

## **THE ‘RED-INK GRANTS’:<sup>1</sup> THE MALAYS AND THE LAND**

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### **ABSTRACT**

*British policy was to preserve and protect the Malay race on the assumption that they, despite being the majority, are historically a disadvantaged race. In addition, they were in need of economic protection against the more aggressive immigrants. Therefore, with the declaration of independence in 1957, a new written constitution was formulated for the Federation of Malaya with the inclusion of Malay special privileges. These privileges include the reservation of land, operation of quotas for licenses and permits, scholarships, etc.*

*This article seek to examine the foundation of Malay reservation land policies in Peninsular Malaysia in the last 50 years and the present policy of the government. It also discusses the challenges faced by the Malaysian government in escalating*

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<sup>1</sup> In Malay, this term is commonly called “geran merah” due to the reason that the words ‘Malay reserve’ is stamped with red ink on the issue document of title as well as the register document of title.

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*the development of the Malay Reservation institution and to explain the strategies and policies adopted to meet these challenges.*

## INTRODUCTION

Historical interpretation of the past reveals that among all the colonial powers, it was the British who were primarily interested in land and permanent settlements. In order to avoid any difficulties in dealing with the native people, the British to some extent had declared the settlement as *terra nullius* even though there were inhabitants on the land. This was to deny the natives legal ownership of their own land and to ignore the strong spiritual and proprietary relationship that these people had with the land.<sup>3</sup> Furthermore this declaration was ‘extremely convenient in terms of justifiably allowing the sovereignty of British over valuable land without having to provide compensation or compromise with the natives.’<sup>4</sup>

Land reservation is a method to transform the natives into permanent agriculture peasants.<sup>5</sup> The best example would be the way British confined the Malays into permanent agricultural settlements by creating Malay reservation lands or Malay agriculture settlements. The same occurred in Punjab, where the British enacted The Punjab Alienation of Land Act 1900<sup>6</sup> to control and supervise the Punjab Muslims as agricultural tribes. This was done on the basis of protecting and preserving the indigenous people, by secluding them into agriculture reservations, from the immigrants who were invited by them to explore the country. The farmers in return, were told to cultivate food for the immigrants. Likewise in Malaysia, the Malay peasants were told to cultivate rice to meet the demand of the population. These peasants were not given any

<sup>3</sup> Behrendt, Larissa, (1995) *Aboriginal Dispute Resolution: A Step Towards Self-Determination And Community Autonomy*, The Federation Press, Sydney, p. 2.

<sup>4</sup> *Ibid.*, p. 3.

<sup>5</sup> Examples can be seen in United States of America where the Government wanted the Red Indians to be farmers. In Malaysia, the Malays were advised to stay permanently as agriculturists.

<sup>6</sup> Act XIII of 1900, came into force on June 8, 1901.

proper tools or training by the colonial powers. In addition, they were normally neglected in the development of the country.<sup>7</sup>

The concept of land reservation that was initiated by British in Malaya was solely to isolate, segregate and preserve the Malays, being natives of the country, from interfering with them in the administration of the country even though it has always been alleged that it was to assist in developing the Malays economically, socially and politically to be at least at par with the other more advanced immigrants. The British believed that they were superior in nature to the Malays and this seems to justify their act to rule the country according to their own wish.

Turning to the past, it can be observed that there were various kinds of land reservation instigated and declared by the British to protect and preserve the native Malays in Peninsular Malaysia, *inter alia*, Malay Reservation Land, Malay Holdings, Malacca Customary Lands, Malay Agricultural Settlement, The Sultanate Land, The Customary Tenure of Negeri Sembilan and the Customary Tenure of Lengkongan Lands of Negeri Sembilan. However, this article aims to discuss only the concept of Malay Reservation land that was introduced by the British in most of the States in Peninsular Malaysia.

The purpose of this article is to discuss the challenges faced by the Malaysian government in escalating the development of the Malay Reservation institution and to explain the strategies and policies adopted to meet these challenges. Before that, it shall embark on an examination of the historical development of Malay Reservation land as this may assist in identifying and clarifying the problems and dilemma faced by the present Malaysian government. One of the major issues that is still haunting the Government, being a very sensitive issue, is whether it is justified to continue to implement privileges solely for one race, the Malays, in a multiracial country like Malaysia.

## DEFINITION

The 'red-ink grants' or the well accepted term 'Malay Reservation' is a special category of land within the boundary of a state,

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<sup>7</sup> Nik Mohd. Zain b. Nik Yusof, 1989, "Land Tenure and Land Law Reforms in Peninsular Malaysia," unpublished Ph.D Thesis, University of Kent, Canterbury, UK, p. 134.

which can only be owned and dealt with by Malays, being the natives of the state. These lands can only be transferred or leased to Malays. This is to protect and ‘preserve the Malay race’ by prohibiting all kinds of dealing on Malay reservation land with the non-Malays. The general conception has been that these areas have generally fallen behind in sustainable development and are associated with complex developmental problems, relative poverty, poor living conditions and inadequate infrastructure.

### **SPECIAL RULES FOR THE MALAYS—TOWARDS THE INTRODUCTION OF THE MALAY RESERVATION INSITUATION**

Up to the end of the twentieth century, under the British tutelage with a *laissez-faire economic policy*, the Malay States had developed progressively. The vast economic potential of the Malay States and the states being virtually uninhabited gave the British no alternative but to cause an influx of Chinese and Indian immigrants into the country.<sup>8</sup> Malay States became an Asian version of “El Dorado” where immigrant coolies rose from ‘rags to riches.’<sup>9</sup> The effect was in the words of Lennox Mills, ‘when the British came, the Malay was a poor man in a poor country; when they left he was a poor man in a rich country.’<sup>10</sup>

The flood of immigrants from China and India was directly for the benefit of the British. Undeniably, it also created a workforce for the Malay States, which was badly needed for the development of the country.

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<sup>8</sup> The International Bank for Reconstruction and Development, (1955) *The Economic Development of Malaya*, The John Hopkins Press, London, p. 3; Mahathir Mohamad, (1981) *The Malay Dilemma*, Federal Publications, Kuala Lumpur; Wan Hashim, (1978) *A Malay Peasant Community in Upper Perak, Integration and Transformations*, Penerbit University Kebangsaan Malaysia, Bangi, p.12; Emily Sadka, (1970) *The Protected Malay States 1874-1895*, University of Malaya, Kuala Lumpur, p. 47.

<sup>9</sup> Collin E.R. Abraham, (1997) *Divide and Rule-The Roots of Race Relations in Malaysia*, Insan, Kuala Lumpur, p. 1.

<sup>10</sup> Baker, Jim, (1999) *Crossroads: A Popular History of Malaysia & Singapore*, Times Books International, Singapore, p. 195.

These immigrants brought energy and ambition to the exploitation of natural resources. Eventually, the British were swayed by the profits that they were earning from the Malay States until they forgot their solemn promise made to the Malay Sultans which was to protect the interest and welfare of the Malays. The effect of this was the Malays, according to Chai Hon-Chan, 'merely retreated from the tide of commercial activity and material prosperity, preferring the quiet of the kampongs,' whereas the British, Europeans, Chinese and Indians 'had the lion share of the country's wealth.'<sup>11</sup>

Inviting too many immigrants to the country, created various ethnic groups and when there were so many different ethnic cultures living in a country, the British had to find the best way to administer the country. Therefore, the British adopted the 'Divide and Rule policy' in order to rule the subjects peacefully and minimise interaction between the various cultures.

The bulk of Malays lived in the rural areas and they hardly had any or had only minimal contact with the other races. On the other hand, the urban Malays were conscious of the existence of the other races but had very little contact with them. The Chinese basically were in towns and tin mines. The Indians were in the rubber plantations. The effect of this rule was that the Malays remained backward and were told to stay as peasants or tillers of the soil.<sup>12</sup> The Chinese inherited all the trading in the Malay States, and became the richest residents of the Malay States. The Indians were rubber-tappers and were poor without any proper infrastructure.

British land policies in the Malay States were therefore basically designed for their own benefit rather than taking care of the welfare of the Malays. These land policies had an impact on the Malays role and position in land and economy. The liberal land policies of the British facilitated the opening up of thousands of hectares of land; and vast tracts of land were allocated to the immigrants for commercial agriculture, such as rubber or tea plantations and mining. At this juncture, the Malays, feeling 'dispossessed' or 'outclassed' in their own motherland, sold their

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<sup>11</sup> Chai Hon-Chan, (1967) *The Development of British Malaya 1869-1909*, (2<sup>nd</sup> Ed.), Oxford University Press, Singapore, p. 60.

<sup>12</sup> Unlike the ordinary Malays, the members of the ruling class were enjoying many privileges, such as a good education, pensions, treatment, medical, etc.

land in urban areas and moved to the villages. The effect being by 1921, only 6% of the Malay population lived in urban areas, compared to thousands of Chinese and Europeans occupying these areas.<sup>13</sup> Therefore, to protect and preserve the Malay race, as it seems justifiable for the British, suitable areas were designated for the ownership of Malays.

It had always been the policy of the British to protect the Malays as natives of the country and to guarantee their future.<sup>14</sup> Therefore, rather than allowing the Malays to sell their land to the immigrants, a suitable area was set aside for cultivation and ownership solely for the Malays. The British, with their liberal land policies, actually believed that it was their right 'to prevent them (the Malays) from prodigally and improvidently divesting themselves of their birth-right and inheritance.'<sup>15</sup> Therefore, in the draft of the Malay Reservation Bill, it was explicitly specified that 'the object of the draft is to prevent the passing of Malay landholdings into the possession of foreigners.' One of the frequent methods of Malay land passing to the non-Malays was by foreclosure by the Indian Chettiers. The Malays were known to be spend thrifts and in the habit of charging or creating a lien over their land to the Chettiers, whenever the need arose. This was explicitly stated by E.W. Birch, the Resident of Perak when he was proposing a policy of preserving the Malay land. To him the only way the Malay race could be preserved was to free them "from the clutches of those people who now remit to India the large sums of money, which they bleed from the people."<sup>16</sup> However, the British were merely worried about the preservation of *kampong* land for the Malays, and not any other land. Eventually, only *kampong* lands were designated as Malay reservation. Kampong lands were ancestral lands which according to the British were 'land which has been handed down from generation to generation of Malays and in which we look for the continuation of the Malay race.'<sup>17</sup> A more cynical

<sup>13</sup> Baker, Jim, (1999) *Crossroads: A Popular History of Malaysia & Singapore*, Times Books International, Singapore, p. 198.

<sup>14</sup> Badriyah Hj Salleh, 'From Adat to Land Enactment,' *Star*, March 20<sup>th</sup> 2000, Monday.

<sup>15</sup> *SSF 3013/1912*, 'An Enactment to Preserve to Malays the use of their Kampong Lands.'

<sup>16</sup> *Selangor Secretariat BA Office 1910, File No. 3170/10*, 'Copy of the a minute by the British Resident, Perak, September 7<sup>th</sup> 1910.'

<sup>17</sup> *Federal Council FMS, 1913*, p. B24.

version for only declaring kampong land as Malay reservation was that the British could confidently create 'a permanent and settled peasantry to produce rice.'<sup>18</sup> This was to ensure and enrich the Malay population:<sup>19</sup>

Thus a race of yeoman-peasantry aforetime happy and prosperous incapable from the very nature of their country and genus of supporting themselves in any other country find too late they have become homeless wanderers in their own land. The Rulers of the Federated Malay States and their Advisers conclusively feel that unless a better judgement is exercised on their behalf the result will be extinction of the Malay yeoman-peasant.<sup>20</sup>

The Malay Reservation Enactment was passed and came into force on January 1<sup>st</sup> 1914, with sixteen (16) sections in it. In the Preface, it is stated that the purpose of the Enactment was to provide for securing the Malays their interests in land. It also stipulates clearly that the Enactment would put the Malay temptation to sell their land 'beyond their reach.'<sup>21</sup> This was done by imposing a *silent feature* (the emphasis is ours) that rubber trees could not be planted on the reservation land.<sup>22</sup> This would be detrimental on the part of the Malays, who were eager to open vast areas of rubber plantation. By planting rubber trees they may obtain an even better price for their land. Despite its importance, rubber

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<sup>18</sup> *Ibid.*, 'The Absorption by Large Land Owners and Estates of Native (Malay) holding, July 28, 1910.'

<sup>19</sup> *DOF Kuantan 672/15 or SS. BA. Office File No. 3013/1912*, 'Objects and Reasons,' p. 2.

<sup>20</sup> *DOF Kuantan 672/15 or SS. BA. Office File No. 3013/1912*, 'Objects and Reasons,' p. 1.

<sup>21</sup> *HCO. 309/1914*, 'Report for the Secretary of State on Federated Malay States Enactment No. 15 of 1913 (The Malay Reservation Enactment, 1913).'

<sup>22</sup> The restriction was not mentioned in the Bill, but rather it was an order directed to the District Land Officers. See *SSF (1875-1955), File No. 1870/1915*, 'Enquiries if Rubber is permitted as a crop on land in a Malay Reservation, April 9<sup>th</sup> 1915'; *SSF (1855-1955), File No. 2742/1915*, 'Permission to plant rubber in Malay Reservation in Labu Mukim May 18, 1915.'

has never been considered as an official crop in the Malay reservation land. R.G. Watson, the Acting Chief Secretary of FMS, during the reading of the 1913 Bill said that the Malay Reservation Enactment ‘may be regarded as one of the rare cases in which the end justifies the means.’<sup>23</sup> He added that the Enactment would deter the Malays from selling their ancestral land to the non-Malays.

## THE MALAY RESERVATION ENACTMENT 1933

The British noticed that the Malays had the habit of charging or mortgaging their land to unlicensed moneylenders, who normally fixed a high rate of interest. In most cases, the peasants would not be able to repay the loan and thus would lose their land. Over time, the British noticed that by virtue of this act, the peasants would in no time lose their motherland to other races. Therefore, after 17 years of the introduction of the Malay Reservation Enactment 1913, the British realized that the policy of protecting and preserving the Malay race has failed.<sup>24</sup> They realized that the legislative sanction has not succeeded in stopping the Malays from selling or charging their land to the non-Malays. They further observed and felt that something more drastic was badly needed and the outcome was the passing of the Malay Reservation Enactment 1933. It can be considered as a gift from the British to the Malays so that the Malays would remain a ‘permanent agricultural population.’

The British were adamant that the present Bill would assure Malay proprietors that they would not be disturbed in their holdings unlike the previous Malay Reservation Enactment, which was merely aimed at preserving the Malays.<sup>25</sup> This assurance was by way of making ‘as unhealthy as possible’ of not allowing the Malay proprietor to deal or negotiate with his title. This may sound cruel or unnecessarily drastic. Nevertheless, by looking at the loopholes in the 1913 Malay Reservation Enactment as well as how the Malays and non-Malays together evaded the provisions, it was crystal clear that ‘something more drastic is necessary and badly needed.’ The British, through its legal advisor quoted

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<sup>23</sup> *FMS Annual Report 1913*, p. 22.

<sup>24</sup> *KLO 668/1930 or SS BA Office (1875-1955)*, ‘Malay Reservation.’

<sup>25</sup> Federal Council Proceeding, p. B132.

the words of a learned Judge in discussing a somewhat similar type of legislation, to justify his move in introducing the major amendments for the 1913 Malay Reservation Enactment. The legal advisor said that:

It is not enough to attain to a degree of precision, which a person reading in good faith can understand: but it is necessary to attain, if possible, to a degree of precision, which a person reading in bad faith cannot misunderstand.<sup>26</sup>

The British felt that they were the ones 'who have the welfare of the Malays really at heart' and were the best friends of the Malays.<sup>27</sup> However, the non-Malay members of the Council objected in principle.<sup>28</sup> They believed that the Malay Reservation Enactment would merely 'preserve to Malays their interest in land and do nothing more.'<sup>29</sup> It could also cause undesirable principles, such as encouraging dishonesty by 'snapping his fingers to the non-Malay creditors after he had taken the loan from them.'<sup>30</sup>

According to Emerson, the objective of the Malay reservation policy was designed to prevent the Chinese from owning new land.<sup>31</sup> If they were permitted to do so, they might form an even more serious threat to the British political and economic predominance in a not too distant future. It is worthwhile to note that the British used the Malay Reservation Enactment to hold land not for the interest of the Malays but to be disposed of to the British companies in the future. Consequently, the Chinese would be denied from owning these lands. By 1938, due to the British implementation of Malay Reservation policy, British owned more than 43% of alienated land in the Malay States. The actual beneficiaries of the Malay reservation policy owned only 27%, which were basically paddy land, and the Chinese and Indians only 23% between

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<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, p. B135.

<sup>28</sup> Opposition was expressed by non-Malay unofficial members, Mr. Shearn and Mr. Lai Tet Loke, against the Bill in principle but it was hopeless.

<sup>29</sup> *Ibid.*, p. B132.

<sup>30</sup> *Ibid.*, p. B133.

<sup>31</sup> Emerson, Rupert, (1970) *Malaysia: A Study in Direct and Indirect Rule*, University of Malaya Press, Kuala Lumpur, pp. 477-480.

them.<sup>32</sup> It was for the political stability of the British and not for the welfare of the Malay peasants that this Malay Reservation policy was implemented. As said by Collin E.R. Abraham, in order for British to stay permanently and safely in British Malaya, they had to get rid of the Chinese influence and threat.<sup>33</sup> Hence, the Malay reservation policy was introduced and implemented; a stepping-stone for the British to protect themselves against the Chinese.

## THE MERDEKA DAY–THE FEDERAL CONSTITUTION 1957

The above discussion has pointed out that the concept of Malay reservation was a British innovation. The British claimed that the Malay reservation of land was designed for the benefit of the Malays as natives of the country in order to have permanent Malay peasants and for the preservation of land for the future Malay generation.<sup>34</sup>

While drafting the Federal Constitution, the Drafters had included provisions for the reservation of Malay land as a matter of national interest development.<sup>35</sup> For the need of uniformity of the land system, the Drafters granted the powers to supervise the implementation and protection to

<sup>32</sup> Collin E.R. Abraham, (1997) *The Roots of Race Relations in Malaysia*, Insan, Kuala Lumpur, p. 217.

<sup>33</sup> *Ibid.*, at 211.

<sup>34</sup> *SS BA Office File No. 2164/1930*, “Report of the Malay Reservation Committee, December 21, 1930,” para 12; See also *SSF (1875-1955) File No.1634/31*, ‘Report of the Committee Appointed to Consider the Question of the Relief of Small-Holders’; See also *SSF 2447/31*, ‘Note on Second Draft FMS Land Code,’ p. 5, where it was stated that nine-tenths of the Peninsula Malays to be a community of peasant proprietors, therefore the ideal future of this community was to encourage everything that tends to make them better cultivators and to discourage them from disposing their land and the best method was to put restriction on transfer of land.

<sup>35</sup> Federation of Malaya, (1957) *Report of the Land Administration Commission, Appointed to Enquire into and Make Recommendations for the Improvement of Land Administration in the Federation of Malaya*, Government Printers, Kuala Lumpur, p. 43.

the Federal Government.<sup>36</sup> It seems that this historical fact has become an essence in the central theme of Articles 89 and 90 of the Federal Constitution.<sup>37</sup> Furthermore, as has been argued by Shaik Nor Alam, this institution of Malay reservation has become a permanent feature of Malaysia's geo-politics.<sup>38</sup> It has indeed become established and very difficult to be changed or challenged.

The Drafters had unintentionally granted special and permanent privileges reserved to a racially defined group of the population, the Malays.<sup>39</sup> The justification for enshrining these salient features in the Federal Constitution was that the Malays, despite being the majority, are historically the disadvantaged race.

Article 89 of the Federal Constitution provides that any alterations or revocations to the status or size of the Malay reservation land needs the approval of the Legislative Assembly and each House of Parliament, i.e., the House of Senate and House of Representatives. Thus, this has made the revocation of reservation land much harder to achieve than the amendment of any other provision of the Federal Constitution. Even though land is a State legislative subject,<sup>40</sup> and though the States have a voice in the operation and implementation of the Malay reservation policy, yet the control effectively lies with the federal government.

Article 89(1) is only applicable to those lands, which had been declared as Malay Reservation prior to Merdeka Day. There were approximately 1,757 883 hectares of Malay Reservation land prior to Merdeka Day.<sup>41</sup> So, the effect of the provision is that it is the Federal Government and not the State Authority, that has been granted wide and unlimited jurisdiction to control and oversee the implementation of the Malay Reservation Enactment. On the other hand, those lands that are

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<sup>36</sup> *Federation of Malaya Constitutional Commission, 1956-1957 Report.*

<sup>37</sup> Shaik Md. Noor Alam B S.M. Hussein, 'Malay Reservations: Meeting The Challenges of the Millennium,' PETA Seminar on Repositioning of Agriculture in the Next Millennium, July 13, 1999, p. 1.

<sup>38</sup> *Ibid.*, p. 2.

<sup>39</sup> Harding, Andrew, (1996) *Law, Government and the Constitution in Malaysia*, Malayan Law Journal Sdn. Bhd. Kuala Lumpur, p. 229.

<sup>40</sup> Section 40 of the National Land Code 1965. See also Ninth Schedule of the Federal Constitution 1957.

<sup>41</sup> Refer to p. 8, Table1: STATISTICS OF MALAY RESERVATION LAND IN PENINSULA MALAYSIA FROM 1913 TO 1957.

declared as Malay Reservation after Merdeka Day are solely within the jurisdiction of the State Authority.

**TABLE 1**  
**TITLE: STATISTICS OF MALAY RESERVATION LAND IN**  
**PENINSULAR MALAYSIA**  
**FROM 1913 TO 1957 (Hectares)**

No	Year/ State	Area Size of the State (Hectares)	1921 <sup>42</sup>	1931	1947 <sup>43</sup>	1955	%
1.	Perlis	79 481.4			37,165	5,028	6
2.	Kedah	942 379.92			808,162	127,804	13.5
3.	Negeri Sembilan	664 144.9	187,079	208,421	237,259	39,472	5.94
4.	Johor	1 898 156.8			49,985	80,585	4.24
5.	Pahang	3.595 560.6	54,005	275,479	299,393	218,326	6
6.	Trengganu	1 295 197.6				1,257	0.098
7.	Kelantan	1 491 651.7			127,785	717,879	48.12
8.	Perak	2 100 009.7	567,619	703,647	737,126	523,031	24
9.	Selangor	795 314.3	36,503	86,927	125,845	44,501	5.59

Source: Archives Malaysia, SSF G 1195/30

Conversion: 640 acres = 2.59 square kilometres

1 hectare = 2.471 acres

By virtue of Article 89(2), the State Authority may declare any state land that is undeveloped or uncultivated as Malay reservation. But, it must be noted that the State Authority must replace an equal area of land, which has not been developed or cultivated for general alienation.

<sup>42</sup> *Proceedings of the Federal Legislative Council Feb. 1948-Feb. 1949*, pp. B124-125.

<sup>43</sup> *Ibid.*

Article 89(3) further envisages that if any Malay reservation land is revoked, then the State Authority has to replace it with any other state land. There are three conditions that need to be adhered to, for the replacement:

- a. It has to be similar in character;
- b. An area not exceeding the area revoked; and
- c. It should be done immediately.

Article 89(4) limits the power of the State Authority, as the State Authority cannot declare any land which is occupied or owned by non-Malays as Malay reservation. Therefore, if the non-Malay has any right or interest on the land, as the registered owner or licensee on Temporary Occupation License, or a leasee or a chargee, then the State Authority is barred from declaring the said land as Malay reservation. This is to protect the legitimate interests of non-Malays under Articles 8<sup>44</sup> and 153 (7) of the Federal Constitution.<sup>45</sup>

Article 89(5) gives ultimate right to the State Authority to acquire land for the settlement of Malays as well as for other races. Article 89(7) proceeds by saying that all Malay reservation land shall only be declared as Malay reservation under the preview of Articles 89 and 90. Article 89(8) states that the law on Malay reservation that is found in Article 89(1) is subject to some modifications for land in the Federal Territory of Kuala Lumpur.

## **THE FEDERAL CONSTITUTION AND DEFINITION OF MALAY**

Article 160 lays down four characteristics to be complied with before a person could be declared as Malay. These are, the person must

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<sup>44</sup> Article 8(1) provides that all persons are equal before the law and entitled to the equal protection of the law.

<sup>45</sup> This clause provides that "Nothing in this Article shall operate to deprive or authorize the deprivation of any person of any right, privilege, permit or license accrued to or enjoyed or held by him or to authorize a refusal to renew to any person any such permit or license or a refusal to grant to the heirs, successor or assigns of a person any permit or license when the removal or grant might reasonably be expected in the ordinary course of events."

be a Muslim, speaks the Malay language, comply with the Malay customs and domiciled in Malaysia or Singapore.<sup>46</sup>

The Article promotes a *de facto race*<sup>47</sup> that is, where race could be extended by legislation. It has been further suggested that Malays in Malaysia should be regarded as a nationality and not a race.<sup>48</sup>

Whereas, in section 2 of the Federated Malay States Malay Reservation Enactment, there are three characteristics to be complied with before a person can be declared as Malay. These are, the person must belong to a Malayan race, he must habitually speak the Malay language or any Malayan language and he must be a Muslim.

It may be observed that there is a conflict between the Federated Malay States Malay Reservation Enactment definition of Malay with Article 160 of the Constitution. Article 160 in does not define Malay as belonging to any Malayan race. However, Article 89(6) of the Federal Constitution resolves this apparent conflict in favour of the Malay Reservation Enactment by redefining the word Malay in accordance with the State's definition.

In summary, Article 89 (6) of the Constitution unambiguously left the ultimate right to define the term Malay to the respective States. It also left a wide lacuna by not relating Article 89(6) to Article 160. This might lead to a restrictive definition of Malay according to the State's needs unlike the more embracing definition of Malay under Article 160.

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<sup>46</sup> Mohd Ridzuan Bin Awang, (1987) *Tanah Simpanan Melayu Analisa Sosioekonomi dan Perundangan*, Rich'me Enterprise, Kuala Lumpur, p. 11; Yahaya Bin Udin, *Malay Reservations-Are There Adequate Safeguards* (Unpublished Dissertation for Master of Comparative Laws, International Islamic University Malaysia, 1991), p. 49.

<sup>47</sup> Emphasis is ours. This term used by the researchers is to indicate the legal term.

<sup>48</sup> See *Constitutional Proposals For Malaya: Report of the Constitutional Committee together with Proceedings of Six Public Meetings, a Summary of Representations Made and Letters and Memorandum Considered by the Committee*, February 20, 1947, p. 39-41.

## **POST MERDEKA: THE CHALLENGES**

The effect of history has led to two different forms of Malay Reservation Enactments of which, one is a single uniform law known as the Federated Malay States Malay Reservations Enactment 1933, and the other is the five distinct state Enactments which are applicable to all states in Peninsular Malaysia except for Penang and Malacca.

The relevant State Malay Reservation Enactments are:

1. The Federated Malay Reservation Enactment 1933 (Cap 142) applicable to the States of Selangor, Perak, Negeri Sembilan, Pahang and the Federal Territory of Kuala Lumpur;<sup>49</sup>
2. The Perlis Malay Reservation Enactment 1353<sup>50</sup>
3. The Malay Reservation Enactment of Kedah 1931.<sup>51</sup>
4. The Johor Malay Reservation Enactment 1936 (No. 1, 1936)
5. The Malay Reservation Enactment of Trengganu 1941(No 17, 1360)
6. The Kelantan Malay Reservation Enactment 1930 (No. 18, 1930)<sup>52</sup>

The Malaysian government is always mindful that the main objective of the British in implementing the concept of Malay Reservation was to protect and perpetuate the Malay race as a permanent peasant class. Table 1, as referred earlier suggested that the British intentionally declared lands that were situated in the remote areas with no or limited accessibility and infrastructure as Malay reservation land. The Table also shows that areas which were popular and had potential to the British and the non Malays such as Penang, Malacca and Kuala Lumpur were either not declared, or only a small percentage of the areas, were declared to be Malay reservation land.

The British did not allow any mining lands to be declared as Malay reservation. To make matters worse, the British intentionally refused to allow the Malays to plant rubber trees on their Malay reservation land. This had inadvertently led to the decline of the value of

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<sup>49</sup> Takes effect on 15.12.1933.

<sup>50</sup> No. 7 of 1353, effective date is 17 Zulhijjah 1353.

<sup>51</sup> No. 6 of 1349.

<sup>52</sup> Effective date is 4.11.1930.

the Malay reservation land and was soon neglected and sold by the Malay owners. In facing these problems and challenges, the present government has taken several measures to ensure that Malay reservation land could be developed even though there are various constraints. Listed below are some of the challenges faced by the Malaysian government in improving Malay reservation land after Merdeka.

### **i. Constraints to Development**

It appears that the Malays perceived the Malay reservation institution as a design by the British to protect them and their land. They actually believed that it was their Malay Rulers who persuaded the British into implementing the laws.<sup>53</sup> Thus, this is the main obstacle for sustainable development. This thought has remained with the Malays until the 21<sup>st</sup> century. They are complacent with the laws and would not accept any changes in the law. Whereas, little did they know that the existing law brings them further into ignorance and poverty as it can be seen, until now, it fails not able to penetrate into sustainable development. Malay reservation land has been treated as a sanctuary rather than a platform to develop.

### **ii. Land not suitable for Agricultural Development/Soil Suitability**

The British owned most of the fertile lands, thus leaving the Malay reservation land on small-sized unfertile agricultural parcels.<sup>54</sup>

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<sup>53</sup> See Roff, William, (1967) *The Origins of Malay Nationalism*, Yale University Press, New Haven.

<sup>54</sup> Nik Hashim Mustapha, Redzuan Othman, Mohd Fauzi Mohd Jani, Zainal Abidin Hashim, Zulkifli Senteri, Jamal Othman and Tuan Haji Hassan Ali, 'Pembangunan Tanah Rizab Melayu Dari Perspektif Ekonomi' (Persidangan Pembangunan Tanah Rizab Melayu, November 9, 1996) pp. 1-2, 11; Saodah Sheikh Mahmood, *Malay Reservation and Malay Land Holdings: A Case Study of Economic Protection Discussed in the Context of Trengganu Reservation Enactment 17/1360*, (A Thesis submitted for the Faculty of Economics and

Most of the land that had been declared as Malay reservation by the British were considered third and fourth class.<sup>55</sup> Moreover, the Malay reservation land were located in hilly areas and it is normally thick jungle, which makes cultivation almost impossible.<sup>56</sup> This may be the reason why Malay reservation land has been abandoned by the landowners. There was an allegation that the British intentionally planned for this as the Malays were known not to be very serious in plantation.<sup>57</sup> In addition, the Malays were lacking in agricultural skills. The alienation of Kuala Lumpur's fertile land to Thomas Heslop, Ambrose Beatty Rathborne and Martin Lister, was the best example of the British policy in disposing fertile land only to British citizens.<sup>58</sup> This land, at present known as Kuala Lumpur's Golden Triangle, was later owned by Loke Wan Tho.<sup>59</sup> It is perceived that despite being aware that the Malays would be unable to own this prime land due to their low purchasing power, the British did not in anyway declare the area as Malay reservation land. Comparatively, the British, if they could have declared the whole of Kelantan and most of the *kampong* land as Malay reservation; they could have declared the city of Kuala Lumpur as Malay reservation too.

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Administration, University of Malaya, Kuala Lumpur, 1971) pp. 12-13; Mohd Azmi Bin Abdul Hamid, 'Disappearing Malay Reserve Lands,' (Land: Emerging Issues And Challenges, 12-15, 1997, Penang) p. 4.

<sup>55</sup> Nik Abdul Rashid, 'Kearah Meninggikan Nilai Tanah Rizab Melayu' (Seminar Ke arah Meninggikan Nilai Tanah Rizab Melayu, Kuala Lumpur, July 1, 1979) p. 5.

<sup>56</sup> Mohd Ridzuan Awang, *Konsep Undang-Undang Tanah Islam*, Al-Rahmaniah, Kuala Lumpur, p. 44. Yahaya Bin Udin, *Malay Reservations- Are There Adequate Safeguards*, (Master Dissertation submitted to Kulliyah of Laws, International Islamic University Malaysia, May 20, 1991) pp. 63-64.

<sup>57</sup> Syed Hussain Ali, 1981, *The Malays: Their Problems and Future*, Heinemann Asia, Kuala Lumpur, pp. 14-16.

<sup>58</sup> Ho Chin Soo, "Golden Hope vs Guthrie," *The Star*, Monday August 21, 2000, p. 21.

<sup>59</sup> *Ibid.*

### iii. Location of the Malay Reservation Land

Most of the Malay reservation land is situated in remote areas with limited accessibility and infrastructure.<sup>60</sup> This fact shows that the British declared only *kampong* land or wasteland as Malay reservation. In extreme cases it overlaps with forest reserves. Some of this land as said by Mohd Ridzuan Awang, are neglected and not worked on by the owners.<sup>61</sup> Any land that had development potential, urban areas and mining land were excluded from Malay reservation. In one instance, the British revoked the status of Malay reservation after discovering that there were tin deposits in the land.<sup>62</sup>

It is believed that the British prejudicially viewed the Malays as incapable and not keen in developing their land. Thus, the location of Malay reservation land was declared in rural areas without proper infrastructure. Whereas, in urban areas, except for Kota Bharu, very small areas have been declared as Malay reservation. In Kuala Lumpur alone, the Malay reservation is merely 3%; and in Ipoh and Johor Bharu, it is 3.4% and 4.8% respectively.<sup>63</sup>

### iv. Fragmentation of Malay Reservation Land

One of the main obstacles to the development of Malay Reservation land, especially in the urban area, is the issue of fragmentation and multiple ownerships which makes them less valuable and unsuitable for any meaningful development. Efforts to change the mind-set of the Malays towards development of Malay Reservation land, issue of market value as well as establishment of a specific consortium for development of Malay Reservation land have been proposed by many parties for quite

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<sup>60</sup> Mohd Azmi Bin Abdul Hamid, 'Disappearing Malay Reserve Lands,' (Land: Emerging Issues And Challenges, 12-15, 1997, Penang) pp. 5-6.

<sup>61</sup> Mohd Ridzuan Awang, *Konsep Undang-Undang Tanah Islam*, Al-Rahmaniah, Kuala Lumpur, p. 368.

<sup>62</sup> *Ibid*

<sup>63</sup> Nik Mohd Zain, "Pembangunan Tanah Rizab Melayu Dari Perspektif Sejarah, Perundangan Dan Pembangunan Masa Depan," (Persidangan Pembangunan Tanah Rizab Melayu, November 9, 1996) p. 32.

sometime. Unfortunately, there is a lack of positive outcome and perhaps the government as well as the Malay companies should work hand in hand with other agencies such as the Dewan Perniagaan Melayu Semenanjung, Malay Contractors' Association as well the Malay Development Agencies like UDA, to develop Malay Reservation land.

## **DEVELOPMENT OF MALAY RESERVATION LAND**

After Merdeka, the Malaysian Government faced unwanted challenges in dealing with Malay Reservation land. One of the major factors that hampered the development was the attitude of the Malay proprietors. Taking this into consideration, the Government has taken various initiatives to ensure that the Malays would be able to maintain and protect their Malay reservation land. Moreover, the Government has played a major role by providing various incentives including financial assistance to the Malay owners to develop their lands. Listed below are some of the achievements made by the Government to maintain and develop Malay reservation lands.

### **a. Increased in the area size of Malay Reservation Land**

At the time of independence, there were 1.7 million hectares of Malay Reservation land. The statistics for 2005<sup>64</sup> show that there are approximately 4 million hectares of Malay Reservation land in the country. This indicates that the Government, in the interest of the Malays in particular and the nation in general, has taken various initiatives to declare and develop more areas as Malay reservation land. However, in order to facilitate rapid sustainable development, the Government has had to acquire some of the Malay Reservation land and is now facing considerable difficulty in replacing land of the same value and characteristics as the previously revoked land.

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<sup>64</sup> See Table 2, Title: Statistic for 2005; Malay Reservation Land in Malaysia, p. 13.

**TABLE 2**  
**TITLE: STATISTICS OF 2005 MALAY RESERVATION**  
**LANDS IN MALAYSIA**

No	State	Area Size of the State (hectares)	Malay Reservation Land 2005	Percentage of Malay Reservation Land
1	Perlis	79 481.4	37,516.94984	47
2	Kedah	942 379.92	868,996.15948	89
3	Federal Territory Kuala Lumpur	664 144.9	803.43	3
4	Negeri Sembilan	1 898 156.8	244,014.05	32
5	Johor	3,595 560.6	273,096.684	17
6	Pahang	1 295 197.6	242,743.826	12
7	Trengganu	1 491 651.7	118.2141	0.0073
8	Kelantan	2 100 009.7	1,306,205.025	99
9	Perak	795 314.3	880,158.236	42
10	Selangor	79 481.4	160,024.904	22
	TOTAL		4,013,677.478	13.3

Source: Ministry of Natural Resources and Environment

## **b. The Premium Rate on Malay Reservation Land**

It is interesting to find out the type of incentives granted by the Government to encourage Malay proprietors to hold on to their land rather than selling the lands at a higher price to other races. By virtue of the Federal Territory Land Rules 1975 the premium paid on Malay reservation shall be half of those specified in Rule 8 (1) of the Land Rules.<sup>65</sup> In

<sup>65</sup> Federal Territory Land Rules 1975, Rule 8(3).

addition, the National Land Code (Revision of Rent) Notification 1983, states that rent paid on Malay reservation land is a quarter than that paid on open or free land.<sup>66</sup> For example, the rent for a dwelling lot house in town is 4 cents per square foot per annum, whereas in Malay reservation land it is only 1 cent per square foot per annum.

In Johore, under the Johore Land Rules 1966, the benefit is given only if the Malay reservation land is less than 10 acres and the proprietor or all the proprietors are Malays.<sup>67</sup> The premium paid shall be half the normal rates. For rent purposes, a similar condition is imposed. The Malay reservation area shall be less than 10 acres and the proprietor or all the proprietors are Malays.<sup>68</sup>

Whereas, in Kedah, under the Kedah Land Rules 1966, the benefit is given only to agriculture country Malay reservation land that is less than 10 acres.<sup>69</sup> If the agriculture country Malay reservation land is more than 10 acres then the normal rate of an agriculture land shall be payable. The said rate varies from \$75.00 to \$150.00 per acre for rubber, oil palm or coconut cultivation. In the case of annual rent, the lower rate is charged to a country Malay reservation agriculture land that is less than 10 acres of land.

It is an indisputable fact that more than 90% of Kelantan is under Malay reservation land. Therefore, the Kelantan Land Rules 1966 did not provide any special rates or rent applicable to Malay reservation land. Whereas in Negeri Sembilan, under the Negeri Sembilan Land Rules 1966, irrespective of any category of land, the premium<sup>70</sup> and rent<sup>71</sup> charged is half than the normal rate. Furthermore, in Perak and Selangor, irrespective of any category of land, the premium paid is half of the normal rate.<sup>72</sup>

In the Pahang Land Rules 1986, the rates of premium of all land within Malay reservation area shall be one half of the prescribed rates. The premium charged for Malay reservation land in Perlis is three-quarters of the normal rate.<sup>73</sup> Perlis also grants special rates to owners of Malay

<sup>66</sup> National Land Code (Revision Of Rent) Notification 1983, Schedule II.

<sup>67</sup> Johore Land Rules 1966, Rule 7(2).

<sup>68</sup> *Ibid.*, Rule 11(2).

<sup>69</sup> Kedah Land Rules 1966, Rule 11.

<sup>70</sup> Negeri Sembilan Land Rules 1966, Rule 8(2).

<sup>71</sup> *Ibid.*, Rule 12(5).

<sup>72</sup> Perak Land Rules 1966, Rule 8(1); Selangor Land Rules 1966, Rule 8(2).

<sup>73</sup> Perlis Land Rules 1987, Rule 9.

reservation land if they wish to change or impose a category of land use within Malay reservation area.<sup>74</sup> For Malays it shall be one quarter of the normal rate whereas for Siamese on Malay reservation land, it is one-half of the normal rates.<sup>75</sup>

### c. The Power of Disposal

Initially, in the 1933 Malay Reservation Enactment, section 7 states that no Malay reservation land shall be sold, leased or disposed of to non-Malays. However, in 1962, the Malaysian Government in order to allow companies and corporations to deal with Malay reservation land has amended the provision and now it provides that the Ruler-in-Council is given the discretion to alienate state land within a Malay reservation to any body, corporate or company, which is specified in the Third Schedule.

Furthermore, the Ruler-in-Council is given a vast discretionary power to declare any company or corporation as Malay and this decision is final and cannot be questioned by the Court.<sup>76</sup>

The Ruler-in-Council is further given the discretion to add to, delete or amend from time to time the list found in the Third Schedule.<sup>77</sup> The item on the list would only become official once it has been published in the gazette. On the other hand, for Federal Territory purposes, the discretion to add to, delete from and amend is granted to the Yang di Pertuan Agung.

The rationale of the amendment was to allow the development and to increase the economy of the Malays in Malay Reservation Land. Therefore, many companies and corporations which are not 100% Malays have been declared as Malay for the purposes of section 7 of the Federated Malay States Malay Reservation Enactment. For instance, Chung Kiaw Bank, Kwong Yik Bank, Lee Wah bank are a few examples where 100% equity in the companies are not held by Malays.<sup>78</sup>

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<sup>74</sup> *Ibid.*, Rule 13(1).

<sup>75</sup> *Ibid.*, Rule 13(2).

<sup>76</sup> Federated Malay States Malay Reservation Enactment ss. 7, 20.

<sup>77</sup> See *Zainal Abidin Bin Mohd. Taib v. Malaysia National Insurance Sdn. Bhd.* [1994] 3 CLJ 731, where the Court held that the decision of the Ruler-in-Council is final and conclusive.

<sup>78</sup> Federated Malay States Malay Reservation Enactment, Third Schedule.

Meanwhile, the Kedah Malay Reservation Enactment has allowed the State Authority to dispose Malay reservation land not only to the Malays but also to Siamese nationals who have been certified by the Director in writing to be a Siamese agriculturist permanently residing in the State.<sup>79</sup> In addition, section 8(2) of the Kedah Malay Reservation Enactment states that all holders of a Malay reservation land under the *Surat Akuan* prior to the declaration of the said land as Malay reservation are free to deal with the non-Malays. The Kedah Malay Reservation Enactment has further given a wide unquestionable discretion to the Ruler-in-Council to declare *any person of any race or nationality*<sup>80</sup> as Malay to hold any Malay reservation land.<sup>81</sup>

In Perlis, no Malay reservation state land shall be alienated, sold, leased or otherwise disposed to any person who is not a Malay or Siamese.<sup>82</sup> However, the exception is found in section 17A (i), where all those persons specified in Schedule D may hold or apply for Malay reservation land.

In the case of Johor, by virtue of section 8, the State Authority has no right to dispose Malay Reservation land by way of alienation to any person not being a Malay. However, it can dispose Malay reservation land to non-Malays through Temporary Occupation Licence, lease or tenancy.

In Kelantan, a flexible approach to the right to charge Malay reservation land to non-Malays was upheld by the High Court in *T. Bariam Singh v. Pegawai Pentadbir Pesaka Malaysia (Administrator of Estate of Datuk Foo Say Lee)*.<sup>83</sup> In this case, it was argued that since the Kelantan Malay Reservation Enactment does not contain any clear provision prohibiting the creation of charge to non-Malays, thus, the act should be regarded as valid and enforceable. It was further argued that the mere depositing of a title as a charge creates an interest on the land and does not constitute a transfer of land. Though, the land may be subjected to auction proceedings, the Land Administrator would still have the right to prevent any bidding made by any non-Malay or even refuse to register any sale through auction to a non-Malay. This opinion is

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<sup>79</sup> Kedah Malay Reservation Enactment s. 8(1).

<sup>80</sup> Emphasis added.

<sup>81</sup> Kedah Malay Reservation Enactment s. 19.

<sup>82</sup> Perlis Malay Reservation Enactment s. 7(i).

<sup>83</sup> [1983] 1 MLJ 232.

preferable, as it would create better opportunity for development of Malay Reservation land. Other cases from Kedah also favour this line of argument.<sup>84</sup>

In addition to a charge, a lease is totally prohibited to be created by a Malay to a non-Malay. However, there was a proposal to increase the period of lease to a maximum of 60 years in order to allow for a more workable project.<sup>85</sup> Nevertheless, the decision made in the 60<sup>th</sup> National Land Council Meeting on this has yet to be tabled in Parliament.

#### **d. The Establishment of a Malay Company**

The provisions on Malay Company are only found in the Federated Malay States Malay Reservation Enactment 1933<sup>86</sup> and Trengganu Malay Reservation Enactment.<sup>87</sup> The requirements of Malay Company are:-

- i. registered under the Companies Act 1965;
- ii. all the members are Malay;
- iii. the transfer of shares is restricted by the Articles of Association to Malays only; and
- iv. one the objects of the Company is to deal with Malay holding land.

Hj Lamin bin Hj. Mohd Yunus J. in *Wan Ismail & Seng Liang Sdn. Bhd. v. Musa bin Mat Jani & Anor*<sup>88</sup> was firm in his opinion that a company where, inter alia not all the members are Malay, is not a Malay company under section 2 of the Federated Malay States Malay Reservation Enactment. Therefore, any dealings conducted by the said company is contrary to section 7 the Malay Reservation Enactment and shall be declared as null and void by virtue of section 19 of the said Enactment.

<sup>84</sup> See, *Sime Securities Sdn Bhd v Tetuan Projek Kota Langkawi Sdn Bhd* [1999] 4 MLJ 585.

<sup>85</sup> <http://besonline.rtm.net.my/modules.php?op=modload&name=News&file=article&sid=20090&mode=mode=thread&order=0&thold=0>.

<sup>86</sup> Federated Malay States Malay Reservation Enactment section 2.

<sup>87</sup> Trengganu Malay Reservation Enactment s. 2.

<sup>88</sup> [1990] 2 CLJ 379.

### e. Exemption and Approval from the Ruler in Council

Most of the Enactments allow appeal to be made to the Ruler in Council for any doubt involving Malay reservation land. The power of the Ruler in Council includes the power to declare whether a person is a Malay<sup>89</sup> and power to declare a company to be a Malay company.<sup>90</sup> The decision of the Rulers is final and shall not be questioned or revised by any court.<sup>91</sup>

### f. National Development Policy

Being well aware that the Malay Reservation policy is one of the causes of Malays being economically backward and segregated from the mainstream of economic development of the country, the Malaysian government is making an effort to reduce the impact of segregation upon the Malays by increasing the income per capita of the Malays and value of the Malay reservation land. This is done through a two-pronged development strategy of eradicating poverty by raising income levels and increasing employment opportunities for Malays and subsequently the restructuring of society so as to reduce the economic imbalances and segregation that exist among the Malays with other races.

The policies to achieve this were set out initially in the New Economic Policy (NEP 1971-90) and subsequently the New Development Policy (NDP 1991-2000) and now the National Vision Policy (NVP). The NEP and subsequently the NDP provided the broad policy framework which contain the Outline Perspective Plan 1 (OPP1), the Outline Perspective Plan 2 (OPP2)(1991-2000), and now the Outline Perspective Plan 3 (OPP3)(2001-2010) which in turn have and will continue to promote the five yearly National Development Plans produced since 1961. In

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<sup>89</sup> *Hanisah v Tuan Mat* [1970] 1 MLJ 213.

<sup>90</sup> See for example, FMS, MRE, s 20, Johore MRE, s. 22.

<sup>91</sup> FMS MRE s 20, Kedah MRE, s 17, Perlis MRE, s 18, Johore MRE, s 22, Terengganu MRE, s 22. A similar decision was supported by the judges in a few cases such as Wan Hamzah J in *Asia Commercial Finance (M) Sdn Bhd v Pemungut Hasil Tanah & Anor* [1983] CLJ 86 and also Faiza Thamby J (as he then was) in *Zainal Abidin bin Mohd. Taib v Malaysia National Insurance Sdn Bhd.* [1994] 3 CLJ 731.

OPP3, one of the emphasis in ‘**Sustainable Growth with Resilience**’ in ‘Restructuring of the Society’ is to oversee the development of Malay reservation land.<sup>92</sup>

### **g. Towards creating World-Class Agriculturist**

The Malays own low class lands and they are financially weak to develop these lands. Furthermore, as they are lacking in motivation, methodology and education, the Government has played a key role by introducing and implementing various strategies to improve and further develop the Malay reservation land. For example, the Second Industrial Master Plan (IMP2) 1996-2005<sup>93</sup> charts the policies and strategies in order to transform the manufacturing sector into a resilient, broad-based and internationally competitive sector. The Government has also introduced two other strategies: Manufacturing Strategy and cluster-based industrial development. For the development of Malay reservation land, value added activities such as agro-based and food products; fish and fish products, livestock and livestock products, fruits and vegetable and floriculture have been included.

The other policy that was launched by the Government was the National Agricultural Policy (NAP) which outlines the country’s policy for agriculture commodities including the NAP3 (1998 -2010).<sup>94</sup> It outlines the strategic directions for agricultural and forestry development to the year 2010. This policy has been formulated to ensure that the capability of the agricultural sector’s strategic role in national development is sustained and enhanced in light of new and emerging challenges facing agricultural development.

Besides the Ministry of Agriculture and Agro-based Industry, Malaysia has set-up a Business Development Center to provide various services such as courses that can be attended to increase knowledge and skill, advisory& consultancy services to educate the Malay owners

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<sup>92</sup> Published by the Economic Planning Unit, Prime Ministers Department and also accessible at [http://www.epu.jpm.my/new%20folder/development%20plan/3rd%20outline\(b\).htm](http://www.epu.jpm.my/new%20folder/development%20plan/3rd%20outline(b).htm)

<sup>93</sup> Published by the Ministry of International Trade and Industry Malaysia, Kuala Lumpur, 1996.

<sup>94</sup> [http://fishdept.sabah.gov.my/download/nap\\_summary.pdf](http://fishdept.sabah.gov.my/download/nap_summary.pdf)

on the availability of funds from the government through various scheme provided by the relevant departments and agencies to assist the Malay investor in agri-food industry. Attractive tax exemptions are also available for Malay investors in agriculture and agro-based industries and could be applied through the relevant department.

## **h. Reducing the Gap in the Value of the Malay Reservation Land**

Lands that were declared by the British as Malay Reservation were lands in low lying swampy tracts that were not wanted by the British planters and estate owners. Therefore, the Malay reservation lands were of low market value without any infrastructure.

**TABLE 3**  
**TITLE: LAPORAN PASARAN HARTA**

<b>Year</b>	<b>Plantation</b>	<b>Size (hectare)</b>	<b>Malay Reserve land (RM/ha)</b>	<b>Non-Malay Reserve land (RM/ha)</b>	<b>% Percentage different between both lands</b>
1988	Paddy	1.5	22,500	32,600	69.0
	Small Estate	1.0	6,800	10,000	68.0
	Palm Oil	1.8	11,000	26,000	42.3
	Average	1.4	13,433	22,867	58.7
1990	Paddy	1.6	30,000	51,600	58.1
	Small Estate	1.0	7,300	12,300	59.3
	Palm Oil	2.0	12,300	31,800	38.7
	Average	1.5	16,533	31,900	51.8
1992	Paddy	1.6	38,600	60,600	63.7
	Small Estate	1.2	8,000	13,000	61.5
	Palm Oil	2.1	13,000	36,800	35.3
	Average	1.6	19,867	36,800	53.9
1995	Paddy	1.8	46,000	64,000	71.9
	Small Estate	1.3	10,000	16,800	59.5
	Palm Oil	2.2	15,600	52,600	29.7
	Rubber	2.5	26,800	68,600	39.1
	Average	2.0	24,600	50,500	48.7

Source: Table on the Value of Malay Reservation Land<sup>95</sup>

<sup>95</sup>

*Laporan Pasaran Harta*, 1989, 1990, 1992, and 1995.

After Merdeka, the Malaysian Government has continuously played a major role in ensuring that these lands could be developed and will be at par with other types of land. So far the government has succeeded in increasing the value of the land even though it is not at par with other types of land. Among the steps taken were through several amendments to the legislation including the 1936 amendment, amendment no 233 of 1959 as well as Amendment to section 17 of 1954 which allow the dealings of Malay Reservation land with several approved bodies such as RISDA, Malayan Building Society Berhad (MBSM) and a few others. However, it was reported that the urban Malay Reservation land is transacted at 30%-50% lower than similar projects where ownership is not restricted only to Malays.<sup>96</sup>

The attitude of treating the value on economic basis should not apply to Malay reservation land. This is a historical property, precious and a security for the Malays. It should be treated as reservation for public purposes and above all with limited availability of land in Malaysia, this Malay reservation land should command a higher value. The emphasis on the value of Malay Reservation land has been given statutory recognition by the Land Acquisition Act 1960, which provides that the fact that the land falls under the Malay Reservation land shall not be taken into account in determining the market value of the land.<sup>97</sup>

### **i. Providing Better Facilities/Infrastructure**

The British aimed to make the Malays permanent paddy growers and permanent food producers for the British and the immigrants. The result of this was almost all the Malay reservation land that was declared by British were located far away from the road and railway networks, mining areas, urban areas and development centres.<sup>98</sup> Thus, according to Hashim Bin Aman and Mohd Ridzuan Awang, the Malays were removed

<sup>96</sup> “Malay land can be new focus of Growth”, [www.nst.com.my/Weekly/PropertyTimes/](http://www.nst.com.my/Weekly/PropertyTimes/) News, 8 October 2005.

<sup>97</sup> Section 2A, First Schedule, Land Acquisition Act 1960.

<sup>98</sup> Sallehuddin Ishak, *The Development of Malay Reserve Land: A Case Study of Seremban, Malaysia* (A Thesis Presented for the Degree of Master of Philosophy in Land Economy at the University of Aberdeen, 1998) p. 5.

from an early growth effect of commercial, plantation, mining and other commercial activities.<sup>99</sup>

A better improvement occurs at present. By virtue of the present Government policy that is to provide basic facilities to Malay reservation areas, ipso facto the value of the land has also increased. For example, in the recent 2006 report on the Real Property Market it was said that by virtue of the improved accessibility in Kuala Langat, the value of the land has increased by 7.5%. By merely upgrading the drainage system in paddy lands in Sekinchan, the value of the land increased to a record of 5.8%.<sup>100</sup>

#### **j. Land Vested upon Acquisition as State Malay Reservation Land**

Section 66 of the Land Acquisition Act 1960 states that, 'upon the making of a memorial under section 23 in respect of any scheduled land, the land shall vest in the State Authority as State land...' Therefore, Malay reservation land, as it appears, will remain in the same nature even though the State Authority has acquired it under the Land Acquisition Act 1960. This contention was supported in the case of *Mohamed Isa & Ors. v. Abdul Karim & Ors*<sup>101</sup> where the defendants argued that upon the surrender of a Malay reservation land to the State Authority, it will lose its character as a Malay reservation land and as such it is no longer covered by the Malay Reservation Enactment. Raja Azlan Shah J., in rejecting the argument said that Malay reservation land also includes State land and therefore any changes in the procedure will not affect the character of the land. In the case of a Malay reservation land, it will only lose its character by way of an express revocation under the respective States' Malay Reservation Enactment.<sup>102</sup> As has been observed, the

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<sup>99</sup> Mohd Ridzuan Bin Awang, *Tanah Simpanan Melayu: Analisa, Sosio Ekonomi Dan Perundangan*, (Kuala Lumpur, Rich'me Enterprise, 1987) pp. 45-46.

<sup>100</sup> Refer to Report on Malaysia Property Market 2005, [www.jp-ph.gov.my/VI/pdf/press\\_release\\_bi.pdf](http://www.jp-ph.gov.my/VI/pdf/press_release_bi.pdf)

<sup>101</sup> [1970] 2 MLJ 165.

<sup>102</sup> *Ibid.*, pp. 168-169.

Malay reservation land will not change its status even though the State Authority has acquired it under the Land Acquisition Act 1960.

### **k. Protecting Non-Malays' Right over Malay Reservation land**

The fact that Malaysia is a multi-racial country has also been considered in determining the policy and law on the Malay Reservation institution. It is provided that any Malay Reservation land originally owned by non-Malays but subject to Malay Reservation area will remain as it is, unless and until the Non-Malay owner deals with a Malay in respect of the land.<sup>103</sup> Once the land is transferred to the Malays, then only will the land be subjected to the rules governing Malay Reservation land.

### **l. Income Disparity**

Under the 9<sup>th</sup> Malaysia Plan, the Government aims to reduce income disparity ratio between natives including Malays and the Chinese to 1:1.50 in 2010 from 1:1.64 in 2004.<sup>104</sup> Hence, any efforts towards improving the Malay Reservation land will certainly bridge the gap of income disparity and guarantee social unity among the members of the society.

## **MALAY RESERVATION INSTITUTION: THE WAY FORWARD**

The above discussion highlights the role that has been played by the Government in developing and protecting Malay Reservation land as a security for the Malays being the natives of the country. Efforts have been geared towards transforming the idle, futile and less precious Malay Reservation land through activities, projects, planning, policies as well as

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<sup>103</sup> *Tan Hong Chit v Lim Kin Wan* [1964] 1 MLJ 113.

<sup>104</sup> <http://webevents.bernama.com/events/rmk9/news.php?id=189342>.

legislation so that Malay Reservation land shall become a valuable property without the need to sacrifice the status.

The Government as well as the private agencies with Malay owners must now look at the quality of Malay Reservation land rather than the quantity or the size of the said land. There is a need perhaps to give more value to Malay Reservation land rather than the Malay Reservation land being valued based on various factors and circumstances. The attitude of treating the value on economic basis should not apply to Malay reservation land. This is a historical property, precious, and a security for the Malays. With limited availability of land in Malaysia, the Malay reservation land should be treated with care and should qualify to command a higher value.

The present Government is transparent in its policy in dealing with the Malay reservation institution, being fully aware that the Malay reservation land is a trust property. It is for the benefit of all the Malays, at present and in the future. The Government is treating the Malay Reservation land as a platform for development. Therefore, it is suggested that the Government, must set up a special body to protect and supervise the development of Malay reservation land. It could be a Computerised Land Bank or Malay Reservation Land Development Corporation. Furthermore, there should be co-ordination among Government departments and agencies to deal with Malay reservation land. Any challenges revolving around Malay Reservation land should be tackled from all aspects; politics, social and economic. There should be a holistic approach from all relevant authorities.