

# DEVELOPING A COMPENSATION FRAMEWORK FOR THE ACQUISITION OF ORANG ASLI NATIVE LANDS IN MALAYSIA: THE PROFESSIONALS' PERCEPTIONS

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## ABSTRACT

*This research explores the issues of land rights and land acquisition compensation related to the Orang Asli (the Malay term for indigenous peoples) in Peninsular Malaysia. Acquisition of Orang Asli native lands is inevitable as land is scarce to meet the national growth agenda and socio-economic developments. As an independent country, Malaysia provides constitutional guarantees, and customary land tenure is recognised and respected. Unfortunately, due to the ambiguity in Malaysian legal system in relation to the definition of land rights of Orang Asli native lands, the practice of payment of compensation to acquisition of the land tends to be unstructured, and disparity exists among the different states. It is therefore pertinent to propose a uniform compensation framework for the acquisition of Orang Asli native lands. This research adopts a questionnaire survey as the method of study, the descriptive and inferential analysis technique to present the results. The study showed that laws of Malaysia are deficient with regard to the protection of Orang Asli lands and rights to fair and just compensation. This research found that the position of Orang Asli land rights has not improved much. Due to this unresolved land rights issue, the present structure of compensation as spelt out under Sections 11 and 12 of the Aboriginal Peoples Act 1954 is perceived as inadequate. As currently practised, in the absence of proper guidelines and regulations, the determination of compensation is entirely at the discretion of the various authorities. Some authorities apply the legislation rigidly, while others are too generous. This research also led to the recommendation that the compensation framework for land acquisition of Orang Asli native lands should possess two categories of compensation – monetary and non-monetary components.*

**Keywords:** Land acquisition, Orang Asli land rights, adequate compensation, compensation framework

## INTRODUCTION

The government of Malaysia is engaged in a massive programme of construction of various public works all over the country that involves acquisition of private land, including Orang Asli native lands (OANL) on a large scale. For this, the government

exercises the power of land acquisition as stipulated under the Land Acquisition Act 1960, and as provided under Article 13 of the Malaysian Constitution 1957. The Article stipulates that no person may be deprived of property except in accordance with law and that no law may provide for compulsory acquisition or for the use of property without adequate compensation. Adequate compensation, therefore, as stated under the provision of Article 13(2) of the Federal Constitution refers to the amount of compensation which is decided, considering all principles stated under the First Schedule of Land Acquisition Act 1960. Thus, this research attempts to focus on the underlying issue of land rights and acquisition compensation in relation to Orang Asli native lands in Malaysia.

## THE ORANG ASLI

The indigenous populations of Malaysia are governed under three different geographical legal regimes. Those residents in Peninsular Malaysia, known commonly as Orang Asli, fall under the Aborigine People's Act, 1954, while those residing in Sabah and Sarawak, known also as 'Orang Asal', are subject to their respective State laws.

Based on anthropological descent, experts have divided the Orang Asli, which make up approximately 0.68% of the population in Peninsula Malaysia, into three general categories; namely 'Negrito', 'Senoi' and 'Jakun' (or 'Proto-Malays'). Each of these three groups can be further differentiated into six subgroups, each with its own culture, language, religion and subsistence lifestyle<sup>1</sup>. Most of them have adopted a more settled lifestyle due to State intervention and support or through interaction with mainstream society, while some still continue to practise shifting cultivation, hunt or forage as part of their subsistence lifestyle.

Due to perceptions that Orang Asli is undeveloped, unprogressive and in need of state guardian, the government continues to adopt a policy of governing and controlling (Nicholas, 2002). In a 1961 policy statement, the Ministry of the Interior outlined the official view of the Orang Asli as an indigenous community whose social, economic and cultural developments prevent them from sharing fully in the rights and advantages enjoyed by other sections of the population. It aims to adopt suitable measures designed for their protection and advancement, with a view to their ultimate integration with the Malay section of the community.

In 2007, statistics show that the Orang Asli make up 50% of the Malaysian population who live below the poverty line. Yet in the 8<sup>th</sup> Malaysia Plan, they are not a focal target in national development programmes in eradicating poverty<sup>2</sup>. Due to lack of consultation and consideration of their specific requirement, the state development schemes do not address their most pressing needs or are implemented inefficiently. The Malaysian

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<sup>1</sup> <http://www.jheoa.gov.my/e-orangasli.htm>

<sup>2</sup> <http://www.pmo.gov.my/RancanganWeb/menuRM8.htm>

representative at the 1996 WGIP meeting admitted that the Orang Asli population remains far behind the mainstream population in terms of health, welfare and education (WGIP Report, 1997).

False perceptions of indigenous people, coupled with exclusion from national life on the economic, political and ideological level have widened the gap between the aspirations of the Malaysian nation-state and her indigenous citizens (Dollah, 1996; Awang, 1996). Obviously, Orang Asli perceived that they are not against development, are desirous of health and welfare improvements, need protection on their interests, especially with regard to their unique relationship with ancestral land. However, these are seldom considered within State developmental schemes (Jafry, 1996; Awang, 1996; Nicholas, 2003). Yet, despite continuous efforts by the Department of Orang Asli Affairs (JHEOA), most Orang Asli still live on the fringe of Malaysian society, cut off from most social services, are poorly educated and making a hard earning (Jamaluddin, 1997; Todd, 1990; Salleh, 1990).

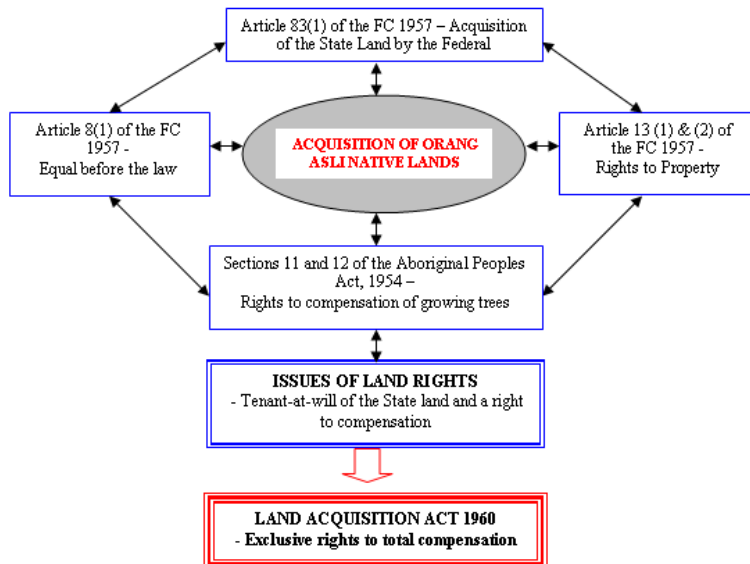
## **KEY CONCEPT OF THE RESEARCH**

To understand Orang Asli native lands and their development problems, it is necessary that the issue of customary lands be recognised as a major factor that must be addressed in order to encourage national economic and social development. There is a complementarity between development and national goals. However, for development to occur, there is a requirement that policy settings for land are formulated within a framework, which accommodates the existing function of Orang Asli land ownership systems. Further, Article 8(1) of Federal Constitution, 1957 states that *'all persons are equal before the law and entitled to equal protection of the law'*. This means that the Orang Asli also have the same protection as other citizens of Malaysia and they are eligible for adequate compensation when their land is being acquired by the government.

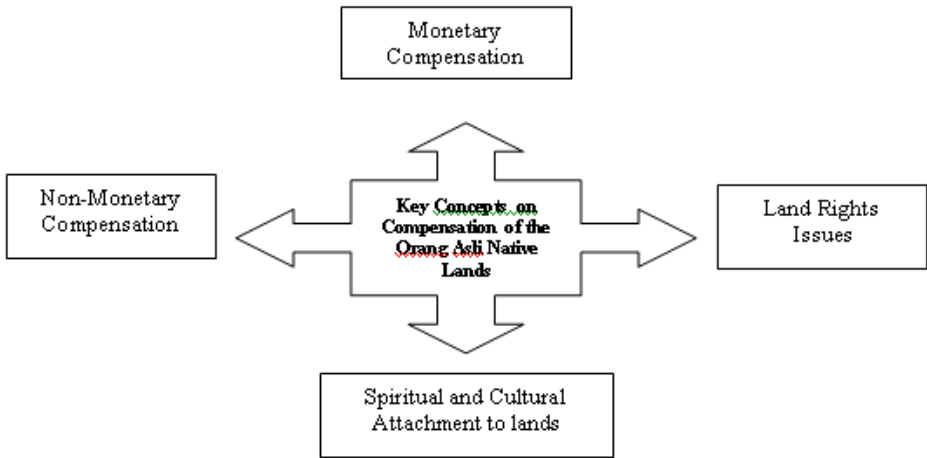
As an independent country, Malaysia has under constitutional guarantees, recognized and respected customary land tenure. According to Sheehan and Small (2002) and Adlington (2000), these customary lands are often unable to be accessed for feasible development projects unless the consent of the customary owners is obtained on terms and conditions that must be negotiated to the satisfaction of those owners. However, governmental powers of compulsory acquisition, which for various state purposes (e.g. highway, school, hospital etc) can be called upon to acquire any land including Orang Asli lands, irrespective of the wishes of the owner (Nicholas, 2003). Also, there is often a constitutional or legal guarantee that land held in private ownership can only be compulsorily acquired for state purposes if adequate compensation is paid (Keith, 1984; Nicholas, 2003). So, how does this notion of adequate compensation attach to acquisition of Orang Asli native lands?

Appropriate provisions have been inserted in legislation in many countries (e.g. Australia, New Zealand, Canada and USA) to deal with the issue of compensation. Some of these provisions have been suggested as purely monetary compensation, while others although still economic in nature may involve in-situ reinstatement or replacement of land (e.g. resettlement programme), with only minimum monetary payment for hardship and other losses. These notions of compensation are referred in the research of Hyam (1985, 2004), which introduces such compensation structures – monetary and non-monetary, in the Australian legal context. Although the State Authority, under the provision of Land Acquisition Act 1960, has the power to possess any private land, an acquisition of Orang Asli native lands does not use the same power but rather uses the spirit of Article 83(1); Article 13 and Article 8(1) of Federal Constitution and the Aboriginal Peoples Act, 1954. This is because OANL is not a titled property, while the status of Orang Asli with respect to the native land is only as ‘tenant-at-will’, a status that does not confer legal ownership, rights or interests. However, the law does not allow the authority to violate one’s right onto their private properties, and this should be applied to Orang Asli property rights as well. Therefore, a key concept of an acquisition of Orang Asli native land is summarized and shown in the Figure 1 and Figure 2. Furthermore, the differences between acquisition OANL and private lands are presented in Figure 3.

**Figure 1: Acquisition of orang asli native lands**



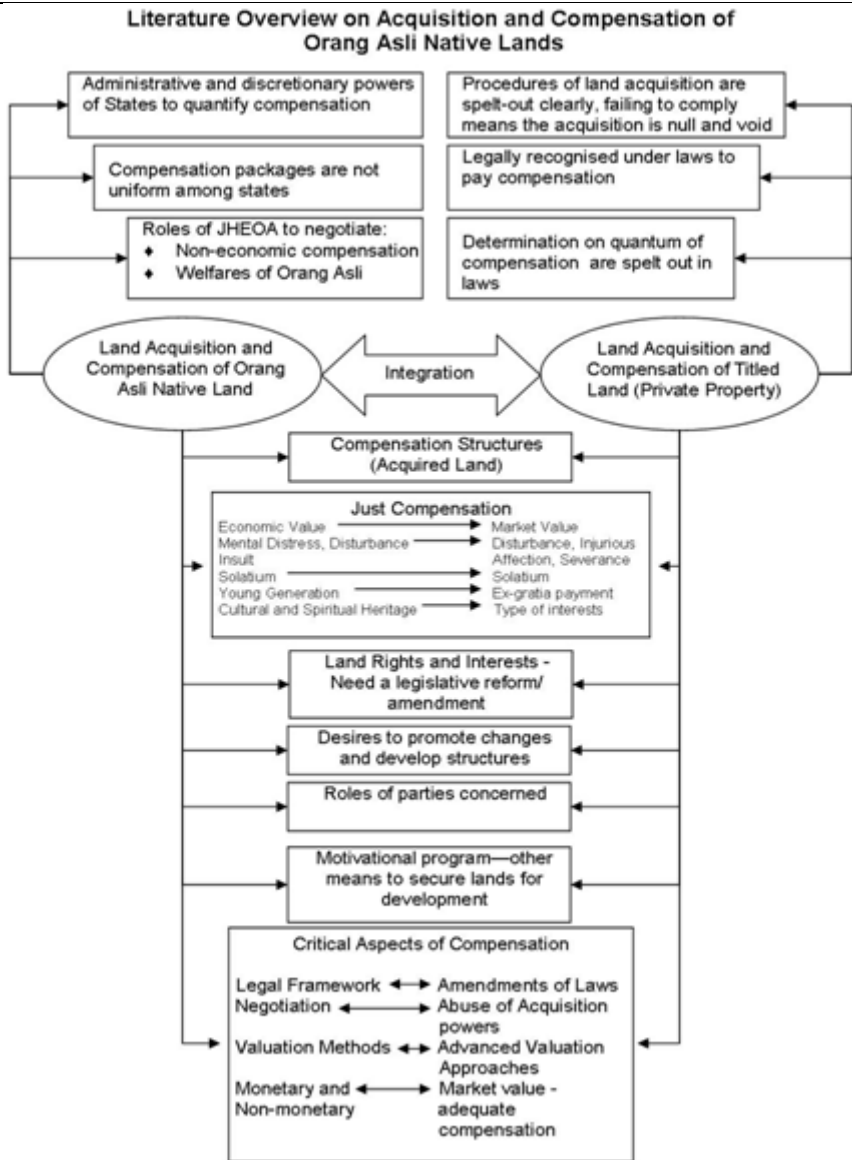
**Figure 2: The key concept on compensation of the orang asli native lands**



However, Malaysian law does not formally codify the Orang Asli land rights. In spite of that, federal laws often deny these rights, if they exist. An example of federal legislature that denies indigenous peoples' land rights is the National Land Code 1965, which declares the State as owner of all lands. Under this Code, derived from the Australian Torrens System of land registration, all lands belong to the State. Private land interests are vested in individuals only upon registration in the land registry.

Orang Asli lands, traditionally passed down from generation to generation, fall outside the Malaysia's land registration system, technically belonging to the State (Cheah, 2004b). The closest one can get to statutory legal recognition of Orang Asli's land rights is through the Aboriginal Peoples Act, 1954. This Act was enacted due to the unwanted roles played by the Orang Asli during the Emergency of 1948-1960, such as providing food, labour and intelligence to the communist insurgents, and even joining them. To overcome these problems, the colonial government established a Department of Aborigines and set up 'jungle forts' in Orang Asli areas, which served to provide welfare, health and education to the Orang Asli (JHEOA, 1996; Cheah, 2004a; 2004b).

**Figure 3: Literature overview on acquisition and compensation between orang asli native lands and private lands**



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The Aboriginal Peoples Ordinance was legislated in 1954, and subsequently the resettlement schemes were implemented to integrate them into the cash economy. The Aboriginal Peoples Act, 1954 successor to the Aboriginal Peoples Ordinance, empowers the Minister to declare certain plots of land to be protected as gazetted aboriginal reserves or areas. Unfortunately, the Aboriginal Peoples Act does not treat the Orang Asli as legal owners of these aboriginal reserves or areas nor give a mandate to compensation for State acquisition of these reserves (Xanthaki, 2003).

Section 10 of the Aboriginal Peoples Act 1954 recognises that the State authorities for acquisition of Orang Asli's crops shall pay compensation, and section 11 merely states that the State 'may' pay compensation for the acquisition of aboriginal reserves or areas. This reveals a degree of discretion in the compensatory process. Furthermore, sections 6 and 7 allow the Minister to extinguish by declaration the status of aboriginal reserves and areas. This worrying lacuna explained by section 6(3) gives the State Government the power to revoke wholly or in part or vary any declaration of an aboriginal area made under section 6(1).

This power in reality renders the State full discretion on compensation duty. Under this Act, the Orang Asli are only tenants-at-will of the State and not all inhabited Orang Asli land have been declared as aboriginal reserves or areas. This makes them unprotected from State acquisition or third party encroachment. Most of the Orang Asli do not know the existence or implications of this Act and are unable to petition the government for the protection owed to them under this Act.

## **PROBLEM STATEMENT**

In the current enthusiasm to make Malaysia a developed nation, the government has overlooked to protect the rights of the Orang Asli (Nicholas, 2003). More lands are being required for development and this has resulted in Orang Asli land being taken away from them. The federal and state governments under the existing laws are under a fiduciary duty to gazette lands to declare them as Orang Asli reserves. This duty is contained under Article 8(5) of the Federal Constitution, 1957. However, the federal and state governments have clearly been lacking in protection procedures and the problem of under-gazetting Orang Asli land has been a long-standing problem (Nicholas, 2003; Ismail, 2005).

Until December 2006, the Malaysian government recognised a total of 141,369.67 hectares of Orang Asli land. Of this, only 13.9 % (19,582.21 hectares) were gazetted as Orang Asli reserves and importantly, more than half or 57.5% (81,269.58 hectares) of the Orang Asli lands were applied for gazette, but no approval had been given. The JHEOA identified that the land gazetted represented only 15% from 876 Orang Asli villages (JHEOA, 2006). Therefore, although the obligation to gazette Orang Asli lands exist, the

rampant under-gazetting by the government leaves the Orang Asli unprotected against developers who prey on what they perceive as cheap lands and easy targets. Encroachment is quite widespread, particularly in Kelantan, due mainly to a liberal land alienation policy (Yaqin, 2002). Due to the undeclared status of most Orang Asli land and the lack of mechanism to keep track of Orang Asli's land, State Government often ends up awarding the Orang Asli ancestral land to private developers (Nicholas, 2003; Endicott & Dentan, 2004).

The land rights of the Orang Asli over their traditional lands are minimally protected by the Aboriginal Peoples Act 1954. The Aboriginal Peoples Act 1954 provides for the establishment of Orang Asli areas and Orang Asli reserves. Previously, it was the view of the government that under the Aboriginal Peoples Act, 1954, the best title that the Orang Asli may obtain from their traditional lands is as a tenant-at-will (Nik Yusof, 1996; Jafry, 1996; Awang, 1996). This is attributed to the government's perception that the Orang Asli traditional lands are actually state lands. The Orang Asli is therefore allowed to occupy or remain on their traditional lands at the pleasure of the government (Nik Yusof, 1996; Jamaluddin, 1997; Salleh, 1990). Whenever the government wants to acquire the Orang Asli traditional lands for whatever reason, they simply revoke the status of these traditional lands and issue to the Orang Asli living in that area a relatively short notice to vacate their traditional lands - notwithstanding the fact that the Orang Asli and their families may have been living in the area for generations. The Orang Asli is then expected to move from their traditional lands within the short stipulated period or be forcibly evicted by the law of the state. This can be evidenced particularly in the state of Selangor as in the case of *Sagong bin Tasi & Ors v Kerajaan Negeri Selangor & Ors* [2002] 2 MLJ 591.

Furthermore, as a consequence of eviction, the Orang Asli is not paid any form of compensation for the loss of their traditional lands. Instead, the Orang Asli is compensated purely based on Sections 11 and 12 of the Aboriginal Peoples Act 1954. Section 11 – *'Compensation on alienation of State land upon which fruit or rubber trees are growing: (1) ...then such compensation shall be paid to that aboriginal community as shall appear to the State Authority to be just; (2) any compensation payable under subsection (1) may be paid in accordance with section 12'; and Section 12 – 'Compensation: ...any aboriginal area or aboriginal reserve granted to any aborigines or aboriginal community is revoked wholly or in part, the State Authority may grant compensation therefore and may pay such compensation to the persons entitled.....'*

Any compensation pursuant to Sections 11 and 12 of the Aboriginal Peoples Act, 1954 is at the discretion of the authorities. There is no fixed guideline. The compensation payable to the Orang Asli pursuant to Sections 11 and 12 is only for the loss of growing trees and buildings. Some State Authorities are very generous, while others are not. No provision is available under the laws for compensation of the acquisition or loss of the Orang Asli's traditional lands. But in general, the amount paid to the Orang Asli as compensation for



their loss of trees and buildings is comparatively small and inadequate (Ismail, 2005; Adong bin Kuwau & Ors v Kerajaan Negeri Johor and Anor [1997] 1 MLJ 418). According to Yap (2002), the Department of Orang Asli Affairs which consists of a majority of non-indigenous staff are perceived by the Orang Asli as being distant, unapproachable and irrelevant in representing and safeguarding their interests. This is despite the claims that, as mentioned by Idris (1983) a former Director-General of JHEOA, the department has been taking great care for Orang Asli, nurturing the community from womb to grave.

Therefore, the real problems encountered in terms of compensation for acquisition of Orang Asli native lands are that:

- i. There is the lack of legal protection toward Orang Asli land rights and interests.
- ii. Compensation as provided by the existing laws only provides for payment of trees and affected buildings – no compensation for the loss of traditional lands.
- iii. Quantum of compensation is at the discretion of the individual state authorities, which results in disparities in practice across the different states. Some state governments follow the laws strictly, while others are too generous.
- iv. The basis of compensation based on common law (court cases) is beyond the existing laws and regulations that are being implemented (e.g. Sagong Tasi (2002); Adong Kuwau (1997)).

## **RESEARCH OBJECTIVES**

The specific objectives of this research are:

- i. To determine the extent to which current laws are adequate in protecting Orang Asli native land rights to compensation.
- ii. To determine the extent of compensation problems from the perspectives of those concerned and decided cases.
- iii. To assess current practices of the State Governments with regard to compensation for acquisition of Orang Asli native land.
- iv. To propose a compensation framework for land acquisition affecting Orang Asli native lands.

## RESEARCH METHODOLOGY

The research adopted a quantitative survey method as the strategies for data collection. To achieve the objectives, this research explored the perceptions of related parties on the issues of land acquisition that involves Orang Asli native land by way of a questionnaire survey. The targeted respondents were the officers of the Department of Orang Asli Affairs (JHEOA), Land Administrators at respective Land Offices, Valuation Officers at Valuation and Property Services Department, Academics, and activists of NGOs. The Orang Asli are purposely excluded from this survey, because the authors are of the view that their inclusion would not make a meaningful contribution to achieving the stipulated research objectives. Their so-called opinion is less significant, and they are not a group of person who have authority or political impact in Malaysia. Rather, on the belief that it would be more effective to work through the groups representing the Orang Asli interests, the authors chose to incorporate these groups in the survey, which include the relevant NGOs and the JHEOA. Since, this research attempts to formulate a compensation framework for acquisition of OANL in respect of administrative and legal implementation, their absence in this research does not affect the overall results of the research.

This questionnaire was divided into seven (7) main parts:

- Part A – Respondent’s background
- Part B – Measurement on development of the compensation framework
- Part C – Measurement on the constructs in developing the compensation framework
- Part D – Measurement of dimensions in developing the compensation framework
- Part E – Suggestions on compensation framework
- Part F – Miscellaneous. The question was posted in an open-ended format and the respondent is requested to give further comments on related issues that have not been covered in any part of the questionnaires
- Part G - Questions specifically for Valuation Officer or Valuer. Questions asked were basically on the basis of determining market value and valuation methods that could be applied in valuing Orang Asli native lands.

The rationale for designing these questions is to seek opinions on issues and structures of land acquisition compensation for Orang Asli native lands. Later, the suggestions and opinions, which are recommended by respective parties, will be used to develop the compensation framework for land acquisition affecting Orang Asli.

This research applies non-random judgment or purposive sampling for its quantitative research. This is because the primary consideration in purposive sampling is the judgment of the researcher as to who can provide the best information in order to fulfill the objectives of the research. The researcher only goes to those people who in the

opinion of the researcher are likely to have the required information, knowledge and willingness to share it. As stated by Kumar (1999), this type of sampling is extremely useful for construction of a historical reality, describe a phenomenon or develop something about which very little is known.

The questionnaire forms were distributed in three phases covering the period of the 15 June 2007 to September 2007. The survey achieved a response rate of 63%, with 158 forms received by way of respondents' return out of a total of 250 forms distributed.

A reliability test was also conducted for this study. Table 1 shows the results of the reliability test for the questionnaires. Based on Table 1, the overall Cronbach's Alpha value for the questionnaire was 0.7410. These results showed that all variables had indicated internal consistency and achieved high reliability values based on scales developed by Sekaran (2000) and Nunally (1998). A variable that achieves a Cronbach's Alpha of greater than 0.6 is considered as having achieved high internal consistency and reliability. Thus, it can be concluded that the respective respondents were able to understand all questions in the questionnaires and they agreed on the necessity of asking the questions.

**Table 1: Reliability test for professionals' questionnaire**

No.	Variables	No. of Items	Cronbach's Alpha
1	Constructs of compensation framework	3	0.7442
2	General compensation issues	6	0.7550
3	Issues of monetary compensation	5	0.7396
4	Issues of non-monetary compensation	5	0.7383
5	General perspectives on acquisition of OANL	9	0.7331
6	Law, regulations and land rights issues	4	0.7339
7	Negotiation of compensation	6	0.7383
8	Challenges in determination of compensation	5	0.7276
9	Monetary Compensation (MC) - Economic / market value	2	0.7504
10	MC - Solatium / premium	2	0.7504
11	MC - Other claims	4	0.7430
12	Non-Monetary Compensation (NMC) – Resettlement programme	4	0.7426
13	NMC – Motivational and training programme	3	0.7398
14	NMC – Other benefits	4	0.7402
15	Suggestions to upgrade the compensation structure	7	0.7416
16	Suggestions on proposal of compensation framework	8	0.7338
17	Suggestions on socio-cultural dimensions	4	0.7363
<b>18</b>	<b>Overall</b>	<b>81</b>	<b>0.7410</b>

## DISCUSSION OF THE RESEARCH FINDINGS

### Respondents' background

The background of the respondents who took part in the survey is presented in Table 2. The results indicate that the respondents in the survey were very qualified to give their opinion. 63.3% of them came from full-fledged government entities, while 15.2 % were from semi-government and other related government agencies. They were made up of Valuation Officers and JHEOA Officers from the age groups of 31 - 40 years and 41 - 50 years, of which 65.2% had direct and indirect involvement in land acquisition projects of Orang Asli native lands. Of significance, some 43.7% and 31.6% had experience dealing with Orang Asli affairs between 2 - 5 years and 6 - 10 years respectively.

**Table 2: The background of the respondents (professionals)**

Characteristic Organisations	Frequency	Percentage (%)
Government	100	63.3
Semi-Govt/Govt Agency	24	15.2
Private	18	11.4
NGO	16	10.1
<b>Total</b>	<b>158</b>	<b>100</b>
<b>Designation</b>		
Valuation Officer/Valuer	50	31.6
JHEOA Officer	48	30.4
Land Administrator	12	7.6
NGO Activist	16	10.1
Academician	24	15.2
Others	8	5.1
<b>Total</b>	<b>158</b>	<b>100</b>
<b>Age</b>		
21 - 30 years	16	10.1
31 - 40 years	77	48.7
41 - 50 years	52	32.9
51 - 60 years	13	8.2
<b>Total</b>	<b>158</b>	<b>100</b>
<b>Gender</b>		
Male	132	83.5
Female	26	16.5
<b>Total</b>	<b>158</b>	<b>100</b>
<b>Experience</b>		
2 – 5 years	69	43.7
6 – 10 years	50	31.6
> 10 years	39	24.7
<b>Total</b>	<b>158</b>	<b>100</b>
<b>Land Acquisition Involvement</b>		
1 project	16	10.1
2 – 5 projects	103	65.2
6 – 10 projects	39	24.7

## The components for developing compensation framework

Table 3 shows the descriptive statistics of the components of compensation for developing a compensation framework for land acquisition affecting Orang Asli native lands. All components scored the mean value ranges from 4.65 to 4.86. This shows that respondents are agreeable that general compensation issues (GCI), monetary compensation (MC) and non-monetary compensation (NMC) are the main components to developing a compensation framework. This is also consistent with the constructs of the 'Research Model' as identified through the literature review. According to Humphry (1998), compensation for damage to native title should include monetary and non-monetary components or, as suggested by Whipple (1997), material and non-material components. Furthermore, the mechanism of compensation is basically to affirm the value and to achieve defined social purposes, to reaffirm relationship of mutual equivalence and demand sharing (Chase, 1980), to bind individuals into groups (Kickett, 1999; Maddock, 1984) and to confirm ownership of the land (Sagong Tasi, 2002; Kickett, 1999; Martin, 1995; Peterson, 1991; Maddock, 1984; Chase, 1980).

**Table 3: Descriptive statistics of the components of compensation**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
General Compensation Issues	4.65	0.493
Monetary Compensation	4.86	0.365
Non-Monetary Compensation	4.75	0.433

Legend: 1= strongly disagree 2= disagree 3=neutral 4=agree 5= strongly agree

## General compensation issues (GCI)

The descriptive statistics in Table 4 reflect the opinion of professionals on various aspects of general compensation issues connected to the taking possession of Orang Asli native lands. Lack of legal protection on Orang Asli land rights emerged as a key issue with a mean score of 4.82. Respondents also felt that the Orang Asli were denied their freedom to inhabitation, produce of the forest, and future living of families (mean scores of 4.00 to 4.66). The deprivation of ancestral land scored the least but, at mean score of 3.80, is nonetheless a strong view expressed by respondents. As mentioned in Sagong Tasi (2000), the laws in Malaysia fail to give full recognition to Orang Asli land rights, and in Adong Kuwau (1997), the court was reluctant to recognise aboriginal rights to land as real interests or ownership rights but rather only as 'tribal rights' which are a very low degree of rights. Therefore, the view of the government was that under the Aboriginal Peoples Act, 1954, the best interest the Orang Asli may obtain from their traditional lands is as a tenant-at-will. This is due to the perceived belief that the traditional lands of the Orang Asli in principle are state lands (Endicott & Dentan, 2004; Jamaluddin, 1997; Salleh, 1990; Idris, 1983). The Orang Asli therefore occupy or stay on their traditional lands at the pleasure of the government.

**Table 4: Descriptive statistics of the GCI**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Suffered due to deprivation of ancestral land	3.80	0.476
Deprivation of freedom of inhabitation/movement	4.66	0.474
Deprivation of produce of the forest	4.00	0.000
Deprivation of future living for family	4.27	0.446
Under any laws, no compensation for land	4.66	0.474
Lack of legal protection	4.82	0.388

Legend: 1= strongly disagree 2= disagree 3=neutral 4=agree 5= strongly agree

### Monetary compensation

Table 5 shows the descriptive statistics of the factors under monetary component. According to the results presented in Table 5, payment for trees and buildings is not a fair basis of compensation for acquisition of Orang Asli native lands and, with a mean score of 4.95, the failure to consider the impact of land loss is a dominant factor. This means that payment of monetary compensation as implemented currently is not within the spirit of Article 13(1) and 13(2) of the Federal Constitution. Moreover, other listed factors are also agreed by the respondents as equally important to be considered where the mean values range from 3.86 to 3.96.

**Table 5: Descriptive statistics on monetary compensation**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Failure to consider the impact of land loss	4.95	0.220
No obvious economic benefits	3.86	0.347
Special value for special attachment to land	3.96	0.192
No uniform compensation framework for states	3.95	0.220
Payment for trees and buildings not a fair basis	4.96	0.192

Legend: 1= strongly disagree 2= disagree 3=neutral 4=agree 5= strongly agree

### Non-monetary compensation

Table 6 shows the descriptive statistics of the factors under non-monetary component. The factor of 'providing ownership toward property' was the highest mean value of 4.58, and other factors all had achieved the mean value of more than 4.0. As an overall analysis, the non-monetary compensation seems to be inadequate to Orang Asli. Nevertheless, an ownership or security of tenure is the most important factor in the life of Orang Asli, as compared to other non-monetary compensation. According to Suhut (2006), land is an invaluable asset to Orang Asli; not only is the value of land, but indeed, land is pride, dignity and survival to them. In addition, sections 6, 7 and 8 of the Aboriginal Peoples Act, 1954 have guaranteed a special privilege of Orang Asli to land.

**Table 6: Descriptive statistics on non-monetary compensation**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Resettlement programme enhances quality of life	4.41	0.494
Provides ownership toward property	4.58	0.495
Not provided enough facilities	4.48	0.501
Location of resettlement not suitable	4.52	0.501
Alienation of uneconomic size of land	4.42	0.495

Legend: 1=not important 2=slightly important 3=moderately important 4=important 5=most important

## General perception on acquisition of Orang Asli lands

### *Land acquisition*

The descriptive statistics as shown in Table 7 revealed the results on the opinion of professionals toward land acquisition issues of Orang Asli native lands in general. The main issues concerning acquisition of Orang Asli native lands are apparently the lack of uniform method to determine monetary and non-monetary compensation; lack of uniform compensation packages among states; lack of legal protection on Orang Asli land rights; compensation to consider market value of ancestral lands; and land acquisition powers should be used for acquisition for public purposes only, which were proved by mean values ranging from 4.58 to 4.66. The respondents also agreed that joint venture creates a productive asset for Orang Asli; compensation proposal must be made available for review prior to inquiry; and procedures of land acquisition to be executed in proper manner as verified by mean values ranging from 4.27 to 4.35.

**Table 7: Descriptive statistics on land acquisition issues**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Less protections by law	4.58	0.495
Procedures of land acquisition	4.35	0.478
Land acquisition powers for public purposes only	4.58	0.495
No uniform compensation packages	4.58	0.495
Consider compensation for ancestral land	4.62	0.469
No uniform method to determine MC and NMC	4.66	0.474
Compensation proposal prior inquiry for review	4.32	0.467
Challenge the acquisition	4.58	0.495
JV creates productive asset	4.27	0.443

Legend: 1= strongly disagree 2= disagree 3=neutral 4=agree 5= strongly agree

### *The issues of land rights*

Table 8 shows the results on the issues of land rights. The factor of the meaning of land occupied under customary rights under section 2 (First Schedule) of Land Acquisition Act

1960 should be given a wider interpretation, so as to ensure that compensation would be paid for acquisition of Orang Asli native lands was the highest mean value with 4.57, and other factors have attained mean values more than 4.0. This means that the unresolved issues of land rights seem to be an obstacle for payment of adequate and just compensation for acquisition of Orang Asli land. However, section 7(2) (iv) of the Aboriginal Peoples Act 1954 explains that *'no land shall be alienated, granted, leased or otherwise disposed of except to aborigines of the aboriginal communities normally resident within reserve'*. Under present practices, the Orang Asli have granted rights to occupy any land not being alienated or lands leased and do their activities on specific areas - section 8(1) of the Act, and they only have the tenant-at-will status. As for Orang Asli native lands, the compensation will require an innovative jurisprudential approach that acknowledges the Orang Asli native lands. Therefore, legal and comparative studies are required to equate Orang Asli native land compensation rights and interests either to Western property law concepts and precedents, or to market land valuation methodology (Cheah 2004a; 2004b; Smith, 2001). It is suggested that this may lead to the development of a 'new arm' (Sheehan, 1998) of land law specifically for indigenous property rights which can decide simultaneously on matters of both federal and state laws.

**Table 8: Descriptive statistics on the issues of land rights**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Land rights are politically marginalized	4.56	0.498
Only Tenant-at-Will status	4.56	0.498
Awarded OANL to private developers	4.27	0.443
Wider meaning of 'land occupied under customary'	4.57	0.497

Legend: 1= strongly disagree 2= disagree 3= neutral 4= agree 5= strongly agree

### *Compensation negotiation*

Table 9 shows the descriptive statistics of the factors under the compensation negotiation sub-component. The factor of the right of Orang Asli is not recognised was the highest mean value with 4.63, meaning that parties involved in the negotiation processes of compensation do not really fight for the protection of interest of Orang Asli. This is proved by lowest mean values of 2.40 and 2.75 recorded by factor of the interest is taken care of and not fair to Orang Asli respectively. This showed that negotiation without the Orang Asli representatives is not an appropriate way in conducting such negotiations.



**Table 9: Descriptive statistics on compensation negotiation**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Negotiation made mandatory	4.49	0.502
The interest is taken care of	2.40	0.491
Not fair to Orang Asli	2.75	0.722
The rights are not recognised	4.63	0.484
This approach is appropriate	4.50	0.502
Administratively justified	4.52	0.489

Legend: 1= strongly disagree 2= disagree 3=neutral 4=agree 5= strongly agree

### *Challenges in the determination of compensation*

Table 10 shows the descriptive statistics of the factors under the challenges' sub-component. The factor of issues of land right was the highest mean value with 4.82, meaning that issues of land right is the highest rank of challenges that need to be treated and resolved in developing of the compensation framework for Orang Asli native lands. This is being followed by challenges to put legal framework (i.e. Federal Constitution 1957, the Land Acquisition Act 1960 and the Aboriginal Peoples Act 1954) to legalize the ownership of Orang Asli lands.

**Table 10: Descriptive statistics on challenges in determination of compensation**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Legal framework	4.66	0.474
Monetary and non-monetary	4.34	0.474
Issues of land right	4.82	0.388
The most reliable valuation methods	3.73	0.443
Negotiation of compensation	4.27	0.443

Legend: 1= strongly disagree 2= disagree 3=neutral 4=agree 5= strongly agree

### **Monetary compensation - current practice of compensation package**

Table 11 shows the descriptive statistics of the results on the current compensation package (monetary). From the results, it showed that all economic and other claims' sub-constructs recorded the mean values less than 2.0. This means that current practice of compensation that consists of dimensions of loss of growing trees, buildings and other improvements, solatium due to special attachment to land, and other claims i.e. support and evacuation allowances; and equity shares which fell under the monetary compensation category were hardly adequate and inadequate. Again, these results are consistent with the statement made by Cheah (2004b) and Nicholas (2003) who commented on the inadequacy of compensation to reflect the actual loss of the traditional lands and livelihood of Orang Asli due to acquisition.

**Table 11: Descriptive statistics on challenges in determination of compensation**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
<b>Economic / Market Value:</b>		
Loss of growing trees	1.82	0.388
Affected buildings and other improvements	1.27	0.443
<b>Solatium and Premium:</b>		
Additional pay to reflect attachment to land	1.80	0.398
Additional pay to reflect socio-cultural dimensions	1.34	0.500
<b>Other Claims:</b>		
Support allowances due to loss of income	1.09	0.294
Unit trust	1.18	0.388
Evacuation allowances	1.26	0.440
Equity shares in development projects	1.15	0.360

Legend: 1= inadequate 2= hardly adequate 3= adequate 4= generous 5= exceedingly generous

### Non-monetary compensation

Table 12 shows the descriptive statistics of the results on the current compensation package (non-monetary). From the results, it showed that all variables and sub-variables achieved mean values ranging from 2.13 to 2.77. Again, the results showed that the respondents believed that current non-monetary compensation packages were hardly adequate except the variable of quality of house fell under category of adequate. Therefore, comments made by Cheah (2004b) and Nicholas (2003) are founded.

**Table 12: Descriptive statistics on the current non-monetary compensation package**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
<b>Resettlement Program:</b>		
Quality of house	2.77	0.425
Size of the house	2.16	0.366
Infrastructures	2.15	0.354
Amenities	2.19	0.393
<b>Motivational Program and Training:</b>		
Mindset Development Program	2.13	0.341
Program objectives	2.16	0.372
Frequency and period of the programme	2.15	0.354
<b>Other Benefits:</b>		
Size of agricultural land	2.18	0.383
Type of crops planted	2.20	0.403
Size of residential land	2.18	0.383
Job/employment opportunity	2.17	0.378

Legend: 1= inadequate 2= hardly adequate 3= adequate 4= generous 5= exceedingly generous

## Suggestions on compensation framework

### *Suggestions to upgrade the compensation structure*

Table 13 shows the descriptive statistics on suggestions to upgrade the compensation structure. From the results, it showed that all variables recorded mean values more than 4.0, except item 'adopt other countries practices' where the respondents are of indifferent opinion. This means that in order to upgrade the existing compensation structures, the related authorities should take the following steps:

- consider compensation for market value of Orang Asli lands
- make the existing implemented structure (i.e. monetary and non-monetary) recognized under a law
- recognize legally the land rights of Orang Asli by giving ownership
- amend the Land Acquisition Act 1960 to incorporate Orang Asli native lands
- implement the judgment of the High Court in Sagong Tasi case, who recognized the Orang Asli native lands the same as title lands
- make it uniform for the payment of non-monetary compensation among state governments.

**Table 13: Descriptive statistics on suggestions to upgrade the compensation structure**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Consider compensation for market value of land	4.47	0.501
Make the existing structures a law	4.61	0.488
Recognized in law the land rights of Orang Asli	4.82	0.388
Implement Sagong Tasi decision	4.10	0.507
Amend the LAA 1960 to incorporate OANL	4.42	0.495
Adopt other countries practices	3.27	0.443
Uniformity of the non-monetary compensation	4.25	0.597

Legend: 1=strongly not recommended    2=not recommended    3=neutral  
4=recommended    5= strongly recommended

### *Suggestions on compensation framework*

The descriptive statistics as shown in Table 14 revealed the results of the professionals on the suggestions of developing a monetary and non-monetary compensation framework for land acquisition affecting Orang Asli native lands. From the results, it shows that all variables recorded the mean values of more than 4.0, except the item 'basis of valuation – whole gazetted area' where the respondents are of indifferent opinion. This means that the

components for developing a compensation framework for land acquisition affecting Orang Asli native lands should consist of the following:

- *Monetary component*: market value of land; solatium; monthly allowance; evacuation allowance; and equity shares.
- *Non-monetary component*: resettlement program; adequate infrastructures and amenities; motivational and training program, and employment.

As a comparison, the Australian Native Title Act 1993 also has established the compensation framework for acquisition of their native titles with two constructs i.e., monetary and non-monetary.

**Table 14: Descriptive statistics on suggestions of the monetary and non-monetary compensation framework**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
<b>I. Monetary Compensation:</b>		
Components of compensation – market value + other claims (as LAA 1960)	4.34	0.474
Solatium – not less than 10% of MV	4.10	0.507
Monthly allowance – 3 years	4.73	0.443
Evacuation allowance	3.23	0.425
For privatization project – equity share for minimum of 2%	4.65	0.478
<b>II. Non-Monetary Compensation:</b>		
Transition / motivational program – 1 year	4.32	0.467
Guaranteed of employment	4.42	0.495
Resettlement with full infra and amenities	4.27	0.443

Legend: 1=strongly not recommended    2=not recommended    3=neutral  
4=recommended    5=strongly recommended

### **Suggestions on compensation for losses of socio-cultural dimensions**

According to Burke (2002), non-monetary compensation structure for acquisition of indigenous peoples should include the socio-culture dimension losses which considered insults, mental distresses, disturbances and the future of the young generation. Table 15 shows that all variables recorded the mean values of more than 4.0 (i.e. between 4.18 to 4.32), meaning that the respondents agreed to all the listed variables. Hence, these socio-culture dimensions ought to be considered in determining the compensation for Orang Asli native lands.

**Table 15: Descriptive statistics on suggestions for compensation of socio-culture dimensions losses (Burke, 2002)**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Insults	4.32	0.467
Mental Distress	4.18	0.388
Disturbances	4.27	0.443
The future of the young generation	4.23	0.425

Legend: 1=strongly not recommended 2=not recommended 3=neutral  
4=recommended 5= strongly recommended

### Valuation methods

Specifically, this part is meant for the Valuation Officer or the Valuer category of respondents. This is due to the question designed is to focus on basis of valuation and methods of valuation which are appropriate to value Orang Asli native lands. Table 16 shows the descriptive statistics analysis for basis in determining of market value for compensation of Orang Asli native lands. The respondents were given seven (7) items as the basis of valuation and thereafter to give their opinion on the items. Based on the results tabulated in Table 16, all items had achieved the mean values more than 4.0 (i.e. 4.22 to 4.42), except item 'possibility of more than one market for Orang Asli lands' which respondents opined it as indifference, meaning that this item is neither agree nor disagree. Therefore, as proven, when valuing Orang Asli native lands, consideration should be given to the aspects of partial and co-existing of property rights; spiritual and cultural dimension of the community that effect value of property; environmental aspect that creates market segment; and the possibility of more than one market for Orang Asli native lands. Indeed, these factors of consideration are different from titled property rights that at all costs do not give any consideration to any intangible matters such as spiritual, cultural and environmental aspects.

**Table 16: Descriptive statistics on the basis for determination of market value**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Based on the appropriate range of values of partial and co-existing property rights	4.34	0.479
Consider spiritual and cultural values	4.30	0.463
The concept of individual title is unacceptable	4.22	0.418
Rate the property on its spiritual or cultural value to the community rather than its productive value	4.26	0.600
Awareness of environmental, culture and institutional factors, cause duality in the market	4.42	0.499
Possibility of more than one market for OA land	3.22	0.418

Legend: 1= strongly disagree 2= disagree 3=neutral 4=agree 5= strongly agree

## Appropriate valuation approaches

According to Whipple (1995), there are three (3) appropriate valuation approaches that can be applied in determining the market value of native title (Australia) which can be possibly applied to value the Orang Asli native lands. The respondents were asked to evaluate these approaches and give their opinion on the practicality of these approaches in the valuation of Orang Asli native lands. Table 17 showed the results. Obviously, the respondents contended that only Normative Modelling (e.g. Contingent Valuation Methodology (CVM)) is suited to be applied in valuation of Orang Asli native lands. On the other hand, the respondents have demonstrated an indifference opinion on the other two approaches i.e. ‘Inference from past transaction (market evidences method)’ and ‘Simulation of the most probable buyer’s price fixing’. Furthermore, respondents commented that traditional valuation methods and advanced valuation techniques (e.g. Monte Carlo Simulation, MRA, DCF, etc) are not recommended in valuation exercises.

**Table 17: Descriptive statistics on the appropriate valuation approaches**

Variables	Descriptive Statistics	
	Mean	Standard Deviation
Inference from past transactions	2.80	0.404
Simulation of the most probable buyer’s price fixing	2.72	0.454
Normative Modeling e.g. Contingent Valuation Methodology (CVM)	4.70	0.463

Legend: 1=strongly not recommended    2=not recommended    3=neutral  
 4=recommended    5= strongly recommended

## Summary of findings with regard to professional questionnaire

Table 18 shows a summary of the results of the professionals questionnaire. This table is developed by computing the results of variables and sub-variables of the questions in the questionnaire. Overall, the constructs of compensation framework, which includes GCI, MC, and NMC were rated as ‘strongly agree’ by the respondents to become as main components for developing a compensation framework for Orang Asli native lands. On variables of general compensation issues; issues of monetary compensation; issues of non-monetary compensation; general perspectives on acquisition of OANL; law, regulations and land rights issues; negotiation of compensation; and the challenges in determination of compensation were perceived by the respondents as agreed, with the mean values ranges from 4.33 to 4.49. All variables and sub-variables presented are important variables to be considered in developing a compensation framework. On the other hand, the existing MC and NMC structures implemented by various state authorities were perceived by them either hardly adequate or inadequate. This is consistent with the comments made by Cheah (2004b) and Nicholas (2003) that the compensation paid by

authorities in land acquisition of Orang Asli native lands does not reflect the total losses of land, lives, culture and spiritual domain of Orang Asli community. The compensation as Altman & Smith (1994:96) recommends would possess “*the total amount of compensation could be more directly linked to actual impacts (positive or negative); be informed by ongoing impact assessment; and be distributed to the persons actually experiencing impacts over the life of an act. It might also ensure that native title would have benefits remaining, to enable them to deal with the later ‘closure’ of a resource development project, and the need to re-establish access to, and use of, the land involved*”.

Therefore, the respondents recommended that compensation framework for acquisition of Orang Asli native lands to be based on monetary and non-monetary dimensions. This is consistent with the statement that compensation for damage to native title will include monetary and non-monetary components (Humphry, 1998; Sheehan, 1997; Mah, 1995; Myers, 1986) or, as suggested by Whipple (1997), ‘material’ and ‘non material’ components. In addition, socio-culture dimensions also need to be considered to reflect a special attachment to land of Orang Asli community. The essential nature of land to indigenous peoples is both metaphysical (e.g. spiritual and cultural) and material (Small, 1997). Hence, any assessments for compensation need to consider both dimensions.

**Table 18: Summary of descriptive statistics of professionals questionnaire**

Variables	N	Mean	SD	Result
Constructs of compensation framework	158	4.75	0.247	SAg
General compensation issues	158	4.36	0.246	Ag
Issues of monetary compensation	158	4.33	0.143	Ag
Issues of non-monetary compensation	158	4.48	0.253	Ag
General perspectives on acquisition of OANL	158	4.46	0.276	Ag
Law, regulations and land rights issues	158	4.49	0.337	Ag
Negotiation of compensation	158	4.49	0.327	Ag
Challenges in determination of compensation	158	4.36	0.170	Ag
MC - Economic / market value	158	1.54	0.264	HAd
MC - Solatium / premium	158	1.57	0.301	HAd
MC - Other claims	158	1.17	0.116	InAd
NMC – Resettlement program	158	2.31	0.172	HAd
NMC – Motivational and training program	158	2.15	0.197	HAd
NMC – Other benefits	158	2.18	0.251	HAd
Suggestions to up-grade the compensation structure	158	4.30	0.124	Rc
Suggestions on proposal of compensation f/work	158	4.26	0.171	Rc
Suggestions on socio-cultural dimensions	158	4.25	0.037	Rc
Valid N (listwise)	158			

Legend: SAg=strongly agree; Ag=Agree; HAd=Hardly adequate; InAd=Inadequate;  
Rc=recommended

Generally, it was agreed that the determination of Orang Asli native land compensation will be based on an assessment of the specific traditional land rights and interests, and on the specific effects of an activity on their traditional lands. Table 19 shows the overall results of variables, which serve as the basis of valuation and valuation approaches to determine compensation of Orang Asli native lands. On basis of valuation dimension, the respondents seem to agree with all listed sub-variables. This was evident by a mean value of 4.14. On the other hand, on valuation approaches, the overall result rather contradict with the result of sub-variables; whereas the mean value overall is 3.41, meaning that they have indifferent opinions on the valuation approaches to be applied in the valuation of Orang Asli native lands. While the results of individual sub-variables showed that the only valuation approach suitable for valuing Orang Asli native lands is the Contingent Valuation Method. In fact, no contradiction occurred, because the results for overall are based on average mean value of three sub-variables.

**Table 19: Summary of descriptive statistics of part G of professionals questionnaire**

Variables	N	Mean	SD	Result
Basis to determine market value of OANL	50	4.14	0.166	Ag
Appropriate valuation approaches	50	3.41	0.205	Nt
Valid N (listwise)	50			

Legend: Ag= agree; Nt=Neutral

## INFERENCEAL ANALYSIS – PEARSON CORRELATION

The purpose of the inferential analysis is to prove whether the correlation between the dimensions of General Compensation Issues; Monetary Compensation; and Non-Monetary Compensation and the development of Compensation Framework is positive or otherwise. This result is important, because the dimensions used are the main components that contributed to the development of a compensation framework. The analysis is based on non-directional hypothesis (Rani, 2004) as explained in the following paragraphs.

### **Is there any statistically significant relationship between perceptions on protection by the laws, land rights issues, negotiation and challenges in determining of the compensation (i.e. general compensation issues) with development of the compensation framework?**

Table 20 shows the analysis of correlation between ‘General Compensation Issues (GCI)’ and ‘Compensation Framework (CF)’. From the analysis, it is notable that there are positive relationships between GCI and CF with a value of  $r = 0.240$ ,  $p < .05$ . In other



words, GCI relates with CF in such a way that the needs of GCI is proportional with the needs of CF and vice-versa. Therefore, the non-directional hypothesis of: Is there any statistically significant relationship between perception on protection by the laws, land rights issues, negotiation and challenges in determining of the compensation (i.e. general compensation issues) with development of the compensation framework is answered and accepted. This is because the value of  $p = 0.002$  is smaller than  $\alpha = .01$ .

**Table 20: Result of correlation test to prove a relationship between general compensation issues and compensation framework**

Variables		General Compensation Issues	Compensation Framework
General Compensation Issues	Pearson Correlation	1	0.240**
	Sig. (2-tailed)	.	0.002
	N	158	158
Compensation Framework	Pearson Correlation	.240**	1
	Sig. (2-tailed)	.002	.
	N	158	158

\*\* Correlation is significant at the 0.01 level (2-tailed).

**Is there any statistically significant relationship between perceptions on market value of the land, ex-gratia and other claims of monetary in nature (i.e. monetary compensation) with development of the compensation framework?**

Table 21 shows the analysis of correlation between ‘Monetary Compensation (MC)’ and ‘Compensation Framework (CF)’. From the analysis, it is notable that there are positive relationships between MC and CF with value of  $r = 0.452$ ,  $p < .05$ . In other words, MC relates with CF in such way that the needs of MC is proportional with the needs of CF and vice-versa. Therefore, the non-directional hypothesis of: Is there any statistically significant relationship between perceptions on market value of the land, ex-gratia and other claims of monetary in nature (i.e. monetary compensation) with development of the compensation framework is answered and accepted. This is because the value of  $p = 0.000$  is smaller than  $\alpha = .01$ .

**Table 21: Result of correlation test to prove a relationship between monetary compensation and compensation framework**

Variables		Monetary Compensation	Compensation Framework
Monetary Compensation	Pearson Correlation	1	.452**
	Sig. (2-tailed)	.	.000
	N	158	158
Compensation Framework	Pearson Correlation	0.452**	1

Sig. (2-tailed)	0.000	.
N	158	158

\*\* Correlation is significant at the 0.01 level (2-tailed).

**Is there any statistically significant relationship between perceptions on resettlement, motivation program and other benefits of non-monetary in nature (i.e. non-monetary compensation) with development of the compensation framework?**

Table 22 shows the analysis of correlation between ‘Non-Monetary Compensation (NMC)’ and ‘Compensation Framework (CF)’. From the analysis, it is notable that there are positive relationships between NMC and CF with value of  $r = 0.174$ ,  $p < .05$ . In other words, NMC relates with CF in such way that the needs of NMC is proportional with the needs of CF and vice-versa. Therefore, the non-directional hypothesis of: Is there any statistically significant relationship between perceptions on resettlement, motivation program and other benefits of non-monetary in nature (i.e. non-monetary compensation) with development of the compensation framework is answered and accepted. This is because the value of  $p = 0.029$  is smaller than  $\alpha = .05$ .

**Table 22: Result of correlation test to prove a relationship between non-monetary compensation and compensation framework**

Variables		Non-Monetary Compensation	Compensation Framework
Non-Monetary Compensation	Pearson Correlation	1	0.174*
	Sig. (2-tailed)	.	0.029
	N	158	158
Compensation Framework	Pearson Correlation	0.174*	1
	Sig. (2-tailed)	0.029	.
	N	158	158

\* Correlation is significant at the 0.05 level (2-tailed).

As a conclusion, the correlation test revealed that positive correlations exist between the dimensions and the relationships are not pure, but causal relationship existed. However, this research does not cover the study of the cause and effect of the relationship. Thus, the researcher believes that separate study is needed to highlight and explore that causal relationship.

**CONCLUSION AND RECOMMENDATIONS**

The results of the empirical findings, which are summarized from the above research methodology, revealed the following:

- the Orang Asli land rights need to be recognized under the law
- compensation for market value of the Orang Asli land need to be considered

- amend the Aboriginal Peoples Act 1954 (Act 134) to provide ownership of Orang Asli Reserves/Areas
- amend the Land Acquisition Act 1960 to incorporate Orang Asli lands
- adopt other countries framework as a benchmark e.g. Australian Native Title framework
- disparity in compensation packages between projects and among state authorities need to be reviewed
- develop uniform framework of compensation for all states.

Furthermore, the research concluded that the proposed compensation framework for land acquisition Orang Asli should employ the following elements:

- **Monetary Compensation**

- a) MV of ancestral land and other claims permitted by Land Acquisition Act 1960 (with the assumption that the land rights issues could be resolved).
- b) Solatium / ex-gratia payment in respect of special attachment to land, insults, mental distresses and the future of young generation
- c) Living allowances for certain period
- d) Evacuation allowance
- e) If the acquisition for economic development – shares of equity for Orang Asli community
- f) Economic size of agricultural land for their source of income

- **Non-Monetary Compensation**

- a) Resettlement program – housing, infrastructure and communal amenities
- b) Motivation program and training
- c) Employment

Finally, in order to upgrade the acquisition compensation of Orang Asli native lands, below are some suggestions:

- The Aboriginal People's Act 1954 has many weaknesses and is not favourable to the Orang Asli i.e. giving them only tenant rights (tenant-at-will) over their ancestral land. Therefore, it needs to be strengthened and amended where necessary. The Orang Asli needs to be accorded the same rights as the other citizens by giving them an ownership to land. The Malay Reserves Enactment; the Group Settlement Act 1965 or and; Felda Scheme could be used as reference so that similar provisions could be made for Orang Asli lands.
- The power of state authorities has to be limited in cases of proposed abolition of Orang Asli lands, to enable consultations with Orang Asli to be carried out beforehand. Alternative land with the same expanse and quality need to be alienated to Orang Asli or gazetted as Orang Asli Reserves, as provided for under articles 8(5)(c) and 89(5) & (6) of the Federal Constitution.

- Further loss of Orang Asli lands could be prevented if state authorities had procedures for screening out any Orang Asli land, before ownership is given to the concerned party.
- The Orang Asli must be involved in the development of their land, based on their needs and aspirations. The human development aspect must not be neglected and it should be the basis of the land development agenda of the government. The development of the Orang Asli reserve lands should be institutionalized in the form of a Trust.
- Sustainable development and the eradication of poverty are only possible when carried out within a human rights framework, with the aim of empowering the citizenry instead of encouraging dependence.<sup>3</sup> Only thus will the Orang Asli have a sense of ownership and a stake in the nation's development.
- Orang Asli are encouraged to give away their traditional lifestyle due to present national environment of development. They have got to change in order to suit with rapid physical development of Malaysia. Land is needed for developments for the benefits of peoples, not only for traditional subsistence means. To encourage them to change, intensive motivational and training need to be implemented properly, in a quest for achieving overall social engineering of Orang Asli communities.
- If Orang Asli lands have to be acquired for national interests, fair and just compensation should be based on current market value and the potential of the property; and this is to be paid entirely to the Orang Asli.
- Should such acquisition involve relocation of people and the destruction of livelihood resources, consultation with Orang Asli must take place beforehand. The relocation site must provide a strong economic base and better facilities.
- The factors of spiritual and cultural attachment to land by Orang Asli need to be considered in determining the market value of ancestral land via solatium, ex-gratia or special value clauses. In addition, this consideration is also in line with the United Nation Declarations who recognized special attachment to land by the indigenous peoples. In considering of this matter, the Land Acquisition Act 1960 needs to be amended, as at present First Schedule of the Act does not cover any special matter towards ownership of the land. To make it possible and implementable in due manner, additional sections e.g. section 1A of First Schedule can be added in the Land Acquisition Act 1960 specifically to deal with Orang Asli lands (if ownership issues have been resolved). If the present First Schedule is used, there will possibility be a double counting in valuation as market value is determined based on land and any improvement on the land, and no consideration is given for any additional value due to special attachment. This clause is applied in valuing land of private ownerships. Therefore, Orang Asli lands require a special clause that allows double counting by permission or requirement of law.

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<sup>3</sup> The United Nations Development Programme's Guidelines to Development, 10 Sept, 2002

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