cultivation and lags in land office records.

About 5 million acres out of a total crop land of about 9.6 million acres, including newly cleared land are cultivated with rubber.[48] About 750,000 acres are over-mature rubber requiring replanting. About 2.5 million acres of rubber are in class 1 or 2 soils. While not all of this area may be suitable for diversified cropping, this represents a large potential for crop diversification, should the need arise. It is to be noted that some rubber is also grown on soils less suitable for it. These include poorly drained class 1 or 2 soils in addition to class 3 or 4 soils of the coastal plains and alluvial areas. Some of these may be converted for annual crops, including paddy.[49]

It is also seen that from about 15.1 million acres suitable or marginal for most of the crops, about 5 million acres are under permanent tree or shrub crops such as rubber, oil palm, coconuts, cocoa, and coffee, and another 7 million acres are under forest, swamp or shrub grasslands. Annual crops on these soil covered only about 1.6 million acres of which over 900,000 acres are cultivated with paddy.[50]

***POLICY ON LAND USE FOR LAND ALIENATED BEFORE THE COMMENCEMENT OF THE NATIONAL LAND CODE***

The land use policy for land alienated before the coming into

force of the NLC is regulated by section 53 of the NLC. Such lands which is, at the commencement of the Act, country land ortown or village land held under a Land Office Title, shall be used for agricultural purposes only.[51]

However, under section 115 of the NLC, this condition will not apply to the use of any part of the land for any purpose which it could be lawfully used if it were subject instead to the category of agriculture.[52] Furthermore, the condition mentioned above will not prevent the continued use of any part thereof for any industrial purpose for which it was lawfully used immediately before the coming into force of the NLC.[53] The above condition too will not be applicable to any part of the land which is occupied by or in conjunction with any building lawfully erected before the commencement of the NLC. It will not be applicable also to any building erected after that commencement, the erection of which would (under section 115) be lawful if the land were subject instead to the category of agriculture. Thus, by virtue of section 53(3), NLC, all lands other than those mentioned above, will become subject at the commencement of the NLC, to an implied condition that it shall be used neither for agriculture nor for industrial purposes.

By virtue of section 53(4), the breach of any condition to which the land is subject will not render it liable to forfeiture unless compensation is paid as may be agreed or determined under section 434 of the NLC.

Section 53(3), however, is subject to controversy. The land administrators have all the time been of the opinion that 'neither for agriculture nor for industrial purposes' means that

the land shall not also be used for building. However, this assumption was challenged in *CLR Federal Territory v Garden City Development Berhad.*[54] In this case the Privy Council held that any land which was alienated before the commencement of the NLC, which is not subject to any condition (neither for agriculture nor for industrial purposes), may be used for building purposes without the necessity of application for change of use, hence no premium should be imposed. It was now clear that unless the State Authority acts under section 54 of the NLC to impose a category of land use on the land in question, the land may neither be used for agricultural nor industrial purposes. But this does not mean that it cannot be used for erecting buildings generally even after the commencement of the Code without there being an application for the imposition of the category 'building'. This is what section 53(3)(ii) of the NLC intended to provide for, more so in view of the fact that, in the case in question, the condition of use endorsed on the title did not have the effect of restricting the use of the land to agricultural purposes only.[55]

***LAND LEGISLATION AND LAND USE POLICY UNDER THE NATIONAL LAND CODE***

The varied land use patterns for Peninsular Malaysia outlined above need some control to prevent the under-utilisation of land. The NLC which came into force in 1966, contains new provisions which set a new policy on land use for Peninsular Malaysia.

Under the Malaysian Torrens system, the State Authority may impose substantial restrictions and conditions on the use of alienated land. The imposition and regulation of such conditions and restrictions serve both as a kind of limitation on private ownership of land and as a means of control of land use. Among

the restrictions that may be imposed by the State Authority include specifying whether the land is to be used for agricultural, building or industrial purpose, the sub-division, partition and amalgamation of land, and compulsory acquisition of land.

The NLC classifies land above the shore-line,[56] into town, village and country land.[57] In the case of land alienated under the NLC,1965, a category of land will be endorsed on the issue document of title along with such express conditions and restrictions in interest as may be imposed by the State Authority as it deems fit.[58] The three categories of land use under section 52(1), NLC, 1965 are agriculture, building and industry. Under the new amendment to the NLC, (effective from 25.3.85 till 31.12.86) no land subject to the category of building may be disposed of or dealt with, except by a way of a charge or a lien,[59] to a non-citizen [60] or foreign company[61] without the prior written approval of the State Authority.[62] This provision however was repealed in 1987.

However, there is no such restriction on industrial land.[63] In respect of land subject to the category of agriculture [64] or to any condition requiring its use for any agricultural purposes, there is an absolute prohibition on its disposal to and restriction on its dealings (except by way of a charge or a lien)[65] in favour of a non-citizen or foreign company.[66] Any acquisition of land in contravention of any of the above shall be null and void,[67] (the above provisions were only effective from 25.3.85 till 31.12.86 as it was repealed in 1986 vide A658).

The NLC is a unified law, and in order to achieve uniformity

of classification of land use, the NLC makes specific provisions for the conversion of land alienated before the commencement of the NLC into the present land use system. As for land alienated before the commencement of the NLC, until the State Authority imposes a category of land use under section 54 of the Code. Town/village land held under land office title and country land which, immediately before the commencement of the NLC 1965, is not subject to an express condition requiring its use for a particular purpose will be subjected to an implied condition that it shall be used for agriculture purposes only[68] whereas town/village land held under Registry title, is subject to an implied condition that it shall not be used either for agricultural or industrial purposes.[69] However, this does not render unlawful the continued use of any part of the land for any agricultural or industrial purpose permitted before the commencement of the NLC 1965.[70] For buildings lawfully erected before the commencement of the NLC or erected after its commencement, the erection of which would be lawful if the land was subject instead to the appropriate category (namely 'building'), is also allowed.[71] This has been decided by the Privy Council in *Garden City Development Bhd v Collector of Land Revenue Federal Territory.*[72]

There are provisions under the NLC whereby the State Authority may alter any category of land use on application by the registered proprietor of the land.[73] Provisions are also made under the Code for the recission, amendment or imposition of any express condition or restriction in interest in respect of the land.[74] Although the State Authority, in approving an application

in respect of any of the above matters, has the discretion to impose such conditions as it may think fit in addition to the payment of a further premium and the imposition of a new rent,[75] the Federal Court in *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd*, held that such discretion of the State Authority is not unfettered and that the conditions imposed must be fair, reasonable and related to the permitted development of the land in question.

***NEW CLASSIFICATION OF LAND USE***

While retaining the old system of classification *viz.* town, village and country, a new two-fold system of land classification was introduced under section 51 of the NLC to secure proper control[76] of future land development. The new system of land classification is now based on use, that is according to three categories, agriculture, building and industry.[77] When a category has been imposed on land, that land must be used for the purpose endorsed in the title and no other, for example, if land is subject to the category agriculture, then that land must be fully cultivated (or otherwise used for agriculture) and no part of it may be used for a non-agricultural purpose such as building or industry. This intention is, however, nowhere expressly stated except that it can be inferred only from a detailed study of the provisions of Part Seven.[78] Section 52(1)(b) of the NLC indicate that when a category is imposed, the land automatically becomes subject to certain conditions as specified in various sections of that Part and it is by virtue of those conditions alone that effect is given to the above intention.

The new system of classification by categories is different

in kind from the old system under the previous Land Code.[79] The classes specified in Section 51 exist in their own right and have a general application to all lands, whereas the categories specified in section of the NLC have no meaning or existence except in association with alienated land, that is a category exists only if it is endorsed on a document of title. This distinction, however, is of academic interest only. It does not prevent the two systems from working harmoniously together and the category system has been designed to operate within the framework of the older classification.

The method by which land is classified into town, village and country land is the same as under the previous land laws [80] that is by declaring a specific surveyed area to be a town or village. This is now done under Section 11(d) of the NLC. Country land, however, does not need to be declared as such. This is so because by virtue of section 51(2)(c) of the NLC, any land above sea-level which is neither town nor village must necessarily be country land.

*The Imposition Of Categories*

The principles underlying the provisions respecting categories are: [81]

(a) Control of development by these means is to be applied in all cases of future alienation.

(b) It would be inequitable for such stringent control to be applied to lands already alienated free from their liability.

The above principles are expressed in very general terms and need to be qualified by a further two:

(c) Notwithstanding the validity of principle (b), it is nevertheless reasonable to enable the State Authority by a considered act of policy, to extend these controls to lands already alienated provided such extension is subject to appropriate safeguards.

(d) Lands approved for alienation under previous land laws but in respect of which title still remains to be issued under the NLC are analogous with lands already alienated and should be treated according to principle (b) and not principle (a).

As mentioned earlier, categories are created by being endorsed upon documents of title. Chapter 2, Part 3 of the NLC specifies three different circumstances by which in accordance with the principles described above, such endorsement can be effected. These circumstances are shown in Appendix 4.1

It is to be noted that the circumstances in these cases are entirely different in kind from those which are set out in sections 52 and 54(1). Both sections will be considered later when the actual processes of land development and control are discussed.

The most common method of implementing the category system which forms part of the land use policy, is that the category prescribed in the notification is to be endorsed on the document of title (which was at the date of the notification, state land) and which was at any subsequent date approved for alienation under section 79 of the NLC.

The provisions of this section 52 and its subsequent sub-sections can have no application to land already alienated,

whether under previous land laws or under the NLC, but apply only to state land. Section 52(2) does not, however, apply to all state land existing at the date of notification. The following types of state land are specifically excluded:

(a) state land already approved for alienation under a previous land law.[82]

(b) state land already approved for alienation under section 79 of the NLC.

(c) state land which the State Authority directs shall not be made subject to a category.[83]

(d) state land which has 'at any previous time been alienated'[84]

In respect of land which has reverted to the state on the termination of a lease that the building thereon may be in good repair or that it may be under good cultivation and capable of re-alienation. In such cases, the State Authority would impose an appropriate category under section 52(3) of the NLC. Sometimes, however, the State Authority may direct that no category be endorsed on the land title in cases where it considers that express conditions would be more effective.[85] This is a provision of the greatest importance. Such land may neither be agriculture, nor industrial nor buildings, such as lands for a private air field, a golf course, a race course and the like. In such cases and in any others in future, the imposition of a category would be inappropriate as control of development must be secured by *ad hoc* express conditions and restriction in interest according to section 120 of the NLC. The imposition of a category as explained above is a matter of policy for the State to

determine when the situation arises. The State Authority would not exempt land from the burden of a category if they considered that proper measures of control were not otherwise provided.

As described above, there are five ways by which category of land use can be imposed.[86] Whichever is used, the results are precisely the same in all cases. However, linked to each category, there are particular statutory conditions and restrictions in interest which come into effect at the time of endorsement. Thus, the endorsement of a category upon a document of title, the land in question, by virtue of Section 52(1)(b) NLC becomes subject to:

(a) that series of implied conditions which is appropriate to the particular category as specified in Chapter 3 of Part Seven of the NLC, and;

(b) those express conditions, appropriate to that same category and as specified in Chapter 4 of Part Seven which the State Authority may see fit to impose.

As stated earlier, at the commencement of the NLC, all alienated land in the country will necessarily be held subject to conditions specified under previous land laws, and will remain so held until a declaration is made by the State Authority under Section 54(1) of the NLC. As such, there will be, for many years to come two systems with respect to conditions operating side by side, namely, that provided under previous laws and that provided under these two chapters of the NLC. It is thus essential here to examine in detail the difference between the two systems and to distinguish them carefully. The innovation in the NLC which was absent in the old land laws was the following two principles in

respect of the status of express and implied conditions, *viz;*

(a) as a general rule, express conditions take precedence to, and may overide or negate, any implied condition which may arise by reason of a category.[87]

(b) Notwithstanding (a) above, the particular conditions with respect to boundary marks and their preservation, implied in section 144 (which applies universally and is not related to any category) take precedence over, and may not be overidden by, any express condition under section 120(4) of the NLC.

***Implied Conditions for Land subject to the Category Agriculture.***

This is a new provision in the NLC and it was absent in the previous land laws. In terms of land use policy, lands subject to category of agriculture will have the implied conditions as set out in Appendix 4.2.[88]

Besides implied conditions, land subject to the category of agriculture is bound by express conditions and restrictions in interest.[89] The State Authorities therefore, are completely unfettered in the drafting of express conditions in the circumstances discussed above.[90]

***Implied Conditions For Land Subject to the Category of Building***

Previous land laws made no provision for the application of any implied building conditions. Buildings then were regulated solely by express conditions of any title. Thus, section 116 (NLC) is a new provision. The main objective of this provision is to ensure that building land must be used solely for building purposes within a period of two years from the relevant date.[91] This section also stipulates that no part of the land shall be

used for agricultural or industrial purposes[92] and no such building shall be demolished, altered or extended without the prior consent in writing of the State Authority.[93]

As a result of this new provision, section 116(1)(d) (NLC) provides that a proprietor of the land immediately before his lease expired, could not demolish his buildings or otherwise reduce their value just before they revert to the State Authority. This condition can only be enforced by a Court injunction. Section 116(4) NLC sets out in detail the purposes for which building land can be used. However, the State Authority may prescribe any purpose for which the building land can be used, by rules under section 14, NLC, depending on the circumstances of any particular case.

As regards the express conditions and restrictions in interest for land under the category of *building*, the State Authority is given wide powers enabling it to impose various conditions with respect to the area, design, the dates of commencement of the building and so on.[94]

*Implied Conditions for Land Subject to the Category of Industry*

The whole section of 117 is entirely new. The term *industry* relates more to 'heavy industry' or large scale cargo and goods transport. However, by virtue of Section 117(1)(a)(v) the State Authority could prescribe purposes of a border-line nature.[95]

The implied conditions as to the use of alienated land which is subject to the category of industry, as prescribed by section 117 NLC are shown in Appendix 4.3.

Thus, the land use policy provided by the Code enables the State Authority to enjoy not only the land that reverts to it on

the expiry of the lease but also whatever buildings or installations that were built by the previous owner.

However, it is to be noted that industrial land can also be used for the provision of educational, medical, sanitary, or other welfare facilities or for any purpose the State Authority may think fit to authorise.

*Change of Use of Land*

Under section 124 NLC, the proprietor of alienated land may apply to the State Authority for the alteration or the imposition of any category of land use, the rescission or amendment of any express condition or restriction to enable him to use or develop his land for purposes other than those currently allowed or the imposition of a restriction in interest. For example, a piece of land previously alienated for the purpose of planting coconuts may now be more beneficially used for building. This process is known as conversion. Under section 124(5) of the NLC, the State Authority is empowered to direct the applicant-proprietor to comply with such other requirements as the State Authority may think fit. However, the discretion of the State Authority to impose such conditions as it deems fit is not unfettered. The conditions imposed must be fair, reasonable and be related to the permitted development of the land in question. (See *Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd.*[96]) In addition, the Federal Court ruled that the Land Executive Committee does not have the power to make the proprietor give up its freehold title and receive in exchange a 99-year lease as a condition for the approval of conversion of land use.[97]

*COMPULSORY USE OF LAND THROUGH LAND ACQUISITION LEGISLATION*

In Peninsular Malaysia, a uniform Land Acquisition Act[98] was passed in 1960 by the Malaysian Parliament[99] under Article 76(4) of the Federal Constitution, which provides that Parliament can make laws in respect of any matter in the State List for the purpose of promoting uniformity of the laws of two or more states. This act repeals previous state laws[100] which were based on the Indian Act of 1894.[101]

Parliament had to pass the Land Acquisition Act in order to comply with Article 13 of the Federal Constitution as discussed earlier in Chapter 3. Therefore, the right of ownership of property and its use, is one of the basic rights assured to everyone (citizen or non-citizen) domiciled in Malaysia, under Article 13 of the Constitution. However, the Land Acquisition Act 1960, allows the government to acquire land for any public purpose,[102] for public utility or for the purpose of mining or for residential, agricultural, commercial or industrial purposes.[103] The justification for giving the State Authority such a power is best summed up by B K Mukherjee J in *Charanjit Lal v Union of India*[104] as follows:

> "It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. This right, which is described as eminent domain, in American law, is like the power of taxation, an offspring of political necessity and it is supposed to be based upon an implied reservation by Government that property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner.[105]"

There are two ways by which alienated land can be obtained for development projects, either by way of compulsory acquisition as mentioned above or by direct purchase[106] from the proprietor.

In most cases, the government policy has been to acquire alienated land.[107] By way of compulsory acquisition, the land can be obtained even if the proprietor does not agree to sell it at a certain price and no bargaining over the price is necessary. However, by virtue of section 37(1) of the Land Acquisition Act,1960, the land owner may appeal over the decision of the DLA as regards the compensation awarded by the DLA, to the High Court and subsequently to the Supreme Court,[108] (see for example, *Bukit Rajah Rubber Co Ltd v Collector of Land Revenue, Klang;*[109] *Ng Tiou Hong v Collector of Land Revenue, Gombak*[110] and *Collector of Land Revenue, Kuantan v Noor Chahaya Binte Abdul Majid*[111]. These cases defined market value in determining compensation as the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land, that is, the price that would be paid by a willing purchaser to a willing seller, where both are actuated by the business principles prevalent at the time in the locality.[112]

In acquiring land for federal purposes, the State Authority may disagree with the request of the Federal Department /Agency to acquire land for its use, for whatever reason. Nevertheless, if that land is still needed by the Federal Government, the Federal Government may invoke the provisions of Article 83(5) of the Constitution by requiring the state government to acquire it compulsorily and the state government has to comply to that request. Thus far, Article 83(5) of the Constitution has not yet been invoked. It is to be noted that the subsequent failure to make use of the land for the purpose it was originally acquired

does not invalidate the acquisition.'[113]

***Problems In Land Acquisition Process***

Land acquisition is one of the most controversial areas of land administration. Very often, it has turned into a major political issue especially over the issue of 'unfair compensation', delays in the payment of compensation and the loss of agricultural land by farmers.'[114] Some of the problems of compensation and land value are explained in Appendix 4.4.

Another issue is the preference of the government to acquire land within Malay reservations, because of its lower value [115] or as a consequence of the need to bring government projects to the rural population, and most of the lands in rural areas are Malay reservations. The Federal Constitution, however, protects the Malay reservations in such a way that if Malay reservation land is acquired for public purposes, an equal area of the same quality and in the same locality should be declared'[116] as a Malay reservation. As a result of the acquisition process, much of the Malay Reservation lands were lost (as shown in Appendix 4.6) as many state governments did not replace the acquired land as required by article 89(3)(c) of the Constitution.

In 1985, the Land Acquisition Act,[117] was amended to provide that affected farmers would be compensated with an alternate piece of agriculture land elsewhere together with monetary compensation, instead of giving them a lump sum of money which did not last very long.'[118]

Another problem which affects the farmers is that land acquisition often results in an agricultural lot being sub-divided and fragmented into two or more uneconomic pieces,

especially so by the construction of irrigation canals and roads.[119] Similarly, partial acquisition of land has in many cases rendered the remaining lot useless and idle.

***THE ROLE OF LAND USE POLICY IN PLANNING***

Land use planning usually involves government at one level or another; and is usually concerned with reconciling the goals and objectives of individuals and groups in society. Land use planning reflects differences in goals between individual land users and the nation as a whole, or broad groups within it.[120]

In the case of Malaysia, perfect physical planning of the use of land will not ensure the success of the NEP [121] without a sound land use policy and an effective implementation machinery at the federal and state levels. Even though land use is a state matter, the federal government by virtue of its control of development fund, plays a major role in determining the land use policy especially at the regional level as regards, *inter alia* new town centres, housing and human settlement.

Another way in which land use policy can influence planning is through the distribution of ownership of residential premises.[122] Politically, land use policy may be used in the service of the political objective of distributing votes in any one particular area by simply approving application for houses to any particular group or race.[123]

Thus, the direct role played by land use policy in planning is that land use policies are designed "to give direction, coherence and continuity to the courses of action, for which the decision making body is responsible." [124]

*THE PRESENT PRACTICE OF LAND USE POLICY AT STATES AND FEDERAL LEVELS*

The evolution of the land use policy is linked with the evolution of town and country planning in Malaysia. As mentioned earlier, land use policy is governed by the land legislation and planning legislation.

Malaysian land use planning was imported from Britain in the early 20th Century as Britain was then a leading country in the evolution of its urban planning system, both as innovator and as exporter. [125]

In Malaysia, land and planning legislation play a neutral role in the implementation of land use policy in planning. It is the policy makers at various levels (federal, states and district) who decide on the land use policy best suited to a particular area or region, after taking into consideration the variables prevailing in the social, economic and political fabric of the country.

In addition to the land legislation and planning laws, the land use policy in Peninsular Malaysia, is determined by two other authorities: the State Authorities (the State EXCOs) and the National Land Council.

Land use policy in Malaysia reflects the operation of the free enterprise economic policy. In the context of agriculture for example, this policy leaves the land owner and/or the land operator much freedom of choice in respect of the agricultural activity he wishes to pursue. Private individuals or organisations with large capital and technological backing, welcome the policy as it has enabled them to develop the land

very rapidly for the production of such export oriented commodities as rubber and palm oil.

The National Land Council existed and formulated land use policies for implementation by the state governments well before the coming into force of the NLC. The first such policy, formulated in 1958[126] was predicated on the agreement of the federal and state governments to undertake large scale land development by opening up virgin lands and state lands adjoining the existing village lands. Subsequent resolutions by the NLC in 1960 modified the previous resolution on land development policy and strategy.[127] The most significant change in the policy is to stop the further release of land to private individuals and organisations (except pocket land alienation) intending to develop unalienated land for agricultural purposes except on a joint venture basis with the government. Such lands are now reserved exclusively for the use of government sponsored land development agencies such as FELDA, FELCRA, RISDA, SEDCs, RDAs and others established for the purpose of providing and managing land for the landless and those with uneconomic-sized holdings or to rehabilitate and replant holdings which have deteriorated through lack of capital, modern input, manpower or management capability.

The Council has also defined a minimum acreage for an economic-sized holding in its 29th Meeting in 1976.[128] It has also fixed an optimum size holding for rubber land in its 30th Meeting[129] in 1977.

As regards mining, the land use policy and its control of mining operation are regulated by the Mining Enactments of each

state. However, the Council has formulated a few ambiguous policies as regards prospecting for tin and mining in the Malay Reservation land.[130] In a paper (Paper No.9/1958), the Council has formulated a general outline on land use for mining with the objective of encouraging both the federal and state governments and individual or companies to embark on mining, especially for tin ore.

With respect to the use of Malay reserve land for mining purposes, the Council's resolutions were meant to provide opportunity to Malay individuals and Malay companies to open up mining operations. With regard to prospecting in Malay reserve land, the Council decided that only the Mining Department should carry out such an operation with federal government funding. The state governments should encourage the application for mining land by choosing areas of land suitable for mining.[131]

The Council also established policy guidelines as to the use of land for mining purposes in forest reserve areas.[132] The Council decided that mining should only be allowed in a forest reserve area as a last resort and only if it does not spoil the environment. In relation to forest reserve areas which have been logged, prospecting for minerals should be undertaken as soon as is practicable and if minerals are found thereon, the area should be mined as soon as possible. However, at the end of the mining operation, such areas should be declared again as a forest reserve.

In 1963, the Council adopted a new policy predicated on the agreement of both the state and federal governments to allow off shore mining[133] limited, in the first instance to the shores of

Malaysian waters only. However, the government may allow prospecting for minerals outside the territorial waters of Malaysia, provided that the companies concerned pay the cost of any security precaution required.[134]

As a result of Council paper No.41/69, the Continental Shelf Act 1966, was enacted to regulate the issuing of licences for prospecting and mining in open sea beds. The Act gives the licensee rights over the sea in the licensed area other than such rights as may be necessary for carrying out its operations under the licence and obtaining the minerals specified therein from the licenced area in a proper and efficient manner other than such rights as may be expressly mentioned in the licence.[135]

Some state governments (Negri Sembilan, Pahang, Federal Territory) have each issued a state land policy document which sets out *inter alia* guidelines for the use of land in the states. The Negri Sembilan policy for example, allows unused or idle state land in town areas to be alienated to agencies or bodies approved by the state government (on condition that there is a restriction in interest on the title or that such land is declared as Malay Reservation land).[136] The State Government of Negri Sembilan has also restricted the use of Malay reserve land in the state for public purpose unless a replacement is found thereafter within one year of it being acquired.[137] Other details of the land use policy of Negri Sembilan are shown in Appendix 4.5. Pahang land use policy is set out in detail in Appendix 4.7.[138]

The Kedah government policy as regards TOLs is that it will not issue any more new TOLs to non-Malays[139] in Malay reservation land but will renew the TOLs which have been issued to

non-Malays in special circumstances. Nevertheless, the state government may repossess such lands if they are needed for public use.

The main problem facing the Federal Territory is how to get land for residential purposes for its increasing population and for resettlement of the existing 400,000 illegal squatters[140] on state land. Therefore, the impetus of its land use policy is to utilize the available state land fully for housing squatters.[141]

*POLICY CHANGES.*

During the Fourth Malaysian Plan (4MP) period (1981-1985), Development Agencies either individually or in joint ventures together developed a total of 270,594 acres of land for agricultural use, as shown in Tables 3.4 and 3.6.[142] For the Second and Third Malaysian Plan period (1971-1980), a total of 730,161 hectares of land was developed for agricultural use.[143] At this rate of development, there would be a further four million acres[144] developed for agriculture by the year 2000. Considering that by 1980 there would still be some 16 million acres of land suitable for agriculture in the country, the development of the 4 million acres by the end of the century would still leave 12 million acres available for future development.[145]

Availability of land for agricultural use would therefore not be a problem for the next 20 to 25 years. The capacity of the various government-sponsored land development agencies will also not be a problem, judging by past performance and present capabilities. As specified in the Land (GSA) Act 1960, the present land development policy is to give each settler a share

of the land but not to specify which portion of the land to be owned. Thus, the new policy is based on 'use' rather than 'ownership'. In this way, difference in productivity of the land throughout a scheme does not pose a problem as every settler gets an equal share of the proceeds of the whole scheme. The problems of sub-division, fragmentation and multiple ownership are also avoided by the Act.[146]

In recent years, the land use policy has been modified in line with the government's intention to diversify the agricultural base to achieve import substitution, improvement of the export trade and production of strategic commodities through the efforts of the small farmers who in turn can derive greater benefits from the increased productivity per unit of land. In order to realise the diversification objective, land use policy has incorporated the concept of intensification of land use, aimed at exploiting the optimum production capacity of the land either through multiple and/or rotational cropping or new cropping.[147] For paddy-growing areas, double cropping is encouraged through the provision of drainage and irrigation facilities. For other areas, for example, the Johor Barat Project area, drainage improvements are aimed at facilitating inter-cropping of coconut with cocoa, coffee, and bananas, besides the integration of dairy farming. In the RDAs areas, the infrastructure, service amenities and other facilities including credit can be provided in centralised locations consisting of one large urban centre or a number of smaller centres strategically located. Finally, it has been noted that the present land use policy has, as will be discussed in detail in Chapter 5, had

limited success in eradicating poverty.

On the other hand, the present land use policy for town land is not conducive to improving the lot of the bumiputra and other low income groups or communities. In most cases, these groups are forced to sell the town lands they own because of the high cost of developing of such land and the inability to obtain funds for this purpose. These reasons have led to many Malay land owners of Malay reserve land selling or mortgaging their land to non-Malays.[148] Sometimes the approved government agencies such as UDA, or the SEDCs also buy such lands for such commercial and business ventures as housing schemes or the erection of business complexes of their own. These residential and shop houses are later offered for sale on the open market. Very often the previous owners are unable to buy them as they do not have the requisite financial means.

***PRESENT FORMS OF LAND USE CONTROL***

Land is subject to various kinds of control over its use and development.[149] What follows is a discussion of the present forms of control on land use policy currently used in Peninsular Malaysia under planning and land legislation.

***Control Under Planning Legislation.***

The early forms of control on land use and control of sub-division of land are still extant. In fact, Part IX of the Town Boards Enactment (FMS Cap. 137) is still in force in the former FMS, the Straits Settlements, Kedah and Perlis. Similarly, Part IX of Johor Enactment No. 118, Part VIA of the Kelantan Municipal Enactment, 1938 and Part IX of the Trengganu Town Boards Enactment 1936, are still in force in the respective

states.

Planning control on the other hand is vested in local authorities. As on 1st January 1981, in all states (except Pahang) local authorities have been reorganised under the Local Government Act 1976.[150] The reorganisation took the forms of changing their names to either Municipal or District Councils and increasing their areas of jurisdiction. The Municipal Councils are mainly for State Capitals and large urban areas. The rest of the reorganised authorities are the District Councils. Their areas are increased by extending their boundaries to cover surrounding lands which were formerly outside their control. However, except for Penang, Malacca and Kedah, not all other states are under a local authority.[151]

Kuala Lumpur got its city status in 1972. From 1970, it has had a new planning law known as the *Emergency Essential Powers Ordinance*, No. 46 of 1970. This was re-enacted as the *City of Kuala Lumpur (Planning) Act 1973*. The provisions of these two laws are almost similar. In 1974, Kuala Lumpur became a Federal territory with an increased area of 94 square miles. Now, the City of Kuala Lumpur (Planning) Act 1973 is in force in all this area. Under Part V of the 1973 Act, no development is to take place on any land except under a planning permission. The same part of the Act provides that an enforcement notice can be served on any person carrying out development without permission.[152]

Under FMS Cap.137, when a town plan is in force, a land owner has an automatic right to change the use of a building as indicated in the plan. Whereas under the 1973 Act, planning

permission needs to be obtained for any change of use whether or not the new use is in conformity with the development plan. The definition of 'development' under the 1973 Act has rendered some matters subject to planning control than under the FMS Cap.137 which was confined only to new building and sub-division of land.

Part V1 of the 1973 Act provides for a development charge to be levied on the increase in value of land enjoyed by a person getting planning permission which allows development over and above that envisaged in the development plan. The development charge is also levied to relieve the Kuala Lumpur local authority from the financial burden of providing spaces for car parking.[153]

In 1982, a new planning law for Kuala Lumpur known as the Federal Territory (Planning) Act 1982 was enacted. The significant difference between the 1973 Act and 1982 Act is that the development plans provided for in the latter Act are based on the new structure and local plans for the city of Kuala Lumpur.

As for other parts of Peninsular Malaysia in 1976, the Town and Country Planning Act (1976) was enacted to replace the various earlier enactments to provide for the proper control and regulation of town and country planning in local authority areas through the preparation of structure and local plans. The main difference between the 1976 Act and the City of Kuala Lumpur (Planning) Act 1973 or the Federal Territory (Planning) Act 1982 is that under the former Act of 1976, a local authority cannot grant planning permission if the development in respect of which the permission is applied, contravenes any provision of the development plan.[154] This, therefore, makes the land use control system under the 1976 Act inflexible.

As on 31st August 1981, the states which have brought into effect the provisions of the 1976 Act relating to development plans (Part III) are Johore (for the Johor Bharu Municipality), Negri Sembilan (for the Seremban Municipality), Perak and Trengganu. As for development control and the development charge provided for in Parts IV and VI), of the 1976 Act, the only state which has adopted them is Trengganu which has adopted the whole of the 1976 Act for its local authorities.[155]

*Control By Land Legislation.*

The early forms of land use control (including control of sub-division of land) are still in force today. The separate laws (except those relating to mining and land conservation) as described above, have been consolidated into the NLC, 1965

The land use policy is incorporated in the NLC through the provisions for land use categories as discussed earlier. The Code also empowers the state government to declare any area of land within the state to be subject to a given category of land use.[156] If the declaration is gazetted, any land (within the area) alienated by the state government will be subject to that prescribed category. There is no need to specify any express conditions qn the land titles because the NLC provides that each category of land use shall be subject to conditions which it details.[157] In the absence of such a declaration, the state government will decide on the appropriate category for any land to be alienated to any person or body at the time when it approves such alienation.[158] In this respect, it is noted that the NLC specifically states that when there is a conflict between an express condition and an implied condition, the former

prevails.[159] Another policy innovation by the NLC is that in the event of a conflict between the conditions on the use of land as endorsed on the land title or implied in the NLC and the planning restrictions, the former prevail.[160]

The NLC does not alter the earlier provisions on sub-division of land in that sub-division has to be approved by a local authority (for land within its area) before the relevant land titles can be registered and issued.[161] However, new provisions in the NLC include the fixing of the minimum size of any agriculture land[162] and the requirement that the consent of any body/authority specified in a direction of State Authority needs to be obtained before sub-division can be approved.[163] The latter provision is intended mainly to control the sub-divisions of rubber and oil palm estates. An estate is subject to control[164] if it has an acreage of not less than 40 hectares.[165] The control is imposed because estate fragmentation often leads to economic and social problems as a result of change of ownership from one owner to a number of owners.[166] The workers employed by the previous owner often lose their jobs as a result of this change of ownership. Thus, the provision of section 214A NLC prohibits the transfer of an estate land of not less than 40 hectares to more than one person or body without the approval of the Estate Land Board established by the State Authority.

Under the Land (GSA) Act, 1960, no land within the schemes undertaken by FELDA that is rural holding, may at any time be sub-divided.[167] The objective is to ensure that the holding remains economic in size.

The provisions on the control of mining are still contained

in the various mining laws discussed earlier.

With regard to land conservation, the early laws have now been consolidated into the Land Conservation Act, 1960.[168] This law was adopted for implementation by all the states through various state laws in the same year.

In order to ascertain the relative contributions of planning and land legislations to land use and land control policy and whether there is a need to improve the present system, the machinery and the practice of land use control is considered next.

***MACHINERY FOR LAND USE CONTROL***

The machinery of land use control comprises the agencies or departments involved and their efficiency depends on their relationships with each other. There are two levels of machinery involved in the land use control in Peninsular Malaysia, namely at the local and state levels.

***Machinery Employed by Planning Legislation At Local Level***

At the local level, the main agency responsible for land use control is the local authority. But not all areas of the country are under a local authority. As at 1st January 1981, about 16.5% of the country was under local authorities.[169] Local authorities exist mainly in urban areas. States which have local authorities covering the whole of their area as at 1st January 1981 are Penang, Malacca and Kedah.[170] In the development areas of RDAs[171] the respective bodies responsible for development of these areas are vested with the powers of local authorities under various laws. In the case of Trengganu Tengah, for example, the powers are conferred under section 10 of the *Lembaga Kemajuan*

(except pocket land alienation) intending to develop unalienated land for agricultural purposes except on a joint venture basis with the government. Such lands are now reserved exclusively for the use of government sponsored land development agencies such as FELDA, FELCRA, RISDA, SEDCs, RDAs and others which are established for the purpose of providing and managing land for the landless and those with uneconomic size holdings or to rehabilitate and replant holdings which have deteriorated through lack of capital, modern inputs, manpower or management capability.

The Council has also defined a minimum acreage size economic holding in its 29th meeting in 1976.[128] It has also fixed an optimum size holding for rubber land in its 30th meeting[129] in 1977.

As regards mining, the land use policy and its control of mining operation is regulated by the Mining Enactments of respective states. However, the Council has formulated a few ambiguous policies as regards prospecting for tin and mining in the Malay Reservation land.[130]. In a paper (Paper No.9/1958), the Council has formulated a general outline on the aspect of land use for mining with the objective of only encouraging both the Federal and State Governments and the individual or companies to embark on mining, especially for tin ore.

With respect to the use of Malay reserve land for mining purposes, the Council's resolutions were to give opportunity to Malay individuals and Malay companies to open up mining operations. With regard to prospecting in Malay Reserve land, the Council decided that only the Mining Department should carry out

Authority which is in effect, the state government. Under section 3 of Part II of the 1976 Act, subject to National Land Council decision, the State Authority shall be responsible for the general policy in respect of planning of the development and use of all lands and buildings within the area of all local authorities in the state. It can also direct the State Planning Authority and any local authority.

For the Federal Territory, instead of a State Authority, a Federal Minister is responsible for the general policy with respect to the planning of the development of all lands within it. The Minister can give direction to the Commissioner over the City of Kuala Lumpur[179] except in the area of planning.

Under planning legislation, the state government (the Minister in the case of Federal Territory) has no power to over-rule a local authority's decision on any planning application.

***Machinery Employed by Land Legislation***

***At Local Level***

The District Land Office is the main agency involved in land use control at local level under the land legislation. Except for the Federal Territory, each state in Peninsular Malaysia is divided into districts (under Section 11(a) of the NLC or under corresponding provisions of the previous land laws). Within each district, there may be one or more areas under a local authority or there may be one local authority covering the whole district area. There are two cases where a local authority area covers more than one district.[180] These are the Municipal Councils of Penang and Seberang Perai (Penang).

In each district the land office is responsible for all land

matters regardless of whether the land is within a local authority area or outside it. With regard to land use policy, the DLA recommends to the State Authority the terms of alienation of state land (including land use) and the terms of conversion of use of private land. It has the power to approve sub-division of land held under Land Office title and also to enforce conditions of title. If there is no direction to the contrary from the State Authority, it has the power to approve alienation of state land.

There are other departments which are involved in the land use policy making at the local level.[8] The Land Office consults the related departments before submitting to the State Authority an application for alienation of state land or an application for conversion of use of private land for its approval. If the land is in a local authority area, the land office will get the views from the local authority concerned.

For mining purposes, the Land Office consults the Local Office of the State Department of Mines before submitting an application for mining for consideration by the State Authority.

In recommending to the State Authority that a given piece of land be declared hill land under the Land Conservation Act, 1960, the Land Office also consults the local offices of such departments as Agriculture, Drainage and Irrigation and Forestry.

The land office in the Federal Territory is headed by a a Land Administrator. Its relationship with the Commissioner of the City of Kuala Lumpur is similar to that between a local authority and Land Office in the other states.

In law, the policy-making body on land use at the state is the State Authority. In the Federal Territory, under The Federal Territory (Modification of National Land Code) Order 1974, (hereafter referred to as 'the 1974 Order') the body having power as the State Authority is the Federal Government which is responsible to Parliament. However, with respect to land, most of the powers have been delegated to the Land Executive Committee which is set up under the 1974 Order. The Committee is made up of the Commissioner of the City of Kuala Lumpur and five senior civil servants and the Chairman is the Chief Secretary to the Government.

The main agency directly involved in land use control at the state level is the State Department of Lands and Mines. There is one such department in each state. This department is responsible for supervising the District Land Offices within the state. Any matter to be brought to the State Authority by the Land Office will have to pass through this department.

In every state, there is an authority set up by a direction made under Section 136(1)(c)(iii) of the NLC, to deal with any application for sub-division of certain kinds of land. In Negri Sembilan for example, under 1969 directions, no sub-division of land, the area of which is more than 100 acres shall be approved without the consent of the State Subdivision and Partition of Land Committee, whose Chairman is the Menteri Besar.[182]

***MACHINERY FOR APPEAL***

***Under Planning Legislation***

There is no provision for appeal against refusal to approve plans for new buildings under the Town Boards Enactment (FMS Cap.

137). In the case of sub-division of land, anyone whose application to sub-divide has been rejected may appeal to the State Authority whose decision shall be final[183] The City of Kuala Lumpur (Planning) Act, 1973 provides for an Appeal Board.[184] An appeal can be lodged with the Appeal Board against the refusal of the Commissioner of the City of Kuala Lumpur to grant planning permission or against any condition imposed by him with respect to a planning permission.[185]

*Under Land Legislation*

Section 418 of the NLC provides that any person / body aggrieved by any decision of the State Director of Lands and Mines, the Registrar and the DLA, may, at any time within a period of three months, appeal to the High Court. This right to appeal covers only decisions on land use control taken by these two officers. There is no provision for an appeal against any State Authority's decision under the NLC 1965.

***ENFORCEMENT OF LAND USE CONTROL***

Action has been taken against some land owners for contravening planning control and land use conditions relating to land titles. In the event of a breach of planning control, the local authority may issue a stop notice with respect to a construction of a building or may order the demolition of a building or the local authority may itself demolish the building. Under the NLC, there are cases of land being forfeited to the state government as a result of a breach of the conditions of land titles.[186] The decisions of the appropriate authority are challenged quite often as in *Liew Kum Kiew v Commissioner of the Federal Capital of Kuala Lumpur; Ipoh Town Council and Anor*

*v Ng Khoon; Tok Jwee Kee v Tay Ah Hock and Sons Ltd., and Anor;* for planning legislation and *CLR Federal Territory v Garden City Development Berhad; CLR Johor Bharu v South Malaya Industries Berhad; Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn.Bhd.*, for land legislation.[187]

***EVALUATION OF LAND USE POLICY AND CONTROL IN MALAYSIA.***

The relative contributions of planning and land legislation to land use policy and control in Malaysia may be assessed by determining whether:

(a) there are provisions in the present laws which may be used to achieve the objectives of land use policy and control.

(b) there are legal and administrative obstacles which can prevent the objectives from being attained.

*Provisions in Existing Laws*

As land values in town centres are higher than in other areas there is greater pressure thereon for more intensive use. Development in town centres needs to be controlled because the increased intensity of land use affects traffic flow, safety and health. Planning and land legislation allow control to be exercised over the intensity of use. At present, control is through planning legislation. Development is not allowed if it exceeds a certain density[188] or a floor area. In the Federal Territory, development charges are imposed for the non-provision of the required car parking spaces.[189]

There is a need to control the intensity of use of land in housing development to ensure that the housing plots have adequate means of access and to reserve land for such associated

uses, as social, commercial and recreational amenities. Planning and land legislation provide for density control and the reservation of land for access.

There may be a need to decentralise commercial activities. Control under land and planning legislation can steer new shops to new areas as identified, for example, in the development plans.[190] To disperse industries, incentives must be provided while simultaneously controlling industrial development through planning legislation.

With respect to agriculture, certain crops like rubber and oil palm are important to the economy. The acreage of land under these crops has to be maintained. Control of land use has played a part in preventing loss of land for these crops. This is achieved through land legislation under which change of use from these crops to other uses is sometimes not allowed.[191]

Agricultural land holdings have to be of a certain size for them to be economic. In the case of rubber, an economic holding has to be about eight acres. However, there is a tendency for agricultural land to be sub-divided into smaller plots upon the death of the proprietor by the distributor thereof to a number of beneficiaries who become its co-owners. However, with the amendment to the NLC and the Small Estates (Distribution) Act 1955, Act 98, multiple ownership of land is checked.[192] To avoid the difficulties arising from the co-proprietorship, the co-owners usually apply for partition of the land under section 140 of the NLC to enable them to hold their shares of the land under separate land titles. Through sub-division control under land

legislation, subdivision of agricultural land into small uneconomic plots can be checked.

In areas declared under Land (G.S.A) Act, 1960, there is a complete prohibition on the sub-division of agricultural land.[193] Under this Act, if a land owner dies, if the beneficiaries cannot agree to assign to one of them (with others getting their shares in monetary form from the assignee) the land will be sold by auction and the proceeds of the sale will be distributed among the beneficiaries.

Tin mining is an important economic activity. While contributing a lot to the economic growth of the country, tin mining left ugly scars and useless land in the country side and in the towns and cities or the periphery thereof. If not for the control exercised under land legislation requiring the filling and levelling of the disused mining land,[194] the deletrious effects would have been far worse.

**Legal And Administrative Obstacles**

There are a number of legal as well as administrative obstacles in the present system of land use control which if not removed may prevent the system from attaining its objectives. Some of these obstacles are discussed below:

**Development Plans As The Only Basis For Land Use Control**

Under the Town and Country Planning Act, 1976,[194] the local authority cannot grant planning permission if the development in respect of which the permission is sought contravenes any provision of the development plan. As a result, when structure and local plans are in force, the local authority cannot grant planning permission for any development which contravenes

the provisions of structure or local plans even though it believes that the development is desirable. The provision in Section 22(4)(a) of the 1976 Act, therefore, reduces the discretion that the local authority has in dealing with an application for planning permission. Although there are provisions in the 1976 Act [195] for the alteration of development plans this is not practised because of the time required. In the case of a structure plan, the approval of the State Planning Committee and the assent of the State Authority are necessary before the proposed alteration to it can come into effect.

**High Incidence Of Breach Of Conditions**

There are many cases of breach of conditions of the use of land under the land legislation.[196] In urban areas, the breach of positive conditions is common. This has resulted in many pieces of urban land being left undeveloped. In rural areas too, there are many cases of breach of positive as well as negative conditions. Large areas of land are left uncultivated thus creating 'idle land'.[197] The main reason for the high incidence of breach of land use conditions is the shortage of experienced staff in the Land Offices able to effectively enforce the conditions in question (see Chapter 1).

***Delay In Getting Approval Of Conversion And Sub-Division***

The conversion process takes a long time, sometimes as long as five or more years. This is especially in getting approval for conversion from agricultural to housing development.[198] Although the National Land Council[199] has, under a resolution it adopted, directed all state governments to ensure that any

application for conversion and sub-division of land is submitted to the EXCO by the Land Office within three months of its receipt, the EXCO can take as long as it wishes before giving a decision thereon.

*Obsolete Pre-NLC Conditions And Inability To Control Use Of Certain Lands*

Lands alienated before the commencement of the NLC are still subject to the conditions imposed at the time of alienation and not those prescribed by the NLC. This situation also obtains in respect of land in Penang and Malacca known as First Grade Land. The State Authority cannot stop the land owner registered under the First Grade title from using the land as allowed by the land title, although such use may be at odds with current circumstances.[200] This is a major weakness of land titles as an instrument of land use control.[201]

*Absence Of Power To Compel Land Owner To Reserve And Surrender Land As Sites For Public Facilities On conversion*

If the land owner does not surrender the plots needed for public facilities, the government is not empowered to compel the land owner to do so, except through compulsory acquisition requiring the payment of compensation to the land owner. It is because of these difficulties this posed that the Federal Territory and as Johore and Perak have in the past, arranged for the land owner to surrender his land to the government for public utilities. This process is known as 'surrender and realienation'.[202] This process has been legalised under the National Land Code Amendment Act, 1984.[203] This amendment cannot, however, be applied to all lands. For example,

it cannot be involved if the land is within a Malay reservation[204] and the present owner is a non-Malay.

**Inability Of Planning Legislation To Control the Use Of Part Of A Building**

One weakness in the present land legislation is that, in practice, it does not permit a piece of land or a building to be used for more than one purpose. This makes control of use of units in a multi-storey building difficult. Such a building usually has a mixture of uses which need to be controlled from a planning view point. Absence of control flows from the fact that the use allowed by land law overrides all other restrictions relating to the use. Thus control under planning legislation is thus ineffective.

**Absence of Power to Reserve 30% of the Units Built For Bumiputra Upon Approval of Conversion And Subdivision Of Land**

The NEP stipulates that 30% of all economic activities including housing and commercial premises be reserved for bumiputra. Land use control is used to ensure that developers reserve for bumiputras at least 30% of all houses and commercial premises built. Currently, this is effected through policy directives rather than legislation. No legal sanction lies against the developer if he does not comply with this requirement.

**Absence Of Power To Compel Developers To Build Low Cost Houses**

Low cost housing is in great demand especially in city centres and town areas. Thus, to ensure that the private sector is involved in low cost housing, the government requires private housing developers to build some low cost houses in a housing

development which requires the prior conversion and sub-division of land. There is no legislative backing for this policy which is thus ineffective.

**Conflict Between Local Authority And Land Administration**

The present system of having two separate sets of legislation on land use can give rise to conflict between the authorities administering them. The plans of a local authority which has planning power over an area within its jurisdiction can be defeated by the decision of the State Authority [205] under land legislation.

**Weakness In Land Use Control Machinery**

A number of weaknesses can be identified in relation to the land use control machinery. One is the presence of two separate authorities which can give rise to conflict as mentioned above. Another is weak management by and the shortage of enforcement officers in the authorities concerned, especially in the land offices[206] which leads to delays in decisions on applications for change of use or sub-division of land and results in conditions endorsed on the titles being breached with impunity. In the case of local authorities, lack of physical planners is quite common. Planning departments exist only in large local authorities or Municipal Councils situated in state capitals. The smaller ones have to depend on the staff of the state Town and Country Planning Department. As a result, delays occur in the processing of applications for planning permission.

*SUMMARY*

The above discussion has shown the strengths and weaknesses of the land and planning legislations as an instrument of land use control. Land use policy therefore is seen as a means towards full utilisation of land resources - which it has succeeded in doing to a certain extent. It has however, failed to bring about the full development of agricultural land, and much agricultural land has been left uncultivated as idle land. Thus, land legislation as a means of land use control has failed and the change of conditions of land use stipulated by section 124, NLC have not been implemented because either of social unpracticability or political unacceptablility.

Approval for conversion or change of use of land and planning permission usually takes a long time. Ready converted residential land may fetch a price three or four times the price of unconverted land.[207] Thus, increases in land prices are related to land use change and planning procedures and policy. During the long time it takes to obtain change of use and planning permission, land becomes scarcer, demand increases and prices rise. Eventually, when after a few years, the approvals are granted for the same piece of land for the same purpose, the price thereof has gone up. The failure of the state governments and local authorities throughout the country to grant the said approvals expeditiously has clearly stimulated and accelerated the inflation of land and house prices. It would seem therefore that the right to build on privately-owned land does not lie with the owner however much he is prepared to risk his capital; the right lies with the state governments and local authorities.

Finally, basic to land use policy and land use control should be the principle of conserving whatever is beautiful, interesting or otherwise agreeable.[208] Where there is no question of conservation, there is little or no case for official controls. The disadvantage of controls are many: loss of time, loss of money, loss of freedom.[209] However, balancing the costs and benefits accruing to the community and the country as a whole, the benefits without doubt, outweigh the costs.

The current land use policy in Peninsular Malaysia suffers from a number of legal and administrative shortcomings. Therefore, to enable the land use policy to achieve economic, social, political and environmental objectives, some amendments to the laws are necessary and certain measures have to be taken to improve its administration and implementation. These will be discussed in Chapter Six.

*NOTES*

1. See s.52 NLC. Alienation of land to any person/body is subject to one of the categories of land use namely: agriculture, building, or industry. Either one of these categories will be endorsed on the land title. This section was subsequently amended on March 25, 1985, to provide for four categories of land use, namely 'agriculture,' 'residential', 'commercial', and 'industry'. [vide the NLC (Amendment) Act 1984 (Act 1985), see PU(B) 145 of 1985. However, due to some difficulties faced in implementing the four categories system, the return to the position prior to March 25,1985, which is also the present position, was subsequently effected by the NLC (Amendment) Act, 1985 (Act A615), commencing from June 1,1985 as per PU(B) 277 of 1985.
2. NLC, 1965, s.127.
3. *ibid.*, s.124.
4. *ibid.*, s.135.
5. Town and Country Planning Act, 1976 where applicable. In the Federal Territory, City of Kuala Lumpur, Planning Act, 1973 is in force. See sections 17 and 18 of 1973 Act.
6. This is a matter of policy only and reference to the local authority and other departments are not mandatory by law. See Manual for Land Administration, p. 12 para.8.
7. However,in the case of application for subdivision of land, approval of planning authority is necessary. [vide NLC, s. 136(1)(c)(i)].
8. See Nathaniel Lichfield and Haim Darin-Drabin, *Land Policy in Planning*, George Allen and Unwin, London, 1980 p.129-145.
9. *ibid.*
10. *ibid.*
11. F.A.Swettenham, *The British Resident of Perak," Annual Report of the Year 1892," PGG.Vol.VI,No.14,26.5.1893, pp.399-400. See also Order in Council No.17 of 1889,"Bendang Land, Kuala Kangsar,"* in PGG, Vol.II, No.14, 25.5.1889, p.483. The dual objectives in the establishment of Malay reservations for example, were to preserve Malay interests in land and to promote permanent settlements i.e, to ensure sufficient supply of rice production for the growing population so that imports of rice would be kept minimal.
12. See Phin-Keong Voon, *Rural Land Ownership and Development in the Malay Reservations of Peninsular Malaysia*, Journal of South East Asian Studies,Vol.14,No.4,March,1977. Today, these reservations have become areas of rubber production and 'Kampung' cultivation.
13. See for example Mining Enactment, FMS Cap.147, Schedule, [s 57], especially parts 1V, V, V1,V11, and V111.
14. See *National Agricultural Policy (NAP) Document*, 12th January, 1984. p.4. The objective of the NAP is to maximise income from agricultural through efficient utilisation of the country's resources and the revitalisation of the sector's contribution to the overall economic development of the country.
15. *ibid.*
16. *ibid.*, p.4.
17. *ibid.*, p.4.
18. Federation of Malaysia Constitution, Article 91.
19. *ibid.*, Article 91(5).

20. Federal Lands Commissioner Ordinance, 1957,(now Act,1957). The general powers of Federal Lands Commissioner under the NLC are provided under s 8 of the NLC. The FLC is the head of the Division of Land Law and Land Management of the Ministry of Land and Regional Development, formerly known as Federal Lands Commissioner Office.
21. See NLC, s.8(1)(c).
22. Crown Lands Ordinance,1886, Straits Settlements, Chapter 113.
23. FMS, Cap.138.
24. Das S.K., *op.cit.* p.38.
25. FMS, Cap.138, s 40.
26. *ibid.*, s. 37.
27. *ibid.*, s. 41.
28. *ibid.*, s. 40
29. *ibid.*, s .37(i).
30. *ibid.*, s .41(i).
31. *ibid,* s .41(ii)
32. *ibid.*, s .50.
33. Town Boards Enactment, FMS Cap.137, s .149.
34. Das S.K. *op.cit.*, p. 483.
35. *ibid.*, p.493.
36. Town Improvement Enactment,1917, ss. 3 and 6.
37. Town Planning Enactment 1923, s. 3(i).
38. *ibid.*
39. *ibid.*, s. 4(i)
40. Sanitary Boards Enactment, F.M.S. Cap.137, s. 136.
41. *ibid.*, ss. 137 & 138.
42. *ibid.* s.149.
43. Sheridan, L.A., *Public and Social Administration*, in Sheridan L.A (ed.) Malaya and Singapore,The Borneo Territories: The Development of Their laws and Constitution, Steven and Sons Ltd.,London,1961.
44. Rivkin, M.D. *Some Perspective On Urban Land Use Regulation and Control*,in World Bank, Urban Land Policy, Issues and Opportunities Vol.11, World Bank Staff Working Paper No.283, The World bank, Washington D.C.,U.S.A, 1978.
45. *Land Resources Report of Peninsular Malaysia, 1974/1975,* Economic Planning Unit, Prime Minister's Department, Malaysia, pp. 23 & 24. [especially Tables 4A to 4D and 13, pp. 70, 71, 72, 73, 88 & 89.]
46. *ibid.*
47. *ibid.*
48. *ibid.*
49. *ibid.*
50. *ibid.*
51. NLC,1965, s. 53(2)(b).
52. *ibid.*, s.53(2)(i)(a), and the proviso thereunder.
53. *ibid.*, s.53(2)(i)(b) and the proviso thereunder.
54. See *CLR, Federal Territory v Garden City Development Bhd.*, [1982] 2 MLJ 98, (Privy Council). The decision of the Federal Court was reversed by the Privy Council. The privy Council held that any land which was alienated before the commencement of the NLC, which is not subject to any condition (neither for agriculture nor for industrial purposes),may be used for building purposes without the necessity of application for change of use, hence no premium should be imposed. Most state governments have already asked the land owners to convert such land and the additional primiums have

already been paid to the governments amounting to millions of ringgit. This money has to be returned to the land owners as per advice of the Attorney General, vide minute No.3.9 of the 37th National Land Council meeting, dated 30.1.84

55. See Teo Keang Sood, *et.al. Land Law in Malaysia*, Butterworths, 1987.
56. NLC s.51(1)(a)(b).
57. NLC s.51(2).
58. NLC ss. 52, 109, 120-122. However, land alienated under the NLC,1965 in pursuance of approval given by the State Authority before the commencement of the said Code, the State Authority may direct that no category of land use be imposed if satisfied that its use could be more appropriately regulated by the imposition of express conditions under section 120 of the NLC. It is to be noted that every condition and restriction in interest imposed in respect of the land will run with the said land (s.104).
59. It is to be noted that a non-citizen and a foreign company is prohibited from bidding at the sale of such 'building' lands without the prior approval of the State Authority [s.433B(4)], NLC (Amendment) (No.2) Act 1985, section 3.(Effective only from 1.6.85 till 31.12.86.
60. A 'non-citizen' means a natural person who is not the citizen of Malaysia (s.433A).
61. A 'foreign company' means a foreign company as defined in section 4(1) of the Companies Act 1965 (section 433A).
62. NLC, s.433B(1) and (3). Those lands already owned by non-citizens and foreign companies before March 25, 1985, will not be affected by the aforesaid restriction. However, all the future transactions of such land will be subject to the aforesaid restriction. This provision has been repealed vide A658.
63. NLC, 1965, s.433B(i).
64. The definition of agriculture includes the cultivation of any crop (including trees cultivated for the purpose of their produce), market gardening, and the breeding and keeping of livestock and fish (s.5).
65. In the case of agricultural land, the prohibition imposed on non-citizen and foreign companies is absolute (s.433B(4).
66. See s.433B, NLC.
67. NLC, 1965 s.433C. The aforesaid restrictions imposed in respect of non-citizens and foreign companies do not apply to persons or bodies referred to in paragraphs (c) and (d) of s.43 (see s.433E),(this provision was effective only from 25.3.85 to 31.12.86.
68. NLC, 1965, s.53(1) & (2). Prior to the NLC, 1965, lands were merely classified into town or village lands and country lands with the State Authority being free to impose such express conditions of land use as it thought fit. Town or village lands were usually alienated for non-agricultural purposes while country lands were normally alienated for agricultural purposes.
69. NLC, 1965, s.53(3).
70. NLC, 1965, s.53(3)(i).
71. NLC, 1965, s.53(3)(ii).
72. See [1982] 2 MLJ 98 (Privy Council)
73. NLC, 1965, s.124(1)(a).
74. NLC, 1965, s. 124 (1)(b) & (c).

75. See NLC, s.124(5).
76. The Commissioner of Land Legislation, *Notes Upon The National Land Code*, note on s.52. (typescript, unpublished).
77. NLC, s.52(i)
78. NLC, 1965, Part Seven, ss.103-129.
79. See Notes of the Commissioner of Land Legislation, *op.cit.*
80. See F.M.S. Cap.138 ss. 34,35 & 36.
81. See Notes of the Commissioner of Land Legislation, *op.cit.*
82. NLC, 1965 s. 52(5).
83. *ibid.*
84. *ibid.*, s.52(2).
85. *ibid.*, s.52(5).
86. *ibid.*, ss. 52(2); 54(1); 124(1)(a); 147(3).
87. *ibid.*, ss. 115(3); 116(3); 117(2).
88. *ibid.*, s. 115.
89. See Notes of the Commissioner of Land Legislation, *op.cit.* The State Authority by using its powers under section 120 of the NLC, may impose conditions requiring the cultivation on any land, a particular crop or of any class or description of crops. It can also prohibit the cultivation of a particular crop or of any class or description of crops. It may also fix the dates in any year on or before which any work of clearing cultivation, sowing, manuring or harvesting, or any agricultural activity, to commence or completed. It may also limit the maximum area of the land which may be occupied by dwelling houses and other buildings.
90. *ibid.*, p.23.
91. See NLC, s.116(1)(a).
92. *ibid.*, s.116(1)(b).
93. *ibid.*, s.116(1)(d).
94. *ibid.*, s.122.
95. Commissioner of Land Legislation, *op.cit.* p.22.
96. See [1979] 1 MLJ 135 (Federal Court]
97. *ibid.*, see also *Ipoh Garden Bhd v Pengarah Tanah dan Galian Perak, Ipoh, [1979]* 1 MLJ 271 (High Court) Perak.
98. The Land Acquisition Act, No.34 of 1960.
99. By virtue of item 2(d) of the State List in the 9th Schedule of the Federal Constitution, the law on compulsory acquisition of land is to be made by the state legislature. However, the present law on land acquisition i.e The Land Acquisition Act,1960, was made by Parliament, which provides that Parliament can make law in respect of any matter in the state list for the purpose of promoting uniformity of the laws of two or more states.
100. Land Acquisition, F.M.S Enactment, Cap.140; Johore Land Acquisition Enactment No.16 of 1936, Kedah Land Acquisition Enactment, No.57; Kelantan Land Acquisition Enactment No.8 of 1934; Land Acquisition (Extension to Perlis Enactment, No.4 of 1958);
101. See Vamapada Mukhopadahyaya *The Land Acquisition of India*, Calcutta, 1894. See also Constitution of India, Article 31.
102. Land Acquisition Act,1960, s. 3(a). Under the Land Acquisition Act,1960, the State Authority is the only authority empowered to acquire land compulsorily. In exercising its power, the State Authority may delegate it to certain persons, normally the Menteri Besar or the Chief Minister under the Delegation of Powers Ordinance, 1956. In fact, as a matter of policy,

this is being done in a number of states in order to speed up the acquisition process.

103. *ibid.*, s. 3(c).

104. See AIR 1951 Sc 4 as quoted in *Teo Keang Sood*, op.cit. pp.319-420, *passim*.

105. *ibid.*

106. See Article 83(5)(b) of the Malaysian Constitution.

107. This is due to the fact that it is difficult for both the proprietor and the government agency that needs the land to come to an agreement over the price. Another problem is that the land purchased might be subject to a condition contrary to the use that is intended and as such the condition needs to be changed and this can cause a lot of inconvenience. The land bought might also be subject to encumbrances like charges, liens, or tenancy exempt from registration. As provided under section 66 of the Act, upon making a memorial under section 23 in respect of any land, that land shall vest in the State Authority as State land free from encumbrances.

108. See s. 37, Land Acquisition Act, 1960. Procedure of appeal to Court is provided under ss. 38-51

109. See [1968] 1 MLJ 176 (High Court Selangor).

110. See [1984] 2 MLJ 35, (Federal Court).

111. See [1979] 1 MLJ 180 (Federal Court).

112. See *Collector of Land Revenue Kuantan v Noor Chahaya binte Abdul Majid*, *ibid.*

113. As per opinion given by the Attorney General, Malaysia, vide P.N.2953, dated 14.2.1968.

114. Report of Land Acquisition Act, Amendment Committee, as per National Land Council Paper No.2/83, for the 36th meeting of the National Land Council,1983.

115. Land Acquisition Act, 1960, First Schedule, s. 1(2A), as amended (1983), vide NLC paper No.2/83. Under the latest amendment to the Land Acquisition Act, 1960, the value of Malay Reserve land is at par with the value of land outside Malay Reserve for the purpose of land acquisition.

116. See Article 89(3)(c) of the Malaysian Constitution.

117. *ibid.*, s.15(1) [as amended 1983].

118. It is proposed that, if suitable alternative land cannot be found, the farmers should be given the opportunity to participate in buying shares in a public estate or co-operative land schemes. Another alternative is that people whose land had been acquired should be given priority in FELDA or other land schemes. See *ibid.*

119. The area is too small to be cultivated. The land becomes an uneconomic-sized holding and no compensation is paid to the land owner on the remaining lot. In such cases, it was proposed by the Land Acquisition Act Amendment Committee, (1983) to make it compulsory for the acquiring agency to acquire the whole piece of land contained therein.

120. See A.S.Mather, *Land Use*, Longmans, London And New York, 1986, p.212.

121. Under the NEP, land use policy is one of the instruments of solving the poverty problem and the restructuring of the society. This is particularly true as fertile land for

agriculture and suitable land for industry, commercial and residential purposes are scarce. The NEP seeks to distribute such lands equitably in consonance with the NEP guidelines.Therefore, the right and positive policy decisions as to which land to be used for what purpose and for whom they are to be allocated, will ensure a sound land use policy, provided, they are based on sound planning and implementation processes.

122. See 4MP p.365. Under the NEP, 30% of the new houses and commercial premises built are to be reserved for bumiputra. As a policy, it needs the co-operation of both the housing developers and the financial institutions to ensure the success of the policy. However, the endorsement on the document of title requiring 30% to be reserved for bumiputra as an 'express condition' is unlawful and unenforceable as such action contravenes Article 8(2) of the Federal Constitution. Such a distributive policy can be done through the land use control i.e 'conversion' or change of use of land from one category to another. As for commercial and industrial premises, the same 30% quota applies, however, the implementation seems to have lagged because it has no force of law and also due to lack of funds faced by bumiputra to purchase expensive premises.

123. There is no direct evidence to prove that this has been done.

124. John Ratcliffe, *Land Policy*, Hutchinson of London, 1976, p.14-15.

125. Lichfield N. and Haim Darin-Drabin, *op.cit.*, London, George Allen & Unwin, 1980, Chapter 1.

126. National Land Council Resolution, 4th meeting, dated 5.12.1958.

127. *ibid.*, paper No.12 & 13/60.

128. *ibid.*, paper No.14/1976, Council meeting on 14.10.1976. The Council agreed that the minimum size for rubber holding per person is 6 acres [for outside FELDA schemes].

129. *ibid.*, paper No.6/1977, Council 30th meeting, on 20.6.1977. The optimum size for rubber holding per settler in FELDA scheme is agreed at 10 acres per settler.

130. *ibid.*, paper No.9/1958 and 10/1958.

131. *ibid.*, paper No.11/1958, 14th meeting, on 5.12.1958.

132. *ibid.*

133. *ibid.*, paper No.18/1963.

134. *ibid.*,

135. Paper No.41/1969. See the Continental Shelf Act, No.57/1966 ss. A3 and B2.

136. Negri Sembilan State Land Policy, paper No.1, dated 12.7.1978, approved by the State Executive Council on 11.4.1979, Exco. paper No.293/79 and 269/79, (unpublished).

137. *ibid.*

138. Pahang State Land Policy. Approved by the 13th EXCO meeting on 1.12.1982, (unpublished - conf.).

139. Kedah EXCO decision, paper No.636/72, dated 29.12.72.

140. From a report by the Director of Lands and Mines, Federal Territory, 1981, (unpublished).

141. Dewan Bandaraya, Kuala Lumpur, Master Plan 1984, pp.115-121.

142. See Fifth Malaysia Plan, 1986-1990, p.302, table 10-2 & p.306, Table 10-3.

143. See Fourth Malaysia Plan, 1981-1985, p.110, Table 5-5.
144. National Agricultural Policy, Cabinet Committee Report, 1979, p.5 (unpublished - conf.).
145. *ibid.*
146. Land (Group Settlement Areas) Act, 1960, s. 15.
147. National Agricultural Policy, Cabinet Committee Report, 1979, p.7 (unpublished - conf.).
148. 293 cases of Malay reserved lands were reported to be mortgaged to non-Malays in 1979 [see Minutes of the 32nd National Land Council Meeting, dated 12 March,1979.] In Johor, the sale of land from Malays to non-Malays in the Johor Barat development area [for Pontian District only], was 8.6% with an acreage of 1,999 in 1979, out of a total transfers of 23,375 acres,[outside Malay reserve area) [Minutes of 33rd National Land Council Meeting, dated 13.12.1980. In Malacca for example, about 1,500 acres of Malacca Customary lands were charged to non-Malays. [vide minute of 35th National Land Council meeting, dated 28.8.1982.
149. Lichfield N. and Drabin H.D *op.cit.* p.70.
150. Bruton M.J. *Strategic Planning in Malaysia: A Review of the Plans and Agencies,* papers in Planning Research, No.47, Dept., of Town and Planning UWIST, Cardiff, 1982.
151. *ibid.*
152. City of Kuala Lumpur, Planning Act,s. 23.
153. See Ahmad bin Salim, *Land Use Control in Peninsular Malaysia*,M.Sc Dissertation, University of Wales,1982, p.42.
154. Town and Country Planning Act, 1976, s.22(4)(a).
155. Bruton, M.J., *Strategic Planning in Malaysia: A Review of Plans and Agencies*,1982.
156. NLC, s.52(2), see also Hansard, National Land Code, 1966.
157. *ibid.*, ss.115, 116, 117.
158. *ibid.*, s.52(3).
159. *ibid.*, ss 115(3), 116(3), 117(2).
160. *ibid.*, s 108.
161. *ibid.*, s. 136(1)(c)(i) & (ii).
162. *ibid.*, s. 136(1)(f)(i).
163. *ibid.*, s. 136(1)(c).
164. *ibid.*, s. 214A(1), which provides that:
" ..No estate land is capable of being transferred, conveyed or disposed of in any manner whatsover,to two or more persons unless approval of such transfer, conveyance or disposal has first been obtaind from Estate Land Board....".
165. *ibid.*, s 214A(ii).
166. *Land Disintegration and Land Policy in Malaya,* Malayan Economic Review, Vol. III, No. 1, April, 1958. See also, Aziz,U. *Report on Fragmentation of Estates in Peninsular Malaysia,* p.958.
167. As in note 146.
168. Land Conservation Act, No.3 of 1960.
169. Bruton,M.J., *Strategic Planning in Malaysia*,1982.
170. *ibid.*
171. The regional areas include: Jengka, Pahang Tenggara, Johor Tenggara, Trengganu Tengah, Kelantan Selatan, Penang, and Johore Tenggara. These areas except for Penang are mainly under virgin jungle selected for agriculture, industrial,

commercial and residential development.

172. Local Government Act, 1976, s. 10. It is to be noted that members of the governing body of the local authority are appointed by the State Government.

173. *ibid.*, s. 2.

174. Federal Capital Act, 1960, s. 6. Members of the Advisory Board are appointed by Malaysian Head of State, the Yang di-Pertuan Agong.

175. City of Kuala Lumpur (Planning) Act, 1973, s. 9.

176. NLC, s. 108.

177. Bruton, M.J.,1982, *op.cit.*

178. Town and Country Planning Act, 1976, ss. 3 & 4(4).

179. City of Kuala Lumpur, Planning Act, 1973, s.3.

180. The term 'district' refers to the districts which make up a state. In each district, the land office is responsible over all land matters regardless of whether the land is within a local authority area or outside it.

181. They are the Public Works Department, Drainage and Irrigation Department, Health Department, Agriculture Department, National Electricity Board and so on.

182. Negri Sembilan Land Policy, see note 99.

183. FMS, Cap.137, S. 149 (vi).

184. The City of Kuala Lumpur, Planning Act, 1973, s.33(1). The Appeal Board shall consists of three members, one of whom is the Chairman who is being nominated by the Chief Justice of the High Court in Malaya from among the Judges of the High Court or persons who for ten years preceding the nomination have been members of the Judicial and Legal Service of Malaysia, or have been Advocate and Solicitors of such High Court.

185. *ibid.*, s. 19(1)(a).

186. NLC, s. 127.

187. See Ahmad bin Salim, *op.cit.* p.95.
For cases referred to, see:
*CLR Federal Territory v Garden City Development Bhd.*, (MLJ,1979); *Collector of Land Revenue, Johor Bharu v South Malaya Industries Bhd.*, (MLJ,1978).
As for cases challenging the authority's decision on land use control see the following cases:
(1) Under Planning legislation:
(a) *Liew Kum Kiew v Commissioner of the Federal Capital of Kuala Lumpur*,(MLJ,1972).
(b) *Ipoh Town Council and Anor vs. Ng Khoon*, (MLJ,1960).
(c) *Tok Jwee Kee v Tay Ah Hock and Sons Ltd., and Anor*,(MLJ,1973).
(2) Cases under land legislation:
*Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn.Bhd;*(MLJ,1979).

188. Town and Country Planning Act, 1976, s 22(4)(a).

189. *ibid.*, s. 22(4)(b).

190. At the same time, some shops may also be required elsewhere to serve local or neighbourhood units. Land use control can also play a part in directing the opening of shops in these units by allowing change of use of land for buildings, for example from residential to shop houses.

191. NLC, s. 124 NLC.

192. See s.205 (3) and (4), NLC. s.205 (3) provides:
"Subject to sub-section (4), no dealing in respect of any alienated land or any interest therein subject to category "agriculture" or to any condition requiring its use for any agricultural purpose shall be effected if such dealing would have the effect of creating any undivided share of such size that, if the land is to be partitioned in proportion to several shares, the area of any resulting individual portion could be less than two-fifths of a hectare."[vide NLC (Amendment Act, 1984, Act A587 gazetted 28.6.1984), see new section 136(1)(f) as amended.

193. Land (G.S.A) Act, 1960, s.16.

194. As a result of tin mining, numerous pools were created. To reduce these effects, the mining lessee is required to post a bond to guarantee that he will fill the pools and level the land to the satisfaction of the DLA. This bond needs to be posted before a mining certificate allowing him to carry out mining is registered.

195. Town and Country Planning Act, 1972, s. 22(4)(a).

196. Town and Country Planning Act, 1976, s.11.

197. There are 2.2 million acres of agricultural land left abandoned in Peninsular Malaysia as at 1979. As they are uncultivated for more than 3 years,they are termed as *idle land*. From the total area, 379,958 acres are paddy land which are not cultivated. Among the reasons given by the Ministry of Agriculture are: (i) physical factor: lack of irrigation facilities (ii) Topography: The lands are in swampy areas or the terrains are too steep. (iii) unsuitable soil condition : the soil condition is poor. (iv) lack of infrastructure: absence of irrigation canal, transportation, (v) socio-cultural: problems of multiple ownership, absentee landlordism, fragmentation of land. Since this aspect is closely associated with local customary laws and practices, issues on proper utilization of such land are seldom attended to (vi) low income obtained from farmlands. [For further detail see *Lapuran Pembangunan Tanah-Tanah Terbiar*, Kementerian Pertanian Malaysia, Julai,1980. (Report on Idle Land, Ministry of Agriculture, Malaysia, July, 1980].
Under s.127 of the NLC, any breach of condition of land use is liable to forfeiture. The weakness of enforcement is due to various reasons; such as shortage of staff, lack of information as to the breach and so on, thus breach of condition is left unenforced. No data is available as to the number of cases of breach of conditions.

198. See Abdul Manaf Mohd.Nor, *op.cit.*

199. National Land Council, paper No.10/82. The resolution was adopted by the Council (accepted by all the state Governments) at the 35th meeting, on 28th August,1982.

200. NLC (Penang & Malacca Titles) Act, 1963.

201. Wilcox,D.L.(1978), *New Planning Wine In Old Legal Bottles.The case for Greater Utilization of Existing Legal Resources in Malaysia,* Urban Laws and Policy, 1, 275-305.

202. This is done under ss. 203-204 of the NLC. However, this provision is only meant to lands having contiguous lots held

under land office title. The application of this provision has been extended (by some DLAs) to other cases such as for conversion process (change of category). This practice is not in accordance with the law.

203. National Land Code, s.204A-H, as amended, vide Act A587, gazetted on 28.6.84.

204. F.M.S. Malay Reservations Enactment, s.7.

205. New Straits Times, dated 4.7.1982. It was reported that the State Authority approved for alienation plots of land to private influential individuals to be used for housing, inspite of objections from the Petaling Jaya Municipal Council, that the land was part of a town park maintained by the Council. However, due to public outcry and also because the case was highly politicised, the approval was withdrawn as no titles have been issued as yet to the successful applicants.

206. National Land Council, 35th meeting, 1982, minute No.3.1. In 1982, there were 167 vacancies in the land offices in Peninsular Malaysia, 11 in category A and 79 in category C, which included settlement officers and clerical staff. The shortage of staff hindered the enforcement work.

207. Ministry of Finance *Property Report*,,1982.

208. Litchfield N. and Drabin H.D. *Policy in Planning, op.cit., 1980.*

*209. ibid.*

# CHAPTER 5

## THE NATIONAL AGRICULTURAL POLICY IN PENINSULAR MALAYSIA

The object of this chapter is to highlight the important role of agriculture in the economic, social and political development of Peninsular Malaysia. It will also analyse the impact of land legislation and land policy on agricultural development of the country, *vis-a-vis* land development strategies and land resource management. While discussing the present trend in agricultural policy, a historical perspective of the British agricultural policy in Peninsular Malaysia (1874-1957) is also to be discussed, as the colonial agricultural policy is in fact practically responsible for shaping the Malaysian agricultural policy today. Finally, it will emphasise on the role that can be played by the National Agricultural Policy (NAP) towards the achievement of the New Economic Policy (NEP). It will also examine the strength and weaknesses of the newly formulated Malaysian National Agricultural policy.

In order to understand the present Malaysian agricultural policy, we shall now look at the colonial agricultural policy in Peninsular Malaysia from a historical perspective.

### *MALAYSIAN AGRICULTURE FROM A HISTORICAL PERSPECTIVE*

#### *The Early Colonial Agricultural Policy*

The development of agriculture in the Malay states as an important objective of the British colonial regime as dependence on tin alone was economically risky. Further, agriculture was perceived to be a more stable economic activity predicated on a

more settled population which would lead to permanent colonisation and yield a stable revenue. [1]

The British agriculture policy in the Malay states was two-pronged in that it envisaged first, large scale plantation agriculture and second, peasant agriculture development to secure self-sufficency in food crops.[2]

The British hoped that such a policy would have beneficial spread effects on the whole economy through the introduction of new or larger factors of production and the stimulation of subsidiary industries.[3] Since the development of agriculture needed large capital, the British administration then regarded European capital and enterprise as important prerequisites for the implementation of their plantation agriculture schemes.[4] The failure of the European capitalists in the tin mining industry rendered them amenable to investing plantation agriculture in Malaya.[5] Various incentives were extended to European planters to induce them to invest in the Malay states, as explained in Chapter 3. However, prior to the 1890's, the effort to involve Europeans in plantation agriculture were not very successful.[6] The government was more successful with Chinese planters who established large sugar plantations in Perak and pepper, gambier and tapioca plantations [7] in Negri Sembilan.

The main problem faced by the early European planters were that of labour supply management, inadequate capital funds and inexperience in crop cultivation. The other problem was the lack of experience of the European planters themselves as they possessed neither the expertise nor the financial resources to open up new lands for purposes of agriculture.[8]

The other prong of the colonial agriculture policy was the encouragement of peasant agricultural development to achieve self-sufficiency in food production through *inter alia* making land easily and cheaply available to potential cultivators.[9] However, many of the immigrant Malaysians preferred to work as wage earners in other occupations and those who did engage in agriculture grew such non-food cash crops as coffee for export market. Therefore, the British plan of self-sufficiency in food production was not achieved.

Peasant agriculture during this period failed to rise above subsistence level. The crops continued to be adversely affected by natural enemies, there were no agricultural advances to increase yields and the growth of agricultural production was further handicapped by several new factors. In the developed areas of tin districts, paddy peasants were tempted by high prices to sell their lands to non-Malays who used them for mining, plantation agriculture or other purposes.

The planting of rice was avoided by the non-Malays because the price of local rice was not sufficiently high to make its cultivation as remunerative as other economic activities. The Malays continued to be rice farmers not of choice but because they were, as will be shown later in this chapter, forced to do so by deliberate colonial policy.[10] The failure to achieve self-sufficiency in rice led to the import of rice into the country to feed the increasing population.[11]

It can be said that peasant agriculture during the first two decades of British colonial rule was not as successful as it was expected to be because it had stiff competition from *inter alia*

tin mining. Peasant agriculture was also adversely affected by competition from cheap rice imports. The British policy also failed in establishing a non-Malay peasant agriculture and non-Malay peasant agricultural activity was almost entirely absent during this period.[12] The agricultural activities of the peasants were more their spontaneous response to the new conditions than the result of specific policies formulated by the colonial administration itself.[13]

The colonial administrators tried to promote peasant agriculture as they perceived a great potential for agricultural development in Peninsular Malaya. The failure of agriculture to develop during the first two decades of the 20th century dim these hopes of the British officials.[14]

With the development of the motor industry in the late 19th century, the demand for rubber produced a spectacular boom in the rubber market. Realising the potential of rubber as a source of future economic strength for the Peninsula, the government encouraged this by offering land on easy terms for rubber cultivation in August, 1897.[15] A vote of M$4,000 was allocated for rubber experiments in 1900.

By 1897, as a result of the generous agricultural land policy, a total of 463,981 acres had been alienated for agriculture in the four FMS mainly in Perak and Selangor to 94,002 applicants.[16] The majority of the landholders were peasant agriculturalists and it was estimated that they held approximately two-thirds of the total alienated agricultural land in the states in 1897, or about 300,000 acres.[17] By 1902, it was estimated that the area of 'occupied' agricultural land was

718,707 acres, an increase of 254,726 acres over the 1897 figure. The actual acreage of increase in the peasant sector is not known, but a less substantial part must be attributed to it as a result of the rapid expansion of the plantation rubber industry during the period.[18]

By 1905, it was estimated that more than 40,000 acres were planted with rubber as is shown in Appendix 5.1. Much of these were planted by the estate sector. A large area of land during the period was alienated to applicants whose *bona fides* were questionable.[19] Later, greater care was exercised in scrutinising applicants but there was no sure way of checking their credentials for land alienation purposes. Another weakness of the land agricultural policy at that time was the failure to act against land owners who failed to cultivate their land fully - which was one of the conditions upon which land was alienated to them. As a result, it was estimated that only about half of the 320,000 acres of alienated agricultural land in the FMS in 1902 was under cultivation.[20]

***The Early Development of Peasant Agriculture***

The Negri Sembilan Malays had been agriculturalists long before the arrival of the British continued their agricultural activity during the colonial period. The main agriculture crop was paddy. After the federation, the indigenous agricultural population continued to be self supporting in their basic needs. Though there were some crop failures after 1900, the peasant agriculturalists of Negri Sembilan remained closest to the British ideal of the peasantry because the Minangkabaus of Negri Sembilan managed to preserve relatively intact their *Adat*

*Perpateh*. A system of personal law, the *Adat Perpateh* kept the tensions and conflicts which had undermined peasant agriculture in other Malay communities to a tolerable minimum. Under the *Adat Perpateh* system customary land tenure, the rights to land were guarded by the female members of the community on whom the estates of the deceased had devolved. This enabled agriculture to be more assiduously maintained as the female cultivators of Negri Sembilan were less drawn to other occupations.

In Selangor, in 1891, the condition of agriculture was least satisfactory. It had in 1891 only 3,000 acres under paddy although the land area in Selangor is larger than that of Negri Sembilan. An attempt by the British administration to develop paddy cultivation in Selangor failed as the state historically had a less firm agricultural tradition than the other states largely because the population consisted of immigrants who had no experience in agriculture and thus preferred other economic activities.[21]

In Pahang, traditional peasant agriculture had been less disrupted because of the later imposition of colonial rule and the state's relative isolation from the forces of change prevalent in many parts of the west coast.[22] By 1901, however, there was an increase in agricultural activities and paddy cultivation estimated to cover 27,400 acres.[23] The British administration was especially concerned over the standard of Pahang's peasant agriculture.[24]

It was in Perak that the British exerted their greatest efforts in developing peasant agriculture during the period of residential administration, especially under Hugh Low and Frank

Swettenham. New policies were adopted to attract peasants and to develop agriculture. Except for the districts of Krian and Larut, agricultural land in Perak were exempt from land rents until 1882 and the practice of rent remissions for new peasant holdings was widespread. Though successful, the development generated by these policies was not founded on a firm basis[25] but was marked instead by haphazardness, uncertainty and a number of failures.

During the early years of British rule, a large number of 'foreign Malays' and immigrant Malaysians had entered the two districts in Perak, attracted by the generous land alienation terms. A network of roads and small canals and villages were established. By 1885, more than 50 acres had been alienated, mainly to planters and peasant agriculturalists. In the same year, paddy worth $204,405 was exported from the districts. "All this progress reflected favourably on British policy and augured well for their hopes of peasant paddy production".[26]

However, in later years, there were paddy crop failures, no new lands were opened up and the districts' paddy exports fell heavily.[27] Paddy lands were abandoned and at the height of depression in 1890 it was said, "there is hardly any acre to be seen and the inhabitants have cleared out wholesale".[28] The colonial agricultural policy changed in 1895 as a result of a serious drought. An irrigation scheme known as the Krian Irrigation scheme costing $656,000 was built and completed in 1906. However, during the poor season, many cultivators left their paddy field lands uncultivated, whilst others pulled out of the districts altogether.[29]

Although water control was an important factor in the development of peasant agriculture the British colonial administrators still pursued a restricted irrigation policy in the Malay states. The insistence of Ernest Birch, the Resident of Negri Sembilan, in his irrigation memorandum in 1898, that there be official irrigation policy for the FMS, resulted in the passing of an enactment on irrigation for the states in July 1899. This enactment empowered the residents to define and control irrigation areas and to impose rates therein.[30] This enactment was not an effective instrument for the development of irrigation schemes as it lacked the government's financial and moral support. Thus, during the period, irrigation remained a low priority activity. With the exception of the Krian Scheme, no large irrigation works were constructed and only a few small projects were undertaken with varying degrees of success.

As a result of paddy crop failures in 1901, enactments were passed to regulate the dates of the different stages of cultivation. The result was that of the paddy harvest in Pahang and Negri Sembilan improved greatly. However, these measures were not always successful as there were occasions when cultivation dates were fixed without considering local conditions, which led to the crop failures.[31]

Mining operations had disruptive influence on agriculture, especially paddy cultivation. The mining activity polluted streams or rivers or diverted water required to irrigate the fields. The administration was in a dilemma whether to protect the interest of paddy cultivation at the expense of its most profitable economic sector. As the situation was very serious by

the 1890's, a Mining Code was enacted in Perak in 1895. The Code extended the powers of the administration over the mining industry to effect more scientific and less wasteful mining techniques. The Code also attempted to ensure that in granting water licences to miners, care would be taken to safeguard the rights of paddy planters and to see that irrigation works were not interfered with. In 1897, the government drafted rules to prevent tailings produced by hydraulic mining.

By 1899, the first Federal Mining Enactment was passed and the provisions of the Perak Mining Code of 1895 were extended to the other states. These measures, however, did not succeed in preventing water from being fouled and mining residue from being deposited in the fields. The spoilage of agricultural land could be stopped only by a total prohibition of mining activity in agricultural areas or by the enforcement of costly filtering processes. The government was not prepared to take these drastic measures.[32]

The Commission of Enquiry, which had been established in 1895 to study and recommend ways and means of solving the problems faced by the tin industry, failed to put forward stronger measures to prevent paddy lands from being disturbed by mining operations. The instances of conflict between these two activities became less numerous with the passage of time. In tin mining areas, employment in the mines, either as a full-time or an auxiliary occupation, was more profitable than working in the fields, and this resulted in many instances of non-cultivation of alienated agriculture land. The second problem was the peasants whose working lands were potentially good mining areas, were

induced to sell them to the miners, or were relieved of them by the government for alienation to miners. The 1895 Perak Mining Code had laid down that the government was not to interfere with agricultural holdings or to hand them over to miners whilst large tracts of uncultivated lands were still available. Section 96 of the Code, however, eroded this protection by empowering the State Council to decide when mining should have precedence over agriculture. The government seemed to favour mining over agriculture.[33]

*Cash Crop In The Early Colonial Period*

The British at first did not resist the peasants' initiative in cash crops. However, in the late 1890's, the administration openly opposed this activity. This was the result of the failure of coffee cultivation in 1895 which led to peasants abandoning their holdings and migrating. Similarly, as the gambier, pepper, and tapioca markets declined the peasants lost interest in these three crops. The ailing peasant cash cropping situation had two important effects. First, the activity lost official favour and second, it discouraged the subsistence-oriented peasants from moving into commercial agriculture.

The British on the other hand encouraged the development of peasant cash cropping in coconut plantations because the crop did not interfere with the peasant's food production plan.[34] A generous policy of alienating land cheaply to the peasants with a minimum administrative process was adopted.

Initially, the Colonial administration favoured the commercial exploitation of the forests which was undertaken without much control. This was because, forest licences granted

and the export of forest products brought revenue to the governments. Forest control was originally in the hands of district administration which had little time to deal with it. In 1898, forest departments were established in Perak and Selangor. However, the forest departments were established not to protect forest land *per se*, but more to facilitate the quick and economic exploitation of the forests for these departments had to justify their existence by their revenue-collection. The forest departments could only pursue limited programmes of forest conservation and development because they were under-staffed and lacked funds. During the period, no forest enactment was passed, forest reservation proceeded very slowly, the forest departments remained small and ineffective and the forests continued to be cut down with little thought for the future.[35]

The peasants' condition in respect of agriculture during this period changed little from that during the residential period. While peasant agriculture advanced in some areas, it stagnated or deteriorated in other parts of the country. The Colonial administration's generous land policy however, facilitated the movements of peasants and enabled them to pursue more crop options than could otherwise have been available to them.

***Land Tenure System Of Paddy Land In The Colonial Period***

The land tenure system for paddy land during the early period of colonial rule can best be described as two tiered. All holders of land whether outright owners by virtue of holding grants, or tenants by virtue of holding long term leases were required to pay an annual rent to the controlling authority, initially the East Indian Company and from 1858, the British Crown.[36]

On the other hand, there was evidence of rack-renting in Kedah in early period. Many peasants in Kedah, though they were usufructuaries of the land, were in reality merely the dependants of agents residing in town who supplied them with food and who in return receive the whole of the produce, with consequent profits.[37] In modern times, this system in Kedah's agricultural society is known as *paddy kunca* system. For non-payment of quit rent, the land was forfeited and sold to others.

In Perak, Sir Hugh Low's high quit rent policy rendered rice growing unprofitable. The level of profitability was even greater for those who could obtain off-farm employment. The high quit rents were later changed when the British adopted the policy of ensuring a secure food supply and self-sufficiency in food production. However, this was not achieved and rice has still to be imported from Bengal, Thailand and Burma.[38]

***The Colonial Policy On Paddy And Its Impact On Peasant Agricultural Patterns***

It was seen earlier in this chapter that paddy cultivation was left to the Malays, largely at their own expense and exclusively by their own labour. Even today we find that about 80% of the Malay peasants are in the poverty-stricken rice growing areas of Peninsular Malaysia. During the Colonial period, rice growing was a major activity with 60% of the total rice area located in the north-west of the Peninsula. Another 23% of the rice growing area was in the north east of the country. With the development of the Penang market and markets elsewhere in the Peninsula, production of the three main commodities in the west came to be identified with race: spices

in the hands of the Europeans, sugar in the hands of the Chinese and rice in the hands of the Malays. The development of rice came to be market oriented and in most accessible areas the holdings and fields were large enough in size to ensure a surplus. However, the unit of production remained unchanged and since amongst the Malays there was no fall in the ratio of agriculture workers to total workers, true economic development did not follow.

The agricultural policy discriminated against towards the peasants in such other ways as the failure to provide adequate drainage and a good communications system, which were essential for agricultural development. The plantation and mining sectors were given preferential treatment with good drainage and communication systems. These policies left peasants with lands less valuable and less suitable for agriculture and deprived them of the broader social benefits arising from public works. This also explained why the peasants owned only a small proportion of alienated land in the developed districts accessible by road and rail.

The bias against peasants in the agricultural policy was balanced by a tilt in favour of plantation agriculture which the administration believed could bring about agricultural development and profits of which could be taken out of the country. Thus, by 1910 peasant agriculture was not favoured by the administrators and this left the peasants with their traditional role of agricultural subsistence producers. However, with the introduction of rubber, the peasant took a greater interest in their lands and large numbers of them returned to the

land.

However, the administration, believed that cash cropping should be a monopoly of the planters, it tried to prevent the peasants from continuing with the cultivation of rubber. The government's strong disapproval of peasant rubber cultivation was caused partly by increased concern over the decline in subsistence agriculture especially paddy cultivation. Various efforts to encourage paddy development, failed to attract the peasants to concentrate fully on paddy development because other more profitable economic activities such as tin and rubber were far more attractive.

In 1917, the Federal Council, to protect the paddy land and to boost local food production, passed the Rice Land Enactment.

The enactment empowered the government to deprive the cultivator of his cultivation (produce) and provided penalties for any violation of the condition. The Enactment had, however, been opposed on the ground that the nature of cultivation provision should be construed as a description of cultivation undertaken rather than as a binding condition. Further, much of the paddy land within the scope of the enactment had much earlier been converted to other types of cultivation.

Initially, the enactment was implemented liberally. However, after 1919 the enactment was enforced quite strictly. This compelled the peasants to remove the cultivators of other types of crops from the land. They also flooded the fields to destroy any other crops cultivated.[39] This enactment however succeeded in preventing rubber from encroaching further into the established paddy fields. In order to increase local food

production, various administrative and legislative measures were taken. This included the passing of Rice Land Enactment mentioned earlier and Coconut Palms Protection Enactment which made the destruction of coconut palms for the purpose of cultivating of other crops an illegal and punishable offence. Administratively, however, the local population, especially the peasants were encouraged to produce and increase local food production.

The failure of the rice crop in India and a world food shortage crisis after the Second World War forced the government to introduce the Food Production Enactment in 1948, which empowered the government to increase food production should the need arise. Thus, in 1949, a Food Controller was appointed in the Straits Settlements and Johore, with powers to compel and regulate the cultivation of rice and other food crops on any land which appeared to be suitable and to requisition labour for the purpose of such cultivation.[40]

During the 1919 and early 1920, the Federated Malay States (FMS) experienced the rice crisis as a result of a drought in Siam which caused paddy exports from Burma to fall by 50% and the price of rice from Siam and Saigon increased tremendously. The country was forced to depend on its depleted rice stocks. Under a food control scheme, government rice stocks in the country were taken over by the government which assumed direct control of rice imports[41] which were gradually released to wholesale dealers at fixed prices to ensure the most equitable distribution. This rice crisis caused a panic among the government officials and the masses as prices of rice rose tremendously. Throughout the period of rice control, the

government was compelled to sell at less than its cost price and had to absorb the loss.[42]

The economic depression of the early 1920s taught a lesson to Malayan peasants that dependence on cash crops alone was risky. The government realised that a new policy was needed to boost peasant food-crop production, especially that of rice. In fact, as early as 1920s, there was mounting public criticism of the government's failure to reduce the country's dependence on imported foodstuffs and demands were made by the Malay elite for a better deal for the local paddy industry in which so many Malay peasants were involved.

There were two opinions during this time on the course of action that should be taken for the development of agriculture. The first thought that the government should concentrate on the production of export staples, while providing for reasonable encouragement to paddy cultivation. The second view was that domestic paddy production should be encouraged by every possible means. This resulted in the Rice Cultivation Committee Report which contained a comprehensive account of paddy cultivation in Malaya during the colonial period.[43]

The most significant aspect of the report was its recognition of the importance of water control in paddy cultivation and its recommendation that a Department of Drainage and Irrigation be set up with branches throughout the country to deal with the problem. The department was finally established in 1932. The provision of drainage and irrigation works was primarily responsible for stabilising the area and production of paddy in the FMS throughout this period. The government's interest in

rice production resulted in the increase in paddy acreage. Rice production also improved in the years to come. Appendix 5.2 shows rice and rubber acreage in 1920s.

Efforts on the part of the administration to increase rice production proved futile. The administration's attempt to encourage peasants to cultivate coconut by alienating land at low rents was frustrated by the gradual inter-planting of rubber with coconuts and by some peasants cutting down coconut trees and planting rubber trees in their place. To check this practice, there was passed in 1917 a Coconut Preservation Enactment which prohibited the replacement of the coconut palm by other forms of cultivation.[43]

At the end of 1920, it was very clear that the administration's foregoing policy had increased food production only marginally. Many of the areas thus cultivated were eventually replaced either by rubber or were abandoned. Whatever the outcome of the food production policy, the responsibility for the unsatisfactory situation in peasant food production was squarely the administration's. The agriculture department which was established in 1905 remained distant from the peasantry. As a result, when the rice shortage crisis hit the Malay states, the agriculture department could not give them much assistance.

In 1925, the Food Production Enactment was repealed in response to an appeal from the plantation industry. This enactment forced the plantation and tin industry to plant or cultivate rice but low yields failed to increase rice or food production. Local food production continued to be a problem unable to keep pace with increased demand. Further, the

cultivation of food crops threatened to be superseded by that of rubber.

*The Policy On Rubber Restriction*

This Stevenson Restriction Scheme (1921-1922) imposed on the the smallholders and the estates for the sole purpose of restricting rubber output and thereby raise prices.[44] The Stevenson Committee, set up by the Colonial office in 1921 to investigate the rubber situation, recommended that the government take action to reduce the amount of rubber exported from producing countries. The recommendation was accepted by the Secretary of State and the British Government and thus, the *Export of Rubber (Restriction) Enactment, 1922* was passed in the Federal Council on 24 October 1922.[45]

This scheme greatly affected the rubber smallholders as their main source of livelihood was rubber. The low rubber prices inflicted considerable hardship, particularly on peasants, many of whom turned to paddy planting or growing minor cash crops or opening up small patches of land to grow food crops.

However, the overall benefit of the Stevenson scheme - an increase in the price of rubber - was shared by both the smallholders and the planters. On the other hand, the disadvantage was that, at the end of the restriction period (31 October 1928), the Netherlands East Indies had exceeded Malaya in terms of acreage and it had almost displaced Malaya as the largest rubber growing country in the world and it was providing strong competition in the rubber market.[46]

The depression lasted for more than four years (1928-1931) and the fall in rubber earnings was disastrous for the Malayan

economy and those dependent on rubber. The low rubber prices resulted in a severe fall in rubber earnings from $202 million in 1929 to $37 million in 1932 and revenue from rubber exports fell from $11 million in 1926 to barely half a million dollars in 1932.[47]

A new rubber restriction scheme (1929) replacing the Stevenson scheme affected the peasants in many ways. The intention of the new scheme was expressed thus:[49]

> "...One of the primary objects of the rubber control scheme was to protect European capital in plantation companies in Malaya, Borneo and the Netherlands East Indies from competition arising from the production of rubber by the natives at a fraction of the cost involved on European owned estates."

Therefore, for the second time, the peasants' interest as rubber producers were sacrificed and this time it was less justifiable as while it could at least be claimed that during the time of the Stevenson Scheme there was a general ignorance of the conditions of peasant smallholdings, the International Rubber Regulation Committee and the Malayan government now had all the available information as well as the lessons of recent history to implement a fair scheme.[50]

Between 1934-41, under-assessment under this scheme resulted in a financial loss of approximately M$173 million for smallholders of the FMS.[51] This loss was, however, less important compared to the effects of the scheme on future peasants smallholdings. Available statistics of land alienation from 1922-1930 reveal that a much smaller area of land was alienated to the peasants compared with the planters as shown in Appendix 5.3.

The policy was abandoned in 1930, and there was a total ban on the alienation of land for rubber planting from 1930 to 1942.

From 1934 to 1942, there was a new policy by which there was a prohibition of new rubber planting on land previously alienated, except for one year from 1939 to 1940 when 5% new planting was permitted.[52] This prohibition prevented the peasants from planting whatever reserve land they held. Nonetheless, the scheme permitted a large measure of replanting between 1934 and 1938 and virtually unlimited replanting from 1939 onwards. In practice, however, the replanting scheme excluded many smallholders as this operation resulted in a loss of income during the six years of which had to elapse before the rubber trees could be tapped. The estates were in a better position to take advantage of the replanting scheme. Thus, this scheme indirectly destroyed the long term competitive ability and prospects of the peasant smallholders and by doing so it enhanced those of plantation producers. Though detrimental to the peasant industry, and though there were several requests for its modification, the policy continued to be implemented.

Prior to this policy, the smallholders' lands were being forfeited for violation of the cultivation condition. The request by the Malayan Estate Owners' Association that the smallholders who had their land titles forfeited be re-alienated the land and permitted to plant rubber was rejected as lands with 'no rubber condition' should not be planted with rubber. The government's policy then was that it was unwise to encourage rubber cultivation on land alienated for food cultivation and that the smallholders had 'adequate land for new planting within the scope of existing policy.'[53]

It can be concluded, then, that the colonial agricultural

policy and its economic programme in the 1930's was to ensure that the Malays would remain in the paddy cultivation areas with the least profitable economic activities. The colonial agricultural aimed mainly to ensure that the plantation sectors would continue to prosper and progress. This is evidenced by the various measures imposed by the government on the Malay peasants to discourage and stop the Malays from embarking on the cultivation of the more profitable cash crops. This was done although the Malays had on many occasions demonstrated their ability to undertake successfully the cash cropping of rubber. This was thus a deliberate policy of the colonial government to ensure the survival of the more preferred European-owned rubber plantation at the expense of the peasantry.[54]

***THE PRESENT STATE OF MALAYSIAN AGRICULTURE***

According to the land use survey of Peninsular Malaysia (1974),[55] agriculture occupied 26% of the land (8,577,000 acres),urban and industrial use took up 0.8%, mining 0.7%, forest 58.6%, swamp 8.1% and other uses 5.6% of a total land area of 32 million acres (Table 4.1). Therefore, in terms of absolute area utilised, agriculture and forestry account for the largest areas of land. The net land area still available and suitable for crop production amounts to 5.7 million acres. The Projected new land development up to 1990, taking into account domestic and export demand and markets for agricultural commodities, is expected to involve the use of some 4.3 million acres of land. In order to accomplish this, land would have to be developed at the rate of approximately 200,000 acres annually. If this development continues at the above rate, a further one million acres of land

would be developed by the end of the century.

Effective policies and strategies based on five-year development plans are pursued continuously by the Malaysian government. The 4MP (1981-1985) and the 5MP (1986-1990) emphasises *in-situ* land development which includes the provision of basic infrastructure and agricultural input as well as promotion of local activities. An integrated approach in providing these facilities and new land development with perennial crops seems to be stepped up[56] under the present 5MP for the benefit of the landless and under employed farmers.

Major developments took place in existing agricultural areas as a result of Integrated Agricultural Development Programmes (IADPs) as well as the expansion of drainage and replanting programmes. Several large drainage and irrigation projects such as the MUDA, KEMUBU and BESUT projects were completed during 1971-80. These projects benefited a total of 109,000 farm families and contributed 57% of the paddy output in Peninsular Malaysia.[57].

As for rubber replanting, a total of 852,906 hectares were replanted with rubber and other crops by RISDA up to 1984. This involved 465,545 smallholders.[58] The replanting programme by RISDA attracted more response from the larger holdings despite an increase in the replanting grant from $2,964 to $5,434 per hectare for smallholders (4.1 hectares below) and from $2,223 to $3,705 per hectare for holdings above 4.1 hectares.

Since the replanting scheme started in 1963, a total of 12,100 hectares of coconuts have been replanted. The acreage of coconut smallholdings increased from 191,000 hectares in 1970 to

198,800 hectares in 1980.[59] A total of only 7,000 hectares of pineapples were replanted between 1971-80 because of shortage of labour, problems of peat soil and market uncertainties. From 1971-1980, over 10,300 hectares of rubber and paddy were rehabilitated by FELCRA,[60] mainly in the less successful land schemes developed by the various state governments. FELCRA also rehabilitated 761 hectares of land as pilot projects aimed at the restructuring and rehabilitation of existing villages and agricultural holdings and developing of new areas on the fringe, to maximise production and increase income.[61]

Despite Malaysia's effort in industrialisation, urbanisation and modernisation programmes, the country's agricultural sector still plays an important role. Traditional villages and agriculture (including fisheries) are still very influential. Of the 13.7 million population [62] (11.4 million in Peninsular Malaysia), 66% live in rural areas, (63% in Peninsular Malaysia). More than 62% of the Malays live in rural areas.[63] In 1985, of the country's total labour force of 5.9 million, 36% were employed in the agricultural sector.[64]

The agricultural sector (including fishing) currently the largest sector of the economy, contributed 29.0% of foreign exchange earnings or M$11,030 million in 1985 compared with 39.8% or M$11,200 million in 1980. Its share in GDP declined from 22.8% in 1980 to 20.3% in 1985. The agriculture sector provided 1.95 million jobs or 35.7% of total employment in 1985, compared with 1.91 million jobs or 39.7% in 1980. During the Fourth Malaysia Plan (4MP) (1981-1985), it generated about 42,300 new jobs or 6.5% of total new employment.[65] Agricultural exports continued

to account for a large share of total commodity exports during the decade (1971-1980) although its shares declined from 52.1% in 1970 to 35.8% in 1980 mainly because the slow growth in the production of rubber and the emergence of crude oil and manufactured goods as important export commodities. Exports of agricultural commodities grew by 9.1% per annum from 1971-75 and by 19.7% per annum from 1976-1980 amounting to an average annual growth rate of 14.3% for the decade. Rubber exports accounted for 41.8% of this growth, while sawntimber accounted for 23.9% and palm oil 30.8%.[66] However, agricultural production was severely affected during the first half of the decade by the world recession in later 1974 and in 1975 and by another recession in 1985. The recessions affected commodity prices adversely. Thus, export commodities as a main source of growth for both the economy and agricultural sector experienced severe fluctuations in prices during the decade. This is due to the fact that agriculture depends heavily on world trade. In addition, from 1971-1980, there was a change in the agricultural sector in terms of increasing diversification of the economy and the export structure and changing export composition in favour of the non-primary commodities.

***Poverty In Agriculture Sector***

The highest incidence of poverty is in the agricultural sector, where it accounted for 66.6% of the poor population in 1980.[67] The poor in this sector were the paddy growers, rubber smallholders, coconut smallholders, fishermen, estate workers, agricultural labourers and the Orang Asli, (see Appendix 5.4). In 1980, it was estimated that 35.1% of estate workers and

*TABLE 5.1*

**INCOME BY ETHNIC GROUP, 1979 AND 1984, PENINSULAR MALAYSIA**
($ per month)

| Ethnic group | | Constant 1970 prices | | | Current prices | | |
|---|---|---|---|---|---|---|---|
| | | 1979 | 1984 | Average Annual growth, rate, 1980-84 (%) | 1979 | 1984 | Average Annual growth, rate 1980-84 (%) |
| Bumiputra | mean | 296 | 384 | 5.3 | 492 | 852 | 11.6 |
| | median | 197 | 262 | 5.9 | 237 | 581 | 19.6 |
| Chinese | mean | 565 | 678 | 3.7 | 938 | 1502 | 9.8 |
| | median | 373 | 462 | 4.4 | 620 | 1024 | 10.6 |
| Indian | mean | 455 | 494 | 1.7 | 756 | 1094 | 7.7 |
| | media | 314 | 347 | 2.0 | 521 | 770 | 8.1 |
| All ethnic groups | mean | 417 | 494 | 3.4 | 693 | 1095 | 9.6 |
| | median | 263 | 326 | 4.4 | 493 | 723 | 8.0 |
| Urban | mean | 587 | 695 | 3.4 | 975 | 1541 | 9.6 |
| | median | 361 | 463 | 5.1 | 600 | 1027 | 11.3 |
| Rural | mean | 331 | 372 | 2.4 | 550 | 824 | 8.4 |
| | median | 222 | 269 | 3.9 | 369 | 596 | 10.1 |

*Source*: Fifth Malaysia Plan, 1986-1990, table 3-4, p.99.

55.1% of paddy cultivators were poor. In absolute terms, the largest number in poverty groups were rubber smallholders (175,900) followed by paddy cultivators (83,200).[68] Of three main racial groups, the incidence of poverty is highest among the Malays.

In terms of income distribution among the ethnic groups, the

Malay mean income continued to be below the national average of $723. Both the Chinese and Indian mean incomes were above the National average as shown in Table 5.1.[69] The World Bank, in its Economic Report, found that poverty was more widespread in rural areas than in urban areas.[70] More than a quarter of the rural Malays lived below the low poverty line of M$350 a month.[71]

In 1971, under its Second Malaysia Plan (2MP), the government incorporated two long term objectives that would guide development policies, which collectively came to be known as the New Economic Policy (NEP). This policy, was initiated after the racial riot of 13 May 1969,[72] addressed the acute problem of poverty and the strong identification of race with economic functions. Accordingly, the NEP's objectives were to reduce poverty (from 49% of households in 1970 to 17% by 1990) and to restructure society so as to more broadly incorporate the majority bumiputra population into the main stream of economic life. The areas covered (with targets set for each are): employment by sector, employment by occupation, and ownership of the share capital of limited companies. It is targetted that by 1990, bumiputra shares at all levels and in all types of employment are to reflect the community's share in population and bumiputra asset ownership in the economy is to be at least 30% of the total.

*The Rubber Smallholders*

The largest identifiable group of poor rural households in Peninsular Malaysia comprises rubber smallholders. Appendix 5.5 shows the number of rubber smallholders by ethnicity and states, and Appendix 2.7 shows acreages owned by smallholders by

states.

According to the Mid-Term Review of the 4MP, rubber smallholders in 1983 accounted for about one-third of the total households. The incidence of poverty among this group, as shown in Appendix 5.4, increased from 41.3% in 1980 to 61.1% in 1983, largely because of the decline in rubber prices. This comprises 34.6% of poverty households at the national level. However, the incidence of poverty among the very small rubber smallholders with less than the average holding size of 2 to 6.5 hectares was higher than the estimates of poverty for the rubber smallholders as a whole.

The persistence of poverty in this sector was due to several factors. First, the decline in the prices of natural rubber, a direct result of the economic recession in the developed countries, had reversed the declining trend of poverty incidence among rubber smallholders since 1970. Second, the average gains made by rubber smallholders were distributed unequally. This is an important consideration in view of the fact that smallholdings range up to 100 acres and that holdings below 5 acres comprise roughly two-thirds of households but only one-third of the area as shown in Appendix 5.7. Third, poverty occurs in this sector because of the small size of holdings (Appendix 5.7). It is estimated that there are 490,460 smallholders [Appendix 5.6] owning 1,165,446 hectares (2,879,817 acres) of land alienated for or planted with rubber, giving an average size holding of 2.38 hectares (5.87 acres)[73]. Half of all smallholdings (50.2%) were less than 2 hectares in size and put together they accounted for less than one-quarter (23.6%) of the rubber land, whereas the

12.8% of the smallholdings of 4 hectares or more in size covered 34.4% of the land.[74]

From the survey carried out by RISDA-USM, [see Appendix 2.7], about three quarters of the smallholders were bumiputra (Malays) (74.3%) but they owned only 63.1% of the land; less than one quarter (23.7%) were Chinese, who owned over one-third (34.8%) of the land. Indian and smallholders of other races made up only very small proportions of smallholders at 1.2% and 0.8% respectively and owned small proportions of the land.[75] At current prices, about 2 hectares (5 acres) of rubber land per household is required to earn an above poverty line income. However, of the 2.7 million acres of smallholdings in Peninsular Malaysia, [Appendix 5.6], 11.7 million acres are owned and operated by 270,000 'unorganised' smallholder families. This gives an average farm size per family of only 2½ hectares (6 acres). The absolute number of poor smallholders was probably higher at around 235,000 households instead of the 198,000 estimated by the Mid-Term Review [76]of 4MP. However, the figures given by the Mid-Term review of the 4MP (1983) was 247,900 poor households in the smallholders sector. Some of the measures recommended to alleviate the incidence of poverty among the smallholders are shown in Appendix 5.8.

***Paddy Smallholders***

Paddy smallholders are the second largest identifiable agricultural group in Peninsular Malaysia comprising 150,000 households, or nearly 8% of all Malaysian households.
These paddy farmers have the highest incidence of poverty. The available figures show the impact on real incomes over the last

two decades of increases in production and changes in the price of paddy relative to the prices faced by paddy farmers as consumers. While the real incomes of paddy farmers increased substantially during the 1960s, the incidence of poverty was still 88% in 1970. By 1975, it fell to 77% partly as a result of the sharp increases in the nominal fixed price for paddy in 1973 and 1974 and as a result of modest production increases. In the period 1975-78, the nominal price of paddy did not change and although yields in the major irrigation schemes rose by 1.8% per annum, a serious drought affected overall production, as actual acreage was cut back, and real incomes fell to a level below that of 1960. Estimates for 1979 show a substantial improvement with a major rebound in production following the 1978 drought and a small improvement in terms of trade following an increase in the guaranteed paddy price. Substantial change should not be expected in the near future.

*Progress of Poverty Alleviation Under The Malaysia Plans*

According to the Fifth Malaysia Plan, (5MP) (1986-90),[77] the overall incidence of household poverty declined substantially during the period 1970-84 from 49.3% in 1970 to 39.6% in 1976 and to a further 18.4 % in 1984. The incidence of poverty in the rural areas declined from 58.7% in 1970 to 47.8% in 1976 and further to 24.7% in 1984 while the incidence of urban poverty declined from 21.3% in 1970 to 17.9% in 1976 and 8.2% in 1984, (Appendix 5.4). In the rural areas, where most of the poor live, there were about 140,000 fewer poor households in 1980 than in 1970's. In the urban areas, there was an increase of 10,000 poor households. However, with the large total increase

in urban households, the urban incidence of poverty also decreased substantially. Rubber smallholders, paddy farmers and estate workers were the major agricultural groups where the absolute numbers of poor dropped significantly, (Appendix 5.4). Several reasons lie behind this excellent performance, including the commodity prices of the late 70's.[78] The strategy of high growth, successfully channelled the great part of the labour force entrants to high productivity occupations outside agriculture where they did not become or remain poor, simultaneously reducing the pressure of population on the agricultural resource base. Also important was direct governmental involvement in new land development and farmer resettlement projects, major irrigation schemes in providing technical and financial support for rubber replanting, development of oil palm on FELDA schemes, extension and marketing assistance and selective subsidy programmes. The success of many of these interventions is attested to by the fact that smallholder productivity over a range of crops increased significantly during the decade with a positive impact on farm incomes.[79]

As regards the NEP objective of restructuring society, broad gains were also registered. It has been seen earlier in Chapter 3 that due to its colonial past, Malaysia has always had a high percentage of foreign ownership of corporate financial capital. Between 1971 and 1980, Malaysian corporate equity ownership increased from 38% to 53% of total. The Bumiputra trust agencies and individuals registered the most rapid rate of growth of asset ownership. However, the Bumiputra share of total equity in the

economy in 1980 was only 12.4% some what less than the targetted 16% and thus somewhat behind schedule for the achievement of the 1990 target of 30%. [80] By contrast, the Chinese community had achieved by 1980 the 40% corporate equity share assigned to it under the New Economic Policy (NEP), ten years ahead of schedule.[81] As such, the increased bumiputra share will be accommodated by a reduction in foreign ownership of the country's corporate wealth.[82] One way of increasing the individual ownership of the corporate equity is through the government sponsored trusts for the bumiputra. About two thirds of the 12.4% bumiputra share of total corporate assets in 1980 was held by trust agencies.[83]

In the distribution of employment, more bumiputra are employed in the industrial and service sector, and fewer in agriculture. At the same time, bumiputra participation in senior occupational and professional ranks has lagged.[84]

A major feature of the Malaysian economy in the 1976-80 period was the very rapid rise in export earnings. This rise can be attributed to three factors; first, there was the extraordinary commodity price boom, in which most of Malaysia's commodities shared and which led to a near doubling of the export price index between 1976 and 1980. Second, there was the very rapid growth in production of oil for export, with oil export values trebling in the period and the value of oil exports climbing to about 24% of merchandise export earnings by 1980.[85] The third factor was the export diversification into and rapid growth of palm oil, electronics, clothing and textiles, all of which gained from the prevailing climate of high international

prices. Total export earnings rose from M$9.5 billion in 1974/75 to M$28 billion in 1980; a near three fold increase. Import prices grew much less rapidly than did export prices and as a result the terms of trade improved sharply, leading to higher income and expenditure growth than growth in production. Thus, Malaysia was able to earn comfortable balance of payments surpluses and there is evidence that the real effective exchange rate appreciated.[86]

A primary fact about this period is a decline in the growth of agriculture from a production growth of 6% per annum between 1970 - 1976 to 4% per annum thereafter with the entire growth after 1976 attributable to palm oil. One of the reasons for the decline was due to the labour constraints in the sector as young people migrated out of agriculture to other occupations of higher lifetime earnings elsewhere. Other reasons included the switches in estate planting decisions in the late 1970's.

The International Bank for Reconstruction and Development (IBRD) Submission [87] on agricultural prospects in Malaysia based on the premise that high permanent income differentials between other sectors of the economy and agriculture are major reasons to expect continuing migration of able, adaptable and innovative young farmers out of agriculture. Though these differentials cannot, and probably should not in all probability be made to disappear, they can be reduced. [88]

To redress or avoid any implicit policy biases against agriculture (for example, high protection of manufacturing sector, heavy agricultural export taxation, guaranteed higher paying income in government service) which dampens the factoral

and commodity terms of trade on which agriculture trades with the economy and the world which in turn, dampens farm incomes and prospects. A too rapid acceleration in real wages in non-agricultural economy would also render much paddy and rubber cultivation unremunerative leading to wide scale, and further abandonment of agricultural activity.[89]

Within agriculture, a further key to revitalisation is to replace the mono-crop production oriented 'export share' objectives of policy, with the single objective of maximising farm and household incomes. In the context of Malaysia, such a policy will entail a greater flexibility in, or lesser constraints placed upon, the choice of crops grown, an enhanced drive for the improvement of man/land ratios (both through new land development and consolidation efforts for existing sub-economic parcels), a reconsideration of models of farm organisation and considerable strengthening of government planning and service delivery mechanism for the sector.

One suggestion that has surfaced recently is that import substituting agriculture be made the centre point of a National Agriculture Policy.[90] While greater production of certain food crops is feasible and desirable, such an emphasis would seriously misread the potential of this sub-sector of agricultural activity to lead agriculture out of its decline and would fail to address the main problems of the sector. The scope for import substituting agriculture is small. Between 1978 and 1980, food imports averaged about M$1.1 billion per annum or about 6% of the merchandise import bill.[91] About 20% of food import was rice, not a crop that has substantial production potential in Malaysia

outside the double cropping areas.[92]

A further 10% of food imports were cereals for example wheat, which agronomically are not suitable for Malaysia; 20% of food imports were dairy products, [93] which recent economic work suggests earn negative rates of return in Malaysia. One is left with identifiable substitution potential in fruit, vegetables and fish, worth about $0.4 billion per annum in 1978-80.[94] Export agriculture alone (excluding paddy) in 1978-80 earned the country about $10.0 billion per annum suggesting the central focus of policy should be directed towards major crops and major problems.[95] To be sure, greater food production in Malaysia has its place in a sector strategy but elevation of this objective above all others is not, on the face of it, to be recommended.

The weaker export performance in large measure stems from declines in rubber and tin export volumes and near stationary growth in the export of sawn logs and timber. For reasons intrinsic to each of these commodities, none can be expected to sustain high long term growth rates in the future although in the short term, they may rebound from their present highly depressed levels. Rubber production began to decline in 1976.[96] Forests in the Peninsula have reached the limits of sustainable exploitation and the implementation of the National Forestry Policy should reduce wood exports from the Peninsula substantially in the future.[97] Malaysia is fortunate as the 'newer' export commodities, petroleum, palm oil and manufactures have grown rapidly since 1976.[98]

**Agriculture Taxation**

Another possible means of poverty alleviation is through reforming the present tax structure imposed on rubber land and rubber products. The main tax paid by the agricultural land holders annually is the quit rent. However, agricultural land holders are also burdened with other types of agricultural taxes which come in the indirect forms of taxation.[99]

Taxes on agricultural output include export duties levied on rubber products (RSS, SMR and planting materials such as budded and seedling rubber stumps, rubber hardwoods and rubber seeds). Landholders have to pay the export duties in an indirect way. Although the incidence of export taxes is on the exporter from whom the government collects tax, the burden of tax does not normally rest on the exporters, it is either shifted forward to foreign buyers or shifted backward to domestic producers depending on the price elasticities of demand and supply. An inelastic supply and elastic demand will shift the tax back to the local producers.[100] However, at present, rubber output is subject to three types of taxes and cesses: a progressive export duty, a replanting cess and a flat-rate research cess. All three payments are levied per unit of rubber produced or exported. These payments are fixed for the cesses but are progressive with respect to price for the export tax [see Appendix 5.9]. These taxes are now so high that they offset government efforts to improve smallholder incomes above the Poverty Line Income (PLI) either because they deny income to growers which could significantly improve their net family returns or because they significantly dampen incentives to increase efficiency or both.

Clearly, these were unintended results of the rubber tax system. The progressivity of the export tax, for example, was intended as a counter cyclical device to capture part of the increased export earnings resulting from temporarily high prices. It was not intended to increase the average tax burden, but given the large long run nominal increase in prices, this was what in fact occurred during the 1970s.

During the last decade, there has been a substantial increase (31%) in the price of rubber in real terms. However, the progressive structure of the rubber tax caused an even larger increase (144%) in taxes, an increase which has absorbed over two thirds of the foregoing price increase. This resulted in the increase of hardly 11% net return to the smallholder in real terms. The government, realising this situation, has recently lowered the rubber export tax. Even with this tax reform, the burden on smallholders remains considerable.[10]

The import duty rates and the surcharge for the various kinds of fertilisers and pesticides imported into the country are indirectly being paid by the land holders. The various agricultural inputs and the amount of taxes imposed are shown in Appendix 5.10.

Land Based Taxes include quit rent, irrigation and drainage charges are also imposed. The rates of quit rent to be paid by the landholders are shown in Appendix 5.11.

Other Taxes imposed include cessess and *zakat* (religious tithe). Cesses are special kinds of taxes where the revenue collected is used for specific purposes rather than for general revenue. However, it can still be a burden to smallholders as they

actually bear the burden of the tax.

Besides quit rent, Muslim landowners and tillers have to pay *zakat tanaman* (agricultural tithe) to the Majlis Ugama Islam[102] on the produce obtained from paddy land yearly, at the rate of one tenth of the produce, according to the *Shafii* school of thought. Other non-consumption agricultural produce is not subject to the agricultural tithe. Thus, non-consumption smallholders do not have to pay the *zakat tanaman*. Appendices 5.12 and 5.13 show the amount of *zakat* collected by the State Religious Department of Johore and Wilayah Persekutuan for 1978 to 1982 respectively.[102]

**The Impact Of Agricultural Taxes On Smallholders**

Various studies have been undertaken on the impact of agricultural taxes on the small farmers, especially on the smallholders. These include Mclure(1972), Snodgrass (1975), Tan (1967), Hussein (1977), and Salleh and Ngah (1978). These studies concluded that the tax incidence among income groups is U-shaped, with regressivity at the lower income levels and progressivity toward the top of the income range. However, Tan (1967) undertook an analysis of rubber export taxes on small producers.[103] In his study, rubber export supply was assumed inelastic and demand fairly elastic. Therefore the incidence of export tax falls mainly on the producers. His study showed that the derived income tax equivalent rates of export taxes were very regressive. Thus, a typical rubber smallholder family was estimated to have paid the equivalent income tax rate of persons with thirty or forty times as much income. Therefore, agricultural taxes imposed a

greater burden on the lower income and the upper income groups than the middle. Hussein (1977), in his study of the tax burden on rubber, coconut and pineapple smallholders in Johore, found that in general, the tax burden on rubber smallholders was much higher than either coconut or pineapple smallholders because of the export duties and rubber cesses.[104] The average rubber smallholder pays about one-fourth to one third of his income in taxes.[105]

**Proposals to improve the existing rubber tax structure**

The heavy rubber tax burden of the poor small holders can be reduced in two ways. First, the export tax and cesses should be abolished or very substantially reduced and the lost revenues recouped at least partially, from other taxes that do not fall on the poor. The basis for this proposal is that the incidence of the rubber taxes is borne largely by the producer who, at 1972-73 prices, paid 90-95% of the export tax. At Current prices and tax rates, assuming a reasonable range of supply and demand elasticities, the incidence borne by the producers ranges from 80-94%.[105a] The government could recoup at least part of the loss revenue from *inter alia* personal and corporate income taxes. Since such a tax reduction would increase the net profits of estates by up to 15%, the loss of revenue would be recouped automatically through corporate income tax and the personal income tax of the larger smallholders. The government could also recoup the loss of revenue by introducing an additional tax on rubber estates, either in the form of a tax on production or a supplementary profits tax such as is now imposed on tin and timber producers.

The second form of relief to the poor smallholders would be to leave the existing taxes in place and to institute a system of rebate to the poor on the total taxes paid on rubber production. This method borne by the producers ranges from 80-94%.[106] This method would minimise the disruption in government revenues. The cost to government would include only the actual rebate and the administrative cost of delivering it. It would not exceed $100 million which is equivalent to less than 1% of Federal government revenue.

Since such a rebate would intervene the net profits of the estates by up to 15%, at least part of the revenue loss could be recovered from, *inter alia* increased corporate income tax and the personal income tax of smallholders[107] which could also go up.

***LAND DEVELOPMENT PROGRAMMES AS A NATIONAL AGRICULTURAL POLICY***

FELDA established in 1956 a major land development agency in Peninsular Malaysia charged with the responsibility of carrying out land development and settlement work for the rural landless. It is a government statutory body established under the Land Development Ordinance of 1956, with the main objective of developing unused land (forest) for agriculture and settlement[108](see Appendix 5.11). It was then felt that land development and settlement were the key to economic development, social progress and political stability. After Independence, the government has undertaken a direct and definite policy for land development as a basic strategy for the improvement of the economic status of the rural sector. This strategy had its origins in the realisation that the colonial agriculture policy towards the rural sector was a passive one although the rural

peasantry and the estate sector played an important role, in the economic life of Malaya. Further, it was realised then that the existing private investment did not generate an equitable distribution of wealth within the country although it did play a major role in Malaysia's agricultural expansion and economic development.[109] Moreover, the need to maintain a balance between national and foreign ownership of land required more direct involvement by the government. Consequently, in post-independence period the public sector has by participating actively in development, reduced the importance of the role therein of the private sector.

The establishment of FELDA was a step towards a more aggressive planned land alienation policy as against the *ad hoc* policy of land alienation under the NLC and the previous land legislations. However, this was only truly realised when the Land (Group Settlement Areas) Act, 1960 was passed. Prior to this Act, FELDA's role merely channelled funds to local development bodies; it was not then directly engaged in the opening up of land and resettlement.[110]

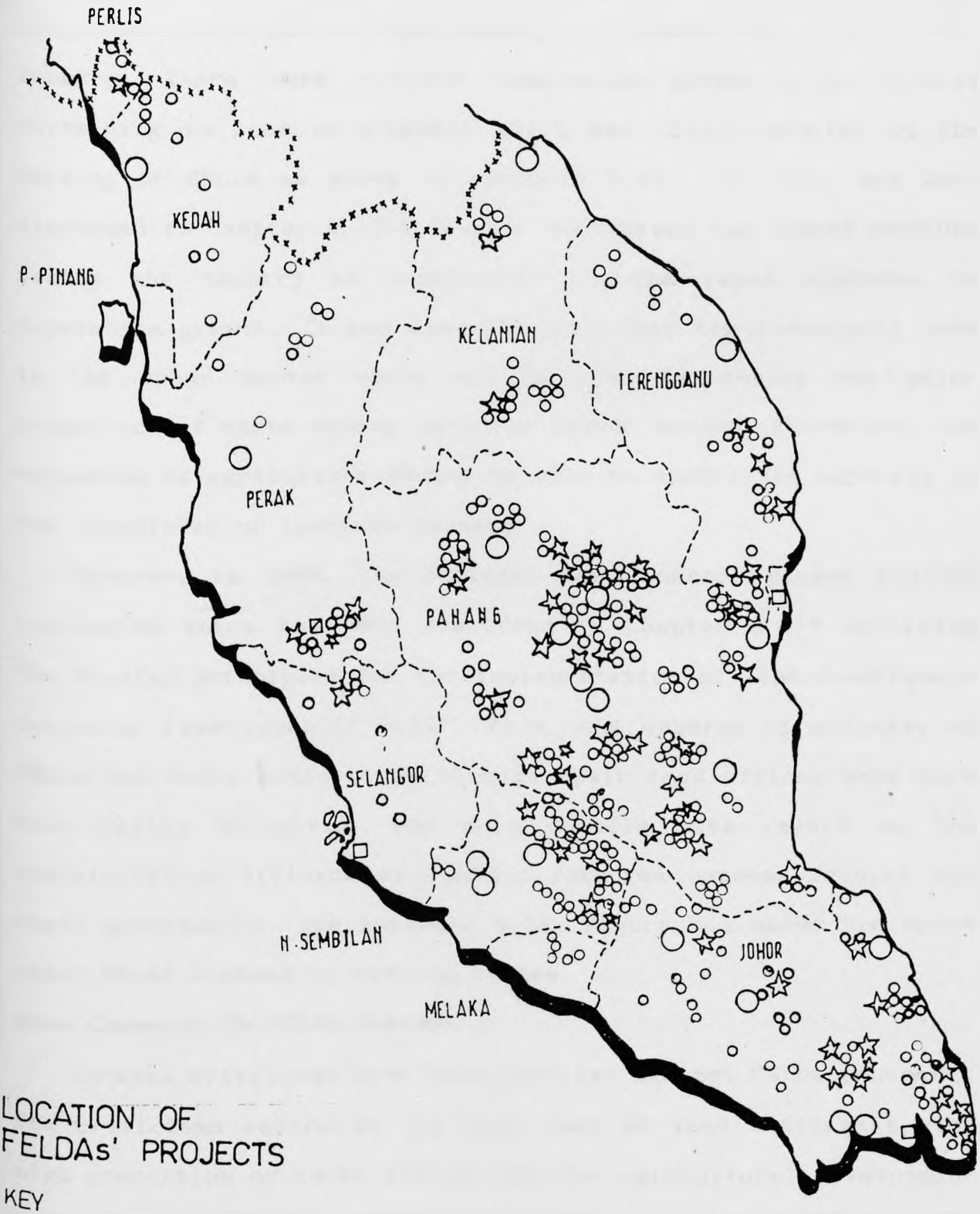
The Land Development Ordinance, 1956 was amended in 1957[111] and again followed by the Land Development (Amendment) Ordinance 1958 to give more power to, and increased FELDA's responsibility from being merely a passive agent of land development and charged it with the duty of promoting, planning, investigating and implementing land development and settlement projects throughout the whole of the federation. It is therefore clear that the general intention of the 1956 Ordinance was for the state governments to plan development projects and establish boards or

corporations charged with the execution of these projects either independently or with federal assistance through FELDA which would provide funds for approved projects. FELDA, on the other hand, may carry out development projects on its own. The Ordinance, however, had many limitations, and as such FELDA was faced with a number of limitations, inadequacies[112] and problems. Despite those limitations, FELDA sponsored the development of eleven schemes in the various states comprising an area of 31,000 acres and 3,000 pioneer peasant families were settled at the end of its third year of operation. During the three years period, FELDA had developed new areas through state and local boards and corporations on the basis of farming communities with the sole objective of creating [113] "organised groups of prosperous land-owning farmers who from experience appreciate the use of co-operative institutions as a means of economic, social and moral progress". By 1960, FELDA had gained valuable experience in the field of land development and new policies were formulated, see Appendix 5.12. According to FELDA's annual report of 1960, the Authority's aim was to plan and carry out land development and settlement projects in new areas with the aim of producing at the end of the development period (normally six years) prosperous farming communities with economically viable farms. In order to fulfil the above objectives, FELDA followed a set of policy guideline as shown in Appendix 5.13.

As more schemes were established by FELDA, the problem of policy co-ordination became more important particularly between FELDA and the state governments.[114] There was an urgency therefore to review the various policies on land matters in the

PENINSULAR MALAYSIA

Figure 5.1: AREAS UNDER FELDA SCHEMES, 1984




SOURCE : FELDA ANNUAL REPORT, 1984

country especially on the newly established land development schemes. Thus, in 1958, the National Land Council was established with the objective of regularising all aspects of land in the country. There were various resolutions passed by the Council pertaining to land development which had direct bearing on the working of FELDA as shown in Appendix 3.15. [115]. This has been discussed in Chapter 2. The Council recognised the urgent problem facing the country in consequence of the rapid increase in population growth. It was also believed that the industrial base in the urban sector would not be able to absorb the major proportion of those coming into the labour market. Therefore, the expansion of agriculture should be able to absorb the majority of the unemployed or landless farmers.

However, in 1960, the National Land Council passed another resolution which has been discussed in Chapter 2,[116] outlining the binding principles for the implementation of land development projects, [see Appendix 5.14]. Thus, the spheres of activity of FELDA and State Authorities through their land offices were more specifically delimited. For more details with regard to the administrative division of FELDA's function between federal and state governments, see Appendix 5.15. Figure 5.1 shows the areas under FELDA schemes in various states.

***Some Comments On FELDA Schemes***

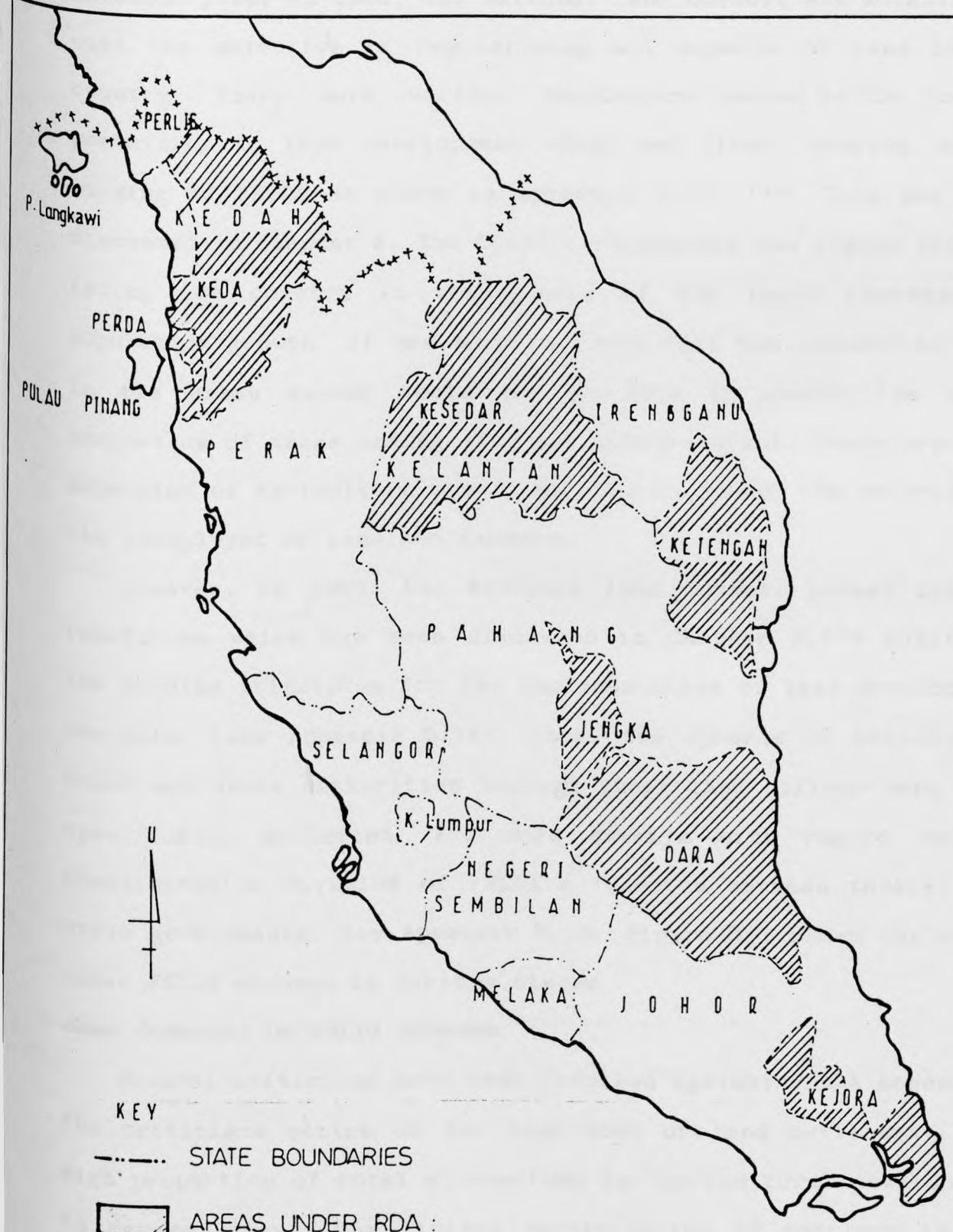
Several criticisms have been levelled against FELDA schemes. The criticisms centre on the high cost of land settlement, the high proportion of total allocations for agricultural development to new settlement, the limited participation of settlers in the early stages of development, and the limitation of direct

benefits to a relatively small number of farm households. These criticisms have some justification but they must be seen in perspective. Up to 1984, for example, FELDA had emplaced a total of 87,946 families in 235 schemes and the total agricultural area developed/being developed was 614,612 hectares, [Table 3.6]. The low settlement level is largely a problem of time lags. In the present mode of settlement, settlers are not brought into the schemes until the second year for oil palm or the third for rubber. Even with these lags, however, land development accounted for more than a third of the additional jobs in agriculture. The cost of creating these jobs was substantial: it is estimated that the average expenditure for each family settled in the schemes in 1985 was M$53,000 compared to M$37,500 in 1980.''[7] Up to 31 December, 1984, the total amount spent by FELDA was M$4.391 billion.''[8]

The cost of land development have been high, in part because the holdings are to provide settlers with an eventual income in the median range. Nevertheless, the economic rates of return of FELDA schemes have been satisfactory at about 14% to 16%. In relation to the current growth of about 25,000 jobs a year in agriculture, job creation through land development obviously is significant. It can be said that investment in FELDA's 'state and Fringe' types of land development''[9] are highly profitable socially. Felda schemes are especially appropriate for social development aimed at improving the quality of rural life. They generate important external economies and a greater saving in terms of government receipts; the 'fringe' schemes provide much more employment for the settler families per unit of

FIGURE 5.2:

# PENINSULAR MALAYSIA
# REGIONAL DEVELOPMENT AUTHORITIES (RDAs)




SOURCE : MINISTRY OF LAND AND REGIONAL DEVELOPMENT, 1985

country especially on the newly established land development schemes. Thus, in 1958, the National Land Council was established with the objective of regularising all aspects of land in the country. There were various resolutions passed by the Council pertaining to land development which had direct bearing on the working of FELDA as shown in Appendix 3.15. [115]. This has been discussed in Chapter 2. The Council recognised the urgent problem facing the country in consequence of the rapid increase in population growth. It was also believed that the industrial base in the urban sector would not be able to absorb the major proportion of those coming into the labour market. Therefore, the expansion of agriculture should be able to absorb the majority of the unemployed or landless farmers.

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Several criticisms have been levelled against FELDA schemes. The criticisms centre on the high cost of land settlement, the high proportion of total allocations for agricultural development to new settlment, the limited participation of settlers in the early stages of development, and the limitation of direct

investment, and are therefore attractive as a strategy for solving the problem of landless peasants.[120]

Increased settler participation in various stages of land development should result in less stringent repayment terms. Various alternatives should be fully explored in the large scheme to increase the number of settlers who benefit and to reduce the capital cost for each family settled. In addition, efforts to design alternative types of land development schemes should continue with a view to spreading the benefits of land development more widely. Alternative types of land development schemes could incorporate settler involvement through a 'farm enterprise' scheme, the development of settler's entrepreneurship and self-reliance. Increased settler participation should help to reduce the financial outlay for each acre settled.

***Other Land Development Schemes***

Besides FELDA and FELCRA land development schemes, other land schemes implemented by the state governments and other land development agencies including the Regional Development Authorities (RDAs). Areas covered by the RDAs are shown in Figure 5.2. Other land development schemes include the Kelantan Land Development Schemes, the Youth Land Development Schemes (states and federal), the Ex-Special Constable Schemes, the Ex-Serviceman Schemes, Land Settlement Schemes for Fishermen and the *Orang Asli* Planting Schemes.

Among all the above mentioned schemes, the Kelantan Land Development Schemes are the most successful.[121] Under the scheme, the settlers do not get any subsistence allowance. They have to

construct their own houses through *gotong royong* work (community help scheme) and to clear their land manually.

Another set of schemes which should be mentioned is the *Orang Asli* (Aborigines) Planting Schemes. These are special land schemes set up for the *Orang Asli* to encourage them to give up shifting cultivation and concentrate on land development programmes. These schemes are developed on the lines of FELDA Schemes but with some major modifications to suit their way of life. The two most important modification are that the *Orang Asli* do not have to make repayments for the government's investment in land development and subsistence allowance is given as outright grant.[122] Presently, under the *Orang Asli* Reserve, the settlers are only allowed to live and work on the land without the benefit of being issued with document of land titles, (see Chapter 3).

***The Integrated Agricultural Development Programmes (IADPs)***

The concept of IADPs was first mooted in 1972. This concept of *in-situ* or area development is a part of the NEP which is aimed at reducing and eventually eradicating poverty and restructuring the society through various agricultural development programmes. For a detailed description of the programmes, see Appendix 5.16.

The main responsibility for carrying out the objectives of the IADPs falls on the Ministry of Agriculture, through the State Agriculture Departments. The acceptance by the Government of IADP as an agricultural development strategy resulted in the setting up of 22 IADPs in Peninsular Malaysia, with at least one in each state in various stages of development [see Appendix

# FIGURE 5.3: AREAS UNDER INTERGRATED AGRICULTURAL DEVELOPMENT PROJECTS

## PENINSULAR MALAYSIA


Source: Fifth Malaysia Plan, 1986 - 1990

5.171. MADA 1 and KADA 1, were established as authorities by Acts of Parliament[123] in 1972, and finally made into IADPs in the early seventies. Figure 5.3 shows the areas covered by IADPs in Peninsular Malaysia.

Malaysia has embarked on a major agricultural land development efforts through the implementation of the IADPs as well as the expansion of drainage and irrigation and replanting programmes. Further progress under the IADPs can be seen in Appendix 5.18.

The Kedah valley IADP is a good example of the impact of the IADPs on the peasantry. This IADPs with over 225,000 hectares of agricultural land spans the largest area in the country. There are 130,000 households in the region and 91.1% of them are paddy farmers.[124] The KADA IADP on the other hand covers 65,000 acres[125] of paddy and has benefited 50,000 households. Increased productivity ranging from 23% to 103% was experienced in the completed IADPs in Besut, KEMUBU and MUDA. In terms of income, an increase ranging from 23.6 % to 197.0% per household had been observed. Production increases averaged between 53% to 128. Out of the total allocation of $593 million for IADPs, about $191 million had been spent.

A key question is whether the increase in the productivity of paddy, for example in MUDA area among the paddy farmers, has lowered the poverty level.[126] Studies made by the World Bank (1983),[127] Universiti Sains Malaysia (1983)[128] and David S.Gibbons (1984),[129] showed that although poverty has been considerably reduced as a direct result of the completion of the Phase 1 (paddy) IADPs in 1980 a sizeable proportion of target

group, about 70% in Besut, 50% in KADA 1 and 30% in MADA 1 remained poor.[130] Regardless of the measure used, a sizeable proportion of paddy farm households in Muda remained poor as of mid-1982.[131]

The current planned agricultural policy notwithstanding, by 1990, the incidence of poverty in Muda is likely still to be around 40%, well short of the recommended target of 25% and there will be more than 26,000 paddy households in the region living below the poverty line.[132] Since a serious poverty problem remains in MUDA and KEMUBU areas, in spite of all the development efforts, the situation in other predominantly paddy regions of Peninsular Malaysia is undoubtedly considerably worse. (For details see Appendix 5.4)

There are many factors responsible for the high incidence of poverty among paddy farmers. A World Bank Report,[133] has identified two major factors leading to peasant poverty in paddy areas: the small size of holdings and the low productivity of paddy relative to other crops. Appendix 5.18 which shows the percentage distribution of household holdings with paddy area by size and by state reveals that 50.2% of holdings cultivated less than 2.5 acres of paddy and 18.7% had less than one acre of paddy. With such small sized holding per household, no current available technology can generate incomes above the poverty line. Even with non-paddy income providing half of the total or with double-cropping, about 3 acres would be necessary to reach a poverty line income and over half of all double cropped paddy holdings are smaller than that. As a result, many paddy farmers, especially the younger ones, move out of

agriculture to find other opportunities.[134] Appendix 5.19 shows holdings by tenure. The solution of this problem will probably the single most important factor in revitalising agricultural growth well into the 1990s. Various efforts towards this end can be suggested. First, continued priority in land development should be reaffirmed. Second, the phenomenon of 'idle' land (see Appendix 5.20 for reasons that led to 'idle land') which has surfaced recently should be brought back into production through reconsolidation efforts.[135] A consolidation law is therefore required to solve the problem of land fragmentation or alternatively, the present FELCRA Act should be amended to incorporate special provisions on the consolidation of small pieces of agricultural land. Third, the rapid exit of the young from agriculture has led to a progressing aging of smallholder heads of household. This process creates a long-term structural problem for agriculture because older farmers are less likely to engage in productivity enhancing improvements that will maintain or expand upon the productive base. Their attachment to often uneconomic sized holdings prevents consolidation into more economic parcels and provides the economic motivation for younger members of the farm community to migrate out of agriculture and further to abandon land. Means should therefore be sought to recycle land held by older to younger farmers.

The government's three basic policy objectives with regard to rice are to increase the income of paddy farmers, to achieve self-sufficiency and to provide high quality and reasonably priced rice to consumers. These objectives have been only partly achieved.

## *SOME SUGGESTED SOLUTIONS TO THE PROBLEMS*

### *Price Subsidy System*

The question to be addressed is, should farmers be subsidised and to what extent? Because of the very high incidence of poverty among paddy farmers, a price subsidy on rice output would appear to be a potent instrument for eliminating poverty. Illustrative calculations for example, indicate that to increase the income of a representative poor paddy household with one hectare of land up to poverty line, the support price would have to be approximately double. This means that at the present production level of 2 million tons of paddy this would require a national subsidy of about $1.4 billion, equivalent to about 12% of total government expenditure in 1980.[136]

If price subsidy were to be implemented, it would have far ranging financial implications. It would undoubtedly lead to very substantial distortions and economic inefficiencies which would obstruct the necessary long term transfer of resources, especially labour from paddy to more productive operations. Such difficulties are now being encountered in Korea.[137] For these reasons, a paddy price subsidy as a major means of eradicating poverty among paddy farmers does not seem warranted.[138]

### *Price Support System*

Another alternative measure is the price support system. This is done by way of setting the offer price at a level equivalent to 'normal' long term world price and adjusting it annually to inflation.[139]

### *Land Consolidation*

The present system of distributing the small estates[140] of

deceased land holders leads to fragmentation of land holdings, especially agriculture lands. This contributed to the already very small average sized holdings becoming even smaller and more uneconomic in size. The multiple ownership of land hampers the actual operator in finding the most efficient way to use his land, since changes in cultivation of crop or sale or the charging of the land require the consent of all owners. The problem of multiple ownership also leads to the abandonment of agriculture land which thus remain uncultivated.

It would be beneficial and wise if attention should be paid to the important role of land reform in the development of paddy sub-sectors in Japan, Taiwan and South Korea.[141]

The successful experience of these countries points to the possible existence of an 'Eastern' model of rural development and poverty reduction in an industrialising country which may be more relevant to contemporary conditions in Peninsular Malaysia.

***THE MALAYSIAN NATIONAL AGRICULTURAL POLICY - A COMMENTARY***

By the 1990s, it became imperative for Malaysia to have a comprehensive long term policy that would be sensitive to the present and future needs of the country as well as responsive to the world market trends for agricultural export commodities. Thus, a written National Agricultural Policy (NAP) was formulated and approved by the government for the first time on 12 January 1984.[142] At the macro level, the new National Agriculture Policy (NAP) lays down long term strategies to revitalise agriculture and remove structural inefficiencies.

In planning for the future economic development of the country, it is important to arrest the declining growth trend of

agriculture. Besides, the current industrial development shows that the industrial sector would not achieve the rate of expansion as envisaged under the Perspective Plan 1971-90. This means that the industrial sector will not absorb as much of the surplus labour in the agricultural sector as was planned. The agricultural sector will therefore have to play a more aggressive role, both supportive and complementary in the future economic development of the country. The NAP, consequently aims at maintaining and sustaining the rate of growth of agriculture.

Generally, any National Agricultural Policy is formulated to achieve the following objectives:[143]

(a) Maximisation of the national output

(b) Maintenance of food supply

(c) Reducing variability in agricultural incomes.

(d) Redistribution of personal incomes.

However, under the Malaysian NAP, the main policy objective is to:

> "maximise income from agriculture through efficient utilisation of the country's resources and (to effect) the revitalisation of the sector's contribution to the overall economic development of the country"[144]

The achievement of the above objective calls for the formulation of appropriate strategies and programmes which take cognisance of the constraints and prospects which will include a review of the current agricultural production with the view of establishing priority areas and optimising their contribution to the sector's objective. All the details in the NAP are based on the principle of 'maximising farm incomes' of farmers and investors alike and for making a market determined choice of cash

crops rather than one determined by the government's setting quotas or specific targets.

Malaysia's previous agricultural policies have generally emphasised one export commodity or another, such as rubber and palm oil and were independently implemented. By introducing the NAP, the government seems to reject this approach. The new policy approach in agriculture is spelled out in the Mid-Term Review (MTR) of the Fourth Malaysia Plan, (4MP) as outlined below.

Within the above overall objective, the NAP accords to increasing food production high priority by setting minimum levels of rice, meat and dairy self-sufficiency. On the export crop, the NAP chose to expand oil palm production through the establishment of well-managed estates. The efficiency of production will be increased through the adoption of improved technology, including labour saving devices. Under the new policy, non-organised smallholdings of palm oil will be discouraged.[145]

Under the NAP, rubber acreage will not be expanded and the development of the industry will be directed towards increasing the efficiency of production[146] of the existing acreage.

The NAP encourages the growing of cocoa and tobacco as one of its strategies to improve the income[147] of the small holders. The long outstanding problems in Malaysian agricultural sector are uneconomic land holdings and idle land for the improvement in yield through the provision of basic infrastructure and technical support services, notwithstanding unremunerative level of income still persist mainly because of the uneconomic size of the holdings.[148]

To overcome the problem of uneconomic-sized holdings, the NAP posits programmes to consolidate land and to promote organised farming with centralised management. As regards an estimated 2.2 million acres of idle land covering the whole of Peninsular Malaysia, programmes are being formulated by various ministries and agencies to promote the development thereof[149]. This can only be done by overcoming the social, legal and administrative obstacles that presently prevent such development.

In rice self-sufficiency, the NAP emphasises the importance of rice as national food security and the 80-85% national requirement policy is based on the assumption that in times of emergency, the consumption of rice is reduced *vis-a-vis* normal[150] times. The fact that rice is a 'security' food has led the government to pursuing the present policy of 80-85% self-sufficiency in rice. The government's reluctance to accept the World Bank advice that it abandons efforts to reach self-sufficiency or something close to it in rice and other food crops and rely instead on buying food from abroad is also based on the same criteria.[151] Another reason for desiring food self-sufficiency is the balance of payments consideration. [152] By achieving self-sufficiency in rice, and other food products, Malaysia will cut its import cost and Malaysia's merchandise account ledger will also gain from greater food exports.

Ironically, while the country spends on food[153] and feed imports, enormous tracts of land are either under used (as instanced by single-cropped rice fields) or have been abandoned. It is felt that Malaysia can achieve self-sufficiency in fruit,

animal feed and dairy products with proper land management and land utilisation.

Agriculture can also make a renewed contribution to the gross domestic product through mechanisation and the use of modern farming methods. So far, little has been done, to extend the range of resource-based industries in Malaysia. The agricultural base, though less glamorous than steel mills and car plants, still provides roughly a third of GDP. However, growth has declined by half since the mid-1970s to about 3% yearly. Many economists urge the enhancing of agricultural productivity by increasing mechanisation, replanting rubber and replanting depleted timber reserves. It is estimated that every 100,000 acres of new planting in both rubber and cocoa would raise export revenues by $250 million. It is also calculated that, each billion spent in manufacturing could plant more than 300,000 acres of rubber or nearly 400,000 acres of oil palm. Further, land development has an added advantage in that foreign-exchange leakage is low.

The other important aspect of the NAP is the emphasis given to the development of the agro-based industries in terms of processing, storage and handling of agricultural commodities to increase their value-added component as at the same time, they provide off-farm income earning opportunities to the rural community. The development of this industry will also emphasise the re-cycling of agricultural waste for utilization as feeds and fertilisers, production of biogas as well as the protection of the environment. The policy also calls for the co-ordination of the public and private sectors to ensure the effective

implementation of the policy. This can be achieved by instilling a co-ordinating mechanism between the two sectors. Following the decline in the share of the agricultural sector in the economy over the years, from 59% of the total output in 1950 to 38% in 1960 and only 23.8% in 1980. Such a policy was drawn in absolute terms, however, the contribution of agriculture to the total output increased from about $646 million in 1960 to $6,926 million in 1982.

The NAP also addresses itself to the problem of the high incidence of poverty as well as the need to maintain and sustain the contribution of the agricultural sector. One way of maximising farm income proposed by the NAP is by raising productivity. This will serve to alleviate rural poverty as well as improve the quality of life while maintaining labour in agriculture. The NAP envisages that farm income will be maximised be achieved through the expanded production of traditional export crops and the development and expanded production of food and industrial crops. The production of all agricultural commodities except rice would be based on technical, including agroclimatic considerations as well as economic returns. As stated earlier, rice production will be based on the national food security consideration. [152]

The strategy outlined by the NAP to achieve the objectives set for the agricultural sector includes a review of current agricultural production with the view of establishing priority areas and optimising their contribution to the sector's objective.[153] The present strategy of developing new land, *in-situ* development, the provision of support services and

incentives and the social and institutional development will be continued.[154]

As regards forestry, the NAP will ensure that the clearing of primary jungle will be kept within reasonable limits to conserve forest resources.

***The National Agriculture Policy And Poverty***

The NAP has not shown in clear terms in its guideline policy how poverty can be alleviated through the implementation of the policy. There is no doubt that the full implementation of the details of the NAP, will increase output. However, there is no 'specific' strategy in the NAP to enable it to combat poverty. The poverty in the agriculture sector can be alleviated through reforms of the existing land tenure systems through land reform strategies, such as 'land to the tillers' programmes. In this way too, farmers would be able to expand the size of their farms. Until and unless farmers own enough land to exceed their present rate of production, the present paddy farmers or the rubber smallholders will not be able to live above the poverty level.

Evidence shows that despite government's spending more than $2 billion since the 1950's on paddy sector development, (more than half of it on irrigation works) more than 76.2% of paddy farmers still live below the poverty line. According to the IADP's Final Report,[155] although a considerable amount of poverty reduction had come about as a direct result of the completion of the phase 1 (paddy) IADPs, sizeable proportions of the target groups remained poor, (about 70% in Besut, 50% in KADA 1 and 30% in MADA 1). The report says that none of these IADPs have explicitly been made responsible for the task of poverty

reduction. They therefore did not see this as an important priority.

*Other weaknesses of the NAP*

The NAP does not clarify the emphasis given to agricultural development and poverty eradication in the framework of national development. The implementation of the NEP shows that more emphasis given to effort to increase the number of rich bumiputra.

The NAP does not correctly analyse the causes of poverty. The existing socio-economic structure is not dealt with; instead it concentrates on low productivity. Hence, measures to increase productivity through modern techniques and technology are emphasised. The concrete details of such measures are unclear. There is no plan to improve, let alone change, the economic system and structure in the area of production and marketing in order to eradicate the sources of peasant exploitation and poverty.

The NAP does not offer clear views of the types of small and medium-sized agro-based industries which can be established to absorb excess labour in the villages to overcome the problem of unemployment and to control mass urban migration.

Finally, the NAP does not discuss the relationship between the agriculture sector and the industrial sector, and how human and material resources should be allocated to obtain maximum benefits. The industries which should be encouraged in order to help increase agricultural production are not identified.

*SUMMARY*

The small size of holdings and the low productivity of paddy are the main factors responsible for the continuing high incidence of poverty among paddy farmers.[156]

Thus, it appears that given the relative prices in 1977, farmers with very small holdings would have done better to cultivate any one of a number of alternatives to paddy or to cultivate paddy in combination with some other crops. Therefore, unless there is redistribution of paddy land or more lands are given to the rubber smallholders (on the basis of FELDA Scheme acreage) through land redistribution programmes, the paddy farmers or the rubber smallholders will not, in the forseeable future, live above the poverty line as established by the government. Since the majority of those farmers are Malays, as long as the Malays are involved in the small farming agricultural sector, they will continue to be disadvantaged in terms of economic wealth *vis-a-vis* than the Chinese who abandoned agriculture and by moving to business and industrial sectors became wealthy and economically more advanced than the Malays. Thus, Malays involved in small paddy and rubber cultivation are condemned to live in poverty unless and until the agricultural land acreage that they own are increased considerably. Only then will they be able not only to live beyond the poverty level but also to commercialise the production of paddy as an important export commodity.

Financially, it is not possible for the farmers to be subsidised. A paddy price subsidy then as a major means of eradicating poverty among paddy farmers does not seem

warranted.[157] However, the price support system as a temporary measure is a viable alternative.[158]

The paddy estate as one of the proposals for alleviating poverty among farmers, is perhaps based on the false assumption that paddy estates would be more productive per unit of land than existing small uneconomic sized holdings. However, available evidence shows that currently there is no significant difference in productivity per hectare between small and large paddy farms.[159] Experience shows that co-operatives do not run the estates profitably. Poor farmers who pooled their land in the proposed paddy estate would stand to benefit only in proportion to the small amount of land they contributed. Former tenants would not benefit (except as workers) as they would have no land to contribute.

NOTES

1. For a detailed account of British Policy and the development of agriculture in the Malay States, see Lim Teck Ghee, *Origins of a Colonial Economy, (Land and Agriculture in Perak, 1874-1897)*, Universiti Sains Malaysia, 1976.
2. See Lim Teck Ghee, *Peasants and Their Agricultural Economy in Colonial Malaya*, 1874-1941, p.14.
3. See *ibid.*, pp.14-15.
4. See *ibid.*, p.15.
5. See *ibid.*
6. See *ibid.*, p.15-16.
7. See *ibid.*, p.16.
8. See *ibid.*
9. See *ibid.*, p.16-17.
10. Various incentives were given to land owners or cultivators such as exemption of rent on peasant land in Perak, before 1883 except in Krian and Larut which were relatively more developed. Agricultural lands in Selangor districts (except in Kuala Lumpur) were also exempted from land rent from 1884 to 1886, and rent remissions were allowed in the same areas from 1886 to 1888. *Ibid.*, p.22
11. See *ibid.*, p.22.
12. See *ibid.*, p.19-22.
13. See *ibid.*
14. The failure of the biggest sugar industry, the largest plantation industry in the Malay states and followed by the unsuccessful attempt to get good market prices for coffee, pepper, gambier and tapioca, led the British officials to find new avenues for agriculture diversification in the Malay states. See *ibid.*
15. See *ibid.*, pp.74-76, & p.95, at note 19.
16. *ibid.*, p.33.
17. See *ibid.*
18. *ibid.*, pp.33-34.
19. See *ibid.*, p.34.
20. See *ibid.*
21. *ibid.*, p.36.
22. *ibid.*, p.58 (fn 17). A very low quit rent of only 10 cents per acre for the first ten years, after which time the quit rent was raised to 50 cents an acre. A restriction in interest was then imposed on the land titles by which no crop other than rubber was to be planted and at least 1/10 of a concession of 1,000 acres or less was to be brought into cultivation each year. For concession between 1,000 acres, 1/12 of the total concession was to be planted each year. The produce of such land was to be subject to a duty of 2½% *ad valorem* for 15 years from the date of commencing work, and there after subject to whatever duties might be in force, up to a maximum of 5 %.
23. See *ibid.* For further detail about agriculture in Pahang and other FMS States, see Lim Teck Ghee, *Peasants and Their Agricultural Economy in Colonial Malaya, 1874-1941*, p.37 and R.D.Hill *Rice In Malaya*, pp. 156-163.
24. See *ibid.*, p.38.
25. See *ibid.*
26. See *ibid.*, p.39.
27. See *ibid.*
28. See *ibid.*

29. See *ibid.*
30. See *ibid.*, p.43.
31. see R.D.Hill, *Rice In Malaya*, Oxford University Press, Kuala Lumpur, pp.125-127. see also *ibid.*, p.45,
32. R.D.Hill, *op.cit.*, p.88.
33. *ibid.*, p.46. In Kinta District for instance, only 3,700 Malays out of a Malay population of 12,000 were registered on the agriculture roll in 1888. In 1894, only 5,028 acres had been alienated for agriculture as against 24,481 acres for mining.
34. See *ibid.*, p.51.
35. See *ibid.* The result of this policy could be seen clearly in many parts of the West Coast states where large and ugly scar marked the country and *belukar* and *lalang* thrived where primary forests had once stood. Development was carried out at the expense of great cost. The early destruction had occurred in unpopulated areas, however, as the pace of development increased, it took a toll of the forests on which the peasant subsisted.
36. See *ibid.* See also R.D.Hill, *op.cit.*, p.88.
37. See *ibid.*, p.90.
38. *ibid.*, pp. 122.
39. See *ibid.*, p.119.
40. Yutaka Shimomoto, *Agriculture Development Policy in West Malaysia*, Journal of Southeast Asian Studies, vol.1, no.1, June, 1980.
41. See Lim Teck Ghee, *Peasants and Their Agricultural Economy in Colonial Malaya*, 1874-1941. p.121.
42. See *ibid.*, p.122.
43. See *ibid.*, pp. 120, 122, 126.
44. This policy was mooted by the British Colonial Government in 1921 because in 1920, there was a trade depression which affected most of the industrial nations of the world, and the demand for rubber declined sharply as factories and other manufacturing plants either curtailed or stopped production.
45. See Lim Teck Ghee, *op.cit.*, p.142-154. As a result of peasants' discontent over the scheme, a committee was appointed by the government to enquire into the equity of the standard of production allowance alloted to small holders and to recommend changes. However, these changes were still not favourable to the small holders. A majority of them in other areas were under assessed.
46. When rubber restriction was brought to an end on 31 October 1928, Malayan rubber was being competed by the Netherlands East Indies in terms of acreage and it had almost displaced Malaya as the largest rubber growing country in the world and it was providing strong competition in the rubber market.
47. See Lim Teck Ghee, *op.cit.* p.181, as for effects of economic depression on the peasantry see ibid., pp.197 & 215.
48. *ibid.* The report contained among other things information on areas under cultivation, the character of paddy lands, conditions of tenure, methods and costs of cultivation, the problem of water control, paddy colonization schemes, the provision of agricultural services and the question of funds. Many officials in the past had acknowledged that the absence of data had often hampered attempts to assist the industry. By having a good information system, it will provide the basis for formulating a better planned policy than would have been otherwise possible. Second, the report proposed that the

problem of paddy cultivation should not be resolved by individual state efforts or departments but by a co-ordinated programme on a country wide basis. Third, the report proposed a number of important recommendations which were adopted by the government and therefore influenced the development of paddy cultivation in Malaya.

49. See *ibid.*, p.150.
50. See *ibid.*, p. 194, see also pp.153-154.
51. See *ibid.*, p.150.
52. *ibid.*, p.194.
53. *ibid.*, p.195.
54. *ibid.*, p.149, 151, 153-154.
55. Present Land Use Survey, Peninsular Malaysia, 1974.
56. 4MP,1981-1985, pp.263-292, see also 5MP pp.305-308.
57. Yield improvement in these schemes varied from 1,448 gantangs of paddy per hectare in 1970 to 1,909 gantangs in 1980 for MADA (Muda Agriculture Development Authority) areas, 1,071 gantang of paddy per hectare in 1970 to 1,624 gantang in 1980 for KADA and from 721 gantang of paddy in 1970 to 1,369 gantang in 1980 in Besut area. In Besut (Trengganu) area, construction work for several similar projects are continuing. Similar projects are being carried out at Krian/Sungai Manik, North West Selangor and Western Johor. Studies were undertaken on several new integrated projects in Kemasin - Semerak in Kelantan, Lower Trengganu, Melaka, Negeri Sembilan Timor and Rompin-Endau to determine their feasibility. Large investments were made in drainage and irrigation infrastructure aimed at improving farm productivity as well as facilitating the introduction of other diversified and high value crops during the period. About 68,000 hectares of land were provided with irrigation facilities for both single and double cropping of paddy in addition to the 97,400 hectares of existing areas, benefiting a total of 136,000 farm families. A total of 99,500 hectares of existing areas were provided with improved drainage facilities in addition to 205,800 hectares of new areas which were provided with similar facilities.
58. *Lapuran Tahunan RISDA*, 1984, p.11. (Felda Annual Report), 1984.
59. 4MP, p.267.
60. *ibid.*
61. In 1979, it had identified an area of 39,800 hectares in TAKDIR (Kelantan) area for rehabilitation work.
62. Population and Housing Census of Malaysia, 1980, *General Report of the Population Census*, Volume 1, p.19.
63. *ibid.*, pp.18-20.
64. See Fifth Malaysia Plan, (5MP) 1986-90, p.139.
65. *ibid.*, p.298.
66. See Fourth Malaysia Plan, (4MP),(1980-1985), pp.18-19, (table 2-3).
67. *ibid.*, pp.32-33,(table 2-3,p.33).
68. *ibid.*, p.33,(table 3-1), see also 5MP,pp.7, 81-92, (tables: 3-1, 3-2, and chart 3-2).
69. *ibid.*, pp. 4 & 36, see also table 3-3 at p.37.
70. IBRD, Report No.4492-MA,*Country Economic Report, Malaysia, 1983*, p.8.
71. See 4MP, pp.31-34,(Tables 3-1 and 3-2), see also pp. 55-56.
72. The riots on May 13th 1969 compounded this disillusionment. Whatever the immediate cause, the riots in 1969 probably had their roots in tensions arising from the widening income disparity between the Malay and Chinese communities - the one predominantly rural, the other predominantly urban.

73. RISDA-USM, *Preliminary Survey Of Small holders, Peninsular Malaysia 1977*, November 1982, p.xiii.
74. *ibid.*, p. xiv.
75. *ibid.*
76. *ibid.*
77. See 5MP, p.85.
78. *ibid.*, pp.35-37.
79. 4MP, p.37-42.
80. *ibid.*, pp.58, 62-63, (see also table 3-14 at p.62).
81. IBRD, Report No.4492-MA,Country Economic Report, Malaysia, 1983, *Structural Change and Stabilization*, p.9
82. Mid-Term Review 4MP,(Malay), pp.111-114 (see Table 3-12 and chart 3-2 at pp.112 & 113).
83. *ibid.*, p.11.
84. 4MP, pp.55-60, see also p.18 particularly table 2-3. Despite overall performance, bumiputra still accounted for a very small proportion of the higher earning professionals. In 1979 bumiputra accounted for only 11% of architects, 7.6% accountants, 11.6% of engineers and 8.6% of doctors in both the private and public sectors. In terms of salaries and wages, a survey of limited companies in Peninsular Malaysia showed that bumiputra held only 6.4% of the top paying jobs over $4,000 a month) in 1976, compared with 30.1% for the Chinese, 3.6% for the Indians, 3.5% others and 56.4% for foreigners,(see Table 3-13 4MP, p.61).
85. *ibid.*, p.11.
86. See *ibid.*
87. IBRD Report, 1983, *op.cit.* p.9.
88. See *ibid.*
89. *ibid.*, p.21.
90. *ibid.*
91. *ibid.*
92. *ibid.*, p.21.
93. *ibid.*, p.22.
94. *ibid.*, p.22.
95. *ibid.*, p.16.
96. This decline is partly due to the shifts in composition from high yielding estates to lower yielding small holders, partly because of the labour shifts discussed earlier and also perhaps because of reduced levels of replanting in the late sixties which have changed the maturity structure of tress towards the lower yielding age range. See *ibid.*
97. *ibid.*, p.19. In Peninsular Malaysia, a National Forestry Policy was accepted and adopted in 1978 with the objective of conserving the existing forest reserves in view of the rapid forest exploitation in the past. The aim of the policy is to ensure adherence by the state governments to the maximum quota for forest exploitation, the strict supervision of the intensity of forest harvesting, the expansion of capacity of wood processing mills and the acceleration in the rate of forest rehabilitation. With the implementation of the policy sawlogs output from Peninsular Malaysia is expected to decline by 7% per annum.
98. *ibid.*, p.16.
99. M.Ariff Hussein *et.al*, *Taxes in the Agricultural Sector and Its Burden On Smallholders*, a seminar paper presented at Universiti Pertanian Malaysia, Serdang, Malaysia, 1984.
100. *ibid.*
101. *ibid.*

102. This portion of the agriculture produce is meant later to be distributed by the 'Majlis' to the poor and needy members of the Muslim community in the respective areas.

103. Tan A.A.H. *The Incidence of Export Taxes On Small Producers*, Malayan Economic Review, Vol.XII, April, 1967.

104. Hussein, Mohammed Ariff, *Tax Burden On Rubber, Coconut and Pineapple Smallholders In Johore*.The Pennsylvania State University, Ph.D Thesis, 1977, [as quoted in Mohd Arif et.all.]

105. See M.Ariff Hussein, *op.cit.* p.10.

105a. *ibid.*

106. IBRD Report, 1983, *op.cit.* pp. xvi-xvii.

107. *ibid.*

108. Federal Land Development Authority, 1980,(FELDA publication), p.1, see also National Land Council paper no.12 & 13/1960.

109. For detailed discussion on FELDA see Tunku Shamsul Bahrain, P.D.A.Perera in, *FELDA, 21 years of Land Development*, 1977.

110. Land Development Ordinance, no.20/1956, Ss. 3(1) and 3(4). The Authority shall not promote, carry out, assist or participate in any such project or activity as is referred to in this section in any state or settlement until such measure for consultation with the government of such state or settlement or with any department of the Federal Government as appear to the Minister to be appropriate have been taken."

111. Land Development Ordinance (Amendment),1956, s 3(2).

112. During the formative period, FELDA experienced many difficulties and there were many limitations such as the lack of co-operation among the various departments within the State Governments. Frequent staff changes at state level necessarily hindered the continuity of discussions and quick follow up. See *ibid.*

113. *ibid.*

114. Besides the limitations mentioned, there was inadequate co-ordination among the 12 departments and agencies which were responsible to 8 ministries both at state and federal levels. However, with the implementation of the new land policies, two FELDA Committees; the Technical Committee and the Technical Planning Committee were set up to assist FELDA in the investigation of proposed schemes, and the planning of the already approved schemes. The task of the Committees were to coordinate all services required in FELDA schemes at federal level. Presently, these two committees are no longer in existence and the required co-ordination is now maintained on a 'direct approach' basis.

115. National Land Council, paper No.4/1958.

116. *ibid.*, papers Nos.12 & 13/1960 and papers Nos.12 & 13/60 (additional).

117. See 4MP, p.306. Under the old structure, FELDA's responsibility to the Minister was rather loose and FELDA's Board could be considered a 'policy making' body. The Special Committee thought that this role was no longer valid, as the policy was laid down by the Minister. They considered that it is the function of the Board to implement and not initiate Ministerial policy, as a result FELDA lost much of its original autonomy. There were two main reasons for this change of policy. First, there was lack of co-operation from government departments. Therefore, for FELDA to obtain quick assistance from other government departments, demanded the curtailment of its autonomy in order to be more closely knitted the

national structure. Second, there was the political considerations for the change. After independence, politicians played a greater role in the national and economic development of the country. Land to be developed by FELDA has to be approved by the State EXCO on the advice and recommendation of State Commissioner of Lands and Mines.

118. FELDA Annual Report, 1984, p.16.

119. *ibid.*, See also Lim Sow Ching, *Land Development Schemes in Peninsular Malaysia, A Study of Benefits and Costs*, Rubber Research Institute Malaysia, 1976, pp.207-208.

120. See also, Ozay Mehmet, *Evaluating Alternative Land Schemes in Malaysia: FELDA and FELCRA*, Contemporary South East Asia, Vol.3, No.4, March, 1982, Institute of South East Asian Studies, Singapore, pp. 341-354. The studies show that FELCRA appears to be doing a more effective job, as indicated by higher average additional life-time income for FELCRA settlers relative to FELDA. See *ibid.*, p.353-357. See also S.Hussain Wafa, *Land Development Strategies in Malaysia, an Emphirical Study*, Occasional Paper No.2, May, 1974, Malaysian Centre for Development Studies, Prime Minister's Department, Malaysia.

121. This is because Kelantan has developed a special low-cost method of land development. Its success was due to the following reasons:

(a) Under the Pan Malayan Islamic Party (PMIP) the Kelantan government has always pursued an independent land development policy which resulted in major differences of land scheme patterns, compared with other states.

(b) In Kelantan, there are very limited source of income available besides agriculture; and there is a land hunger due to over population.

(c) The Kelantan farmer is extremely hard-working and modest and is willing to live under difficult living conditions in the remote areas.

122. See 4MP, p.42. See also 5MP, p.92. Between 1961 and 1973 a total of 11,300 acres were opened for Orang Asli. Under the 4MP, about 1,270 families had been assisted through the various minor agriculture schemes. During the plan period 10,100 hectares of land were converted into permanent agriculture and a further 5,931 hectares were developed for agriculture. Facilities for their social improvement in the field of education, health and housing were also expanded during 1971-80, 101 primary schools and 67 hostels were built. In the field of health, 85,000 cases were given treatment. In housing, 2,000 houses were built for the community. Government's effort had been intensified to upgrade the socio-economic well being of Orang Asli and to accelerate their integration into the mainstream of society. During the 4MP period, a sum of M$40.1 million was provided for the opening up of new lands for agriculture, setting up of processing centres and handicraft workshops for settlement schemes in Titiwangsa region.

123. MUDA Agricultural Development Authority,1972, Act,70.

124. See David S.Gibbons, Lim Teck Ghee, *et.al, Study of Strategy, Impact and Future Development of Integrated Agricultural Development Projects*, Vol.1, Main Report, Universiti Sains, Penang, 1983. The Study shows that about half of the remaining poor in MUDA were in the "hardcore" group. There was a wide variation in the incidenc of both overall and "hardcore" poverty among the administrative

districts in MUDA, with the high rates in Yan and Pendang. In terms of absolute numbers of poor in 1982, Kubang Pasu and Kota Setar had slightly more than Yan. However, the absolute number of poor paddy farm households in MUDA declined between 1972 and 1982 by only about half as much, in proportionate terms, as the poverty incidence, because of the increase in the number of farm households. Overall in the MUDA area the estimated number of poor paddy households declined from 30,845 in 1972 to 26,240 in 1982 by 15% but two districts Yan and Pendang, actually experienced increases in their number of poor households over the period. (see also Mid Term Review, Fourth Malaysia Plan, p.233).

125. *ibid.*

126. For impact of IADPs on farmers and their income, see Final Report, *Study of Strategy, Impact and Future Development of Integrated Agricultural Development Projects*, Vol. 1, Main Report, particularly pp. v-viii and pp. 73-74, 87-93; 119-143.

127. IBRD, Country Economic Report, Malaysia, No.4492-MA, *Structural Change And Stabilization*, May,1983, (Annex 1, National Agricultural Policy) pp.7-9.

128. David S.Gibbons, Lim Teck Ghee, *et.al*, *Study of strategy, Impact and Future Development of IADPS*, volume 1, Main Report, Centre for Policy Research, Universiti Sains Malaysia,1982.

129. *ibid.*, p.122-127.

130. *ibid.*, p.122. The study also shows that the real incomes of paddy farmers increase substantially during the 1960's, however, poverty was still 88 % in 1970. By 1975 it fell to 77% due to sharp increases in the nominal fixed price for paddy in 1973 and 1974 and as a result of modest production increase. In the period 1975-78,the nominal price of paddy did not change and although yields in the major irrigation scheme rose by 1.8% per anum. Serious drought affected overall production, actual acreage was cut back, and real incomes fell to a level below that of 1960. Estimates for 1979 show a substantial improvement, however, with a major rebound in production following the 1978 drought and a small improvement in terms of trade following an increase in the guranteed paddy price.

131. *ibid.*

132. *ibid.* According to the World Bank Report, [Report No.4492-MA, 1983,conf.], a single-cropping paddy farmer with no outside income needed about 6 to 7 acres to achieve an income above poverty line; but 90% of all single-cropping paddy farmers have holdings smaller than 6.5 acres. Even with non-paddy income providing half of the total or with double cropping, about 3 acres would be necessary to reach a poverty line income and over half of all double-cropped paddy holdings are smaller than that. By comparison, even with no other sources of income, less than 2 acres of tobacco or fish would be needed to reach the poverty line, less than 1.5 acres of cabbage, potatoes, or tomatoes, and less than 1 acre of chillies, coffee or pepper.

133. IBRD Report, *op.cit, (Annex 1, National Agricultural Policy)*,

134. *By comparison, even with no other sources of income, less than 2 acres of tobacco or fish would be needed to reach the poverty line, less than 1.5 acres of cabbage, potatoes, or tomatoes, and less than 1 acre of chillies, coffee or pepper. Thus, it appears that*

*given the relative prices in 1977, farmers with very small holdings would have done better to cultivate anyone of number of alternatives to paddy or to cultivate paddy in combination with some other crop.*

135. *See for example, Pedro Moral-Lopez, Principles of Land Consolidation Legislation*, FAO, Rome, 1962.

136. See Malaysia, *Selected Issues in Rural Poverty*, World Bank Report, December,18,1980, p.44.

137. See Zahir Ahmad, *Land Reforms in South-East Asia*, Orient Longman, New Delhi,1975, pp. 116-142.

138. See Malaysia, *Selected Issues in Rural Poverty, op.cit.* p.46. The present guaranteed minimum price of $30 per pikul for medium grain paddy is 13% below the estimated 1980 world price (in constant prices). The 1980 world price is about 17% below projected long term world paddy price (in constant prices). Thus, a policy of providing to farmers the underlying long term trend price would imply increasing the offer price to approximately $42 in 1980 and thereafter adjusting the price for domestic inflation. At the current production level of about 1.8 million tons of paddy, the total financial cost of the producer subsidy would be about $200 million.This increase in the offer price from $30 per pikul would add approximately $400 net cash income or represent 27% increase in total household cash income, and roughly 15% would go to poverty households specialising in paddy production.

139. *ibid.*

140. Under the Present s.15(5) and (6), of the Small Estates (Distribution) Act, 1955, shares of beneficiary muslims should be distributed according to *faraid*, no matter whatever the size of the land, unless every such beneficiary being of full age and capacity shall have assented thereto. Hence,this leads to fragmentation of land. It is thus proposed that this section should be amended.

141. For land reforms in Taiwan, See Martin M.C.Yang, *Social Economic Result of Land Reform in Taiwan*, East-West Center Press, Honolulu, 1970. See also Chen Cheng, *Land Reform in Taiwan*, China Publishing Press Co. 1961. For land reforms in Japan, see for example, Dore, R.P., *Land Reform in Japan*, O.U.P.London, 1959. See also Laurence 1. Hewes, *Japan - Land and Men*, an Account of the Japanese Land Reform Program, 1945-1951, Greenwood Press Publishers, Westport, Connecticut, 1974 (reprinted), particularly chapters 7, 10 and 13.

142. National Agricultural Policy Document, January, 12, 1984,

143. Edith H. Whetham, M.A. *Economic Background to Agricultural Policy*, Cambridge Univesity Press, 1960, pp.1-6.

144. *ibid.*

145. *ibid.*, policy No.37.

146. *ibid.*, policy Nos. 35 and 36.

147. *ibid.*, policy Nos. 38, 41.

148. The reason for low income is also said to be caused by small size farm. This has been emphasised by IBRD Report (1980) and USM Study (Centre for Policy Research,) 1983

149. See National Land Council, 36th meeting, on 25.3.1983, minute No.3.9., Working paper No.3/83. The state governments have agreed to develop idle lands with the co-operation of Ministries of Land and Regional Development and Ministry of Agriculture [and between FELCRA and FELDA].

150. *ibid.*, policy No.26.

151. Malaysia, *Selected Issues in Rural Poverty, op.cit.* p.82.
152. *ibid.*
153. National Agricultural Policy, 1984, policy No.26.
154. *ibid.*, policy No.12.
155. David S.Gibbons, Lim Teck Ghee, *et.al,. Study of Strategy, Impact And Future Development of IADPs,* Main Report, USM, 1983, p. 122.
156. *ibid.*, See also Kevin Young, Willem C.F.Bussink, *et.al., Malaysia, Growth and Equity in a Multiracial Society*, Chapter 8. [Agriculture and Rural Poverty,] pp. 228-230 & 211-252, *passim.*
157. See *Malaysia, Selected Issues in Rural Poverty, op.cit.* p.44. This would require a national subsidy of about $1.4 billion, equivalent to about 12 % of total government expenditure.
158. *ibid.*, p.46. See also, David S.Gibbons, *Paddy Poverty and Public Policy,* A Preliminary Report on Poverty in MUDA Irrigation Scheme Area, 1972 and 1982, monograph series, No.7, U.S.M., Penang, 1984, p.45.
159. See D.S.Gibbons, Lim Teck Ghee *et.al., USM-MADA Land Tenure Continuation Study, Land Tenure in Muda Irrigation Area:* Final Report, Part 2, Findings, Centre for Policy Research, Universiti Sains, Malaysia, 1981, p.194.
160. See note 141.

# CHAPTER 6

## RECOMMENDATIONS

This chapter presents some recommendations to resolve the problems and shortcomings discussed in Chapters 1 to 5. These recommendations focus on various aspects of the land policies and land administration which have rendered the land laws and land administration in the country weak and ineffective and to suggest improvements thereto. Further, these recommendations if implemented would help realise the goals of the New Economic Policy (NEP).

### LAND LAWS AND LAND ADMINISTRATION

Land administration constitutes a complex and enormous field of problems partly because of the comparatively low priority of and lack of sufficient attention given thereto in the past. The situation generally is becoming increasingly critical as problems are rampant in all areas and particularly in the areas of management, training, decision making and in the systems and procedures used to deal with the various types of land applications, land conversions and land dealings. For example, an application for a simple change of express condition takes an average of 301 days.[1] while for prospecting permit,[2] the present average is 429 days.

Under Article 74 of the Federal Constitution and the NLC, 1965, land is under the jurisdiction of the state government. All state land is in law vested in the State Authority, comprising the Ruler/Yang Di Pertua of each state, but effective power is

exercised by the EXCO headed by the Menteri Besar/Chief Minister of the state. With the introduction of the NLC, 1965, all powers relating to land have remained concentrated in the State Authority (the State EXCO) thus rendering the lower levels of the land administration hierarchy powerless to decide even on trivial administrative matters such as the issuing of TOLs. This has resulted in serious congestion at the highest decision making level in the state.

The State Commissioner of Lands and Mines (CLM) is also, by reason of the concentration of powers relating to land in the State EXCO, deprived of executive authority to ensure the effectiveness and efficiency of land administration within his administrative jurisdiction. He has extensive responsibility without the authority necessary to discharge the same. Therefore, the state CLM has been reduced to the situation of the Federal Lands Commissioner (FLC), who is expected to implement national policies merely through advice and persuasion. Under the present arrangement, the state CLM appears to be both the staff as well as a line officer in the state administrative hierarchy.

On a national level, land administration does not seem to have a formal structure. It consists of a number of fragmented elements characterised by loose and ineffective horizontal and vertical relationships and organisation lacks policy leadership as well as executive leadership at both federal and state levels. The over concentration of power in each of the State Authorities has enhanced the difficulty of central co-ordination and control as shown in Appendix 6.3. The lack of an appropriate co-ordinating authority at the state level, however, has placed the

state commissioners in a position that is as difficult as that of the Federal Lands Commissioner.

There is, in view of the enormous structural deficiencies in this important area of the national administrative system and the ambitious socio-economic goals set by the federal government, an urgent need for modification in this structure. It is therefore recommended that the respective roles of the National Land Council (the Council) and each of the State Executive Councils and the FLC and each of the State Commissioners (and District Land Administrators) be clearly identified and defined.

The Council should assume a more effective leadership role in securing co-ordination and administrative uniformity for the mutual interest of the governments concerned. Both the Council and each of the State EXCOs should be responsible for the formulation of, and decision on, all major policy issues within their respective spheres of authority. The FLC should take full responsibility over all the administrative affairs of the Federal Lands Department; the FLC should be appointed Secretary to the Council and be accountable directly to the Federal Minister of Lands and Mines.

The Federal Lands Commissioner (FLC) should be provided with specially selected officers to be Deputy Federal Lands Commissioners. The FLC should be authorised to maintain a personnel programme *vis-a-vis* the federal public services department, covering all officers in land administration and be responsible for the internal transfer of such officers in both the federal and state lands department and the posting of these officers into or out of the department.

All subordinates of the Federal and State Lands Commissioners should be protected by law from having to accept orders other than those from their respective heads of department. The existing Management Unit of the Federal Lands Commissioner, besides having to carry on the function of management audit in the land offices, should be given the task of managing the personnel programmes proposed above. The FLC should be directly responsible for writing the annual performance report of each of the State Commissioners after receiving the written comments of the State Secretary concerned. Under this arrangement, all states' civil service officers should be transferable on secondment to any of the other states or the federal lands department. In this way, the state officers will acquire a broader outlook and varied experience. This proposal is expected to face opposition from most of the State Civil Service officers who have already lived and worked within the state for years and do not wish to be transferred outside their home states. The State CLM should take full responsibility over all administrative affairs of the state lands department in his state. The state CLM should be responsible for writing the annual confidential reports in respect of each of the District Land Administrators after getting the written comments of the District Officers concerned. Finally, management of a district land office should be the responsibility of an officer officially designated as the District Land Administrators and accountable directly to the State Commissioner of Lands and Mines.

Chapter 1 has discussed the numerous structural deficiencies of land administration that render it ineffective in serving

the present day needs of the development administration of the country. These deficiencies render imperative, a major reorganisation and integration of land administration system. The reorganisation and integration of land administration proposed below will be possible only after a number of preliminary problems have been resolved. First, the body or authority which can take the political and administration lead to initiate the process will have to be identified and be vested with the requisite legal authority to act. Then, the body - be it the Council or otherwise - charged with ensuring that the aforesaid reorganisation and integration is effected by all the governments concerned will have to be identified and/or be given the requisite powers to, if necessary, compel compliance. This, in turn, presupposes that the socio-political implications and the seriousness thereof, of such a reorganisation will have been determined earlier - especially in relation to the creation of the federal and state departments to handle land matters. Essentially, the proposed reorganisation and integration would involve the standardisation and streamlining of the present personnel policies and procedures in respect of land offices - a daunting task given the complexity and praguantion of the country's public services. Most importantly, the opposition of the state governments to solve what is fundamentally a political problem by administrative means would have to be overcome before the proposed changes are implemented.

The proposed changes will necessarily have to be viewed in the context of the future of the country, especially the likely political developments and their effects on land administration.

The role of the system of land administration as an instrument for realising future national development goals has to be determined. And as vital will be the land administration's ability to secure continuous and effective political and administrative support for the development programmes it initiates.

The foregoing are not insurmountable and should not be allowed to stand in the way of the proposed reorganisation. The Malaysian Constitution vests the federal government with the requisite legal authority to effect the reorganisation of land administration. Article 76(4) of the Federal Constitution for example empowered Parliament, for the purpose of ensuring uniformity of law and policy, to make laws with respect to land tenure, the relation of landlord and tenant, registration of titles and deeds relating to land and so on. In terms of administering the said laws, it is not within the jurisdiction of the federal government. However, the reorganisation of the land administration could be effected through the existing National Land Council if it is vested with sufficient powers for this purpose. The existence of the National Land Council, vested with adequate powers for a more effective leadership role in land administration, could prove to be a major instrument in effecting the implementation of the above proposals if the Council leadership is properly advised.

The present national planning system comprises a number of fairly independent administrative units. These units plan, develop and implement their respective programmes. The goals or objective to be accomplished may be directly or indirectly

related to the broader national goals. In fact the time has now come for Malaysia to seriously consider the establishment of an integrated national development planning system in view of the fact that the whole process of reorganisation and integration of land administration is designed to enable it to maximize its contribution to the fulfilment of goals established by the national development administration system of which land administration is an important part. Article 92 of the Malaysian Constitution for example empowered the federal government to proclaim an area as a development area and thereupon Parliament shall have power to give effect to the development plan. Article 92(3) defines development plan as a plan for the development, improvement or conservation of the natural resources of a development area, the exploitation of such resources, or the increase of means of employment in the area. This Article can be instrumental in establishing an integrated planning system and land administration can fit into it.

The mounting national socio-economic pressure now exerted on the land administration structure demands its integration and response to the fierce challenges of modernisation. But, the political and administrative forces tend to encourage either the maintenance of the status quo or its fragmentation though the forces of integration seem to have an edge over those of fragmentation. Be that as it may, the land administration system is suffering from a kind of organisational paralysis, which results in its being too weak to respond adequately to the challenges posed by the change. The reform proposed above will indubitably enable the land administration system to adopt and

function adequately in response to present day needs.

The best known organisation models have been examined and assessed in terms of their ability to cope with the present day needs of land administration in West Malaysia. Of the three sub-models of the integrationist variety, the Council - Manager model has proven to be the most appropriate for adoption within the framework of existing needs and constraints.

The adaptation of the integrationist sub-models is not only very much in line with the structure of the many existing federal and state institutions, but it also has the added charm and promise of built-in management devices and mechanisms for securing a much higher standard of effectiveness and efficiency in the fulfilment of organisational as well as national goals. There is therefore, the need to build up strong executive leadership from the top down through the line of formal hierarchy.

Although not all problems and difficulties of implementing the reorganisation proposal have been probed into, some most pertinent questions have been raised, covering both short and long-term problems. The success of implementing the above proposals, however, is very much dependent on the validity of the assumptions made above.

A structural reorganisation of land administration as a whole calls for a clear specification of the respective roles of the National Land Council and each of the State Executive Councils on one hand, and the Federal Lands Commissioner and each of the eleven State Commissioners of Lands and Mines (and the District Land Administrators) on the other. As a national body with

adequate powers, the National Land Council should assume a more effective policy leadership role in securing co-ordination and administrative uniformity for the mutual interest of the state governments. Therefore, both the National Land Council and each of the State Executive Councils should be responsible for the formulation of, and decisions on, all major policy issues involving land administration within their respective spheres of authority. Basically their functions should be more legislative rather than executive.

Section 13 of the NLC has unintentionally provided for excessive centralisation of authority in state land administration in Peninsular Malaysia. By contrast the former FMS Land Code (Cap) 138 distributed such power between the State Authority, the State Commissioner of Lands and Mines and the Collector of Land Revenue (now the District Land Administrator). However, the National Land Council has centralised the decision-making powers merely to formalise the overall responsibility of the State Authority in state land administration. This was so provided for the purpose of enabling the State Authority to maintain a more effective control on land officers to whom most of these powers were intended to be delegated. The new NLC provides the legal basis for the Executive Council to withdraw any delegated authority or power from any officer suspected of abusing or being incapable of exercising such power properly. It was also intended to invest the EXCO with greater responsibility. In short, the legal provision was meant to change the devolution of power provided in the FMS Land Code to one of deconcentration but has instead resulted in over-

concentration of power at the EXCO level. Thus, the good intention underlying the change in the legal provisions has not been appreciated; the advantage offered has not been used in the interest of effective and efficient state land administration. It is the present excessive concentration of power in the EXCO that resulted in a congestion of decision-making and considerable delay in land administration. It is therefore proposed that trivial matters should not be dealt with by the EXCO and more delegation of powers to the State Commissioner of Lands and Mines and the District Land Administrators should be considered by the State Authority in order to overcome the existing delays and backlog of land cases in land offices. Approval of TOLs, for example, and the re-issuing of such licences should be delegated to the Land Administrators.

Any effort to streamline the administration merely by modification of the existing systems and procedures would be unrealistic and unbalanced unless the present system of allocating powers is also modified. The desired results could never be achieved because such effort would only help to worsen the existing bottleneck at the top level. The EXCO normally consists of nine very important and busy politicians who could meet for only a few hours about twice a month to review existing policies, to initiate and formulate new ones and to decide on all state matters brought up for consideration and decision, including land cases.

It is easy to condemn the administration for inefficiency or merely to identify what the underlying causes are for the delay;

but it should be realised that land administration, like other government agencies, was not authorised to change its operating systems and procedures without direction from an appropriate authority. In the absence of such direction the existing systems and procedures have continued to be adhered to.

It has been shown in Chapter 1, that there is a considerable backlog in land offices. The backlog, however, is not due to the machinery that implements the system which is weak and ineffective. The problems and causes of the weakness of the land administration machinery have been discussed in detail in Chapter 1, and among others, they include weak and ineffective leadership, lack of adequate knowledge of land law and land administration procedures, shortage of staff, lack of adequate modern office facilities and delay in decision-making by the EXCO. From the discussion, it can be concluded that land administration is a skilled profession requiring intensive training and experience. To achieve professionalism in land administration, a separate land service department (like Immigration and Registration departments) in each state providing a career for officers in such department is the most suitable solution to improve the existing machinery. Short of a separate land service for land offices, an alternative would be that the land and district administration be reformed by separating land office from district administration. Such an administrative reform would place the land office in full control of and vest it with the responsibility of giving effect to the land legislation and executing the policy of governments free from pressure of outside influence in general administration. Only a

cadre of officers at all levels who are skilled and interested in carrying out an intricate and complex form of administration can provide an effective land administration and land policy. As members of a separate department these officers would work under the State Commissioner of Land and Mines who would be responsible for the direction and supervision of the officers. The District Land Administrators (DLAs) themselves would be responsible for the other land officers and other junior staff under their charge and this staff should have the same prospect for promotion as the staff in any other department. The DLA, responsible directly to the State Commissioner for Lands and Mines and solely responsible for the land administration in the district, with control of all subordinate land office staff would keep the District Officer informed of land policy, development and administration within the district. Further, the subordinate field and clerical staff, would be transferable, for example on promotion, from one land office to another within the state but not to other departments. As for serving officers, they should be given the option to choose whether they wish to serve the Land Departments or not, and in the beginning it may be necessary to second officers to the department. Since land administration is a state matter, the decision as to when any state introduces its separate Land Department should be discussed and decided by the National Land Council. A nation wide programme should be carried out to implement this policy.

The system proposed above has the objective of establishing an integrated formal structure for land administration in Peninsular Malaysia. But in so doing, the new system also seems

to disintegrate the formal authority of both the Menteri Besar/Chief Minister and the State Secretary over the State Commissioner of Lands and Mines. This, however, is more apparent than real because under the present system it is the Federal Public Services Department (currently in 7 states) which has the formal authority to appoint or remove (transfer) a state Commissioner of Lands and Mines from his post - not the Menteri Besar/Chief Minister.

In a major reorganisation of this nature, problems and difficulties will surely arise. Many individuals, interest groups and organisations will inevitably be affected, directly or indirectly, adversely or otherwise. The reorganisation process would have a great impact upon some of the prevailing old values and cherished institutions affecting the status, power and working habits of some senior officers.

The implementation of the proposed reorganisation will also have a significant impact on a state's overall system of administration. This is true because the new structure for land administration will, in fact, alter the existing formal relationship pattern in a state administrative system. It is also proposed that a study should be made of the possible adverse effects of implementing the proposed system of land administration, particularly within the framework of the existing state administrative system. Where necessary, new roles and functions may have to be determined, particularly with respect to the State Secretary, the State Development Officer, and the District Officer so as to ensure that administration of the state as a whole will be as effective and efficient as the

proposed structure for land administration is designed to be. The success of this programme would require active support of the national and state political leadership and cooperation, participation and a firm conviction on the need of such reorganisation on the part of almost everyone directly or indirectly involved in land administration at the present time.

Another avenue of improvement in the field of land administration should be the establishment of a Land Training Institute under the Ministry of Land and Regional Development. However, considering the present economic and financial position of the government, this proposal might not be feasible at the present time. It is therefore proposed that as an alternative solution, a one year diploma level course in Land Law and Land Administration should be established at the National Institute of Public Administration [INTAN]. This course should be specially designed to suit the requirements of the land officers in order to improve their knowledge in land laws and land administration and to upgrade their management skills..

As a safeguard against administrative actions, annual reports on land administration should be submitted to the state legislature by the State Commissioner of Lands and Mines and this should be as important as a 'Public Accounts Report'. Instructions to this effect should be issued by all state governments and to ensure uniformity, the Federal Commissioner of Lands and Mines should be asked to advise state governments on the contents of the reports.

It has been shown in various chapters that the present NLC though comprehensive in its procedures, lacks clarity and

precision as a national law. The procedures are lengthy and cumbersome. Thus, a restructuring of its form without loosing its contents is necessary. This can be done by having separate detailed procedures in NLC Regulations. In this way the law could be understood easily and the procedures could be amended as and when necessary by the National Land Council without going through Parliament.

The Ministry is now embarking on computerisation of all land records and revenue collections. This is a step in the right direction. With the use of computers in land records, land transactions (land dealings) and in the collection of land taxes (quit rents, rates and so on), the system should be able to rid itself of all its present deficiencies. Furthermore, computerisation of all relevant land data would be a useful exercise for future land and resource management and land use planning. The establishment of the proposed 'land data bank' would greatly enhance the greatly needed data for the efficient management of land resources of the country. Computerisation is not only efficient but also saves space and time and guarantees the security of the land titles. The backlog of land cases could greatly be reduced. Data on land matters could be stored and retrieved as needed for planning and policy making purposes.

*LAND OWNERSHIP POLICY*

Chapter 2 has shown that the Five Year development plans and the implementation of the New Economic Policy have not changed the land ownership patterns of the country. It has also been shown that in terms of land ownership by ethnic groups, the present patterns of landownership among the Malays, Chinese and

Indians do not depict the population patterns of the country. It is therefore proposed that a ceiling limit restricting the ownership of agricultural land say 25 acres should be imposed as indicated under recommendation 3 of Chapter 2. Owning of residential property in urban areas too should be limited to a 'one man one house policy'. This could be done through policy directive or to be more effective, through legislation. Policy control could be effected by prohibiting financial institutions from lending money for housing loans to those who already own houses. However, as policy directives do not have the force of law, it may therefore be necessary that section 42 of the NLC be amended to implement this policy.

Coming back to the issue of restricting the ownership of agricultural land by a natural individual to 25 acres for agricultural purposes, this would mean that a natural individual who acquires agricultural land would have to restrict his agricultural activities on the land to those that would be economical only if they are carried out in an area not exceeding 25 acres. It has to be borne in mind that the limitation of ownership to 25 acres would not necessarily mean that such 25 acres be comprised in one lot or in contiguous lots. The limitation to 25 acres could relate to a situation where there are a multiplicity of lots of varying sizes owned by one individual in different places within Peninsular Malaysia.

Given the jurisdiction of each state over land within its territory, the provisions of the National Land Code apply in each State in Peninsular Malaysia as a law made in respect of that state and executed within that state. Therefore, according to the

Attorney General,[3] there cannot be included in the National Land Code a provision which operates throughout Peninsular Malaysia on a federal basis. In other words, there cannot be inserted into the National Land Code a provision to say that no natural individual person shall own a total of more than 25 acres of agricultural land in Peninsular Malaysia. It is further argued that the limiting of ownership of agricultural land by an individual to 25 acres throughout Malaysia would require that transmissions of agricultural land to an individual should be controlled so that the total acreage of land owned by an individual together with the land transmitted to him does not exceed 25 acres. Transmissions of land are, on the other hand governed by the distribution Acts or ordinances such as the Small Estates (Distribution) Act or the Probate and Administration Act or the Distribution Ordinance, 1958. The NLC, being a law relating to the State subject of land can only provide for the registration of a transmission which has been effected by the law relating to the particular category of transmission. Transmissions of land can be effected under the law relating to probate and administration which in turn is related to the laws on the subjects of wills and intestacy. These are federal subjects and as the Federal laws on these subjects provide for transmission of agricultural land without limitation as to the area of land, it would not be possible for the Code to effect the operation of the provisions of such laws by imposing a limitation because it would be outside the scope of a law on a state matter to make any provision which is contrary to those provided under federal law. It will not be possible even for

federal law to prevent the transmission to an administrator or to an executor of the estate of a deceased person of agricultural land of more than 25 acres, because in such transmission the administrator or the executor does not acquire a beneficial interest in the property but only legal ownership for the purpose of distribution to the beneficiaries or for utilising the property for the payment of the liabilities of the deceased. Neither could transmissions from the administrator or executor to a beneficiary of the estate of the deceased be prevented or limited by the Code as the transmission would be dependant on the laws relating to wills and intestate succession. Similar considerations as in the foregoing paragraph would apply to the transmission of property belonging to an insolvent estate as such transmission would be effected by the relevant federal law relating to bankruptcy or winding up.

The limitation of ownership of agricultural land to 25 acres for each natural individual would make it necessary to have a provision in the Code which would prohibit the registration of a transfer of any area of land to a person who would in consequence of the transfer have ownership of a total of more than 25 acres of agricultural land. This would present great administrative difficulties in the registration of every dealing in agricultural land because no matter how small the area of the land to which the dealing relates, the necessary inquiry will have to be made in respect of the property holding of the purchaser to ensure that the total area of the agricultural land held by him would not exceed 25 acres after adding thereto the area of the

agricultural land which is the subject of any current transfer.

Another difficulty which will also arise in the case of agricultural land held in co-proprietorship because an individual share of a co-proprietor in the land cannot in law be related to a physical area of the land held by the co-proprietors. Therefore, the undivided share in agricultural land held by a co-proprietor will have to be excluded from the computation of the limit of 25 acres of agricultural land which an individual would be entitled to hold. But if this exception is allowed, it will provide an easy avenue for circumventing the 25 acres limitation by two co-proprietors owning in co-proprietorship agricultural land far in excess of 25 acres. However, to overcome this it might be possible to include a provision of notional ownership of a physical portion of agricultural land held in co-proprietorship, such physical portion being proportionate to the undivided share of the land held in co-proprietorship. But the execution of such a concept of transforming an undivided share into a notional ownership of a physical portion of the land will entail a great deal of administrative work.

Another problem will arise as regards the alienation of agricultural land. In this regard, in respect of every proposed alienation of agricultural land to a natural individual, it will be necessary in the first instance to ascertain the total area of agricultural land already held by the applicant so as to ensure that the total area of such land will be held after the alienation will not exceed 25 acres. This will no doubt involve a great deal of administrative work and consequent delay in

effecting the alienation. If the true intent and purpose of restricting the ownership of agricultural land to 25 acres is to be realised, then ownership by companies would also have to be subjected to a certain ceiling limit. If this is not done, then companies, being corporate legal entities, would be free to have ownership of unlimited areas of agricultural land. Under Malaysian company laws[4] a company can be formed by two or more persons, and such company may be a limited company, an unlimited company, a public company, or a private company. In the case of a private company, any number of persons being not less than two and not more than fifty can form such a company. It will therefore be seen that natural individuals will continue to be able to own land of 25 acres or more by incorporating themselves as a company under the companies law. Having regard to this situation, it will be seen that a provision to restrict the area of agricultural land owned by natural individuals cannot have the effect of really preventing natural individuals from actually owning land to an unlimited extent, because all that it will be necessary to do to achieve that purpose would be for two or more persons who are minded to own agricultural land in excess of the permitted maximum of 25 acres would be to own the land in the name of the company which the persons so minded can easily form and register under the company law.

Furthermore, the prohibition of ownership of agricultural land by a natural individual in access of 25 acres could be defeated by various other means, such as:

(a) ownership of land through trustees and nominees;

(b) leases and tenancies; and

(c) by members of families holding land at 25 acres per member of the family.

It is therefore concluded that the restriction of ownership of agricultural land to 25 acres can only be effected in respect of future alienation and dealings in agricultural land. Existing ownership of agricultural land cannot be effected by amending the Code because the existing owners cannot be deprived of agricultural land held by them in excess of 25 acres. Since this is an alien concept to the scheme of the Code, great care will have to be taken in drafting any provision providing such restriction, and it will have to be ensured, amongst other things, that the new provision in this regard does not conflict with, or cause difficulty in relation to the implementation of other provisions of the Code.

*Land Redistribution*

One way of ensuring that tillers would get an equal opportunity of owning agricultural land is through the redistribution of agricultural land. This sounds drastic especially in a multi-ethnic nation like Malaysia. However, there are many ways of doing this. First, the two million acres of idle agricultural land as mentioned in Chapter 5 can be acquired under the Land Acquisition Act, 1960 and redistributed to those who are in dire need of land for cultivation. Under section 129 of the NLC, alienated lands which have not been cultivated continuously for three years can be forfeited and such land can be realienated to those tiller peasants. This provision should be strictly enforced, to ensure that owners of agriculture land cultivate their land or face forfeiture. This, however, would

need a strong political decision and political will as redistribution of acquired uncultivated land has not thus far been undertaken.

Another alternative would be to expand the concept of *in situ* land development programmes by which adjoining state lands are distributed in order that the existing landowners would be able to increase their plots of land to the required economic sized holding of about 6 acres per family. Such experiments as have been carried out in Teratak Batu, (Kelantan) should serve as a model for other states to follow.

The concept of 'land to the tillers' reforms which has been popularly expounded and successfully implemented in such countries as South Korea, Taiwan and Japan should be emulated in this country. Agricultural land in respect of which applications for alienation are received, for example, should be thoroughly investigated before they are being approved for alienation. This is to ensure that the actual tillers of the land would physically occupy such land, failing which legislation should provide for the acquisition and redistribution of such land to those who actually till the land.

Another reform possible in the land ownership policy is to provide for a stricter provision in the Malay Reservations Enactment as regards the power of excision of Malay Reservation land. As discussed in Chapter 3, much of Malay Reserve land has been lost as a result of excision by the State Authority for various reasons and these lands have seldom been replaced as required under Article 89(3)(c) of the Constitution. Therefore, to have a fool-proof protection against loss of Malay Reserve

land, the State Authority should not have the power to excise Malay Reservation land for other than for public purposes alone. In case of land required for federal purposes, the EXCO should be able to approve such acquisition only upon simultaneously approving another area as a Malay Reservation. In this way, the replacement of Malay Reservation land lost as a result of excision by the State Authority would be fully guaranteed.

With the recent amendment to the Malay Reservations Enactment,[5] land in Malay Reservation areas can now be charged to non-Malays and non-Malay institutions as collateral for a loan. Though this is a right step towards enhancing the value of Malay Reserve land for development purposes, caution must be exercised to prevent the misuse of such a provision as this could eventually lead to the loss of Malay Reserve land.

Chapter 3 has also shown that Malays could not develop their lands in urban areas due to shortage of capital and entrepreneurial ability. It is therefore necessary that there be established an agency aimed at developing Malay Reservation land especially in town centres and peripheral areas for industrial, commercial and residential developments. This would enable the Malays to retain the ownership of their land. Without such an agency, it is impossible for the Malay landholders in urban areas to develop their land and eventually the financially strapped Malay landholders would have lost their land to wealthy Malays who are financially strong.

Another way of protecting the Malays from losing their land is by restricting the ownership of land in Malay land reserves by companies or corporate bodies all 100% of whose share holders

are Malays. This will ensure that no abuse by way of share transfers is involved. Appropriate provisions may be involved in the Malay Reservations Enactments.

As a result of rapid development in Penang, much Malay land in the state was lost to non-Malays, either through sales or acquisition for public purposes. These lands were not replaced because Article 89(3) of the Constitution empowers only states which have an existing Malay Reservation law to declare any land to be a Malay Reservation. Therefore, Article 89 of the Constitution should be amended to enable such a law to be introduced. The introduction of a Malay Reservation law in the state of Penang would greatly help to preserve the ownership of land by Malays without which lands owned by Malays in Penang would eventually diminish. One easier method of doing this is to have a Malay Holding law similar to the law relating to Malay holding in Trengganu. The non-Malays would not be deprived of their rights in land ownership by such a law.

*LAND DISPOSAL POLICY*

As stated in Chapter 1, one of the most important powers of the State Authority is the power to alienate state land to those who are eligible under section 43 of the National Land Code. This power is guarded jealously by the state as having power in land means having control of the electorate. Different states have different policies pertaining to the distribution of state lands. Some states have their own written land policies as discussed in Chapter 3. Other states which do not have written land policies based their decisions on the previous policies made by the EXCO when alienating state land and if such policies are absent, new

policies are formulated by the EXCO. Sometimes decisions as to land alienation are made on an *ad hoc* basis.

It has also been shown in Chapter 3 that vast numbers of land applications, and applications for Temporary Occupation Licences in the land offices are at various stages of processing. If all these have to be considered, as they are, by the State Authority, there will be further delays. Therefore, in the interest of efficient land administration, the State Authority has to delegate more of its powers to:

(a) The Menteri Besar/Chief Minister for the approval of Town and Country Land not exceeding 20 acres for development projects, for annulment of forfeiture of alienated land under section 133 of the NLC and the approval of acquisition of land under Land Acquisition Act of 1960.

(b) The Director of Lands and Mines for the approval of state land for agricultural purposes of not more than 5 acres, as well as for the approval of Reservation of Land under section 62 of the National Land Code; the approval of variation of conditions and rescission of express condition under section 124 of the National Land Code; the approval of first renewal of prospecting permits; the approval of licences for the construction of jetties and the approval of applications for rebate of quit rents.

(c) The District Land Administrator for the approval of alienation of 'pocket' land not exceeding 3 acres in area; the issue of Temporary Occupation Licences for planting paddy, cash crops, vegetables, (and also for public rallies and entertainments.)

*Determination of New Policies*

As in the case of the delegation of powers, the need to formulate new policies and amend existing ones is apparent. Policies are essentially guides and instructions to Land Administrators as to the manner and means by which certain problems have to be handled. These policies should be formulated to realise national economic aspirations directly connected with the policy diversification of crops and establishing agricultural industries. Some of the policies which should be resolved by the State Authorities are:

(a) To consider outstanding land applications based on the resolutions of the National Land Council as discussed in Chapter 3, that is individual alienation must be replaced by group alienation *en bloc*.

(b) To legalise the position of those who are in illegal occupation of state land. This is an urgent and logical step as the number of persons involved and the acreage planted with permanent crops such as rubber, palm oil and fruit trees are quite considerable.

(c) The issuing of Temporary Occupation Licences for the purpose of paddy planting in consonance with the national aspiration to be self-sufficient in rice production as stipulated in the National Agricultural Policy.

(d) To publicly 'announce' parcels of state land to be alienated according to the needs of and demands from local inhabitants.

(e) To permit the export of rock materials such as sand and

silica to foreign countries to establish local industries and create job opportunities.

(f) Applicants for land should be fully investigated by a reliable non-political committee. This is to ensure that the applicants are capable of developing the land and putting it to its best use. In the event of there being two or more qualified applicants for the same lot, the successful applicant should be decided by ballot. This is necessary because of rampant allegation that certain groups are deprived of land ownership because of their political belief or inclination. The computerisation of land alienation methods and procedures would ensure the identification and disqualification from alienation, of those who already own adequate-sized pieces of land.

(g) The availability of good and fertile lands for various purposes and uses, one of the obstacles to the land alienation process renders necessary, as elucidated above, the imposition of a ceiling limit on individual ownership of agricultural land.

(h) Haphazard settlement should be avoided in a modern state. One way of achieving a planned alienation policy is for the state to locate, mark and zone land in economic units in areas suitable for alienation. This can be done by the District Land Administrators with the help of the survey department and the State Economic Planning Unit. Designing the land before an application is made enables a proper design to be made having regard to all natural features, and provision can also be made for all such

public requirements as road reserves, public utilities, schools, and parks.

(i) All categories of land should be alienated on a leasehold basis. The alienation of land in perpetuity including for agricultural purposes except land needed for federal/state government purpose. This would generate revenue for the state in the form of premium. New planning perspective may be implemented over the reverted land. Further, agricultural land not cultivated for a number of years should be forfeited and realienated to those genuine land seekers who genuinely want to cultivate the land.

To achieve the above objectives, the National Land Council should formulate a new land alienation policy based on the guidelines proposed above for all the states. The Council should ensure that each state has written land alienation policy consonant with the overall national alienation policy of the federal government. Thus, a radical land disposal policy needed to modernise the agricultural sector to bring the incomes therein on par with those in urban areas. Such a policy will also contribute to the integration of agriculture with modern activities in commerce and industry so as to create in rural areas and smaller towns an economic and social environment that will facilitate the development of a dynamic agriculture sector.

One reform of the land alienation procedure is the replacement of the present method of indicating land applications on litho sheet maps by computerisation. This will help to reduce duplicating land approvals as well as help to identify the types

of land (soil suitability, terrain, natural features and so on) to be alienated. In approving land applications, the Land Conservation Act, 1960, should be enforced strictly to prevent soil erosion which may lead to silting of river beds and drainage systems. Studies in land offices, (see Chapter 1), reveal that there have been cases of more than one approval for the same piece of land which have often led to litigation.

Another reform involves the changing of the methods and system of processing land applications which presently require considerable time and cross references between departments. These methods and systems need to be reviewed to reduce the time involved. The 'three months' directive given by the National Land Council should be closely followed by all the land offices in the states. Although co-ordinated efforts between the National Land Council, the Ministry of Land and Regional Development and the State Directors of Lands and Mines have reduced the time taken to approve an application, there is still room for further improvement.

Since the Report of the Land Administration Commission was published in 1958, various changes have been made to the methods of land alienation, especially after the Land (Group Settlement Areas) Act, 1960 was enacted and planned alienation was made part of the national land alienation policy. Previously, land was alienated haphazardly as the initiative to obtain a piece of land generally rested with the land seekers. Although planned alienation should be the mode of new land settlement, the existing method of *ad hoc* settlement cannot be entirely abandoned as many settlers need to obtain additional areas of land close to

the existing settlements. Areas of land close to existing settlements should be retained for this purpose wherever possible. The interest of all classes of land seekers have to be considered and the administration should aim at preserving a reasonable degree of contentment amongst intending applicants for land.

Although various land development agencies have been established to settle the land hunger problems, these settlement schemes will only partially satisfy the demand for land which will be the duty of the government to meet. It is therefore important to remember that too much should not be expected from the Land Development Authority in satisfying the public demand for land. It can never provide more than a partial solution of the existing land hunger. Planned land settlement on the lines outlined in Chapters 2 and 3 will have to be pursued with vigour. However, those settlers who are not sponsored by any Land Development Authority should be helped by some other body, such as the Agricultural Bank or a new Land Development Bank which should be established for, *inter alia*, this purpose.

Since there are many more land seekers who cannot get land for agriculture purposes, land administrators in the states should not think that all their settlement problems can now be placed on the shoulders of the Land Development Agencies, and that the State Land Officers can relapse into passivity. This is far from being the case. Each state will need its own planned land settlement schemes in addition to those of the Federal Authority; otherwise grave discontent amongst the people is likely to arise.

The District Land Administrators should design the land ahead of application. In this way, a proper design can be made. Planned alienation of state land by the Land Administrators should take cognizance of the following factors:

(a) Choice of an area of suitable land. This may be a small area of a few lots or large areas of a few hundred lots.

(b) Investigation of the land to determine the best use to which it can be put.

(c) Location of roads, river reserves and other reserves, *kampung* sites and so on.

(d) Design of the land for alienation into economic or 'living' areas.

(e) Speedy removal of any marketable timber.

Unless the Land Administrators implement this proposal vigorously the above actions can be unduly prolonged. Therefore, Land Administrators should take speedy actions at all stages of land settlement.

*LAND USE POLICY*

Chapter 4 has established that the current land use policy in Peninsular Malaysia suffers from a number of legal and administrative shortcomings. Therefore, to enable the land use policy to achieve economic, social, political and environmental objectives, some amendments to the laws are necessary and certain measures are required to improve its administration and implementation.

The following recommendations are meant to improve the existing weaknesses or shortcomings in the legislations and implementation process.

Land use policy in Peninsular Malaysia should aim at achieving the objectives of proper allocation of land, its proper distribution, efficiency in land use and equity in terms of the rights and obligations of both parties. For proper allocation of land, land use planning is vital. The legislation for planning and the rules for the implementation thereof must be flexible enough not to make it impossible to carry out planning objectives.

In terms of land use, the resources should be properly conserved and the system should not waste time and skilled manpower. Thus, what is needed is a system that is administratively simple, understandable and enforceable.

As regards distribution, in cases where land has been acquired for public purposes, the price should be fair both to the community and the landowner.

In cases where landowner is denied development by legislation or where his development is controlled, the land owner has the right to know that he has been treated fairly and the principles on which compensation is paid or denied. As the value of privately owned land is increased or inflated by public action, including planning permission, there should be some means of collecting the value of the betterment from him. However, where the landowner enjoys 'unearned increment' even without specific public action, there should be some way of the community sharing the product.

To achieve efficiency in land use, both for economic growth and the achievement of the NEP, the following recommendations are proposed.

Land use policy must be geared towards fulfilling the community growth by ensuring that land is made available where and when it is needed, for the purpose of which it is needed at a fair market price which reflects its value in use without any speculative element. A National Land Bank should be established for this purpose.[7]

The establishment of a Land Bank especially in the Federal Territory and in other urban areas where land is becoming scarce will solve the acute problem of land shortage. In principle, land banking is the reservation of land for future urban use. It can also be used for purposes of reservation of lands for other public purposes. Land can be reserved in many ways, but most commonly in the land banking context, it entails the acquisition, extended ownership and eventual resale for the intended use. The government can also use its regulatory power under legislation as the Town and Country Planning Act, 1976 or the Federal Territory (Planning) Act, 1982 and the decisions not to extend roads and other public utilities to control development and reserve land.[7]

A land bank, will make available land as and when it is required free from squatters. The purpose of saving money by purchasing early is a popular reason for land banking. To make money, all or part of the land must be sold at a real profit, taking account of all costs. A better way of making money through land banking is to initially purchase and hold land with potential for development for expensive housing, commerce or industry and when it is developed, to sell it for a profit which can be used to subsidise low cost housing.

Land banking also permits more effective control of development than can be achieved by zoning and other regulations. It is sometimes feasible to buy land around planned new towns and other large housing projects in order to control the future uses.

One of the most compelling reasons for land banking is to get land acquisition off the critical path of project implementation. National Housing programmes throughout the world suffer from acute uncertainty and protracted time lapse in project implementation because of delays in obtaining land.[8] Malaysia has experienced similar problems of delay in its land acquisition process as discussed in Chapter 4.

Land can be banked for use in the low cost housing programmes through regulation and reservation, through the use of government land holdings, and through purchase (see Appendix 6.1). The Land Bank requires the establishment of a specific agency to discharge its functions and powers efficiently. The proposed agency's functions and powers are explained in Appendix 6.2.

However, a frequent argument against land banking is the very essence of the concept, only viewed negatively, that is, land banking is premature. Money is spent before it is necessary. Land is acquired and sometimes taken out of production before there is a 'higher use' for it. Moreover, this premature land acquisition may be legally dubious and creates land management problems and costs. A related argument is that planners are not very good at identifying site requirements years in advance so that the acquired sites often prove to be either unneeded or less than optimal.[9]

The fact is that in a majority of the large cities of the

third world, there is a vast number of people who cannot afford legal access to residential land, regardless of what the elementary and minimal land needs may be.'[10] In Malaysia, these people fulfil an essential role in the urban economy, and there is no hope at all of their leaving the city and returning to their *kampung*. On the contrary more will be coming.

The issue of providing sufficient residential land for housing the poor legitimately and in a socially acceptable manner is thus an issue that concerns the city as a whole, and cannot therefore be resolved by allowing each landowner in the city to reserve his land for the most profitable use. Some sites in the city have to be used to house the poor. Since the poor are in the city in large numbers, the area of land needed to house them is quite substantial, even though they usually occupy sites at considerably higher densities than middle-income or high income groups. The poor are efficient users of urban land. They use a small amount of urban land per person and they can find good use for every small piece of land virtually anywhere. Yet planning authorities, land administrators, municipal governments and the national leadership usually fail to see the need to provide adequate land for housing the poor. Most authorities prefer to regard the use of land by the poor as temporary (thus TOLs are issued), with the expectation that they will vacate it to make way for the most profitable use of every plot in the city. There is even the refusal to recognise the fact that the poor people need to live somewhere. This is evidenced by the illegal occupation of land by the poor being termed 'a problem'. Eviction of the poor from such land does nothing but shift the 'problem'

to some other location in the city. Such shifts, which are usually accompanied by considerable losses to the poor, do little to improve the situation in the city as a whole. On the other hand, they often result in net reductions in the already limited housing stock.

To meet the challenge of housing the poor, most cities will need to re-evaluate their concept of the proper use of urban land to make adequate room for people who, for one reason or other, continue to remain invisible when decisions on land use are made. Yet, in the majority of developing countries,[11] and Malaysia is no exception, the urban land market does not operate as a free market. It is subject to varying degrees of control over land use, to regulations governing land transfer, to restrictions, to development rights, to compulsory acquisition and taxation. Government controls are, in turn, subject to political pressures by different groups with interests in using land and benefiting from land transactions.

In recent years, the federal government through the National Land Council, has formulated various policies and principles to guide both the state and federal governments in planning human settlements. This is in conformity with Article 91 of the Federal Constitution[12] which provides that the National Land Council is to formulate, from time to time, a national policy for the promotion and control of the utilisation of forestry or any other purpose. This constitutional provision has been used to enable a planned development of housing and human settlements by the formulation of national policies on land use. Various policies and strategies to organise human settlements in urban areas have

been established through two different approaches. First, there has been the creation of satellite towns and the establishment of residential suburbs which have been very successful in easing housing shortage of the Federal Territory. However, the high cost of these houses put them beyond the means of the squatters. To cater to the housing needs of squatters, high rise low-cost buildings have been constructed but the City Hall has found this to be too costly to bear. Recently, a new approach was adopted with the construction of walk up flats of not more than four storeys. The remedy to the squatter problem in the city calls for a 2-prong approach: the housing need of the squatters be catered for and the efforts at resettlement and rehabilitation must have, as their objective, the integration of the squatters into urban community, both economically and socially. City Hall which has recognised the urgency of resettling the squatters and the most effective way to do so is to first evict the squatters and eventually resettle them on perhaps the same land, after dwelling units have been erected for them. The eviction of squatters is provided for by the Essential (Clearance of Squatters) Regulations, 1969 which empowers City Hall to evict squatters and demolish squatter buildings. The problem is that no positive action has been taken to clear the squatters through the provisions of the Regulations perhaps because of the fear of losing the political support of the squatters who comprise 24% of the total population in the Federal Territory. Moreover, the eviction of the squatters by itself without their relocation or resettlement will be futile because the evicted squatters have no alternative but to squat on another piece of available land. The

increase in the price of the low-cost accommodation and the non-availability of such accommodation in the Federal Territory will force the displaced squatters to squat again. The process will continue until and unless positive measures are taken to resettle them.

One alternative solution is that measures must be taken to divert the rural in-migrating population away from the Federal Territory by providing the urban poor with accommodation within their means. At the moment, the so-called illegal occupation of land and eviction of dwelling thereon is the only solution the squatters have to their need for housing. Land policies in the Federal Territory and in other urban areas where squatters are prevalent should take cognisance of the low income groups, that is, the squatters when planning for land distribution and land use for housing. What is required is gradual improvement of housing predicated on the acceptance of slum and squatter communities as legitimate forms of urban housing which, in principle, must be improved rather than destroyed. Slum clearance must be abandoned in all but exceptional circumstances, and be replaced by opening of new serviced area where low-income people can build their houses gradually over time.

In deciding on land use policy in both the private and public sectors of the economy, the State Authority should have full regard to the social consequences thereof and not merely refer to the effect of their decisions on the profitability to individual landholders or on the budgets of public authorities. Thus, land use policy must treat land as a scarce commodity by making sure that it is used effectively and not held idle for

purposes of speculative gain. Society must insist that land is used as a productive asset and not as a store of value. Buying and selling land for purely speculative reasons does not serve any useful social purpose and is inimical to enterprise. It is therefore imperative that land use policy encourage and not stifle productive enterprises. But, as initiatives for development and redevelopment depend on the prospect of gains which accrue to the private sector from permitted changes in land use, land must be made available for any given purpose at a minimal cost in terms of labour and other resources. This means that cost of administering land use policies must be kept as low as possible, to achieve their aims. Moreover these policies must be administratively feasible.

As regards equity, the equitable distribution of land requires appropriate provision of land for purposes of social housing, public services generally and the preservation and improvement of the public domain. A general objective of land use policy must be to balance the rights and obligations of different individuals and groups in relation to land use. This involves the recognition of the fact that private rights and obligations over land, need to be balanced against those of the community generally.

Further, the land use policy should aim to provide all members of society with acceptable standards of housing on terms which are both just and within their capacity to pay. Land must be made available for residential purposes at prices which will reflect the costs to society of providing the land for those purposes with regard to levels of income and wealth and hence the

capacity to pay.

Artificially inflated increases in land prices must be minimised through legislation if equity in land use is to be achieved. The present tax on property gains is not adequate in checking the prices of land and houses. The land use policy must be made to stabilise land prices because rising prices benefit land owning members of the community at the expense of others. Therefore, the land use policy should be geared towards ensuring that landowners are restricted to gains from the development or use of land and are excluded from gains associated merely with the passive holding of land.

In order to achieve the above proposal the implementation of land use policy must be improved. Some measures to improve the system are discussed below.

The implementation capability of the agencies responsible for land use control must be increased. There is a need to strengthen the staffing position and the management of local authorities and land offices, to avoid delays in the processing of applications for alienation of state land, for change of use and sub-division of land. Because of shortage of staff, the conditions of land titles and planning control are seldom enforced. Also, development plans too are not brought up-to-date.

It is imperative for state governments to adopt and implement as soon as possible the provisions of the Town and Country Planning Act, 1976, which has replaced the various local authority laws such as the Town Boards Enactment. The absence of a body to co-ordinate physical planning at the state level and

the absence of flexible (structure) and detailed (local) plans can hinder the smooth implementation of the land use control system. With structure and local plans in force, the possibility of a conflict between the local authority and the land administration can be reduced.

Imposition of development charges associated with land use change and planning permission should be restrained. In imposing a further premium or a development charge when approving a change of land use and planning permission, consideration must be given to the effect of such extra charges on the costs of houses and commercial premises. Such charges discourage development by private landowners. Such charges will also be passed on to the purchasers of houses or commercial premises. These adverse effects would hit the bumiputra most. In housing development, the further premium can discourage owners from developing their land for housing or other commercial purposes. The ultimate result will be high costs for houses and high rentals for business premises.

The National Land Council is the only legal avenue by which the federal government can influence land use policy in various states of Malaysia. Therefore, the Council should play a more effective and forceful role in land use control. The strength of the Council which is based on constitutional provision, binds both the federal and state governments, and this should be used as a weapon, to implement effective land use policy for the country. To the Council's present role of mainly deliberating proposed amendments to the land legislation should be added a more meaningful function of guiding the country's land use policy

and control. Efforts should be made to exploit the potential of the Council as a body responsible for formulating land use policies at the national level.

*THE NATIONAL AGRICULTURAL POLICY*

Chapter 5 has shown the importance of the agricultural sector in the Malaysian economy as a major contributor to Gross Domestic Product (GDP) and employment. However, the declining importance of the agricultural sector is clearly seen eespecially in the Fourth Malaysia Plan.[13] Although the agricultural sector will still contribute the largest single share of employment in 1990, this share is expected to fall to only 31.8% of total employment.[14]

Chapter 5 has also shown that poverty is greatest in both incidence and absolute number of households in the agricultural sector. The aim of the 1984 National Agricultural Policy is primarily the reduction of poverty in the agricultural population. As seen from Chapter 5, the persistence of poverty is closely linked to the small size of farms and it is important to note that the per capita farm size of poverty households is skewed towards less than half a hectare. At least two-thirds of the poverty households operated no more than half a hectare each in the country's agricultural areas. It is therefore seen that as a result of small farm size, a large proportion of the farmers falls below the poverty line and commercialisation of peasant agriculture tends to be accompanied by a tendency towards concentration of land in fewer hands. This has resulted in polarisation with the development of big holdings and large farms on one hand and small, uneconomic and marginalised farms on the

other. Malaysia, like any other capitalist country, finds that agricultural land ownership tends to become concentrated in fewer hands in the form of larger holdings. Similarly, land operation tends to become concentrated in fewer (not necessarily the same) hands in the form of larger farms.[15] Generally, small size is the dominant characteristic of holdings of paddy land. The results of concentration of ownership of the total paddy land is seen in the fact that a sizeable proportion of the land (42.3%) is held in a relatively small number of large holdings (11.2%).[16]

The above problems faced by the agricultural sector,[17] calls for the introduction of reform programmes so that the objectives of the National Agricultural Policy, the maximisation of income from agriculture through efficient utilisation of land, can be achieved. This is only possible if land for agriculture purposes can be increased in area so that every farmer family is able to own and farm an economic sized holding. There are two ways of doing this. First, new lands can be opened for agricultural development either for paddy or other crops and second, paddy land can be re-distributed to landless tillers. The first alternative is easier and politically more acceptable for the second alternative involves a major political decision as yet unwarranted by the the present economic and political climate.

*Group Farming*

The government's move to promote group farming among paddy farmers has been criticised. Critics argue that group farming is likely to bring little, if any benefit to small farmers because it is economically unsound. In group farming, those participating therein, 'contribute' their land to a 'management'

which attends to the cultivation thereof. The 'management' does not necessarily include the owners or for the matter, employ the farmer to work the land. It seems that only a few of the former paddy farmers are at best employed as agricultural labourers. The majority of paddy farmers might not be employed at all and do not take part in the management of the farm. The farm management would be in the hands of the government agricultural staff. Overheads and operating expenses are high, especially if fully accounted for, and returns do not appear to match them. Finally, the government might have to subsidise these projects quite heavily to make a go of them. Even if this is done, the chances are that the situation of small farmers is not improved very much because the return to the participating farmer is in proportion to the amount of land he contributes to the project. Therefore those with a small amount of land to contribute obtain only small returns, and those with nothing to contribute do not receive anything except possibly wages for seasonal labour. Therefore, such a programme of group farming, even if heavily subsidised, brings little benefit to small farmers and may even aggravate the position of small tenants.

Another possible area of reform relates to the tenancy legislation, namely the Padi Cultivators (Control of Rent and Security of Tenure) Act, 1967. The bias of the existing legislation in favour of the tenants makes landlords reluctant to rent out their paddy lands. Although the 1967 Act incorporates the main recommendations of a 1965 study, it is still ineffective because as the study by the Ministry of Agriculture in 1972 indicates, the paddy landlords use their political and

social influence to block its implementation. Further, unlike the redistribution of ownership of agricultural land, tenancy reform does not deprive landlords of their power (that is control over access to the land) which they use to deter the legislation.[18] No amount of improvement to the tenancy legislation will render it effective.[19] What is required is more radical legislation to effect the redistribution of land.

Other options which could improve the farmers' income in the agricultural sector includes government subsidies. At the moment there are three main subsidies for paddy: the government support price, a payment of $10 for each picul of paddy sold through the *Lembaga Padi dan Beras Negara* (LPN) (National Padi and Rice Authority) or its authorised agents, and, the provision of free fertiliser at a rate of two bags per acre up to a maximum of 5 acres per farmer. Studies by various organisations such as USM show that all three of these are of considerably greater benefit to big farmers than they are to those operating less than 3 acres of paddy land. As for the price support and payment for marketed paddy, the big farmers benefit more, simply because they sell much more than the small farmers. With respect to the fertiliser subsidy, big farmers benefit more because they operate more land and have been able to find ways round the 5 acres ceiling. Thus, the various subsidies offered by the government have made big paddy farms even more profitable and the subsidies are therefore likely to strengthen the forces of accumulation and polarisation that have resulted in increasing concentration of paddy land in progressively fewer large holdings[20] especially in the paddy areas of MADA and KADA. As an indirect result of this

phenomenon, small paddy farmers may finally find themselves operating an even smaller share of total paddy land. The subsidies though, may help to sustain the small farmers on the land, but on less of it. Even if the average size of their farm does not decline, small farmers will not benefit much from the subsidies because they do not sell much paddy and they do not operate much land. Therefore, if there is no effort to increase the size of the farms of small farmers the subsidies will not bring them much benefit, and may even work against them.

One way of increasing the income of the small farmers in the absence of the above proposed land reform is to give a kind of subsidy inversely related to the farm size and / or tenure. This subsidy can be considered as a kind of under-employment benefit, a payment to small farmers (who are prepared to operate more paddy land, but cannot get it) could make up the difference between current household income and the rural poverty line.

Another kind of subsidy which can be implemented is a remission by the state government of land rents paid by small tenants on land rented up to say, 5 acres. The above proposals, in the absence of measures to increase the size of small farms merit serious consideration by the government.

***Redistribution of Paddy Land***

As discussed in Chapter 5, the ownership of paddy land in the MUDA region remains quite highly concentrated. There was also an apparent trend of an increase in the proportion of farms which are small, besides the continued existence of a sizeable number of tenant farmers in the region (24.5% of all farmers), and also the presence of a considerable number of landless agricultural

labourers in the area. The foregoing together with the continuing shortage of opportunities for alternative employment, both inside and outside the MADA, requires new policy thinking on the pattern of access to paddy land. Clearly, under these circumstances, some redistribution of ownership and in the operation of paddy land to small farmers (including tenants) and landless agricultural labourers would be justified. The basis of this proposal is that since the widespread and persistent poverty can only be achieved by access to paddy land, ownership and operation of that land should be distributed relatively equally among its cultivators. One way of doing this is through the imposition of a ceiling on the amount of paddy land that could be owned and operated by one household and a restriction (or even prohibition) on the ownership of paddy land by members of non-cultivating households. The justification for redistribution of ownership and operation of agricultural land, where they are distributed quite unequally, is based on two issues: efficiency (greater productivity) and equity (greater social justice). More equal distribution of agricultural land would result, although not necessarily proportionately, in more equal distribution of household income and opportunity for economic mobility. Redistribution of ownership of paddy land to small farmers can be justified on output or production grounds as well, because productivity is found to be highest on small farms.[21]

In the MUDA Scheme, there is sufficient paddy land to be redistributed to enable each cultivator, after redistribution of ownership to small farmers and landless agricultural labourers, subject to a suitable ceiling per capita, to have enough land to

provide an adequate level of living for his household.[22]

*Increase the Size of Small Farms*

Another option that can be considered, if the above proposal of redistribution of paddy land seems to be too radical, is increasing the average farm size of small paddy farms to about the 3 acres required to lift the average-sized households out of poverty. One way of doing this is by encouraging the small farmers to migrate out of MUDA areas and redistributing their land to the remaining medium and large farmers to increase their average farm size. Such a policy, however, would not help to keep small farmers on the land and can be dismissed on welfare as well as output grounds because alternative employment prospects for the out-migrating farmers are bleak. A more viable option would be to increase the size of average farm size which, theoretically, can be done by legislating a ceiling on farm size, (that is, per adult equivalent household member) and redistributing the right to operate paddy land currently operated in excess of that ceiling. In the MUDA area, for example, the average farm size is 5.6 relongs,[23] there is, therefore, enough paddy land to enable an average-sized household to operate a farm of four relongs. A ceiling of 9.9 relongs would release enough paddy land, which if redistributed to small farmers to operate would increase their average farm size to 3.8 relongs, that is a size very close to the desired average of four relongs. Theoretically, this policy could eradicate absolute poverty by increasing the income level of the small farmers. However, the obstacles to the implementation of this policy recommendation are likely to be political rather than

administrative.

It is also likely that there will be less problems with land that currently is rented out by big landlords. They may be willing to accept a ceiling on the amount of land that they can rent out to any individual tenant provided that their rental income is assured. Further, they might be even willing to allow a state agency to act as their agent in renting out their land, assuming that they can be assured of current market rents. On the other hand, big tenant operators who would have to give up land they are renting and operating above the ceiling would certainly oppose the proposed policy. Such big tenant operators, however, have less political influence than the big landlords. The biggest political hurdle in implementing this policy would be the big-owner-tenants who form the largest group among the big farmers. They would most probably attempt to use their considerable political influence to block the adoption and implementation of the instant proposal. And they are likely to succeed. It will thus be necessary to exclude owner-operator land from the programme which would leave it with the rented land. In the 'reduced' scheme to re-distribute the ownership and till of rented land, no tenant would be allowed to rent in any land that would put his farm above the ceiling. Because of the exemption of the owner-operated land from the ceiling, the ceiling size may have to be lowered to release enough land for redistribution of operation to create the desired impact on regional poverty. In the case of the MUDA area, farm operators would be exempted from the ceiling on farm size, but would not be allowed to rent in any land if they are already operating farms above the ceiling. If

this programme were to be implemented in MUDA area, there is enough tenanted land to render a ceiling and redistribution of operation effective in eradicating poverty.

In Japan, Korea and Taiwan, land reform has been classified as the main mechanism for poverty reduction in the agricultural sector as a whole. In view of the 'sensitivities' surrounding land reform, it is not likely that radical land reform programmes will be carried out at the moment in Malaysia, despite its potential in achieving the New Economic Policy objectives. However, the government in advocating the "Look East Policy" should also look into the 'Eastern' model of land reforms in Taiwan, Japan and Korea, which have adopted varying types of land reforms to stimulate agricultural transformation and national growth. In the past, Malaysia had emulated various forms of institutions such as farmers association from Taiwan, Japan and Korea, because of the potential performance and promises such institutions would have on our agricultural sector.

The persistence of poverty in the agricultural sector especially in MUDA and KEMUBU and other paddy growing areas, is a matter of great concern to the government. As stated in Chapter 5, its basic cause is the increasing number of unequal-sized paddy farms and the consequently large number of farms which are too small to produce an income above the rural poverty line for their households. Because of the high rate of dependence of these households on paddy production for their livelihood, the continuing inadequate opportunities for alternative employment inside and outside of the area and the declining opportunities for earning additional income within the area (due

to the spread of mechanisation), government policy should emphasise programmes to keep them in paddy production and to reduce their poverty, at least until such time as the opportunities for alternative employment of the government policy for development of the paddy sector has revealed that its programmes are inadequate to this purpose. Without a programme to increase the size of small farms, the subsidies and other efforts to increase productivity will, at best, aid the small farmers insufficiently; at worst, these policies will aggravate the situation of the small households by putting them under increasing pressure from big farmers who would like to operate their land. As suggested above, the programme to increase the farm size of small paddy farmers while at the same time converting small tenants, owner-tenants and landless agricultural labourers into owner-operators appears to be the only feasible way of reducing poverty.

*Land Development Programmes*

FELDA's land development programme is considered one of the Malaysian government's most successful land reform programmes under its mild land reform law, the Land (Group Settlement Areas) Act, 1960. FELDA's target has been to develop annually an average of 100,000 acres or 156 square miles.[24] Although the pace of land development undertaken by FELDA is undeniably rapid, it does not clearly reflect FELDA's contribution to the national agricultural scene. In 1959, FELDA's agricultural acreage comprised less than 0.1%; by 1973 it was 6.9% and today, FELDA accounts for about 11% of Peninsular Malaysia's cultivated acreage.

If viewed as a portion of the national population, FELDA has benefited only a small fraction of the population. However, this is not a correct perception as it ignores the nature of FELDA's programme and the fact that FELDA is only one element in the overall strategy of economic policy. FELDA's settler intake total should be compared with the number of potential FELDA settlers and not the national population. That is to say, for a fair comparison, the total number of FELDA settlers should be assessed against the segment of the population to which the FELDA programme is addressed. The other segments of the population are to be catered for by other elements of the government's economic policy. Chapter 5 has shown that FELDA's land development objectives are subject to such limitations as discussed below.

FELDA, being a public body has to serve the specific objective of catering for the landless by providing them with economically viable farming units. This specific objective is in itself a limitation as the number of the landless who can be settled into a FELDA scheme is limited by the size of the viable farming unit.

FELDA has been said to favour a particular group in respect of the intake of settlers. From FELDA's view point, this is not a totally true allegation.

The cost of preparing each settler's holding on the basis of a ten-acre holding is around $50,000 for both oil palm and rubber ($26,000 in 1977) per settler. This is high. From FELDA's view point, even though the outlay per settler is high, it is compensated by a high return to the economy.[25] Furthermore, the chances of getting a suitable return to the investment are

reasonably good. To lower the investment would be to increase the risk and FELDA, through its two decades of experience, has found the present investment level to be near the optimum.

One way of reducing the cost of land development per settler family would be for the settlers themselves to get involved in various stages of land development activities from the beginning. The present high cost of settlement work in FELDA schemes is caused by all the land development processes (clearing the land etc.) being contracted out to various contractors at various stages. It is therefore proposed that settlers should be made responsible to work on the land schemes from the beginning and be paid for their work. In this way, the settlers will not only get paid but they will also become attached to the land they work. Overall, this will reduce the cost of land settlement per settler to FELDA.

Another problem beyond FELDA's control is the fluctuation in prices of FELDA's five commodities. Short term fluctuations tend to make people unduly optimistic or otherwise depending on whether the price is high or low. Although FELDA has instituted various measures to counter it, the problem cannot be completely overcome. The economic stability of FELDA projects will continue to be subject to the violent fluctuations in prices of its commodities.

Another feature that will occupy attention is FELDA's relationship with the settlers after all their loan repayments have been paid. In 1977, for example, three schemes had completed their loan repayments. This means that FELDA no longer has any means of exercising control over the activities of the settlers

and in return the settlers do not really have any obligation to FELDA.

As a poverty redressal programme, FELDA has succeeded in improving the income level of the settlers to that above the poverty line. For example in 1982, oil palm settlers earned on the average $624 per month, and those in the rubber schemes obtained $403 a month compared to the settlers' previous monthly income of less than $100 before they joined the schemes.

However, there are limitations under which FELDA has to operate. First, the settlers' welfare is heavily dependent on world commodity market prices. The present commodity situation resulting in depressed settler incomes and reduced loan recovery is the testimony of the influence of commodity prices.

Second, FELDA cannot provide land for the entire community of the rural poor. Further, its target age group is between 18 and 35 and the economically handicapped who fall outside this age bracket cannot benefit from its poverty redressal programme. This is so because FELDA feels that any relaxation on the upper limit of age would raise doubts about the very existence of the settler when he is due to receive land title.

Third, for the past 27 years of FELDA's existence, the size of holdings planted with commercial crop has increased from 2.4 to 4 hectares in response to declining commodity prices. Under the FELDA type programme, a holding size once set becomes rather rigid and inflexible. There is no scope under existing arrangements for any enlargement of holdings.

Fourth, good fertile land has become more scarce for FELDA to develop. In many states, it is becoming progressively more and

more difficult to get land of suitable size and inherent soil quality for this kind of land settlement and development.

Finally, FELDA is facing the problem of second generation settlers. FELDA holdings were designed and adjusted from time to time to offer employment for one worker and an income level to support a family. It is common observation that population growth is high and the other sectors in the country are not able to absorb settler dependents after they leave school.[26] One way of settling this problem is to intensify and expand the in-house training facilities to cater for a larger number of settler dependents. The existing facilities are geared towards training only some 1,400 settlers every year.[27] Some of them will find employment within FELDA while others will have to look for employment elsewhere.

*The 1984 National Agricultural Policy*

The Malaysian agricultural development strategies are manifested in the declared National Agricultural Policy (NAP) announced in 1984. The policy is considered a reinforcement of earlier development strategies contained in documents such as the Five Year Malaysian Development Plans. It has been shown that the National Agricultural Policy is generally aimed at continuously promoting a balanced agricultural growth in relation to industrial growth. Specifically, it is aimed at maximising agricultural income by utilising national resources efficiently and enhancing the agricultural contribution to the growth of the Malaysian economy.

The agricultural strategies embody activities that will promote investments in the agricultural sector with capital,

modern technology and trained human resources. The NAP also includes the development of socio-economic institutions that will not only accelerate agricultural development but also generate modernisation and commercialisation of agriculture and such new economic activities as agro-based business and rural industries.

An examination of the NAP, makes it apparent that the strategies thereof are biased in favour of traditional and smallholder agricultural sector. This is justified because this sector is characterised by low productivity, high incidence of poverty, and widespread under-employment. The sector essentially operates under a system of low investment and inadequate organisation. Even though the traditional and smallholder agricultural sector has many limitations, it remains significant to the economy since it provides livelihood for about half of the working population and contributes significantly to the value of the gross domestic product. Further, this sector is constituted primarily by the Malays who are politically dominant. Their welfare and economic status often have an impact on the general level of economic activity in the country. An accelerated development of traditional and smallholder agriculture is also essential for the attainment of the social and economic goals envisaged in the New Economic Policy (NEP).

As discussed in Chapters 3 and 5, Malaysia's agricultural development strategies take three major forms in the efforts to increase agricultural production and consequently, reduce poverty. They are, specifically, land development, *in situ* development and institutional development. As discussed in Chapter 5, land development for agriculture has been a major

means of developing the physical and human resources so as to create employment and increase productivity in rural areas. There are various forms of land development which include FELDA-type settlement schemes, Fringe Alienation and Rehabilitation Schemes, Youth Land Schemes, Joint Venture Estates and Private Estates. Out of all these land schemes, the FELDA-type and the Youth Land Schemes are settled by participants.

The various land development schemes have created a remarkable economic transformation in the rural sector. In terms of area developed, the FELDA schemes have achieved significant success as discussed in Chapter 5, while the schemes developed by other federal agencies as FELCRA, RISDA, and other RDAs are of varying effectiveness. The schemes create productive employment, provide ownership of an economic-sized holding, and enhance capacity to earn an income above that of the average Malay rural household. From Table 3.6, it is evident that progress in land development has been remarkable, at least in terms of acreage development and quantity exported. This progress has also brought about a sustained increase in productivity and income. Thus, land development and settlement concentrating upon tree crop development will remain a major strategy in the Malaysian agricultural development, especially when crops like rubber, oil palm and cocoa provide an economically viable investment despite the competition they face in the international market.

*In situ* development has, to a large extent, brought significant progress in the agricultural sector. It has extended the base of agriculture in some parts of the rural sector, primarily through capital investment and a wide acceptance of new technology such

as high yielding varieties, chemical fertilisers and pesticides. It has also improved farmers' access to capital with the provision of incentives such as input subsidies and financial and technical assistance. With the existence of large areas of alienated agricultural land suitable for crop production, *in situ* agriculture will continue to be an important means of modernising and diversifying agricultural production to improve the socio-economic status of the farming population.

Institutional development and improvement on the other hand, are essential particularly in Malaysia, because the farming population, in general, are lacking in agricultural facilities and more often than not, encounter imperfections in the agricultural market. Institutional development includes the provision of effective agricultural support services such as extension work, training, credits, subsidies, research, marketing, and processing. In Malaysia, institutional development has progressed to the extent of causing a proliferation of government agencies. Institutional development should provide channels for increased employment and economic activities. The existence of agricultural institutions has been the avenue for access to technical, financial, and other forms of input that improve farm productivity.

Chapters 3 and 5 have shown that the quality of life among the farming population has also improved as many farmers have had access to better socio-economic amenities. However, the proportion of income increase for the Malay rural population, excluding the smallholder settlers in FELDA schemes, is still less than that of the non-Malay rural population. In fact, the

income of a significant proportion of the Malay rural household is still below the poverty line of $350.00 per household per month. Among the smallholders, producers of export crops on FELDA schemes have achieved a considerably higher income than that of other producers.[28] Paddy farmers have also experienced increases in income returns, but the increase varies between regions, primarily owing to differences in the cost of production and input used.

Chapter 5 has shown that progress has been achieved in various segments of the agricultural sector. It is also evident that this is not sufficient to provide agricultural employment and raise agricultural income to a satisfactory level. It cannot be claimed that the strategies have made a great impact on rural poverty, at least at the macro level. This is so because there are many inherent constraints which adversely effect the development of the agricultural sector. While trying to accelerate agricultural development through land development (and settlement programmes), the strategy used has raised some conflicting issues. FELDA, being a large scale land development agency, requires heavy investment expenditure from public funds. The FELDA schemes are more costly than developing already established areas. The development cost has been relatively high compared to smallholder scheme developed elsewhere in Southeast Asia and Latin America.[29] This has given rise to a conflict between the attainment of employment and increased output objectives on one hand and high investment cost on the other. Perhaps, the same amount of public expenditure can be used for productive investment elsewhere, possibly creating more

employment, better output gains, and larger increases in incomes.

As mentioned earlier, new land development benefits only a small group of people despite the heavy financial outlay. In the context of a rapidly growing rural population, where widespread under-employment, unemployment and landlessness exist, land development and settlement programmes provide an immediate short term method of expanding employment opportunities. In FELDA schemes, for example, an area of 5,000 acres, providing 10 acres of land per settler, can only absorb about 400 to 500 settlers. Thus far, FELDA has since its inception in 1956, settled only 50,000 families. Furthermore, the percentage of beneficiaries compared to non-beneficiaries is still small. Therefore, meeting this need through FELDA-type schemes would place a tremendous strain on the available resources, both physical and financial.

As shown earlier in Chapters 3 and 5, the land settlement under FELDA provide the participants with a fixed acreage. Because of expanding households, the fixed land acreage of the settlers will, in the long run, be too limited to absorb the family labour into agricultural production. This finally will lead to under-utilisation of family labour, thus creating out-migration and possibly economic and social dislocations within the schemes and elsewhere.

Inherent in land development strategy is the choice between the maximisation of land productivity and the maximisation of land development programmes, purely from the aspect of employment opportunities created. Very often, maximisation of land productivity may lead to a negative impact on employment; whereas maximisation of land development programmes, may lead to a

reversion to old practices in agriculture and not to the desired objectives. It is therefore felt that the choice between the alternatives appears to be one which will be more acceptable politically, socially or economically, regardless of the consequences.

Another area of concern is the mechanisation of farm operations. Mechanisation is said to facilitate an increase in yield through effective and timely farm operations. In paddy cultivation, mechanisation seems to provide an answer to the shortage of labour, especially when it can help to supplement labour during the 'peak periods'. As has been said earlier, since the farmers are already under-employed, farm mechanisation may worsen the situation. Farm machines may also lie idle and under-utilised during non-peak periods. There will thus be a wastage of farm machinery at certain periods unless they can be used for other types of production.[30] The displacement of agricultural labour by mechanisation tends to create substantial social and economic dislocations because the displaced labour, mainly the aged and the poorly educated is, in most cases not readily absorbed into other sectors. Further, the rising costs of production caused by the mechanisation of agriculture, affects the income returns of the producers.[31]

The following should be pursued to successfully implement the agricultural development strategies.

**Land Development**

Though Malaysian primary commodities may be adversely affected by unfavourable export prices and excessive competition from other producing countries and synthetics, rubber, oil palm

and cocoa, are still an economically viable investment. The expansion of their cultivation through land development will remain important in the future. It will be an important source of government revenue and, when developed on smallholder basis through new land development and settlement, will raise the poor to middle-class levels and sustain the present political stability. However, given the objectives of the NEP, and the NAP and the productivity-versus-equity consideration, land development should do more than just provide foreign exchange earnings and benefit only on a small proportion of the rural population. It is therefore necessary that land development programmes be designed to absorb more settlers with smaller farm size and lower, but still above average, income. Further, land development can also be used as a means of promoting group farming through which more settlers can be absorbed. Group farming has great potential as a grassroot channel for facilitating technology transfer, extension and training programmes, delivery credit, and other farm support services. This may be used as an alternative strategy for reducing the existing poverty and other socio-economic problems. It will not only benefit a larger proportion of the population but also facilitate a more equitable use of public funds for social, economic, and political ends. It may also solve the problem of scarce land resources and the lack of public funds.

Two additional ways of accelerating agricultural development are by improving the quality of the land already in farms and by bringing additional land into cultivation.

The question is not whether to improve and expand the land

base for agriculture. Instead, the important questions are where this should be done and how. In making these decisions, the relative cost of different kinds of land improvement and the length of time before each can be completed and become productive are important considerations.

For the immediate future, investment to improve good land now being cultivated is the most promising approach. This involves improvements to retain rainfall and to increase the efficiency of and the improvement of the existing irrigation distribution systems and provisions for drainage. On a long term basis, the opening of new land and the tapping of new water resources offer wide opportunities for expanding agricultural production. However, the bringing into cultivation of sizeable areas of new land involves costly investments in roads and other community facilities, services and assistance to settlers in clearing, and sometimes, constructing irrigation and drainage systems as well. These are essential parts of a programme to bring new land into cultivation. Since heavy investments and long-term financing are required for such projects, along with a great deal of administrative machinery and organisational effort, it is extremely important that they be undertaken only after competent surveys of the soils and water resources, and appraisals of the project's economic and administrative feasibility, have been made. Many large projects have been started prematurely and have become a political burden to the government, a disappointment to the farm settlers, and a serious waste of scarce investment funds which could have brought much higher returns had they been used for increasing the productive

capacity of lands already being cultivated.

Where a farmer depends entirely on rainfall, the productive capacity of his land can often be increased by various types of terracing, land levelling, water run-off controls and drainage facilities. Such land improvements are designed to increase the water holding capacity of the soil in order to conserve moisture, or to provide for drainage during seasons when there is too much water. Currently much farm land needs drainage. This can seldom be satisfactorily arranged by one farmer acting alone. In most cases a wider system is required, serving many farmers. Land improvements of this sort can often be made at relatively low cash cost by using local manpower and draft animals at slack seasons of the year.

Similarly, there are many areas with ample opportunities for small-scale irrigation development, where farmers can build their own irrigation systems with only a little outside help by drawing water from shallow wells or by diversion of a stream. The example of the government of several African countries in encouraging farmers to do this is worth emulating.[32] Therefore with population growth, expansion of land is important for the future, but efforts to improve land already in cultivation should not be neglected in favour of the more glamorous new lands programmes.

The major argument in favour of bringing new lands under cultivation is that they extend the physical base for agriculture in the long-run. New large irrigation schemes take 5 to 10 years or more to be constructed and then another 10 years or so before the new settlers have developed an intensive and well balanced

farming system to make full and efficient use of the new land and water resources. For the immediate years ahead, by far the greatest increase in food production will have to come from the lands already in cultivation.

However, another argument for programmes to develop new lands rests upon the fact that it is often easier to introduce new farming systems and other changes in new farming areas than in old established ones because many traditional obstacles are absent in new areas. New types of farming on these lands, new types of extension services and credit and cooperative organisation, and new incentives guiding farmers and villages towards a more modern system of production and local community organisation, can provide a demonstration from which the whole country can benefit. At the same time however, the cost of such comprehensive projects is very high. However, in the Malaysian context, it would be more advantageous to the country to utilise the heavy investment funds needed to open new lands for cultivation to increase agricultural production on lands already in farms and delay the more ambitious new schemes until later date. It is important therefore that long-range projects do not divert attention from opportunities to improve the quality of land already being farmed particularly in the MUDA and KEMUBU regions. Their productive capacity can be vastly increased whether new lands are brought into cultivation or not. The cost is lower, and the return can come much more quickly. Seldom can the land area of a country be doubled, or even increased by 50% through developing new lands, but it is often possible to increase yields by 50% or even to double the yields of the crops

on the existing land.[33]

**New Technology in Farming**

There seems to have a wide gap between technology resulting from research and the useful applications thereof which explains the farmers' lack of response and resistance thereto. Therefore it is important that modern technology should be adaptable to local conditions, taking into consideration the geo-climatic as well as socio-economic constraints predominant in the areas in which the technology is to be applied. It should be appropriately adaptable on small farms as this will allow for more efficient and economic utilisation of farm resources. The technology must not only be suitable for adoption by small farmers but must also minimise the displacement of labour. Finally, although there is a need for new and appropriate technology, the introduction thereof has a wider implication. The government must guarantee their accessibility to all farmers; otherwise, technological development will create new issues such as wider inequality among farmers and this could result in social instability.

**Production Incentives**

Presently the government is providing incentives to farmers in the forms of input subsidies, guaranteed product prices, a better land tenure system and tax policies. These incentives should be expanded in terms of allocative efficiency and equity. In this way, the expansion of programmes such as double-cropping of paddy, crop diversification, including replanting and rehabilitation and the adoption of new economic activities will be enhanced.

Evidence shows that the present production incentives are inadequate. The accusation that Malaysian farmers are having subsidy mentality is far from justified because, as we have seen, the agricultural sector has for a long time, made many sacrifices for the non-agricultural sector. The time is right for other sectors to make a return contribution to agriculture through budget re-allocations in favour of agricultural production.

**Institutional Development**

Many agricultural development institutions have been established, not without some duplication. This has not only affected management but has also resulted in wastage which could have been avoided if an integrated programme and approach in solving farmer's problems had been adopted in the past. It is therefore proposed that the agencies should work together in a coordinated and integrated manner so that agrarian problems are solved systematically and pragmatically. This can be done by having an effective and meaningful linkage between the agencies concerned, which must operate on the basis of concensus of how best to bring about development. By this way, duplication of efforts and competition can be minimised and farmers would at the same time, benefit from efficient services and effective guidance towards modernisation. To achieve this, the government must urgently plan and streamline the programmes of the various agencies and encourage them to become a more structured set of 'client oriented' institutions acting as a nerve centre for all farming activities.[34] The intensification of integrated agricultural development programmes can also bring

about institutional cooperation and coordination. All these programmes would initiate a progressive rural structure through viable and dynamic socio-economic institutions in the agricultural areas to bring about development.

**Rural Industrialisation**

The availability of a wide range of agricultural products offers considerable scope for investment which could transform them into commercially viable products. Further, the agricultural sector could also maintain a regular supply to reduce the inherent problems associated with irregular supply of raw materials. Given this potential, it is imperative that the government exploit this sector by maintaining a better dispersal of industries into rural areas which have revealed a higher capability of providing employment as compared to agriculture. It is therefore necessary that mobilisation of resources towards this end be able to provide potential employment and capital investment for the benefit of the agricultural sector and the economy as a whole. Moreover, the out-migration of rural youth to urban centres in search of better employment opportunities can be minimised.

The development of agro-based and food based industries to promote rural industrialisation would require heavy commitment from the government especially in terms of providing incentives and financial support. Although the NEP has dictated this as a policy, its adequacy is questionable. This is so because the location of any industry is determined by economic factors, industries will not locate themselves in rural areas without sufficient attractions or benefits.

Finally, the National Agricultural Policy with various strategies for the development of the agricultural sector need to be improved from time to time. The continuation of these strategies is important as they carry social, economic and political overtones and to a large extent, have promoted agricultural (and economic) growth, social security and political stability in the country. It is evident that without government and public support the development of agriculture will be hampered because the said strategies require full commitment from the government and demand greater public sector support and the country's available resources. The tendency to depend on support may in the end, be unhealthy and affect the growth in the agricultural sector when resources become limited. However, at present, such a dependency is justified on the premise that the agricultural sector had made many sacrifices and contributions to the development of this country.

The government's policies and activities can be planned but agricultural production cannot, except in an indirect fashion be so planned. The government's policies and activities are therefore incomplete. It is thus imperative that private citizens that is, farmers should play a greater role in using the facilities made available by the government. It is the farmers who make the critical decisions about what crops to grow, the methods to use, the credit to employ, and how much of their produce to market. Therefore for greatest productivity these decisions must be left to farmers because of the wide variations in natural conditions both between and within individual farms. In the Malaysian context, the distribution of much of farm

produce and of farm supplies and equipment is effected by private merchants. Governmental credit never completely replaces private lending.[35]

Experiences in countries where the rate of growth of agricultural productivity is highest are invariably the countries that are not trying dogmatically to be either 'private enterprise' or 'socialist,' but countries that recognise that agriculture is, and must be, both private and public.[36]

***Agricultural Planning should be by Agricultural Regions***

The establishment of the various Regional Development Authorities in Malaysia points to the fact that any overall plan for agricultural development in a country needs to be made up of separate plans for different agricultural regions within the country. The measures to spur agricultural development usually need to vary enormously from one region to another. Some regions are potentially more productive than others and the needs of the country at a particular time may be such that increasing production of specific crop or livestock products, found in certain regions but not in others, may be considered most important. Meanwhile, people in the poorer regions feel they have as much right to public facilities as anyone else. This conflict can be reduced by developing different kinds of plans for different regions.

***Production and Marketing Problems***

The main problem faced by most agricultural producing countries is that of transportation and marketing facilities. The agricultural potential of a country is determined by the marketability of its product that is whether

what it can grow can be profitably sold. This potential, however, can be changed by improving transportation and marketing facilities. Until this is done, the development of each region is limited by its markets. To determine these requires estimates of the probable demand for selected crops and livestock products and the geographical location of these demands either within the country or abroad.

***Increasing Production versus Increasing the Profitability of Farming***

In order to increase the income of the farmers, the objective of each farm operator is not to achieve maximum physical production within any one crop or livestock enterprise but the maximum margin of returns over costs for his farm business as a whole. Farmers do not really care whether they grow rice or tobacco, or rubber or oil palm. If it is more profitable to farmers to grow tobacco, that is what they will do. If they are correct in their judgement about relative costs and returns they are doing more for agricultural development than if they had done what the planners hoped they would. Therefore, the government cannot influence the amount of selected commodities that farmers produce. It can do this by the policies it adopts affecting prices and by its allocation of research effort to selected crops and livestock, or by having its extension workers put special emphasis on them, but this can be successful only if the price relationships are favourable.

***Agricultural Investments Require Time To Become Productive***

Large irrigation schemes as in Kedah and Kelantan took many years to become fully effective. The opening up of new land

developments takes at least 6 to 7 years before the farmers can taste the fruits of their labour. Research stations must be efficiently operated over a period of years before their experiments succeed and are tested to the point where farmers can have confidence in the new methods they provide. Extension services have to operate for several years before farmers gain confidence in them, partly because it takes each extension worker several years on the job to become really competent and to deserve the farmers confidence. Therefore, plans for agricultural development must be far-sighted. They must foresee needs in the future and get started with investments that require a number of years to pay off. On the other hand, plans for agricultural development are always likely to be more soundly based if they are drawn up with full knowledge of what the judgement of farmers are as to what they need in order to move ahead.

Finally, planning for agricultural development should be a continuous process. Agricultural policies should be reviewed as and when necessary. An example is provided by the land reform measures that establish the conditions of tenure under which farmers operate. As proposed earlier, at one point in time it may be wise for a country to limit the size of agricultural holdings to a chosen maximum in order to break up 'feudal' patterns of land holding and increase incentives to the individual operators of smaller farms. But a time frequently comes when changes in agricultural technology and increasing off-farm employment opportunities make it wise to modify this policy. No policy should be regarded as permanent, nor should a country refrain from establishing a particular policy when it is needed just

because it will have to be changed later.

Thus the key in national planning in agriculture is a thorough understanding of agriculture and of agricultural development. Good plans can never be made by compromises among specialists each of whom really understands only his own part of the task. Each specialist who participates in planning needs a general understanding of the whole agriculture and agricultural development.[37]

*NOTES*

1. *Land Administration: A critical Study on Some Critical Areas,* Development Administration Unit, Prime Minister's Dept., 1968, pp.17-18.
2. *Ibid.*, pp.17-18.
3. The Attorney General's opinion was that legally and administratively it is very difficult to enforce the "25 acres policy" by individuals and companies as discussed in Chapter 6. See Attorney General's letter to the Ministry of Lands, dated 25th February, 1982.
4. See Companies Act, 1960, Laws of Malaysia Act.
5. See for example, F.M.S. Malay Reservations Enactments, section 7 as amended.
6. National Land Council, Paper No.10/82. The paper was discussed at 35th Meeting of the National Land Council on 28/8/1982.
7. Countries with land bank programmes to control land development include Austria, Belgium, Denmark, Finland, France, Great Britain, the Netherlands, Norway, Spain, Sweden and Switzerland. Others include: Canada, Israel, Puerto Rico and Some cities in the USA (e.g.Milwaukee, Baltimore) also have land bank programmes.
8. The simplest and most direct measure of financial feasibility is the comparative costs of banking land versus acquiring it when needed for development. Costs of holding the land include interest on the money used to buy it as well as management and maintenance costs, less revenues from interim uses.
9. At a time when government is facing recession, and must postpone infrastructure and other projects, ignore the maintenance and repair of existing systems, and even cut services, land banking may not seem very prudent or even affordable. The key is to find source of funding for the land acquisitions which is not directly competetive with other government programme. The point that reserving land well in advance of need can be detrimental to existing land uses and values is also a valid concern, but one that can be off set by good management. Land does not need to be taken out of production nor its use changed at all for that matter. Its use during the interim period could generate revenues to off set management and other holding costs. Keeping the land actively productive also reduces the potential for occupancy by squatters.
10. See Shlomo Angel *et.al* (eds.) *Land For Housing The Poor.* The Craftsman Press Ltd., Bangkok, Thailand, 1983.
11. *ibid.*
12. See Article 91, Federal Constitution, [at Appendix 1.3].
13. In the 4MP it was recorded that the contribution of agriculture to GDP fell from 30.8% in 1970 to 22.2% a decade later. For the same period the contribution of agriculture to employment dropped by 9% to only 41% of the total. In fact the future role of agriculture in the country's economy is likely to decline further as envisaged in the outline perspective plan (OPP). Agricultural output is projected to grow at only 3.5 % per annum between 1981- 90 and to contribute only 14.4% of GDP by 1990. In employment, the OPP projects that the agricultural sector will contribute only 8.2% of new jobs between 1981 and 1990, whereas manufacturing is expected to contribute 29.6%.
14. See Fourth Malaysia Plan, p.169.
15. D.S.Gibbons, Lim Teck Ghee, *et.al.*: *Land Tenure in MUDA Irrigation Area,* .C.P.R.,U.S.M. 1981.

16. See *ibid.* In Muda area for example, a wide dispersal of ownership among 78,000 holdings, of no less than two-thirds were small (below 4 relongs). 11% of the owners (big) own about 42% of the holdings. In terms of area covered, small holdings accounted for 21.6% of all paddy land, medium-sized holding 36.1% and large sized holdings 42.3%.37.
17. Sukor Kasim: *Projek Printis Kajian Kemubu, op.cit.* CPR, USM, Dec. 1981.
18. Sukor Kassim, *Land Reform: Options And Realities* The Malaysian Economy At The Crossroads: Policy Adjustment or Structural Transformation, Malaysian Economic Association, 1984, p.404.
19. See FAO, undated, p.29.
20. Sukor Kassim, *Land Reform: Options And Realities op.cit.* p. 104.
21. *ibid.*, p.407.
22. *ibid.*, p.407. The estimated area of paddy land in MUDA area is 344,353 relong. If this area is divided by the estimated 61,00 paddy farmers and 5,000 landless agricultural labourers, the average of 5.22 relongs is well above the 4 relongs of owner operated land necessary to provide the average-size household of 5.6 persons with an income above the poverty line. As explained in Chapter 5, a complete redistribution of land would involve the acquisition of land from big landlords who depended heavily on income from renting out their paddy land.
23. *ibid.*, pp. 407-408.
24. Alias, R.M. (1977), "An Overview of FELDA," *Land Development Digest, Vol.1, No.1, pp.2 & 4.*
25. *ibid.*, p.22.
26. Abdullah Yusoff, *The Role of FELDA In The Context of The Green Revolution*, Analysis, Jilid 1, Bil.2. p.14.
27. *ibid.*
28. *ibid.*, p.44.
29. *ibid.*, p.48
30. Affifuddin Omar, "Social Implications of Farms Mechanization in the Muda Scheme". See also H.Southworth and M.Barnett (eds.), *Experiences in Farm Mechanization in Southeast Asia,* Singapore: Agricultural Development Council, 1974. The author has shown that in paddy farming, some 7% and 1.2% of the farm labour force was being displaced by machines in land operation and harvesting respectively.
31. See Nasaruddin Arshad & Zulkifly Hj.Mustapha, *Some Issues in Malaysia Agricultural Development Strategies*, Analisis Jilid 1, Bil.2. p.49.
32. See A.T.Mosher, *Getting Agriculture Moving*, Frederick A.Praeger, Publishers, New York, 1966, p.163.
33. A.T.Mosher, *op.cit.* p.168.
34. See Nasaruddin Arshad *et. al, op.cit.* p.53.
35. *ibid.*, p.170.
36. *ibid.*, p.172.
37. *ibid.*, p.172.

## CONCLUSION

The land tenure systems, the land laws, land use and the National Agricultural Policy extant in Malaysia today has been traced in this study, to their origins in the systems, laws and agricultural policies introduced by the British colonial regime from the late 18th century until Independence in 1957. This has been done to show how the laws, institutions, practices and policies of the British shaped, and continued to shape, their contemporary counterparts long after independence as legislators, policy makers and administrators as they attempt to modify them to suit the new conditions, needs and aspirations of contemporary Malaysia. In doing so, the study has identified the strengths and weaknesses of the different legislations relating to land - the National Land Code 1965, the various Malay Reservations Enactments, the Padi Cultivators Act, 1967, the Land (Group Settlement Areas) Act, 1960, the Land Acquisition Act, 1960, the National Consolidation and Rehabilitation Act, 1966 and the Small Estates (Distribution) Act, 1955 among others - and the difficulties encountered in enforcing their provisions. The study has also examined the various problems - produced as well as policy-generated - faced by the implementing agencies in discharging their land administration and land development functions.

Modern land law and land administration in Malaysia have their beginnings in the Torrens system of land registration introduced into the country by the British in 1896. The British introduced the new system for two reasons. First, they desired

to facilitate the economic development of the territory through an organised system of land management by way of legally registered land holdings which would replace the existing Malay tenurial system that they considered disorganised and unsystematic. Second, the British desired the income in revenue that would be generated by a sound and efficient system of land administration. With the Torrens system, the British introduced into the country the notion of 'absolute' ownership of land by private individuals. Currently, the notion of private ownership of land and its concomitant, security of tenure, has its basis in Article 13 of the Malaysian Constitution which prevents the executive from acting arbitrarily in relation thereto and in accordance with a law enacted by Parliament. Thus private property is protected against executive action but not against legislation. Hence, the Land Acquisition Act, 1960 empowers the government to acquire any property compulsorily for public purposes subject to the condition that the owner thereof is paid 'adequate compensation' which has been judicially defined as approximating the market value which is, if necessary, to be determined by the Courts. The rights of the private owner of land are thus balanced against the rights of the community with a slight bias in favour of the community.

A further point about private ownership of land in Malaysia is that it is not absolute even if the Land Acquisition Act is not involved. For the fact is that what the individual (in whose name the title to a piece of land is registered) acquires is not ownership *strictu sensu* but 'tenure' from the state. He holds the property subject to his fulfilling the conditions - express and

implied - to which the land is made subject upon alienation to him. Failure to do so - for example, to pay the prescribed annual quit rent or to use it for the prescribed use - renders it liable to forfeiture. In addition, the National Land Code (NLC) imposes various restrictions on his right to use the land or anything that is found thereon or therein as he deems fit. For instance, he has no right to minerals or oil deposits in his land or to remove rock material as defined by the NLC from his land without a permit. Also, his land can be subject to easements whether of right or of access. Again, this reflects the attempt to balance the rights of the individual against the rights of the community to benefit from the land in question.

Desiring to maximise profits from agriculture and mining, the British colonial regime adopted a very liberal and flexible policy of alienating land to the non-Malays which led to the loss of Malay lands by sale to the non-Malays. When the British realised this, they introduced the Malay Reservations Enactments in the FMS and later in the other Malay states to stem the transfer of Malay land to the other races. This protective policy in respect of Malay land ownership through the Malay Reservations Enactments which have endured to the present, ensured and continues to ensure, that the Malays do retain ownership of a certain percentage of land in their own motherland. This protective policy which has been strengthen by Article 89 of the Malaysian Constitution affected and still affects the pattern of land ownership in the country; Malays today own about 35% of all alienated land in Peninsular Malaysia. Without this policy, the non-Malays would have owned more than 65% they now do. The non-

Malays may view the reserved lands policy as politically or racially biased but without it, the Malays would probably have been rendered landless in their own country. Be that as it may, the institution of Malay reserves is not, as discussed in Chapter 2, without its disadvantages but it is, on the whole, irreplaceable.

Inextricable from the Malay reservation policy have been the efforts of both the colonial and present governments, to ensure that Malays produced enough food for the country's increasing population. The attempt to make the Malays the food producers of the country has been institutionalised by the National Agricultural Policy of 1984 whereby an 80% self-sufficiency in rice is targetted. This has adversely affected the pattern of land ownership among the Malays; Malay land ownership is concentrated in the poverty-stricken agricultural parts of the country. By contrast, the non-Malays occupy urban areas where they own land which is valuable for industrial, commercial or residential purposes. The imbalance in the ownership of rural and urban land along racial lines is clearly to the economic detriment of the Malays. The government's effort to correct the imbalance by distributing land through planned FELDA schemes have not been able to change the existing pattern of land ownership between the Malays and the non-Malays. The Malays still suffer the disadvantage of owning economically less valuable land and by comparison to the non-Malays' holdings in the industrial and commercial areas.

Given the existing pattern of land ownership along racial lines, any programme to reform it will necessarily appear

to discriminate against the non-Malays. Any such reform programme will undoubtedly be fiercely opposed by the non-Malays but failure to launch the same will merely perpetuate the existing inequities along racial lines. The political will that is required to implement such a radical, and potentially explosive, reform programme has yet to be manifested.

During the period of British colonial rule, there were as many laws governing land matters as there were administrative units (the FMS, Straits Settlements, UMS) - a situation which persisted even after the Federation in 1896 and Independence 1957. The colonial regime, concerned primarily with exploiting different parts of the country for different purposes, could tolerate this. However, with independence, the development of the country had to be viewed and undertaken as a whole. This rendered imperative a uniform land law and a uniform land administration system to facilitate land development as a means of national development.

Accordingly, various state land laws were unified through the formulation and enactment of the NLC, 1965. The NLC was adopted mainly for the purpose of serving the requirements of the national development programmes under the various Malaya and later Malaysia Economic Development Plans and finally, the New Economic Policy. However, the NLC has not been entirely successful in ensuring uniformity of land policy in all the states because land is a state matter under the Malaysian Constitution and each state guards this right jealously. Accordingly, the NLC does not lay down any land policies; these are left to the discretion of each state. As a result, different

states have different policies on a variety of land matters such as land alienation, land conversion, sub-division and amalgamation, leases, temporary occupation licences, the selection of candidates for land development schemes and the choice of specific development programmes. Nor are these policies clearly defined in all the states for only Pahang, Negri Sembilan and Federal Territory of Kuala Lumpur have written land policies particularly in relation to land alienation. Similarly, the NLC does not specify premiums, quit rents and other revenues derived from land; these are left to the state governments to determine in accordance with their local conditions and circumstances.

Although the National Land Council established under the Federal Constitution has introduced some measure of uniformity in land policy, it has achieved this in spite of and not because of the NLC. Thus, the problem of achieving uniformity of land policy throughout the country (Peninsular Malaysia) is one that merits serious consideration by the relevant authorities.

The government exerts direct or indirect influence on the land use for the fundamental reason that the individual and societal needs do not always coincide. Governmental intervention and control is thus a recognition that specific types of land use while profitable for the individual may not be optimal for society in general. With increasing population exerting greater demands on land and land resources, planning legislation and land legislation become effective instruments of land use control. Various amendments have been made to the NLC to meet the present day development needs.

For example, in 1984 an amendment was passed which prohibits non-citizens from owning land in Peninsular Malaysia with the exception of industrial land. The aim of this particular amendment was to protect the citizens from losing their land especially agricultural and residential land to foreigners. However, in 1987, this amendment was revoked and foreigners may now own all types of land in Peninsular Malaysia.

However, land ownership policy especially in the agricultural sector should be based on 'land to the tiller' concept for reasons elucidated in Chapters 2 and 5. The implementation of a policy based on this concept would ensure a more equitable distribution of land based on productivity and the capacity of individuals and groups to cultivate the land. Land ownership policy should not be based on ownership *per se*. The ability to utilise the land to its fullest capacity with maximum returns should form the basis of a sound land ownership policy.

Changes in land laws and procedures thus involve changes in the political, social and economic fabric of the country for land tenure and land law reforms can only be possible with changes in land ownership and control of land resources.

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*APPENDIX: 1.1*

*DISTRIBUTION OF POPULATION BETWEEN RURAL AND URBAN BY ETHNIC GROUP, PENINSULAR MALAYSIA, 1980.*
*('000)*

| | Urban | % | Rural | % | Total | % To Total Population |
|---|---|---|---|---|---|---|
| Malay & Other Bumiputra | 1,608.1 | 37.4 | 4,716.3 | 65.8 | 6,324.4 | 55.3 |
| Chinese | 2,178.9 | 50.6 | 1,715.4 | 23.9 | 3,894.3 | 33.8 |
| Indian | 486.0 | 11.3 | 692.9 | 9.7 | 1,178.9 | 10.2 |
| Others | 31.4 | 0.7 | 44.0 | 0.6 | 75.4 | 0.7 |
| Total | 4,304.4 | 100.0 | 7,168.6 | 100.0 | 11,473.0 | 100.0 |

Source: Computed from Fifth Malaysia Plan, p.134, table 4.4 and 1980 Population and Housing Census of Malaysia, General Report of the Population Census, Vol.1, Department of Statistics Malaysia, pp.22-23, table 3.6.

APPENDIX 1.1a.

LAND TITLES IN VARIOUS STATES OF PENINSULAR MALAYSIA ISSUED PRIOR TO 1966.

*Johore*

1. Surat Sementara (S.S.) [temporary occupation]
2. Johore Grant (J.G.)
3. Approved Application for Grant (A.A.G.)
4. Approve Application for Lease (A.A.L.)
5. Agricultural Lease (A.L.)
6. Approve Occupation by C.L.R. (A.O.)
7. Malay Grant
8. Malay Lease (M.L.)
9. Provision Mukim Register (P.M.R.) (in Kluang District)
10. Extract of Mukim Register (E.M.R.)
11. Certificate of Title (C.T.)

*Kedah*

1. Surat Putus (S.P.) (Grant)
2. Surat Putus Besar (S.P.B.) (Grant above 50 relongs)
3. Surat Putus Kecil (S.P.K.) (Grant below 50 relong)
4. Surat Kechil (S.K.)
5. Surat Akuan (S.A.) (Approved Application)
6. Permit

*Kelantan* (as recognised by Kelantan Enactment 1938).

1. Grant
2. Surat Miliki.
3. Permit.
4. Provisional Document of Title.
5. Provisional Document of Title for Railway Land.
6. Lease of State Land.
7. Chop Lama.
8. Chop Jualan.
9. Agreement for Lease of Agriculture Land.
10. Agreement for Mining Lease.
11. Certificate of Title.
12. E.M.R (Entry in the Mukim Register)
13. E.D.R. (Entry in the Daerah Register)
14. S.I. (Settlement Index/card).

*Malacca*

1. Statutory Land Grants (S.L.G.)
2. Agricultural Lease (A.L.)
3. Grant-In-Fee Simple
4. Extract from Mukim Register (E.M.R.)
5. Freehold (title not issued)
6. Dutch Title Deed (D.T.D.)

*Negeri Sembilan*

1. Grant of State Land (G.S.L.)
2. Lease of State Land (L.S.L.)
3. Certificate of Title (C.T.)
4. Entry into Mukim Register (E.M.R.)

*Pahang*

1. Surat Melayu (S.M.) (old Malay title)
2. Sultanate Land
3. Grant (Gt)
4. Certificate of Title (C.T.)
5. Lease
6. Approved Application (A.A.) [not a title as such]
7. Entry Mukim Register (E.M.R.)

*Penang*

1. East India Co.Grant (E.I.C.)
2. Indenture
3. Grant or Grant -In-Fee Simple
4. Statutory Grant (St.Grant)
5. Lease
6. Colonial Grants (C.G.)

*Perak*

1. Entry in Mukim Register.(E.M.R.)
2. Grant for Land (G.L.)
3. Certificate of Title (C.T.)
4. Approved Application [not a registered title]
5. Lease of State Land (L.S.L.)
6. Lease for Agricultural Land (L.A.L.)
7. Lease for Padi Land (L.P.L.)
8. Lease for Colony (L.C.)

*Perlis*

1. Grant Banci (G.B.)
2. Grant Lama (G.L.)
3. Grant Kechil (G.K.)
4. Surat Putus (S.P.)

*Selangor*

1. Grant of State Land
2. Lease of State Land (L.S.L.)
3. Certificate of Title (C.T.)
4. Entry In Mukim Register (E.M.R.)

*Trengganu*

1. Grant (Gt.)
2. Certificate of Title (C.T.)
3. Keterangan Register Mukim (K.R.M.)
4. Akuan Milik Tuntutan (A.M.T.)
5. Keterangan Settlement (K.S.)
6. Keterangan Settlement Lama (K.S.L.)
7. Keterangan Settlement Baharu (K.S.B.)
8. Permohonan Tanah Di-Benarkan (P.T.D.)[as Approved Application].

APPENDIX 1.2

STATE REVENUE FROM LAND TAXATION - QUIT RENT, 1982.
PENINSULAR MALAYSIA

| State | Current year tax $ | Amount should be collected $ | Amount Collected in 1982 $ | Amount of arreas as at 31.12.82 $ | % Collected $ |
|---|---|---|---|---|---|
| Johore | 21,676,353.00 | 28,615,030.90 | 22,091,029.18 | 6,524,001.72 | 77.2 |
| Kedah | 7,280,751.65 | 9,481,852.65 | 5,770,115.85 | 3,711,736.80 | 60.9 |
| Kelantan | 5,083,561.90 | 7,556,190.30 | 4,564.131.91 | 2,992,058.39 | 61.9 |
| Malacca | 6,192,156.84 | 7,780,014.98 | 5,813,673.36 | 1,966,341.62 | 74.7 |
| N.Sembilan | 9,580,717.75 | 15,121,916.39 | 9,974,491.29 | 5,147,425.10 | 65.9 |
| Pahang | 8,134,388.56 | 16,736,103.61 | 7,498,895.83 | 9,237,207.78 | 44.8 |
| Penang | 9,722,269.14 | 15,658,975.49 | 7,075,840.31 | 8,583,135.18 | 45.2 |
| Perak | 15,586,968.10 | 22,715,978.18 | 19,602,846.19 | 3,113,131.99 | 86.3 |
| Perlis | 938,000.00 | 1,486,110.50 | 776,745.35 | 709,365.15 | 52.3 |
| Selangor | 21,218,500.00 | 33,075,291.21 | 17,518,231.56 | 15,557,059.65 | 52.9 |
| Trengganu | 2,344,897.91 | 5,700,955.30 | 2,489,412.01 | 3,211,543.29 | 43.6 |
| Wilayah Persekutuan | 19,705,653.42 | 45,039,005.43 | 14,189,130.02 | 30,849,875.41 | 31.5 |
| TOTAL | 127,464,718.27 | 208,967,424.94 | 117,364,542.86 | 91,602,882.08 | 56.2 |

*Source:* State Directors of Lands and Mines,
Peninsular Malaysia (1982).
A Report by Administrative and Legal Division,
Ministry of Land and Regional Development - unpublished), 1982.

*APPENDIX 1.3*

FULL TEXT OF ARTICLE 91, FEDERAL CONSTITUTION OF MALAYSIA.

*91: The National Land Council*

(1) There shall be a National Land Council consisting of a minister as chairman, one representative from each of the States, who shall be appointed by the Ruler or Yang di Pertua Negeri, and such number of representatives of the Federal Government may appoint but, subject to clause (5) of Article 95E, the number of representatives of the Federal Government shall not exceed ten.

(2) The chairman may vote on any question before the National Land Council but shall not have a casting vote.

(3) The National Land Council shall be summoned to meet by the chairman as often as he considers necessary but there shall be at least one meeting in every year.

(4) If a chairman or a representative of a state or of the Federal government is unable to attend a meeting, the authority by whom he was appointed may appoint another person to take his place in that meeting.

(5) It shall be the duty of the National Land Council to formulate from time to time in consultation with the Federal Government , the State Governments and the National Finance Council, a national policy for the promotion and control of the utilisation of land throughout the Federation for mining, agriculture, forestry or any other purpose, and for the administration of any laws relating thereto; and the Federal and State Governments shall follow the policy so formulated.

(6) The Federal Government or the Government of any State may consult the National Land Council in respect of any other matter relating to the utilisation of land or in respect of any proposed legislation dealing with land or of the administration of any such law, and it shall be the duty of the National land Council to advise that government on any such matters.

APPENDIX 1.3a

TEXT OF ARTICLE 95E OF THE FEDERAL CONSTITUTION OF MALAYSIA.

95E: Exclusion of States of Sabah and Sarawak from national plans for land utilisation, local government, development, etc.

(1) In relation to the State of Sabah or Sarawak Article 91, 92, 94 and 95A shall have effect subject to the following Clauses:

(2) Subject to clause (5), under Article 91 and under Article 95A the State Government shall not be required to follow the policy formulated by the National Land Council or by the National Council for Local Government, as the case may be but the representative of the state shall not be entitled to vote on questions before the council.

(3) .....

(4) .....

(5) Clause (2) shall cease to apply to a state -

(a) as regard Article 91, If Parliament so provides with the concurrence of the yang di Pertua Negeri; and

(b) as regards Article 95A, If Parliament so provides with the concurrence of the Legislative Assembly;

but for each representative of the State of Sabah or Sarawak becoming entitled, by virtue of this Clause, to vote on question before the National land Council or National Council for Local Government, one shall be add to the maximum number of representatives of the Federal Government on that council.

APPENDIX 1.3b.

MALAYSIA: FEDERAL GOVERNMENT DEVELOPMENT EXPENDITURE
by State, 1981-85

| State | Fourth Plan allocation $ million | % | Estimated Fourth Plan expenditure $ million | % |
|---|---|---|---|---|
| **High -income** | | | | |
| Selangor | 3,924.28 | 8.00 | 3,538.85 | 7.64 |
| Federal Territory | 5,263.91 | 10.74 | 5,025.72 | 10.85 |
| **Middle -income** | | | | |
| Johore | 3,357.31 | 6.85 | 3,098.81 | 6.69 |
| Malacca | 652.71 | 1.33 | 592.90 | 1.28 |
| Negeri Sembilan | 1,296.92 | 2.65 | 1,222.85 | 2.64 |
| Pahang | 3,090.55 | 6.30 | 2,871.84 | 6.20 |
| Perak | 3,676.36 | 7.50 | 3,478.63 | 7.51 |
| Perlis | 626.56 | 1.28 | 579.00 | 1.25 |
| Penang | 1,468.62 | 3.00 | 1,380.34 | 2.98 |
| Sabah | 2,585.13 | 5.27 | 2,580.02 | 5.57 |
| Sarawak | 3,285.59 | 6.70 | 3,112.70 | 6.72 |
| Trengganu | 2,543.95 | 5.19 | 2,343.79 | 5.06 |
| **Low-income** | | | | |
| Kedah | 2,620.63 | 5.35 | 2,408.64 | 5.20 |
| Kelantan | 2,617.74 | 5.34 | 2,473.49 | 5.34 |
| multistate | 12,015.16 | 24.51 | 11,612.42 | 25.07 |
| Total | 49,025.42 | 100.00 | 46,320.00 | 100.00 |

Note:

1. Multi state projects are those whose beneficiaries are nation-wide and whose locations cannot be determined.

Source: Fifth Malaysia Plan, p.231, Table 7-4.

APPENDIX 1.4

*POWERS OF THE FEDERAL LANDS COMMISIONER OF THE FEDERATION OF MALAYA UNDER THE NATIONAL LAND CODE*

Under Section 8 of the NLC, the Federal Lands Commissioner may:

a) Consult and correspond with any State Commissioner.

b) Require any State Commissioner to furnish him with such returns, reports and other information as he may require relating to the alienation of lands within the State and dealings and other transactions affecting such lands.

c) From time to time, convene meetings of the State Commissioners for the purpose of consultation concerning the administration of the NLC.

d) With the approval of the State Commissioner, enter within and inspect the records of any land registry or land office in any state.

e) With the concurrence of the State Commissioners, issue such circulars relating to the administration of this Act as may be considered desirable.

Source : National Land Code, Section 8

POWERS OF THE FEDERAL LANDS COMMISSIONER

Some of the Powers of the State Commissioner, include the following:

The powers to enter any land, to conduct enquiries, inspection of any documents in any public office. He is also empowered to commence, prosecute and carry on in the name of his office any action suit or proceeding relating to state land, any contract concerning land to which the State is a party, any trespass on State land, to recover any item of land revenue and the recovery of any fine or enforcement of any penalty under the Code. Though he is not a member of EXCO, he is responsible for the preparation of all EXCO papers on land matters and he is required to explain and deliberate policy matters and certain administrative and legal procedures as regards the land administration to the EXCO when asked to do so during any of the EXCO meetings.

Source : National Land Code, Section 8

*APPENDIX 1.5.*

ADMINISTRATIVE RESPONSIBILITIES OF THE FEDERAL LANDS COMMISSIONER

1) Inspecting land offices throughout Peninsular Malaysia and giving advice to land officers on various aspects of the implementation of land law provisions and procedures. An Audit Management Service was established in 1980 to carry out this objective.
2) Training of land officers at all levels which is jointly undertaken with the National Institute of Public Administration and the State governments.
3) The distribution of small estates of deceased persons to beneficiaries throughout Peninsular Malaysia. In 1974 the Federal Lands Commissioner's Office took over the responsibility of distributing of small estates from the land offices. Currently, there are 42 officers charged with this responsibility and they are stationed in various districts of each state. These officers are gazetted as Collectors of Land Revenue under Section 12(1)(b) of the National Land Code.
4) The establishment of a computerised "National Land Data Bank" for Peninsular Malaysia, with the objective of computerising the land administration system in the country. This project was started in 1983 and it is due for completion in 1988.
5) The acquisition of alienated lands for the use of the Federal Departments. Currently, there are units known as the Special Mobile Unit whose task is to acquire private lands needed for Federal purposes in various states under the Land Acquisition Act 1960. These officers too are gazetted as Collectors of Land Revenue by the respective State Governments.
6) The enforcement of the provisions of Padi Cultivators (Control of Rent and Security of Tenure) Act 1967. Enforcement officers are sent out to various states to ensure that landlords and tenants comply to the provisions of the Padi Cultivators Act.
7) To carry out research work pertaining to the implementation of the various provisions of the land laws and to recommend land law reforms or amendments to be made to the related land laws.

Source : National Land Code, Section 8

APPENDIX 1.6.

EXTRACT OF OPINION BY MR.C.N.CHANDRA, MEMBER OF LAND ADMINISTRATION COMMISSION, 1958

" I see no other way of securing that administration until there is cadre of officers at all levels who are skilled and interested in carrying out an intricate and complex form of administration. I do not consider that interim measures can strike at the root causes of the present arreas and inefficiencies, and I accordingly recommend that Lands Department separated from the general administration of the district officer, be established in every state as soon as possible"

*Source:* Report of The Land Administration Commission, 1958, p.69.

APPENDIX 1.6a.

*TOTAL NUMBER OF LOTS (LAND TITLES) IN PENINSULAR MALAYSIA BY STATE AS AT 30TH JUNE, 1982*

| State | No. of Lot/Land Titles |
|---|---|
| Johore | 515,094 |
| Kedah/Perlis | 361,256 |
| Kelantan | 599,702 |
| Malacca | 134,647 |
| Negeri Sembilan | 230,303 |
| Perak | 587,160 |
| Penang | 235,005 |
| Pahang | 728,354 |
| Selangor | 248,645 |
| Trengganu | 177,473 |
| Wilayah Persekutuan | 390,800 |
| TOTAL: PENINSULAR MALAYSIA | 3,708,439 |

*Source:* Survey and Mapping Division,
Survey Department, Ministry of Land and Regional Development, Malaysia, 1982.

## *APPENDIX 1.7*

### *SOME OF THE FEATURES OF THE PADI CULTIVATORS ACT, 1967.*

i) Section 7(i) of the Act gives the option of renewal of tenancy agreement to the tenants.
ii) Section 11(i) provides restrictions on the amount of rent, as is expressed in the 2nd Schedule according to the class of land, normally in the traditional measurement of *gantang* and not in cash, unless both parties agreed to the payment of cash.
iii) Section 12 provides the saving clause in cases of crop failure, the rent to be paid is at a reduced rate as Gazetted.
iv) The tenant has the rights to continue occupation of the land during continuance of tenancy on the death or incapacity of the landlord. This gives security of tenure to the tenants though the ownership of the land changes.

The right of possession by the landlord is given by Section 24 of the Act:

i) Upon the expiration of the tenancy agreement, provided the tenant does not wish to continue the tenancy any more.
ii) In the event of death or incapacity or otherwise of the tenant, unless a member of family of the tenant who is actually cultivating the land wishes to continue working on the land.
iii) If the landlord satisfied the committee that the tenant has been guilty
of bad husbandry resulting in the damage to the land or to impair its value.
iv) If the landlord satisfied the committee that the tenant has wilfully refused to sign, execute or renew the tenancy agreement under Section 7.
v) If the landlord can satisfy the committee that the tenant has contravened or failed to observe any of the implied conditions.
vi) Where the landlord desires to cultivate the land himself. In this case the landlord has to give a year's notice in writing to the tenant.

## *APPENDIX 1.8*

### *OFFENCES THAT MAY BE COMMITTED BY THE LANDLORD*

i) If he imposes or receives rents which exceeds the rate stipulated in the agreement.
ii) If he imposes or receives cash payment not in accordance with Section 11(i), i.e. Second Schedule of the Act.
iii) If he receives or demands any rent from a tenant or applies for an order of possession of paddy land which has not been registered in accordance with the Act.
iv) If he fails to register for a tenancy agreement within the period specified in Section 4 of the Act or within such period as may be extended by Registrar under that section.
v) If he ejects a tenant without the written order of the committee, from any padi land comprised in a tenancy agreement.
vi) If he receives from the tenant any addition to the rent lawfully payable under this Act.

Source : Padi Cultivators Act, 1967

## APPENDIX 2.1

### F.M.S: THE TRANSFERS OF LANDS TO NON-MALAYS

During 1909 and 1910, 1548 holdings totalling 7567 acres had been transferred by Malays to non-Malays in Selangor. In Perak, J.W. Birch asserted that 9/10 of all the original Malay holdings were sold to non-Malays. In 1912, 961 sales of Malay land to non-Malays were recorded, whilst non-Malay sales to Malays during the same period amounted to 741. In 1913, 1685 Malay holdings were transferred to non-Malays as against 348 non-Malay transfers to Malays. In Negeri Sembilan however, the transfer was very small and they did not cause any alarm to the government.

The above figures referred to town, village and country holdings, cultivated and uncultivated and small as well as large holdings. It was estimated that 50% of the 1584 Malay land in Selangor sold to non-Malays in 1909 and 1910 consisted of what it regarded as traditional holdings. In Perak in 1913, the increase in Malay land sales to non-Malays was found mainly in Batang Padang, a newly settled mining district.

In 1905, the Malays particularly the immigrant Malays were buying virgin land, clearing, planting and then selling it. Some of the sales were traditional lands and it was this that the administration was very concerned about.

*Source:* Lim Teck Ghee, *Peasants and Their Agricultural Economy in Colonial Malaya*, 1874-1941, OUP, Kuala Lumpur, 1977

## APPENDIX 2.2

### F.M.S. MALAY RESERVATIONS ENACTMENT: DEFINITION OF A MALAY

In the Malay Reservation Enactment (F.M.S.) Chapter 142 a "Malay" means a person belonging to any Malayan race who speaks any Malayan language and professes the Muslim religion; and includes; (a) the Majlis Ugama Islam; (b) the official administrator when acting as administrator or trustee of a deceased Malay;

and provided that the Ruler in Council may alienate State land within Malay Reservation to any body corporate or company specified in the Third Schedule, which the Ruler in Council may, by order published in the Gazette, add to, delete from, or amend, from time to time.

*Source:* Malay Reservations Enactment, FMS, Cap.142.

### *ARTICLE 160(2), FEDERAL CONSTITUTION*

***Malay*** means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and -
(a) was before Merdeka Day born in the Federation or in Singapore or born pf parents one of whom was born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or
(b) is the issue of such a person.

***Source: Malaysian Constitution, Article 160(2).***

## APPENDIX 2.3

### F.M.S : ALIENATED LAND IN MALAY RESERVATIONS
1 JANUARY 1931. (figures in acres)

| | Perak | Selangor | N.Sembilan | Pahang | All States |
|---|---|---|---|---|---|
| Land Owned by Malays | 215,524 | 116,845 | 109,041 | 75,069 | 516,479 |
| Land Owned by non-Malays | 17,985 | 4,168 | 52,000 | 1,763 | 75,916 |
| Area occupied under T.O.L. by Malays | 3,931 | 4,551 | 776 | 539 | 9,797 |
| Area occupied under T.O.L. by non-Malays | 889 | 90 | 315 | 5 | 1,299 |
| Area alienated under Mining Enactment | 2,390 | - | 74 | - | 2,464 |
| Forest and other reserves | 168,512 | 996 | 127,665 | 10,028 | 307,201 |
| Total area alienated | 409,231 | 126,650 | 289,871 | 87,404 | 913,156 |
| area unalienated | 1,329,457 | 88,144 | 225,131 | 593,295 | 2,236,027 |
| Area of Malay Reservations | 1,738,688 | 214,794 | 515,002 | 680,699 | 3,149,183 |

*Source:* Lim Teck Ghee, Peasants And Their Agricultural Economy In Colonial Malaya, 1874-1941, p.260. (Appendix 8.2.)

## APPENDIX 2.4

### F.M.S : OWNERSHIP OF AGRICULTURAL AND MINING LANDS BY RACE 1 JANUARY, 1938 (figures in acres)

| State | Europeans (%) | Malays (%) | Chinese (%) | Indians (%) | Others (%) | Total (%) |
|---|---|---|---|---|---|---|
| Perak | 315,846 (29.6) | 358,132 (33.6) | 171,909 (16.1) | 73,318 (6.9) | 147,109 (13.8) | 1,066,314 (100) |
| Selangor | 421,909 (53.6) | 166,382 (21.1) | 130,128 (16.5) | 60,081 (7.6) | 9,120 (1.2) | 787,620 (100) |
| Negeri Sembilan | 305,191 (56.2) | 116,888 (21.5) | 75,469 (13.9) | 34,853 (6.4) | 10,668 (2.0) | 543,069 (100) |
| Total | 1,042,946 (43.5) | 641,402 (26.8) | 377,506 (15.7) | 168,252 (7.0) | 166,897 (7.0) | 2,397,003 (100) |

*Source:* Lim Teck Ghee, Peasants And Their Agricultural Economy In Colonial Malaya, 1874-1941, p.261.

## APPENDIX 2.5

### MALAYSIAN CONSTITUTION : FULL TEXT OF CLAUSE 89(1), 89(1A) and 89(2) AS REGARDS TO MALAY RESERVATIONS

89: *Malay Reservations*

(1): Any land in a state which immediately before Merdeka day was a Malay reservation in accordance with the existing law, may continue as a Malay reservation in accordance with that law until otherwise provided by an Enactment of the legislature of that state, being an Enactment-

(a) passed by a majority of the total number of members of the legislative assembly and by the votes of not less than two-thirds of the members present and voting; and

(b) approved by resolution of each House of Parliament passed by a majority of the total number of members of that House and by the votes of not less than two-thirds of the members voting.

(1)A: Any law made under Clause (1) providing for the forfeiture or reversal to the State Authority or for the deprivation of the ownership of any Malay Reservation or any right or any interest therein, on account of any person, or any corporation company or other body (whether corporate or unincorporate)

...continue to p.510

holding the same ceasing to be qualified or competent under the relevant law relating to Malay Reservations hold the same, shall not be inconsistency with Article 13.

(2): Any land in a State which is not for the time being a Malay reservation in accordance with the existing law and has not being developed or cultivated may be declared as a Malay reservation in accordance with that law:

provided that -

(a) Where any land in a state is declared a Malay reservation under this clause, an equal area of land in that state which has not been developed or cultivated shall be made available for general alienation; and;

(b) The total area of land in a State for the time being declared as a Malay reservation under this clause shall not at any time exceed the total area of land in that state which has been made available for general alienation in pursuance of paragraph (a)

*Source:* Malaysian Constitution, Article 89.

## APPENDIX 2.6

OWNERSHIP OF MINES BY ETHNIC GROUPS - PENINSULAR MALAYSIA, 1970

| Ownership | Number of Mines | | Value of out-put | | Value of input | | Value added | | Number of workers | |
|---|---|---|---|---|---|---|---|---|---|---|
| | No. | % | $'000 | % | $'000 | % | $'000 | % | No. | % |
| Malaysians: | | | | | | | | | | |
| Malays | 26 | 1.7 | 11,052 | 1.5 | 3,330 | 1.5 | 7,722 | 1.4 | 11,696 | 18.1 |
| Chinese | 1,290 | 85.6 | 328,645 | 43.2 | 125,227 | 57.4 | 203,418 | 37.5 | 47,999 | 74.2 |
| Indians | 4 | 0.3 | 510 | 0.1 | 300 | 0.1 | 209 | 0.0 | 4,374 | 6.7 |
| Others | 36 | 2.4 | 41,414 | 5.4 | 8,462 | 3.9 | 32,952 | 6.1 | 131 | 0.2 |
| Total Malaysians: | 1,356 | 90.0 | 381,621 | 50.2 | 137,319 | 62.9 | 244,301 | 45.0 | 64,200 | 99.2 |
| Non-Malaysians: | 140 | 9.3 | 327,219 | 43.0 | 69,941 | 32.1 | 257,278 | 47.5 | 486 | 0.8 |
| Others | 10 | 0.7 | 51,691 | 6.8 | 10,827 | 5.0 | 40,864 | 7.5 | - | - |
| TOTAL | 1,506 | 100.0 | 760,530 | 100 | 218,086 | 100 | 542,443 | 100 | 64,686 | 100 |

*Source:* Department of Statistics, Malaysia, *Principal Statistics On Ownership and Participation In Commerce and Industry, West Malaysia, 1970/1971, p.90.*

*APPENDIX 2.7*

*RUBBER SMALLHOLDERS, BY ETHNICITY, AND AREA ACCORDING TO STATES IN PENINSULAR MALAYSIA, 1977*
*(acres)*

| State | Bumiputra Area | % | Chinese Area | % | Indian Area | % | Others Area | % | TOTAL Area (100%) |
|---|---|---|---|---|---|---|---|---|---|
| Johore | 124,673 | 48.8 | 127,963 | 50.1 | 36,755 | 37.6 | 2,515 | 0.8 | 255,311 |
| Kedah | 108,313 | 77.7 | 24,831 | 17.7 | 1,480 | 1.1 | 160 | 0.1 | 139,498 |
| Kelantan | 129,424 | 91.0 | 11,624 | 8.2 | 435 | 0.3 | 694 | 0.5 | 142,177 |
| Malacca | 31,656 | 47.7 | 31,777 | 47.7 | 2,490 | 3.8 | 403 | 0.6 | 66,326 |
| Negri Sembilan | 47,804 | 51.8 | 41,709 | 45.2 | 2,678 | 2.9 | 116 | 0.1 | 92,307 |
| Pahang | 99,248 | 68.0 | 44,883 | 30.8 | 1,370 | 0.9 | 430 | 0.3 | 145,931 |
| Perak | 95,234 | 60.2 | 57,777 | 36.5 | 3,322 | 2.0 | 1,995 | 1.3 | 158,328 |
| Perlis | 2,113 | 54.5 | 1,373 | 35.4 | 52 | 1.4 | 337 | 8.7 | 3,875 |
| Penang | 5,029 | 21.3 | 18,109 | 76.8 | 395 | 1.7 | 46 | 0.2 | 23,579 |
| Selangor | 36.608 | 51.3 | 32,068 | 44.9 | 2,276 | 3.2 | 433 | 0.6 | 71,385 |
| Trengganu | 50,631 | 99.4 | 8,908 | 0.2 | 112 | 0.2 | 83 | 0.2 | 59,734 |
| TOTAL | 730,733 | 63.6 | 40,1022 | 34.1 | 17,125 | 1.5 | 9571 | 0.8 | 1,158,451 |

Source:Computed from: Census of Smallholders In Peninsular Malaysia, 1977:Socio-Economic Profile, Poverty And Participation in RISDA Programmes, RISDA-USM,1983, pp.13 & 26.

## APPENDIX 2.8

### RESULT OF STUDY ON EVOLUTION OF ETHNIC PATTERNS OF RURAL LAND OWNERSHIP IN PENINSULAR MALAYSIA

The result of the study showed that the Chinese for example, held 80% of the land for half of the 'age' of the holders while the corresponding figures for planting companies is 69% and Malays 62%. Up to 1968, 55% of all the lots owned by Malays had never passed out of Malay possession, while that for the Chinese was 37% and companies 17%. With reference to non-reservation lots, a substantial proportion (47%) of the lots were owned by Malays for up to only a third of the 'age' and 71% less than the 'age' of these lots. Only 15.3% of the non-reservation lots never passed out of Malay control, compared with 37% for Chinese owners. In sharp contrast, land ownership by Indians, Chettiers and Europeans was largely transient in nature. 4/5 of the lots ever owned by Indians were held up to 20% of the 'age' of the lots and only 6% more than half the 'age' of the lots. Similarly 88% of the lots owned by Chettiers lasted up to less than half the 'age' of the lots concerned. European ownership was the least durable, 895 of the lots being owned up to 20% of the age of the lots.

*source;*: Phin-Keong Voon, *Evolution of Ethnic Patterns of Rural Land Ownership in Peninsular Malaysia: a case study*, South East Asian Studies, Vol.15, No.4, March, 1978, pp.515-516.

## APPENDIX 2.9

### EXTENT OF LAND TRANSFERS IN JOHORE BARAT AREA, 1975 - 1979

| | |
|---|---|
| From Malay Owner to Malay Owner | 29.9% [6,979 acres] |
| From Malay Owner to non-Malay owner | 8.6% [1,999 acres] |
| From non-Malay owner to Malay owner | 4.2% [977 acres] |
| From non-Malay owner to non-Malay owner | 57.4% [13,420 acres] |
| Total acreage of land transferred | 23,375 acres. |

*Source:* Ministry of Land and Regional Development, 1979.

***Note:*** The above data is only for the District of Pontian, which consists of 70% of the acreage covered by the project.

## APPENDIX 3.1

## MAIN STEPS IN PLANNED ALIENATION OF LAND

1. Land Office selects an area of land.
2. State Authority approves the alienation in principle.
3. Land Office invites applications.
4. Applications are short listed, interviewed and selected.
5. DLA informs selected applicants to submit formal applications to him in the prescribed form..
6. DLA prepares paper for consideration by the relevant authority.
7. DLA conveys approval or refusal of application.
8. DLA receives payment of alienation fees.
   8.1. Qualified title are prepared and registered as soon a alienation fees are paid.
   8.2. DLA is to see that requisition for survey is submitted to the Chief Surveyor as soon as alienation fees are paid.

***Note:*** Registration of qualified title, final title and surveying of land upon approval of alienation are dealth with separately under the NLC.

## APPENDIX 3.2

## STEPS IN UNPLANNED ALIENATION OF LAND

1. District Land Administrator (DLA) receives application.
2. DLA determines whether an application can be accepted for consideration or not.
3. DLA directs tracer to chart and report:
   3.1. Tracer to chart the area applied and the file reference on the relevant litho sheet.
4. DLA directs Settlement Officer to report.
   4.3. DLA is to study report of the Settlement Officer.
5. DLA refers the application to the relevant departments.
   5.1. Reference should be made simultaneously.
   5.2. DLA to study the views received.
6. DLA prepares paper for consideration by the relevant authority.
7. DLA conveys approval or refusal of applications with specific terms as provided by the NLC.
8. DLA receives payment of alienation fees;
   8.1. Qualified title are prepared and registered as soon as alienation fees are paid.
   8.2. DLA is to see that requisition for survey is submitted to the Chief Surveyor as soon as alienation fees are paid.

***Note:***

1. For detail description of the various steps, see *Manual For Land Administration*, Government Printer, Kuala Lumpur, 1981.
2. Registration of Qualified title is made mandatory under the new amendment to the NLC.

## APPENDIX 3.3.

## TEXT OF ARTICLE 166(3) AND (4), FEDERAL CONSTITUTION

166(3): Any land vested in the State of Malacca or the State of Penang which immediately before Merdeka Day was occupied or used by the Federation Government or Her Majesty's Government or by any public authority for purposes which in accordance with the provisions of this constitution become federal purposes shall on and after that day be occupied, used, controlled and managed by the Federal Government or as the case may be, the said public authority, so long as it is required for federal purposes and -

(a) shall not be disposed of or used for any purposes other than federal purposes without the consent of the Federal Government, and

(b) shall not be used for federal purposes different from the purposes for which it was used immediately before Merdeka Day without the consent of the Government of the State.

166(4): Any state land which immediately before Merdeka Day, was occupied or used, without being reserved, by the Federation government for purposes which become Federal purposes on that day, shall on that day be reserved for those federal purposes."

## APPENDIX 3.4.

## FULL TEXT OF ARTICLE 85, FEDERAL CONSTITUTION

85. Release of land reserved for federal purposes.

(1) Where any land in a State which is reserved for any federal purposes ceases to be required for those purposes, the Federal Government shall offer to release the land to the State on condition that the State pays to the Federation :

(a) the market value of any improvement made (otherwise than at the expense of the State) while the land was in use for federal purposes; and

(b) the amount, if any, paid by the Federation, or paid before Merdeka Day by the Government of the Federation of Malaya, in respect of the cost of acquisition of any interest in the land by the State Government;

and if the State Government accepts the offer the reservation shall cease.

(2) Where the State Government does not accept an offer made in accordance with clause (1), then unless by agreement between the Federal Government and the State Government the land is reserved for another federal purpose, the Federal Government may require the State Government, and it shall then be the duty of that Government, to cause to be made to the Federation a grant of the land in perpetuity without restrictions as to the use of the land, but subject to the payment of a premium equal to the market value of the land reduced by the amounts which would have been payable to the Federation under Clause (1) if the said offer had been accepted, and to the payment annually of an appropriate quit rent; and where such a grant is made to the Federation, the Federal Government may sell and transfer or lease the land on such terms and conditions as it may think fit.

(3) Except as provided by this Article, land in a State which is reserved for federal purposes shall not cease to be so reserved, and all land so reserved shall be controlled and managed by or on behalf of the Federal Government.

## APPENDIX 3.5.

## LEGAL OPINION OF THE SOLICITOR GENERAL, MALAYSIA

"Unfortunately for the Malayan Railway Ordinance, the Constitution of the Malayan Union was replaced by the Federation of Malaya Agreement on the 1st February 1948. The validity of Section 22 of the ordinance and perhaps other provisions in the ordinance which deal with the land must be tested against the provisions of the Federation of Malaya Agreement. This Agreement established a federation in which there is proper division of powers between the Federal Government and the State Governments.

As regards land, legislation thereon, except for purposes of bringing about uniformity in land legislation came under the competence of state legislatures...It therefore, could easily be seen that by a stroke of the pen as on the 1st February 1948, the provision of Section 22 of the Malayan Railway Ordinance 1948 became inconsistent with the Federation of Malaya Agreement and therefore as on that day there was no question of the General Manager or the Chief Secretary or his successor, the Federal Lands Commissioner, having the power to grant leases to reserve land. The authority which should grant leases of Railway reserve should then be done by Section 24 of the FMS Land Code, namely the Ruler in Council. One, therefore, could see that Section 22 of the Malayan Railway Ordinance had only one day's life, namely on the 31st January 1948.

The Federal Constitution which was promulgated in August 1957 contains the same division of powers between the Federal Government and the State Governments by which land comes under the competence of the state governments and later, National Land Code of 1965 re-affirms once again that the power to grant leases of reserve land is vested in the State Authority which is the successor to the Ruler-in-Council under the former land legislation. It therefore became evident that no reliance can now be placed on Section 22 of the Malayan Railway Ordinance because this section had been overtaken by the Federation of Malaya Agreement on the 1st February 1948.

I therefore hold the view that the lease of railway reserves must now be governed by the National Land Code ".

*Source:* Opinion of Solicitor General to State Legl Adviser, Selangor dated 6th May, 1969, vide PN 3309/E pt.11(73).

## APPENDIX 3.6

### LEGAL OPINION OF PROF. AHMAD IBRAHIM ON RAILWAY RESERVES

(i) "The Federal Constitution clearly distinguishes between land held for Federal purposes and lands reserved for Federal purposes. Article 84 and 86 deal with lands *held* for Federal purposes and Article 85 deals with land *reserved* for Federal purposes.

(ii) It is clear that the provisions of the Railway Ordinance in relation to land held or reserved for federal purposes must be read subject to the Federal Constitution. This is abundantly clear from the decisions of the Privy Council in Surinder Singh Kanda v Menteri Besar Johore (1969). Where there is a conflict between the Railway Ordinance and the Federal Constitution then the Federal Constitution must prevail.

(iii) On the other hand I do not, with respect, agree with the opinion that the Railway Ordinance 1948, must be read subject to the National Land Code. Indeed Section 4(i) of the National Land Code expressly saves the provisions of any other law passed before the commencement of the Act, in so far as they relate to land. In any case the provisions of the National Land code deal with *reserved* land and not land *held* for a public purpose.

(iv) Article 86 of the Federal Constitution does give power to the Federation to dispose of any interest in land which is vested in the Federation. So long as the provisions of this Article are complied with, it would appear that land held for Federal purposes can be disposed of. On the other hand, where the land held or reserved ceases to be required for Federal purposes then the provisions of Article 84 and 85 of the Federal Constitution are applicable.

(v) My opinion is that railway reserves are lands held for a federal purpose and therefore can be dealt with under Section 22 of the Railway Ordinance read subject to Federal Constitution."

However, in Station Hotels Bhd v Malayan Railway Administration, Ali F.J., ruled that railway reserves are lands reserved for a federal purpose and are thus within the terms of Clause (3) of Article 85

*Source*: Paper prepared by Malayan Railway Administration vide PBK Sulit No.558/80, pp. 4-8, dated 21st January, 1980.

## APPENDIX 3.6a

### AREAS UNDER RAILWAY RESERVE, BY STATE AND BY TYPE OF TITLES

( in acre )

| State | With land title | Lease | Reserve | Total |
|---|---|---|---|---|
| Johore | 581.3 | 3.1 | 311.3 | 895.8 |
| Kedah | 1,380.9 | - | - | 1,380.9 |
| Kelantan | 4,876.7 | 59.2 | - | 4,936.0 |
| Malacca | - | - | 548.8 | 548.8 |
| Negri Sembilan | 298.4 | - | 2,546.2 | 2,844.6 |
| Pahang | 0.06 | - | 395.8 | 395.9 |
| Penang | 431.7 | 664.2 | - | 1,095.9 |
| Perlis | 509.4 | - | - | 509.4 |
| Selangor | 30.5 | 241.9 | 558.8 | 831.4 |
| Wilayah Persekutuan | 39.3 | 18.8 | 568.0 | 626.2 |
| Singapore | 92.7 | 473.9 | - | 566.7 |
| TOTAL | 8,245.8 | 1,463.5 | 7,411.5 | 5,502.7 |

*Source*: Federal Lands Commissioner, Ministry of Land And Regional Development, Malaysia, 1983.

## APPENDIX 3.7

### EXTRACT OF OPINION OF THE SOLICITOR FOR THE MALAYAN RAILWAY

The opinion of the Solicitor General in appendix 3.5 was replied to by the Counsel for the Malayan Railway, Messrs. Skrine & Co. and the Counsels arguments were as follows :

(i) The Railway Ordinance and the Federation of Malaya Agreement 1948 were promulgated at the same time. To be exact the Railway Ordinance is one day older than the Federation of Malaya Agreement. The makers of the Railway Ordinance are also the makers of the Federation of Malaya Agreement. It would be very unlikely therefore, for these law makers to toil and sweat for a law which was going to be operative only for one day.

(ii) The provisions of the National Land Code 1965 is general in nature whereas the Railway Ordinance 1948 is promulgated solely for the purpose of the Railway Administration, as such the provision for land contained therein relates solely to the requirement of the Malayan Railway Administration."

The authority in the Land Code 1965 in respect of the right to lease reserve land can be cited in Section 63 which must be read in conjunction with the main clause by which it can be interpreted that the Authority to dispose reserved land can be done in the following manner:

*Source:* Paper by Malayan Railway, PBK 558/1 (conf.), 1980.

## APPENDIX 3.8

## DEFINITION OF MALAY RESERVATIONS

The term "Malay Reservation" means that any land duly declared and gazetted under the provisions of the various state Malay Reservations Enactments. Such lands are reserved for Malays. Non-Malays cannot hold any rights, interest or carry out any dealings in such land. Sarawak which has a more complicated land system than Peninsular Malaysia also recognised special rights of natives to land. Larger blocks of land gazetted, as "Native Area Land", can only be owned under individual title by natives and such procedure has a sort of resemblance to the Malay Reservations in Peninsular Malaysia. In Sabah, reservation of land for particular laws or communities is not known, but the native owner may request upon alienation to convert such land into "Native Title Land". Once the land has been registered under a *"Native Title"* it cannot be sold or charged to a non-native. This practice has its equivalent in the "Customary Land" of Negri Sembilan, the only difference is that the *"ownership"* of "customary land" in Negri Sembilan is restricted to females in the same *suku* [clan].

Article 89 of the Constitution re-affirms the provisions of the Malay Reservations Enactments in Peninsular Malaysia, whereas the states of East Malaysia do not have such protection in the Constitution, however, such protection is found in the Sabah Land Ordinance and Sarawak Land Code respectively. They are more flexible for amendments, as amendments can easily be done only through the state legislature without going through Federal Parliament.

However, under Article 89(6) of the Constitution "Malay" includes any person who, under the law of the state in which he is resident, is treated as a Malay for the purpose of reservation of land.

*Source*: Federal Constitution, Article 89.

## APPENDIX 3.8a

### THE EXTENT OF ORANG ASLI (O.A.)(ABORIGINES) RESERVE, 1986

| State | Land Gazette as O.A reserve (acre) | Land Approved as O.A. reserve (acre) | Land Applied for O.A. reserve. (acre) | Area Occupied by O.A. without official application (acre) | Land not required by O.A. (acre) |
|---|---|---|---|---|---|
| Pahang | 756 | 42,778 | 110,519 | 10,735 | 9,450 |
| Perak | 13,697 | 19,917 | 61,752 | 26,279 | - |
| Kelantan | - | 6,930 | 20,992 | - | - |
| Johor | 8,331 | 4,455 | 4,248 | 85 | - |
| N.Sembilan | 4,248 | 5,344 | 5,242 | - | - |
| Selangor | 3,159 | 9,475 | 1,247 | 125 | 410 |
| Trengganu | 3,000 | 345 | 230 | - | - |
| Melaka | 37 | 938 | 125 | - | - |
| Kedah | 620 | - | - | - | - |
| TOTAL | 38,748 | 90,182 | 204,355 | 37,224 | 9,860 |

*Source:*

Jabatan Orang Asli, Malaysia, 1986.
(Aborigines Department, Malaysia, 1986), [unpublished report].

## APPENDIX 3.8b

## FUNCTIONS OF THE REGIONAL DEVELOPMENT AUTHORITIES (RDAs)

The following functions have been assigned to the Regional Development Authorities:

"to provide, stimulate, facilitate and undertake economic and social development, as well as residential, agricultural, industrial and commercial development in the *Kawasan* (region) and to control and co-ordinate the performance of the foresaid activities in the *Kawasan* (region.)"

The Regional Development Authorities were given extensive powers, including the power to borrow funds, to establish subsidiary corporations for special projects and to acquire privately owned land for development purposes, the power that is normally reserved to the Land Officers.

*Source:* Varius Statues of RDAs.

## APPENDIX 3.9

## NATIONAL LAND COUNCIL RESOLUTION, 1961

(1) Blocks of land to be alienated should be of the size up to 2,000 acres and sub-divided into 10 acre lots.

(2) Such area of land is to be gazetted under the Land (Group Settlement Areas ) Act, 1960;

(3) The land must be fully cultivated within five years of occupation.

(4) Express conditions on the land titles must be imposed, prohibiting transfer, charge, lease or mortgage of the land for a period of 15 years with exemptions requiring the written permission of the Menteri Besar.

(5) Only those who are landless are eligible for participation in the scheme.

(6) Government servants who are about to retire and whose income is less than M$350 per month may also be considered to participate in the scheme.

## APPENDIX 3.10

## FOREIGN OWNED RUBBER ESTATES, 1971.

The foreign owned estates totaling 534, had a total acreage of 866,800 acres and accounted for 55.5% of total estate acreage. The average size of these estates was 1,623.2 acres in 1971 as compared to 468.8 acres for Malaysian owned estates. The foreign owned estates also employed more than half of the persons engaged in rubber estates (113,027 persons or 57.7%) and averaged 211.7 persons each. They produced 61.6% of total rubber output of estates in 1971.

The single most important group of foreign owned estates were owned by the British. There were 273 British owned estates in 1971, having a total acreage of 622,900 acres or 40% of total estate acreage. The average size of a British owned estate was 2,281.7 acres. These estates also produced 316,200 tons or 48.5% of total rubber output in estates. Appendix 3.11 shows the comparative figures of foreign owned estates in relation to Malaysian owned estates. However, this figure has decreased since 1971 as shown in Appendix 3.11

*Source:* Department of Statistics, Malaysia, 1983 (Rubber).

APPENDIX 3.11

NUMBER OF ESTATES AT 31.12.83 BY STATE AND OWNERSHIP: PENINSULAR MALAYSIA

| State Ownership | Total | Malaysian Residents | Non-Malaysian Residents | Joint |
|---|---|---|---|---|
| Johor | 321 | 249 | 71 | 1 |
| Kedah & Perlis | 282 | 268 | 14 | - |
| Kelantan | 60 | 51 | 9 | - |
| Melaka | 107 | 98 | 9 | - |
| N.Sembilan | 211 | 200 | 10 | 1 |
| Pahang | 153 | 149 | 4 | - |
| Pulau Pinang | 32 | 29 | 3 | - |
| Perak | 244 | 220 | 22 | 2 |
| Selangor & W.Persekutuan | 164 | 153 | 11 | - |
| Trengganu | 25 | 24 | 1 | - |
| | 1,599 | 1,441 | 154 | 4 |

*Source:* Department of Statistics, Malaysia, 1983, (Rubber Statistics Handbook, Malaysia, p.26

## APPENDIX 3.12

## LAND OWNERSHIP BY ETHNICITY 1971: [OIL PALM, COCONUT AND TEA ESTATES]

### Oil Palm

The Chinese owned 185 oil palm estates.the highest owned by any single community with an acreage of 112,300 acres or 21.3% of total oil palm acreage. The Malay owned estates were only 5 with a total acreage of 2,800 acres or 0.5% of total acreage in all oil palm estates. The average size of the Malay owned estates was only 560 acres. Of the 5 estates, two were proprietorships, one a partnership, one a co-operative and one a limited company. The one classified as a co-operative alone accounted for 2,300 acres compared to total 2,800 under Malay owned estates.

There were 12 Indian owned estates in 1971 having a total acreage of 2,800 acres.

### Coconut Estates

There were only 48 coconut estates, 31 were owned by Malaysians while the rest were owned by foreigners. Foreign owned estates accounted for the bulk of both the acreage (67.3%) and production of nuts (80.6%) and Copra (79.9%). The Chinese owned 22.8% of total planted acreage in the 48 estates and the Indians owned the remaining 6 estates with an acreage of 5,300 acres or 9.9%. There were no Malay owned coconut estates. The average size of Malaysian owned estates was 564 acres compared to the average size of foreign owned estates of 2118 acres.

*Source:Statistics Dept.,Malaysia,Principal Statistics on Ownership and Particilation in Commerce and Industry,W.Malaysia,1970/71. (coconut estates)*

### *Tea Estates*

*Tea is the least important of the plantation crops. There was only 23 tea estates in 1971 with a total planted acreage of 7,300 acres. Malaysians owned 16 of the estates. The Chinese owned 11 estates with an acreage of 2,200 acres and the Indians 2 estates with an acreage of 900 acres. Foreigners owned 7 estates of which 4 were British. The British owned estates and the foreign owned estates accounted for 54.8% of planted acreage. The average size of Malaysian owned estates was only 206 acres. Foreign owned estates had an average of 571 acres.*

*Source:* Statistics Department, Malaysia, *Principal Statistics on Ownership and Participation in Commerce and Industry, West Malaysia, 1970/1971*, pp.44-47.

APPENDIX 3.13

NO. OF OIL PALM ESTATES BY LEGAL STATUS AND OWNERSHIP, 1983: MALAYSIA

| Legal Status/ Ownership | Total | Malaysian Residents | Non-Malaysian Residents | Joint Ownership |
|---|---|---|---|---|
| Public Limited Company | 277 | 252 | 25 | - |
| Private Limited Company | 582 | 515 | 65 | 2 |
| Partnership | 237 | 219 | 17 | 1 |
| Others | 132 | 123 | 9 | - |
| TOTAL | 1,228 | 1,109 | 116 | 3 |

*Source:* Statistics Department, Malaysia, Oil Palm, Statistics, 1983.

APPENDIX 3.14

SETTLER EMPLACEMENT BY STATE, 1984
PENINSULAR MALAYSIA.

| State | No. of Schemes | Settler Families | % |
|---|---|---|---|
| Pahang | 89 | 35,586 | 40.5 |
| Johor | 55 | 20,507 | 23.3 |
| N.Sembilan | 34 | 13,587 | 15.4 |
| Trengganu | 19 | 5,554 | 6.3 |
| Perak | 11 | 4,161 | 4.7 |
| Kedah | 8 | 2,689 | 3.1 |
| Selangor | 4 | 2,097 | 2.4 |
| Kelantan | 7 | 1,725 | 2.0 |
| Melaka | 5 | 1,328 | 1.5 |
| Perlis | 3 | 712 | 0.8 |
| TOTAL | 235 | 87,946 | 100.0 |

*Source*: FELDA Annual Report, 1984, p.10.

## APPENDIX 3.15

### DECISIONS OF THE NATIONAL LAND COUNCIL ON ALIENATION,1958

Both the Federal and State Governments agreed on the need for immediate comprehensive and concentrated efforts to start and maintain the maximum land development possible;

2. recommended to all governments, the adoption of planned land development for the purpose of:

a) establishing holding of economic size, and if possible and desirable, creating complementary estates.

b) making proper use of soils and conforming to the topography.

c) establishing Kampung and villages properly furnished with social and other services as the centre.

d) ensuring no scattered habitations and

e) establishing processing and marketing facilities as part of the development.

3. The development of fringe areas should be restricted by:

a) bringing existing holdings up to the size considered to be the "economic holding" in those areas.

b) providing economic holdings for members of families already established.

c) rejecting applications for scattered holdings from other individuals.

*Source:* National Land Council Resolution, 1958.

## APPENDIX 3.16

### OBJECTIVES OF LAND DISPOSAL POLICY FOR FEDERAL TERRITORY

(i) To ensure that the State may provide living accommodation for the low income groups.

(ii) To ensure the equitable ownership of assets among the Bumiputra in terms of their value and area.

(iii) To ensure that the Wilayah Persekutuan would have sufficient area to be developed permanently in conformity with the City's Comprehensive Plan, having in mind that Kuala Lumpur is the national capital.

(iv) To give opportunity to Bumiputra entrepreneurs to be involved in commercial, housing and industry through a planned development of state land and to give opportunities to the Bumiputra to own commercial and industrial lots through the development programmes of state and private lands.

(v) To overcome the squatter problem through the construction of high rise low cost flats.

(vi) To ensure a permanent revenue for the Government through a systematic land alienation procedures. In this context, the State lands concerned are those lands which have not been allocated or reserved by the government including former mining lands and areas under State and Federal leases which have expired.

*Source:* Land Policy Document, Federal Territory, Kuala Lumpur, 1984.

## APPENDIX 3.17

### LAND ALIENATION POLICY IN THE FEDERAL TERRITORY

Some of the Land Policies for Federal Territory are as follows:

(i) State land, ex-mining land and unreserved land or land not occupied or used by government, whose land use zoning or site plan have been determined, may be considered for alienation.

(ii) New applications for mining land will not be considered. However, existing mining land which is in operation and has potential for tin and which is profitable, may be considered for the lease to be renewed.

(iii) Any state land and ex-mining land which have been zoned may be parcelled out into smaller parcels each of which not more than 50 acres, to be considered for alienation to housing developers chosen to implement housing projects.

(iv) 'Pocket Land' may be considered for alienation to any applicant but priority is to be given to government agencies and bumiputra individual applicants or bumiputra companies.

Priority of Applicant.

Applications for land will be given priority to the following:

(i) To government agencies or private agencies if the objective of the applicants is to implement projects under the 5MP.

(ii) To bumiputra Companies where 100% of the shareholders are bumiputra and have a paid up captial of $200,000 provided the objectives of the applicants are to develop the area into housing in conformity with the objectives of the NEP.

(iii) To Company registered as bumiputra-owned, in the form of at least 70% of the shares owned by Bumiputra and 30% owned by non-Bumiputra with a paid up capital of $300,000.00.

The form of land alienation is as follows:

(i) Land alienation involving 'pocket' land is approved to individuals, companies, corporations and so on for housing and industrial uses. These lands may consist of one or more lots.

(ii) The form of alienation of state land which involves large areas of land for housing projects by way of uncontrolled alienation is to stop.

(iii) The alienation of land through joint venture between the government and private companies is to be continued. The form of joint venture policy is that the governments should be empowered to to fix the price of the houses and the choice of building units in the housing project.

(iv) The alienation of land in the form of joint venture between the government and its agencies. This method was practised in an area of about 310 acres in Datuk Keramat, Ulu Kelang, approved to Selangor State Economic Development Corporation (SEDC) and re-alienated to individual applications.

(v) The direct alienation of land to government agencies for various projects such as the Kampung Konggo housing project, the 'Squatters upgrading project' and 'Site and Services' project.

The area of land in the Federal Territory (since its creation in 1974) that has been alienated up to 1979 was 2,200 acres. These land can be divided into two categories:

(i) The alienation of land for a particular use to individual or group applicants including 'pocket' land which involved an area of 270 acres, (1706 lots). This figure does not include a total of 2,400 applications approved to Kampung Konggo residents, Taman Maluri, and site and services project in Salak Selatan.

(ii) The alienation of land which involves large areas of land and needed considerable financial expenditure for its development. Approvals for such lands were given to government agencies, companies, voluntary organizations and joint venture companies which involved an area of 2,200 acres as shown below:

| | |
|---|---|
| (a) government agencies | 1,400 acres |
| (b) private companies | 260 acres |
| (c) joint venture companies | 195 acres |
| (d) others | 60 acres |

From the above acreage, which have been approved for alienation, individual applications are as follows:

| Ethnic groups. | Area. | Lots. |
|---|---|---|
| Malays | 260 acres | 1662 |
| Chinese | 6 acres | 43 |
| Indian | 3 acres | 11 |
| TOTAL | 269 | 1716 |

While the alienation of land to individuals as a group, of which each area consists of more than 5 lots, and including the number of applications approved for housing lots in the Housing estate of Kampung Konggo, Taman Maluri and Site and Services projects in Salak Selatan are as follows :

| Ethnic groups. | Lots. |
|---|---|
| Malays | 2746 |
| Chinese | 552 |
| Indian | 138 |
| Others | 12 |
| TOTAL | 3448* |

* (This total includes industrial and shop lots).

*Source*: Land Alienation Policy Document, Federal Territory, 1984.

## APPENDIX 3.18

### *THE PAHANG STATE LAND ALIENATION POLICY*

1. Applications for lands within an area of twenty miles from Kuantan town are closed except :

(i) applications from the holders of TOL issued before 1978.

(ii) applications from government departments and statutory bodies.

(iii) applications for land lots which have been approved by the government and lots within a group settlement area.

(iv) applications for land illegally occupied before June, 1966.

(v) areas which have been determined by the CLR, Kuantan with a ready-made layout plan prepared by the State Director of Town and Country Planning. The same condition applies to the land within a mile from Bandar Baru Maran Centre.

2. Individual applications for land within the development area of Endau-Rompin is closed. Land within this area can only be opened for development according to the planning made by the Committee of Irrigation Development Endau-Rompin, by having site and services programmes i.e. the provision of housing as well as other social amenities.

3. As regards to land alienation policy for new villages created during the emergency period of 1950's, the state is to continue alienating such lands to the occupier with special premiums for the original settlers who were evacuated and in occupation before 31st December 1960.

The conditions of alienation are that, the titles are to be state leases with a period of 60 years and a premium of $10 per lot (nominal). The restriction in interest of such land is that the land alienated cannot be leased, charged or transferred without written permission of the EXCO.

4. The State Government has drawn up a policy on the opening up of industrial areas. The responsibility of opening and developing industrial areas outside the RDA is given to the Pahang Development Authority.

5. The industrial areas are to be approved in "block" to the three agencies (LKNP, DARA, PKJ) and these agencies are also responsible for finding investors or purchasers.

6. Alienation of land on a large scale, (more than 10 acres) will only be considered to the State and Federal Government agencies; such as Pahang State Development Board, Pahang Agricultural Development Board, FELDA, FELCRA, RISDA, The Pilgrimage Fund Board and other Bumiputra interests which the State deems fit to develop land to achieve the NEP.

7. Pahang citizens would be given priority in FELDA schemes. Efforts should be made to develop the traditional 'Kampung' (village) in the areas surrounding FELDA schemes.

8. As regards alienation policy under the GSA Act,1960, the state identified three types of schemes to be developed:

(i) Rubber or palm oil land schemes (for areas which are near to the existing Kampung), (ii) Village style or orchards, (iii) Housing.

The management and implementation of all the existing group land schemes which are to be implemented would be given to FELCRA or RISDA or other government agencies or departments.

The settlers for these schemes will be selected by a Committee, chaired by the District Officer.

The lots to be alienated under the Group Settlement Scheme are to be alienated directly to the participants and if necessary charged to the agency concered until the costs incurred by the agency to develop the land are paid in full.

9. The State Government's policy on Fringe Lands is to allow the successful schemes to be continued by the State Land Agricultural Board and unsuccessful schemes are to be transferred to FELCRA or RISDA to be rehabilitated. The State is to alienate land to individuals provided such lands are of the following categories:-

(i) Pocket land (ii) land illegally occupied before 15th September 1966 (iii) land opened up through planned or group alienation by the State government. However, lands within 1½ miles from the sea, stretching at the North of Pahang river to the state boundry of Pahang and Trengganu, is closed for application except for a particular area planned by the DLA concerned.

*Source:* Pahang State Land Policy Documen, 1981.

## APPENDIX 3.19

### CONDITIONS OF ALIENATING STATE LAND IN TOWNS: NEGRI SEMBILAN

(i) Alienating of land for housing at the town fringes is as far as possible to be based on the concept of 'Desa Permai', i.e. where the population is centered so as to become a 'viable identity'.

(ii) As for alienating lands for government housing projects, the proportion of share capital is as follows:

(a) Bumiputra, including corporations holding at least 60% shares. Applications for government housing projects will not be considered if the interest of a bumiputra Company, especially the local bumiputra does not achieve the required proportion of shares required by the government.

(b) In planning for housing in those areas, the following conditions must be fulfilled:

(i) At least 70% of the total houses in the area must consist of low cost houses, according to the government definition.

(ii) A state representative must be allowed to sit on the Board of Directors of the Company concerned and he is directly responsible to the Menteri Besar.

(iii) The housing area must be provided with social amenities.

(iv) It must have a good sewerage system.

(v) The project must begin within 6 months from the date of approval of the alienation. If this condition is not followed, the land will revert to the State Government.

(vi) Land so alienated cannot be charged, transferred or sold without the written permission of the EXCO.

(vii) The housing lots owned by bumiputra must contain a strict provision that the land title will always be in the hands of bumiputra and where possible the land shall be gazetted as Malay Reserved Land.

(viii) If the equity proportion of Bumiputra is satisfactory (at least 60%) PKNNS may be exempted from joint venture. [...continue]

**Appendix 3.19 [cont.]**

(ix) If the project which is being implemented by the Bumiputra is using the services of "sub-contractors" or the skills of non-Bumiputra in the field of develpoment, a study scheme must be created so that such skills can be transferred to the Bumiputra. This scheme must include financial supervision and management. It is the responsibility of the government representative to sit on the board of the Company to report to the Menteri Besar on any issue which touches policy matters.

The State Government's policy on the resettlement of illegal squatters on state land is by way of building low cost houses or flats. Such projects will be carried out on a joint-venture basis between the Bumiputra Company and the State Corporations.

As to commercial complexes in town areas, planned by the government is to be carried out for the establishment of such complexes for Bumiputra. For this purpose, suitable land to be alienated should be on leasehold and "special conditions" on land titles are to be enforced, such that the land cannot be transferred, charged or leased without the written permission of the EXCO.

*Source: Negri Sembilan State Land Alienation Policy Document, 1981.*

*APPENDIX 3.20.*

*NEGERI SEMBILAN MINI ESTATE POLICY*

*Priority may be given to the following applicants:-*

*(i) State Development Corporations (not more than 3,000 acres)*

*(ii) State Foundation (not more than 3,000 acres).*

*(iii) Corporation or private limited company which represents the interests of the local district, such as the Negeri Sembilan State Economic Development Corporation.*

*(iv) The distribution of suitable state land is by District, therefore, each district will be represented by one or a few more companies which have locally based shareholders. Joint ventures with any estates will be allowed provided the locally based companies or bodies or corporations own not less than 55% shares in any joint venture. The land alienated will be a state lease or Mukim lease with a special rate of premium. Lands alienated for mini-estates will have special conditions, i.e. they must be developed within 3 years from the date of alienation or else the state is empowered to forfeit the land. The DLA is to report the progress of such development to the State Government. The State Government is empowered to appoint a representative to sit as a member of the Board of Directors for any mini estate.*

*Source:* Negri Sembilan Land Policy Document, 1981.

APPENDIX 3.21

LAND TRANSFERS TO NON-CITIZEN OR FOREIGN COMPANIES BY STATE AS AT 31.12.1982

| State | No.of Titles | Area Involved (acre) | (hectare) |
|---|---|---|---|
| Perlis | - | - | |
| Kedah | - | - | |
| Penang | 1395 | 5,429.8 | 2198.29 |
| Perak | 46 | 6,506.18 | |
| Selangor | 354 | 39,903.99 | 16,155.46 |
| N.Sembilan | 76 | 564.87 | 228.69 |
| Melaka | 130 | 157.4 | 63.75 |
| Johor | 2803 | 11,262.0 | 4,559.79 |
| Pahang | 20 | 622.23 | 251.91 |
| Trengganu | 5 | 20.55 | 8.32 |
| Kelantan | - | - | - |
| Wilayah Persekutuan | 122 | 19.71 | 7.98 |
| | 4951 | 64,487.45 | 23,474.22 |

*Source:* Ministry of Land and Regional Development, (Administrative and Legal Division),1982,(unpublished report).

note:
1. Selangor has the largest area (39,903.99 acres or 16,155.465 hectares) of land owned by non-citizen.
2. The largest area of land in terms of category of land use owned by non-citizen is agriculture (30,024.263 acres),especially in Selangor (15,631 acres).
3. In Penang,357 titles owned by Foreign societies,or clubs such as churches.
4. As for category, Building ( residential),1,443 titles are owned by non-citizen especially in Johor,(1,409 titles).

## APPENDIX 3.22

### PART THIRTY-THREE (A) NATIONAL LAND CODE RESTRICTIONS IN RESPECT OF NON-CITIZENS

433B. (1) Notwithstanding anything contained in this Act or in any other written law-

(a) a non-citizen or a foreign company may acquire land or an interest in alienated land may be effected in favour of a non-citizen or a foreign company;

(b) a dealing under Division 1V with repect to alienated land or an interest in alienated land may be effected in favour of a non-citizen or a foreign company;

(c) alienated land ,or any share or interest in such land, may be transferred or transmitted to, vested in, or created in favour of any person or body as "trustee", or of two or more persons or bodies as "trustees", where the trustee or one of the trustees, or where the beneficiary or one of the beneficiaries, is a non-citizen or a foreign company;

(d) the Registrar may in rspect of any land register any person or body as "represenetative" or make a memorial in favour of any person or body as "reprsentative" if such person or body is a non-citizen or a foreign company;

(e) the Registrar may endorse any memorial of transmission on the register document of title to any land in favour of a non-citizen or a foreign company, but only after the prior approval of the State Authority has been obtained upon an application in writing to the State Authority by such non-citizen or foreign company:

provided that no such approval shall be required in respet of any land or any interest in any land which is subject to the category "industry":

And provided further that no such approval shall be granted in respect of any land or any interest in any land which is subject to the category "agriculture" or to any condition requiring its use for any agricultural purpose.

(2) Where the State Authority grants any approval under sub-section (1) it may be made subject to such terms and conditions as may be specified by the State Authority.

433C. After the commencement of this Part, any disposal of land by the State Authority, or any dealing or other act with regard to alienated land or any interest therein, in contravention of section 433B shall be null and void.

433D. (1) Nothing contained in this Part shall render invalid anything done under this Act or any previous land law before the commencement of this Part.

(2) Nothing contained in this part shall render invalid any instrument effecting any dealing in any alienatd land or any interest therein in favour of a non-citizen or in favour of a foreign company executed before the commencement of this Part and stamped in accordance with the provisions of the Stamp ordinance, 1949 either before or within one month after the commencement of this Part.

*Source:* National Land Code, Part Thirty Three.

## APPENDIX 4.1

### CIRCUMSTANCES WHERE CATEGORIES ARE ENDORSED

With respect to "New Alienation", these circumstances are:

(i) as provided by Section 52(2) of the NLC, i.e by declaration of a specific area within which a prescribed category will be applicable. (So far, this method has not been applied by the State Authority.)

(ii) as provided by Section 52(3) by an ad hoc decision by the State Authority wherever land, not affected by a category prescribed as in (i) is approved for alienation. This is a common and usual form of decision by the State Authority undertaken on approval of a piece of land for alienation, with respect to lands already alienated.

(iii) as provided by Section 54(i) of the NLC by declaration of a specific area within which such land will on a prescribed date become subject to whatever category may be appropriate. From our knowledge no State Authority has applied this provision as yet.

However, two further circumstances are specified in which the endorsement of a category may be effected. These are:

(iv) as provided by Section 124(1)(9) i.e. by endorsement at the request of the proprietor of land already alienated and;

(v) as provided by Section 147(3) i.e. on approval of an amalgamation at the request of any such proprietor.

*Source:* National Land Code 1965.

## APPENDIX 4.2

### LAND SUBJECT TO CATEGORY AGRICULTURE : [S. 115(4) NLC.

Land subject to category agriculture can be used for the following purposes:

(a) the purpose of a dwelling house for the proprietor of the land or any other person lawfully in occupation thereof or for the servants of or any person employed for agricultural purposes.

(b) the purposes of agriculture.

(c) the purpose of extracting or processing raw material from agricultural produce.

(d) the purpose of preparing for distribution any such material or produce, or any livestock or fish or the produce of any livestock.

(e) the purposes of providing educational, medical, sanitary, or other welfare facilities including (so far as they are provided primarily for use by persons employed on the land) facilities for the purchase of goods and other commodities.

(f) any purpose which the State Authority prescribe by rules under Section 14 of the National Land Code.

(g) any purpose which the State Authority may think fit to authorise in the circumstances of any particular case.

(h) any purpose incidental to a purpose falling within any of the preceding paragraphs. [...continue]

(ii) restrict the parts of the lot which may be used for purposes other than cultivation, i.e. the whole area of the land must be brought fully under cultivation within three years of the date of alienation or the relevant date except those areas, occupied or in conjunction with a building referred to in Section 115 (4) as mentioned above or used for purposes under Section 115 (4)(e) stated above. Furthermore, such area of land must be continuously cultivated and the cultivation of the land shall be made within twelve months of the date of alienation or any relevant date .

(iii) provides most stringent cultivation conditions for the remainder of the land left after deduction of any parts included in (ii).

*Source:* National Land Code 1965.

**RESTRICTIONS AS TO LAND SUBJECT TO IMPLIED CONDITION "AGRICULTURE",**
**[S.115 (1) NLC.]**

Land subject to the implied condition "agriculture" will have the following restrictions:

(i) prohibit the erection of any building except as specified, vide Section 115(1)(a) and Section 115(4) of the NLC. The said purpose as provided under section 115 of the NLC is shown in Appendix 4.4

(ii) restrict the parts of the lot which may be used for purposes other than cultivation, i.e. the whole area of the land must be brought fully under cultivation within three years of the date of alienation or the relevant date except those areas, occupied or in conjunction with a building referred to in Section 115 (4) as mentioned above or used for purposes under Section 115 (4)(e). Furthermore, such area of land must be continuously cultivated and the cultivation of the land shall be made within twelve months of the date of alienation or any relevant date.

(iii) provides most stringent cultivation conditions for the remainder of the land left after deduction of any parts included in (ii).

Thus, if it is compared to the previous land laws, these cultivation conditions are far more drastic than those in the previous laws.

It must be noted however, that the cultivation conditions referred to in (iii) above, apply solely to lands which are 'cultivated' i.e. with crops. The provisions of Section 115(1)(a) and (d) can have no application to land used for such agricultural purposes as stock-raising or fish-ponds. It would be clearly have been impossible to provide implied conditions under this Section to cover all conceivable circumstances.

It is seen here that section 115(4) as mentioned above gives a detailed specification of permissible buildings and this is necessary in order to cover every type of development from small peasant holdings to large estates which are under a statutory obligation to provide various services to their labourers. Whereas Section 115(4)(f) (appendix 4.4) is particularly intended to enable State Authorities to prescribe appropriate types of "cottage industry" as being permissible on agriculture land. These must vary widely and cannot be foreseen. As for Section 115(4)(g), the State Authority needs to authorise such use and it needs to be embodied in an express condition.

## APPENDIX 4.3

### LAND SUBJECT TO CATEGORY "INDUSTRY" : [ S. 117 NLC].

*Land subject to category 'industry' will have the following conditions:*

(i) the land shall be used only for the purposes of the erection or maintenance of factories, workshops, foundries, warehouses, docks, jetties, railways, or other buildings or installations for use or in connection with one or more of the following purposes:

i) manufacture, ii) smelting iii) the production or distribution of goods, or other commodities; iv) the storage transport, or distribution of goods or other commodities.

The Code also stipulated that every building or installation on the land shall be maintained in repair.

The Code also prohibits the owner of the building or land owner from demolishing altering or extending the building or land owner from demolishing altering or extending the building without the prior consent of the State Authority . Thus, in a case of a state lease for example, the land and all the buildings and whatever installations are upon the land at the time of expiry of the lease, the whole structure must remain intact and it will be reverted to the State Authority.

## APPENDIX 4.4

### PROBLEMS OF LAND VALUE IN THE LAND ACQUISITION PROCESS

The value of land is determined by the interaction of demand and supply, whether overtly in a relatively free market or covertly as a latent value in a controlled society. In the Malaysian context, however, the demand for and therefore the value of a given piece of land depends on far more than its intrinsic qualities. It depends essentially upon location and accessibility. In Adam Smiths terminology, it is the "value in exchange' rather than the 'value in use' that is important in an assessment of land values with exchangeable value being derived from scarcity and the application of labour. In Malaysia, it is reasonable to infer that the principal factor directing both the level and more particularly, the distribution of land values is the administrative and legislative frame work, that besets the land market, because the value of land today depends largely on public policy besides the influence of individual owner's action. Thus, it can be concluded that land values are determined by all aspects of the planning process, economic, social and political, acting in unison. This is more so in society, such as Malaysia, which is subject to rigorous planning control and public direction. Within prevailing statutory and administrative controls, it has therefore been maintained that the prime determinant of market value is the existing use of land.

In such a situation,if a piece of land is used for agriculture,the value of the land for purposes of acquisition will be based on the current market value of agricultural land. Its potential value,if the land is converted to a more lucrative use such as housing or industry or commercial is not to be taken into consideration. [continue...]

This is the situation in the case of valuation of agricultural land by the government valuers for purposes of land acquisition. It has been alleged by many affected land owners and politicians that the government valuers always quote lower values in determining land compensation and higher land values when estimating the value of land for payment of estate duty (death duty) or real property gains tax purposes. The truth of this accusation has always been denied by the Valuation Department.

However, under Section 14(2) of the Land Acquisition Act 1960, the DLA has the ultimate power to decide the amount of compensation to be paid to the affected land owner. The Collector at least in theory, will not be solely influenced by the government estimated value of the acquired land. The land owner too, can engage a private valuer to value his land for the purposes of a bargain for better value.

*Source:* Report of Premium Sub-Committee, Valuation Department, Malaysia, 1977.

## APPENDIX 4.5

### *LAND USE POLICY FOR NEGRI SEMBILAN*

In the case of state land in town areas, the use of such land on alienation must be complied with the policy as set out by the government. Some of the other policies are:

(i) Such lands are to be used for housing schemes. Such project should commence within a period of six months from the date of alienation. If this condition is not complied with, such land will revert to the state.

(ii) The said land cannot be charged, sold, or transferred without the written permission of the EXCO.

(iii) Housing plot owned by bumiputra must be endorsed with restriction such that the title will remain with Bumiputra and where possible, the land is to be gazetted as Malay Reserved land.

As for the change of land use from agriculture to building or other uses, the area of which is more that 5 acres, the application is to be made to the Land Action Committee or Housing Committee. If the area is less than 5 acres, the application can be sent to the EXCO. In considering the approval of such projects, social and economic consideration is taken into account, especially if the application will help the government in solving the housing problems of a low cost type .

Under one of its policy decisions, the state government of Negeri Sembilan has formed an enforcement unit. This unit is responsible for the enforcement of land use conditions, arrears of quit rent, and other aspects of enforcement of the provisions of the NLC and state land policy decisions .

*Source:* Negri Sembilan State Land Policy Document, 1981.

## APPENDIX 4.6

### THE EXTENT OF ALIENATED MALAY RESERVE LAND ACQUIRED FOR PUBLIC PURPOSE BY STATE AS AT 1985

| State | Acreage |
|---|---|
| Johore | 613 |
| Kedah | 8,956 |
| Kelantan | 10,115 |
| Negri Sembilan | 846 |
| Pahang | 58,210 |
| Perak | 12,100 |
| Perlis | 2,840 |
| Selangor | 8,720 |
| Trengganu | 18 |
| Wilayah Persekutuan | 29 |
| TOTAL | 102,447 |

*Source:* Ministry of Land and Regional Development, Federal Lnds Commissioner Office, 1983, (unpublished).

## APPENDIX 4.7

### THE PAHANG LAND USE POLICY

The Pahang government conversion policy from agriculture to building stipulates that :

(i) on conversion, at least 30% of the building plots (shop houses, residential and other buildings) which are built by private developers must be sold to bumiputra through the Pahang State Development Corporation.

(ii) for a lot of more than 2 acres, at least 30% of the residential quarters built, must be of a low cost type ($20,000 below). However, Malay reserve land is exempted from this condition.

(iii) land below 2 acres will be imposed an additional condition that only residential houses are to be built except that if there is any contrary planning approval.

(iv) for lands with an area of more than 20 acres, part of the land must be reserved for a playing field, a community centre, areas for small traders, a mosque, and this must be in accordance with the requirements set by the local authority from time to time.

(v) all buildings reserved for bumiputra may be sold to non-Bumiputra after one year from the date of reservation and after the Pahang State Development Corporation confirmed that there are no bumiputra buyers.

*Source:* Pahang State Government Land Policy Document, 1981.

## APPENDIX 4.8

## MEMBERS OF THE STATE PLANNING COMMITTEE

The members of the Committee consists of the Chief Minister of the State as Chairman, a Deputy Chairman appointed by the State Government, the State Secretary, the State Director of Town and Country Planning (the Secretary of the Committee), the State Director of Lands and Mines, the Director of State Economic Planning Unit, the State Director of Public Works, the State Legal Advisor and four others appointed by the State. This Committee is also responsible for the approval of structural plans prepared by local authorities in the state.

*Source:* Town And Country Planning Act, 1976.

## APPENDIX 5.1

F.M.S: THE INCREASE IN RUBBER ACREAGES
IN THE FOUR FMS STATES, 1905 -1909
(in acres)

| States | 1905 | 1906 | 1907 | 1908 | 1909 |
|---|---|---|---|---|---|
| Perak | 11,934 | 29,612 | 46,167 | 56,706 | 68,278 |
| Selangor | 25,758 | 44,821 | 61,552 | 82,246 | 93,953 |
| Negeri Sembilan | 5,718 | 10,663 | 17,656 | 27,305 | 31,945 |
| Pahang | 15 | 483 | 860 | 1,791 | 2,877 |
| Total | 43,425 | 85,579 | 126,235 | 168,048 | 196,953 |

*Source:* Annual Report, Director of Agriculture, 1906-9, as quoted in Lim Teck Ghee, *Peasants and Their Agricultural Economy In Colonial Malaya, 1874-1941, p.95, fn.9.*

## *APPENDIX 5.2*

*RICE AND RUBBER ACREAGES, 1920s: PENINSULAR MALAYSIA*

| *States* | *1919-1920 rice (acres)* | | *1921 rubber (smallholding) (acres)* |
|---|---|---|---|
| *Perak* | *124,426* | | *241,654* |
| *Selangor* | *11,441* | | *111,244* |
| *Negri Sembilan* | *29,639* | | *66,878* |
| *Pahang* | *32,869* | | *36,608* |
| *Kedah* | *193,668* | | *n.a* |
| *Perlis* | *20,400* | | *n.a* |
| *Penang* | *135* | | *n.a* |
| *Povince Wellesley* | *26,238* | | *n.a* |
| *Kelantan* | *142,000* | | *n.a* |
| *Trengganu* | *10,830* | | *n.a* |
| *Malacca* | *27,265* | | *n.a* |
| *Johore* | *9,000* | | *n.a* |
| *Total* | *627,931* | *Total FMS* | *456,384* |

*Source:* Computed from R.D.Hill, *Rice in Malaya, p.174, table 19* and *Lim Teck Ghee, Peasants and Their Agricultural Economy In Colonial Malaya, 1874-1941, p.173, (note 31).*

## APPENDIX 5.3

*RUBBER ACREAGE IN THE FEDERATED MALAY STATES, 1921*
*SMALLHOLDERS AND PLANTATION SECTOR*
*(in acres)*

| State | Plantations | | Smallholdings | |
|---|---|---|---|---|
| | Total Area Alienated | Total Area Planted | Total Area Alienated | Total Planted |
| Perak | 343,506 | 231,893 | 241,654 | 215,293 |
| Selangor | 404,569 | 282,576 | 111,244 | 96,827 |
| Negri Sembilan | 295,418 | 210,743 | 66,878 | 52,986 |
| Pahang | 52,833 | 36,022 | 36,608 | 40,688 |
| TOTAL | 1,096,326 | 761,234 | 456,384 | 405,794 |

**Source:** Lim Teck Ghee, *Peasants And Their Agricultural Economy In Colonial Malaya 1874-1941*, p.175.

APPENDIX 5.4

INCIDENCE OF POVERTY[1] BY RURAL-URBAN STRATA
1970, 1976, AND 1984: PENINSULAR MALAYSIA

| Stratum | 1970[2] | | | 1976[3] | | | 1984[4] | | |
|---|---|---|---|---|---|---|---|---|---|
| | Total households ('000) | Total poor households ('000) | Incidence of poverty (%) | Total households ('000) | Total poor households ('000) | Incidence of poverty (%) | Total households ('000) | Total poor households ('000) | Incidence of poverty (%) |
| Rural[5] | 1203.4 | 705.9 | 58.7 | 1400.8 | 669.6 | 47.8 | 1629.4 | 402.0 | 24.7 |
| Rubber-smallholders | 350.0 | 226.4 | 64.7 | 126.7 | 73.8 | 58.2 | 155.2 | 67.3 | 43.4 |
| Padi farmers | 140.0 | 123.4 | 88.1 | 187.9 | 150.9 | 80.3 | 116.6 | 67.3 | 57.7 |
| Estate workers[6] | 148.4 | 59.4 | 40.0 | - | - | - | 81.3 | 16.0 | 19.7 |
| Fishermen | 38.4 | 28.1 | 73.2 | 28.0 | 17.6 | 62.7 | 34.3 | 9.5 | 27.7 |
| Coconut smallholders | 32.0 | 16.9 | 52.8 | 19.3 | 12.4 | 64.0 | 14.2 | 6.6 | 46.9 |
| Other agriculture | 144.1 | 128.2 | 89.0 | 528.4 | 275.4 | 52.1 | 464.2 | 158.8 | 34.2 |
| Other[7] industries[8] | 350.5 | 123.5 | 35.2 | 510.5 | 139.5 | 27.3 | 763.6 | 76.5 | 10.0 |
| Urban | 402.6 | 85.9 | 21.3 | 530.6 | 94.9 | 17.9 | 991.7 | 81.3 | 8.2 |
| Agriculture | - | - | - | 24.8 | 10.0 | 40.2 | 37.5 | 8.9 | 23.8 |
| Mining | 5.4 | 1.8 | 33.3 | 4.5 | 0.5 | 10.1 | 7.8 | 0.3 | 3.4 |
| Manufacturing | 84.0 | 19.7 | 23.5 | 55.3 | 9.5 | 17.1 | 132.3 | 11.3 | 8.5 |
| Construction | 19.5 | 5.9 | 30.2 | 34.7 | 6.1 | 17.7 | 86.6 | 5.3 | 6.1 |
| Transport & utilities | 42.4 | 13.1 | 30.9 | 53.2 | 9.1 | 17.1 | 73.9 | 2.7 | 3.6 |
| Trade & services | 251.3 | 45.4 | 18.1 | 242.0 | 33.7 | 13.9 | 472.7 | 21.9 | 4.6 |
| Activities not adequately defined | - | - | - | 116.1 | 26.0 | 22.4 | 180.9 | 30.9 | 17.1 |
| Total | 1606.0 | 791.8 | 49.3 | 1931.4 | 764.4 | 39.6 | 2621.1 | 483.3 | 18.4 |

*Sources:* Fifth Malaysia Plan, 1986-1990, table 3-1, p.86.

Notes: 1. The incidence of poverty for 1970 was based on the per capita poverty line income, while those for 1976 and 1984 on the respective gross poverty line incomes.
2. Post Enumeration Survey (PES) is a simple survey covering 25,000 households in Peninsular Malaysia.
3. The Agricultural Census,1977 (for reference year 1976) covered 188,000 households in Malaysia.
4. The Household income survey,1984 is a sample survey covering 60,250 households in Malaysia.
5.Households have been redefined on the basis of the industry and occupation of the head of household
6.Statistics on estate workers for 1970 were from indirect sources and therefore not comparable with 1984.The PES did not make any distinction between estate workers and labourer on smallholdings.The Agricultural Census, 1977, did not cover estates and therefore, estimates on estate workers are not available for 1976.
7. Includes other agricultural farmers such as oil palm smallholders, pepper smallholders, pineapple and tobacco farmers, and livestock and poultry farmers
8. Includes households engage in mining, manufacturing, construction, transport and utilities, and trade and services sectors.

## APPENDIX 5.5

### MAIN CROPS CULTIVATION BY AREA: PENINSULAR MALAYSIA,1976

| State | Census Estimates Of Cultivated Area 1976 ('000 acres) | | | | | |
|---|---|---|---|---|---|---|
| crops | Total | Rubber | Oil Palm | Coconut | Padi | Other |
| Johor | 1,537 | 823 | 501 | 95 | 5 | 113 |
| Kedah | 683 | 399 | 16 | 9 | 232 | 27 |
| Kelantan | 477 | 237 | 54 | 25 | 119 | 42 |
| Melaka | 245 | 196 | 15 | 7 | 13 | 14 |
| Negri Sembilan | 586 | 459 | 73 | 7 | 18 | 29 |
| Pahang | 913 | 415 | 418 | 15 | 23 | 42 |
| Penang | 106 | 51 | 8 | 11 | 26 | 10 |
| Perak | 828 | 410 | 180 | 69 | 101 | 68 |
| Perlis | 93 | 13 | - | 2 | 56 | 22 |
| Selangor | 580 | 256 | 210 | 52 | 31 | 31 |
| Trengganu | 346 | 128 | 102 | 21 | 60 | 35 |
| Total | 6,394 | 3,387 | 1,577 | 313 | 684 | 433 |

*Source*: 1977 Census of Agriculture,Malaysia,Main Report, p.373.

## APPENDIX 5.6

NUMBER OF SMALLHOLLDERS BY ETHNICITY AND STATES, PENINSULAR MALAYSIA, 1977

| State | BUMIPUTRA No. | % | CHINESE No. | % | INDIAN No. | % | OTHERS No. | % | TOTAL Number |
|---|---|---|---|---|---|---|---|---|---|
| Johor | 60,139 | 61.5 | 36,755 | 37.6 | 785 | 0.8 | 72 | 0.1 | 97,750 |
| Kedah | 56,197 | 86.9 | 5,918 | 9.2 | 343 | 0.5 | 2178 | 3.4 | 64,696 |
| Kelantan | 67,786 | 96.7 | 1,908 | 2.7 | 100 | 0.2 | 306 | 0.4 | 70,108 |
| Melaka | 20,148 | 66.4 | 9,179 | 30.9 | 899 | 2.9 | 115 | 0.4 | 30,355 |
| Negeri Sembilan | 27,179 | 67.4 | 12,326 | 30.6 | 766 | 1.9 | 29 | 0.1 | 40,300 |
| Pahang | 36,897 | 75.2 | 11,540 | 23.5 | 448 | 0.9 | 179 | 0.4 | 49,850 |
| Perak | 50,952 | 68.8 | 20,896 | 28.2 | 1425 | 1.9 | 785 | 1.1 | 74,058 |
| Perlis | 1,502 | 64.2 | 502 | 21.5 | 36 | 1.3 | 300 | 12.8 | 2,340 |
| Penang | 2,821 | 42.9 | 3,647 | 55.5 | 95 | 1.4 | 12 | 0.2 | 6,575 |
| Selangor | 20,416 | 64.0 | 10,485 | 32.7 | 877 | 2.0 | 145 | 0.5 | 31,923 |
| Trengganu | 21,713 | 92.9 | 1,612 | 6.9 | 38 | 0.1 | 21 | 0.1 | 23,376 |
| TOTAL | 365,750 | 74.6 | 114,768 | 23.4 | 5806 | 1.2 | 4136 | 0.8 | 490,460 |

*Source*: Census of Rubber Smallholders In Peninsular Malaysia, 1977:Socio-Economic Profile, Poverty and Paricipation In RISDA Programmes, RISDA-USM, 1983, p.25.

## APPENDIX 5.7

DISTRIBUTION OF HOLDINGS BY NUMBER, AREA AND SIZE GROUP, PENINSULAR MALAYSIA, 1976

| Holdings Size Group) (Acres) | Holdings Number | Holdings % | Total Area Operated Acre ('000) | Total Area Operated % |
|---|---|---|---|---|
| Total Malaysia | 886,416 | 100.0 | 6,564 | 100.0 |
| Less than 1.0 | 79,092 | 8.9 | 39 | 0.6 |
| 1.0 < 2.5 | 216,106 | 24.4 | 343 | 5.2 |
| 2.5 < 5.0 | 213,539 | 24.1 | 739 | 11.3 |
| 5.0 < 7.5 | 138,184 | 15.6 | 816 | 12.4 |
| 7.5 < 10.0 | 75,956 | 8.5 | 638 | 9.7 |
| 10.0 < 12.5 | 57,931 | 6.5 | 621 | 9.5 |
| 12.5 < 15.0 | 20,817 | 2.4 | 281 | 4.2 |
| 15.0 < 20.0 | 32,644 | 3.7 | 539 | 8.2 |
| 20.0 < 25.0 | 15,082 | 1.7 | 325 | 5.0 |
| > 25.0 | 37,065 | 4.2 | 2,223 | 33.9 |

*Source*: 1977 Census of Agriculture, Malaysia, p.487.

APPENDIX 5.8

SOME MEASURES TO ALLEVIATE POVERTY AMONG THE SMALLHOLDERS

*The Types of Assistance to the farmers*

(1) The core of any assistance programme must include:

(a) replanting of individual small holdings with high yielding stock and provision of extension after tapping begins to help small holders make the most of their improved stock.

(b) enlargement of holdings that cannot provide above poverty incomes.

(c) replanting small holdings with higher income crops to the extent feasible; and

(d) financial programmes designed to maximize the farm gate price of small holder rubber.

(e) replanting under RISDA Scheme:

Being a government agency, RISDA is charged with the replanting programmes of old rubber trees with young ones - with high yielding stock. RISDA's help comes in the form of financial grants to small holders, currently at the rate of $1,200 per acre for replanting with rubber only on the first 10 acres (replanting of additional acreage or with crops other than rubber, would be at the rate of $900 per acre).

As a means of alleviating poverty, replanting can increase income but will not bring them out of poverty and thus income supplemental measures will still be needed.

One main reason for small holders' reluctance to replant their old rubber land is the serious cash flow problem during the period of immaturity which will be a disincentive for poor farmers to replant. At the present level of the replanting grant of $1,200 per acre, an assuming effective intercropping it is estimated that replanting will reduce a small holders income by $600 per acre replanted during the period of immaturity.

Furthermore, low yields during the first year of production would further reduce income by about $200 per acre. Thus, the total income loss during the first eight years would be about $800 per acre.

It is therefore recommended that the grant be increased to about $1,800 per acre for holders with holdings of 3 acres or less and furthermore, since inflation rate has gone up every year, the level of the replanting grant be revised annually, taking into account changes in costs and rubber prices, with the objective of setting the grant at a level that at least maintain a current income.

The present block replanting by RISDA should be continued as this is one of the ways of bringing back the idle land into economic use. Furthermore, the block replanting system will reduce the unit cost of replanting, through economies of scale. It will also act as a means of consolidating small rubber lands into bigger amalgamated lots.

Under the block replanting, small holders pool their holdings and receive shares on a proportional basis, a block manager is appointed by RISDA to over see the operation and the labour force is taken from the participating smallholders who receive a wage for the work done on the land. Block replanting is today being used for about 40% of RISDA's replanting programme.

***Source:** RISDA-USM, Preliminary Survey of Smallhlders, Peninsular Malaysia, 1977, November, 1982.*

## *APPENDIX 5.9*

### *TAXES ON AGRICULTURAL OUTPUT*

*1. Rubber*

Export duties for rubber is assessed according to a formula.The price is based on the RSS 3 and SMR 20. Based on the gazetted value listed below,a duty will be calculatted in cents/kg. to the nearest 1/8 of a cent according to the rates shown:

| *price* | *Rate* |
|---|---|
| On the first 180 cents per kg. | ad valorem nil |
| Plus on the next 11 cents per kg. | ad valorem 20% |
| plus on the next 11 cents per kg. | ad valorem 25% |
| plus on the next 11 cents per kg. | ad valorem 30% |
| Plus on the next 11 cents per kg. | ad valorem 35% |
| Plus on the next 11 cents per kg. | ad valorem 40% |
| Plus on the next 11 cents per kg. | ad valorem 45% |
| Plus on the balance | ad valorem 50% |

A cess is also charged for each kilo of rubber exports. There are two kinds of cess and taxes levied as follows:

| | | |
|---|---|---|
| replanting cess | : | 9.92 cents/kg. |
| Research cess | : | 3.85 cents/kg. |

The total cess levied per kg. of rubber exported is 13.77 cents. The value is calculated to the nearest 1/8 of a cent or every kilogram.
Specific taxes are also levied for rubber planting materials exportd. The taxes are as follows:

| | *Export duty* | *surtax* |
|---|---|---|
| Budded rubber stumps | 30 cents each | 5% |
| Seedly rubber stumps | 15 cents each | 5% |
| Rubber hard wood | $2.19/metre | 5% |
| Others | nil | 5% |
| Rubber seeds | $22.05/kg. | 5% |

***Paddy***

Paddy or rice is not taxed in anyway. Broken rice for animal feed,however,carries a 5% surtax.

***Oil Palm***

Palm oil export is taxed according to a formula.Based on the gazetted price listed,a duty is calculated in ringgit/tonne to the narest cent.

| *Gazetted FOB Prices* | *Rates of Duty* |
|---|---|
| On the 1st $500 per tonne | ad valorem nil |
| Plus on the next $49.21 per tonne | ad valorem 30% |
| Plus on the next $49.21 per tonne | ad valorem 35% |
| Plus on the next $49.21 per tonne | ad valorem 40% |
| Plus on the next $49.21 per tonne | ad valorem 45% |
| Plus on the balance | ad valorem 50% |

***Source: Mohd.Ariff Hussein, et.al., Taxes In Agricultural Sector and Its Burden on Smallholders,USM, 1984.***

## APPENDIX 5.10

IMPORT DUTIES ON FERTILISER

| *Commodity* | *Imported Duty* (per m.t.) | Surtax |
|---|---|---|
| 1. Other Nitrogeneous Fertiliser | $44.29 | 5% |
| 2. Ammonium Phosphate containing not less than 6 mg/kg of Arsenic | $44.29 | 5% |
| 3. Other Fertilizers | $44.29 | 5% |
| 4. Fertiliser in tablet, lozenges, similar prepared forms | $ 9.85 | 5% |
| 5. Other Fertilisers, Gross Weight not less than 10kg. | $44.29 | 5% |
| 6. Herbicides/Antisprouting Products | | 5% |
| (containing monosodium acid methane, arsenate, other salts and derivatives of methylarsonic acid | | 15% or $2.20 whichever is higher |
| (a) Others | | 15% |
| (b) Others containing diuron, monuron and linuron | | 15% or $3.30 |
| (c) Others | | 15 % |

*Source: Mohd. Ariff Hussein, et.al., Taxes In Agricultural Sector and Its Burden on Smallholders*, USM, 1984.

## APPENDIX 5.11

THE OBJECTIVES OF THE LAND DEVELOPMENT ORDINANCE, 1956.

The Objectives of the Land Development Ordinance, 1956 are as follows:

(i) Developing unused (forest) land for agriculture and settlement.

(ii) Relocate suitable persons who are landless or almost landless with the objective of raising their standard of living through modern agriculture.

(iii) Organise and implement systematic development of land by the provision of training, credit facilities and supervisory and management services.

(iv) Construct and operate modern processing facilities in order that settlers obtain better returns.

(v) Guide the development of settler communities such that attitudes and sense of values are consistent with the development needs

*Source:* Land Development Ordinance, 1958.

**APPENDIX 5.12**

ZAKAT (RELIGIOUS TITHE) FOR THE STATE OF JOHOR
1977-1982

| YEAR | TOTAL COLLECTED | TOTAL CLAIMED | BALANCE UNCLAIMED | % UNCLAIMED |
|---|---|---|---|---|
| 1978 | 1,850,001 | 1,780,753 | 69,248 | 96.3 |
| 1979 | 2,070,693 | 1,559,522 | 511,171 | 75.3 |
| 1980 | 2,225,536 | 1,840,194 | 385,342 | 82.7 |
| 1981 | 2,669,399 | 2,160,300 | 509,099 | 80.9 |
| 1982 | 3,026,000 | 2,921,936 | 104,064 | 96.6 |

*Source:* Ab.Rashid Hj.Dail & Hailani Muji Tahir, *Sumber Keewangan dan Pengurusan Baitul Mal*, paper presented for National Seminar on Faraid, Universiti Kebangsaan Malaysia, 1983.

## APPENDIX 5.12a

### THE OBJECTIVES OF FELDA's NEW POLICIES

The objectives of FELDA's New Policies are:

(i) maintaining the present standard of social services, and meet increasing demands.

(ii) absorbing part of the growing population and providing indirect employment for others and;

(iii) providing the market for the secondary industries which will afford employment to some of the increasing population.

*Source:* FELDA, 21 Years, FELDA, Kuala Lumpur, 1985.

## APPENDIX 5.13b

### FELDA POLICY GUIDELINES

Felda Policy guidelines are as follows:

(i) Exploit those undeveloped primary or secondary forest of the country that are certified suitable for development by the Department of Agriculture.

(ii) Have competent full time management at scheme level to supervise the projects from the start.

(iii) Establish central villages within the development areas consisting normally of 400 families in each new settlement.

(iv) The situation of the plot to be in such a manner that the individual settler need not work more than two miles to his farthest holding and the size of the holding to be 10 1/4 acres (1/4 acre house lot, 7 acres rubber and 3 acres other crops) where rubber is the main crop and 12 1/4 acres (1/4 acre house lot, 10 acres oil palm and 2 acres other crops) where oil palm is the main crop.

(v) Select the best settlers who are Federal citizens, between 21 and 50 years of age, married with children, physically fit, landless or with less than 2 acres, with an agricultural background, willing to work hard and abide by the conditions of entry, rules and regulations prevailing in the land development scheme.

(vi) Provide financial aid to settlers in the form of subsistence allowance for a period of 2 years.

(vii) Encourage collective work wherever necessary and practicable.

(viii) Ensure efficient processing and marketing through central co-operatively owned factories.

(ix) Arrange for the provision from the start, with the basic community services (schools, water supply, roads etc.).

(x) Create nuclei of local councils in the form of meeting of the farmers representatives.

***Source: Federal Land Development Authority, 1985.***

## APPENDIX 6.1

### THE REGULATORY APPROACHES TO A LAND BANK

1. The regulatory approaches that can be employed to a land bank include:

i. Zoning, under regulatory power, where the land is designated for housing with attached standards which only low-cost housing projects can meet.

ii. Zoning, where lands are classified for low cost housing and low intensity uses, e.g. agriculture, which become uneconomical as urbanization occurs.

iii. Zoning and building codes where development is permitted for designated uses only when specified amount of low-cost housing is provided.

iv. Zoning, with the transfer of development rights, whereby the owners of designated lands are enabled to transfer specified development rights to other lands (by sale or exchange) on the condition that the remaining development rights allow low-cost housing only.

2. Public purpose reservation is another use of regulatory power. As is zoning, compensation is not paid unless the courts determine that the regulations constitute a 'taking' i.e, confiscation. The most common approach to public purpose reservation is 'official mapping'. The government identifies the land it wishes to reserve for roads, rights of ways, parks, and other public purposes, prepares a map designating these lands; adopts this map; and has it properly recorded as a legal document restricting the rights to develop the designated lands.

3. The existing inventory of government-owned land is, in many countries an abundant source of sites for low-cost housing. What is needed is to identify those sites which are best for housing; to have them so designated by the government; and to have the ownership of these sites transferred to land bank for low cost housing.

4. Direct purchase of the land, involving either all or partial rights, is the most common and most expensive method of acquiring land for housing the poor. As land costs continue to increase, the capabilities of government and the poor to generate affordable housing continue to decline. A growing share of the urban population cannot afford even minimal standard housing.

*Source:* Shlomo Angel *et.al., Land for Housing the Poor,* The Craftsman Press Ltd., Bangkok, 1983.

## APPENDIX 6.2

### POWERS AND FUNCTIONS OF LAND BANK AGENCY

The following are some of the powers and functions of the proposed Land Bank Agency for Peninsular Malaysia:

(a) A land bank agency should be created to purchase, hold, manage, trade and sell land for the purpose of providing low-cost housing in urban area.

(b) The land bank agency should be staffed by permanent, full-time professionals with training ad experience in land law, valuation,

planning, urban economics, architecture and engineering.
(c) A five year land acquisition programme should be prepared annually as a rolling plan; i.e each year refinements would be made and the programme extended by one year to include new housing projects.
(d) The financial plan for the rolling five-year land acquisition programme should also be prepared and adopted annually. Government financial commitment should be secured each year for the additional projects.
(e) The land bank agency should have the power to borrow money and retain surpluses from land sales to finance future acquisitions, and reduce its dependence on government grants.
(f) Specific site standards, selection criteria and selection procedures should be established and followed carefully by the land bank agency, thus reducing needed approvals by policy-level officials.
(g) The land bank agency should be empowered to search for and select suitable sites and negotiate for their purchase on a confidential, non-disclosure basis as long as the laws, regulations and guidelines are strictly adhered to and adequate records are maintained for monitoring, auditing and evaluation purposes.
(h) Compulsory purchase powers should be clear and strong, including provisions which enable the land bank agency to gain control of the site quickly with the compensation to be determined later by the courts.
(i) Government should adopt a policy stating that low-cost housing is a high-priority use for publicly-owned land. Means should be created to implement this policy by transferring suitable government-owned sites to the land bank.
(j) Land should be acquired for purposes associate with planned low-cost housing projects, including more expensive housing, commerce and industry. These lands should be sold at market prices upon development, thereby providing significant internally generated revenue.
(l) The land bank agency should be able to engage in joint ventures with private developers to encourage the private sector to provide low-cost housing directly and to provide sites for NHA housing within large development projects.
(m) Long-term land leases, sale and and other innovative land transaction techniques should be encouraged to minimize land costs.
(n) Land held in the bank should be in productive use until it needed for housing projects, including continuation of uses at the time of purchase and other authorized interim uses. Housing is a desirable interim use only when the occupants are to be housed in the project when it is implemented.
(o) Consideration should be given to the creation of unique revenue sources for the land bank to reduce or even eliminated its dependence on appropriations from general government revenues. Possibilities include a development tax, a betterment tax, a sales tax. Income tax incentive which would encourage land donations and private provision of low-cost housing should also be considered.
(p) Means should be sought for obtaining land without the direct expenditure of money. The transfer of development rights technique should be considered in this regard; other possibilities should also be identified and explored.

*Source:* Shlomo Angel *et.al.*, *Land for Housing the Poor*, The Craftsman Press Ltd., Bangkok, 1983.

FIGURE 6·1 : ORGANIZATIONAL CHART FOR LAND ADMINISTRATION IN PENINSULAR MALAYSIA