

# PAYMENT OF ADEQUATE COMPENSATION FOR LAND ACQUISITION IN MALAYSIA

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## ABSTRACT

*Land acquisition involves the compulsory taking of land, often against the will of the landowners. The law in Malaysia requires the state to pay compensation adequately; however, adequate compensation is not defined in the statute. Historically, the courts seem to have succumbed to the pretense that the adequacy requirement may be achieved by giving sufficient monetary rewards in exchange. The questions are what monetary quantum is appropriate to constitute the constitutional mandate of adequate compensation; what should be the measure of compensation; what makes compensation adequate, and what are the tests of adequacy? A questionnaire survey was conducted among practicing valuers to discern their views with regard to the above issues. This survey revealed the views that compensation attributes under the stipulated laws are not adequate to fulfill adequate compensation notion under the spirit of Article 13 of Federal Constitution 1957. There is a need to review the heads of compensation structures by incorporating other countries practices such as payment of solatium or premium as over and above total compensation. Most of the valuers believed that land acquisition need not necessarily present the best alternative for the government to secure land for development.*

**Keywords:** Land acquisition, adequate compensation, compensation structure.

## INTRODUCTION

In Malaysia, federal, state, local governments and public authorities are vested by statute with the power to acquire land. The law of land acquisition is principally concerned with the rules governing the procedure to be followed in acquiring the land by compulsory means and with the awarding of compensation to the dispossessed landowner. Here, property is acquired by the state against the will of the landowner, but this can be done in the public interest and not in private interest (Brown, 1991). Eminent domain does not permit taking property of A and giving it to B to confer benefit on him. It also does not permit taking away property without just compensation. It is not eminent domain but expropriation, and this is illegal (Jain & Xavier, 1999).

The land acquisition statutes also provide that a dispossessed landowner shall receive compensation for the loss of the resumed land. According to Rowan-Robinson and Brand

(1995), the purpose of compensation is to compel the owner to sell the right (in monetary terms) as though the land owner is in the same position as if his land had not been taken. In other words, the landowner gains the right to receive a monetary payment not less than the loss imposed on him in the public interest, but, on the other hand, no greater. The underlying theme in the compensation provisions of the land acquisition statutes is to ensure that a dispossessed landowner is no worse off and no better off as a result of his eviction (Brown, 1991). This paper presents a study conducted via questionnaire survey amongst practising valuers in Malaysia. The survey investigates land acquisition issues and explores perspective of valuers regarding land acquisition implementations in Malaysia. The survey emphasised the payment of adequate compensation to dispossessed landowners.

## **LAND ACQUISITION IN MALAYSIA**

Land is acquired in Malaysia under the Land Acquisition Act 1960. This is a serious encroachment on the right to property by legislation, although the fact remains that over a period of time, the law has been liberalized in certain aspects (Brown, 1991; Jain & Xavier, 1996). Nevertheless, there are still some aspects of the law which need to be modified (Jain & Xavier, 1996). Land acquisition and compensation matters are therefore entirely creatures of statute (Xavier, 2001). Historically, the courts have declared that the requirement may be satisfied by expressing adequate compensation in terms of money. The problem then is to find out, how much money is required to meet the constitutional mandate that adequate compensation be paid? To solve this problem, practitioners rely upon the concept of market value that is also provided under the laws of compulsory acquisition.

The law requires in any acquisition of land that the State Authority pay adequate compensation. The term 'adequate compensation' is not defined. It is totally abstract; it has no meaning from a practical standpoint, unless it is related to something which has a concrete value (Graham, 1984 in Khong, 1996). Market value and adequate compensation are not defined in acquisition laws, neither has it been contended that adequate compensation and market value are the same thing. Obviously, in some cases they are not, rather the idea is that market value is the best method of satisfying the requirement that adequate compensation is paid. The idea is sound and it works well in practice (Khublal, 1994 in Khong, 1996). Therefore, it is the desire of the state to give adequate compensation based only on market evidence, and if each party involved in land acquisition will act in accordance with professional ethics, honesty and integrity, the objective of arriving at adequate compensation will be achieved based on market value (Khublal, 1994).

Dundas & Evans (2001) stated that the compensation on the market value basis is considered to be satisfactory; however, there is a feeling that an additional payment, probably a percentage of the value, should be paid to all property owners or, perhaps, only to a restricted category, such as owners/occupiers. Epstein (1998) acknowledges that

restrictions on the rights of others often serve as a form of implicit, in-kind compensation. For example, zoning restrictions in a residential neighbourhood may be justified by the average reciprocity of advantage received by residential landowners. A study in Aberdeen (RICS, 1995; Rowan-Robinson et al, 1995) also recommends that a supplement should be paid. If the compensation were seen to be more generous, it could be possible to present compulsory purchase positively to the extent that, if it were sufficiently high, owners/occupiers might welcome compulsory purchase.

The meaning of adequate compensation has different interpretations in different countries. In United States, the market value of the subject property is generally held as just compensation for the dispossessed owner (Eaton, 1995). In UK, compensation is based on the principle of value to owner that is made up of market value together with other losses suffered by the claimant (Denyer-Green, 1994). This principle is broadly followed in most Commonwealth countries and regions such as Australia (Rost & Collins, 1984) and Hong Kong (Cruden, 1986). In China, the current compensation laws are far from adequate, due to the just terms compensation principle not being in place, and has caused great discontent (Chan, 2003).

Usilappan (1997, 2000) concerned payment of fair, equitable and just compensation to the affected owners. The Constitution required payment of adequate compensation and the Act provides for market value and other damages and, though these appear equitable in law, in practice the landowners still suffer. Various amendments to the Act provide the landowners lesser compensation such as compensation on planned use, relocation hardships and business losses. Most jurisdictions have done away with betterment, but in Malaysia the betterment clause is still in the Act (Buang, 2001; Usilappan, 2000; Xavier, 1999).

Based on the above discussions and the current attributes of compensation under laws of land acquisition in Malaysia, are compensations adequate? Are the landowners compensated well? Therefore, the main issue of this research can be concluded as *'To what extent the notion of adequate compensation as applied by the existing laws is concordant with the expectation of the parties involved'*.

## **RESEARCH AIMS AND OBJECTIVES**

This research has been carried out in Malaysia with the aim of assessing whether the existing compensation framework for land acquisition as stipulated in First Schedule of Land Acquisition Act, 1960 and other related rules, circulars, and guidelines released by related government agencies, Board of Valuers, Appraisers and Estate Agents, Malaysia, and valuation practices in Malaysia are effective and adequate in safeguarding the owners' interest and losses. Specifically, the research assesses the existing (local and foreign countries) compensation structure, legal instruments and the practice of valuation in determining adequate compensation for affected land owners.

The research firstly reviews all the international guidelines such as acts, charters, recommendations, and resolutions on compensation as practised by the foreign countries such as the United Kingdom, USA, India, Australia and Singapore. UK, India, Australia and Singapore are selected due to the origins of the law is similar to Malaysia. USA is selected due to comprehensive legal procedures and determination of so-called just compensation adopted by various states in US is quite substantial. Secondly, the research studies procedures of the acquisition process in selected countries, with the objective to consolidate understanding on their significance as well as understanding their approaches towards compulsory acquisition. Finally, the research assesses the implementation framework at local level by focussing on whether the practices and guidelines of foreign countries could be implemented into a local Malaysian context in relation to three aspects: legal instruments, management/procedural structures and effective valuation approaches of compensation with the objectives to identify their strengths and weaknesses.

## **OVERVIEW OF LAND ACQUISITION**

### **Land Acquisition Laws**

Freedom of the person and the right to acquire, hold and enjoy property are the two pillars on which a democratic society rests. These are characteristics as natural rights of the people. Property is not only an economic asset; it also has emotional and sentimental value (Jain & Xavier, 1996). The right to property is not absolute. This right has always been regarded as being subject to eminent domain, an inherent right of the state, an essential part of the state sovereignty (Ghosh, 1973). Eminent domain is subject to two essential conditions: private property is to be taken only for public use; and just compensation must be paid for the property taken (Keith, 1984). Land acquisition, therefore, is a way of direct control over land development. Land acquisition is also the government's tool to assemble land in resolving the land supply problems for development. Land assembly through land acquisition is a way out to solve problems with landownership and landowners' reluctance to offer their land for development (Omar & Ismail, 2005). The power of compulsory purchase supports the land assembly negotiations in order to avoid situations where individual landowners can freeze development by refusing to sell, particularly by trying to hold out for unreasonable purchase price (Ball, 1996). Under certain circumstances, such as when there are landownership problems and passive landowners, the government feels that to undertake land development by compulsory purchase is more complicated, time consuming and more expensive than to reclaim land from sea for development in certain waterfront areas (Omar, 1999; Omar & Ismail, 2005).

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 on a large scale. The government intervention over land development is directly exercised

under the power of land acquisition as stipulated under the Land Acquisition Act (1960), and provided under Article 13 of the Malaysian Constitution (1957). This article stipulates that no person may be deprived of property in accordance with law and no law may provide for compulsory acquisition or for the use of property without adequate compensation. With reference to the clause of the land acquisition by the Federal Government, Article 83 set out detailed procedures for land compensation as stipulated by the Malaysian Constitution (1957). Therefore, using the power contained in the Land Acquisition Act (1960), the government can acquire land for public purposes with adequate compensation as determined under Schedule 2 of the Act. 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 the Land Acquisition Act 1960. Even though the State Authority, under the provision of Land Acquisition Act 1960, has the power to possess any private land, it does not allow the authority to violate one's right onto their private properties (Omar & Ismail, 2005).

### **Principles of Compensation**

The term compensation is used in a number of other statutes. It has a well understood meaning in respect of workers' compensation. It has a different meaning from damages in the law of contract and tort. When used in the context of deprivation of land it means *recompense or amends*. It means the sum of money which the owner would have got had he sold the land on the open market plus other losses which result from the resumption. However, the term compensation is not defined in the land acquisition statutes. The term takes its meaning from the provisions which define what monetary sum must be paid to the dispossessed owner for the loss of his land (Brown, 1991; Rowan-Robinson & Brand, 1995). The sum payable may represent a sum not only for the land taken, but also other losses suffered in consequence of the acquisition. The fundamental principle has been to place the affected landowners in the same position, after the acquisition as he was before, nor worse, nor better. This also called the principle of equivalence (Cruden, 1986; Brown, 1991, Rowan-Robinson & Brand, 1995; Teo & Khaw, 1995; Jain & Xavier, 1996; Usilappan, 1997).

### **Measurement of Adequate Compensation**

What should be the measure of compensation? According to Elliott (1977), there is nothing in any compulsory acquisition laws mentioned on the measure or yardstick to apply in assessing the compensation. As the result of the unusually open texture of the legislation, the measure of compensation was left to the arbitrators or juries to determine (Parish, 1985). Michelman (1980) develops two models of compensation designed to achieve different objectives, one derived from classical utilitarianism and the other, the fairness model derived from the *justice as fairness* approach of John Rawls. Michelman's main concern was with the question 'when to compensate'. However, Bell (1980)

considers how the objectives of these two models might be reflected in the measure of compensation. Bell suggests that the objective of the utilitarian approach would be to maximise social welfare. His research indicates that in view of the time, trouble and expense being invested in lengthy negotiations with landowners, the greater net benefit would be likely to be achieved by a measure of compensation which provides claimants with a small balance of advantages thus encouraging less objections and speedier settlements. An interesting example of a utilitarian approach to compensation is as quoted by Cullingworth (1980), who cites the Minister of Transport in a memorandum in 1958 to the Minister of Housing and Local Government as stating that his department 'could not be more strongly in favour' of a Bill providing for an increase in the measure of compensation for compulsory acquisition because of the difficulties faced by his department in time consuming procedures for compulsory acquisition at unattractive rates of compensation. Bell suggests that this small balance of advantage might be assessed by reference to the optimum point on a claimant's satisfaction curve. On the data available, he estimated that this would point to an addition of some 30 percent to the market value of a holding.

A Rawlsian approach to compensation would view matters from a different perspective. Rawls (1958) suggested that the principles of justice for the basic structure of society should be those principles 'that free and rational persons concerned to further their own interests would accept in an initial position of equity as defining the fundamental terms of their association'. Bell (1980) hypothesised that Rawl's rationale, which had no idea whether they would be faced with the prospect of the expropriation of their land, would select a measure of fairness which would ensure that the worst affected group would end up marginally better off. He considered that the compensation decisions of the lay juries prior to 1919 exhibited some of the characteristics of a Rawlsian approach to compensation and on this basis concluded that such a measure might add at least 10 percent of the market value.

Cane (1988) makes a distinction in the context of compensation for accidents between that which is intended to provide a financial equivalent for what has been lost and that which is intended as a substitute or solace for what has been lost. The former is generally taken to refer to the lump sum required to leave the claimant as well off but no better off than he or she would be without the change in their expectations. Compensation for compulsory purchase based on this equivalence might typically reflect the price which the claimant could have expected to have obtained for the property on a sale in the open market together with other consequential losses (Rowan-Robinson, 1995). McGregor (1988) states that compensation which is granted as a substitute or solace for what has been lost would seem to comprehend rather more intangible loss, something that cannot be replaced, and something other than patrimonial loss. Such an element in an award of compensation of compulsory purchase might provide recompense for the individual value which people commonly ascribe to heritable property in excess of its market value (McAuslan, 1980; Knetsch, 1983; Farrier & McAuslan, 1988). This is sometimes referred to as 'householder's surplus' and reflects loss of tie with the area, friendships made, and

so on – items which are difficult to value (Rowan-Robinson, 1995). Both the utilitarian and fairness models of compensation would be likely to make some allowance, although for different reasons, for the subjective expectations of the claimants (Farrier & McAuslan, 1988; Rowan-Robinson, 1995).

In Groundwater Recharge Study carried out on Bonriki Island Tarawa, Kiribati during 1996-1997, the monetary compensation did not always compensate for the loss of relationship to the land, the dignity and identity that it provides. Perhaps the compensation can be tied in some way to the role of guardianship, which can then be passed on to the next generation. Although in some respects, traditional attitudes and relationships to land may work against acquisition and use for public purposes, it may be possible to work with those values.

Compensation has largely been understood to refer to specific measures intended to make good the losses suffered by people displaced and/or negatively affected by the acquisition. Compensation usually takes the form of a one-off payment, either in cash or in kind and is principally about awards to negatively affected persons. The losses incurred by people affected by the creation of infrastructure such as project offices and township, canals, transmission lines and other activities are not usually properly accounted for and so these losses have not been adequately compensated. Similarly, the impact of the projects (e.g. dam) on the livelihoods of the downstream population and on people losing lands and livelihoods due to land acquired for compensatory afforestation has not been properly assessed and compensated. Compensation is most often awarded only to persons in possession of undisputed legal title. Tenants, sharecroppers, wage-labourers, artisans and encroachers are rarely considered eligible for compensation, whereas they are paradoxically the most vulnerable and in need of support. Community assets and common resources like grazing grounds and forests, which again may be critical for the livelihood of the poorest, are not compensated for under the acquisition process.

Compensation on the basis of replacement value still restricts it to individually owned property; the totalities of rights that are violated are not compensated. The most critical of these are the customary rights of people to natural resources that are vital to livelihood and food security; the loss of the common property resources which constitute a valuable shared productive base of the community. This highlights the need for compensation to be relocated in a framework of restitution of rights, both community and individual, beyond even replacement value.

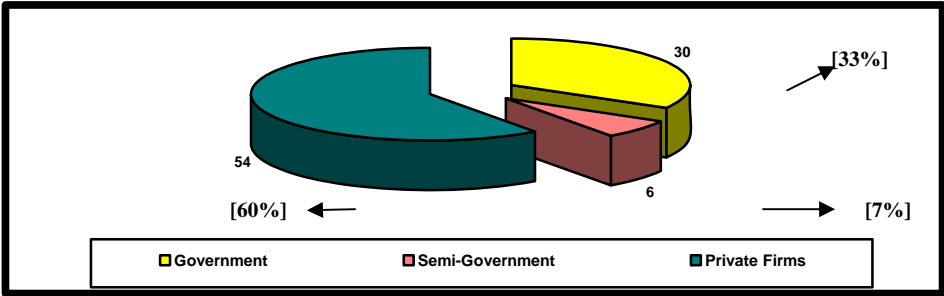
## **METHODOLOGY**

A preliminary questionnaire survey was the first stage of the data collection process in this study. The questionnaire was closed-ended in nature and was designed such that it does not take long for the respondent to answer. The target population in this study was the valuers in public and private valuation organisations in Malaysia. Two hundred and fifty (250) questionnaires were distributed to these organisations based on the following geographical locations: Klang Valley (N = 100), Northern Region (N = 60), Southern

Region (N = 60) and East Coast (N = 30). 90 questionnaires were returned to give the response rate of 36%, which is considered appropriate based on Ellhag & Boussabaine (1999) and Idrus & Newman (2002). The data gathered from the survey has been analysed using descriptive statistical techniques. Generally the weights used in this paper (except mentioned otherwise) are 1=strongly agree; 2=moderately agree; 3= agree; 4=moderately disagree; and 5=strongly disagree.

As presented in Table 1, the respondents who took part in the survey are qualified to give their opinion. This was evident from the fact that 53% of them have experience in valuation of land acquisition of between 11 to 100 cases. Apart from that, 50% of them hold managerial posts as manager or assistant manager; 13% are academicians in real estate management and 4% are holding other posts i.e. as a partner.

**Chart 1: Type of Organisation**



Source: Field Survey, 2006

Chart 1 shows the nature of organizations of the participating respondents. Fifty four (54) or 60% of respondents are from private firms; 33% are from government organisations and the balance, 7% are from semi-government agencies including universities.

## SURVEY RESULTS AND DISCUSSION OF FINDINGS

### Background of the Respondents

**Table 1: The Main Characteristics of the Sample**

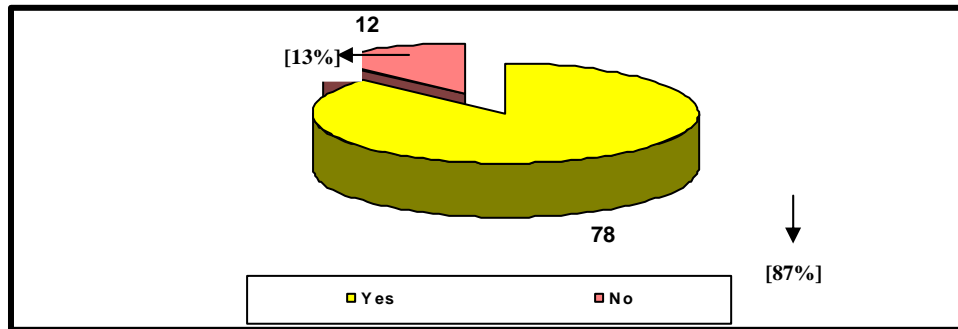
Characteristic	Frequency	Percentage (%)
<b>Gender</b>		
Male	66	73
Female	24	27
<b>Designation</b>		
Valuation Officer/Executive	30	33
Deputy - Director/Manager	21	23
Director/District Valuer/Branch Manager	24	27
Academician	12	13
Others	3	4
<b>Highest level of qualification</b>		
Bachelor Degree	90	66
Master Degree/PG Diploma	40	29
PhD	6	5
<b>Professional membership</b>		
Registered Valuer	54	45
MISM/FISM	54	45
MRICS/FRICS	12	10
<b>Age</b>		
21 – 30 years	6	7
31 – 40 years	24	27
41 – 50 years	48	53
51 – 60 years	9	10
> 60 years	3	3
<b>Number of cases valued</b>		
< 10 cases	36	40
11 – 50 cases	30	33
51 – 100 cases	18	20
> 100 cases	6	7
<b>Percentage of cases valued and then referred to court</b>		
< 10%	54	60
11 – 25%	24	27
26 – 50%	12	13
51 – 75%	0	0
> 75%	0	0
<b>Location of the organisation</b>		
Klang Valley	46	51
Northern Region	20	22
Southern Region	18	20
East Coast	6	7

Source: Field Survey, 2006

## Issues and Perspectives on Payment of Adequate Compensation

### Q1: Other Alternatives for Government to Secure Land for Development

Chart 2: Other Alternatives



Source: Field Survey, 2006

From Chart 2, 87% of the respondents agreed that, apart from compulsory acquisition under the powers of Land Acquisition Act, 1960, the government does have other ways to secure land for development. Only 13% believed that compulsory acquisition is the only means the government can exercise to secure land to carry out public projects.

### Q2: Options for government to secure land for development

The weights used in this question are 1=yes; 2=no; and 3=not sure. Table 2 presents respondents' views on the options open to the government for securing land for development. Compulsory acquisition medium was the most popular option, followed by direct purchase through negotiation and joint venture. An agreement under the threat of compulsory acquisition is least popular although it remains as one of the options. This result is concordant with research findings by Omar and Ismail (2005).

Table 2: Options for government to secure land for development

<i>Ranking</i>	<i>Option</i>	<i>Mean Score</i>
1	Compulsory acquisition	1.06
2	Direct purchase through negotiation	1.10
3	Joint venture	1.90
4	An agreement under the threat of compulsory acquisition	3.51

Source: Field Survey, 2006

### Q3: Options exercised by the government

For this question, the weights used are 1=most often; 2=often; 3=seldom; and 4=never. Table 3 shows the general ranking of the regularity of options implemented by the governments to secure land for development. The result showed that compulsory acquisition was the most often option exercised by government, followed by joint venture and direct purchase. Agreement under the threat of compulsory acquisition was revealed as never have been applied. The researcher is of the opinion that the respondents did not really understand this option due to its unpopularity in Malaysian scenario as compared to in Scotland.

**Table 3: Options exercised by the government**

<i>Ranking</i>	<i>Option</i>	<i>Mean Score</i>
1	Compulsory acquisition	1.36
2	Direct purchase through negotiation	2.10
3	Joint ventures	2.74
4	An agreement under the threat of compulsory acquisition	4.51

Source: Field Survey, 2006

### Q4: Purpose of Compulsory Acquisition Powers

**Table 4: Purpose of compulsory acquisition powers**

<i>Ranking</i>	<i>Purpose of acquisition</i>	<i>Mean Score</i>
1	Public purposes	1.13
2	Economic development purposes	2.25
3	Residential and industrial purposes	3.46
4	Agriculture	4.26
5	Mining	4.54

Source: Field Survey, 2006

The weights used in this question are 1=all the time; 2=often; 3=sometimes; 4=rarely; and 5=never. Table 4 shows the general ranking of purposes for compulsory acquisition powers being used in Malaysia. Land acquisition for public purposes was unanimously agreed by the respondents to be implemented 'all the time' by authorities. Keith (1984) noted that private property is to be taken only for public use, and with the payment of just compensation. Furthermore, respondents believed that economic development purposes under section 3(b) of the Act, is 'often' implemented under compulsory acquisition.

### Q5: Stages of Acquisition being opposed

When asked about what stages of land acquisition processes are being opposed, the respondents indicated that the awarding of compensation stage is 'all the time' and 'often' being opposed by landowners, which was evident from 74% respondents mentioning it. This was followed by 26% respondents who indicated that inquiry stage is 'sometimes'

opposed by affected landowners. Rowan-Robinson (1990) commented that ‘compulsory purchase is one of the harshest impositions by the State upon its citizens’. Studies by Dundas & Evans (2001) in Scotland revealed that there is evidence of persistent widespread dissatisfaction with the compulsory purchase process and compensation extending over long number of years. In many land acquisition cases, people suffer more than they gain, thus land acquisition needs to be dealt more pragmatically (Usilappan, 2000).

## Q6: Reasons for opposing acquisition

**Table 5: Reasons for objections in acquisition**

<i>Ranking</i>	<i>Reason for objection</i>	<i>Mean Score</i>
1	Inadequacy of compensation	1.46
2	Purposes not purely public purpose	2.10
3	Emotional attachment to property	2.90
4	Procedures not clear	3.51

Source: Field Survey, 2006

The weights used in this question are 1=most important; 2=moderately important; 3=slightly important; 4=important; 5=slightly unimportant; 6=moderately unimportant and 7=not important at all. The respondents were asked to score their answers based on these scales.

Table 5 shows the reasons for people’s objections in land acquisition. Inadequacy of compensation was the most important reason why land acquisition was opposed by landowners. This was evident from its mean score of 1.46, while purpose not purely for public ranked second with the mean score of 2.10. Interestingly, no results showed the mean score of more than 4.0. This means that the respondents were not in dispute as to the importance of all the reasons given. However, the collective attitude of society or the community against compulsory purchase is not mirrored in the attitude of most individuals whose land is acquired for public purpose who are, in fact, contented with their deal with the acquiring authorities (Dundas & Evans (2001); Gordon (1989)). No other reasons were given by respondents for objecting to the compulsory acquisition.

## Q7: Advantages of Land Acquisition Powers

As shown in Table 6, the main advantage of compulsory acquisition from the respondents’ point of view was that it was considered as the main government tool to assemble land in resolving the land supply problems for development. The table also indicates other advantages, which are: to avoid situation where individual landowners can frustrate development by refusing to sell; compensation based on market value satisfies adequate compensation, and; saves time and creates less problems to acquiring body. These are the advantages that scored higher rating in the survey as compared to holding out land.

**Table 6: Advantages of land acquisition powers**

<i>Ranking</i>	<i>Advantage</i>	<i>Mean Score</i>
1	The government's tool to assemble land in resolving the land supply problems for development	2.12
2	To avoid situations where individual landowners can frustrate development by refusing to sell	2.46
3	Compensation based on market value satisfies the adequate compensation	2.48
4	Save time and creates less problems to acquiring body	2.76
5	To avoid landowners to hold out land for unreasonable purchase	3.43

Source: Field Survey, 2006

### **Q8: Disadvantages of Land Acquisition Powers**

Table 7 shows the disadvantages of land acquisition powers as identified by the respondents. The respondents agreed that, the main disadvantages of land acquisition were; it was complicated, time consuming and expensive to implement and compensation was not generous. The lowest score on the listed disadvantages was on the factor that land acquisition was always opposed by landowners. This might not be true if the compensation is generous and sufficiently high, and the landowners will welcome compulsory acquisition (Rowan-Robinson, 1995).

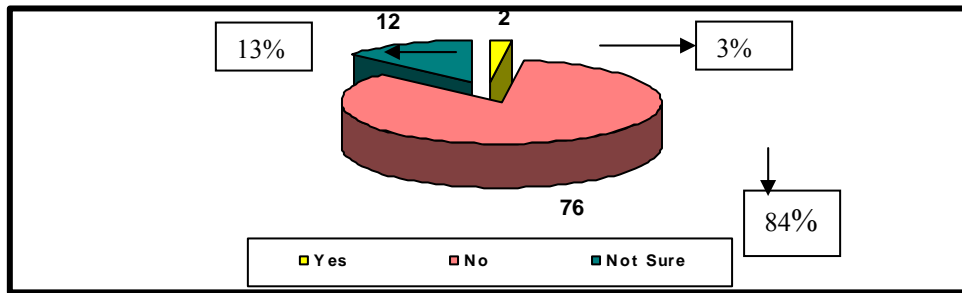
**Table 7: Disadvantages of land acquisition powers**

<i>Ranking</i>	<i>Disadvantage</i>	<i>Mean Score</i>
1	Complicated, time consuming and expensive	2.23
2	Compensation was seen as ungenerous and not up to the expectation of affected landowners	2.34
3	Serious encroachment on the right to property	2.46
4	Not welcome by landowners	2.67
5	Always opposed by the affected landowners	3.85

Source: Field Survey, 2006

**Q9: Whether or not adequate compensations have been given**

**Chart 3: Adequacy of compensation**



Source: Field Survey, 2006

When asked as to whether the existing compensation framework under the First Schedule of the Land Acquisition Act and other related rules provide for adequate compensation, 84% thought that adequate compensations were not given, while 13% were not sure and only 3% thought it adequate under the present act and rules. This suggests that adequate compensation remains as a main issue that needs to be addressed.

**Q10: Perceptions on current attributes of compensation**

Table 8: Perceptions on current attributes of compensation

Ranking	Attributes of Compensation	Mean Score
1	Market Value of Land Taken	3.53
2	Injurious Affection	4.07
3	Severance	4.20
4	Disturbance	4.24

Source: Field Survey, 2006

The weights used in this question are 1=exceedingly generous; 2=generous; 3=adequate; 4=hardly adequate; 5=inadequate. The respondents were asked to score their answers based on this scale, and the results are tabulated in Table 8.

As shown in Table 8, the majority of respondents agreed that compensation under the heading of disturbance was hardly adequate. This was evident from the mean score of 4.24 which was the most extreme among the four heads of claims while “market value for land taken” achieved 3.53 mean score, which can be considered as adequate, others listed heads of claim achieved mean scores more than 4.0. This means that all heads of claim under the present Act are hardly adequate. This result is consistent with the findings for Q9.

## Q11: Opinion on acquisition issues

**Table 9: Opinion on acquisition issues**

<i>Ranking</i>	<i>Issues</i>	<i>Mean Score</i>
1	Other methods of valuation help in adequate compensation	2.13
2	Could a review of head of claims help the cause of adequate compensation	2.40
3	Payment of solatium/ premium as over and above the total compensation is necessary in Malaysia	2.46
4	The decisions by court in land acquisition cases (the principles with regards to compensation) contribute to satisfaction in payment of adequate compensation	2.66
5	Over-bearing of comparison method in determining market gives impact on adequate compensation	3.06
6	Is there a need for the Malaysians to adopt other countries' practices in determining fair compensation	3.40

Source: Field Survey, 2006

Based on Table 9, four main issues in land acquisition scored with means of less than 3.0 and were therefore considered important by respondents. These are: the usefulness of other methods of valuation towards the determination adequate compensation; the need for a review of head of claims to help the cause of adequate compensation; the necessity in this country to introduce solatium/premium as payment over and above the total compensation, and; the contribution of court decisions on land acquisition cases (the principles with regards to compensation) towards the satisfaction in payment of adequate compensation. Perhaps the impact of the over-bearing role of comparison method on the determination of adequate compensation, with the mean score of 3.06, also important to be explored in land acquisition researches. On the other hand, Malaysia also needs to adopt other countries' practices in determining fair compensation, as this issue achieved mean score of not more than 4.0.

## Q12: Perceptions on the measures of adequate compensation

**Table 10: Perceptions on the measures of adequate compensation**

<i>Ranking</i>	<i>Measure / Test of adequate compensation</i>	<i>Mean Score</i>
1	Component of compensation should include: MV + other claims (disturbance, severance, injurious affection) + solatium	1.60
2	Land acquisition power is purely for public purposes	2.06
3	Landowners do not challenge the award	2.13
4	Basis and component of other claims need to be reviewed	2.33
5	Beyond monetary compensation – e.g. resettlement	2.53
6	Negotiation with landowners is mandatory before compulsory acquisition	2.60
7	Compensation proposal is made available for review and consideration by landowners before inquiry	2.66
8	Establishment of National Land Management to secure land for development	2.66
9	Taking into consideration humanity aspects in compensation – e.g. hardship, readjustment of life/family/business	2.66

Source: Field Survey, 2006

Table 10 itemises the 9 listed measurements of adequate compensation. The respondents agreed that all measurement factors have scored a mean score more than 3.0. This means that they were strongly and moderately agreed that all the factors are important to be taken into consideration in land acquisition researches. Respondents also gave considerably high marks for suggestion on an establishment of National Land Management to secure land for development. Usilappan (2000) suggests that an alternative system should be considered to allow economic development taking place without complete land acquisition. The government can play the role of a mediator and as a watchdog to development.

## Q13: Ranking of the importance of land acquisition concerns

Based on feedback from the survey, the general ranking of the importance of land acquisition concerns in Malaysia is as follows:

**Table 11: Ranking of the importance of land acquisition issues**

<b>Land acquisition concerns</b>	<b>Ranking</b>
Quantum of compensation	1
Determination of the market value and other claims (valuation methods)	2
Laws of land acquisition	3
Process / procedures of land acquisition	4

Source: Field Survey, 2006

As tabulated in Table 11, the quantum of compensation ranked the highest among the main concerns on land acquisition with 65% of respondents testifying to that. The concern on the determinations of market value and other claims came next. Dowdy *et al* (1998), Newcombe (1999), Dundas & Evans (2001), Law Commission, UK (2001), Land Information, New Zealand (2002), Calandrillo (2003) and Omar & Ismail (2005) also emphasized on various compensation issues in their research.

#### **Q14: General Comments on land acquisition in Malaysia**

In addition to the structured questions, the respondents were also encouraged to give their further comments on any other aspects regarding land acquisition in Malaysia. 17 respondents had given their comments which were summarized as follows:

- a) The authorities are discouraged to pre-announce the proposal of acquisition for projects. This will create speculative purchases among those who have interests.
- b) The independence of assessors appointed by the court need to be ensured.
- c) Land should only be acquired when necessary and urgently needed for development. There were cases where lands acquired were left idle for years.
- d) The Land Acquisition Act 1960 is quite clear in determining the compensation (except for loss of earnings), but each individual interprets them differently. This gives rise to confusion as to which items can and cannot be claimed. The Act should be revised and simplified to disseminate all information without confusion.
- e) Land acquisition powers should only be used for public purposes. Economic development projects that fall under section 3(b) of the Act must be made compulsory for acquiring body to negotiate with landowners before

compulsory acquisition. This will make landowners welcome the project proposals.

- f) Justice is done when the landowners are able to appoint lawyer and other professionals. Thus, the government needs to absorb the cost for those who are not capable to do so. Now, the cost is limited to valuation fee only.
  - g) Under the present laws of acquisition in Malaysia, there is no room for landowners to challenge the validity of acquisition like before. There were cases where acquisition was done in bad faith.
  - h) In general, land acquisition in Malaysia is quite fair although the whole process is long. At least our system has compensated related parties fairly and provided platform to discuss/negotiate compensation with relevant authorities, as compared to Singapore.
- .

## **LESSONS FROM OTHER COUNTRIES**

A study involving comparisons of the United Kingdom, USA, Hong Kong, China, India, Australia and New Zealand found six advantages of the systems in those countries as compared to Malaysia. These factors are perhaps relevant for Malaysian compensation structure in land acquisition to consider, in moving towards improving its compensation framework. The advantages are as follows:

- i) The recognition of business compensation;

UK, USA, Australia and New Zealand recognise payment for loss of goodwill as an attribute of compensation. In Malaysia, business losses are allowed under compensation claims as stipulated in section 2(e) of First Schedule but they do not cover loss of goodwill and loss of earnings.

- ii) Equity of disturbance payments (relocation hardships);

Disturbance payment can include a wide range of items such as professional fees for acquiring alternative premises; costs of adapting alternative premises, including carpets, curtains and shelving; removal costs and any other reasonably quantifiable losses. In Malaysia, a claim under this heading is only for cost of transfer.

- iii) Payment of solatium/premium over and above the total compensation;

Solatum is an additional sum in respect of the owner injured feelings or the insult due to the unilateral action of the acquiring authority in arbitrarily expropriating the land. A solatum may be awarded as a percentage of the compensation or it may be an amount calculated without reference to any percentage. This payment has been the practices in many countries but Malaysia has yet to adopt it.

- iv) An element of compulsory negotiation before using compulsory acquisition powers;

In the United States, landowners have the right to negotiate before compulsory acquisition and this was made mandatory in the land acquisition procedures; indeed, municipalities are required to prove that negotiations have failed before leave to proceed through the courts is granted. In Malaysia, negotiation is allowed under acquisition of Section 3(b) but subject to cooperation in the entire project.

- v) Compensation details

In the United States, the compensation proposal which indicates the detailed valuation of compensation is made available for landowners to review for a period of one month before an official inquiry. No such procedures is in place in Malaysia.

- vi) Alternative compensation

Section 105 of Public Works Act in Australia states that an alternative to monetary compensation such as 'land for land' compensation can be considered where equivalent crown owned land is readily available. The Law Reform Commission in Canada (1978) recommended a 'home for home' principle whenever a residential property is expropriated. India also has such clause in her land acquisition act. However, in Malaysia no laws provided such alternative.

## CONCLUSION

The literature review and survey results revealed that the main issue of land acquisition is the quantum of compensation that is perceived by the respondents as inadequate to fulfill adequate compensation notion under the spirit of Constitution. There is a need to review the heads of compensation structure by incorporating other countries, practices. Although there is a broad acceptance that market value is the appropriate basis for compensation for land taken, perhaps there is also a general feeling that a solatum or premium should be paid to compensate the claimant for the compulsory nature of the acquisition. Most of the valuers perceived that land acquisition need not necessarily present the best alternative for government to secure land for development. Other alternatives such as direct purchases through negotiation and joint venture are the alternatives available for government to exercise rather solely depending on land acquisition powers. According to Usilappan (2000), land acquisition is a complex process, is sensitive in nature, and needs pragmatic

approach to deal with. Wherever possible, land developments should be carried through the process of normal economic supply and demand.

In relation to other countries, evidence from practitioners in every country studied except UK, indicates that a standard premium is added to the valuation achieved via the statutory basis of compensation in instances where the owner is prepared to allow the State to purchase their property by negotiation; indeed, in USA, municipalities are required to prove that negotiations have failed before leave to proceed through the courts is granted (Dowdy *et al*, 1998). The levels of premium have been quoted at 10% - 25% contrasting strongly with the UK where it is perceived that valuations undertaken by reference to compulsory purchase legislation produce lower than market value and in relation to blight: The incidence of blight in the other countries studied tends to be reduced because of the greater certainty in their land use development plans and in respect of re-expropriation.

Current negotiation and mediation practice suggests that some parties are trying to adopt a workable approach to compensation. It remains to be seen, however, whether the principles of valuation by the court in land reference cases are recognized to give space for compensation that addresses the intrinsic value of land. To secure just terms and sustainable outcomes, all parties need to be made more aware of the implications attached to following different statutory pathways for compensation. An impartial interpretation of the law and a better understanding of the principles and practice of valuation will lead to an adequate compensation settlement.

At the heart of any call for greater transparency in compensation agreements lies alternative interpretations of whether the compensation is private (hence there is no requirement to be open) or public (hence there is a public interest in greater scrutiny (Altman, 1985, 1998; Levitus, 1999)). Whatever the outcome of that debate, the lack of transparency contributes to inadequate monitoring of compensation payments, obstructs independent evaluation of terms and conditions, and limits the development of benchmarks for how compensation might be better measured, distributed and managed.

Finally, the problems of compensation are more than just a matter of law and valuation; it is a matter of justice between society and man. “The word *compensation* would be a mockery if what was paid was something that did not compensate”.

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