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**AN INSTITUTIONAL ANALYSIS OF ENVIRONMENTAL IMPACT  
ASSESSMENT (EIA) IN MALAYSIA: SOCIAL CONFLICT AND CREDIBILITY**

**NOR-HISHAM BIN MD-SAMAN**



# **An Institutional Analysis of Environmental Impact Assessment (EIA) In Malaysia: Social Conflict and Credibility**

## **Proefschrift**

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aan de Technische Universiteit Delft,  
op gezag van de Rector Magnificus [prof. ir. K.C.A.M. Luyben](#);  
voorzitter van het College voor Promoties,  
in het openbaar te verdedigen op  
[donderdag 7 juli 2016 om 10:00 uur](#)

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Keywords:        Institutions, EIA, Social Conflict and Credibility

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# List of Abbreviations

ABB	Asia Brown Boveri Limited
ADO	Assistant District Officer
AESIEAP	Electricity Supply Industry of East Asia and Western Pacific
ANOVA	Analysis of Variance
APA	Aboriginal People Act 1954
ASEAN	Association of Southeast Asian Nations
BCA	Benefit–Cost Analysis
BDC	Bakun Development Committee
BHP	Bakun Hydroelectric Project
BO	Build–Operate
BOT	Build–Operate–Transfer
BRIMAS	Borneo Resources Institute
BRPC	Bakun Regions People’s Committee
CAP	Consumers’ Association Of Penang
CAWP	Coalition Against Water Privatisation
CBA	Cost-benefits Analysis
CCTC	Centre for Technology Transfer and Consultancy
CGPV	Country Garden Pacific View
CIDB	Construction Industry Development Board
CIEE	Canadian Initial Environmental Evaluation
CIJ	Centre of Journalism
CM	Chief Minister
CMS	Cahaya Mata Sarawak Berhad
COAC	Centre for Orang Asli Concerns
CSR	Corporate Social Responsible
CSWM	Coalition for Sustainable Water Management
DAP	Democratic Action Party
DARA	Pahang Tenggara Development Authority
DBKL	Kuala Lumpur Municipality
DEIA	Detail of Environmental Impact Assessment Report
DG	Director General
DLP	District Local Plan
DLT	Dr Luhat Technologies
DOA	Department of Orang Asli
DOAK	Department of Agriculture
DOE	Department of Environment
DOIC	Department of Information and Communication Sarawak
DOS	Department of Statistics
DPM	Deputy of Prime Minister
DPR	Development Proposal Report
DPTOA	Department of Land for Orang Asli for Agricultural and Residential Purposes

DPW	Department of Public Works
DTCP	Department of Town and Country Planning
EA	Environment Assessment
ECER	East Coast Economic Region
EEC	European Countries
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EM	Ismail Ibrahim Sdn Bhd and Edward and Sons Sdn Bhd
EMP	Environmental Management Plan
EMS	Environmental Management System
EON	Exchange of Notes
EPD	Environment Protection Department
EPU	Economic Planning Unit
EQA	Environmental Quality Act 1974
EQC	Council on Environmental Quality
ES	Environmental Statement
EXCO	State Executive Committee
FDI	Foreign Direct Investment
FELCRA	Federal Land Consolidation and Rehabilitation Authority
FELDA	Federal Land Development Authority
FOE	Friends of the Earth
FPIC	Free, Prior and Informed Consent
FTZ	Free Trade Zone
GDP	Gross Domestic Product
GEC	General Electric Company
GERAKAN	Parti Gerakan Rakyat Malaysia
GLC	Government Linked Company
GNP	Gross National Product
GOM	Government of Malaysia
GTZ	German Agency for Technical Cooperation
HAKAM	National Human Rights Society
HIA	Health Impact Assessment
HRCM	Human Rights Commission of Malaysia
HVDC	High Voltage Direct Current
IA	Impact Assessment
IAIA	International Association for Impact Assessment
ICU	Implementation Coordination Unit
ID	Irrigation and Drainage
IJM	Mudajaya Construction Sdn Bhd
IMF	International Monetary Fund
IRN	The International Rivers Network
ISA	Internal Security Act
JBIC	Japan Bank for International Cooperation
JEXIM	Japan Export–Import Bank
JICA	Japan International Corporation Agency
JAKOSAM	Jaringan Kampung Orang Asli Semenanjung Malaysia
JOAS	Association of the Indigenous Network Peninsular Malaysia
KDP	Kelau Dam Project
KLCC	Kuala Lumpur City Centre
KLIA	Kuala Lumpur International Airport
LCDA	Land Custody and Development Authority of Sarawak

LDC	Less Developed Countries
LDP	Liberal Democratic Party
LSD	Land Survey and District
MBPJ	Petaling Jaya Municipality
MBSA	Shah Alam Municipality
MCA	Malaysian Chinese Party
MCH	Malaysia–China Hydro
MCHJV	Malaysia–China Hydro Joint Venture
MEGTW	Ministry of Energy, Green Technology and Water
MIC	Malaysian Indian Party
MIDA	Ministry of International Trade and Industry
MiTI	Ministry of International Trade And Industry
MLR	Malay Reserve Land
MLCE	Ministry of Local council and Environment
MMB	Malaysia Mining Berhad
MNREP	Ministry of Natural Resources and Environment Planning
MNS	Malaysia Nature Society
MNUSD	Ministry of Unity and Social Development
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOW	Ministry of Public Works
MPAJ	Ampang Jaya Municipality
MPK	Klang Municipality
MPSJ	Subang Jaya Municipality
MRP	Malaysian Rock Product
MSC	Malaysia Super Corridor
MSTE	Ministry of Science, Technology and Environment
MTUC	Malaysia Trade Union Congress
MWA	Malaysian Water Association
MWFCD	Ministry of Women Family and Community Development
MWPU	Minister of Works and Public Utilities
NCE	National Council for The Environment
NCER	Northern Corridor Economic Region
NCL	Native Customary Land
NCR	Native Customary Rights
NDPC	National Development Planning Committee
NEP	New Economic Policy
NEPA	National Environmental Protection Act 1970
NEQA	National Environmental Quality Act 1975
NF	National Front
NGOs	Non-Governmental Organisations
NLC	National Land Code
NPP	National Physical Plan
NREB	Natural Resources and Environment Board
NREO	National Resources Environmental Ordinance
NST	News Straits Times
NT	Native Title
NWRS	National Water Resource Study
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OECF	Overseas Economic Cooperation Fund
ORFCM	Office of the Chief Registrar’s Federal Court Malaysia

OSA	Official Secrets Act
PAC	The Public Accounts Committee
PAS	Pan-Malaysian Islamic Party
PAP	Project Affected People
PBB	Parti Pesaka Bersatu
PBRIS	Parti Bersatu Rakyat Sabah
PBS	Parti Bersatu Sabah
PCA	Prevention Crime Act
PEIA	Preliminary Environmental Impact Assessment Report
PETRONAS	Malaysia National Petroleum Agency
PINTAS	Master Plan For Action on Social Issues
PLUS	Northern to Southern Highway Project
PM	Prime Minister
PPP	People Progressive Party
PPPs	Policies, Plans and Projects
PRM	Parti Rakyat Malaysia
PRS	Parti Rakyat Sarawak
PSM	Parti Socialist Malaysia
PW	Public Works
RA	Risk Assessment
RIDA	Rural and Industrial Development Authority
RM	Ringgit Malaysian
RSLB	Resettlement Scheme of Lurah Bilut
RSSA	Resettlement Scheme of Sungai Asap
RTM	Radio Television Malaysia
SA	Sustainability Assessment
SAGC	Sabah Attorney General Chamber
SALCO	Sarawak Aluminium Company
SALCRA	Sarawak Land Consolidation and Rehabilitation Authority
SAM	Sahabat Alam Malaysia
SAP	Special Action Plan
SAPROF	Special Assistance for Project Formation
SCANE	Sarawak Conservation Alliance for Natural Environment
SCORE	SARAWAK Corridor of Renewable Energy
SDC	Sustainable Development Concept
SDCR	Sabah Development Corridor
SDI	Sustainable Development Indicator
SEA	Strategic Environmental Assessment
SEB	Sarawak Energy Berhad
SEPU	State Economic Planning Unit
SESB	Sarawak Energy Services Sdn Bhd
SESCO	Sarawak Electricity Supply Corporation
SIA	Social Impact Assessment
SLC	Sarawak Land Code 1958
SNREB	Sarawak Natural and Environment Resources Board
SOE	State-owned Enterprises
SOS	Save Our Sungai Selangor
SPDC	State Planning And Development Committee
SPDP	Sarawak Progressive Democratic Party
SPSS	Statistical Package for the Social Science
SPU	Sarawak Economic Planning Unit
SSP	State Structure Plan

SUARAM	Voice of the Malaysian People
SUHAKAM	Suruhanjaya Hak Asasi Manusia
SUPP	Sarawak United People Party
SYABAS	Syarikat Bekalan Air Selangor
TBL	Triple Bottom Lines
TEPSCO	SMEC International Pty Ltd SMHB Sdn Bhd
TIA	Traffic Impact Assessment
TIAT	Transport Impact Assessment
TNB	National Utilities Energy
TOR	Term of References
TrEES	Treat Every Environment Special Sdn Bhd
UEM	United Engineer Malaysia
UK	United Kingdom
UKM	University Kebangsaan Malaysia
UMNO	United Malays National Organisation
UN	United Nations
UNCTAD	United Nations on Trade and Development
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration of Rights of the Indigenous Peoples
UNEP	United Nations Environment Program
UNIMAS	University Malaysia Sarawak
UPKO	United Pasokmomogun Kadazandusun Murut Organisation
USA	United States of America
USD	United States Dollar
VDSC	Village Development And Security Committee
WPP	Water Privatization Programme

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# Summary

Institutions require credibility – it is the fundamental element of every successful policy or interventions. Without credibility, institutions would induce social conflict, which would then lead the institutions into a state of empty, or even no credibility. While it has a few inherent characteristics, credibility is context dependent. To rally credibility, support and share on the institutional rules must be acquired from the social and political actors. In addition, to gain credibility, the design of institutions must take into account the socio-economic conditions of project affected people (PAP), as they are the party directly affected by the introduction of the institutions. Setting the background from the above theoretical perspective, this study posits that Environmental Impact Assessment (EIA) institutions cannot become credible just by relying on procedures or technical issues. Instead, as the concept of institutions clearly demonstrates, EIA, like any other policy, is heavily influenced by the economic, social, and political context within which it operates. EIA itself can provide a platform for rent-seeking, as well as for human actions that are driven by vested interest; therefore, creating or managing EIA credibility is clearly a daunting task. Against this backdrop, this research study examined two dam projects in Malaysia: the Bakun Hydroelectric Project (BHP) in Sarawak and the Kelau Dam Project (KDP) in Pahang. These two case studies have demonstrated that both States and project proponents failed to support EIA adequately. This study clearly found that EIA had been treated as being merely a symbolic law; therefore the EIA rules failed to function effectively. This could perhaps be explained by the significant involvement of political actors and other stakeholders, e.g. contractors and funders of the two projects. Their support was found to be driven by vested interests in the projects, and they tended to manipulate the EIA process and procedures. To compound the credibility issue, this study demonstrated that local people had strong perceptions regarding the loss of the Native Title (NT). In this sense, this research study has found that the hardship experienced by PAP was one of the contributing factors in influencing the EIA or project's implementation credibility. Despite the fact that the majority of PAP were land-dependent people, this study revealed that they benefited from very little of the socio-economic improvement that had been promised by the government and politicians. The absence of employment opportunities outside the agriculture sector at the resettlement schemes played a supplementary role that made PAP more discontented with the projects, and EIA in particular. Therefore, it is not surprising that local rejection of the EIA and project implementation was manifested in terms of conflict that eventually led to a deficit of trust towards the government and politicians. Against this background, this research study found that the Malaysian EIA was moving towards empty or even becoming low or non-credibility institutions.

# 1

## Introduction

### 1.1 Background of the Research

Malaysia is an emerging economy that is experiencing rapid urbanisation. This is reflected in its socio-economic indicators, with its population reaching 23 million and the Gross National Product (GNP) per capita standing at USD 7,900 in 2010 (DOS, 2011a). Malaysia thus occupies a position in the upper-middle income group (UNCTAD, 2011a). Meanwhile, according to the Global Competitiveness Report 2009–2010, out of 30 countries surveyed, Malaysia is positioned twenty-sixth (World Economic Forum, 2009, p. 15). In terms of global Foreign Direct Investment (FDI) in 2010, a total inflow to Malaysia of USD 7.0 billion was recorded, compared to only USD 1.4 billion in 2009 (UNCTAD, 2011b).

In parallel to the background described above, Malaysia aims to achieve a developed nation status by 2020, a vision put forward by the fourth Malaysian Prime Minister (PM), Mahathir Mohamad in 1991. As a result, many physical development projects have been accelerated. Consequently, as a management planning instrument in land use and environmental planning in Malaysia,<sup>1</sup> the position of the Environmental Impact Assessment (EIA) is facing a great challenge in having to reconcile the development pressures of economic growth with maintaining environmental protection. As these development projects involve the acquisition of natural resources such as water, land and forest products, the livelihoods of indigenous peoples have been gravely affected. As a result, rivalry between project proponents or developers and indigenous people has increased and has often become intense.

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<sup>1</sup> Other development plans include, for example, the National Physical Plan (NPP), the State Structure Plan (SSP), the District Local Plan (DLP) and the Special Action Plan (SAP), which are all administered by the Department of Town and Country Planning (DTCP). The DTCP and the Department of Environment (DOE) share the same ministry, namely the Ministry of Housing and Local Government (see also the discussion in Section 3.5, Chapter 3).

EIA has existed in Malaysia for almost three decades (since it was officially established in 1987). This new policy has brought about a new approach in environmental planning and management in Malaysia, where development permit tools (i.e. EIA) are required for 19 types of land-use activity. Therefore, as a tool for administrative reform, this new policy has evoked a mixed reaction. While EIA promotes itself as a systematic, technical and rational assessment tool, in practice, a different picture is painted. For example, a general criticisms directed towards EIA in Malaysia is the regular presence of public protest and controversy in project implementation<sup>2</sup>. It seems that EIA, which is a main project tool, fails to perform its fundamental roles, i.e. bringing acceptance to projects and thus minimising conflict.

This derives from the fact that one of the features of Malaysian political economy is an interaction between politics and business. As EIA relates to development projects, it has been seen as a platform for rent-seeking by political and business elites through project tendering, awards and direct benefits. Consequently, this has put overwhelming pressure on EIA institutions as to how to maintain and enforce its own rules, while at the same time being pressured by powerful political and business elites. Therefore, it is not surprising to see that EIA often comes under severe attack, largely due to its failure to function effectively in the development approach, vis-à-vis the environment. This is because EIA has been perceived as mainly legitimising the actions of political elites in rent-seeking without giving equal attention to local aspirations (Gurmit-Singh, 1986a; Gurmit-Singh, 1986b; Gurmit-Singh, 1993; INSAN, 1996; Memon, 2000; Nicholas, 1997; Nicholas, 2000; Furuoka, 2008; SAM, 2007; Nicholas, 2010a; Nicholas, 2010c; Nicholas et al., 2010).

To compound the problems associated with EIA, a strongly technocratic approach is often applied by states in the decision-making process. This can be traced through the way the state handles public participation in particular (Gurmit-Singh, 1986a; Gurmit-Singh, 1986b; Gurmit-Singh, 1993; Nicholas, 2010a; Nicholas, 2010b; Nicholas, 2010c; Nicholas et al., 2010; Memon, 2000; Nicholas, 2000, Spires, 1995; INSAN, 1996; Nicholas, 1997; Furuoka,

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<sup>2</sup> The latest protest and controversy involves the Country Garden Pacific View (CGPV) Sdn Bhd, the developer of the Forest City development project, the state and local people. The project has a gross development value (GDV) estimated at RM (billion) 600 on reclaimed land. It is a joint venture between KPRJ, a Johor State government-owned subsidiary, and a developer from the China-based Country Garden Holdings Co Ltd. It was claimed that the project developer had conducted the project without EIA approval (Mahevera, 2014). In Sarawak, there was a protest by the Penans on the Murum Dam in Belaga, Sarawak. There were reports that some of the protesters were detained by the police (Shi-Lian, 2013). Protests were also made by the Orang Seletar, one of the Orang Asli's sub-ethnic groups. They staged protests outside the Johore State Assembly meeting of Sultan Ismail's Building (The Star, 2011). All of these protests ultimately relate to the credibility issue of the EIA – How can it function as a tool for granting development permits? Does it rally social and political support from the local people?

2008; SAM, 2007; CAP, 2000). This local scenario parallels a long-observed scenario in the international arena; many authors have questioned the position of EIA in environmental governance because of its perceived weakness, particularly in the decision-making process (see, for example, Formby, 1990; Beattie, 1995; Benson, 2003; Broad, 1995; Boyle, 1998; Petts, 1999; Briffett, 1999; Bravante and Holden, 2009; Memon, 2000; Morgan, 2012; Weston, 2003; Weston, 2004; Schofer and Hironaka, 2005; Fujikura and Nakayama, 2001; Goldman, 2005; Jay et al. 2007; McCormick, 2007; Kakonen and Hirsh, 2009; Apostolopoulou and Pantis, 2010; Kim, 2010; Lamb, 2014a; Lamb, 2014b).

As this study is concerned with the implementation of EIA and its impact on project development, it therefore hopes to give local people their own voice on both EIA and land rights issues, as well as on their perceptions of the role of the state and politicians. The involuntary relocation of indigenous people through the social engineering of new land systems has thus exerted further tension. However, although this new institutions have given security to indigenous land, it has brought few benefits in improving the socio-economic conditions of the participants. This scenario has raised the profile of the EIA institutions and questioned whether the state could indeed establish a credible institution through state social engineering. With this background in mind, there are implications for the theoretical understanding required for designing a credible institutions.

Taking all of these arguments into account, the researcher has formulated the following research questions:

- i) What has caused the EIA institution to be perceived as having low credibility in the Malaysian context? In this regard, to what extent are the EIA rules being shared by its social and political actors?
- ii) Under what socio-economic conditions could EIA as an institution gain a state of credibility, or, alternatively, non-credibility?
- iii) What is the nature of the conflict occurring in the two study areas chosen for this research, including the sources of such conflict and the strategies used by its actors? What are the roles played by the social conflicts in EIA and how have they contributed to the credibility of the institutions?
- iv) What are the manifestations of low credibility of the institutions in the two study areas? What are the manifestations of the conflicts that relate to low credibility and lack of trust in the state and in politicians?

This research posits that the EIA *institutions* in Malaysia would gain credibility in the eyes of local actors when they perceive the EIA *process* to be credible. In addition, to resolve environmental conflicts that are due to loss of land rights, what is needed most is for the state to take into account the socio-economic conditions of the local indigenous people. Eventually, from a wider perspective, it is hoped that this research study will offer insights and guidance on the 'no-go' criteria for development projects.

Based on the above research questions, this study is designed to attain the following objectives:

- i) To identify the institutional factors that contribute to the low level of credibility of the Malaysian EIA institutions.
- ii) To understand the extent to which the elements of rent-seeking and political patronage play their roles in affecting the implementation of EIA in case study projects.
- iii) To assess the perception of how development impacts on credibility and its causal impacts in the resettlement schemes.
- iv) To examine the nature, degree and incidence of conflicts in the study areas.

## **1.2 Research Concepts and Angles<sup>3</sup>**

A brief explanation of the general supporting concepts and the terminology used is given in this section. However, a detailed explanation of the central concepts and theories (e.g. institutions, property rights and implementation) is dealt with specifically in Chapter 4, which is the theoretical chapter of this research study. The decision to focus on the credibility angle, rather than on efficiency in analysing EIA performance, is also explained in this section.

### **1.2.1 EIA**

Although EIA has been defined in a variety of ways, each definition possesses a similar characteristic: the existence of rationality and systematics. For example, according to Canter (1996, p. 2), EIA is '*...the systematic identification and evaluation of the potential impacts (effects) of proposed projects, plans, programs, or legislative actions relative to physical-*

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<sup>3</sup> Angle here refers to the focus of the research study.

*chemical, biological, cultural and socioeconomic components of the environment*. EIA has also been referred to as *'the evaluation of the effects which are likely to rise from the major project (or action) which significantly affect the natural and man-made environment'* (Wood, 2003, p. 1). Akin to Wood's definition, Canter (1996, p.2) has viewed EIA as the systematic identification and evaluation of the potential impacts (effects) of the proposed projects, plans, programmes or legislative actions related to the physical–chemical, biological, cultural and socio-economic components of the total environment. On the other hand, Lee and George (2000, p.1) have given a broad definition of EIA. According to them, EIA is a policy for reducing the negative environmental consequences of development activities, thus it would promote sustainable development. Meanwhile, in a universal definition, the International Association for Impact Assessment (IAIA) defined the EIA as:

*"...the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made"* (IAIA, 1999, p. 2).

The Department of Environment (DOE) (DOE, 2007, p. 1) of Malaysia has followed the international definition in defining EIA as:

*A study to identify, predict, evaluate and communicate information about the impacts on the environment of a proposed project and to detail out the mitigating measures prior to project approval and implementation.*<sup>4</sup>

Sharing the similar definition, the Malaysian Economic Planning Unit (EPU) has offered the definition of the EIA as:

*A set of procedures for ensuring the environmental factors are given adequate consideration in making decisions on major proposals. An EIA, on the other hand, is a study to identify, predict, evaluate and communicate information about the impacts on the environment of a project and to detail the mitigating measures prior to project approval and implementation.* (Thanarajasingham, 1992, p. 9).

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<sup>4</sup> Theoretically, the EIA process involves four cycles of development; namely planning, construction, operation and abandonment (see, Interorganizational Committee on Guidelines and Principles for Social Impact Assessment, 1995, p. 18). The study of the EIA process after project approval (such as in this research study) is known as post-auditing. In the Malaysian context, the common term used to refer to the post- auditing process is EIA follow-up.

### **1.2.2 Land Rights**

An EIA project requires land. Thus, it involves the issue of land rights. The United Nations has defined land rights in four ways: i) the allocation of rights in land; ii) the delimitation of boundaries of parcels for which rights are allocated; iii) the transfer from one party to another through sale, lease, loan, gift or inheritance; and, iv) the adjudication of doubts and disputes regarding rights and parcel boundaries (UN-Habitat, 2012). This research has taken the stance that the concept of land rights is related to the concept of property rights, which involve rules – formal and informal – that designate the appropriate use, control and right to transfer (Knight, 1992). Knight suggested that property rights are a concept of rights and duties with settings and circumstances (including objects) capable of producing income. Property rights can also be defined as social relations in the general sense (Bromley, 2005; Weimer, 1997). However, in this study the researcher has cautiously referred to the concept of property rights from two distinct perspectives. Firstly, from the holder's perspective, which touches on three main rights: i) the right to use an asset; ii) the right to use the asset to earn income and contract regarding the asset; iii) the right to alienate, sell or transfer the asset. Secondly, from the state's perspective, which focuses to two main rights: i) specify property rights; and ii) the right to enforce them.

### **1.2.3 Assessing EIA Performance: Between Effectiveness and Credibility**

This research acknowledges that EIA effectiveness is a widely used concept to measure EIA performance at policy level (see, for example, Ortolano et al., 1987, p. 285; Gilpin, 1995, p. 17; Petts, 1999, p. 6; Briffett, 1999, p. 333–334; Wood, 2003, p. 12).<sup>5</sup> Ortolano et al. (1987, p. 285) defined the effective concept as environmental impacts being accounted for by project decision makers in the course of planning<sup>6</sup>. According to Sadler (1996) cited in Baker and McLelland (2003, p. 583), 'effectiveness' is defined as '*how well something works or whether it works as intended and meets the purposes for which it is designed*'.

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<sup>5</sup> For example, Wood (2003) has proposed 14 criteria to measure effectiveness, which range from legal provisions to monitoring aspects and influence in decision-making. On the other hand, Briffett (1999) has asserted that the term and concept of effectiveness are varied. However, Briffett (1999), among others, has asserted that EIA cannot be effective unless there is the political will to make it succeed and a legal and institutional infrastructure to enforce and control its operation.

<sup>6</sup> Ortolano et al. (1987, p. 285–286) have proposed six components in assessing effectiveness. The components proposed have mainly emphasised EIA compliance with rules, as well as the influence of an EIA in the decision-making process.

In a similar vein, Polonen et al. (2011, p. 121) defined it as being '*whether the instrument works, is used as intended and meets the purposes for which it is designed*'; Kolhoff et al. (2009, p. 284) took the view that effectiveness of an EIA must be measured by its contribution to well-informed decision-making and the influence of its outcome. However, this research has adopted the views of Elling (2009, p. 129) on the effectiveness concept; according to him, EIA policy is highly dependent on how the term rationality – the main concept in effectiveness – is constructed.

In addition, he stressed the ability of the EIA process to meet its objectives and used this criterion to determine its effectiveness.<sup>7</sup> Arts et al. (2012, p.1250025-3), on the other hand, pointed out that the effectiveness concept in EIA must give emphasis to the substantive outcome; for example, when EIA is able to enhance environmental protection or to contribute to greater awareness about the environment.<sup>8</sup> Ortolano (1997, p. 20–21), on the other hand, stated that the effectiveness concept must be based on an environmental justice framework. To Ortolano (1997), the concept of effectiveness consists of two types: i) productive efficiency;<sup>9</sup> and, ii) Benefit–Cost Analysis (BCA). Meanwhile, Petts (1999, p. 6) proposed three broad level criteria in analysing effectiveness: i) internationally, in terms of a comparative assessment of the achievement of international environmental objectives; ii) nationally (or within an organisation), in terms of the performance of a system by reference to the policy and institutional functions that EIA is designed to serve; and, iii) at the micro or process-specific level, in terms of the contribution of EIA to the decision being made.

In an attempt to assess the EIA system performance in developing countries, Kolhoff et al. (2009, p. 275) produced the EIA model centring on five external contexts: international donors and finance institutes; institutional legal framework and internet; EIA conventions; political and administrative system; and, socio-economic system and natural environment. These external factors interact with the regulatory framework and capacities that then affect EIA performance.

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<sup>7</sup> O’Riordan and Sewell, (1981, p. 10) have offered a framework to analyse the effectiveness of EIA as a policy review. According to them, this framework must include the national political culture, including the style of democracy, political accountability, interest group activism and influence, procedures for arbitration of disputes, and project assessment and techniques.

<sup>8</sup> According to Arts et al. (2012, p. 1250025-3), the effectiveness of an EIA can be divided into two levels: i) at the project level; and, ii) at the system level. In each of these two levels, the effectiveness of the EIA is dependent on the context specific to where the EIA operates.

<sup>9</sup> In simple definition, it refers to the hypothesis that productive efficiency is increased when a more desired output is obtained. On the other hand, BCA is concerned with whether a policy or plan will increase efficiency (not necessary maximise it) (Ortolano, 1997, p. 21).

In their study of British Columbia's EIA, Baker et al. (2003, p. 585) proposed four criteria in assessing EIA's effectiveness: i) procedural (practice) – how is it applied; ii) substantive (performance) – what objectives were met; iii) transitive (proficiency) – how did its application support objectives; and, iv) normative (purpose) – what goals were reached. Polonen et al. (2011), on the other hand, measured EIA's effectiveness in Finland against five factors, namely: i) the quality of the screening system; ii) quality of EIA; iii) linkage between EIA and decision-making; iv) public participation in the EIA process; and, v) follow-up. Meanwhile, Ahmad and Wood (2002, p. 215) in their evaluation on the effectiveness system of EIA in Egypt, Turkey and Tunisia proposed three criteria: i) legislative and administrative procedures for EIA; ii) aspects of EIA, such as screening, scoping, EIA report review, mitigation, etc; and iii) measures undertaken to improve the effectiveness of EIA systems.

Lim, (1985) who evaluated institutional process and the performance of EIA in developing countries, proposed five criteria of EIA performance outcomes: i) a fully internalised element of the planning process; ii) support for a position of advocacy for the environment; iii) a process of adjustment among conflicting goals; iv) a process to remedy prior environmental damage; and, v) a perfunctory endorsement of public or private actions. These five criteria are compared to three aspects: i) national development planning; ii) institutional structure; and, iii) performance evaluation. The World Bank proposed four evaluative criteria for effective EIA: i) it is initiated early; ii) it involves the public; iii) it evaluates development alternatives; and, iv) it is supported by effective monitoring and supervision (Rees, 1999, p. 333).

However, the international assessment indicators for EIA are still plagued with inadequacy. According to Cashmore et al. (2004), there is overwhelming reliance on the procedural effectiveness criteria while substantive criteria are ignored. For them, the factors that need to be assessed are stakeholders' empowerment, EIA's abilities to influence consent and design decisions, as well as whether the EIA leads to sustainable development, for example (Cashmore et al., 2004, p. 307).

As stressed at the outset, this research acknowledges that EIA is usually evaluated on its effectiveness; however, this research has examined EIA from a different angle. In this study, EIA has been measured in terms of credibility. Therefore, this study goes beyond project appraisal, and includes policy review. As this research relates more to the relations between

EIA as a public policy and EIA institutions, it is more inclined to the work of Cuppen et al. (2012, p. 72), which considers that a project or decision-making should be influenced by the socio-technical system. In addition, as asserted by Cashmore et al. (2010, p. 373), EIA cannot be separated from politics, as its activities involve the acquisition of power.

Having taken into account the above approaches, this research has adopted the pluralist model of EIA, where the elements of values and politics are intersected and intertwined. As asserted by Bartlett and Kurian (1999), society is structured around the needs of the dominating ruling class or elite. As such, all decisions, either by design or by default, are ultimately made to serve the interests of those whose wealth or power dominates the structure of the society (Weston, 2003, p. 278; Amy, 1990, p. 62). From this perspective, the actual actions are not based on the concerns about environmental impacts on a local community, but instead on the economic interests of the dominant groups in society. Consequently, EIA in this sense is seen merely as a smokescreen in order to provide legitimisation for decision-making. This perspective and model will be furthered discuss in Chapter 2, Section 2.3.

Against this background, this research postulates that the study of EIA's effectiveness must shift towards achieving environmental protection – the substantive<sup>10</sup>. Therefore, EIA as a public policy must be mixed together with the improvement of the socio-economic programmes for the project affected people (PAP) – through which the resettlement exercises in the case studies were carried out. The thorough discussion on the credibility concept will be further elaborated in Chapter 4 – the theoretical chapter for this research study.

### **1.3 Research Framework: Institutions, Property Rights, EIA Implementation, Conflict and Credibility**

'Institutions' in this study has been interpreted as '*social rules*'. As such, EIA rules, like other social rules, are societal and economic phenomena whereby EIA has affected, while being affected by, institutions (Ho, 2009; Morgan, 2012). Institutional factors include rules -formal and informal e.g. regulations, instructions, precepts and principles as well as customs,

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<sup>10</sup> This includes the sustainability in environment and social aspects. In this sense, the PAP's ability to continue and improve their life as claimed by the project proponents and as stated in the EIA objectives should be a basic criteria in assessing the performance of the EIA and the development projects itself.

conventions etc. in influencing or shaping how institutions of the BHP and KDP have been governed. In the context of this research, this includes actors' support (or non support), interests and motivations elements. Having said that, this research study has shifted from the traditional approach of analysing institutional change, or for that matter EIA success or failure in relation to its efficiency, to the current debate on credibility concept, or low credibility, which is defined as the rules shared by the social and political actors as a key determinant of policy success. By prescribing this perspective, the institutions would only assume credibility by achieving its intended effects. In other words, establishing the credible institutions mean that it is able to rally for social and political support (Ho, 2005a; Ho, 2005b; Ho, 2006).

As briefly mentioned, this study has borrowed the conceptual guidelines of Ho (2009, p. 186) on how to evaluate institutional credibility. The following proxies were proposed by him to measure the credibility of an institution<sup>11</sup>:

*...the level of conflict that an institution generates; the extent of 'institutional robustness' expressed as a function of institutional lifespan and flexibility; the degree to which an institution facilitates or frustrates overall socio-economic, political and cultural change; and the extent to which an institution fulfils the functions it ought to perform in the eyes of social actors.*

It is interesting to note that Ho's guidelines are also aligned to those of Morgan (2012, p. 10) who argued that:

*Any evaluation of the EIA effectiveness is only meaningful when it is made in the socio-economic, political and cultural contexts of the country concerned.*

He went on to argue that the effectiveness of EIA depends on the understanding of the nature and purpose of EIA. As with Morgan's work, this study has taken into account the conceptual framework provided by Boyle (1998). Boyle's work was found to be relevant in this discussion, as he argues EIA implementation to be influenced by the socio-economic

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<sup>11</sup> In his recent articles, Ho (2014, p. 18) has simplified and operationalised the credibility concept into two proxies: i) perceived support for the institutions; and, ii) the level of conflict generated by the institutions. See also his interesting discussion on credibility concept in Ho (2013). The discussion on the credibility concept will continue in Chapter 4.

and political factors. For example, the socio-economic factors that are related to the employment, educational and income level of the targeted people are essential to the credibility of the EIA in Malaysia. At the macro level (at the national level), the socio-economic of indigenous people was scrutinised in order to assess their condition. Subsequently, the examination of the PAP at the resettlement schemes have underwent the similar examination to identify their socio-economic conditions. With this assessment, the reality of the development projects against its objectives can be made. In view of the above approach, this research study posits that the success of EIA is not only measured in terms of compliance with the rules, but, beyond that, it requires the rules to be shared by the social and political actors.

As the property rights theory stresses the importance of examining the role of the state in facilitating or not facilitating the EIA process, this research assumes that the attitudes of the social and political actors in relation to EIA are important when assessing institutional credibility. State or government roles in particular are an important element in investigating the implementation of EIA. The importance of actors in influencing policy implementation has been well documented (see, for example, Lipsky, 1980; Grindle and Thomas, 1991; Tantivess and Walt, 2008; Dente, 2014; Sutton, 1999; Keeley and Scoones, 2003; Bressers, 2004). Specifically, the role of the state in facilitating or hampering institutions was also examined in other studies (see, for example, North, 1993; Weimer, 1997; Haber et al., 2003; Ho, 2005a; Ho, 2005b; Ho, 2014). This route is inclined to the orientation taken by EIA researchers and other researchers who have studied policy implementation in developing countries like Malaysia. They have argued that factors such as political patronage or vested interests are among the major factors influencing EIA's effectiveness (Broad, 1995; Boyle, 1998; King, 2008; Bravante and Holden, 2009; Memon, 2000; Fujikura and Nakayama, 2001; Apostolopoulou and Pantis, 2010; Kim, 2010).

Under these circumstances, and as advocated by many implementation researchers (see, for example, King, 2008; Rock, 2001; Hirsh and Warren, 1998; Hirsh, 1998; Grindle, 1980a; Grindle, 1980b; Grindle and Thomas, 1991; Boyle, 1998), this research study posits that it would not be complete without a good understanding of the influence of political actors and elites in policy implementation. As rightly asserted by Grindle (1980a, p. 3), the implementation gap occurs when the statement of policy goals and their actual achievement are divergent. This research agrees with Grindle (1980a, p. 5), who observed that at least two factors seem to affect policy implementation: i) the content of public policy; and, ii) the

political context of administrative action. In this regard, the implementation of EIA policy could provide a futile example, as it is being affected by external factors, i.e. factors other than the EIA processes and procedures.

This approach is also in line with the EIA model advocated by Bartlett and Kurian (1999),<sup>12</sup> Sager (2001) and Craik (2010, p. 39), as well as Cashmore (2004, p. 410) to a certain extent<sup>13</sup>. The EIA models proposed and applied by these authors try to address questions regarding 'how' and 'why' EIA works in practice. They also give an explanation regarding 'how' and 'why' EIA is being constructed into different perspectives by different actors. The models have labelled and framed EIA into two streams: a non-political tool and a political tool. This research adopts the latter view, a realist perspective, which views EIA, like any other policy, as vulnerable to political influences.<sup>14</sup>

Furthermore, as asserted by Grindle (1980a, p. 3), implementation is not only about mechanical translation of goals into routine procedures; rather, it involves fundamental questions about conflict, decision-making and 'who gets what in a society'. Inevitably this is what Weston (2010, p. 370) pointed out; EIA as a state led process is a function to serve the interests of the capitalists – action taken under the pretext of EIA as a rational assessment. As such, the analysis as to how political patronage has influenced the institutions or EIA implementation needs to be considered in this context (see the discussion of the element of rent-seeking in EIA by Boyle, 1998; Bravante and Holden, 2009; Hirsh and Warren, 1998). The analysis of rent-seeking is made through the property rights theoretical lens, e.g. as how the connection between project planning and implementation leads to the creating, maintaining and transferring of rents to the politicians, families or political-business patrons-elites. This approach proves that rent-seeking and the political and economic interests of the elite cause the institutions and policy to be inefficient (see for example,

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<sup>12</sup> Although Bartlett and Kurian (1999) have used the term 'model', their intention was to theorise how EIA works in reality. They categorise EIA models into six models (further discussion regarding the EIA model is made in Chapter 4).

<sup>13</sup> However, Cashmore (2004, p. 410) used the term environmental design model. In this model, the focus on EIA is to document and receive development consent. This model relies heavily on technical expertise and assumes that the EIA process predominantly operates in a vacuum.

<sup>14</sup> This research is also aware that the approach employed in this study inclines towards what has been termed the political ecology perspective. Researchers in this stream (Bryant and Bailey (1997), McCarthy and Prudham (2000), and Forsyth (2003), for instance) study political ecology concerns on social justice and environmental disputes or change due to neo-liberal agenda and political economy force. Political ecologists who study conflicts in developing countries will usually employ two approaches, namely cultural ecology and political ecology (Forsyth, 2003, p. 8). In the same vein, Lamb (2014b), in his political ecology study on EIA governance for Hatgyi Dam, stressed the importance of incorporating political elements into the study. While, this research study acknowledges, and has incorporated, such elements, the researcher is of the opinion that an institutional approach (as employed in this study) is adequate to deal with these research intentions.

Acemoglu, 1995; Acemoglu, 2003; Acemoglu et al., 2004; Benson, 1984; Engerman and Sokoloff, 1997; Engerman and Sokoloff, 2005).

Therefore, at the macro level, the analysis centres on the issue of how EIA rules are being implemented or followed. This is done through a case study analysis of how EIA as an institutional structure developed in a historical context. Analysis has also been carried out on the actors' attitude regarding EIA at both an international and national level – in Malaysia. In this light, this research has investigated the state of the EIA institutions from two interrelated perspectives: i) the social and political support of EIA; and, ii) the loss of Native Title (NT)<sup>15</sup> due to the relocation of indigenous people to new resettlement schemes. This research is of the opinion that there is a strong relationship between EIA, NT and resettlement<sup>16</sup> as the trio have influenced each other.

The investigation on EIA is further expanded into NT and resettlement, as they are directly affected by EIA policy, as well as the fact that a holistic understanding of the institutional context of EIA will only be gained by measuring the live experiences of local people. The relationship between EIA and NT is important, as the researcher views that EIA policy should bring about a substantive result – at least a perception of positive impacts or improvement resulting from the introduction of EIA. This is in line with the suggestion of Scheumann and Hensengerth (2014, p. 8) that to achieve sustainable dam development, or credibility in EIA for that matter, study on EIA procedures needs to include consideration of or the findings from studies on EIA procedures needs to be incorporated into resettlement and rehabilitation policy.

As conflict – both public and disguised plays a crucial role in institutions, this research study has studied it at two levels. First, in relation to the acceptance or the extent the rules are complied with or shared by the project proponents and the state. This is done through consideration of the way the EIA is conducted. Second, at the village level, social conflicts were examined through the resistance taken by local indigenous people in relation to the EIA process, the projects and the resettlement schemes. Parallel to that, the examination

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<sup>15</sup> NT is an umbrella term that covers the concept of the Native Customary Rights (NCR) over land for the Orang Ulu in Sarawak and Sabah, as well as Aboriginal Customary Title or Aboriginal Title or Aboriginal Reserves/Areas for the Orang Asli in Peninsular Malaysia. In view of the fact that the court in Malaysia has regarded both native and Aborigines customary rights as synonymous (see HRCM, 2008a), this study refers to both customary titles as NT. However, in terms of application of the terms, this research study uses the terms interchangeably.

<sup>16</sup> This research study is of the opinion that relocation is part of the EIA component study. Above all, relocation will influence EIA or project success or failure. This approach also parallels that outlined by Marriott (1997).

was also made on the strategies employed by the state, the project proponent and other project actors in pushing the project for approval or acceptance. This study's approach was found to sit well with that used by Briffett (1999, p. 334) who asserted that EIA cannot be effective without, among other things, the presence of political will and the ability to enhance quality of life, as well as contributing to overall economic growth. Therefore, these factors have been taken into account in this study.

This research study acknowledges that research on the implementation of public policy normally centres on questions about 'outcomes' or 'outputs'. For example, Hill and Hupe (2009, p. 137) posed two sets of questions regarding the effectiveness of policy: i) 'are the specified activities established?'; and, ii) 'do they have any effect on the problem?' Their study on policy implementation also made a distinction between policy implementation and policy intervention. The authors suggested that the question of so-called 'symbolic policy' had nothing to do with implementation failure. Instead, it could be caused by application of inappropriate policy (Hill and Hupe, 2009, p. 138).

This research has employed a few simple methodological solutions to address both questions. First, on the issue of the effects of the policy on the problem, this research views that the credibility of EIA policy must function, among other things, as a tool for procedural and substantive purposes – its process and procedures must be complied with. In addition, EIA must be able to minimise conflict and resistance so that it can eventually rally social and political support for projects. In this sense, the project must be able to empower local roles in project decision-making. In short, the objective and founding purposes of EIA must be paralleled with reality and practice.

Second, in relation to the distinction between policy implementation and policy intervention issues, this research argues that the examination of EIA policy must not only include the EIA itself but must also include external factors, such as rent-seeking and land rights. Without doing so, a study of policy credibility would be incomplete, if not naïve. In relation to the last issue of symbolic policy, this research again posits that EIA is definitely a correct policy response to environmental problems. However, what has become an issue is that EIA has been used for symbolic reasons. This view is similar to the observation made by EIA researchers such as Bartlett and Kurian (1999), Sager (2001), Craik (2010) and Cashmore (2004).

## **1.4 Research Setting<sup>17</sup>: Approaches, Designs and Strategies**

This research has adopted a mixed method<sup>18</sup> study, whereby quantitative and qualitative approaches have been used in the process of collecting, analysing and reporting the data. Using a mixed method study provides at least three strengths: i) it gives a complete picture by noting trends and generalisations; ii) it recognises in-depth knowledge of participants' views, thus incorporating them in research design; and, iii) it neutralises or cancels the deficiency of evidence or bias of data gathered from a single method or one level of organisation only (Creswell and Clark, 2007; Creswell, 2003; Creswell, 2014).

Poteete et al. (2010, p. 12) pointed out that a mixed methods study is particularly important when the researcher wants to use different methods in order to address different questions and contexts at different stages. Therefore, conducting a mixed methods study can provide strengths while eliminating or minimising problems better than by using either approach alone (mono-method approach) (Johnson and Onwuegbuzie, 2004; Creswell and Clark, 2007). The quantitative approach, allows the researcher to precisely measure the variables and hypothesise them (Neuman, 2011, p. 165). On the other hand, the qualitative approach, among others, allows the researcher: i) to understand the contexts, settings or cases in which participation in a study takes place ; ii) to explore the problem and to empower individuals to share their stories and perspectives; iii) to capture interactions due to the inability of the quantitative method, such as failure to recognise unequal individual status in terms of the socio-economic, or its deficiency in considering sensitive issues such as gender (Creswell and Clark, 2007, p. 40). Therefore, the mixed methods study offers strengths from both the qualitative and quantitative fronts, while minimising the weaknesses of both quantitative and qualitative research (Bryman, 1984; Tashakkori and Teddlie, 1998; Creswell and Clark, 2007; Babbie, 2010). It is a simple fact that many research questions and combinations of questions are best and most fully answered through mixed research solutions (Johnson and Onwuegbuzie, 2004, p. 18). A mixed methods study also provides more superior grounds for triangulation than a single methods study (Tashakkori and

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<sup>17</sup> This refers to the environmental positions that navigate this research's enquiry.

<sup>18</sup> This research has followed the definition of a mixed methods study as advocated by Creswell and Clark (2007, p. 5) that involves two aspects: i) as a methodology, a mixed methods study involves philosophical assumptions that guide the direction of the collection and analysis of data and use a mixture of qualitative and quantitative approaches in many phases of research process; and ii) as a method, a mixed methods study focuses on collecting, analysing and mixing both quantitative and qualitative data in a single study or series of studies. This research is also aware of the definition of mixed methods as suggested by Johnson and Onwuegbuzie (2004, p. 17) where the authors defined it as a method that 'mixes or combines the quantitative and qualitative techniques, methods, approaches, concepts into a single study'.

Teddlie, 1998; Bryman, 1984; Patton, 1999). In addition, it also offers richer and more comprehensive data (Neuman, 2011, p. 165) and provides meaning to a researcher (Babbie, 2010, p. 24).

In terms of types of research design, this research study has employed an embedded concurrent experimental design,<sup>19</sup> where quantitative and qualitative data are collected, analysed, and interpreted at the same time (Creswell and Clark, 2007, p. 81). The quantitative data was embedded within a larger qualitative design. The rationale for this approach is that while quantitative data explain statistical results, qualitative data refines and explains respondents' views in more detail.

Meanwhile, taking into account the nature of the research objectives, this research has mainly employed the case study approach in its data generation strategies<sup>20</sup>. According to Yin (2009, p. 17), a case study constitutes '*decisions, individuals, organizations, processes, programs, neighborhoods, institutions, and even events*'. Meanwhile, Babbie (2010, p. 309) defined a case study as the in-depth examination of a single instance of social phenomenon, such as a village, family or juvenile gang. According to Yin (2009, p. 2) a case study is relevant upon three conditions<sup>21</sup>: i) the type of research questions; ii) the control an investigator has over actual behaviour; and, iii) the focus on the contemporary set of events, over which the investigator has little or no control.<sup>22</sup> The case study <sup>23</sup> can be done by using either qualitative or quantitative evidence that comes from fieldwork, archival records, verbal reports, observations, or any combination of these techniques (Yin, 2003; Yin, 2004; Yin, 2009).

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<sup>19</sup> Although the embedded concurrent experimental design has been employed in this research, as mentioned by Creswell (2014, p. 3), this research design should not be viewed as rigid, distinct categories, polar opposites or dichotomies. Instead, it represents a different point on a continuum, along with other mixed methods designs, namely convergent parallel, explanatory sequential, exploratory sequential, embedded, transformative and multiphase (Creswell, 2014, p. 231).

<sup>20</sup> Another related research strategy employed in this research was grounded theory. According to Straus and Corbin (1997, p. 12) grounded theory is a theory derived from the data taken from site, systematically gathered and analysed through the research process. Meanwhile, Charmaz (2006, p. 2) defined grounded theory as a method consisting of systematic, yet pragmatic guidelines for collecting and analysing qualitative data in order to construct theories 'grounded' in the data themselves.

<sup>21</sup> These three criteria was first recommended by Rowley (2002, p. 17) as the factors in choosing case study as the data generation strategy.

<sup>22</sup> In his earlier books, Yin (2003, p. 4; 2004, p. ix) referred to the reason for using case study being the inability of the researcher to separate or distinguish the phenomenon within the context of the study.

<sup>23</sup> According to Yin (2009, p. vi-vii), a case study involves five stages: i) screening; ii) designing case study; iii) preparing to collect case study evidence; iv) collecting case study evidence; v) analysing case study evidence; and, vi) reporting case study. Meanwhile, Hancock and Algozzine (2006, p. 99) stated that the case study involves nine sequential procedures: i) setting the stage; ii) determining what we know; iii) selecting a design; iv) getting information from interviews; v) getting information from observations; vi) getting information from documents; vii) summarising and interpreting information; viii) reporting findings; and, ix) confirming findings.

### 1.4.1 The Two Case Studies

In order to study the implementation status of EIA projects in Malaysia thoroughly, this research has used the Bakun Dam Project (BHP) in Bakun Sarawak and Kelau Dam Project (KDP) in Raub, Pahang as its two case studies. Both dam projects have affected indigenous people, the Orang Ulu in Sarawak and the Orang Asli in Peninsular Malaysia.<sup>24</sup> In the Malaysian context, the Orang Ulu and the Orang Asli are considered minorities and economically- and socially-weak groups.<sup>25</sup> Both dam projects in this study have the ability to extrapolate many past and current development projects, whereby the state and private companies are increasingly encroaching on indigenous traditional land life (see HRCM, 2010a, p. 82; HRCM, 2013, p. 89–99 & 116–122 & 138–1398).

The Orang Asli and the Orang Ulu constitute around 6 and 0.63 percent of Malaysia's population respectively. Both projects involved the forced acquisition of indigenous land or NT. Consequently, the Orang Ulu and Orang Asli have been resettled at the Resettlement Scheme of Sungai Asap (RSSA) and the Resettlement of Lurah Bilut (RSLB) respectively. These two case studies allowed the researcher to carry out a comparison study of similar results (literal replication) or contrasting results (a theoretical replication) (Yin, 2009, p. 60; Meyer, 2001, p. 333). In addition, the use of a multiple-case study was intended to blunt any criticism and/or scepticism about these findings of this study – a multiple-case study produces more robust findings than a single case study (Yin, 2009, p. 62).

In addition and as asserted by Yin (2009, p. 60-61), a single case study is vulnerable. Two (or more) cases provide substantial analytic benefits as compared to a single case. The two case studies allow the researcher to examine: i) the way the EIA has been implemented in two regions: Peninsular Malaysia and Borneo States; ii) the socio-economic characteristics ; iii) the life experience including conflicts by the PAP or the targeted people; and; iv) the presence of rent-seeking and political patronage in Malaysia specifically the dam building sector.<sup>26</sup> Above all, the two case studies allow the researcher to explore and test the credibility theory as well as to provide causal analysis.

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<sup>24</sup> 'Orang' means 'people' in Malay. Both the Orang Asli and the Orang Ulu are connoted as those who live in the rural and interior area and are generally socio-economically backward.

<sup>25</sup> A minority is determined by reference to the entire population of the country. Meanwhile, a socially-weak group refers to their socio-economic backwardness in reference to their socio-economic status compared to other ethnic groups.

<sup>26</sup> This research study is fully aware on the concept a 'single/double-blind' experiment of which single/both experimenter/s and participants do not know which are the experimental and the control groups (see, Kumar, 2011, p. 126; Neuman, 2011, p. 296-297; Babbie, 2010, p. 235). In addition, this research study findings are

In this case study, the main unit of analysis is the Malaysian's EIA project namely the BHP-KDP. Meanwhile, the experiences of the NGOs and PAP – local people and leaders at the resettlement schemes concerning land rights, compensation, conflict and trust were regarded as embedded units of analysis. The dependent variables such as indigenous people's perception on EIA, land rights, compensation and resettlement, conflict and trust to the government and politicians. The independent variables are the way of the EIA and land rights of the case-studies have been implemented, the socio-economic, compensation of the PAP and perceived state facilitation at the resettlement schemes. By linking the independent and dependent variables, the case study is able to shed light on the causal mechanisms as well as it able to validate and triangulate the conclusions made. In analysing the case studies, the main analytic technique employed by the researcher was pattern matching.

In this regard, the predicted pattern of institutional empty variables were defined as a benchmark. This study intends to generalise the causal explanation on why the institutional interventions or EIA work or fail in Malaysia. At the macro level, the review of international and national policy and issues related to EIA were made. Drawing on these will produce a narrative synthesis identifying major themes and will inform case studies. At the meso and micro levels, in-depth micro level case studies of experience and practices at the resettlement schemes were examined based on the information themes collected at macro level. This is done through secondary data.

It is important to note that in terms of comparing the case study, this study did not analyse the case study findings in one single chapter. Only in the final chapter, the comparison of the selected findings which are related to theoretical observations were made.

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also not a 'counter-factual' conditional claim about an alternate possibility and its consequences (Hendrickson, 2008). It is important to recognise that social research is not laboratory in nature, thus, certain conditions in selection of a case study cannot be controlled (this is what the case study is all about- the researcher has no control over situations). Thus, the case studies used in this research study are not single/double-blind, but in fact, it is set up as an open-trial, not a single/double-blind. Yet, the value of its findings fit in with other studies, which provides it with wider validity (see also the related overall justification on the research design and its validity in the Chapter 8, Section 8.13). Furthermore, for opportunistic reason, in view that the case studies have been chosen on the basis of access of researcher to sites and persons, which in itself is already a challenge given the sensitivity of the topic. In addition, this approach is similar to the assertion by Stake (2005, p. 451) who emphasises that the selection of case study could be made based on the grounds that it is most accessible or the one we can spend the most time with and the opportunity to learn.

### 1.4.2 Fieldwork and Survey Management

As PAP have been resettled at the new resettlement schemes, the survey for this research was therefore carried out at the RSSA and RSLB. In terms of the fieldwork, the preliminary data collection for the BHP was done in May 2011; it included semi-structured interviews and participatory observations. The second round of site visits was carried out from September to November 2012. During this time, the questionnaire survey was distributed among 220 respondents from ten longhouses (see Appendix A). These longhouses comprised five different sub-groups, namely Kenyah, Kayan, Lahanan, Ukit and Penan of Sarawak. Prior to the full survey, a pilot survey was carried out on 15 longhouse households in Sarawak in order to test the validity of the research questionnaire.

Meanwhile, on the KDP in Pahang, Peninsular Malaysia, preliminary site visits were carried out on three occasions from May 2011 to July 2012. A pilot survey was carried out on five households prior to the final questionnaire of 37 Orang Asli Temuan respondents. The final surveys took place in the second and third week of November 2012. Table 1.2 below shows the population and sampling profile of both resettlement schemes. The detailed breakdown of the survey samples distribution between longhouses at the RSSA and housing schemes at the RSLB is attached in Appendix A.

**Table 1.1:** Population, interview and sampling profile in both resettlement schemes

<b>Population profile</b>	<b>Orang Ulu in Bakun Sarawak</b>	<b>Orang Asli in Kelau Pahang</b>
Population	*11,616	**330
Number of head of family	2,219	137
Number of samples	220	37
Percentage sample taken from the total heads of family	10.0%	27.0%
Number of interviews (with local community leaders only)	16	5

Sources: \*Sub-District Office of Sungai Asap, 2012; \*\*DOS, 2012

As shown in Table 1.1, the total population of indigenous residents in the resettlement schemes was 11,616 for Orang Ulu and 330 for the Orang Asli respectively. Meanwhile, in terms of the number of heads of families, the former had 2,219 and the latter had 137. The number of samples chosen totalled 257, of which 220 were from the Orang Ulu (in Sarawak) and 37 were from the Orang Asli (in Pahang). This study used 10.0 percent of the total

heads of family for each longhouse at the RSSA and 27.0 percent from the number of the Orang Asli's heads of family at the RSLB.<sup>27</sup>

In terms of the sampling method, multi-stage cluster sampling was chosen for this research study as it can provide a high degree of representativeness while reducing sampling error (Neuman, 2011; Babbie, 2010). The first stage of the survey was done by selecting a sample of longhouses based on the sub-groups for the Orang Ulu. For the Orang Asli the clustering based on the housing block areas were made. This was followed by stage two, whereby the selection of a minimum of 10 percent of the total number of Orang Ulu and Orang Asli heads of family was made. At this stage, simple random sampling was then used to select respondents from each of the longhouses/houses. It is worth mentioning that the multi-stage sampling in this study was not based on a homogenous stratum (e.g. socio-economic characteristics). Instead, it was derived from the ten different sub-villages (for the Orang Ulu) and the five different zones of the resettlement scheme areas– north, south, east, west and central (for the Orang Asli). The reason for doing so was to ensure that there was a mix of different ethnic groups or representations for this study. Thus, this strategy could bring about more representativeness for the study.

In this study, the 'head of family' was the household's reference person, either male or female (normally male). In the indigenous household structure, decision-making is normally a male-dominated matter (Carol-Yong, 2008, p. 120–121). Nonetheless, this selection does not by any means suggest that this research has sidelined the decision-making structure of society. However, the nature of research and the questionnaire objectives have made the heads of family more relevant in this context.

Semi-structured interviews<sup>28</sup> were conducted on various stakeholders involved in both projects; a list of key organisations interviewed is attached in Appendix B. The semi-structured interviews were aimed to complement the questionnaires. The structured

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<sup>27</sup> It is to be noted that the higher percentage of respondents from the Orang Asli in Pahang (27%) as compared to the Orang Ulu in Sarawak (10%) was because the former was smaller in terms of heads of family and total population.

<sup>28</sup> In this interview, the researcher allowed the interviewees to answer the question without limiting it to: i) the sequence of the questions; and, ii) the scope of the questions. The researcher specifically employed several techniques as recommended by Leech (2002, p. 667) in undertaking the semi-structured interview. For instance, by gaining rapport, as well as by applying two types of questions: i) tour questions give the respondents a verbal tour of something they know well; and, ii) prompting questions allows two things: a) they keep people talking; and, b) rescue them when responses deteriorate.

interviews were carried out with local community leaders or aristocrats<sup>29</sup> at the RSSA and RSLB: 16 interviews were conducted with the *Maren Uma* of the Orang Ulu in Sarawak and five with the Village Development and Security Committee (VDSC) members of the Orang Asli in Pahang.

Each of the interview sessions lasted between 20 and 25 minutes. In order to encourage candour and to adhere to the university and institutional ethics, respondents were guaranteed anonymity as a prerequisite of the survey. The essence of the local indigenous peoples' interview sessions centred on the respondents' comments regarding their experience in dealing with EIA and their life experiences at the resettlement schemes, particularly about land rights and resettlement issues. The questions also dealt with the issue of conflict. Lastly, the questionnaire survey investigated respondents' perception of the government and politicians' roles in assisting their life at their current resettlement schemes. On the other hand, the interview questions for organisations mainly emphasised issues that related to EIA practices for the projects: compensation and relocation, and land right issues. The questions also dealt with conflict and the measures taken by the organisations in their efforts to rally local acceptance of the projects.

Though there were prepared questions, during the interviews respondents were permitted and given the flexibility to answer in as much detail as they wished. In order to deepen the researcher's understanding regarding the community's issues, participatory observation was undertaken in both case studies. The researcher took part in various social and cultural activities. Staying with these indigenous people allowed the researcher to obtain a direct and close observation of their lives. In addition to formal interviews, informal conversations in various social and cultural settings enriched the quality of the data collection, as well as sharpening the researcher's understanding of the community's issues. All questionnaires and interviews were undertaken using face-to-face interview techniques.

In order to gain a complete understanding of the projects, the researcher also conducted semi-structured interviews with both leaders and their followers who refused to resettle at the current resettlement schemes. A site visit was made to Nahe Jaleh village, one of the main villages for the Orang Ulu in Bakun, Sarawak. This new village is located within the Bakun impoundment area, where the researcher met Bato Bagi's followers. A site visit was also carried out at the Orang Asli Sungai Temir Village, Raub, Pahang, where interviews

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<sup>29</sup> They are also known as aristocrats or '*Maren Uma*' in Orang Ulu's terms

were undertaken with Bedu An and his followers. This is the original village of the Orang Asli, who are currently resettled at the RSLB. Both interviews were considered necessary in order to further probe into their experience of dealing with EIA, the project and land issues.

The essence of the interviews with organisations centred on opinions about the issue of EIA practices and the land rights issue. In terms of presenting the data interview, this study presents narratives or storylines as an elemental part of understanding human affairs. To analyse the interview contents of this study, the interviewees' accounts were captured through semi-structured interviews that were first recorded with a digital recorder (only after consent was given). With the help of textual documents and audio-visual materials, the process of categorising (grouping) and structuring (ordering) the meanings were undertaken using the thematic themes analysis of the relevant and related issues – based on the research objectives. Meanwhile, in the quantitative analysis, the questionnaire survey data was run through the Statistical Package for the Social Science (SPSS) software, and descriptive and inferential analyses were made. Thematic analysis<sup>30</sup> was carried out in order to answer the research questions, as described in Section 1.1 of this chapter.

### **1.4.3 Instruments, Validity and Reliability**

This research study adopted a mixed methods approach; three primary data collection instruments were used in this research study: a questionnaire survey, interview survey and observation. The questionnaire survey was intended to measure respondents' perception of EIA and land rights impacts. It also touched on compensation and resettlement issues, as well as conflict and its causal effects, including respondents' perception of politicians and the state in fulfilling their roles. As such, the respondents' questionnaire survey was intended to address the research questions as follows: i) how respondents' perceived EIA and land rights as practised in EIA projects; ii) under which socio-economic conditions, did the credible or low-credibility institutions occur for the study areas; iii) what conflict types and strategies were employed by respondents at the resettlement schemes; and, iv) what were the perceptions of the level of trust towards the state and politicians in each case studies.

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<sup>30</sup> According to Braun and Clark (2006, p. 79) thematic analysis is a method for identifying, analysing and reporting patterns (themes) within data. It minimally organises and describes data sets in (rich) detail. The thematic analysis also interprets various aspects of the research topic (Boyatzis, 1998 cited in Braun and Clark, 2006). Meanwhile, a 'theme' in the thematic analysis captures something important about the data in relation to the research question, and represents some level of patterned response or meaning within the data set (Braun and Clark, 2006, p. 82).

Observation at the resettlement schemes was carried out in order to observe and understand the activities, attitudes and perceptions of PAP in a natural setting.

### 1.4.3.1 Reliability of the Quantitative Data and Findings

To achieve reliability, this research study clearly conceptualised all constructs. In addition, multiple indicators and a range of data sources were used in order to operationalise the concepts – the triangulation approach was used to minimise error as multiple indicators have been measured. The conclusion was reached based on solid results. For the questionnaire survey instrument, a pilot survey was also conducted to test the reliability.

In order to evaluate the validity of the scales used in the questionnaire survey, the Cronbach’s alpha test was used. Scaled between 0 and 1, those items that have an alpha coefficient closer to 1.0 signify greater internal consistency, whereas 0.5 is considered weak and should be eliminated from the questionnaire instruments. Ideally, Cronbach’s coefficient alpha scale should be above 0.7 (Nunnally, 1978). However, a low Cronbach’s coefficient alpha such as 0.6 can be taken as the measure of acceptability (Moss et al., 1998; Hair et al., 2006). Table 1.2 below presents the reliability coefficient for the questionnaires used in this study. The result was generated from SPSS; each of the items was measured using a five-point scale as shown in Appendix E.

**Table 1.2:** Cronbach’s coefficient alpha

Items	Questions	No. of Items	Cronbach’s Alpha
Local Perception of the Land Policy and its Impact	B1 – B17	17	0.717
Local Perception towards the Government and Politicians’ Roles	G1 – G15	15	0.681

As can be seen from Table 1.2, the Cronbach’s coefficient alpha for ‘*Local Perception of Land Policy and its Impact*’ item is 0.717 and it is 0.681 for ‘*Local Perception towards the Government and Politicians’ Roles*’ item. It can be concluded that all items in the questionnaires had good internal consistency, and hence were found to be useful and reliable.

### **1.4.3.2 Reliability of Qualitative Data and Findings**

To dig further into the issues and strengthen these research findings, the interviews were also carried out with individuals and organisations as follows: i) local community leaders at the village level; ii) Non-Governmental Organisations (NGOs); iii) government agencies; and, iv) project proponents. The essence of those interviews centred on the past life experiences as encountered by them in relation to EIA matters and land right issues. The questions also related to how the actors in EIA projects perceived the government and politicians' roles in assisting their life at the current resettlements schemes. The interview questions for organisations mainly emphasised the issue relating to EIA practices in the projects, compensation and relocation, and land right issues. The interview questions also dealt with conflict and the measures taken by the organisations in their efforts to rally local acceptance of the projects.

To enhance the dependability and consistency of the interviews and observation, several basic techniques were employed. For example, to give internal consistency, the data presented in this research is assumed fit together to provide a coherent picture. To bring external consistency, multiple data sources such as interviews, participation and document study were cross-checked or verified in an effort to ensure reliability. Meanwhile in ensuring the validity of the qualitative data and findings, the conduct of the researcher was carefully executed in order to make sure it did not disturb the usual day-to-day life of the respondents' community. In addition, being accepted as a member of the community allowed the researcher to have competent insider performance; this was achieved by staying with both communities through a participating approach and mingling with them on formal and informal occasions. Moreover, this research managed to obtain assistance on data verification from the main NGOs for both indigenous communities, which has further enhanced this research study's validity and reliability. All of these triangulation<sup>31</sup> strategies are able to bring credibility to the qualitative data and findings to the research in general.

In summary, as asserted by Mathison (1988), triangulation minimises inconsistency and even contradictory data by embedding the empirical data at hand with a holistic understanding of the specific situation and general background knowledge about social

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<sup>31</sup> The term triangulation originated from the field of land surveying. In research, triangulation means the use of a variety of methods or research instruments in data collection and analysis. As different single methods can result in different empirical reality, use of a single method is not able to solve the problem of rival explanations adequately; triangulation provides more grist for the research mill (Patton, 1999, p. 1192).

phenomena. The strategies employed in this research are part of the grand measures recommended by Shenton (2004)<sup>32</sup> in ensuring validity and reliability, thus enhancing the trustworthiness of the research.

## **1.5 Ethical Consideration in Conducting the Research**

Ethical issues are paramount and the researcher needs to abide by them as they concern issues of security, confidentiality and privacy. During the site visits, at the outset of the survey and for the interviews or secondary data collection, the research objectives, consequences and risks involved were explained to the participants. As the researcher shared almost the same (or a similar) culture with both groups of indigenous participants, it allowed the researcher to understand the extent of the cultural boundaries – what constituted sensitive or taboo aspects, and how to react or respond to them. The indigenous peoples' trust towards the researcher could be observed in the warm reception they gave him. The researcher's relationship with the indigenous people still continues to this day and has gone beyond the scope of this research study.

This research was officially approved by the Ministry of Energy, Green Technology and Water (MEGTW) for the KDP in Raub, Pahang. Permission from the Department of Orang Asli (DOA) was also granted before fieldwork was commenced. For the BHP in Sarawak, research permission was also granted by the Sarawak Economic Planning Unit (SPU), a unit under the Sarawak Chief Minister (CM). This research study also obtained approval from the EPU, a federal unit under the PM's Office in Putrajaya.

## **1.6 Thesis Layout and Line of Argument**

As mentioned in Section 1.3, this study is based on a study by Ho (2009), who provided the conceptual outlines for measuring institutional credibility. This research goes beyond EIA procedural matters, as it concerns the internal and external interaction of EIA institutions. It builds on the premise that EIA would not be able to achieve its prime objectives, such as protecting the environment and community, when social and political actors do not share its

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<sup>32</sup> Shenton (2004, p. 64) addressed the same four criteria as employed by positivist researchers in ensuring validity and reliability of research: i) credibility (in preference to internal validity); ii) transferability (in preference to external validity/generalisability); iii) dependability (in preference to reliability); and, iv) conformability (in preference to objectivity).

rules. Therefore, this study posits that, in order to ensure the rules are shared, land rights and compensation, and resettlement aspects, also need to be taken into account. To deal with this proposition, this research is divided into eight chapters. Chapter 1 has provided the introduction and Chapters 2 and 3 review EIA concepts and practices. Next, Chapter 4 discusses the theoretical aspect of the study, and Chapter 5 focuses on Malaysia in general. Two empirical chapters are then provided (Chapters 6 and 7) and lastly, Chapter 8 provides a conclusion and discusses lessons learned.

In this introductory chapter, the researcher highlighted the objectives of the research and pointed out the research problems relating to policy implementation of EIA in Malaysia. To guide the discussion, the researcher furnished supporting concepts for the research. This chapter also provided a brief discussion regarding the study's methodology.

Chapters 2 and 3 review the current EIA literature to provide the context for this study. The reviews are divided into international and national (Malaysian) context. Chapter 2, which reviews EIA from an international perspective, recalls the basic concepts of EIA, including its founding purposes, strengths and drawbacks. To understand the attitude, interest and support of actors in a particular state, the researcher lays down comparative overviews of EIA between the developed and developing countries in relation to which the administrative and political issues surrounding EIA implementation have been discussed. This chapter also discusses the arguments made by those who are for and against EIA. With the view that EIA is an evolving concept, the final section also provides the current development trend of the Impact Assessment (IA) field worldwide.

Next, in Chapter 3, the researcher provides details about the implementation of EIA in Malaysia. The chapter begins by providing an overview of the local macro-historical journey of EIA development. It then outlines the procedural process of EIA, including EIA law and statute, institutional frameworks and the actors' roles. As in the previous chapters, this chapter reveals arguments for and against the introduction of EIA in Malaysia. Finally, the chapter gives a brief explanation of the current development trends of IA currently being practised in Malaysia.

Chapter 4 provides a theoretical lens for the research. The three main theories – institutions, property rights and implementation – are discussed. These three theories are essential in providing the theoretical lens and explaining the 'context' and relation of EIA implementation

issues. In addition, this chapter further expands on credibility, empty and conflict as the main concepts in addressing EIA implementation issues in Malaysia.

Chapter 5 devotes discussion to the case studies, from the population, economy and political setting of Malaysia, to the background and demographics of the Sarawak and Pahang States (where the BHP and KDP are respectively located). In order to put the discussion on rent-seeking and political business into context, the researcher briefly reviews political patronage in Malaysia, including its origins and effects. This chapter also briefly lays down the government policies on NT issues and land-related conflict in Malaysia. Finally, the chapter briefly explains the dam and resettlement development. The main intention of Chapter 5 is to provide context relating to the three key aspects: the case study, people and land.

Chapters 6 and 7 provide deeper detail about the two projects. Chapter 6 discusses the BHP and Chapter 7 the KDP. In each of these chapters, the first discussion touches on secondary information on the projects' evolutions, the stakeholders involved, EIA non-compliance, and the presence of the rent-seeking in the project. Then, an explanation is given regarding the resettlement schemes, including the basic socio-economic data relating to the resettlers. The second discussion in each chapter provides empirical evidence through the analysis and interpretation of the questionnaire survey and fieldwork findings. Analysis of local people's perceptions concerning EIA as experienced by them, as well as their life experience in the resettlement schemes, is discussed. The questionnaire survey discussion also covers conflicts, including the type and frequency experienced by the respondents. Following this, respondents' perception of land rights, and government and politicians are also elaborated on. Lastly, recommendations made by respondents are included. The final chapter concludes the discussion and highlights the gaps between empirical evidence and theoretical foundation. In doing so, this research revisits the institutional debates on credibility by using lessons learned from the Malaysian EIA experience.

# 2

## Environmental Impact Assessment at the International Level: Concept, Stakeholders' Attitudes and Development Trends

### 2.1 Introduction

This chapter aims to review and reveal the nature of the EIA concept, including its founding purpose, its stakeholders' attitudes and its development trends. This research argues that it is crucial to understand how the EIA concept was established and how it has developed over time. As such, this section discusses the EIA concept in detail: its origin, rationale and roles or functions. This chapter also explains the strengths and weaknesses of EIA. To make a comparative overview of EIA practice in the international context, and, in particular, to demonstrate how different states treat EIA, the discussion briefly reviews EIA in developed and developing countries.<sup>33</sup>

Guided by the research question as to what extent the EIA rules are being shared, this research takes the stance that examination of both developing and developed countries could provide a good understanding of actors' attitude towards EIA. In this regard, their support or opposition, along with the problems and limitations of their respective countries would address the first operationalisation proxy – the perceived support of social and political actors for EIA. First, it is necessary to recall the basic concept of EIA as this provides a basic reference to measure against current performance. In addition, this chapter examines to what extent the political economy setting influences the establishment and

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<sup>33</sup> Although there are many classifications of the economic status of countries based on their level of development; for example, underdeveloped countries have been particularly referred to as less developed countries (LDCs), underdeveloped or Third World Countries. However, this research refers to underdevelopment countries as developing countries. The classification level of development as applied in this research is divided into two general categorisations – developed and developing countries. For a detailed discussion regarding development categorisation, see, for example Handelman (2003, p. 1–24) and Ison et al. (2002, p. 283–284).

implementation of EIA in the country. This includes the element of rent-seeking and technocratic approach in development. Ultimately, the chapter intends to show the complexities and conflicting views amongst the actors in dealing with EIA implementation.

## **2.2 EIA: The Cardinal Features**

In order to form a basis for the evaluation of the performance of EIA, especially in relation to its founding purposes, this section briefly discusses the basic roles of EIA, as well as its strengths and drawbacks. A brief discussion on the origin of EIA is first provided.

### **2.2.1 The Origin of EIA**

EIA is a multifaceted field; historically it is rooted in various fields, including land use planning, cost-benefits analysis (CBA), multiple-objective analysis, modelling and simulation (Barrow, 1997, p. 167). EIA was initially stimulated by the introduction of the National Environmental Protection Act (NEPA) in the USA on 1<sup>st</sup> January 1970. The architect behind this legislation was Lynton K. Caldwell, a Professor of Political Science at Indiana University, Bloomington.<sup>34</sup> Caldwell had long been searching for techniques or methods that could force planners and implementers to consider socio-ecological consequences (Buhrs, 2009, p.42) which could offered a comprehensive impact analysis (Caldwell, 1988, p. 75).

It was found that prior to the establishment of the NEPA, the US Congress found itself in an embarrassing position, largely due to projects that were approved by them leading to environmental disasters, an unanticipated result of Congress action (Caldwell, 1988, p. 76). Congress was also frustrated by the fact that development agencies often presented only a single option to them; as they had no alternatives to choose from, they were finally forced them to endorse the proposal. In this sense, they saw this as a clear indication that the existing appraisal techniques available – prior to the establishment of EIA – were unable to provide a systematic and comprehensive assessment (Buhrs, 2009; Weston, 2004). Moreover, it was hoped that EIA could offer a more systematic 'product-driven' process for environmentally informed decision-making (Barrow, 1997, p. 169).

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<sup>34</sup> See detailed bibliography from this great man by Stone (2015).

Against this background, the NEPA is seen as the answer to addressing adverse environmental impacts and the result of a strong demand for political participation within civil society after the Second World War (Weston, 2004). The NEPA was a success because of the pressure group movement, which was inspired by, among other things, a book called *Silent Spring* by Rachel Carson which was published in 1962<sup>35</sup> (Wolf, 1981; Modak and Biwas, 1999). One of the actions of this pressure group was to question the legitimacy of the Western model of capitalist industrialisation as well as the science and technology on which it was based (Weston, 2004).

However, due to the lack of specific guidance and a divergence of interpretation of the NEPA, the early years of EIA implementation in the USA was characterised by lawsuits. Although the Council on Environmental Quality (EQC) prepared guidelines to assist with interpretation of the Act, it allows for discretionary interpretation rather than being binding (Glasson et al., 2005; Barrow, 1997).

### **2.2.2 Founding Purposes of EIA**

There are undeniably numerous reasons for EIA implementation. However, to start, it would be useful to recall the original intention of the EIA architect, Lynton K. Caldwell. According to him, EIA is designed to reform priorities and procedures in federal policymaking that have major environmental implications. In this sense, EIA was part of a broader comprehensive policy analysis, which was intended to influence behaviour in the private sector (Caldwell, 1988, p. 75). Generally, EIA principles are based on the rationalist perspectives that emerged in the 1960s, when the technical-rational model became a guiding model (Jay et al., 2007, p. 288).

In the positivism approach and linear understanding, the view is taken that EIA aims to assess and protect the environment, as it provides a systematic, comprehensive and objective assessment. In this regard, EIA helps decision-makers to make a rational decision on a proposed project (Clark, 1984, p. 6). With the view that EIA is an ex-ante tool, it would be able to anticipate the negative impacts that are likely to arise prior to project approval whether the assessment is made for policies, plans and projects (PPPs). Therefore, through

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<sup>35</sup> The book made the connection between pesticide use and biological effects on human life. The link between environmentally hazardous material and personal health, as demonstrated in the book, has been powerful in raising public awareness and mobilising collective action (Wolf, 1981, p. 22).

the incorporation of EIA into the existing planning and decision-making process, it would be able to identify the unlikely negative effects and could provide additional information towards a 'better' decision from the decision maker, and the public, on the consequences of the proposed development action. It also enhances the positive effects of the proposed development (Clark, 1984; Wathern, 1988; Canter, 1996; Glasson, 1999; Modak and Biwas, 1999; Lee and George, 2000; Wood, 2003; Glasson et al., 2005; Buhrs, 2009).

Meanwhile, according to Lee and George (2000, p. 1), the basic purpose of EIA can be split into three areas: i) to identify any potential adverse environmental consequences of a development action – through early identification, they may be avoided, reduced or at least taken into account during planning and design; ii) to ensure that any potential environmental consequences are taken into account, both during planning and designing, and actioned; and, iii) to influence how potential environmental consequences are managed during implementation. Cashmore (2004, p. 417), on the other hand, identified three substantive purposes based on the five EIA models: i) in the analytical and information provision models – EIA is supposed to inform the decision process through the provision of an accurate impact forecast in a focused report; ii) in the participation and environmental governance model – EIA could influence and shape the decision process through the emancipation of society; and, iii) in the environmental design model – EIA could provide explicit consideration that involves making environmental concerns a fundamental design goal.

Moreover, Weston (2004, p. 313) provided more crucial points when he pointed out that when EIA was first introduced, the whole process of EIA was designed to reinforce three key inter-assumptions: i) that systematic, scientific assessment and prediction can be objective and accurate; ii) that the rational model of decision-making, on which EIA is based, would lead to 'better' decision-making; and, iii) that the public, once given the information, will believe and trust the science and experts in the central role of the assessment process. As claimed by many EIA scholars, the EIA process' ultimate aim is to enhance the rationality of policymaking, thus serving as an institutional reform directly instilling ecological rationality (Caldwell, 1988; Buhrs, 2009; Cashmore et al., 2004; Amy, 1990; Bartlett, 1990). In this sense, through EIA, political actors, as individual or organisations, have to consider the proposed project's particular ecology and consider the environmental values embedded in the ecological procedure.

This eventually invokes rationality in the political institutions. In addition, by establishing, reaffirming and progressively legitimising environmental values and ecological criteria as standards by which individual actions are to be structured, chosen and evaluated, EIA in this sense has substantively institutionalised the ecological rationality (Bartlett, 2005, p. 55). However, this role is not surprising, as the development of EIA itself has been strongly shaped from the rationality paradigm, as acknowledged by Caldwell (1988, p. 75) himself.<sup>36</sup>

However, the idealistic purposes that EIA have in reality paint a different picture. In critically examining the purpose of EIA, Cashmore et al. (2004, p. 297) found that the decision-making in EIA is merely to demonstrate rationality or to act as political exercises. Amy (1990, p. 62) revealed that the design of public participation in the EIA process is to enhance the image of democratic rights and to reduce environmental costs. On the other hand, its real intention is to portray public inputs being incorporated in EIA decision-making.

EIA has been promoted as a process whereby the development permit will be granted or refused. However, Jay et al. (2007, p. 291) revealed that planning approval officers generally take the view that EIA could provide more confidence to the project applicant – that there has been compliance to the procedure – rather than acting as a deterrent. In this sense, the EIA procedure would normally suggest that the development project should be approved, rather than refused. Moreover, it was observed that in authoritarian decision-making, EIA approval may take place behind closed doors and that political evaluation may outweigh the technical evaluation most of the time (Wood, 2003; Hensengerth, 2014).

The pertinent question now is: What is the normative function of EIA in social conflict or, for that matter, environmental conflict? Clearly, conflict is at the heart of the environmental disputes where EIA or Social Impact Assessment (SIA) could play a role as a resolution device (Susskind, 1982; Manring et al., 1990).<sup>37</sup> EIA provides a basic right for stakeholders to be involved in the democratic process; thus, EIA will minimise any negative perception about the project. Through local participation and empowerment, EIA could reduce the chance of conflict (Clark, 1984; Cashmore, 2007; Munn, 1975; Barrow, 2010). This would

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<sup>36</sup> In explaining the influence of EIA's development, Caldwell (1988, p. 75) outlined five influencing factors: i) rational planning theory; ii) technology assessment; iii) risk assessment; iv) the policy goals of the environmental movement; and, v) a desire to reinforce administrative accountability through the disclosure of considerations of entering into public decisions by government agencies.

<sup>37</sup> For example, Manring et al. (1990, p. 253) identified two potential roles of the SIA: i) anticipating and predicting conflicts, which in turn could be used to avert and manage conflict; and ii) the potential of predictive SIA, in particular as a data based mediation strategy in environmental conflict management.

eventually bring about trust and confidence to a project or programme (Wood, 2003; Canter, 1996; Purnama, 2003; Ortolano, 1997; Colombo, 1992). Although EIA cannot directly resolve a conflict between stakeholders, it provides grounds for a conflict to be mitigated through its process. EIA can sometimes help to clarify the issues at stake before a decision is made – usually on the basis of political factors (Clark, 1984, p. 10).

According to Wandesforde-Smith and Moreira (1985, p. 224), EIA could also provide a political impetus for reform, particularly in developing countries. However, this reform might be 'abducted' in order to protect projects that might be key to national development plans (Wandesforde-Smith and Moreira, 1985, p. 225).<sup>38</sup> Clearly, the ultimate role of EIA is to provide a tool for sustainable development, where it would lead to a balanced approach in development through the incorporation of economic and social development considerations in the context of the environment (O'Riordan, 1986; Glasson et al., 2005).

## **2.3 Strengths and Drawbacks of EIA**

The arguments of those who support and oppose EIA are discussed in this section can be divided as follows.

### **2.3.1 Strengths of EIA**

There are a few strengths and drawbacks of the EIA process and system. The discussion can be divided into two fronts: i) process and procedural; and, ii) principles and philosophical.

In terms of the process and procedural aspects, the benefit brought about by EIA is an improved decision-making process, which amends the behaviour of actors through public participation and environmental awareness (Wood, 2003, p. 314). The communication between actors in the EIA process is also enhanced through public participation. Conditions that make people anxious and suspicious, especially PAP, can be minimised or at least suitably managed through public participation (Purnama, 2003, p. 428).

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<sup>38</sup> However, the ability of EIA to imitate the major policy and institutional change is limited for development projects, particularly for those not financed by foreign aid. Therefore, the normative argument for mandating EIA in this regard is that EIA should lead to more effective environmental protection, which will eventually enhance project acceptance.

Improvements in decision-making then bring sound and sustainable benefits that reduce potential adverse impacts. This, in turn, saves mitigation costs and time due to earlier detection of potential environmental problems, as well as the design of the corrective measures (Clark, 1981; Clark, 1984; Lee and George, 2000). In addition, Canter (1996) argued that the EIA process, along with the engineering and economic factors, would facilitate incorporation of the environment as a factor in project decision-making. Through the EIA process, the management of the use, renewal and conservation of all natural resources can be enhanced. Thus, EIA could promote a Sustainable Development Concept (SDC).

On a philosophical front, the best strength of EIA is that it provides a systematic, rational and political assessment that goes beyond the traditional development control, such as planning techniques (Bartlett, 2005; Hironaka<sup>39</sup>, 2002; Weston, 1997; Lawrence, 2003). Decision-making under the rationalist perspective provides a logical structured process of adopting the means of achieving a given objective. Specifically, decision-making in EIA is made after taking the following into consideration: i) a systematic consideration of all possible alternatives; ii) an assessment of all possible solutions; and, iii) an analysis of all available information that is objectively assessed as it is always quantifiable (Weston, 2000, p. 187). In this sense, EIA gives more credibility or legitimacy to the decision-making process. This view is parallel to the one long claimed by those followers of the extreme rationalist perspective of Marx Weber as well as other neo-classical economists who have suggested that EIA is an objective and value-free assessment, which bases decision-making on a systematic and largely technical assessment of the evidence (Weston, 2000; Bartlett, 2005; Benson, 2003).

Another benefit EIA offers regards its nature as an ex-ante tool in decision-making. With such a nature, EIA would evaluate the environmental consequences of the proposed project prior to construction taking place. EIA would therefore act as a development filter or development proposal permit that needs to be obtained by the project proponent before commencement. In this sense, it would save costs resulting from errors or mistakes related to environmental planning or consequences due to project implementation.

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<sup>39</sup> Hironaka (2002, p. 70), on the other hand, introduced the term 'the prestige of science' to explain among other things, the reasons for EIA's international expansion.

### **2.3.2 Drawbacks of EIA**

However, despite the positive pictures painted by proponents of EIA, it carries serious drawbacks. The main limitation of EIA is that it has been mostly applied to specific activities, or in a geographically centred area, or has heavily focused on the project level while the strategic or policy level has been left unattended. This limitation has created doubt about the ability of EIA to become a proactive tool, considering that the EIA project is an outcome of strategic planning at the PPP level (Partidario, 1996; Ortolono, 1997; Glasson et al., 2005; Partidario, 2000; Briffett et al., 2003; Alshuwaikhat, 2005; Wallington et al. 2007; Bhurs, 2009).

From the sustainable development point of view, Wood (2003, p. 368) argued that such an aim would remain elusive, as EIA is unable to effectively influence decision-making. He identified seven EIA limitations and briefly grouped them as follows: i) weaknesses in coverage; ii) weaknesses in integrating EIA into decision-making; iii) weaknesses in the EIA preparation; iv) weaknesses in the EIA report review; v) weaknesses in impact monitoring and enforcement; vi) weaknesses in monitoring systems; and, vii) weaknesses in the Strategic Environmental Assessment (SEA). On the other hand, Ortolono (1997, p. 326–327) observed that the current approach in EIA has failed to adequately assess the cumulative impacts.<sup>40</sup> In his view, the cumulative impacts from a series of small projects that are decided on a case-by-case basis could have collective impacts and great significance, even if each individual project has only minor defects.

Regarding the actors' attitude, while project proponents are not overly worried about the direct cost, they were mostly worried about indirect costs due to unexpected delays, such as an increase in the project construction cost. It has been observed that to the business fundamentalist, EIA is perceived as another bureaucratic layer in the process of conducting business (Gilphin, 1995, p, 158). Related to this, most of the constant drawbacks of EIA have actually stemmed from the perception that it could potentially delay project implementation (Ison et al., 2002, p. 52; Nelson, 1994, p. 282). For example, according to Ison et al (2002), the delays could result from poor coordination between various environmental agencies or public pressure groups and between government departments. This delay would then affect the overall cost of the project due to late execution of the

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<sup>40</sup> It is *'the impacts on the environment that result from the incremental impacts of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency...or person that undertakes such other actions'* (Ortolono, 1997, p. 327).

project (Ison et al., 2002; Lee and George, 2000; Wood, 2003; Barrow, 1997). In addition, there is a fear that the EIA process could be appropriated by lawyers and become a bureaucratic delaying tactic, which could eventually halt project construction (Gilphin, 1995; Barrow, 1997).

Nonetheless, there is merit to the claim that approval or decision-making in EIA has been used to legitimate development projects. State sanctions on these political patronage projects have been used as a platform for rent-seeking activities by business and political actors, largely when those projects have involved the use of natural resources (Boyle, 1998; Bravante and Holden, 2009; Broad, 1995; Memon, 2000). In this sense, the EIA rules seem to be ineffective or at least compromised in order to ensure that the proposed project proceeds. In this sense, Wood (2003, p. 223) observed that despite EIA being one of the factors to be considered in project approval, the other non-environmental objectives, such as political factors, may well outweigh the findings of the technical evaluation of the proposal.

On monitoring the EIA system,<sup>41</sup> Wood (2003) found that there was little evidence of monitoring work in the EIA practices due to the lack of a record-keeping culture. Parallel to Wood's views, Ortolano (1997, p. 327) observed that although the EIA report must include actions to mitigate the adverse impacts, in practice, its implementation is questionable. In Ortolano's view, some project proponents have disregarded the mitigation actions due to the stance that the requirements were beyond their scope.

One common drawback of EIA is the low priority given to public participation. Despite its purpose being widely recognised, Wood (2003) noted that the EIA system in developing countries has generally been confronted with weak requirements and weak implementation. This has demotivated the public from participating in the decision-making process. However, Tomlison (2003, p. 275) viewed such criticism as unfair. He argued that EIA was not established to promote participation. Instead, its objective was to ensure that environmental implications of development projects were taken into account in the decision-making process.

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<sup>41</sup> According to Morrison-Saunders and Arts (2004, p. 1), the follow-up terminology includes activities in EIA, among others: monitoring, auditing, ex-post evaluation, post-decision analysis and post-decision management. Monitoring refers to the baseline data collection, impact monitoring, compliance monitoring and state of the environment monitoring. On the other hand, the term 'evaluation' consists of activities like appraisal of monitoring results against the established benchmarks (ibid).

On another issue, Wood (2003) observed that in developing countries, among the criticisms raised about EIA is a claim that it is costly. It was found that the delay of project approval was due to the EIA process (Wood, 2003). Meanwhile, Howes (2005, p. 98) pointed out that the industry has claimed that the EIA procedures are unnecessary and would delay project approval. This would consequently increase the cost of the project (Ibid). The preparation of an EIA seems to be a costly burden and it is acted on only as a government approval process (Lion et al., 2013, p. 791). However, Giplin (1995, p.25) notes that the cost for preparing an EIA represents only a small proportion of the total project cost and should not be an issue of concern. A study done by Canter (1996, p. 30) has shown that the additional cost for a larger project would normally range from 0.1 to 0.5 percent.

Considering this from a wider perspective, Bissett (2000, p. 154) observed that EIA in low and middle income countries suffers severely from the following deficiencies: i) illiteracy; ii) linguistic and cultural diversities that hinder mutually intelligible communication; iii) lack of local knowledge and understanding regarding the scale, nature and likely effects of certain types of development projects; iv) unequal access to the consultative and participatory processes for certain social categories (for example, women); v) remoteness of some stakeholders; and, vi) the time/cost implication of dealing with these difficulties satisfactorily.

In addition to the procedural weaknesses, EIA also poses drawbacks on its principles; for example, Bartlett (1990, p. 89) pointed out that EIA has suffered from the ecological rationality and technocratic approach in dealing with its procedures and processes. By using the pluralist model of EIA in particular, Bartlett (1990) and Carter (1996, p. 301) showed that EIA, like other policies, is subject to political pressure and has subjective and value influences and contested concepts such as 'acceptable risk'. In this sense, they claim that EIA decision-making solely based on rationality and technicality is gravely flawed. In other words, despite EIA claims to be a systematic, scientific, objective and neutral assessment, in reality EIA is not entirely true. The fact that EIA is not isolated from the political context when environmental decisions are made has put EIA on the shaky ground. It is clear that the EIA's decisions were not formed in a vacuum; the decision moving from the proposal stage, screening, scoping and to the project approval would involve the element of politics.

In this sense, project decision-making is usually more the product of politics rather than that of scientific analysis. In this regard, EIA is prone to manipulation by policymakers that do

not use EIA as a guiding tool. Instead, EIA has become a way of rationalising and legitimating decisions or approval that has already been made by the state (Bartlett, 1990, p. 89; Carter, 2007, p. 303). In addition, Ortolano (1997, p. 325) contended that EIA is not well integrated into the decision-making mechanism; it is often undertaken after the planners and decision-makers have begun advocating a particular proposal. In this light, EIA serves largely to mitigate the adverse effects of a project that has already being decided upon well beforehand.

Where EIA takes place under such conditions, it is little more than a paper exercise and just a 'greening' of the state administration or rationality camouflage in order to justify development decisions that have already been made in advance by the authorities (Buhrs, 2009, p. 46; Amy, 1990, p. 62). In this sense, it exists merely as symbolic window dressing, with little or no real influence on the choice process (Buhrs, 2009, p. 46; Bartlett, 1990, p. 88).

For Gilphin (1995, p. 158), as the EIA study is undertaken within a short-term framework, he posited that EIA procedures are simply performed to smooth out development. EIA has also become a tool for political manipulation and as an expression of misguided optimism, as it has allowed exploitation. In this sense, O'Riordan (1986, p. 4) argued that EIA had become an apologia for activities that in aggregate were ultimately unsustainable. Therefore, despite mountains of EIA reports having been prepared, Canter (1996, p. 30) suggested that they would be forgotten as soon as the permit was received or a decision was made to go ahead with the project construction and operation.

Parallel to this view, Buhrs (2009, p. 50) explained that the decision-making techniques for EIA served to play a political role through the distribution of power among the actors involved – be it within or outside the state. EIA, in this regard, has been used as a legitimising device rather than a decision-making tool. This problem with EIA should not be surprising, as according to Beattie (1995), EIA problems were inherited from three crucial facts that always tend to be ignored: i) the fact that EIA is not science, instead it deals with political and value concerns about the project; ii) EIA always contains unexamined and unexplained value assumptions that are outside of the EIA's scope; and, iii) EIA will always be political, as it is part of a decision-making process that has distributional impacts for its actors.

In addition to these failures and drawbacks, the hierarchy based on expertise, with both power and knowledge centralised at the apex, has also contributed to the weaknesses of EIA (Dryzek, 2005, p. 93). This is because the relevant knowledge is dispersed and becomes fragmented, whereas the EIA process requires a holistic solution through free, open and equal criticism. In this light, Amy (1990, p. 62) observed that the pressure on government agencies to promote and support economic growth has led to environmentally irresponsible decisions. In relation to this, the study by Kong (1994) revealed that governmental agencies were more inclined to subscribe to the views of those who were close to the mainstream interest of the state and business – the economy. This eventually pressures state authorities to promote a technocratic model of environmentalism – among other things – characterised by less participation of public in the decision-making process.

Regarding the technocratic approach, Amy (1990, p. 62) also observed that the administrators of EIA have used it to legitimise their decisions and to forestall or undermine any environmental position from any public opposition to the project. Due to the lack of the democratic legitimacy, administrators of EIA have to depend on the technocratic form of legislation, with the claim that their decisions are based on rational grounds, or at least give the appearance that they have been brought about by EIA. Associated with this view, Hironaka and Schofer (2002, p. 222–223) asserted that although EIA might fit well as a general solution to the environmental problem, the capability of EIA to work efficiently is varied, as it depends on the political systems, ecosystems and environmental problems of the respective countries. In this sense, in terms of the compatibility between EIA knowledge and democracy, Boggs (1991) explains that EIA could threaten and disrupt the naturally functioning interactive system due to its emphasis on technocracy and rationality (Boggs, 1991, p. 4). Therefore, Boggs suggested that EIA within democratic politics poses a dilemma and contradiction. In addition, as EIA is an arena of competing interest where it uses a scientific knowledge, it creates tension to democracy (Baber, 1988, p. 176).

Weak environmental regulations are numerous. However, in terms of political system influence, it was found that there is a strong case of leaders in democratic regimes being more likely to adopt environmental friendly policies. This can be seen as an institutional weakness, where regulatory conflict of interest and lack of public scrutiny of policy processes have made environmental protection difficult. (Tang and Tang, 2000; Hironaka and Schofer, 2002; Tan et al., 2005). Despite that, according to Tang and Tang (2000, p. 82) there are three dangers that could hamper EIA's efficiency in these countries: i) in

authoritarian regimes that have recently adopted democratic elements (i.e. transition countries), it was found that environmental related issues are given less priority; or ii) there is common negative perception that the strict environmental regulations would impose direct cost to these transition countries; and, iii) the administrative agencies continue to maintain a dominant position in environmental policymaking sure that it does not have a legal framework to facilitate citizen participation in the policy processes (Tang and Tang, 2002 ; Tang et al., 2005).

Meanwhile, the administrative agencies' domination in environmental policymaking is also a reason for environmental regulation or EIA being ineffective – rules imposed by an environmental agency could be overruled by them. In addition, business groups, through their close connection to politicians, always exert great influence on government policies which can consequently give them greater advantages through the design of government policies (Tang and Tang, 2000; Tang et al., 2005).

Concerning the issue of public participation, it has been observed that although the existing model of the environmental policymaking has already incorporated citizen participation, administrative agencies have been found to continuously dominate the policymaking process (Tang and Tang, 2000; Tang et al., 2005). To build the negative perception further, the credibility of the environmental agency in Taiwan was in question when its administrator was promoted to Vice-chairman for Economic Planning and Development, a powerful political–business coalition. It has been observed that Taiwanese business interests can exert great influence on government policies through their contacts at the very top of the executive branch. This has led to public distrust of the environmental agency, as it is unable to enforce pollution controls caused by the business sector effectively (Tang and Tang, 2000, p. 89).

In addition, politics among departments has also contributed to the ineffectiveness of EIA in Taiwan. Difficulty arose due to the conflict between the jurisdiction of the Department of Health, the major department responsible for environmental protection, and the Council for Economic Planning and Development, which is the most powerful government body – responsible for coordinating the various ministries. This conflict exists due to the perception that EIA might hamper Taiwan's ultimate national goal on economic development. While environmental groups were strong advocates for greater authority to be given to environmental protection agencies, on the other hand, many business leaders and

government officials have insisted on a minimal role for the Department of Health in the EIA process out of fear that, if it was given extensive powers, it would veto economically important projects (Tang and Tang, 2000, p. 86). On a related matter, the air pollution prevention fees in Taiwan have failed to get adequate support from the executive branch due to the fear that the fees could hinder the economic development goal (Tang and Tang, 2000, p. 87).

## **2.4 Actors' Attitude Regarding EIA**

According to Howes (2005, p. xx) there are generally three key political players that govern environmental aspects: the state, business and community. The state refers to the entire set of institutions of governance that constitute the public sector. The state is internationally recognised as having sovereignty over a particular country and group of people, as well as having the power to make and enforce laws within its jurisdiction. The state's response to environmental policy is important, as it influences the effectiveness of the policy. The second player is business, which is a major contributor to environmental risks. Most of the actions taken by the state have been directed by the business sector. Therefore, negative responses by industry could become a major impediment to the implementation of policy decision, or EIA in this regard. The third player is the community. Analysis of community response is important, as communities collectively organise themselves; for example, into environmental movements, pressure groups, NGOs and political parties. Their roles have played a significant role in the formulation of policies, the creation and enforcement of regulations, and changes to the behaviour of industry.

Considering the above, this section therefore investigates the attitude of the state and their responses regarding the EIA proposal and its implementation by tracing the political and administrative issues in the respective countries. This is done particularly through revealing the arguments of those who support and oppose it.

### **2.4.1 Actors' Attitude Regarding EIA in Developed Countries**

In the USA, during the early years of EIA implementation, many court cases were filed due to its weaknesses (Dryzek, 2005; Barrow, 1997). One interesting observation of the EIA policy at that time was that it was not prepared for the sake of the decision-making process

for the proposed project. Instead, it was used as a 'shield' for protection if court action was filed in respect of the proposed project. Therefore, the EIA reports became long and unreadable, with EIA being used to defend agencies against potential accusations that the environmental concerns were not being taken seriously by the actors. For example, in the Netherlands EIA was regarded as a legal requirement that was conducted just to meet legal requirements (Cashmore and Richardson, 2013, p. 3). However, in a recent study, Runhaar et al. (2013, p. 23) showed that EIA actors have positive acceptance of EIA, as it provides transparency. On the negative side, however, a sceptical view was raised about there being little substantive discussion on EIA and its roles in decision-making.

In the UK, the European Countries (EEC) Directive 1985/337 on EIA was not fully welcomed (Weston, 1997; Glasson et al., 2005; Howes, 2005). According to Weston (1997, p. 8), the UK government's opposition was due to three reasons: i) the UK government's argue that the development control systems that were already being practised were equivalent to the roles performed by EIA<sup>42</sup>; ii) instead of viewing the Directive on EIA facilitating land use and development planning, the UK government saw it as a further impediment to development; and, iii) the UK government felt that EIA was a form of interference to their sovereignty, as this new regulation was imposed by an outsider. The issue of sovereignty interference was shared by all members of the EEC. The UK government also criticised the fact that EIA coverage extended to projects involving factors such as forestry and agriculture, which were seen operating outside the traditional scope of the UK's development control (Weston, 1997, p. 8). Meanwhile, Glasson et al. (2005, p. 40-41), argued the opposition of the UK's DOE arose out of the agency's scepticism about the need, practicality and cost of EIA.

In addition, it was observed that the failures of the directive to provide a clear definition of the procedures for carrying out EIA and a lack of consideration given to the cumulative impacts were among the reasons for the UK's opposition (Weston, 1997, p. 13). The UK government viewed EIA sceptically and regarded it as another burden to development. Parallel to the UK's view, the Netherlands government opined that the EEC Directive that obliged EIA to be implemented throughout the EEC was seen as a very weak compromise; it was strongly resisted, particularly by the development promoters and bureaucracies. In this sense, the EIA requirement is not the best way to protect the environment (Wathern, 1988, p. 201).

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<sup>42</sup> See also (Barrow, 1997; Mohamad-Said, 2001).

Despite the resistance, EIA was finally enforced in the UK in 1987. According to Weston (1997, p. 30), there are four reasons for the acceptance of EIA: i) most professional planners find the EIA requirement useful in reaching a balanced decision on the proposed development; ii) an Environmental Statement (ES)<sup>43</sup> is viewed as a manifestation of value where it is a means of gaining time to judge a political climate and providing a possible reason upon which the ultimate decision may be hung; iii) many unpopular proposals are subjected to objections on environmental grounds; and, iv) it is argued that the ES showing no adverse environmental effect can be a very helpful tool in justifying an approval.

In contrast to the attitude of the state or local authorities towards EIA in the UK, the public have generally welcomed it and see EIA as an unprecedented opportunity for them to access the information contained in the ES and to influence decisions. However, the practice has not really been encouraged (Weston 1997, p. 32–33). The state's sincerity about EIA could probably be more clearly demonstrated, as there is no incentive for developers and authorities to promote public participation or to produce the EIA report other than the minimal amount required EIA rules (Buhrs, 2009, p. 50).

In view of the fact that EIA also acts as a form of controlling rent, including that for natural resources, there were constant conflicts between the state and federal governments. For example, Buhrs (2009, p. 50) found that in Canada, EIA remains under the control of the various states and provinces, which can be attributed to the constellation of power associated with the importance of, and dependence on, their resource industries. Formby (1987, p. 208) observed that in Australia the perceived weak EIA implementation was due to the state's reluctance to fully enforce legislation with the stance that it could backfire on them. For example, in 1985 in Queensland, the Australian Government refused to unilaterally permit action to prevent the construction of a road through a Queensland rainforest due to the fear that the government's decision would result in electorate loses (Formby, 1987, p. 211). It was also found that the Australian States were reluctant to impose a high standard of EIA requirements due to the emphasis on economic growth. In this regard, Formby (1987, p. 209) observed that the opposition to the EIA legislation had slowed down the operation of EIA in Australia.

There was also specific concern about the implication of EIA legislation, particularly regarding the politics between government agencies. For example, there was great concern

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<sup>43</sup> In the UK, the EIA document is called Environmental Statement

that the EIA legislation would allow the active intervention of the DOE in the decision-making processes. Therefore, it was not surprising that the Departments of Treasury, Trade and Resources, and National Development and Finance sought substantial changes to the EIA legislation in order to prevent such interferences (Formby 1987, p. 219).

Moreover, in Australia, the Department of Trade and Resources was also worried that the EIA legislation would add an additional burden to their current workload. There was also concern within the Department of National Development, which intentionally avoided referring their project proposals to the Department of Science and the Department Environment, the agency responsible for EIA approval. In order to limit the power of the DOE, the Department of Treasury, Finance, Trade and Resources and the Department of National Development demanded that the EIA legislation be restricted in terms of scope. In addition, the Department of Finance also stepped in to suggest that its minister press for amendments in order to limit the application of the EIA legislation (Formby, 1987, p. 220). On a more current issue, Nogrady (2013) observed that the Australian EIA implementation is still plagued by sceptical views on the EIA's role in protecting the environment. To environmentalists, EIA has never caused the rejection of project approvals, as it has to invariably bow to the political and economic pressures. Clearly, the scenario described here has shown that the politics between these government agencies played significant a role in hindering the effectiveness of EIA implementation in Australia.

In their comparative study between the UK and French EIA systems, Glasson and Belanger (2003 p. 607) noted that fighting over influence caused an obstacle to the introduction of the EIA system in both countries. France is also bound by the EEC Directive on EIA; however, the country was reluctant to implement EIA because it was perceived as Anglo-Saxon domination. France's resistance was also because it already had an operational EIA system, which was much akin to what the EEC Directive on EIA could offer. Therefore, it did not want to change its legislation. Instead, France saw it as an opportunity to influence other EEC members to adopt its 'EIA' system. Moreover, France also argued that the new EEC Directive on EIA was a bureaucratic burden to its current administration (Glasson and Belanger, 2003, p. 622).

In Spain, Pardo (1997, p. 124) found that the socio-political situation was not favourable to a sound implementation of EIA. Pardo (1997, p. 126) observed that environmental and other social organisations had a low level of interest in EIA and low priority has been given

to it. Even if the EEC Directive on EIA were abided by, it was followed only minimally, and some agencies in Spain had not considered EIA at all.

#### **2.4.2 Actors' Attitude Regarding EIA in Developing Countries**

Despite the widespread acceptance of EIA from as early as 1984 in many developing countries, the implementation of EIA still generated much heated debate on its failure to achieve its intended objectives. As mentioned by Ebisemiju (1993), the poor performance of EIA is multifaceted, ranging from serious legislative flaws to serious administrative, institutional and procedural framework flaws in the respective countries. Along with the technical barriers, EIA has also suffered due to administrators' unfamiliarity with the EIA concept and unfamiliarity of its role in the planning process, as well as the serious gap between intention and real practice (Ebisemiju, 1993, p. 249). These constraints, according to Ebisemiju, are due to the socio-cultural, political and economic realities of Third World countries, where environmental protection is ranked behind their economic priority (Ibid).

Although the proponents of EIA have strongly advocated that EIA could help in rational decision-making in developing countries, its benefits have been outweighed by the undue delays in project implementation, which consequently increase the overall project costs. The delays have been attributed to environmental considerations which were either not properly conceived or were not integrated from the beginning of the project (Agarwala and Biswas, 1989, p. 68).

In explaining the importance of follow-up activities, it was found that the EIA reports, particularly in respect of analysis, was done merely to get the project approval in developing countries. The term Agarwala and Biwas used was 'pseudo-analyses'; meaning the whole purpose of the analysis is to justify the project's need based on 'manufactured' data or deliberated skewed analyses (Ibid). Concerning public participation, it was noted that in developing countries the public has very little say in the EIA decision-making process. This problem is compound by the fact that in developing countries the public are not only illiterate, but the actors are usually ignorant of EIA (Ibid). In this regard, Purnama (2003, p. 429) observed that in Indonesia project proponents have a negative view of EIA and the public participation process. They regard the procedure of public participation as just a formality in order to obtain a construction permit.

Panigrahi and Amirapu (2012, p. 31) observed that in India some of the EIA projects with significant environmental impacts were exempted from EIA requirements and, where included, its incorporation into decision-making has been weak. This is due to the fact that the government has inadequate technical and financial resources, deficiencies in screening and scoping, weak coordination, subjective review, ineffectiveness of public participation and no standard of monitoring. However, on the plus side, they have identified that there has been political and media support for EIA implementation in India. A comprehensive observation on the study of the environmental pollution issue in India indicates that a lack of public involvement resulted into the country's environmental policy being symbolic (Khator, 1984, p. 105). On the other hand, in Brazil, limited resources and political constraints, as well as inherent limitations in the procedures and legislation are much complained about in relation to EIA (Glasson and Salvador, 2000, p. 209). On the substantive issue of EIA, Wood (2003, p. 13) pointed out that *'too many examples exist in developing countries of the mechanistic EIA reports being produced that have little or no effect on decisions'*.

In this regard, Alshuwaikhat (2005, p. 311) observed that in many Asian countries, EIA was implemented with insufficient staffing and experience; there were also evaluation inadequacies, particularly in relation to monitoring aspects and insufficient baseline data. Therefore, Alshuwaikhat argues that political decisions to adopt EIA have been made without adequate consideration of the technical and infrastructural aspects of the respective countries. Instead, he went on to say that the priority given to EIA in dealing with poverty alleviation, economic growth and development, as well as political stability is found to be low. This is because EIA has mainly served as a political decision, a decision made without the involvement of the public (Alshuwaikhat, 2005, p. 311).

In addition, Abaza (2000, p. 274) observed that among the problems that have impeded the development of EIA in developing countries is the political resistance and scepticism surrounding the EIA's purpose, as it originated from the USA, a Western country. Developing countries see the concept of EIA as a form of imperialism whereby Western countries are attempting to impose environmental values on these developing countries. This is particularly true when developing countries see the paradox and superficial treatment of developed countries' actions on environmental protection. As such, the developing countries view the developed countries as paying lip service to environmental issues. However, these criticisms have also applied to several international donor agencies, which are operating a system of double standards. The development projects requested by developing countries

are subjected to strict Environmental Assessment (EA), whereas the donor-initiated projects, particularly those with no clear environmental focus, are often not required to go through the same EIA requirements (Ibid).

Despite the recognition of the EIA role in protecting and sustaining the natural environment, for the Association of Southeast Asian Nations (ASEAN) its implementation seems weak, as the urgent need to promote economic growth is always given priority (Briffet, 1999, p. 333). In this regard, Grubb et al. cited in Desai (1998, p. 4), for instance, observed that the resistance of semi-industrialised countries like Malaysia, Indonesia and Brazil consider environmental protection to be a luxury issue – it can only be considered after rising the level of economic growth has been given priority. Related to this, Briffet (1999) found that there were sceptical and negative views among the regions' politicians and other government decision-makers about EIA. The cumulative factors that have led to those sceptical views are as follows: i) EIA seems to obstruct the much needed development, while it requires a large amount of money to implement; ii) EIA creates too many delays for the development proposal; iii) EIA requires too many commitments; for instance, in terms of improving public participation in the planning processes; and, iv) there is a lack of available expertise and monetary resources in conducting EIA studies in these developing countries, vis-à-vis ASEAN.

In this regard, while many developing countries recognise the importance of environmental protection they face real difficulty in reconciling economic need with environmental protection (Agarwala and Biswass, 1989, p. 66). Investigating this issue further, Lim (1985, p. 150) pointed out that one common impediment to the successful implementation of EIA is indicated in the institutional structures of the EIA organisation, which puts economic-oriented agencies in the position of the main approving agency. Therefore, the review agency for EIA has limited authority and a relatively lower status in governmental agencies. Therefore, it is not surprising that such authoritative agencies can always override the environmental policy in giving priority to economic consideration. In a study on the EIA and environmental laws in Taiwan, Tang and Tang (2000, p. 86) observed that the NEPA, which is responsible for overseeing development projects, gives less consideration to environmental protection than to economic factors. In addition, during the review process, the EIA administrator, who holds a more junior rank than the Cabinet Minister, usually always finds it hard to override the concerns of the other ministries. Therefore, the agency is likely to turn EIA requirements into a formality (Ibid).

In relation to this, Hironaka and Schofer (2002, p. 222) found that many Third World countries lack the capacity to carry out EIA procedures effectively, not due to lack of motivation, but to the difficulties of the bureaucracy in countries torn by civil war or hampered by extreme poverty. In this light, they view that the decoupling policy could be even more obvious in these countries. It was also found that the implementation of EIA in developing countries, including Malaysia, were wanting, inadequate or the authorities just met to adhere to the procedural requirement (Briffett, 1999; Briffett et al., 2003; Briffett et al., 2004). According to Briffett et al. (2003), among the reasons why the implementation was fraught were the persuasive power of the developer, personal influence and politicians' agendas. There was also a perceived need for some of the stronger government agencies to proceed with the proposal at the expense of any environmental cost. EIA will only be effective if it has political support, which requires political will in order to succeed, as well as the legal and institutional capacity to enforce its operation (Briffett, 1999). Realising this background, Briffett (1999, p. 334) asserted that the top government decision-makers in developing countries will only implement effective EIA if it can be demonstrated that it will enhance the quality of life, as well as contribute to overall economic growth. To compound the implementation deficiencies, many developing countries assume that EIA is burdensome and requires intellectually complex-disciplinary exercises (Briffett, 1999).

In Thailand, it has also been observed that project proponents and government administrators have sceptical and negative views regarding EIA. According to them, EIA could bring about some undesirable issues, which some of them tried to avoid. In addition, Rojanaphruk, (2012) also reported that the environmental agency in Thailand seems practically powerless compared to the economic-oriented or other development agencies. In relation to the EIA processes, he also observed that public participation in Thailand is weak because of local mistrust of the EIA process. In addition, according to Wiput Puljaroen, a former Director of the Health System Research Institute of Thailand, EIA has been turned into a formality and a tool for obtaining project approval. Even receiving EIA approval does not guarantee that the project is necessarily environmentally sustainable (Rojanaphruk, 2012).

## **2.5 Rent-seeking: How Does It Compromise the EIA Rules?**

Generally, the presence of a political element within an EIA study could prevent EIA from performing effectively. In their study on the Calaca power plant in the Philippines, Fujikura

and Nakayama (2001, p. 199) concluded that political bias among EIA practitioners has led to technically erroneous methodologies and conclusions in assessing the project's impact. On the other hand, contrary to widespread claims that there is no political will of Third World countries to deal with the environmental issue,<sup>44</sup> in his study on forests in Indonesia and the Philippines, Broad (1995, p. 331) argued that:

*Policy failures on environmental grounds need to be grasped for what it is – not as an overnight, nor as a faulty judgement. The decision of public policies in these countries is too often shaped both directly and indirectly, by those with a vested interest in the continued mismanagement of natural resources. In other words, one cannot accurately label the general policy failures or as mismanaged resources. Rather, there are politically successes in managing natural resources for the benefits of the controllers.*

Broad's above observation actually tends towards the view that the environmental policy fails to achieve its intended purpose due to rent-seeking. In the context of EIA, rent-seeking activities by the political elites have affected the effectiveness of the countries' EIA system. For example, Bravante and Holden (2009, p. 542) in their study on the Philippines' non-ferrous metal mining industry, observed that the shortcoming of the EIA system in the Philippines is a result of the presence of politically elite interests. The same observation was also made by Kim (2010, p. 634) in his study on the Japan International Cooperation Agency (JICA) aid to the Philippines government.

The JICA gave aid to the Philippines to construct the San Roque Multi-purpose Project (part of which is a dam construction) in Northern Luzon, Philippines. He observed that the vested interest of commercial elites in Japan and the Philippines, and political-economic strategies of state managers have made the EIA procedures just a 'greening exercise'. A similar observation was made in Cambodia, where it was among the factors that brought failures to social and environmental regulation in the Cambodian elite's economy interest. The dam project was approved by the Cambodian Investment Board and received political backing from the PM. In this sense, EIA have done nothing more than advise on mitigation

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<sup>44</sup> For example, Ebisemiju (1993, p. 250) opined that the implementation of environment-related laws and regulations in developing countries have been significantly inhibited by a lack of political will. However, this research study is of the opinion that what Ebisemiju meant was the lack of political will in the context of enforcing environmental regulation. In addition, Briffett (1999, p. 163) has also claimed that the livelihood of EIA in developing countries is much dependent on the attitudes and vision of the most senior political decision-makers.

measures, rather than using being a tool to influence decision-making (Hensengerth, 2014, p. 303). The implementation gap or the EIA incompliance made Kim (2010, p. 635) conclude that:

*Without being able to serve its prescribed role as a 'scientific' and 'technical' undertaking to inform decision makers, the procedure was compromised by the different political decisions and views by various stakeholders.*

The two Nam Theun Hydroelectric Dam projects, located in Laos also exhibited vested interests of the actors involved, including the World Bank as a fund lender, engineering firms, builders and the project's reviewer (Goldman, 2005, chapter iv). Despite the dam project receiving EIA approval, it was found that the EIA and SIA prepared for the project were seriously flawed and found to be inadequate, and there was a lack of alternative studies (Goldman, 2005, p. 159). Goldman (2005, p. 160) related the flaw in the project assessment to the consultants working under contracts specified by the World Bank.

In Southeast countries, environmental regulations, including EIA, have also been blamed for being ineffective in protecting natural resources due to the problems associated with political, technical, legal, social and environmental factors. This is particularly due to the absence of transparency and public participation, where EIA remains immune to criticism (Hirsch and Warren, 1998, p. 15). Another factor that impedes successful EIA implementation and monitoring is the pervasive corruption of perception (Ibid). In this regard, Boyle (1998, p. 95) observed that in Thailand, Indonesia and Malaysia support for EIA from political and business actors was found to be low. It also appears the environmental agencies in those countries are virtually powerless compared to the economic and development agencies.

## **2.6 The Expansion of EIA Worldwide**

Since the enactment of the NEPA in 1969 in the USA, the EIA model developed by the NEPA has been adopted by more than 120 countries in various forms, beginning with developed countries such as Canada (1973), Australia (1974), West Germany (1975) and France (1976) (Glasson et al., 2005, p. 36). The warm welcome of EIA around the globe is mainly because it has provided a systematic process for examining the environmental consequences of development-related initiatives (Gilpin, 1995; Canter, 1996; Ortolano, 1997; Modak and

Biswas 1999; Lee and George, 2000; Hironaka and Schofer, 2002; Wood, 2003; Glasson et al., 2005; Craik, 2008; Buhrs 2009). Consequently, the wave of EIA then expanded to developing countries in the 1970s, which coincidentally paralleled the growth of physical development patterns in East and Southeast Asian countries in particular. The unprecedented levels of economic growth have exposed the region to a wide range of development opportunities and challenges that require environmental protection, including the need for EIA (World Bank, April 2006, p. iii). Table 2.1 simplifies the key stages of EIA's international development.

**Table 2.1:** Key stages in the worldwide adoption of EIA

<ul style="list-style-type: none"> <li>Project review relied on technical/engineering and economic analysis. Little attention to environmental considerations.</li> </ul>	Pre-1970
<ul style="list-style-type: none"> <li>The NEPA introduced requirements and procedures for EIA in 1970.</li> <li>Australia, Canada and New Zealand followed the NEPA in 1973 and 1974.</li> </ul>	Early–Mid 1970s
<ul style="list-style-type: none"> <li>The EIA process was established in developing countries in the late 1970s to early 1984 (e.g., Brazil, Philippines, China and Indonesia).</li> </ul>	Late 1970s to early 1984
<ul style="list-style-type: none"> <li>European Union Directive on EIA established minimum provisions for compliance by the member states.</li> <li>World Bank and other international lending and aid agencies established EIA requirements in an increasing number of developing countries to carry out EIAs (e.g. Asia).</li> </ul>	Mid 1984 – End of decade
<ul style="list-style-type: none"> <li>The United Nations (UN) conventions on climate change and biological diversity identified EIA for its environmental mechanism.</li> <li>The 1992 Earth Summit promotes the use of EIA.</li> <li>Many developing countries enacted EIA legislation.</li> </ul>	1990s

Source: Sadler, 1996, p. 25 & 27

In this regard, Hironaka (2002, p. 68) identified three important factors that have influenced EIA legislation and its spread: i) pressure from international environmental organisations; ii) pressure from the international foreign aid organisations; and, iii) pressure from the international scientific efforts, where each actor is helping through their organisational work.

The excellent initiatives of the European organisations, such as the International Union for Conservation of Nature in its espousals of EIA, and efforts by the United Nations Environment Programme (UNEP), have encouraged strong interest in EIA. Both of these organisations are among the key environmental organisations that have helped to structure the environmental discourse and policies, and encouraged many countries to adopt EIA; they have also put environmental issues on the agendas of many countries (Hironaka, 2002, p. 69).

The expansion of EIA is also attributed to pressure directed by international donors from industrialised countries, which have essentially funded development projects in developing countries. They received criticism from environmentalists who claimed that environmental problems in the developing countries provided with funding have come from multinational projects. In addition, there is an assumption that the chance of receiving foreign aid is higher if developing countries have introduced EIA legislation in their countries (Buhrs, 2009; Rock, 2001). Meanwhile, the environmental pressure in developed countries, as well as in developing countries, has created a climate of opinion in which the international donors, such as the World Bank, have to consider environmental issues, such as requiring EIAs in their loan protocol or any development assistance. For example, in the European Union, EIA has become mandatory for its member countries through the adoption of the European Council Directive on EIA in 1985 (Hironaka, 2002; Buhrs, 2009; Ortolano, 1997).

In addition, the expansion of EIA has been facilitated largely because of environmental protection requirements imposed by international organisations and aid agencies such as the World Bank (Lee and George, 2000; Ortolano, 1997). Although EIA is not a compulsory prerequisite of international organisations, many assume it would give them a higher chance of receiving foreign aid if they have done it (Buhrs, 2009, p. 47). Consequently, in 1989 the World Bank required that all sponsored projects that could have a negative environmental significance to conform to EIA requirements. This move was followed by other international banks (Ibid). On a negative note, Hironaka and Schofer (2002, p. 222) also observed that the expansion of EIA internationally was due to the influence of the institutional environmental regime rather than the countries concerned accommodating local interests or local perception of the effectiveness of EIAs. In developing countries, procedures like EIA would help the nation state to enhance their image in the international arena.

This research is aware of the discourse on the environmental and political ideologies where democracy is said to enhance environmental protection. This stance is based upon the assumption that a strong civil society would allow environmental issues to attract public attention easily (Hironaka and Schofer, 2002; Tang and Tang, 2000; Rock, 2001). Therefore, in this context, EIA cannot function effectively when it is kept secret from the public or when it has very limited dissemination. This is why weak public participation has resulted in EIA in developing countries being classified as secret or subjected to corruption, and it is often completely disregarded (Hironaka and Schofer, 2002, p. 224–225).

## 2.7 The Development Trends in IA

This section aims specifically to capture the development trends of the IA concept worldwide and not the general concept of environmental concerns. Obviously, IA is a dynamic field. To indicate the warm acceptance of EIA around the globe, as of 19<sup>th</sup> May 2003, Vanclay (2004, p. 274), for example, has shown that 100 different types of expanded forms or hybrids of EIA exist; these vary in terms of different terminologies, domains, interests and types of activities (Vanclay, 2004, p. 273).

Although this study only focuses on two EIA expansions: SIA, and the Sustainability Assessment (SA), there are many hybrids and development trends in the IA field. For example, Vanclay and Bronstein (1995) have grouped the development trends of EIA into three major groups: i) the macro IA<sup>45</sup>; ii) the tools of IA; and, iii) the tools for future IA.<sup>46</sup> In another publication, Vanclay (2004, p. 271) categorised the current trends in EIA into five streams: i) up streaming IA<sup>47</sup> into the policy level through the development of SEA; ii) the development of a myriad of additional forms of IA to cater for each specific issue; iii) the integrating and integrative approach; iv) broadening of the definition; and, v) mainstreaming IA through the environmental auditing and Environmental Management System (EMS).

There is a parallel discussion regarding IA in Malaysia; there are currently three types of IA that have been introduced into the Malaysian environmental management and land use planning system. For each of these, the discussion touches on the basic concept and includes its strengths and weaknesses. As well as explaining the developmental trends in the IA concept, it is the intention of this section to highlight the deficiencies and criticisms that have been levelled against, and discuss the way they have been dealt with.

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<sup>45</sup> The IAIA (IAIA, 2009, p. 1) has defined IA as simply *'the process of identifying the future consequences of a current or proposed action'*. IA is a generic term that can mean either an integrated approach or the composite/totality of all forms of IAs such as EIA, SIA, HIA, etc. However, Garner and O'Riordan (1982, p. 346) made a distinction between EIA and EA. According to them, the former is a technical exercise aimed at evaluating the physical, ecological and environmental impacts that may arise from the proposed project. EA, on the other hand, is less technical.

<sup>46</sup> They have classified the extension of EIA into three main groups: First, under the Macro Impact Assessment groups are: a) EIA; b) SIA; c) Technology Assessment; and, d) Policy Assessment. Second, under the tools of IA are: a) Economic and Fiscal Impact Assessment; b) Demographic Impact Assessment; c) Health Impact Assessment (HIA); d) Ecological Impact Assessment; e) Risk Assessment (RA); and, f) Public Involvement. Third, under the tool for the future of EIA are: a) Climate Impact Assessment; b) Development Impact Assessment; and, c) Environmental Sustainability.

<sup>47</sup> Although Vanclay (2004) used the terminology 'IA', after reading the whole article it became obvious that he was referring to EIA.

### 2.7.1 Social Impact Assessment

SIA emerged worldwide in the early 1970s<sup>48</sup> because of the introduction of the NEPA in the USA (Burdge and Vanclay, 1995; Vanclay, 2004). However, SIA only became popular when the protests of native Alaskans on the proposed Trans-Alaskan pipeline project erupted. This incident awakened the EIA community to realise the importance of SIA in EIA studies, especially in dealing with the community conflicts. It also gave a new paradigm for EIA scholars and practitioners to study – the impacts of projects that extend beyond the biophysical and chemical scopes. Consequently, a trend has emerged to include the social and cultural impacts in the EIA study (Interorganizational Committee on Guidelines and Principles for Social Impact Assessment, 1995; Burge and Vanclay, 1995). Consequently, SIA has always been seen as a component of the EIA study, especially when the term 'environment' is interpreted widely.

Since then, the term SIA has become popular, though other terminologies have also been used in many countries, such as socio-economic impacts (European countries); social analysis (US Government); and HIA (for some anthropologists and countries) (Burdge, 2003, p. 226). Being a leading scholar of SIA, Vanclay (2003, p. 6) has provided a clear definition:

*SIA includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions.*

Therefore, SIA is a study of the social impact, which is defined as the consequences to the human population in the proposed changes of policies, programmes, plans and projects that alter the ways in which people live, work, play and interact as an individual or as a community<sup>49</sup>. The primary purpose of SIA is to bring about a more sustainable and equitable

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<sup>48</sup> Vanclay (2004, p. 238) in making a comparison of the five approaches of IA, has concluded that SIA was established in 1973.

<sup>49</sup> Vanclay (1999) cited in Vanclay (2002, p. 185–186) summarised the social impacts as a change to one or more of the following:

- i. People's way of life: how they live, work, play and interact with one another on a day-to-day basis;
- ii. Their culture: shared beliefs, customs, values and language or dialect;
- iii. Their community: its cohesion, stability, character, services and facilities;
- iv. Their environment: the quality of the air and water people use, the availability and quality of the food they eat, the level of hazard or risk, dust and noise they are exposed to, the adequacy of sanitation, their physical safety, and their access to and control over resources;

biophysical and human environment (Vanclay, 2003, p. 2). It minimises local resistance to projects, and therefore reduces disruption. It increases project success, and it prevents major planning disasters and associated costs (Vanclay and Bronstein, 1995, p. 33). What can be summarised from the above SIA concept is that it is an umbrella or overarching framework that encompasses all human and other impacts on societies from the proposed or intervention activity, including at the policy level. In other words, SIA's intention is to act as an inclusive tool that focuses on humans and societies.

However, SIA is also facing deficiencies. As highlighted by Vanclay (2004, p. 281) there are several barriers confronting SIA. Among other things, this is related to the deficiency in the rationality approach in dealing with assessment. SIA in particular and social sciences in general have been blamed, as they do not have an applied tradition, or practicality. They are not used to provide practical recommendations. Moreover, there are difficulties in applying the social sciences to SIA, particularly as its consideration of social issues is descriptive and discursive, not predictive; and qualitative not quantitative. In addition, SIA tends to involve values with different value-weightings being applied by different groups, which may change over time. All of these issues have become impediments, thus resulting in the slow acceptance of EIA in the IA field. Furthermore, a disciplinary prejudice or bias exists that views social issues as unimportant. This has led to a weak commitment to SIA.<sup>50</sup>

In this regard, the common critique highlighted by many researchers was that the study of social impact under EIA has not been given equal treatment when compared to physical and biological components (Glasson, 2001; Glasson et al., 2005; Ahmad, 2001; Vanclay, 2002; Salim, 2005; Buhrs, 2009; Taylor, 2009; Formby, 1987). It was found that a contributory factor was that the social impact was studied under the socio-economic category, which by nature is the most difficult to measure and predict when compared to the physical, biological and economic impacts (Ahmad, 2001; Vanclay, 2002; Vanclay, 2006; du Pisani and

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- v. Their health and wellbeing: where health is defined as 'a complete state of mental, physical and social wellbeing, not merely the absence of infirmity' and is applied to individuals and to the society in which they live;
  - vi. Their fears and aspirations: their perceptions about their safety, their fears about the future of the community, and their aspirations for their future and future generations.

<sup>50</sup> The other two barriers are: i) the difficulty in the SIA process, particularly in terms of the paucity of studies, the lack of effective techniques, tools and models, and the quality of available data. There may be a shortage of skilled SIA professionals and even social planners, particularly in the employment of the government; and ii) procedural problems apply to SIA, particularly as SIA as a discipline has not instigated a formal registration system, and regulatory agencies have not demanded that SIAs be performed by appropriated qualified consultants. There is also no formal review process, no evaluation process and no universal standard SIA (Vanclay, 2004, p. 281).

Sandham, 2006). Therefore, it is not surprising that SIA consultants give more weight to the economic aspects, thus marginalising the social impact study. In this regard, Baines and Associates (2008, p. 4) have asserted that in order to mainstream SIA into the EIA field, SIA must be less technocratic. Therefore, the public participation process should be strengthened.

Meanwhile, to Vanclay (2004), SIA has to be considered beyond the impact prediction. It must be viewed as a philosophy about development and democracy. A summary of the failures of SIA in EIA implementation and the poor treatment given to it, could probably be best provided by the words of Vanclay (2004):

*SIA failed to obtain sufficient legal mandate. So it is rarely done, and when it is done, it is rarely done well. Too often it is seen as legitimating bad development rather than being a path to good development.*

### **2.7.2 Sustainability Assessment (SA)**

The interest over the idea of 'sustainability' has brought SA into the IA field. According to Pope et al. (2004, p. 595), SA comprises a broad range of different processes by which the implications of an initiative on sustainability are evaluated; the initiative can be a proposal on the existing policy, plan, programme, project, piece of legislation or a current practice or activity. SA is the 'next generation' of EA (Sadler, 1999). According to Morisson-Saunders and Fisher (2006, p. 20) EIA and particularly SEA have started to increasingly consider not only the biophysical impacts but also the social and economic considerations. It has been observed that the biggest weakness of EIA is that it is mostly confined to assessment on a case-by-case basis or project-based assessment. The difficulty arises due to the absence of a policy or planning framework to take into account the local, national and global environmental limits and the competing demands in a global and long-term context (Buhrs, 2009, p. 49; Mohammad-Said, 2001, p. 262). All of these deficiencies and expectations have led to the development of SA, which seeks to integrate the economic, social and environmental components (Buhrs, 2009, p. 107).

However, SA has also received criticism, at least from the practicality point of view. Many governments appear to apply SA in the EIA-based tradition, whereby the positive and negative impacts are identified but not placed in a policy context (Buhrs, 2009, p. 108).

Although it has been claimed by SA proponents that it is an objectives-based assessment, whether it attempts to integrate and promote the sustainability development concept is doubtful. This is due to the trading off or the conflict between its main concepts of the environmental, social and economic. Therefore, in this regard, Buhrs (2009, p. 108) observed that the environmental objective loses out to the economic and social interest objectives, as both of the latter often enjoy stronger support from politicians (Ibid).

## **2.8 Synthesis of Concluding**

The founding purpose of the introduction of EIA was to provide a systematic, rational and technical tool that can be used by policymakers in order to improve the state of the environment. Eventually, this purpose would lead to public acceptance of project implementation, whereby conflict and controversy surrounding projects could be minimised, if not eliminated. These founding purposes of EIA are actually parallel to the concept of the credible or non-credible institutions, concepts that will be discussed in Chapter 4. It must be acknowledged that the concept of the IA is developing quickly worldwide in the form of new sectors or tools, but also in the way IA tools should be dealt with and approached.<sup>51</sup> The changes in the EIA concept from the biophysical to socio-economic, and now to sustainable development, reflect the development of EIA as an IA tool that aims to cope with the needs of environmental protection.

As a response to the criticism that EIA is narrowly confined to the biophysical environment, it has brought about the emergence of many sector-based IAs such as SIA, SEA, Traffic Impact Assessment (TIA), etc. Therefore, scholars in the IA field are of the opinion that EIA should include, for example, social and economic aspects of the environment. EIA also seems to fail to incorporate decisions at the PPPs level, which has led to the emergence of SEA. This has sparked other IA tools to emerge and fill the gap. However, one thing is certain, all attempts to expand its scope towards sector-based IAs such as SIA, HIA and TIA, etc., seem unable to influence decision-making at the higher level (e.g. SEA and SA), which clearly indicates that IA tools demonstrate a common deficiency. Above all, it remains to be

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<sup>51</sup> Examples of the new concepts or approaches in IA include the Triple Bottom Lines (TBL) and EMS. TBL is generally about corporate social responsibility which aims to maximise economical, social and environmental values. On the other hand, EMS typically focuses on the environmental impacts and legal responsibilities of each individual business. However, to Vanclay (2004) this is nothing new or different, as both concepts ultimately aim to bring environmental protection, which is typically already offered by the traditional IA concept, such as EIA, SIA and SEA.

seen whether the development of the EIA concepts are translated into action – by giving substantive purpose on sustainability in particular.

Despite the positive picture painted on the EIA as a rational, systematic, objective, scientific, value free and unbiased impact assessment, in reality and like other policies, EIA paints a different picture. As discussed and in many instances, its existence is merely to full fill the procedural requirement rather than to guide development. Put differently, EIA in such conditions is little more than a paper exercise and its ultimate aims is to 'greening' the state administration or by providing rationality camouflage in order to validate development decisions that have already been made in advance by the authorities. It has become a political exercise whereby the decision-making to approve the project has been outweighed by political criteria rather than the assessment from the EIA – a symbolic window dressing, with little or no real influence on the choice process .

At the macro level, a country's political-economic setting influences EIA performance. In a developing country, in particular, shows that strong government interferences in development policy consequently breeds and promotes political patronage and rent-seeking. Under these circumstances, it leads to conflict of interests and values as the state roles contradict – to be the protector of the environment and to do business as well. In addition, in view that there is strong relation between politicians (patron) - to provide rents to clients (businessmen) and clients - to provide the financial support to the patrons, EIA performance becomes complicated and deteriorated. This consequently makes the EIA fail to achieve its intended purpose due to rent-seeking.

In addition, technocracy approach in the way the way of development project is being handled and dealt has negatively affect the EIA. The technocracy approach inclines to side line social study or public involvement in the decision-making process. In many developing countries with an authoritarian system, environmental regulations have largely been initiated by government officials from the *'top-down'* approach. In terms of actors' attitude towards EIA, it was found that the developed country's attitude differ from the way of the developing countries in treating EIA. It can be generally assumed in countries which have more advanced and stronger democracy, the EIA process and procedures are strengthen too. This relates to the country's priority on environment or understanding on EIA. The chapter also revealed that EIA at the international level is facing different attitudes regarding its implementation. At least in the beginning of the EIA introduction in these countries, there

were segments of government agencies against it – due to perceived loss of grip or diminishing in agency jurisdiction. On the other hand, business actors also have negative view on EIA as it was believed to be the impediment factor to the project development or business activities while, EIA to the local people gained positive response as it gives more democratic space to them.

Having reviewed the EIA at the international level, the next chapter – Chapter 3 demonstrates the characteristics of EIA at the local level – Malaysia. In addition to demonstrating the features of EIA, including its organisational structures, the following chapter reveals the arguments for and against it, as well as the developmental trends of EIA concepts in Malaysia.

# 3

## Environmental Impact Assessment in Malaysia: Administrative, Strengths and Limitations, Support and Opposition and Its Developmental Trends

### 3.1 Introduction

Malaysia is part of the second generation of Asian countries to formally adopt EIA through the establishment of legislation and an administrative system. In the general sense and like other environmental policies, EIA aims to protect the environment. Historically, before the establishment of EIA in Malaysia, there were already 14 environmental statutes concerning various environmental protections and conservation. Unfortunately, the previous legislation only acted through the control and command approach. As such, this approach caused great deficiency – these environmental legislations dealt with the environmental problem in a reactive manner. In contrast, EIA hopes to provide a systematic approach, whereby it would be able to anticipate the negative impacts likely to arise from project approval.

Again, it is necessary to reproduce two out of four research questions which have primary guided discussion for this chapter:

- i) What has caused the EIA institution to be perceived as having low credibility in the Malaysian context? In this regard, to what extent are the EIA rules being shared by its social and political actors?
- ii) Under what socio-economic conditions could EIA as an institution gain a state of credibility, or, alternatively, non-credibility?

This chapter also aims to review the background of EIA implementation in Malaysia by discussing the historical context that has brought EIA into the environmental policy administration. It also discusses the institutional structures, as well as the actors involved in

the Malaysian EIA. In addition, the chapter discusses the strengths and weaknesses of EIA, as well as the emerging trends in relation to the EIA concept in Malaysia. This chapter intends to demonstrate the EIA rules that have been set down over time.

## **3.2 Development of EIA in Malaysia**

This section provides the background of the introduction of EIA in Malaysia. This research argues that the development of EIA in Malaysia is historically rooted in the Environmental Quality Act 1974 (EQA). Therefore, by using the timeframe of the introduction of Section 34A (Prescribed Activity), better known as the 'Order 1987', the development of EIA in Malaysia can be divided into two broad phases; namely pre and post 1987.<sup>52</sup>

### **3.2.1 The Existence of EIA Prior to the Order 1987**

Prior to 1970, the Malaysian economy was predominantly an agricultural-based economy. There were virtually no environmental concerns due to the strong focus on the physical and economic development. In addition, the so-called 'environmental movement' from outside Malaysia was minimal, if not absent (Aiken, 1988; Sani, 1993).

The agenda for development in Malaysia could be argued to have significantly begun through the introduction of the New Economic Policy (NEP) in 1970, which resulted from the racial riot on 13<sup>th</sup> May 1969.<sup>53</sup> During the implementation of the NEP, many large-scale development activities were carried out. For example, among the measures taken to accelerate the economic growth during the NEP implementation was the establishment of the Free Trade Zones (FTZs); incentives were given to foreign investors to set up factories within these areas. Inevitably, while this effort brought about positive economic effects, this approach posed significant pressure on environmental quality and human well-being. As acknowledged by Aiken (1988, p. 297) the rapid exploitation of natural resources and the expansion of resource-based industries resulted in environmental problems in Malaysia. It

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<sup>52</sup> However, Hezri and Hassan (2006) categorized the environmental policy transformation in Malaysia into four stages: i) federal policy formulation; ii) crisis and consideration; iii) SDC; and, iv) implementing sustainable development. However, this research study found that the clarification was muddled, as it was based on the policy responses to the general environmental problems in Malaysia.

<sup>53</sup> Although it was referred to as a racial riot, the riot actually happened between the Malays (indigenous, or Son of the Soil, or widely known as 'Bumiputera') and the Chinese only. The Indians, for example, were not involved. This racial riot was confined geographically to Kuala Lumpur. It was not a mass riot occurring across the whole of Malaysia.

was found that the sources of this degradation were activities related to the development of land and natural resources and the discharge of waste from industrial activities, mainly from rubber and palm oil factories (Sani, 1993, p. 66).

Parallel to this economic development, the international trend of environmental protection, in particular the Malaysian attempt to respond to the Stockholm Conference on the Human Environment held in 1972, had growing significance (Thanarajasingam, 1992, p. 4). This was also due to the successful lobbying of Malaysian NGOs, such as the Consumers' Association of Penang (CAP) and the Malaysian Nature Society (MNS). These cumulative factors led to the introduction of the EQA 1974 (Ramakrishna, 2003; SAM, 2007; Aiken, 1988; Aiken and Leigh, 1986).

The urgent need for EIA in Malaysia was not felt until natural disaster incidents occurred, when there was a big flood in Kuala Lumpur in 1970 and in Bota Perak in 1976, respectively. The DOE of Malaysia was asked by the World Bank to assess the environmental impacts, as flooding was a major concern at that time (Staerdahl et al., 2004, p. 4). The World Bank through the World Environmental Mission visited Malaysia in 1975 and consequently in the same year made a report (1974–1975). Among other recommendations in the report was the need for Malaysia to design and formulate EIA as policy mitigation to any major development project (Ho, 1992; Staerdahl et al., 2004).

However, before the introduction of the EQA, at least 40 pieces of environment-related statute had already been implemented (Thanarajasingam, 1992, 4). These statutes were largely housekeeping in nature. They were found to be inadequate and scattered, and they could not address the environmental problems holistically (Sani, 1993, p. 66). The approach seemed right given the status of Malaysia's environmental problems at that time, which were largely dominated by small-scale and limited numbers of agricultural-based industries, most notably small rubber, tin, timber and palm oil factories.

The EQA, a federal enacted law, came into force on 15<sup>th</sup> April 1975, and was aimed at protecting the Malaysian environment through two broad objectives: i) preventing environmental pollution; and, ii) providing remedial measures. It has thus been regarded as the first-ever Malaysian environmental law dealing with environmental problems. The introduction of the EQA was timely due to the rapid development patterns that were occurring in developing countries, including Malaysia (particularly in the 1970s). Moreover, it

was observed that East and Southeast Asian countries experienced unprecedented levels of economic growth, exposing the region to a wide range of development opportunities and challenges. Therefore, a range of policy reforms, development plans and programmes, including EIA, were being undertaken to meet these environmental challenges, especially in the resource and environment intensive sectors (World Bank, 2006).

In the early years, Malaysian EQA implementation mainly focused on remedial measures, whereby environmental issues and problems were solved on the reactive, responsive and command–control approaches (Yakin, 2006, p. 1). In addition, many projects that have been granted approvals were later found to cause environmental damage due to the failure of authorities to anticipate such consequences. In the words of Hezri and Hasan (2006, p. 4.1), this policy was built on earlier environmental responses to nascent environmental problems and a need for policy action. This has turned out to be an internal factor that has made the Malaysian government realise the need to amend the EQA.

The commitment to EIA was then made clear when it was spelled out officially in the policy statements in Chapter XI of the Third Malaysia Plan (1976–1984):

*In the evaluation of all relevant projects, an assessment of the overall impact of these projects on the environments will be undertaken. Ministries and Departments as well as the private sector will be required, before embarking on the implementation of such projects, to identify all likely environmental effects as well as the means to be taken to counter them. These assessments will be taken into account in the final design and implementation of the projects but bearing in mind that the adoption of environmental protection measures will need always to be in balance with development costs. (GOM, 1974, p. 226).*

The Third Malaysia Plan also acknowledged degradation in environmental quality such as air pollution, water pollution, forest depletion and land clearings. Following the EIA initiative, a number of efforts were taken to implement it. For example, after setting up the Ad-Hoc Panel of the DOE in 1977, a proposed EIA procedure was introduced at the National Seminar on EIA in September 1977. The proposed procedure was then examined and reviewed by the Ad-Hoc Panel. Subsequently, this proposed procedure was submitted to the Malaysian government and approval was given in 1978. However, in principle this approval was subjected to the preparation of a set of EIA guidelines.

Consequently, in January 1979, under the Colombo Plan Arrangement, a New Zealand consultant was assigned to help Malaysia in preparing the EIA procedure. A draft guideline known as the EIA Handbook – Procedure and Guidelines was prepared and endorsed in 1979 by the EQC, an advisory body set up under the EQA. (Ho, 1992, p. 4; Ho, 1990, p. 310). With the help of the United Nations Environmental programme (UNEP), the DOE developed procedures and guidelines adopting most of the details taken from the Canadian Initial Environmental Evaluation (CIEE), as well as from the NEPA of the USA (Staerdahl et al., 2004, p. 4).

Parallel to this environment protection development, FDI started to come into Malaysia and resulted in many factories being set up. For example, Ghazali Atan cited in Aslam and Piei (1994, p. 37) observes that during 1984, FDI was around 8 percent of the gross domestic capital formation in Malaysia. Consequently, it rose to 19 percent in 1989. Malaysia's Gross Domestic Product (GDP) between 1960 and 1990 also increased seven-fold, at an annual growth rate of 6.8 percent (Sani, 1993, p. 64). Mahathir's administration, which began in 1984, accelerated the pace of the Malaysian economy by expanding and modernising it. A series of reforms and rationalisation measures were initiated, such as the Industrial Master Plan, the Look-East Policy, the National Agricultural Policy and the Privatisation Policy. These policies and initiatives are reflected in the shift of the economy; the basis of the country's economy changed from the production of raw materials to manufacturing. The rate of industrialisation and urbanisation has accelerated since then. This new economy has greatly affected the Malaysian physical environment. In this light, although the EQA was already in place, it failed to address most environmental problems effectively.

EIA has only officially been implemented in Malaysia since 1988. However, it was in operation in Malaysia since 1979,<sup>54</sup> but without statutory provision. In the Fourth Malaysia Plan (1981–1985), the emphasis on EIA was reinforced through three-pronged strategies: pollution control, comprehensive land use planning and integrated project planning (GOM, 1979). This further strengthened the role of EIA in Malaysia.

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<sup>54</sup> According to Che-Ibrahim (1992), it was found that between the years 1981 to 1987, there were 45 EIA reports submitted to the DOE. In this regard, the DOE encourages project proponents and various approving authorities on the positive effects of EIA.

### **3.2.2 The Emergence of Formal EIA through the Order 1987**

During the administration of Malaysia's Fourth Prime Minister (Mahathir Mohamad), the industrialisation and urbanisation activities intensified.<sup>55</sup> This era was also marked by the economic liberalisation and privatisation programmes where the business sector experienced rapid development. As the industrialisation and urbanisation pace was rapid, the government was aware that these developments would bring environmental degradation. It was not until 1987 that the Malaysian government realised that special attention needed to be paid to developing a comprehensive environmental strategy.<sup>56</sup> The approach taken by the Malaysian government at that time, which emphasised remedial measures only, was found ineffective considering the rapid development progress that happened in the mid-1980s.

Taking cognizance of the fact that prevention measures had failed to address the environmental problems in a comprehensive manner, led the Malaysian government to introduce EIA. Through the amendment of the EQA in 1985, a new Section 34A was introduced. The introduction of EIA has brought about a new approach in environmental planning, where anyone, whether individual or organisation, who intends to carry out a prescribed activity has to undertake a study of the impacts before EIA approval can be granted.<sup>57</sup>

EIA in Malaysia aims to reform and strengthen Malaysian environmental protection and consequently to give confidence to the overall Malaysian environmental governance system. Through the Order 1987, the environmental protection and management, on development projects in particular, has changed to be proactive. In addition, it aims to signal Malaysia's commitment towards good governance of environmental protection to local and international communities.

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<sup>55</sup> Although the industrial strategies and trade orientation in Malaysia has been in operation since 1958, the Industrialization Policy in Malaysia has been formally established in 1986 through the launch of the Industrial Master Plan (Rasiah, 2011, p. 151).

<sup>56</sup> As a comparison to neighbouring countries that introduced EIA earlier than Malaysia, please note the following: In 1974, the Philippines originally conceived the Philippines Environmental Policy (P.D. No.1151). The actual establishment of the EIA System began with the Presidential Decree (P.D.) No. 1586, (The World Bank, 2006, p. 55). In Indonesia in 1986 (Indonesia's EIA system was first established by the Government Regulation No. 29 (1986) in accordance with the provisions of Article 15 of the former Environmental Management Act No. 4/1982, see p. 32). In Thailand, EIA was required from 1975 for a wide range of project categories under the Improvement and Conservation of the National Environmental Quality Act 1975 (NEQA). The Minister prescribes the categories of projects that required an Environmental Impact Statement (EIS) – a list was issued in 1981. (World Bank, 2006, p. 62).

<sup>57</sup> See Section 34 A of the EQA. It will be discussed in detail in Section 3.6 of this chapter.

In the Sixth Malaysia Plan (1991–1995), Malaysia further reiterated the government's commitment to sustainable development initiatives. During this period, the National Council for the Environment (NCE) was established. The NCE functions to coordinate the strategies and programmes of all agencies towards a more holistic approach (GOM, 1991, p. 409). The government also stressed its commitment towards integrating environmental consideration in the planning and implementation of project development. It also acknowledged that the cost of preparing EIA is marginal in comparison to overall project costs (GOM, 1991, p. 406).

Meanwhile, in the Seventh Malaysia Plan (1996–2000), the Malaysian government reiterated support to include EIA requirements for resource-based development projects, as well as to boost cooperation and consultation between the stakeholders involved (GOM, 1994, p. 598). The government also stressed its commitment towards integrating the environmental consideration in the planning and implementation of the project development. The plan acknowledged that the cost of preparing an EIA is marginal in comparison to the overall project costs (GOM, 1991, p. 406). Meanwhile, during the Ninth Malaysia Plan (2006–2010), the government promised to foster cooperation of the stakeholders with environmental considerations. EIA was again mentioned in the Ninth Malaysia Plan (2006–2010) whereby the government pledged to foster closer cooperation between the stakeholders in addressing the environmental concerns. The government also stressed there should be increased application of EIA as an environmental planning tool for evaluating and mitigating the environmental impacts of development activities (GOM, 2006a, p. 453).

### **3.3 General Actors and Their Roles in the EIA Process in Malaysia**

In order to facilitate discussion within this research, it is necessary to define the identity and roles of the actors who are specifically involved in the EIA process.<sup>58</sup> This research has defined 'actor' as 'an individual or organisation who has been affected or has interest in the EIA policy and activities'. In addition, considering that actors in the EIA process are numerous, and that they vary according to the type of EIA project, this research has classified the actors involved into six groups (as shown in Table 3.1).

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<sup>58</sup> It worth mentioning that this section discusses actor roles differently from the next section (discussion under Sub-section 3.5.4 – The Actors Involved in the EIA Review Process) because the basis of discussion within this section is specifically actor's roles in the context of the EIA process.

**Table 3.1:** General EIA actors and their roles in Malaysia

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<p><b>The Project Initiator</b> The individual or organisation proposing and implementing the prescribed activity. The project initiator can delegate the task of conducting the EIA to a consultant, but he remains responsible for the content of the EIA.</p>
<p><b>The Assessor</b> The assessor is the individual who may be a leader of a team who conducts or coordinates the EIA study. He is responsible to the project initiator to complete the task of preparing the EIA report.</p>
<p><b>Environment-related Agencies</b> The main agency responsible for implementing EIA is the DOE. However, other agencies are involved in five areas, as follows:</p> <ol style="list-style-type: none"><li>Providing information to the assessor</li><li>Formulating the terms of reference (TOR) of the EIA study</li><li>Giving comments on the EIA study</li><li>Reviewing the EIA report</li><li>Monitoring and auditing compliance of the project initiator to the agencies' requirements and project impacts</li></ol>
<p><b>The Review Panel</b> An independent body of experts and representatives. The panel is responsible for making comments and recommendations to the project authority with regard to the environmental cost and benefits of the project. However, for the Preliminary Environmental Impact Assessment Report (PEIA), the state DOE officers and other government agencies undertake the review internally.</p>
<p><b>The Approving Authority for the Project</b> According to the DOE (2007, p. 7) the projects approving authority includes:</p> <ol style="list-style-type: none"><li>the National Development Planning Committee for federal government sponsored projects;</li><li>the respective state planning authorities for state government sponsored projects;</li><li>the region development authorities of the State Executive Committee (EXCO); and</li><li>the Ministry of International Trade and Industry (MiTI) for industrial projects.</li></ol>
<p><b>The Public</b> The public are the central actors in the EIA process and will be involved during the:</p> <ol style="list-style-type: none"><li>scoping process;</li><li>profiling (data collection);</li><li>impact identification; and</li><li>during Detail Assessment EIA report review</li></ol> <p>The public may be the NGOs, PAP or other interested parties.</p>

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Source: Modified from Mohamad-Said, 2008, p. 36; DOE, 2007, p. 10; DOE, 2009, p. 9–10

However, this research acknowledges that in practice there are many different roles that need to be carried out by the same individual or group. In this regard, this research is fully aware that the actor's relationship is complex. For example, the media, political parties and judiciary were also involved in both dam projects under the study. In the same vein, this research also acknowledges that the bureaucrats, politicians and scientist are also involved in EIA projects, but they might be grouped as the approving authority or project initiator, or as the assessors. Consequently, the public are another significant actor in the EIA process in Malaysia and can be considered as three different groups: i) the general public, that is the public at large or the population of the country; ii) interest groups, which are often used as indicators of the views of the general public; and, iii) individuals who are potentially directly

affected by the proposals.<sup>59</sup> NGOs and the media are normally also categorised as the public.

### 3.4 The EIA Process in Malaysia

The EIA process might differ from one country to another or vary based on the type of project. However, the EIA process in Malaysia generally includes the stages shown in Table 3.2. There are two basic stages where the EIA process requires public participation: i) Conducting the EIA Study; and, ii) Preparation of the Report. During these stages, the project proponent through the EIA consultant must consult PAP. Public participation is also required during the Report Review and Approval stage. In this stage the EIA report is compiled and produced by the project proponent and has to be displayed for PAP inspection. Again, PAP input must be sought.

**Table 3.2:** The basic elements of the EIA process in Malaysia

<b>Establishing the Need for the Project</b>
Justification of the project is required, including highlighting the social, cultural and economic benefits gained from the project's implementation.
<b>Consideration of Project Options</b>
Assessing the proposed project, including its technical, economic and environmental considerations. The project proponent should also include a 'no project option'.
<b>Screening</b>
Determining whether an EIA study is necessary for the particular project. In Malaysia, this is made based on 19 prescribed activities.
<b>Scoping</b>
A process of deciding the scope of the potential and significant impacts to be considered within the EIA study'.
<b>Conducting the EIA Study and Preparation of the Report</b>
Carrying out an EIA study: collecting data, and assessing and predicting the impacts based on the appropriate methods and techniques. The report is then prepared in order to present the findings.
<b>Report Review and Approval</b>
At this stage the report is reviewed by the public through public participation. The report is also reviewed by the technical and non-technical agencies, which include the PAP.
<b>The EIA Study: Approve or Reject</b>
The EIA report will either be approved or rejected. The decision and reasons for approval will be attached, together with the conditions of approval. If the EIA report is rejected, the reasons will be stated.
<b>Post-Monitoring and Audit</b>
The project proponent monitors and audits the project implementation based on the conditions of approval, and other conditions as stated by the authorities.
Source: Mohamad-Said, 2008; Mohamad-Said, 2001; DOE, 2010; DOE, 2009; DOE, 2007

<sup>59</sup> The term to refer to this group is the 'project affected people' (PAP).

### 3.5 The EIA Procedures in Malaysia

This sub-section explains the Malaysian EIA procedures including the process of conducting the EIA study. For a graphic presentation, see Appendix E. As a federal country, Malaysia practices three levels of governments as stipulated in State, Federal and Concurrent Lists. To reflect the federal system of EIA administration since 1993, EIA report approval has been divided into two agencies namely the state DOE and the federal DOE, where the former administer the PEIA and the latter the Detail of Environmental Impact Assessment Report (DEIA).<sup>60</sup> Appendix E briefly illustrates the framework of the Malaysian's EIA procedure, which can be divided into four main components: the PEIA, the DEIA, the requirement for the reviewing process and the post-monitoring and audit.

Before going into detail on EIA procedures in Malaysia, it is necessary to understand the position of EIA in land use planning. The EIA study is a requirement under the land use planning and development control. Together with the EIA report, there are at least four development plans which each play important roles in the land use planning: the NPP<sup>61</sup>, the SSP<sup>62</sup>, the DLP<sup>63</sup> and the SAP.<sup>64</sup> Unlike the EIA report, which is mainly administered by the DOE, these four development plans are governed by the DTCP. In terms of the scope of this study, although the element of environmental consideration is already present in the reports, these four development plans only focus on policy implications at the regional level. In addition, the scope of the environmental consideration is found to be 'planning' based rather than assessment based. In contrast, EIA operates at the local level or at the construction project or site level.

It is important to note that the Malaysian EIA system functions as part of the supplementary mechanism in the environmental mechanism and land use planning system. Therefore, the

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<sup>60</sup> Except for a project in the Exclusive Economic Zone (EEZ) or for an inter-state project. The Director of state DOE headed the review process with the assistance of the EIA officer.

<sup>61</sup> The NPP provides a systematic planning system that integrates from macro to micro levels. The plan acts as a basic guideline and benchmark of development plan preparation as well as performing as an "advisory plan" which translates development policies into spatial plans' (GOM, 2006b).

<sup>62</sup> The SSP translates the national economic, social and physical objectives into physical development strategy for the state or part of the state. It also provides a framework for the production of more detailed local land use plans. It intends to guide public and private sector investment and infrastructure development (GOM, 2006b).

<sup>63</sup> The DLP mainly consists of a written statement with diagrams setting out the detailed planning, and manner of carrying out the proposals set out in the structure plan of a local planning authority area. It also sets out the development proposals and details of land use of an area (GOM, 2006b).

<sup>64</sup> The SAP contains proposals for special and detailed treatment by development, redevelopment, improvement, conservation or management practice, and the nature of the treatment proposed. The plan concerns particular areas within a local planning authority that need special development programmes (GOM, 2006b).

project approving authority is responsible for approval of the project<sup>65</sup> while the approval of the project EIA rests solely in the DOE's hands. It is important to note that at the state level, the State Planning and Development Committee (SPDC), among others (including the EXCO), is headed by the CM and is committee responsible for approving or rejecting projects. Since any development project larger than 500 hectares is subject to EIA, the SPDC bears enormous executive power in deciding project fate. According to Jaafar (1994), the power of the EXCO, or in this case the SPDC, may even be overruled by the advice of state technical departments, e.g. the DOE.

### **3.5.1 The Preliminary EIA Report**

The PEIA is the first type of EIA reports. The report is prepared after the project proponents or the hired consultants have identified the proposed project subjected to EIA, based on the 19 prescribed activities (under the Order 1987) (DOE, 2007, p. 6; Mohamad-Said, 2008, p. 40; DOE, 2009, p. 57–61). The PEIA is conducted during the feasibility study; this process is also known as a 'filter' for the project development. If the project is not subjected to EIA or if the project does not come under the 19 prescribed activities, the project proponents could directly apply for permission for the project from the respective authorities. However, the project itself must comply with other guidelines such as the project concept corresponding with other development plans or complying with other mandatory requirements (DOE, 2007, p. 48).

To reflect the decentralisation of the DOE management, since 1993 the PEIA report is reviewed by the state DOE internally, except for projects that take place in the EEZ or inter-state projects. This move aims to avoid any delay to project implementation.<sup>66</sup> The review of the PEIA is done by the Technical Committee comprising the DOE state officers and other relevant government agencies named the 'One-Stop Agency' (DOE, 2007, p. 13). However, the final say on approval or rejection of the EIA report lies solely in the hands of the DOE

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<sup>65</sup> According to DOE (2009, p. 10) the project approving authority includes:

- i) the National Development Planning Committee (NDPC) for Federal Government sponsored projects;
- ii) the EXCO for state government sponsored projects;
- iii) the various local authorities or regional development authorities with respect to planning approval within their respective areas; and
- iv) the Ministry of International Trade and Industry (MIDA) for industrial projects.

<sup>66</sup> However as observed by Briffett et al. (2004, p. 231), the delegation of EIA power to the state level by the DOE has created some problems, which include "...lack of staff with sufficient analytical skills, poor institutional capacity and an absence of effective monitoring of the mitigation measures".

State Director.<sup>67</sup> The period allocated for the PEIA review is five weeks. However, the current directive has stated that the review time taken has been reduced to three weeks for selected activities.<sup>68</sup>

### **3.5.2 The Detailed EIA Report**

The DEIA is prepared based on two conditions: i) those projects for which the PEIA has shown that significant impacts will be arise or when there are unknown impacts (residual impacts), thus requiring detailed studies, and; ii) those projects which, based on experience and knowledge of the DOE, will give rise to significant environmental impacts. There are 13 development activities that normally need to go through the DEIA procedure.<sup>69</sup>

In preparing the DEIA, the Review Panel consists of, among others, the DOE, other technical agencies and academicians in order to facilitate project proponents with the TOR of the report. The TOR should detail out the purpose of the assessment and streamline the likely impacts that have been previously identified by the PEIA. The Review Panel also gives advice on the environmental data collection and methodology, including the public participation process. The project proponent should therefore have sufficient copies of the report to be reviewed by the Review Panel, the approving authorities, the concerned environment-related agencies and the interested public.

It is important to note here that, if the project proponent argues that 'in the public interest' or due to proprietary rights part of the DEIA report should not be made available to the public, he can apply to the Director General of Environment for the information to be withheld from public scrutiny (Ho, 1992, p. 10; Mohamad-Said, 2008, p. 42; DOE, 2009, p. 24). In terms of informing the public of their ability to participate in the reviewing of the

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<sup>67</sup> As stated in Section 34A of the EQA, the decision to approve or reject the EIA reports lies in the hands of the DG of DOE federal. However, in 1993, as part of the decentralisation and reform exercise which aims to expedite the EIA report process, the DG of DOE federal gave the power to the state DOE to approve the PEIA.

<sup>68</sup> The projects subject to the new directive are new townships, industrial activities at the industrial sites only, treatment for waste disposal, and outside storage activities and sewerage plant.

<sup>69</sup> The 13 development activities subject to the DEIA are: iron and steel industry; pulp and paper mills; cement plants; construction of coal fired power plants; construction of dam for water supply and hydroelectric; coastal reclamation; incineration plants for scheduled wastes and solid wastes, construction of municipal solid waste landfill facility including municipal solid waste transfer station; projects involving land clearing with 50% of the area or more having slopes exceeding 25 degrees except for quarry; logging covering an area exceeding 500 hectares; development of tourist or recreational facilities on island in surrounding waters which are gazetted as national marine parks; construction of recovery plant (off site) for lead-acid battery wastes; scheduled waste recovery or treatment facility generating significant amount of waste water located upstream of public water supply intake (DOE, 2007, p. 34).

DEIA report, the Secretariat to the Review Panel has to inform the public through the mainstream media such as the national newspapers (Malay and English). The announcements should include the places where the reports are available, the information and the nature of the project and the cost of each copy (in case the public wishes to purchase copies).

It is worth mentioning that local acceptance of the EIA project should also include the compensation element. As such, compensation is among the variables in the EIA study. Although in some cases, or at least to a certain extent, monetary values are not comparable to the loss of land by the land dwellers, in normal circumstances having a good and fair compensation would have a positive psychological impact on the landowners.

### **3.5.3 The EIA Review Process**

The last component of the Malaysian EIA procedure is the review process. It aims to: i) critically review the EIA reports; ii) evaluate the development and environmental costs and benefits in the final project plan; and, iii) formulate recommendations to the relevant approving authorities on the project proposal.

During the DEIA review process, the report directly goes to the DOE federal (Headquarters). The Director-General (DG) of the DOE chairs the Review Panel, which consists of members from the various disciplines. The DEIA review process starts when the reports are received by the DOE. The process takes a maximum of two months from the date the public notices are posted. Normally the first month is spent reviewing the DEIA and the second month is used to review the comments made by the public and concerned environment-related agencies (Mohamad-Said, 2008, p. 44). The panel evaluates the environmental aspects as well as other project criteria. The panel also makes recommendations for the project approving authority on the implementation of the project. The panel completes the task by issuing a 'Detailed Assessment Review' report (Ibid). The total time taken for the DEIA review normally amounts to 12 weeks (DOE, 2007, p. 13).

### **3.5.4 The Actors Involved in the EIA Review Process**

As acknowledged by Modak and Biwas (1999, p. 14) the institutional structures and agencies responsible for the management and implementation of EIA vary between

countries, reflecting different political, economic and social priorities. Therefore, the actors involved are subject to variations. However, in the Malaysian EIA context, the actors are set out in Table 3.3.

**Table 3.3:** The actors in the EIA process: Their main roles and interests

<b>GROUP</b>	<b>ROLE</b>	<b>INTEREST</b>
Project initiator	Plan, develop and/or manage the key sector development project	Mainly economic (in the case of the private sector) but also socio-economic (in the case of public sector projects)
Project investor (leading agency and purchaser of land)	Investment in key sector project	How impacts of project would affect the viability of the project and liabilities incurred
Economic Planning Unit (EPU)	The most influential agency which sometimes override other agencies' decisions Formulate policies and strategies for socio-economic development	Mostly on social and economic issues such as income, social and political implication from the project proposal Prepare development programmes and project budget Monitor and evaluate the achievement of development programmes and projects
Department of Environment (DOE) or Natural Resources and Environment Board (NREB) Sarawak	Decision to approve or reject the EIA report	Extent of impacts the project has on land use and adjacent developments
Town and Country Planning Department	Zoning and land use	Extent of impacts the project has on land use and adjacent developments
Other government agencies (e.g. Irrigation and Drainage (ID), Public Works (PW), Fisheries, Agriculture, Health and Sewerage Services, etc.)	Relevant inputs from the respective areas of expertise	Implications of the proposed project on other projects or activities in which they have interest in or wish to promote
Project approving authority	Project approval	Impacts to be within acceptable levels with no significant residual effects
Local authority	Zoning and development control	Extent of impacts the project has on land use and adjacent developments
Local community	Relevant inputs for protection of local interests	Impacts of project and how they affect the quality of local interest

Source: Table designed by Nor-Hisham, 2014 after Oral Conservation with Fadzli Mat-Yassis an Officer from the SEPU, Pahang at the Wisma Seri Pahang, Kuantan, Pahang on 3<sup>rd</sup> July, 2011; and Mohamad Irwan Awang, an Officer from SPU on 10<sup>th</sup> September 2011; modified from DOE, 2007; MEGTW, 2010.

The various parties bring different responsibilities and interests thus shaping a fragmented governance structure in the Malaysian EIA system. However, the DOE as the main leading government agency is responsible for overseeing EIA implementation in general. The DOE is a department situated under the Ministry of Natural Resources and Environment (MNRE). The DOE's main objective is to protect and to ensure a sound environment in Malaysia. In

the context of EIA, the DOE is an agency in compliance with the relevant laws and regulations. The DOE is not alone in overseeing the EIA processes since other agencies are also involved (as shown in Table 3.3).

As previously mentioned, in practice, the most influential government agency in the Malaysian policy making is the EPU, whether at federal level or state level, as this agency is considered a senior department and think-tank for the government. In addition, the EPU or State Economic Planning Unit (SEPU) is directly under the purview of the PM (federal) or CM (state). The department is given strong power in terms of decision-making. Since the EPU is a technical and economic-oriented department, most of its decisions centre on economic perspectives (Oral Conservation with Fadzli Mat Yassis, an Officer from the SEPU Pahang at the Wisma Seri Pahang, Kuantan, Pahang, on 3<sup>rd</sup> July 2011).

As mentioned by Bruton (2007a, p. 46), the Malaysian development planning structure is led by the PM's Department. The EPU is responsible for formulating policies and strategies for medium- and long-term economic and social development. The input for the production of development plans comes from the states and various ministries and statutory agencies through strict structures. The principal implementation agency is coordinated through the Implementation Coordination Unit (ICU), which is also overseen by the PM's office (Bruton, 2007a, p. 47).

In this regard, Bruton (2007a, p. 30) argues that the development planning in Malaysia inclines towards a centralised government approach where power is concentrated in the hand of the PM and United Malays National Organization (UMNO). Bruton's view inclines towards what has been observed by Sahabat Alam Malaysia (SAM) (2007, p. 166), that the process of policy designed in Malaysia is mainly a 'top-down' affair.

On the other hand, the DOE would only approve an EIA report after the other agencies have given their recommendations. In normal circumstances, the SPDC will give project approval only after the DOE has approved the EIA report and satisfaction of the other technical approval requirements from the other technical agencies. In Peninsular Malaysia, the Minister of MNRE does not have an obvious hand in the EIA report review, i.e. approval or rejection. In the Sarawak EIA system, the responsible ministry under which the NREB Board

is chaired is the Minister of Natural Resource and Environmental Planning (MNREP) <sup>70</sup>. In fact, the CM presides over the SPDC meeting.

### **3.5.5 Post-monitoring and Audit**

After they are satisfied with the EIA report for a project, the DOE through the DG will approve the report based on two approved conditions: i) the EIA report has been approved without condition; or, ii) the EIA report was approved with conditions (Mohamad-Said, 2008, p. 18). In Malaysia, the activity of the monitoring of project implementation after EIA approval is called post-monitoring and audit. It is the responsibility of the DOE and other technical agencies to monitor the project's approval conditions in order to make sure the applicant complies with them. The project proponent itself has to carry out the follow-up activity. As stipulated in the Malaysian EIA system, the post-monitoring and audit<sup>71</sup> are basic elements in the EIA procedures.<sup>72</sup> A project proponent who has violated any of the conditions of approval may be subject to imprisonment. On the other hand, if the EIA report for the project is rejected, after the consultation with the DOE, the project proponent may revise and resubmit it.

The DOE has imposed a requirement for the project proponent to conduct the post-monitoring and audit of EIA in Malaysia in two ways: i) based on the conditions of approval, the project proponent is subject to monitor and audit the project based on the respective conditions which in the detailed Environmental Management Plan (EMP). The EMP has to be submitted to the DOE; and, ii) depending on the conditions of approval, the DOE could require the project proponent to do a comprehensive post-monitoring and audit on the project as stated in the EIA report (Mohamad-Said, 2008, p. 177).

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<sup>70</sup> See, Order 1994, Section 3 (1) (The Commissioner of Law Revision Sarawak, 2008, p. 10). Coincidentally, at the very least, the Minister who is also the CM turns out to be the same person who heads the SPDC committee for project approval and previously also the Chairman of the NREB Board (NREB, 1995).

<sup>71</sup> On the other hand, Morrison-Saunders and Arts (2004, p. 1) have proposed the term 'EIA follow-up'. It is a term which covers activities in the EIA including (among others) monitoring, auditing, ex-post evaluation, post-decision analysis and post-decision management. Monitoring refers to the baseline data collection, impact monitoring, and compliance monitoring and state of the environment monitoring (among other types of monitoring). The term 'evaluation' consists of the monitoring activities resulted against the established benchmark.

<sup>72</sup> Section 34A (7) stipulates that '*...the person carrying out the activity, in the course of carrying out such activity, shall provide sufficient proof that the conditions attached to the report (if any) are being complied with...*' (GOM, 2013b, p. 43).

### 3.6 The Basic Statutory Requirements of EIA in Malaysia

This study has categorised the basic statutory requirements of EIA into two types: i) concerning the EIA requirements in general; and; ii) the EIA requirements for the public participation process in EIA in Malaysia specifically.

#### 3.6.1 The Basic Statutory Requirements of EIA

The Ninth Schedule under Part IV of the Federal Constitution spells out the relationship between the Federation and the State's power (GOM, 2013a). Article 74, which is read together with the Ninth Schedule of the Federal Constitution, deals with the distribution of powers between the Federal, State and Concurrent Legislative Lists<sup>73</sup>. Although there is no specific mention in the Constitution of whose responsibility EIA is, since EIA mainly involves the use of the natural resources, like river, land, agriculture and forest, and these items mainly fall under the State List.<sup>74</sup>

The power to administer the implementation of EIA in Malaysia is mainly derived from the EQA (Prescribed Activities) (EIA) Order 1987 under two sections, namely Section 34A and Section 34AA. Since it is a federal law, it is applicable to the whole country. Section 34A (1) spells out that '*the Minister, may, after the consultation with the Council, may by order prescribe any activity which may have significant environmental impact as prescribed activity*' (GOM, 2013b, p. 41). To prevent or discourage any person from simply carrying out any development activity without the EIA approval, Section 34A (2) of the Act specifies that '*any person intending to carry out any of the prescribed activities shall appoint a qualified person to conduct an environmental impact assessment and to submit a report thereof to the Director-General (DG) may prescribe*' (GOM, 2013b, p. 42). To avoid ambiguity in report interpretation preparation, Section 34 (2)(C) specifies that the EIA '*report*<sup>75</sup> *prepared should*

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<sup>73</sup> The Federal List covers 27 headings, such as the external affairs, defence, internal security, education, welfare of aborigines and censorship. The State List has 13 headings and includes Islamic law, land, agriculture and forestry, local government, state works and water (among other things). The Concurrent List covers 12 subjects such as social welfare, public health, drainage and irrigation, and housing. The Constitution also provides additional State and Concurrent Lists with regard to certain subjects in relation to the States of Sabah and Sarawak. For instance, native laws and customs, and cadastral land survey are concurrent subjects for Sabah and Sarawak while water, power and electricity, agriculture and forestry research are concurrent subjects in the States of Sabah and Sarawak (see detail in Ninth Schedule, Article 74 and 77) (GOM, 2013a, p. 193–202).

<sup>74</sup> According to Abdul-Rahman (1998, p. 79) there exist clear environmental issues and problems due to fragmented legislation concerning the environment which many parties appear to be involved, resulting in lower priority being given to EIA.

<sup>75</sup> In the USA, the EIA report is termed as the Environmental Impact Statement (EIS).

*be in accordance with the guidelines prescribed by the DG and should contain an assessment on the environment and the proposed measures that should be undertaken to prevent, reduce or control the adverse impacts on the environment'* (Ibid). Pursuant to this power, Order 1987 specifies the 19 categories and 57 activities subject to the mandatory EIA requirements (Thanarajasingam, 1992; DOE, 2007).

The importance of the EIA report as a basis for EIA approval is clearly indicated in Section 34A (6) which states that until the required report is submitted and approved by the DG, no person can carry out a prescribed activity. Furthermore, Section 34A (8) states that any person who violates this Section shall be guilty of an offence and shall be liable to a fine or imprisonment (GOM, 2013b, p. 43–44). In addition, Order 1987 also gives power to the DG to issue a prohibition order or stop work order to the person(s) carrying out the prescribed activities without the approval, or those who have violated any conditions attached to the approval report, or where the prescribed activities are being carried out in such a manner that they are likely to cause environmental damage. Meanwhile, in order to facilitate EIA preparation, the DOE prepared essential EIA publications including the EIA Handbook. As of October 2010, there are 26 EIA guidelines for the specific development activities, which range from coastal resort development projects, to dams and/or reservoir projects and petrochemical industries (DOE, 2010, p. 29).

Besides the Order 1987, which is directly related to the EIA administration in Malaysia, the States of Sarawak and Sabah have introduced their own EIA legislation. In the State of Sarawak, the main legislation governing EIA is The Natural Resources Environmental Ordinance (NREO), which was established in 1949. The NREO came into force on 1<sup>st</sup> February 1994 and was amended in 1993 (NREB, 1995, p. 1). This ordinance incorporates all the amendments to the NREB 1949 including provisions directly safeguarding the environment (including the EIA). Section 10 of the Ordinance empowers the NREB to order a project proponent or developer to undertake or adopt measures that may be necessary for the conservation of natural resources or the protection and enhancement of the environment in the concerned site. This means that project proponents undertaking prescribed activities that could have any impact on the environment and natural resources must conduct an EIA study and submit the EIA report to the Board (NREB, 1995, p. 3).

It is worth noting that although the NREO is the predominant environmental law on environmental protection and management in Sarawak, the EQA is still applicable in the

state. In Sarawak, as well as having the EIA guidelines prepared by the DOE federal, the state NREB has also prepared the EIA Handbook. The PEIA and project proponents, in particular, are required to follow the state's EIA requirements.

Another important feature of Malaysian EIA legislation arises due to the Minister of Science, Technology and the Environment gazette notification on 20<sup>th</sup> April 1995, which excluded dam activities and placed them under the jurisdiction of state law, in this case the Sarawak NREB. Prior to this, dams were prescribed activities to which the EQA applied under the Order 1987. According to Nijar (1997, p. ccxxxi) the amendment was made after Ekran asked for approval from the Sarawak NREB – its Chairman at that time was the CM. The approval was given on 27<sup>th</sup> March 1995 and was promulgated on the same day but the transfer of jurisdiction for dam project EIAs (from EQA to NREB) took effect from 1<sup>st</sup> September 1994.

### **3.6.2 The Basic Statutory Requirements of Public Participation in EIA**

As previously mentioned, this section of the study also discusses the legal provision on public participation in the EIA process in Malaysia. This research study has posited that it is important to trace the extent to which the legal backup is provided to the public for participation, as it is central to the EIA process. In addition, state commitment to the EIA can be examined in the public participation process.

It is clear that there is no legal provision directly dealing with public participation in legislation. For example in the Order 1987, the requirement for public participation was only implemented in 1996 when the DOE made it compulsory, as stated in the EIA Handbook, a manual for EIA preparation. It states that the preparation of the TOR and the DEIA were required for public participation. It also stated that the EIA reports must be displayed and inspected by the public (DOE, 2009, p. 24 & 28). In addition, the public must be informed about the places and dates the DEIA reports are to be reviewed so that they would be able to make comments. Notification should be done through the mass media and website of the DOE.<sup>76</sup> To strengthen public participation further in the EIA procedure, in March 2007, administrative instruction has been issued to require all DEIA reports to include an executive summary and to be displayed on the DOE website. In Peninsular Malaysia, the guidelines in

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<sup>76</sup> See Section 4.3 of the EIA Handbook (DOE, 2009).

the EIA Handbook state that it is the responsibility of the project proponents to provide and distribute sufficient copies of the DEIA to the public and interested parties. According to Section 3.4.4 of the EIA Handbook, public participation must be included in the DEIA – how the project will bring benefits to the community.

As mentioned, the transfer of the jurisdiction for dam project EIAs from the federal law of the EQA into the Sarawak Ordinance (the NREB), has great implication on the EIA governance in Sarawak State itself. In this light, Nijar (1997, p. ccxxxi-ccxxxii) observed that, under NREB, there is no mandatory requirement for the project proponent to make any EIA report available to the public or to any people affected by the project. The project proponent has discretion whether or not to supply the EIA report to public<sup>77</sup>.

### **3.7 Administrative Arrangements for EIA in Malaysia**

In managing and coordinating environmental matters, including EIA implementation in Malaysia, the EQC is the highest body at ministerial level.<sup>78</sup> The EQC functions include advising the Minister of MNRE on matters pertaining to the EQA as well as on any matters questioned by the Minister. The EQC also provides policy guidance to the DOE in the formulation of policies and strategies on environmental management. The Council members are appointed by the Minister from academia, state governments, federal agencies, the industrial sector and NGOs. The Council also considers proposals for strengthening existing enforcement programmes, such as the introduction of a scheme to make available monetary awards for any reported and reliable information on the sources of environmental pollution. The Council also reviews achievements in the treatment of rubber and palm oil mill effluents, and deliberates on proposals for reviewing the fees for disposal of such effluents.

The DOE was established on 15<sup>th</sup> April 1975 due to the awareness that Malaysia needed one agency that could conserve and protect the environment. The DOE's main task is to administer the EQA and the department is situated under the Ministry of Local Council and Environment (MLCE). However, before 1<sup>st</sup> September 1983, the DOE was known as the Environmental Section (Ramakrishna, 2003, p. 3). After that date, the Environmental Section

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<sup>77</sup> Under the Detailed EIA process, the EIA Handbook for EIA in Sarawak stated that '*Public participation, on the initiative of the project proponent and where it affects public interest, ought to be included in the Detailed EIA process if it is likely to benefit the planning of the project...*' (NREB, 1995, p. 19).

<sup>78</sup> The EQC, which was established under Section 4(1) of the Environmental Quality Act 1974, was launched on 12<sup>th</sup> April 1977.

was elevated to department level as the DOE and was put under the jurisdiction of the Ministry of Science, Technology and Environment (MSTE). Since 2000, the DOE has been placed under the MNRE. To administer the EQA and implement EIA, the federal DOE was given the task to assist and give advice to project initiators as well as to assess and review EIA projects. This is done through the evaluation section where there is a responsible unit for handling and coordinating EIA matters, including report reviews.<sup>79</sup> In general, the DOE aims to promote, enhance and sustain sound environmental management in the process of nation building. The DOE's objectives are as follows: i) to ensure that the uniqueness and quality of the environment is preserved while maintaining the health, prosperity, safety and comfort of the present and future generations; and, ii) to administer and enforce the EQA (as amended) and subsidiary legislation, as well as Section IV of the Economic Exclusive Zone Act 1984.

The federal DOE is located in Putrajaya and each state in Malaysia has a DOE state office. In addition to the state DOEs, the States of Sabah and Sarawak have their own environmental protection agencies, namely the NREB and the Environmental Protection Department (EPD) respectively. Both agencies function similarly to the DOE, including the terms of administration of EIA, but they are specifically confined to state level. However, unlike other established government agencies such as the EPU and MiTI, which directly touch on the socio-economic planning and designing Malaysian development policies, the DOE, on the other hand, can be considered a junior department. In contrast, the EPU and MiTI are among the agencies that are regarded as senior or established departments. They are also directly under the purview of the PM or the CM of the state and this status makes them influential.

Lim (1985) has observed that EIA in Malaysia fits well into the centralised model where the organisational structures, in particular the DOE, is inclined to the favourable top-down pattern in the decision-making approach. Lim has asserted that decision-making in Malaysia is dominated by the PM and elite organisations – one of them is the EPU, which is the central agency for any policy making in Malaysia. In his view, although Malaysia is a federation of states, it has evolved into a centralist model with decision-making mainly coming from the federal level. Another feature of Malaysia's decision-making is the strong executive influence in designing the policymaking process (Lim, 1985, p. 195). This also in line with that concluded by Taylor (2009, p. 17), that the typical orientation in the SIA

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<sup>79</sup> See, DOE (2015).

process (one of the IA studies) remains technocratic with less public involvement and consultation from stakeholders and communities.

### **3.8 Limitations and Drawbacks of EIA Implementation in Malaysia**

This section discusses the challenges in implementing and enforcing EIA in Malaysia. In addition, this section also briefly discusses the environmental protection problems in general.

#### **3.8.1 Ambiguity in EIA Legislation**

As previously mentioned, many natural resources are subject to the state purview, which consequently makes the state the most responsible party. Furthermore, many environmental problems are local in nature. As such, the state and local authorities are deemed to be in a better position to identify if there are environmental problems and to monitor situations in their particular areas. On the other hand, the environment or EIA is not specifically defined in the Federal Constitution, which has sometimes led to jurisdictional disputes between the federal EIA and the state environmental laws. As EIA touches on development on natural resources, the states have viewed that EIA implementation is a kind of federal interference in the states' responsibilities (EPU, 1993). This has usually led to less or minimal cooperation in EIA implementation from the various states involved.

The politics and conflict between the Federal and state governments, and the political differences between them, are best illustrated by the export ban on logs from Sabah (an example of federal influence in relation to environmental issues). Between 1992 and 1998, Sabah State was captured by the Parti Bersatu Sabah (PBS), which at that time was an opposition party. The federal government realised that the state revenue was limited and had to depend on federal assistance. The Federal Minister of Primary Industry banned log exports from the state in 1992 since he has been vested with some power over the timber policy. The ban was justified on the basis that it encouraged the growth of wood-based industries in Sabah. The then CM of Sabah unsuccessfully argued that the ban was only acceptable with compensation from the federal government because the state anticipated revenue loss (Jomo, 2003, p. 449). Another case of conflict was the Endau-Rompin dispute

due to the conflicting interest and jurisdiction between the federal government and the Johore State (Aiken and Leigh, 1986, p. 171).

### **3.8.2 Ambiguity in the Prescribed Activities**

The loopholes and inadequacies of the EIA procedures have also contributed to the EIA problem in Malaysia. A more obvious problem relates to the threshold and quantum issue concerning prescribed activities – the land use activities that are subject to EIA requirements. For example, for logging activities it is stipulated that EIA is compulsory. However, it was found that some projects, housing schemes or logging areas for example, were excluded from the EIA requirement due to 'loopholes' in the EIA guidelines when project proponents split them out into smaller sized areas – each below 500 hectares. The project was intentionally designed in order to avoid EIA being imposed (SAM, 2007; Ho, 1992).

The problem on the nature or scope of EIA is in line with the international limitation of EIA; Hassan (1998, p. 3–4) has found that the current practice of applying EIA to a project on a project basis has many shortcomings. The current practice was found not to be able to address issues related to the cumulative and subtle long-term effects of a project. In addition, the mechanism of the post-monitoring and audit was found to be absent. Therefore, there is an urgent need for EIA to be a tool for the early detection of impacts at the very early project planning cycle.

### **3.8.3 Problem of Enforcement – Conflict of Interest**

The DOE is responsible for every aspect of environmental issues. However, the agency was found to be in conflict with more established agencies that resent the infringement of EIA on their traditional turf. This is especially true when it concerns the Treasury and Trade Authority<sup>80</sup> (Thanarajasingam, 1992, p. 21). As previously mentioned, since natural resources like river, forest and land come under state matters, enforcements by the DOE are not fully welcomed by the respective state. For example, in Sabah there was a case where a factory owner was fined by the DOE for contaminating a river. The matter was brought to the state's attention; the state questioned the DOE's power since river and water came

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<sup>80</sup> The agency is now called the Ministry of International Trade and Industry (MITI).

under the State Lists (Chiew, 2008a). Relating to this, Ho (1992, p. 24) asserted that limitations of the monitoring programme mainly arose due to ignorance of the state's agencies about EIA requirements since EIA is a federal requisite. This conflict is due to state's stance that their economy must be dependent on the natural resources, which are under the State List. Therefore, Memon (2000, p. 287) observed that the Sarawak State, for example, has over the years zealously guarded its constitutional autonomy against what it perceived as encroachment by the federal government on its constitutional rights over the State List. In reference to the BHP, Memon found that the ability of Ekran to get fast-track approval under the state EIA approval system has indicated the ability of Sarawak's business and political elites to manipulate or abuse the EIA system easily. In addition, weak enforcement and the absence of a strong commitment by the local politicians have exacerbated the problem of EIA enforcement in Malaysia (Memon, 2000; Briffett et al., 2003).

Hirsch and Warren (1998, p. 16) have also noted that in Sarawak, Malaysia, the combination of provincial patronage politics, state government dependence on timber revenues and the ethnic politics of logging have helped to explain the interest in the timber industry. This interest has affected environmental policies as its guidelines and rules need to accommodate the actors' preferences. The ability of the political and Sarawak elites to get approval despite the environmental impacts and stakeholders protest has shown that public input is nothing more than as a token gesture (Memon, 2000, p. 289).

Digging down further on this issue, the bigger issue demonstrated here is the conflicting interest and priority between the environment and economic issues, and in this case the EIA policy. However, this is not surprising as one of the challenges of EIA or environmental policy around the world, or even in Malaysia for that matter, is to preserve the environment while at the same time pursuing economic growth.<sup>81</sup> In many respects, economic interest always takes priority over the environment in most developing countries (Aiken, 1988; Sani, 1993). In addition, in developing countries, including Malaysia, environmental protection is evidently given low priority whereas the government's agenda places strong emphasis on economic growth (Leu et al., 1997, p. 97). At the same time, Malaysia has also taken precautionary steps in ensuring that EIA is not turned into an obstructive tool that could hamper the country's economic progress (Ho, 1992, p. 29).

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<sup>81</sup> According to Gomez (2002, p. 9 ), most authoritarian regimes in East Asia, specifically in Malaysia, Singapore and Indonesia, have acknowledged that continued political control can be justified by ensuring economic growth.

In the context of Sarawak, the NREB's ability to perform its duties in a credible and neutral manner has raised public scepticism. The main NREB committee task is to chart the policy and direction of environmental protection with a view to extraction of natural resources in Sarawak, including the right decision-making on licensing and getting EIA project approval. The NREB committee is headed by the Chairman of the Ministry of Resource Planning, the ministry within which the NREB operates. Coincidentally, the NREB Chairman is also the CM of Sarawak who oversees the three most relevant and important departments for EIA implementation, namely the Department of Lands and Surveys, the Department of Forests and the Sarawak Natural and Environmental Resources Board (SNREB). As such, the formulation of policies on forestry, land development, mining and town planning in Sarawak is excessively concentrated at the highest level of authority, in this case the CM, which then controls rents<sup>82</sup>. To compound the EIA weaknesses, the EIA process in Sarawak is managed under high discretion; for example, under the Sarawak law, public participation is not required unless the project proponent so desires (JOANGO Hutan, 2006, p. 17) This has built the wrong type of public perception – that the state sanctions certain EIA projects despite the project's high potential to be damaging to the environment (Malaysiakini, 2009).

Meanwhile, according to Mohamad-Said (2008, p. 177), there are unclear roles on the enforcement between the government agencies. Despite the fact that a coordination unit is already in place there is a lack of interagency coordination. In addition, the attitude of some project proponents regards EIA as a snapshot exercise – just to get project approval. In this regard, Mohamad-Said (2001, p. 223) has asserted that the enforcement of the post-monitoring and audit activities has been treated as less important in Malaysia.

### **3.8.4 Limited Powers of the Department of Environment**

To curtail the credibility of EIA implementation in Malaysia further, there is a view that the limited powers and low hierarchy of the DOE has contributed to its limited role in the decision-making for proposed projects (Chiew, 2008a; Maidin, 2006). The DOE is perceived to have offered advice and action beyond its own jurisdiction and power. In this regard, the advice given by the DOE was not regarded as compulsory. It was found that if the SPU, planning authority or any other agency continue to give approval to projects the decision may contradict the policies in the development plan (Maidin, 2006).

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<sup>82</sup> SAM (2011, p. 20) has also observed that the position of Taib Mahmud as CM of Sarawak (1981–2014), who monitors and runs three state departments (as above), has led to non-transparency and abuse of power.

The inability of the DOE to stop the projects that have violated the EIA conditions of approval has exacerbated the public perception of the agency having limited powers. It is clear that the DOE is only concerned with EIA approval but the project approval rests with the approving authority, or to be precise, in the hands of the SPU; the members of which consist of the CM, EXCO members and technical agencies such as the PW, Geology, etc. In this regard, a common criticism of EIA is that it does not have the powers to influence the project application – either to approve or to stop the proposed project. This has therefore built the existing perception that EIA is powerless (Ho, 1998, p. 263).

In line with worldwide criticism of EIA, EIA in Malaysia is often implemented quite late in the planning process; therefore, it has failed to influence project decision-making. This failure is mainly attributed to the inability of EIA to take into account the impacts that first arose at the strategic level. As mentioned by Briffett et al. (2004, p. 229) matters such as land use allocations in the planning process, policy decisions on technological and socio-economic issues as well as the setting up of programmes in large areas are found to be missing from the EIA study.

### **3.8.5 Low Commitment of State on Environmental Issues**

The main problem in implementing effective environmental policy is the political will. From the politician's point of view, the priority given to environmental protection could hamper economic growth (Maidin, 2006). In addition, Gurmit-Singh (1986b; 1993) has long observed that the environmental commitment, including the use of EIA, from the highest echelon of politicians, bureaucrats and captains of industry has been far from being satisfactory in Malaysia. The characteristics of state bureaucracy and administrative values, in particular a strong vested interest element, have hampered environmental protection, including EIA. It was found that civil servant and other government officials are often loyal to superiors in return for the own benefits, and vertical communication and dissemination are encouraged in order to maintain a client-patron relationship (Boyle, 1998; Hirsh and Warren, 1998; Maidin, 2006; Bruton, 2007a). In this regard, while in principle Malaysia has given its commitment towards environmental protection or the implementation of EIA, the state has regarded environmental protection as a matter of national sovereignty (Thanarajasingam, 1992, p. 18). In the state's view, the international pressure towards

environmental protection (i.e. EIA) in Malaysia is covert under the concept of global commons and the common heritage of humankind (Ibid).<sup>83</sup>

Clearly the observations made by Thanarajasingam (1992, p. 18) above have coincided with what Gurmit-Singh (1986b) has long pointed out – the dilemma of developing countries in reconciling economic needs with environmental protection where the issue of widespread poverty and deprivation of its population has thus not taken top priority.

### **3.8.6 Weak Public Participation Practice**

Public participation is the main tenet in the concept of decision-making and this is included in the EIA concept. Although it is required in the Malaysian EIA system, public participation has been found to be limited and has no priority unless the public has been invited to be involved in the process. This is despite the fact that the majority of EIA reports prepared and submitted to the DOE are PEIA – the PEIA is conducted in-house and without public review. Furthermore, the approval conditions for the final report are always not accessible to the public (Staerdahl et al., 2004, p. 6 & 16).

Thanarajasingam (1992, p. 10) has asserted that public participation in EIA has been found to be poor and erratic. In relation to public participation, an aspect that has always been criticised is the application of the unjustified use of the Official Secret Act 1972 (OSA) (Act 88) on EIA reports. In Malaysia, EIA does not only suffer from low public awareness. In addition, as a public document, an EIA is usually not accessible to public review (M-Nor, 1991, p. 133). The unwillingness of the executives and politicians to have a share of the decision-making has hampered the transparency and accountability of the projects – the main tenets in a democratic society.

In Malaysia, state procedures on public participation for the DEIA report have clearly mentioned that the right to public participation is at the initiative of the project proponent<sup>84</sup>. In other words, the public may be invited to comment on the proposed project on the

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<sup>83</sup> For example, issues like anti-tropical campaign and the plight of the indigenous people in developed countries, as well as the way Antarctica issues have been handled, have clearly illustrated the manipulative roles of developed nations and the double standards that they apply in dictating what national governments should or should not do (Thanarajasingam, 1992, p. 18).

<sup>84</sup> In this sense, Centre for Journalism (CIJ) found that in the EIA context no legal obligation has been imposed on the project proponent to follow specific procedures for notifying the public or affected communities (CIJ, 2007, p. 42).

discretion of the project proponent and/or where it is deemed that the project could affect public interest (Nijar, 1997; UNEP, 1997; DOE, 2009). Weak public participation is obvious in Sarawak; the Sarawak's EIA Handbook has deliberately given much discretion to the project proponent on public participation (Maidin, 2011, p. 157). The state also appears to adopt a vague approach as to whom the public should be consulted by. In this regard, the Sarawak Conservation Alliance for Natural Environment (SCANE), an NGO, has pointed out the urgent need for the state to amend the existing NREO in relation to the EIA process in order to allow for public participation prior to the approval of EIAs in the state (ALIRAN, 2010).

The SCANE has found several shortcomings and flaws in the EIA processes and reports of the Sarawak State. EIAs have been conducted and approved for numerous development projects related to forestry, plantations and dams without the knowledge of the public. The public at large is still in the dark as to how these EIA reports were approved in the first place and this remains a mystery. Even the approval of EIAs for some highly controversial projects such as hydropower dams were shrouded in secrecy, despite public outcries (ALIRAN, 2010). The SCANE has also noted that over the past few years the EIA process and practices were clearly a mockery of the NREO; many flaws have been found in EIAs but the EIA reports were approved nonetheless. As a result, public perception of the NREO is that EIA is no more than an instrument to legalise a 'stitched-up job' with the project proponent allegedly colluding with the appointed EIA consultants to get the EIA approval out of the way.

The SCANE has also observed that the EIA process under the NREO has only been procedural in order to pave the way for the implementation of certain development projects. In most cases, the EIA process seems merely to fulfil the projects' criteria, which mainly comply with the requirements of the project proponents as well as the financiers. In this regard, Gurmit-Singh (1986a) explains that the EIA administrators and managers sometimes tend to look down on and dismiss the native intelligence of ordinary people. Among the reasons contributing to the in-conduciveness of EIA for civil society in Malaysia are the limited scope and form presented by a network of laws, of which several have origins in the colonial era, e.g. the OSA and the Internal Security Act (ISA) (Gurmit-Singh, 1986a; Ramakrishna, 2003).<sup>85</sup> In this regard, civil society has been controlled in the name of

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<sup>85</sup> Critics argue that the abolishment of the ISA in 2013 has become meaningless as the new law, the amendment to the Prevention of Crime Act 1959, in their view still contains the ISA's spirit - detention without trial. For example, The Bar Council, the Sabah Law Association and the Advocates Association of Sarawak are

national security (Ramakrishna, 2003). Thus, it is not surprising that Grindle (1980b, p. 200) views most of the Third World political systems as being based on more or less a fragile coalition of elite groups; the need to utilise government goods and services to cement bargains for loyalty and support is a common characteristic. In addition, negative stigmas such as 'anti-government group', subversive group or tools of foreigners still plagued Malaysia's NGOs (Thanarajasingam, 1992, p. 16).

Tracing the root of the public participation problem, it was observed that the adoption of a 'top-down' managerial approach<sup>86</sup> which treats the implementation of policy as separate from policy formulation is among the chief factors that contribute to the weak public participation in this context (Bruton, 2007a; Bruton, 2007b; Taylor, 2009). In this light, Bruton (2007b, p. 35) further observed that the Malaysian policy comes in from the top and is then translated into operating instructions and then handed down to the implementers at the bottom of the hierarchy. While acknowledging the problem of the planning and implementation process in Malaysia, he also views that the 'top-down' hierarchical system of planning and management is favoured by government (Bruton, 2007a, p. 36). In addition, Bruton's identified that the following seven factors contributed to the policy being unattainable in Malaysia: i) inadequate resources; ii) the policy is a bad policy; iii) the multiplicity of agencies involved in the process; iv) the complexity and difficulty of coordinating the multiplicity of tasks; v) inadequate, or even a lack of, communication; vi) policy ambiguities; and, viii) conflict of interest and lack of compliance between the policy makers and the implementers (Bruton, 2007a; Bruton, 2007b).

### **3.9 Arguments For and Against the Formalisation of EIA in Malaysia**

This section discusses the arguments of EIA proponents in justifying the need for EIA as well as the arguments put forward by those against it. It is the intention of this section to illustrate the attitude of the actors in EIA in Malaysia who are assumed to have much influence on EIA implementation. Arguments supporting EIA and arguments against it are discussed below. However, this section does not intend to group the discussion based on the actors' statements, rather, the discussion provided here includes grouping-based issues.

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appalled by the proposed amendments to the Prevention of Crime Act 1959, especially in regards to preventive detention without trial (The Star, 2013).

<sup>86</sup> This approach will be further discussed in Section 4.10, Chapter 4.

Sub-sections 3.9.1 and 3.9.2 represent the arguments of those who support EIA, while section 3.9.3 until 3.9.6 discuss arguments against the introduction of EIA in Malaysia.

### **3.9.1 An Aid to Decision-Making**

Consistent with the broad lines of reasoning, the EPU, as the leading agency in policy planning and decision-making in Malaysia, has promoted the idea that EIA could serve as an effective planning tool – it could aid the decision-making process through its multiple roles, namely assessment, prediction mitigation and the communication process (Thanarajasingam, 1992, p. 10). Through the introduction of EIA, the position of the public in decision-making is recognised and being strengthened via the regulative and procedure measures as stated in the EIA Handbook. As discussed in Section 4.2, the Malaysian government itself has strongly recognised EIA as a means to protect and improve the environment and this is publicly featured in the Third Malaysia Plan (1976–1984) (GOM, 1974).

As an ex-ante tool, EIA can assist the development proposal in being able to evaluate the proposed project. Thus, EIA will minimise negative impacts as well. Consideration of the early environmental planning life of a development can lead to an environmentally sensitive development. It also could improve the relationship between the actors of the project. It could thus aid the formulation of the development proposal in land use planning (Sentian and Mohd-Tuah, 2001; DOE, 2009).

The DOE has also strongly supported EIA; this was the case even before it came into formal application in 1988 when project proponents were encouraged to conduct EIA on a voluntary basis. In contrast, the private sector has treated EIA with lukewarm acceptance, except for the Malaysia National Petroleum Agency (PETRONAS) – the only private agency that can be singled out for diligent compliance with the national environmental policy (M-Nor, 1991, p. 137).

### **3.9.2 The Need to Address Environmental Matters As Early As Possible**

Since EIA operates at the project level, its introduction could foresee and address environmental and human impact at an early stage (i.e. planning level) before the actual physical project takes place. It could thus avoid costly mistakes in project implementation,

either due to environmental damages caused by project implementation or because of modifications that may be required subsequently in order to make the action environmentally acceptable (DOE, 2009, p. 1).

The decline in environmental quality as well as the increase of the awareness of the local people, especially during the 1970s, has led the government to make serious efforts in addressing environmental degradation. The proponents of EIA have argued that it is time for Malaysia to have a comprehensive environmental management (i.e. EIA) considering that Malaysia's earlier environmental mechanism failed to protect the environment efficiently (Sani, 1993; SAM, 2007). This oversight has made Malaysia realise that a specific mechanism needed to be put in place in order to avoid environmental degradation. In addition, there was also growing awareness about environmental protection (e.g. for EIA requirements) since a decline in environmental quality would drag Malaysia's economy down. Therefore, the idea behind the support for EIA is that it could lead to more effective environmental protection if it was implemented in compliance with technical requirements. The public participation process, which is a main feature of EIA, could also be used to provide an endorsement for project proponent action and this will definitely improve the decision-making process.

### **3.9.3 EIA as a Stumbling Block to Development**

The most difficult task in formalising EIA as a legal requirement in Malaysia was related to efforts in convincing the policymakers, the project approving authorities and the project proponents to accept EIA as a planning tool. For them, EIA is mainly seen as an additional stumbling block to development (Ho, 1990; Memon, 2000; M-Nor, 1991; Thanarajasingam, 1992; Ho, 1992; Jaafar and Ismail, 1998; Ibrahim, 1996; Sentian and Mohd-Tuah, 2001; Makmor and Ismail, 2014). From their perspective, the implementation of EIA would delay the proposed projects since an EIA study needs to be conducted before project approval. For instance, Ho (1992) has observed that project proponents have complained about the undue delays in the application for industrial projects. The normal period for receiving comments back from the respective agencies, where the applications have been sent for review, was at least one month. In addition, requiring an EIA study to be carried out at this stage would be construed as 'delaying a project' (Sentian and Mohd-Tuah, 2001, p. 13). In addition, Ho (1992, p. 19) observed that a delayed decision on an EIA's report approval is

sometimes due to the request of the scope of TOR by the DOE and some were not to the DOE's satisfaction.

Despite the positive response from the public sector on EIA, which can be seen through their voluntary efforts in carrying out EIAs even prior to the compulsory requirement in 1998, it has been observed that during the early years of EIA implementation, the private sector has responded unfavourably towards EIA (M-Nor, 1991, p. 133). The industry and project proponents in this regard, have viewed EIA as another bureaucratic obstacle they have to overcome rather than as a beneficial tool for decision-making (M-Nor, 1991, p. 137). Moreover, the opponents of EIA went on to label the process anti-development, expensive or a mere paper tiger. In Malaysia, developers consider it an extra-expense exercise – they have paid very little heed to it and approval was rarely based on adequate baseline data (Thanarajasingam, 1992, p. 9).<sup>87</sup> Moreover, for the palm oil factories and manufacturers, EIA has been seen as unnecessary. The opponents argue that EIA will drive off investors and could ruin the nation's industrialisation plans because it causes unnecessary delays (M-Nor, 1991; Gurmit-Singh, 1986b). This has led Gurmit-Singh (1993, p. 57) to conclude that there is general consensus in the private sector to avoid EIA.

In this regard, Briffett et al. (2004, p. 225) have observed that the concept of the EIA system in Malaysia, or in many developing countries, has come under much pressure when there is conflict between what is environmentally acceptable and what is economically desirable. This is because any generation of economic growth is essential for perceived progress.

#### **3.9.4 EIA as a Window Dressing or Symbolic Law**

In relation to the accusations that EIA could halt development progress, the opponents of EIA have claimed that EIA is just a symbolic law – its regulation has little effect on its founding purpose<sup>88</sup>. It has been observed that an obvious aspect that has frustrated the public and environmentalists and led to criticism whenever there is discussion on EIA is that it is merely used by project proponents as a formality to be complied with (SAM, 2007, p.

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<sup>87</sup> In terms of the cost of the EIA preparation, it is difficult to make an actual calculation since it depends on the scope of the particular EIA study and type of project. However, in Malaysia it may be concluded that the cost of EIA studies varies between 0.058 to 1.429 percent (Che-Ibrahim, 1992, p. 83).

<sup>88</sup> This is also the interpretation used in this research. See the following theoretical chapter (Chapter 4, Section 4.8.1).

162 & 163). According to Sentian and Mohd-Tuah (2001, p. 75–76), another major drawback of EIA in Malaysia is that it has been used just to achieve a development permit, rather than as a tool to achieve sound environmental management within the project objectives or on a broader national and regional basis. This is reflected in the local authority's attitude; according to them, by the time the EIA report is submitted to the respective authorities the local authority has already approved the project development plan. In some extreme cases, by the time the EIA report is submitted to the respective authorities, the project was already in the construction stage or even completed.

The perception that EIA is just a symbolic law is demonstrated by how the state uses the EIA procedures and process as a threat. For example, it is too often found that bulldozers have started to rumble before the final EIA has been properly approved – before such approval has been able to address preventive measures and/or to allow the public to state their views. In this regard, Hassan (1998, p. 8) has observed that in some cases, development projects have commenced before the final approval of a project by the relevant authorities. In relation to the situation of EIA as a symbolic law, Ho (1992, p. 163) states that despite public participation being they key part of the EIA process, public access to the EIA report is usually limited, both in terms of public viewing time and the number of copies of the EIA report made available. Moreover, the outcome of the effect of public feedback in the decision-making process is also unknown.

Other factor that builds the perception that EIA in Malaysia is merely a symbolic law is related to the issue of restricted information on projects, such as the presence of draconian laws (mainly the OSA). This is because all EIA reports are classified under the OSA, which prohibits the use of information contained in the project proposal. This has obviously made the public wary in participating in effective ways in the EIA process, since the information about the project is deliberately delimited (Gurmit-Singh, 1986a; Gurmit-Singh, 1986b; M-Nor, 1991).

In addition, according to Gurmit-Singh (1986b, p. 7), the application of the OSA is a major constraining factor in obtaining the environmental data, i.e. the EIA report. The OSA has made it a criminal offence for anyone to have, let alone use, the information contained therein. In addition, certain methods used in developed countries for exerting pressure are just not available or possible in Malaysia because of the differences in its socio-political environment. For example, there is no scope for formal lobbying in Malaysia. The fact that

all forms of mass media are under very tight government restriction and controls, restrict the extent to which the media can be used effectively by private pressure groups to achieve their protest objectives (Ibid).

The perception EIA as a symbolic law has also been cultivated by the absence of project options as one of the factors that needs to be considered in the EIA study. This has reflected the negative attitude of project proponents in EIA. In practice, consultants' input was limited when considering only a few alternatives. For example, in reference to BHP, Memon (2000, p. 135) has found out that since the dam site and type structures have already been decided, the project proponents in this case have, more often than not, finalised the detailed plans and engineering designs prior to commissioning an EIA. This has led environmentalists to point out publicly that an EIA conducted under such conditions was nothing more than a whitewash. In these circumstances, EIA is conducted to accommodate the project's proposed requirements rather than allowing proposals for changes to locations or engineering design (Memon, 2000, p. 136). In this regard, there is obviously a lack of follow-up activities when EIA is used as a means to obtain project approval rather than as an ongoing tool for environmental planning and management (Mohamad-Said, 2008, p. 9).

Limited public participation has also helped to build the perception that EIA in Malaysia is close to the situation of a symbolic law. Leu et al. (1997) evaluated three counties, namely Taiwan, Malaysia and Indonesia, and found that public participation in these countries is limited. The majority of the EIA reports in Malaysia are of the PEIA type; this study has revealed that this type of report is absented from any forms of public participation such as site visits, formal independent review or public involvement (Leu et al., 1997, p. 92 and 95). In reasoning out this issue, Leu et al. (1997) suggest that EIA is evidently low in acceptance in those countries; this is due to the strong emphasis on their national independence and the priority given to economic development. This was explicitly evident during the Commonwealth Heads of Government Meeting in Malaysia in 1989 when the Malaysian government stated that environmental concerns should not be used to introduce a new form of condition on aid or development financing nor as a pretext for creating unjustified barriers to trade (Leu et al. 1997, p. 97).

Contrary to the opinion of the DOE, which holds the view that the public response to DEIA is very slow, SAM argues that this is mainly due to the poor sharing of information and inadequate EIA notification, a failure on the part of the DOE itself (SAM, 2000). Citing the

treatment of public participation in the Sarawak EIA case study, Gurmit-Sigh (1993) commented that the BHP has been made a precedent – that the state's environment regulations can bypass federal laws and do not need to be scrutinised by the public.

While the state recognises the role of NGOs in generating public awareness about confronting the real issue, many local environmental and human rights-based NGOs have been subjected to regular criticisms from the state due to strong and vocal independent positions taken by them. A stigma has been attached to them; this includes accusations such as anti-government, subversive, tools of foreigners, anti-development and anti-national. On the other hand, a favourite Malaysian labelling of overseas NGOs is to accuse them of spreading lies of the Western environmentalists (Gurmit-Singh, 1993; Thanarajasingam, 1992).

### **3.9.5 The Presence of EIA is too late to Influence Decision-making**

EIA is meant to follow the integrated planning concept but both processes require land approval from the EXCO. An application for land alienation or land conversion must be submitted to the Land and District Office, and then can be referred to the relevant agencies for comments. At the same time, an EIA must be prepared in a process coordinated by the DOE. Normally, the project needs to be approved by the state first, and an EIA report is only prepared after the commitment has been made to the site, design and technologies. This has led to the perception that that in some cases EIA is regarded as a mere formality (Staerdahl, et al., 2004, p. 6 & 16). The perception that EIA is just a symbolic law aligns with the work of Briffett at al. (2004, p. 224), which found that the timing of the submission of the EIA report is too late to make important changes and adopt alternative options, such as site selection, technology, design or a change in the size and extent of the project. This has long been observed by M-Nor (1991, p. 135); he found that EIA was only initiated after the pre-feasibility studies had been completed.

### **3.9.6 EIA as a Tool to Challenge the State Administration**

In relation to the drawbacks of EIA implementation, Memon (2000) has observed that the state argues that EIA could pose some kind of threat to its political power. To the state, the public is hiding behind the environmental justice concept in order to demand information on the project, in the form of public participation, for example. In explaining the reason why

the environmental response varies between different states, Rock (2001, p. 11) asserted that, among other things, the ability of the state to have some degree of insulation from business interests has gained the status quo.

Rock also observed that when the state's decision-making is subject to patron ties or interest group pressures, effective state action could become more difficult. In other words, the rent-seeking behaviours have circumscribed state autonomy in policy making through the manipulation by particular business interests groups. For example, the Sultan of Johor has made remarks about his uneasiness towards EIA when he was recorded as saying that the environment and water issues were state matters and Johore needs no interference from outsiders (Gomez, 2014). The Sultan raised the issue because to him there were irresponsible quarters who wanted to use their powers within EIA as a weapon to stop a development that does not benefit them. He has further questioned why certain quarters were bent on delaying approval, and said that such actions only hindered the development of the state and their unjustified actions would drive away investors in Johore.

To exacerbate the EIA problem in Malaysia, Gurmit-Singh (1986a, p. 9; 1993, p. 57) has found that the environmental legislation, in this case EIA legislation, has been inadequately enforced. Enforcement agencies have not been seen to implement the laws uniformly or consistently without fear and favour. In this sense, the long-standing observations made by Gurmit-Singh (1986a, p. 10) are still relevant in the Malaysian environment context; he said that political parties, especially those from the ruling parties, have been able to ram through environmentally disruptive projects. While opposition parties have been trying to preserve the environment and give support to the local people in protecting the environment, unfortunately their support has been twisted by the government controlled mass media and the government by turning the issue into an anti-government challenge. In relation to this, although Malaysia can be considered as one of the pioneers in environmental institutionalisation, as opined by Hezri (2011), the instruments of public policy institutions relating to environmental protection worked at the margin of public policy because of limited resource and influence in government.

### **3.10 The Development Trends of IA in Malaysia**

The Malaysian IA concept imitates the international pattern of EIA by following the same path. In the early years of implementation, the assessment begun with the intention to

tackle relevant construction projects specifically to avoid environmental issues. The concept then grew rapidly thus leading to the existence of other IAs such as SIA, SIAT, SA, HIA, the Transport Impact Assessment (TIAT), Strategic Impact Assessment (SEA) etc. In the context of land use planning in Malaysia, the first three types are currently being promoted and applied widely. Therefore, this section discusses those two types of EIA with an emphasis on the reasons for their emergence, their concepts and their strengths and weaknesses. This section intends to demonstrate the changes in the development of the EIA concept in the Malaysia context. As previously mentioned, besides explaining the development trends in the IA concept, it is the intention for this section to highlight the deficiencies and criticism made against EIA and the way such criticisms have been dealt with.

### **3.10.1 Social Impact Assessment**

The development process not only brings about biophysical and chemical impacts but also socio-economic impacts. Therefore, considering the trade-off between such impacts is crucial in decision-making. Such realisation has led to the adoption of SIA. By definition, SIA is used to assess and estimate in advance the biophysical and social consequences that are likely to arise from any specific policy, programme, plan or project.

The Malaysia government has realised that if the social illness arising from development activities if not treated equally within the EIA process this could hamper Malaysia's attempts to achieve a developed nation status by 2020. As stated in the Ninth Malaysian Plan (2006–2010), the Malaysian government aims to achieve an optimal balance between material growth and societal development (GOM, 2006a). In this sense, SIA could offer part of the solution by complementing the EIA role.

Moreover, the Malaysian government is of the opinion that the term 'environment' broadly includes the human component; this is covered in the EIA Handbook. In the Malaysian context, it has been argued that there is clear evidence that the scope of EIA covers social aspects since it is already embedded in the Malaysian EIA Handbook through the human component of EIA study (DOE, 2009). On this basis, proponents of SIA have argued that SIA coverage already exists in EIA (Hassan, 2009). However, like with international experience, SIA implementation in Malaysia has been treated as less important than physical, chemical and biological components (MWFC and UNDP, 2002, p. 79; Sidu, 2005). This is commonly recognised by many researchers where the social aspects in EIA

components have been acknowledged as the weakest part of EIA study (du Pisani and Sandham, 2006; Ahmad, 2001; Barrow, 1997; Vanclay, 2002).

In Malaysia, the legal mandate for SIA implementation is sourced from two operating procedures, namely the EQA and the land use planning procedures under the Town and Country Planning Act 1976 (Act 172). There are also non-statutory requirements for the SIA initiative within Corporate Social Responsibility (CSR) (Rosly, 2009, p. 21). A benchmark for implementation of SIA in Malaysia occurred in 1997 through the setting up of The Special Committee of the Cabinet on Eradicating Social Problems. Through this committee, the Malaysian government has developed a blue print 'Master Plan for Action on Social Issues' (PINTAS). The main aim of PINTAS is to anticipate and outline the actions that need to be taken on social issues at the strategic level. Among the objectives of PINTAS is to take the lead on the tasks of promoting, preventing, curbing and curing social issues that arise from any development activities (GOM, 1999, p. 19). The Ministry of National Unity and Social Development (MNUSD) was at that time entrusted with the task of being the Secretariat for this committee.

Between July 2001 and March 2002, the Malaysian SIA project was jointly funded by the Malaysian government and the United Nations Environment Programme (UNEP). The objectives of the study included the review past experiences of SIA in Malaysia (MWFC and UNDP, 2002, p. iii). This research has found two fundamental weaknesses regarding past experiences of SIA in Malaysia: i) methodological flaws; and, ii) institutional constraints. On the methodological front, problems were related to confusion about what the social impacts were as well as the strict and rigid interpretation of EIA. This is particularly true in relation to the public participation process, which eventually became risky when useful public input was too little and too late in the planning process to make much difference (Baines and Taylor, 2002; MWFC and UNDP, 2002).

The institutional constraints, on the other hand, are mainly due to the existing approach on SIA study that placed it under the scope of EIA. Designating the SIA study under EIA meant that the DOE is responsible for the report assessment, something that the DOE itself currently suffer of staff and expertise. It is clear that the DOE is facing inadequate resources in treating the social components in EIA. Also, the department has never had enough of the relevant skills and the politics of science has exacerbated the institutional problem. The problem deteriorated because the social impact studies were not handled by the social

scientists, rather by physical scientists. A plausible reason for this is that the attitude of the DOE was to relegate social science to a secondary status behind the more established disciplines of economics and engineering (Baines and Taylor, 2002; MWFC and UNDP, 2002; Ahmad and Abd.-Aziz, 2003).

Until now, there has been uncertainty on the position of SIA in Malaysia, and debates on whether or not SIA should be integrated in EIA or standalone as an IA still continue. However, an unofficial statement from the DOE has suggested that SIA is now being taken out of EIA reports and being limited to the socio-economic variables only, such as employment, housing, education, utilities and amenities, etc. (Interview with Amaluzzaman Muhammad, Federal DOE Officer from the EIA Evaluation Section, on 12<sup>th</sup> October 2012 at Putrajaya). In EIA reports, the scope of the SIA coverage has been reduced; for example, social change due to development has been dropped, even though this concept is pertinent to the SIA study (see the concept of social impacts as recommended by Vanclay, 2002).<sup>89</sup>

The DOE is of the opinion that the SIA study is better handled by the DTCP through the incorporation of the SIA study in the development plans, namely NPP, SPP and DLP, as well as in the Development Proposal Report (DPR) (Interview with Amaluzzaman Muhammad, the Federal DOE Officer from the EIA Evaluation Section, on 12<sup>th</sup> October 2012 at Putrajaya).<sup>90</sup> For example, since 27<sup>th</sup> September 2001, the DTCP has gazetted and inserted the amendment in the Town Planning Act to include Act A1129, which imposed the requirements for the SIA study in the DPR:

*The State Authority may specify that the development proposal report submitted under subsection (1) in respect of certain categories of development shall include an analysis of the social implications of the development for the area which is subject to the application for planning permission. (GOM, 2006b, p. 40).*

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<sup>89</sup> Vanclay (2002, p. 183–211) has proposed the seven following variables and groups in the social change process study: i) demographic processes (changes in the number and composition of people); ii) economic processes (relating to the way in which people make a living and economic activity in society); iii) geographical processes (changes in land use patterns); iv) institutional and legal processes (relating to the efficiency and effectiveness of institutional structures including government and non-government organizations); v) emancipatory and empowerment processes (increasing influence in decision making processes); vi) socio-cultural processes (affecting the culture of a society); and, vii) other processes.

<sup>90</sup> However, the SIA study has been dropped in the SSP due to poorly produced. It was also found that SIA study in DLP is also facing the same problem (Shamsudin, 2009, p. 74).

On the other hand, the DOE will concentrate on the SIA format and the type of reporting currently being applied in the EIA system. However, like EIA, SIA in Malaysia only operates at the project level. Thus, it has raised the scepticism about whether it is able to offer a solid procedure and methodology in assessing social impacts at the strategic level (Ministry of Women, Family and Community Development (MWFCD) and United Nations Development Programme (UNDP), 2002, p. 99). However, a review of SIA within the EIA process has identified several major flaws. For example, there is prolonged debate on the methodological SIA concepts as well as the dominant technocratic approach in dealing with SIA process (Syed Abd. Rashid, 2009, p. 47 & 54). Like with the EIA process, it was found that in the SIA process the technocratic approach tends to dominate the assessment. It also treats public participation more as a public relations exercise than a mechanism that is designed to empower people through greater ownership and control over the outcome of the decision-making (Ibid).

### **3.10.2 Sustainability Assessment**

In the Eighth Malaysia Plan (2000–2005), the Malaysian government introduced SA, which aims to replace SEA as well as to mitigate the poor integration of SIA in land use planning (Shamsudin, 2009, p. 74). Like with SEA, the administration of SA comes under the DTCP of Malaysia. In Peninsular Malaysia, the State of Selangor has become a pioneer in preparing a blueprint for sustainability development; it recognises that land approval for physical development projects need to incorporate a new perspective that would allow the integration of environmental, social and economic policy objectives (Hezri and Hasan, 2006). The strategies and action plans to bring Selangor towards sustainability are stated in the Sustainable Development Strategy and Agenda 21 of Selangor. These documents are used as the basis for assessing the policies and plans in preparing the SSP.

According to the Manual for Local Plan (DTCP, 2013), the purpose of SA in the plan preparation process is to ensure that all proposed developments are in line with the sustainable development concept, i.e. promoting a balanced social, economic and environmental development. Before the development of SA as a standard, systematic and reliable method, the previous SEA principles were being used. SA covers more development aspects, integrates those aspects into sustainable development and covers PPPs. SA also assesses the opportunities and constraints of the proposed development; thus it covers the major development aspects including land use, economics, demographics, etc. Unlike EIA or

SIA, SA touches on a wide range of areas and regions; thus incorporating it into a spatial analysis. In addition, it is also able to assess the cumulative impacts, which in turn will make SA able to identify the implications of the proposed project. Taking all these aspects into consideration, the Malaysian government states that SA could provide a more practical and a wide-ranging assessment that could eventually bring the sustainability concept into the preparation and implementation of the development plan system.

### **3.11 Synthesis of Concluding**

This chapter has briefly demonstrated the process and procedure concerning EIA implementation in Malaysia. This has included the institutional structure of EIA administration in Malaysia. It is clear that EIA involves a variety of actors and at a variety of levels. Each of them brings a different expectation and interest, which makes the issue of governing EIA complex and intertwined.

This chapter has also briefly explained the historical context that led to the introduction of EIA. Like with other developing countries, EIA in Malaysia is facing a mixed reaction as demonstrated by EIA actors' acceptance and attitude towards EIA. To the bureaucrats and business actors, EIA would seem to give them extra burden in terms of cost and time, and thus would slow down the development. This was particularly true during the early years of EIA implementation in Malaysia.

Concerning to the EIA developmental trends, there is a consistent and parallel EIA concept trend that is moving from being sector based towards the incorporation of sustainability principles. It has been found that EIA in Malaysia follows the global pattern of growth. In addition, the Malaysian government has realised the weaknesses of the EIA concept and this has led to the emergence of a new concept of IA, (e.g. SIA and SA). However, the long-standing criticism of EIA at the international level continues to dominate the Malaysian EIA discussion. Therefore, issues like EIA being viewed as a halt to development progress, the low recognition of EIA rules by the state whereby it becomes merely a symbolic legislation, and the vested interest of EIA actors are among the factors that impede EIA credibility in Malaysia. It was also observed that any form of EIA extensions, be it SIA or SA, the real issue is that there is not much difference in practices.

Apart from the IA development trends review (see Section 3.10 in this chapter), this chapter also reveals a few pertinent aspects. The most obvious aspect is that the technocratic approach employed in Malaysia's planning and development which includes Malaysia's way in managing EIA. It was revealed that despite the presence of the mechanism for public empowerment, in reality, public participation is still hindered. Not only that, the Malaysia public is facing draconian laws that curtail human rights and freedom. However, this should not come as surprise to us as the developmental state is given priority. As such, while the state views environmental protection is important, commitment and priority given to economy supersede the former.

To deteriorate the EIA implementation problems in Malaysia, this chapter divulges that while there is limited power of the DOE, there is strong dominant of executive roles in environmental protection agencies – which is not in the sense to protect and strengthen the environmental policies but to manipulate the policy in order to serve their vested interest. This is especially true in Sarawak especially during the Taib Mahmud ruling which saw his domination on the environmental agency or EIA i.e. the NREB. He also holds executive power on three other agencies and their scope of works which includes to approve agencies projects. Thus, the establishment of EIA appears to be meaningless or in the institutionalist language; it has failed as an institution to function as it ought to be.

The above observations consequently boil down to the issue of rent-seeking and political patronage – obvious features in Malaysia's political economic. The state which is being controlled by politicians from UMNO specifically. They utilise their position to distribute rents to their clientelist. As will be discussed in chapter 5, this approach has always been justified in the name of correcting the ethnic socio-economic imbalance. This has affected the enforcement of the rules (EIA policy) because the state is the main guardian of the environmental protection facing vested conflict. Under this circumstance, the operation and implementation of EIA become ineffective and non-credible.

Therefore, it is interesting to see the extent to which the current IA, or EIA concept for that matter, is perceived to fulfil its basic roles. It is also interesting to consider the real attitudes and conflict strategies employed by EIA actors, especially the state. However, prior to that, Chapter 4 will provide a theoretical lens for this research study.

# 4

## Institutions, Property Rights and Implementation

### 4.1 Introduction

This chapter provides discussion on the main theories and concepts employed in this research study. The three (3) main theories scrutinised are institutions, property rights and implementation. This trio of theories is found to be essential in providing an explanation on how EIA functions or ought to function. At first, the discussion in this chapter touches on the basic definitions and concepts of the theories with special attention being given to institutions, property rights and implementation. Then, the discussion deals with the concepts that accompany the three (3) theories, namely the concepts of credible institutions, non-credible institutions and empty institutions. In relation to implementation theory, the concept of symbolic law and decoupling are elaborated on. To explain the EIA problem further, EIA models are examined. The technocratic approach that specifically focuses on a symbolic process of public participation is also elaborated on in the context of an empty institution. Following this, further explanation is provided on the manifestation of empty institutions and the concept of conflict is examined.

The intention of this chapter is to show how institutions, property rights and implementation theories play a role in defining and limiting the credibility of EIA. As EIA is specifically a state matter, the role of the state in enforcing the EIA rules in this context has been found to be important. In the discussion of each of the theories and concepts, the role of rent-seeking in hampering the institutions will be highlighted.

## 4.2 Basic Concepts and Definitions

### 4.2.1 Institutions

There is no single concept propounded by the sociologists, political scientists and economists that can represent a universal definition of institutions. The differences in the definitions and concepts stem from the fact that each school has constructed and defined behaviour in their own way. However, the most popular definition of institutions was provided by North (1990, p. 3)<sup>91</sup> who regards institutions as *'the rules of the game<sup>92</sup> in a society, or more formally, the humanly devised constraints that shaped human interaction<sup>93</sup>*. A similar line of thought was offered by Knight (1992, p. 2) who defined institutions as *'a socially set of rules that structure social interactions in a particular way'*.

Meanwhile, Scott (2001, p. 51) as a sociologist and social theorist viewed institutions as consisting of three (3) systems or pillars: i) regulative system; ii) normative system; and, iii) cultural–cognitive system. According to him, in the regulative system, institutions constrain and regularise behaviour through explicit regulatory processes such as rule-setting, monitoring and sanctioning activities. Meanwhile, in the normative system emphasis is placed on rules that introduce a prescriptive, evaluative and obligatory dimension into social life, including values and norms. Lastly, in the cultural–cognitive system, shared conceptions constitute the nature of social reality and the meaning it made (Scott, 2001, p. 51–57). Concerning the agency concept, he argues that agency refers to a body that is socially structured and an actor's ability to have some effect on the social world, altering the rules or the distribution of resources (Scott, 2001, p. 76). These four (4) types of institutional carriers are illustrated in Table 4.1 below:

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<sup>91</sup> North (1990).

<sup>92</sup> Bardach (1977, p. 56) has defined 'games' as a master metaphor that directs attention and stimulates insight. In this sense, study on games, for example, would focus on the actors (players), stakes and strategies, tactics, resources for playing and rules of play.

<sup>93</sup> In this sense, North (1990, p. 5) has differentiated the concept of institution as an organisation.

**Table 4.1:** Institutional pillars and carriers

Carriers	Pillars		
	Regulative	Normative	Cultural–cognitive
<b>Symbolic system</b>	Rules, laws	Value, expectations	Categories, typifications, Schema
<b>Relational system</b>	Governance system, power system	Regimes, authority system	Structural isomorphism, identities
<b>Routines</b>	Protocols, standard operating procedures	Jobs, roles, obedience to duty	Scripts
<b>Artifacts</b>	Object complying with mandated specifications	Objects meeting, conventions, standards	Objects possessing symbolic value

Source: Scott, 2001, p. 77

Influenced by Scott (2001) and still emphasising the concept of 'rules', Vatn (2005, p. 60) viewed institutions as '*...the conventions, norms and formally sanctioned rules of a society. They provide expectations, stability and meaning essential to human existence and coordination. Institutions regularise life, support values and produce and protect interests*'. A narrower definition of institutions can be found in Ho's works (2001, p. 399), who regarded it as a '*legal and (state) administrative sphere*'. Institutions in this sense is regarded as '*institutional arrangement embodied in promulgated policies, formal laws and customary rules and the state administration*' (Ho, 2005a, p. 2). Meanwhile, Ho (2009, p. 184) also proposed another definition, viewing institutions as '*a cultural purpose and permanence, transcending individual lives, intentions, and generations, and are identified with the making and enforcing of rules governing cooperative behaviour*'. In his later publication, Ho (2015, p. 353) defined institutions as '*a set of endogenously shaped context-determined social rules*'. Meanwhile, the concept of institution has also been viewed as a shared set of common knowledge at equilibrium as proposed by Aoki (2007, p. 6): '*An institution is self-sustaining, salient patterns of social interactions, as represented by meaningful rules that every agent knows and are incorporated as 'agents' shared belief about how the game is played and to be played*'. A similar line of thought is followed by Kingston and Caballero (2009, p. 176) who viewed institutions as '*...a set of shared perceptions which tie all the individual, truncated mental modes together*'.

Institutions matters in this research because it hopes to provide solutions to the problem by introducing rules, formal and informal, to reduce uncertainty and enhance expectation in the form of normative patterns (North, 1990; Mantzavinos, 2001). In this light, institutions is a product of interaction whether in the form of politics, economics or culture. For example, Doner (2010, p. 9) clearly saw institutions as the heart of economic development. Without

considering its thrust, origin and relevancy to economic analysis as suggested by Aoki (2007), all the above definitions have one similarity, that institutions is related to the rules, a characteristic which strongly relates to the fact that the institutions itself is the product of formal and informal rules.

#### **4.2.2 How Do Institutions Emerge and Change – Endogenous, Exogenous or Both?**

There is considerable debate on the process of how institutions emerge and change (see, for example, Mantzavinos, 2001; Vatn, 2005; Kingston and Caballero, 2009). The debate can be divided into two (2) broad categories: i) by design and centralised implementation; and, ii) evolutionary or spontaneous order. Mantzavinos (2001, p. 90), for example, viewed institutions as either a product of collective action or a product of a spontaneous process of social interaction. He found that change in institutions would occur because of the institutions' response to relative price and 'ideology' (Mantzavinos, 2001, p. 94). What he said on this issue is worthy of note:

*Institutions may change in one direction or another according to how the agents choose each time and depending on what form the invisible hand process or the collective action takes. (Mantzavinos, 2001, p. 97).*

Meanwhile, in a similar vein, Aoki (2007, p. 1–2) distinguished two (2) traits of institutions: i) exogenous; and, ii) endogenous. The former is regarded as the product that has been exogenously pre-determined outside of the economic transaction, while economic institutions are regarded as rational transaction-cost-saving responses within these constrains. The latter is the product of spontaneously and/or endogenously shaping, sustained in the repeated operational plays of the game itself. Therefore, to Aoki (2007, p. 6), an institution is regarded as '*self-sustaining, salient patterns of social interactions, as represented by meaningful rules that every agent knows and are incorporated as agents' shared belief about how the game is played and to be played*'.

Parallel to Mantzavinos's view, Ho (2013, p. 1096) opined that institutions is endogenously and autonomously shaped 'rules of the game', whereby the institutions is not only shaped and enforced by any single and outside agent but through mutual interaction of that agent with others. In the context of land development studies, the principle of endogenous

development views that institutions are the result of social actors and economic agents' interaction (Ho, 2013, p. 1091). Approaching institutions as endogenous has allowed us to overcome the unattended role of collective action and political process, which tended to happen in evolutionary theories of institutional change. Simultaneously, this prescribed approach would also be able to overcome the unconvincing explanation of informal rules (such as social norms) which are involved in a decentralised manner (Kingston and Caballero, 2009, p. 167).

However, in this research, institutions design is viewed as a product of multi-dimensional aspects including both external and internal aspects. For this research study, institutions are a product of interaction and interplay between socio-economic, cultural and political parameters across time and space. The relation of institutional-parameters in this regard is a symbiosis. However, this is not to suggest that the roles of actors in shaping the institutions are completely ignored. Their roles still exist, particularly in the routines arena. What has mostly determined institutions is interplay between the political, economic and social factors, which then produces an institution (a rule). In conceptualising institutional change, this research study subscribes to Ho's view (2005a, p. 2) that the distinction between *resultant* and *determinant* or *chicken (institutions) versus egg (changes in socio-economic conditions)* does not matter.<sup>94</sup> Instead, what concerns the researcher more is the interaction by which the institutions affects change and is itself affected at the same time.<sup>95</sup> Therefore, in this research study, institutions could be endogenous and exogenous<sup>96</sup>.

To apply the above approach, this research views that as an institution EIA needs to be dealt with in two (2) contexts: i) how EIA as an institution affects social, political and economic actors; and, ii) vice versa. In addition, the social context in which institutions operate also needs to be considered in this institutional study. In other words, this research study regards the societal and economic phenomena – the EIA problem and land rights – as affected by and affecting institutions. Economic agents' and social actors' 'game' is not one in which institutions can be intentionally formed by an internal agency, such as a ministry, a non-governmental organisation or a consulting company. This approach has long been expounded by Putnam's study (1993, p. 8) which found that the study of institutions must

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<sup>94</sup> Kingston and Caballero (2009, p. 174) held the same view when they stated '*...institutions shape individuals at the same time as individuals shape institutions*'.

<sup>95</sup> Esman (1972, p. 22) identifies five (5) clusters of institution variables in the institution-building universe, namely leadership, doctrine, programme, resource and internal; structure.

<sup>96</sup> According to Berger and Luckmann (1999) cited in Aoki (2007, p. 10), exogenous/endogenous duality is referred to as the focal point of the phenomenological approach to the sociology of knowledge.

be distinguished by two (2) variables: i) independent variables; and, ii) dependent variables. It is worth quoting Putnam's own words in this context:

*Taking institutions as an independent variable, we explore empirically how institutional change affects the identities, power and strategies of political actors. Later taking institutions as a dependent variable, we explore how institutional performance is conditioned by institutions.*

### **4.2.3 The Concept of Rules within Institutions**

The basic concept of explaining interaction within institutions is rules; they are regarded as choice constrains. In a general sense, rules can be described as regulations, instructions, precepts and principles. Ostrom (2005, p. 16–17) observed that the concept of rules is varied and it can be classified into four (4) domains: i) regulation sense; ii) instruction; iii) precept; and, iv) everyday sense. From the regulation point of view, rules can be thought of as the set of instructions for creating an action situation in a particular environment. Meanwhile, in the instruction sense, a strategy adopted by participants for individual plans of action can also be considered as a rule. When a rule is used as a maxim for prudential and moral behaviour, it can be regarded as a precept rule. Lastly, rule in the everyday sense refers to rules that describe a law or principle. In a more general sense, Ostrom (2007, p. 36) defined the concept of rules as '*shared understanding or shared meaning about what actions (or states of the world) are required, prohibited, or permitted*'. In this sense, all rules originated from efforts to achieve order and predictability among humans by creating classes of persons (positions) that are required, permitted or forbidden states (Schlager and Ostrom, 1992; Ostrom, 2005; Ostrom, 2007).

On the other hand, Kingston and Caballero (2009, p. 154–155) found that rules can be simply distinguished between 'formal' and 'informal'; the former relates to those that are explicit or written down, particularly if they are enforced by the state or enforced endogenously by members of relevant groups. The latter, on the other hand, are implicit and include 'codes of conduct', norms of behaviour and conventions as well as 'extensions, elaboration and modifications of formal rules' (Kingston and Caballero, 2009, p. 154).

Why are rules important in institutional analysis? In game theory, rules are important because they help to define the choice situation and the outcomes associated with choices

(Ostrom, 2005, p. 17–18). In this sense, the importance of rules is to know how they impact the action situation. Therefore, in the context of this research study, rules definitely influence the implementation of EIA in relation to the issue of shared understanding or predictability of EIA – how it should be conducted, the extent to which the rules are implemented and the way in which they are formulated.

#### **4.2.4 Property Rights**

Property rights are a subject of study in many fields, including anthropology, sociology, history, psychology, law, geography, biology, philosophy and economics. This has brought about divergent conceptions of the definition and application. However, many authors have viewed property rights from the perspective of the Hohfeld's system of jural relations, which centres on roles, obligations and restrictions (Boydell and Searleb, 2014, p. 325).

Property rights is a concept that has strong association with institutions. This is not surprising when we examine the different interpretations of property. Thus, in property rights, the rights could involve complex forms and vary between individuals and organisations. However, the concept is succinctly reflected in the definition given by Libecap (1989, p. 1) who viewed property rights as *'the social institutions that define or delimit the range of privileges granted to individuals to specific assets, such as parcels of land or water. Private ownership of these assets may involve a variety of rights, including the rights to exclude non-owner from access, the rights to appropriate the stream from use and involvement in the resource, and then the right to sell or otherwise transfer the resource to others'*. In a similar definition provided by Knight (1992, p. 22–23), property rights is equated to *'rules (be it formal or informal) that designate the appropriate use, control and right to transfer'*. Weimer (1997, p. 3) also suggested that property rights are *'a concept of rights and duties with settings and circumstances (including objects) capable of producing income. It is therefore, social relations concerning the use of things that lie at the nexus of economics and politics in the general sense'* (Weimer, 1997, p. 1 & 3).

Meanwhile, to Cramb (1993, p. 289) property rights are *'a socially recognized right of action or decision making with respect to a particular resource, each right being associated with reciprocal duties, liabilities, disabilities, or the absence of rights on the part of others within a network of property relations'*. On the other hand, Vatn (2005, p. 254) viewed property rights as a *'...specific type of rights of fundamental importance to resource allocation issues'*.

According to Vatn, property can be distinguished in two (2) ways: :i) as a thing like a house, a piece of land, a chair etc.; and, ii) a social relation between the rights holder and the rights rewarders under a specific authority structure such as granting legitimacy and security to a specific resource or benefit stream. In this sense, Vatn (2005, p. 252) observed that discussion on property rights normally revolves around three (3) issues: i) resource distribution – who gets access to which resources; ii) transaction cost<sup>97</sup> – the cost of setting up and running institutions for the individual and common use of resources; and, iii) perceived, interest and value – the effect a regime may have on how problems are perceived, which interests it defends and which values it fosters.

### **4.3 Institutions, Property Rights and EIA**

The relationship between institutions and natural resources has been found to be a market (an economy). In order to understand what possibilities and restrictions are involved, one needs to examine across the institutional systems (Vatn, 2005, p. 14). The motivations and interests influence the way of markets govern resource allocation which then effect which relations will dominate between humans, humankind and nature and, of course, cooperation, tension and contest are involved (Ibid). Vatn (2005) emphasised that institutions are driven by choice and common good whereby the preference we made affects our common good. However, he asks two (2) pertinent questions: i) How do societies make decisions about common good?; and, ii) How are the various interests and conflict incorporated into decisions? To answer these questions, Vatn (2005) states that the core issue in institutions is: why we cooperate or do not cooperate relies on social contexts, and developing a good social context is crucial for us to understand such issues (Vatn, 2005, p. 1).

Bromley (1992, p. 1) explains that to study property rights in the context of environmental policy, one can examine entitlement. According to him, it carries three (3) significant consequences because the structure of entitlement will determine: i) which parties to environmental disputes bear unwanted costs; ii) which parties bear the transaction costs of environmental change through new environmental policy; and, iii) which parties are able to call upon the power of the state to protect their interest. In this sense, Bromley (1992, p. 2)

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<sup>97</sup> It has also been defined as cost of making, monitoring and enforcing agreements between actors – benefit economic and political outcomes (Kang, 2013, p. 439-440).

states that environmental policy is about determining which party should receive protection from the state; when protection is forthcoming, that party acquires a right.

However, any discussion on property rights regimes is concerned mainly with goods and assets and policy issues like EIA are left unattended. As such, applying the property rights theory could enlighten us as to how to understand the credibility or low credibility of EIA. As EIA is not tangible property, the concept of property rights as social relations with related rights and duties suits this research well. As such, following such a concept means that we are dealing with rights that run from the collective to the individual level. Therefore, as asserted by Vatn, (2005, p. 254) these rights are a space for the contestant which have to be defined and defended through the socio-political process. In other words, when we relate the concept of rights of authority, public or state (central) in structuring our interactions, EIA itself determines the right of each actor in the EIA system; for instance, local people's right in voicing their views regarding the project.

In this sense, the study of EIA in the context of property rights concerns a network of social relations with respect to the way rules are being implemented and followed. It therefore touches on the enforcement issue of the state as the enforcer. However, the problem is that the state itself has a vested interest in the process of enforcing the rights. Nonetheless, this research follows Demsetz's definition that defines the institutions in the property rights concept on three (3) broad criteria: i) the right to control resources; ii) the right to earn income from the resources; and, iii) the right to transfer the resources (Demsetz, 1967). Since property rights are divided into private, collective and state, EIA involves all types of property and is used as a tool in managing and enforcing the rights (Ostrom, 1990).

In this research, the concept of property rights is linked to the credible concept in order for us to understand the extent to which the state commits itself towards enforcement of property rights. Thus, it becomes clear that in order to understand this situation, we need to examine the socio-economic and political dimension first. EIA itself involves the issue of the abundance of rights where rights to participate in the EIA process or rights to EIA are normally granted in formal rules such as legislation and guidance. Therefore, in this research study, I cautiously refer to the concept of property rights from two (2) distinct perspectives. Firstly, from the holder's view there are three (3) main rights: i) the right to use an asset; ii) the right to use the asset and to earn income and contract regarding the asset; and, iii) the right to alienate, sell or transfer the asset. Secondly, from the state's point of view, there

are two (2) main rights: i) to specify property rights; and, ii) to enforce property rights (Haber et al., 2003, p. 21).

In this research, property rights in EIA relate to how the rights and duties have been protected or assigned by the state. In other words, property rights in EIA relate to the roles of the state. When we relate the concept of rights of authority, public or the state (central) in structuring our interactions in EIA itself, they determine the right of each actor in the EIA system; for instance, why EIA has been conducted in such a way, what are the vested interests among the players, and local people's right to voice their view regarding the project. In addition, the property right theory is relevant in this research because it helps to explain the dynamic of institutions issues such as enforcement problem. It also touches on the politics of property rights, i.e. the way power is given and received, and vested interests.

#### **4.4 The Culprit of Environmental Problems or the Threats to the Institutional Credibility**

The sources of environmental problems or conflict are context dependent and numerous, ranging from the structures of society to the individual level. To answer this important question, we need to demonstrate what credibility means to actors in the EIA institutions. As the concept is subject to dispute among economists, political scientists and property rights scholars, it is to be expected that it would attract varied interpretation, as different fields conceptualise different definitions. However, the following reasons have been identified as sources of environmental problems or threats to institutional credibility.

##### **4.4.1 The Absence or Ineffectiveness of Property Regime Enforcement**

The efficiency of property rights are measured on three (3) aspects: i) universality – all resources are owned by someone; ii) exclusivity – property rights are exclusive rights; and, iii) transferability – to ensure that resources can be allocated from low to high yield uses (Mahoney, 2005, p. 109). As such, in property rights, there are four (4) types of property regimes: private property, common property, state/public property and open access (Vatn, 2005, p. 255).

In the context of economic development, the substantial researchers have advocated the positive relationship between security or well-defined property rights and economic growth (Vatn, 2005; Weimer, 1997; Libecap, 1989; Lawson-Remer, 2014; Pierpont, 2007; Schlager and Ostrom, 1992; Bromley, 1997; North, 1990; Weimer, 1997). Having a well-enforced property rights system would enable investors to get direct benefits from the use of their property, and encourage investors to invest efficiently. Credible enforcement of property rights could help in alleviating political risk, reduce the transaction cost of doing business and stimulate the market to function efficiently by overcoming information limitation. In addition, it could secure rights to boost productivity by pooling resources (North, 1990; Weimer, 1997; Abbott, 2000).

Meanwhile, Lawson-Remer (2014, p. 321) identified two (2) roles of security of property rights at two (2) levels: i) at a micro level where secure property rights will generate economic growth; for example, by incentivising efficient levels of investment and ensuring that a resource is neither overused nor underutilised; and, ii) at a macro level where secure private-property rights act as an essential pillar of individual liberty which could breed political accountability; this in turn leads to economic policies that are broadly growth enhancing rather than bestowing benefits solely on powerful, rent-seeking elites. Bromley (1997, p. 3) asserted that it was wrong to assume that environmental problems have been associated with externalities since the economic effects transcended the domain over which the legal system property right has socially sanctioned control. In order to gain credibility, what the third party or enforcer needs to do is increase the audience cost that it will bear for renegeing on threats or promise (Martin, 1993, p. 431).

#### **4.4.2 Divergent and Vested of Interests**

Divergent and vested interest of game players would lead to conflict. Vatn (2005, p. 68–69) argues that the problem in coordinating different interests would lead to conflict due to institutional arrangements – *'which define who have access, in what form and to what degree'*. Meanwhile, in the context of EIA, Ortolano (1997, p. 403) observed that threat to the credibility of EIA could emerge from the divergence of interest between the agency and the state. Ortolano's view is in line with the individual perspective of the stakeholder theory, which suggested that the principal source of the stakeholder conflict is the differences in a shared common set of values (Cordano et al., 2004). The agency or state in this case may view public participation activities as an exercise merely to satisfy legal requirements and

use it to build a consensus among citizens or use it to harmonise potential conflicting interests. In addition, the weak third-party solution, or sanction, or the legal ambiguity, or uncertainty of legal doctrine and behaviour of the agent would exacerbate the problem (Vatn, 2005; North, 1990).

#### **4.4.3 Rent-Seeking Activities**

Parallel to the neo-classical assumption, this research study posits that the rational actor would lead to rent-seeking because the actor would maximise their own interest or utilities, and thus impede socially efficient institutions (Libecap, 1989; Knight, 1992; Weingast, 1993; Rothstein, 2005). It was found that the inefficient institutions and policy has been due to rent-seeking and interest by the elite's politics and economics (see, for example, Acemoglu, 1995; Acemoglu, 2003; Acemoglu et al., 2004; Benson, 1984; Libecap, 1989; Engerman and Sokoloff, 1997; Engerman and Sokoloff, 2005; Ostrom, 2005; Weingast, 1993; Weingast, 2011; Rothstein, 2005). Meanwhile, Ostrom (2005, p. 220), for example, observed that local self-organisation can also be dominated by local elites in order to use rules as tools to advantage themselves.

In a narrower observation on rent-seeking in environmental policy, many authors have viewed rent-seeking or political business to be one of the driving forces in altering or, in this case, manipulating the environmental policy/rules or EIA (Broad, 1995; Boyle, 1998; Hirsh and Warren, 1998; Memon, 2000; Briffett et al., 2004; Bravante and Holden, 2009). Political and business elite's interests have been found to affect environmental policies, i.e. EIA – as its guidelines and rules have been bent to accommodate their interest. Furthermore, rent-seeking will make the policy ineffective because it tends to create a corruption of the environment due to the absence of accountability and responsibility (Hafez, 2014).

#### **4.4.4 Politics in Property Rights and Enforcement**

Bromley (1997, p. 3) found that environmental problems are due to property regimes. He also made assertions that transaction costs are the real culprit in environmental problems. To understand transaction cost, he proposed that the investigation must continue with the status quo structure of rights or to be specific their nature and magnitude. In this sense, he states that change to the existing structures will be difficult because it could involve some interests that are thought to have 'rights'. On the challenge for the government to employ

'intervention', he stressed the question of which parties the 'protection' should be awarded. His ideas advocate that investigation needs to be made in order to understand why governments tend to protect certain parties while leaving others out. This eventually requires us to understand the institutional structure or the element of '*who gets what and how*'. Meanwhile, Weimer (1997, p. 96) explained that credible property rights depend on the actors' stance that other actors will respect their rights. As such, shift in the discount rates of the relevant actors, particularly the government, would affect the beliefs and shape the credibility of property rights.

Another threat to property rights mainly relates to the actions of government in the expropriation, especially in the developing countries and more so to socially weak groups. However, this is not to suggest that property rights is a completely arbitrary concept or that it can only be described in terms of opposites, positive or negative. The concepts works and exits along the degree of high to low enforcement.

#### **4.4.5 Ambiguity of Rules<sup>98</sup> and Pragmatic Approach in Development**

Ambiguity of rules in governing human interaction could also become a source of conflict (North, 1990; Diermeier et al., 1997; Everingham, 2001). In explaining the roles of the institutions, North (1990) opined that conflict could have its root in uncertainty or ambiguity of the rules of interaction, which could cause actors to interpret rules based on their perception. Institutional ambiguity due to the absence of a clear property rights regime can theoretically become a potential explosive source for future social conflict (Ho, 2001, p. 401). On the other hand, Everingham (2001, p. 61) found that the failure of the Nicaraguan's formal rules to clarify legal ambiguity over coveted assets had led to persistent conflict in the agrarian structure.

Concerning rules, Ho (2014) stressed that conflict could occur when new rules are not shared by the common and not because of the need for each individual acceptance. Another threat to credibility with respect to rules occurs when policymakers follow discretion rather than the stated rules. This will result in either suboptimal planning or in economic stability (Kydland and Prescott, 1977, p. 487). In order to avoid such rules becoming trapped in

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<sup>98</sup> This theoretical belief is a clear contradiction of China's empirical evidence in land tenure which saw that despite its institutional ambiguity in the land rights system, it still achieved credibility (Ho, 2000a; Ho, 2000b; Ho, 2003; Ho, 2005a; Ho, 2005b; Ho, 2006; Ho, 2009; Ho, 2013; Ho, 2014; Ho and Spoor, 2006).

suboptimal planning, Kydland and Prescott suggested that rules should be made simple and easily understood or by crafting institutional arrangements which could make them difficult and time-consuming to change (Ibid).

In relation to this, in case of the China land institutions, the central state's choice to allow local and informal institutions to operate in informal ways rather than formalising them through national laws is the fundamental explanation of such institutions' credibility and successful functioning (Ho, 2003; Ho, 2005a; Ho, 2005b; Ho and Spoor, 2006; Ho, 2009; Ho, 2014 ). More importantly, the grass roots (or public) must accept the institutions, and being accepted in this context is heavily dependent on the socio-economic setting. However, this does not suggest that credibility is only the state's concern. Indeed, it greatly depends on the credibility of the institutions itself to effectively undertake institutional reform or it might put the social acceptability or credibility of the institutions at stake – which then might lead the institutions to have less credibility or even worse become an empty institution (Ho, 2003; Ho, 2005a; Ho, 2005b; Ho, 2009; Ho, 2013; Ho, 2014; Ho and Spoor, 2006).

#### **4.4.6 Socio-Economy Conditions and the Fallacy of Social Engineering**

In a more general sense, Ho (2014) views that the socio-economic conditions of the affected people could become a factor of conflict. In the absence of an alternative risk-avoidance arrangement and sufficient employment outside the agriculture sector, conflict would be more prone to happen as the project could jeopardise the local people's life due to their strong reliance on their land for their survival (Ibid). In this regard, the changes initiated could face local resistance when rules do not represent the people's aspirations and when these people have regarded the rules as a social and political compromise. Although compensation could help in easing the psychological effects of displacement, without proper and adequate compensation given to the land holders, land requisition could become a source of conflict (Ho, 2003).

As mentioned by Ho (2013; 2014), the dependency on land could influence the degree of conflict where the higher dependency on land the higher the expected level of social conflict is. In addition, state intervention for forced resettlement or social engineering does not necessary guarantee that people will support it (Ho, 2014, p. 24).

#### **4.4.7 Environmental Change**

In the context of environment, Barrow (2010) stated that environmental change is one of the main factors that can cause social impacts, which consequently could contribute to conflict in a negative or a positive manner. In his view, failed development could also trigger conflict. Change that has been found to be independent of any development could cause or ease problems and development or an unrelated change might highlight or catalyse developing conflict.

#### **4.5 Two Related Concepts: Trust and Legitimacy**

This research study deals entirely with the concept of credibility, a concept that has become subject of disputes between economists, political scientists and property rights scholars. However, it is deemed essential to discuss two (2) associates of the credibility concept – trust and legitimacy. In order to distinguish both concepts, this section will provide a brief overview.

##### **4.5.1 Credibility and Trust**

This section aims to clarify briefly the main theoretical concept of credibility and trust. Both concepts have been used in analysing institutions. Ho (2005a; 2006b; 2014) differentiated between the trust and credibility concepts when he asserted that the former gives more focus to the relation between social actors and groups. Ho's clarification on the trust concept can be traced to the earlier works of Coleman (1988), an American sociologist who has revealed the characteristics of the trust concept in his discussion on social capital<sup>99</sup>. A few paragraphs from Coleman's article are deemed necessary in order to shed light on our discussion. For example, Coleman (1988) made the following remarks about the role of trust to *'...facilitate certain actions of actors – whether persons or corporate actors – within structure'* (p. S98). He further stressed that: *'Unlike other forms of capital, social capital is inherent in the structures of relations between actors and among actors'* (Ibid). Furthermore, Coleman (1988, p. S118) viewed the trust concept as *'...embodied in relations*

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<sup>99</sup> Social capital here means 'features of social organisations such as networks, norms and trust that can facilitate or improve certain actions and cooperation of actors for the mutual benefit of actors and society (Coleman, 1988; Putnam, 1993; Portes, 1998).

*among persons*: Clearly, Coleman's statements point out that the trust concept is mainly concerned with social relations.

The reason why credibility and trust seem parallel and thus create confusion is because social trust also lubricates cooperation between social, political and economic actors (Putnam, 1993). Like credibility, trust is considered a key ingredient in sustaining economic dynamism and government performance<sup>100</sup>. The absence of trust would lead to poor economic performance and its attendant social implications. Therefore, the greater the level of trust is within a community, the greater the likelihood of cooperation (Putnam, 1993; Fukuyama, 1995; Quddus et al., 2000). In Putnam's view, social trust provides a solution on the dilemma of collective action and inadequate third-party enforcement. Social trust and cooperation are found to reduce uncertainty, as they provide no incentive to defect. Social trust thus gives a model for future cooperation (Putnam, 1993).

Moreover, as asserted by Farrel and Knight (2003, p. 541), the trust concept relates to the party/parties or people conceptualised as '*X trusts Y*'. On the other hand, the credibility concept goes beyond the social relations among actors and groups or even the form of institutions. Credibility focuses on the nature of an institution itself and the perception of it. It also examines the role of government in guiding institutional change (Ho, 2005a; Ho, 2005b, Ho, 2006, Ho, 2009, Ho, 2013, Ho, 2014; Ho and Spoor, 2006).

One might wonder whether trust can really be withdrawn from the discussion of credibility in institutions. To answer this, Rothstein (2005) can perhaps shed some light with his observation that social traps and the problem of trust can affect institutional credibility when the actors have assumed a vested interest or have an agenda that serves their own interest. In other words, while we might be able to differentiate trust and credibility theoretically, in reality these two (2) concepts are deeply intertwined. Therefore, this research study posits that the discussion on trust can be made whenever necessary as long as it finally relates to the credibility discussion. On the other hand, in society where there is little trust, human activities need to cooperate under a system of formal rules and regulations, which have to be negotiated, agreed to, litigated and enforced through third-party enforcement roles.

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<sup>100</sup>However, as pointed out by Portes (1998), sociologists tend to highlight only good sides of social capital, which is due to sociological bias. He identified at least four (4) negative consequences of social capital: i) exclusion of outsiders; ii) excess claims on group members; iii) restrictions on individual freedoms; and, iv) downward levelling norms.

#### 4.5.2 Credibility and Legitimacy

Another related concept attached to credibility is legitimacy. Ho (2014, p. 16) asserted that legitimacy is associated with political rule and power. Meanwhile, for Stillman (1974, p. 42), legitimacy is defined as *'the compatibility of the results of governmental output with the value patterns of the relevant system'*.<sup>101</sup> In other words, Stillman viewed legitimacy to be related to the compatibility between the value patterns of the relevant systems and the results of the government output (Ibid). Meanwhile, akin to Stillman's concept, Powell and DiMaggio (1991, p. 169) found that legitimisation largely pertains to societal evaluation of organisational goals. Meanwhile, Suchman (1995, p. 574) views legitimacy<sup>102</sup> as *' a generalized perception or assumption that actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions'*. To obtain legitimisation, Powell and DiMaggio (1991, p. 169) asserted that the results must parallel with the value pursued by the organisation and it must be consistent with wider societal values.

In the same vein, Scott (2001, p. 59–61) found that legitimacy would be achieved when institutionalised activity could develop repeated patterns of behaviour that then would evoke shared meaning among the participants. To Scott (2001), legitimacy is gained in three (3) ways: i) regulative – ascertaining whether the organisation is legally established and whether it is acting in accordance with relevant laws and regulations; ii) normative – stressing moral obligations and moving beyond legal requirements; and, iii) the cultural cognitive view – emphasising that legitimacy comes from adopting a common frame of reference or definition of the situation. Legitimation of this order could occur when committing it to the wider cultural norms or rules. According to Scott (2001, p. 59), legitimisation explains institutional order by ascribing cognitive validity to its objective meaning. Legitimation justifies the institutionalised order by giving a normative dignity to its practical imperatives. In the context of the EIA, Craik (2010, p. 244) referred to legitimacy as *'the justification'*<sup>103</sup> *of authority'*. He asserted that legitimacy rests on the fact

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<sup>101</sup> Stillman (1974, p. 42) has identified at least four (4) compatibility of systems which are needed to make the results are deemed legitimated: i) the international system; ii) the society; iii) the groups within society; and, iv) the individual within society.

<sup>102</sup> According to Suchman (1995, p. 577), legitimacy can be divided into three (3) broad categories, namely pragmatic legitimacy, moral legitimacy and cognitive legitimacy. However, there is no intention for this research study to differentiate the characteristics between them.

<sup>103</sup> The justification, on the other hand, refers *'to more than simply the giving of reasons, but the giving of reasons that are intended to be mutually acceptable'* (Craik, 2010, p. 244).

that actors will often share, inter-subjectively, common understandings regarding both the right process and right substance (Craik, 2010, p. 191).

While legitimacy is rooted in externalities and rational agents, credibility on the other hand, stems from a ruler who has established or changed the rules. The credibility concept is also detached from the two (2) typical concepts in neo-classical economics, namely the externality<sup>104</sup> and rationality of agents<sup>105</sup> either on the part of those who can establish a certain rule (e.g. governor) or on the part of those who can actively change the rule (Ho, 2014, p. 16). Therefore, credibility concerns how institutions are formed and perceived as a result of autonomous, endogenous patterns of interaction and power difference. Rejecting rationality means that credibility employs irrationality instead. According to Vatn (2005, p. 132–133) irrationality occurs when: i) there are inconsistent preferences; ii) if a person does not do what she/he prefers she/he has decided to do, she/he also acts irrationally; and, iii) holding preferences for which no account or argument can be given.

Another characteristic of credibility, which is not present in legitimacy, is its roots in distributional conflict. However, there is no such type of fully credible institutions. Instead, Ho (2014, p. 16) tends to view distributional conflict as inherent in the property right arrangement.

#### **4.6 Embracing Credibility: the Inadequate Concepts of Security and Effectiveness**

As mentioned in Chapter 1, this research study departs from the conventional approach of analysing EIA performance. Instead of using the effectiveness concept, this research has tried to measure the performance of EIA through the credibility concept.

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<sup>104</sup> According to Vatn and Bromley (1997, p. 135 & 147), externalities are used to analyse market efficiency where transaction cost is the source. Externalities are the external factors that give negative cost to market economy. Parallel to the above view, Cochran and Malone (2007, p. 18) argue that market failure to allocate resources efficiently contributes to social cost or externality. On the other hand, Bromley (1997, p. 3), contrary to the widely held belief, posit that externalities do not represent market failure. Rather, they indicate a failure of the legal system property regimes to structure domains of economic activity so that all of the cost and benefits associated with independent activities are brought to bear on the relevant parties.

<sup>105</sup> Rational agents is the core concept in the neoclassical economies reading on rational choice. It has been argued that rationality exists when agents maximise individual utility (Vatn, 2005, p. 113). Cochran and Malone (2007, p. 435) view individual self-interest as a major contributor to the market failure and the problems in the environment.

The current debate on institutional change has suggested that any institutions created must possess the element of acceptance or trust in the system as a key determinant of the policy success. Instead of focusing on the security of property rights, Ho (2003; 2005a; 2005b; 2006; 2013; 2014) and Ho and Spoor (2006) asserted that credibility of the institutions should be our focus in analysing institutional change. Only by having credibility would the institutions bring about positive effect as it intended. In his convincing arguments, Ho (2006, p. 582) has debunked the stance that formal institutions could offer the ultimate solutions for security of tenure. Instead, under certain socio-economic circumstances, customary rules might seem more credible and accepted than formal arrangements. Therefore, establishing a credible institutions means being able to rally social and political support. Ho (2009, p. 582) also argued that in examining the credibility concept, the role of the state in guiding institutional change is found to vital.

## **4.7 Examining the Credibility Concept in Institutions**

### **4.7.1 Historical Perspective**

The credibility concept originally appeared in economic vocabulary language, particularly in explaining the phenomena of Western monetary and anti-inflationary policies. Historically, the credibility concept has roots in the neo-classical school where it generally touched on the credible commitment concept<sup>106</sup> (Blackburn and Christensen, 1989; Grabel, 2000; Ho, 2009).

Like with other concepts, credibility attracts divergent interpretations and perspectives, at least between economists, political scientists and sociologists. While acknowledging the divergent interpretations of the credibility concept, Blackburn and Christensen (1989, p. 2) asserted that the concept has always been equated with *'the extent to which beliefs about the current and future course of economy policy are consistent with the program originally announced by policy makers'*.<sup>107</sup> In addition, it is also synonymous with *'forward-looking*

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<sup>106</sup> Grabel (2000, p. 5) has reasoned why credibility is extended to financial policy-making, saying that *'...to be credible, financial policy must be insulated from the vagaries of the political process, where short-sighted political goals often predominate'*.

<sup>107</sup> That is why to the neo-liberal proponents, a policy is regarded as achieving credibility when it able to demonstrate commitment towards the neo-liberal measures or agenda (Grabel, 2000, p. 6). Credibility to this group relates to the consistency between what had been announced (in this case the neo-liberal commitment) and what has been currently implemented. In other words, it is 'shared expectation' between actors.

*behaviour by private-agents and inability of centralised policy makers to pre commit themselves to announced policy'* (Ibid).

Again, Blackburn and Christensen (1989) stressed that the credibility concept relates to the circular logic between policy and effectiveness. In the context of economic policies, Grabel (2000, p. 2) explained: *'The credibility argument, then, depends on a kind of a circular logic: economic policies are deemed effective if they are credible to private agents; but policies are deemed credible only if they are seen to be effective'*. She advocated the idea of using the credibility concept in order to promote the neo-liberal agenda where the market acts as the principal means for directing economic affairs (Ibid). In this sense, credibility can be assessed when we find a gap between forming expectations and making judgements about what actions to take (Grabel, 2000, p. 2–3).

Meanwhile, Weimer (1997, p. 8) stressed that persisting in attempts to gain credibility could affect efficiency and economic growth. He emphasised that the biggest threat to credibility policy comes from changes in government policy. Parallel to Weimer's thoughts, Diermeier et al. (1997, p. 20) argued that the credibility is gained when *'people believe that they are not subject to arbitrary change'*. However, credibility to them is neither granted by government nor seized by private actors, rather, it emerges as an equilibrium outcome of strategic interaction among relevant actors. Here, actors not only refers to individuals but also to government and economic actors. To tackle the deficiencies in the exogenous and endogenous perspectives on credibility, Weimer et al. (1997, p. 22) posited that *'credibility is a consequence of the stability of individual expectation about future government actions to redefine or violate relevant property rights'*. In the political context, credibility is rooted in the commitment problem (Martin, 1993; Weimer, 1997) and is sometimes referred to as the Weingast's dilemma (Haber et al., 2003, p. 3)<sup>108</sup> .

However, while acknowledging that credibility itself has originated from the credible commitment reading concerning the neo-classical reading on efficiency and security, the credibility concept (as used in this research) is detached from any principle of the intentional and institutional design (Ho, 2013, p. 1095). Instead, credibility is a concept that has been

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<sup>108</sup> The logic subscribes here is *'Any government strong enough to define and arbitrate property rights is also strong enough to abrogate them for its own benefit'* (Haber et al., 2003, p. 20). Weimer (1997, p. 11) has long advocated such logic when he said that *'A strong state can use its authority to establish a property system...a state strong enough to set and implement formal rules that achieve these characteristics may also be strong enough to allow the government in power to change the rules to further its own interest'*.

employed to investigate how institutions function, or fail to function, at a given place and time (Ho, 2003; Ho, 2005a; Ho, 2005b; Ho, 2006; Ho, 2003; Ho, 2013; Ho, 2014; Ho, 2015; Ho and Spoor, 2006). In simple words, Ho (2005b, p. 8) defined the credibility concept as *'trusting the system'* or in the context of property rights – the extent to which the economic and political actors prove that property rights are credible.

Credibility has also been conceptualised as sufficient trust from social actors or the degree of social support that institutions rally (Ho, 2005a, p. 187; Ho, 2009, p. 184). In another study, Ho (2014, p. 16) defined the credibility concept as *'the perception of the endogenously, autonomously shaped institutions as a common arrangement'*. Therefore, credibility is a measure of how actors perceive institutions as a jointly shared rule. Ho (2014, p. 24) also defined credibility as the *'...autonomous and endogenous result of the interaction and power interaction and power divergences between various actors – be it the state, corporate or civic'*. In this sense, to Ho (2014) credibility is merely the expression of the degree to which institutions are perceived to be accepted by those whom they govern. Since credibility concerns function<sup>109</sup>, the concept of success is context dependent whereby it might succeed through the 'hands-off' approach<sup>110</sup> or state intervention; for example, through the state mediating the conflict or facilitating institutional change, which must first occur at the grass root level (Ho, 2014, p. 24).

#### **4.7.2 Why Do We Need Credibility?**

According to those property rights scholars of the neo-liberal perspective, the credibility policy would induce investment because political and economic actors believe in the system. Weimer (1997, p. 8), for example, asserted that the credible property right would: i) prevent freedom from arbitrary seizures of property by the government; ii) give an understanding of the relative growth in the different times and regions; and, iii) foster economic growth through the accumulation of capital. The credibility of the property rights existence is also important in order to foster effective market economies and democratic political institutions (Weimer, 1997, p. 12). Therefore, institutional reform is unlikely to be effective in promoting economic growth and political stability when people assume that they are subject to

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<sup>109</sup> Ho (2009) strongly advocates the idea that the impressive economy growth of China is due to its pragmatic approach, despite the country being socialist in nature. To him, our approach in examining development should shift from form to function. In this sense, China's success provides a strong counter argument on the neo-classical reading of the development policy, particularly in terms of privatisation and other government intervention policies.

<sup>110</sup> Without much state intervention.

arbitrary changes (Diermeier et al., 1997, p. 20). In this sense, credibility means the expectation that an announced policy will be carried out, and reflects not only the policymaker's intentions but also the state economy where the stochastic-shock<sup>111</sup> will be important (Drazen and Masson, 1994, p. 752).

Meanwhile, Grabel (2000) demonstrated the importance of credibility when she observed how the leaders of Brazil, Argentina, Hong Kong and Singapore were able to calm investors and induce private investments to return to their respective countries despite the Asian financial crisis (1997–1998). These leaders gained credibility when they were committed to the neo-liberal reform. They also got various external validations by private investors and multilateral institutions on their institutional reforms in their respective countries. In the context of the monetary policy, Blackburn and Christensen (1989, p. 2) argued that a lack of credibility would inhibit a sufficient fall in inflationary expectation in order to prevent the economy from being thrown into depression. In the context of international politics, credibility is a tool used in rallying international cooperation as well as to induce investment and to boast economic growth (Martin, 1993, p. 430; Haber et al., 2003, p. 2). With regard to informal rules and their relation to economic growth, the economic actors argue that informal rules do not have as strong an influence on the growth of the economy as the state does. Therefore, the state needs to establish formal rules in order to encourage economic activity thus promoting economic growth (Deimeier et al., 1997).

From a narrower perspective, the presence of credibility could minimise conflict because actors have shared rules, or the implementation of the policy has been abided by and been conducted in a fair and transparent manner. When the policy or institutions are supported by social and political actors, then such policy or institutions are said to have gained credibility.

#### **4.7.3 What Are the Characteristics of Credibility and How to Measure It?**

There are three criteria or parameters in analysing credibility or empty or non-credibility institutions: i) functionality; ii) imposition of institutions<sup>112</sup>, and; iii) power divergence<sup>113</sup>.

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<sup>111</sup> The 'stochastic-shock' refers to the situations or models containing a random element. As such, the model is normally unpredictable and without a stable pattern or order (BusinessDictionary, 2015).

<sup>112</sup> Discussion on the roles of power are also discussed in Section 4.7.4, 4.8.1, 4.8.2 and 4.11.1.

Firstly, as credibility concerns only the function of the institutions, Ho (2009; 2013; 2014; 2015) posited that the ultimate aim of the concept is to assess the 'institutional functionalism'. Ho's idea of analysing institutional credibility through functionality lens can be traced to the basic establishment of institutions in many fields: to fulfil its fundamentals or core functions of its establishment. Auber (1966) for example, highlights the fallacy of the Norwegian Housemaid Law to effectively function due to its inability to fulfil the purpose of the law establishment.<sup>114</sup> Meanwhile, Ilbery (1984) asserts the fragmentation of land by farmers through the Evesham Custom have contradicted the state's idea of unifying under individual holding. Ibery (1984) has also been able to show the divergent of interests between state's ideas and local aspirations. Guhan (1994) also asserts that the social security options including access to land and employment are prerequisite factors to the success of economic reform process. Guhan (1994) also stresses on the importance of institutional functions in reforming economic process.

Meanwhile, Grabel (2000, p. 2) argues that in order to employ the credibility concept, the truthfulness of assumptions about the epistemic condition in which economic actors live and the economic models that these actors use to interpret economic events are important to bear in mind. The similar observation offered by Aron (2000, p. 128) who argues that institutional credibility should be measured on the performance or quality of formal and informal institution rather than merely describing the characteristics or attributes of institutions. In other words, Aron (2000) clearly shows us that institutions should be measured on function rather than forms (the characteristics of the institutions). The importance of analysing function was also advocated by Rodrik (2002). He emphasises the important of institution and asserts that great awareness must be taken to avoid 'one policy fits all' in development. To put it differently, he shows that market and economic functions must be determined by their functionality aspects and not in forms (Rodrik, 2002, p. 189). In more direct and clear statements, Chang (2007, p. 19-20) asserts that in analysing institutions performance, focus must be given on function and it should precede forms. Chang asserts that forms do not guarantee particular outcome of institutions establishment (Chang, 2007, p. 20). Subsequently, Davy and Pelliserry (2013) who examine the existence of informal settlements in urban areas concluded that informal settlements (i.e. institutions) provide similar functions as the formal settlements – to provide security, peace and dignity to the residents.

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<sup>113</sup> Discussion on the role of power in institutions formation is also discussed in section 4.7.4, 4.8.1 and 4.8.2.

<sup>114</sup>See detailed discussion in Section 4.8.1.

Therefore, following the above authors' ideas, this research takes the stance that credibility is a label blind concept. Therefore, in analysing credibility, it does not give priority on the weak issue in neo-classical debates on development approaches such as state intervention versus market forces; or private versus public; or formality versus informality; or title versus un-title; or security of tenure versus insecurity; or whether the institutions are customary, insecure, inefficient, irrational, pervasive or labelling.<sup>115</sup> Rather, its analysis focuses from form to function and detaches itself from any normative conviction, political doctrine or theoretical assumption about form, i.e. teleology and evolution (Ho, 2009; Ho, 2013; Ho, 2014)<sup>116</sup>. By prescribing such approach and by detaching its examination in a pragmatic, flexible and non-orthodox fashion, the study on credibility thus concerns what works in a given space- and time-dependent context, and only after that, the question of form is raised (Ho, 2014, p. 24).

In addition, it directs us to focus more on explaining the '*performances or quality measures that might be important rather than merely describing the characteristics of attributes*' (Ho, 2014, p. 15). From this perspective, a credible institution exists when an institution performs a certain function in society or the community through perceived support, and is deemed credible by social actors or economic agents (Ho, 2014, p. 4). In other words, the study on credibility in institutions draws attention to the natures of an institution itself and the role of the government in its successful creation or failure. It also concerns the way in which an institution is perceived by social actors as well as how the institutions evolve over time. In the study on credibility, the institutions could rally a given level of perceived support and be deemed credible by social actors or economic agents (Ho, 2014, p. 16).

Another issue concerns the perception that credibility as a common rule relates to the issue of institutional change. Ho (2014, p. 16) asserted that: '*economic agents and social actors are not the one in which institution can be internally formed by an international agency...Contrarily, the game knows no external agency because all are in the game*'. In this sense, what Ho (2014) has proposed here relates to his assumption that credibility (institutions) is spontaneous order.

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<sup>115</sup> Hodgson (2004, p. 19) made a strong remark on this origin of institutions polemics when he said the puzzle of the chicken or the egg issue would bring an indefinitely puzzle and will never reach an end point.

<sup>116</sup> The neoclassical reading on institutions always centres on rationality and institutional change of institution. Credibility, on the other hand, detached from this perspective.

In order to investigate the credibility of institutions, Ho (2013, p. 1096) urged researchers to ask the following key questions as a basic guidance in his/her quest: *'what is the institutional structure in a given time and space-determined context, and what levels of credibility does it command?...why institutions – as endogenous, spontaneously ordered 'rules of the game' – are socially accepted by those whom they govern.'* In the case of the non-credible or empty institutions, understanding on the institutional structures is also required. The investigation of institutions in the credibility context must always be directed at function, or failed to function, which means what rules exist longitudinally and geographically – rules of the game (Ibid).

Again, Ho (2013, p. 6–7) argues that the credibility concept can be conceptualised as a theoretical continuum where an institution is placed between 'fully credible' and 'partially credible' or 'partially credible', 'empty' or even 'non-credible'. However, those categorisations are temporally and spatially determined<sup>117</sup>. He also stressed that there is no such thing as an ideal-type conflict-free (credible) institutions or fully contested (empty) institutions. Therefore, credibility neither represents equilibrium where the interaction and power divergences of actors have led to a negotiated balance over the distribution of resources nor does it equal a balance of power. Ho (2014, p. 16) found that credibility does not concern individual or personal acceptance but that the emphasis on the aggregate perception of institutions is common agreement. Therefore, credibility centres on the anticipation of future action as Ho (2014, p. 17) rightly reminded us: *'shared belief about how the game is played and to be played'*.

Secondly, the imposition of new institutions by the state leads to non-credibility when it fails to rally social and political support. The rejection of the new institutions is mainly caused by the inability of the institutions to adequately function as they ought to be – thus leading to non-credible institutions. The examples of such failures can be traced in many fields particularly in institutional change around land-agrarian reform in Latin America or Eastern Africa (Everingham, 2001; Andre and Platteau, 1998); forest titling in India and China (Kumar and Kerr, 2013; He and Zhu, 2008) as well as native title in Malaysia (Majid-Cooke, 1999; Alias et al., 2010).

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<sup>117</sup> This principle follows the idea as expounded by Blackburn and Christensen (1989, p. 36) who have asserted that credibility is not a permanent condition. Instead, it is likely to be time-dependent, having both impact and subsequent effects.

The last important aspect in analysing institutional credibility is, one has to be fully aware of the roles of power. As briefly discussed above, the roles of power are pertinent in analysing the credibility of institution. Again, this aspect has been explicitly discussed by various scholars. For example, in discussing the influence of credibility to institution, Grabel (2000, p. 15) asserts that the distribution of power in society needs to be taken into account when analysing credibility. She also stresses on the fact that credibility is founded on political power (Grabel, 2000, p. 2). Meanwhile, North (1994, p. 360-461) in discussing the objective of institution, highlights the roles of politics when he states that "*Institutions are not necessarily or even usually created to be socially efficient; rather they, or at least the formal rules, are created to serve the interests of those with the bargaining power to create new rules*". The power also influences institutions persistence as discussed by Acemoglu and Robinson (2006). According to them, despite the political elites could be losing their political power, they however, may still exert disproportionate influence in politics by increasing the intensity of their collective action (e.g. in the form of greater lobbying, bribery, or downright intimidation and brute force). By employing these approaches, it thus ensures the continuation of previous institutions (Acemoglu and Robinson (2006, p.326). In other words, despite institutional inefficiency, institutions persist due to differences in power and being forced upon.

In summary, the fundamental element in examining the credibility concept within this research is how EIA works or does not work in practice - the functionality aspect. The examination must also include the aggregate individual actors' perception and lived experience as both factors will affect the level of credibility. When the public feels distrust towards the state or other actors due to their failure to undertake reform or function as actors/agency ought to do, this will seriously threaten the institutions. Another way to probe credibility would be through examination of the socio-economic conditions of PAP due to resettlement schemes and changes in land tenure.

However, the pertinent question remains unaddressed. Who actually provides credibility? In the case of China, Ho illustrated that the establishment of credible institutions rest with the local actors, but it is done neither intentionally or consciously. However, this is not to suggest that the state plays a trivial role. In fact, the state plays a crucial role in instilling credibility by demonstrating the persistence of policy, thus any changes in government policy would be regarded as a threat to credibility (Weimer, 1997, p. 8).

#### 4.7.4 What is Empty<sup>118</sup> and a Non-credible Institutions?

This research posits that the opposite extreme of a credible institution is non-credible while empty institutions positioned in the middle of the theoretical continuum concepts. A few factors drive the creation of an empty institution; for example, an empty institution could emerge as a symbolic compromise over sensitive social issues in order to avoid conflict (Ho, 2014, p. 16). An empty institution is also constructed when powerful actors attempt to engineer social change through the imposition of new rules (Ho, 2005a; Ho, 2005b; Ho, 2006; Ho, 2014). In social, economic and political terms, an empty institution relates to the concept of a collective trust in the system.

Meanwhile, in terms of rules, the empty institutions embody new rules that are not perceived as common. In this sense, the empty institutions contain rules, be it policies, regulations or organisations, with little or even a negative effect on the behaviour and action of the social actors. As a result, the institutions are generally unenforceable or heavily contested or creates conflict. It also features environmental degradation, and the victimisation of farmers, as Ho found in his studies (2005a; 2005b; 2006; 2009; 2013; 2014, 2015). As such, the empty institutions are nothing more than a paper agreement, a mere empty shell or hollow shell, and it can bring about a negative effect on the actions of social actors (Ho, 2005a; Ho, 2005b; Ho, 2006; 2015; Ho and Spoor, 2006). In this light, Ho's idea on a less credible or empty institutions are related to the concept of window dressing or symbolic law, or also known as 'decoupling' to students of institution. In the above situations, the rule, or EIA in this context, does not become a guide to decision-making. Instead, EIA becomes a way of rationalising and legitimating decisions or approval that have already been made by the state. In short, in this light EIA is used just to meet procedural requirements.

In the same vein, the empty institutions also relates to what Martin (1993, p. 415) illustrated in the concept of 'action' or 'cheap talk' in international politics. Schelling stressed that

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<sup>118</sup> Hajer (2003, p. 175) introduced the concept 'void' institutions – *'...there are no generally accepted rules and norms according to which policy making and politics is to be conducted'*. Meanwhile, to Puffer et al. (2010, p. 441) who analysed entrepreneurship institutions in Russia and China refers institutional void as 'a situation' in which *"Transition economies are often characterized by underdeveloped formal institutions, often resulting in an unstable environment and creating a void usually filled by informal ones."* However, this research study views that the 'void' concept as discussed in the context of emerging markets or neo-liberal is different from the empty concept. This is because the former refers to institutional arrangement that is credible (or empty) because it dissociates from daily practices.

*'actions speak louder than words... Merely describing one's commitment to a particular course of action carries little weight'*. This so-called 'cheap talk' does not cost anything and is typically discounted by other actors (Diermeier et al., 1997, p. 23). Meanwhile, Ostrom (2005, p. 222) observed that the effectiveness of legislation, one form of rules, will be undermined if state interventions are deemed to support commercial interests above local interests. To avoid the empty institutions in this context, in a system that is governed by the rule of law, there must be consistency between the rules-in-form and the rules-in-use (Ostrom, 2005, p. 20). Meanwhile, in the case of forest tenure, Ho (2005a, p. 14) states that the manifestation of a low credibility or empty institutions are expressed in bad management practices, normally with a high incidence of social conflict.

What about non-credible institutions? Evolving from empty institutions traits, non-credible institution surfaces when the symbolically rules or status quo actions of institutions become shattered. The difference between empty and non-credible centres on rules is: unenforced rules (empty institutions) versus shattered or broken rules (a non-credible institutions).

After having examined the EIA as an institution from the context of credibility and property rights, the researcher had also now expanded this investigation into the new theoretical approach of implementation theory. The next section aims to complement our understanding, examining why EIA works or does not work.

#### **4.8 The EIA Problems: Insights from the Implementation Theory**

This research has posited that implementation theory can be a vital theory in supporting our understanding of implementation policy hindrance in developing countries, including Malaysia. Pressman and Wildavsky (1973, p. xix) defined implementation as *'to carry out, accomplish, full fill, produce and complete'*, while Hill and Hupe (2009, p. 3) provide almost the same definition in describing it as *'to carry out, accomplish, full fill, produce, complete'*. Meanwhile, Bardach (1977, p. 56) defined implementation by using the metaphor of 'games'. In these games, he examined implementation by *'looking at the players involved, what they regard as stakes, their strategies and tactics, their resources for playing, the rules of playing (which stipulate boundaries beyond which lie fraud or illegitimacy), the nature of the communications (or lack of them) among the players, and the degree of uncertainty*

*surrounding the possible outcomes. The game metaphor also directs our attention to who is not willing to play and for what reasons, and to who insists on changes in some of the game's parameters as a condition for playing'.*

In general, the discussion on implementation theory has mainly revolved around three (3) approaches: the top-down approach, the bottom-up approach and the synthesis approach (See, Bardach, 1977; Pressman and Wildavsky, 1984; Sabatier, 1986; Hill and Hupe, 2009). As the name suggests, the top-down approach is dominated by central actors that would take an approach that tends to empower the single actor while leaving other actors unattended. Meanwhile, the bottom-up approach stems from local actors – also known as street-level bureaucracy (Berman, 1978). The implementation policy may occur at two (2) levels, namely macro and micro levels of implementation. At the macro level, the implementation process normally dominates the top or hierarchy or central actors, while at the micro level local actors influence implementation policy. Swapping between the two and the effort to extract both strengths have led to the emergence of the synthesis approach. In the synthesis approach, the problem of any study is to examine all major categories of actors and not simply programme proponents (Sabatier, 1986, p. 39).

It is obvious there are numerous problems that could hamper policy success and many of them are context dependent. However, the following factors are commonly identified by implementation policy scholars, such as Pressman and Wildavsky (1973), Edward III (1980), Lipsky (1980) and Makinde (2005):

- i. a lack of continuity in government policies;
- ii. inadequacy in human and material resources;
- iii. the gap between the stated policy goals and the practice;
- iv. policy ambiguity or lack of clear goal and objectives;
- v. multiple actors and agencies in policy implementation; and
- vi. human frailty, including disposition and attitudes.

This research study posits that the important factor that brings EIA implementation or, to be specific, policy formulation failures is because the rules (i.e. EIA) have been used to enrich certain elites, thus, the implementation policy has been hampered by compromising the rules. This is in line with Bardach's (1977, p. 51) observation that the existence of complexities of joint action was due to the presence of many actors who threatened EIA.

The researcher is concerned with policy being just a symbol while the implementers themselves have divergent interests and motives, i.e. vested interests.

Like other policies, EIA involves bureaucrats as its implementer. Therefore, the successes and failures of EIA partly rely on the implementation process. What have implementation theorists discussed in relation to the failures of policy implementation in developing countries? In this research, the symbolic law<sup>119</sup> and decoupling concepts are posited as concepts related to low credibility and form part of the implementation theory discussion. Both concepts are deemed essential in order to explain why low credibility practice has been implemented in EIA, especially in the case of Malaysia.

#### **4.8.1 EIA as a Symbolic Law**

This research has included the concept of symbolic law in the discussion on policy implementation. It aims to explain the factors that influence policy implementation, which according to Burnett (1998) can be divided into two (2) main groups: the contextual factor and behaviour of individual actors<sup>120</sup>. The symbolic law concept was originally proposed by Aubert (1969). He highlighted the implementation gap between the law in print and the law in practice. By using the Norwegian Housemaid Law as a case study, Aubert demonstrated how the law was compromised socially and politically. In addition, there was little connection between the law's target groups and the public authorities. The ambiguity that accompanied it caused the law to be ineffective. According to the study by Hill and Hupe (2009, p. 137), a symbolic law is an inappropriate policy response that could bring about no impact to the problem. The concept of symbolic law explains why certain norms and values are not widely accepted in society without the lawmaker having considered their practical feasibility and the feasibility of implementation (Hill and Hupe, 2009).

According to Newig (2007, p. 277), the term 'symbolic law' refers to *'laws which despite their ambitious officially declared objectives that are designed to remain ecologically ineffective'*. Meanwhile, to Murray (1990, p. 16) and Hironaka and Schofer (2002, p. 226), an indication of symbolic law can be assessed through symbolic commitment. A symbolic law

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<sup>119</sup> This research study acknowledges that there is heated debate on the meaning of symbolic. For example, according to Scott (2001, p. 173), the noun 'symbolic' is not equivalent to the decoupling (smoke and mirrors) adjective. Instead, the organisation may pose dual features – symbolic and real concern. He further reiterates that symbolic does not necessarily create decoupling.

<sup>120</sup> The examples of contextual factors are policy standards, budgetary resources, and social and economic conditions. On the other hand, the behaviour of the individual actors relates to demands and interests, which affects implementation (Burnett, 1998, p. 214–215).

has less substance than a non-symbolic law (Newig, 2007, p. 277). In a general sense, symbolic law offers less meaning than substance in a practical way (Ho, 2000a, p. 243). Therefore, symbolic law has been found to be generally ineffective because the manner in which symbolic law is formulated ensures that it could not achieve its aims since the law has been established just to satisfy the faction that opposes it (Ibid).

However, how does any law become symbolic? According to Hill and Hupe (2009, p. 138), symbolic law is a kind of policy type process that is introduced to convince the public that the government is concerned about the issue rather than to actually deal with the issue. Symbolic law mainly occurs due to the existence of hidden agendas in the strategic behaviour of politicians (Newig, 2007, p. 277). Caldwell (1988, p. 75), on the other hand, opined that the concept of symbolic law applied in the case of the NEPA (1969) because the Act contained no court-enforceable requirement; in the context of politics, symbolic law implies political action that does not achieve its apparent purpose because the respective policies 'do not have teeth' (Bluhdorn, 2007, p. 256). Meanwhile, Bartlett (1990, p. 90) noted that EIA can be '*intendedly ineffectual*' and '*merely symbolic window dressing*' depending on how it has been implemented. According to Shulock (1999, p. 228), symbolic law has also stemmed from the naïve assumption of the traditional policy analysis view that presumes that a good design policy will affect decisions and help solve the problems of the client. On the other hand, the interpretative scholars have viewed policy as a symbol of the legitimate decision processes that can increase support for the governance process in a society that values rationality (Shulock, 1999, p. 229).

According to Murray (1990, p. 16) and Hironaka and Schofer (2002, p. 226), governments can adopt and implement an environmental assessment process in order to appear to purportedly be doing something to take environmental information and values into account, while the actual decision-making is changed minimally. In Murray's view, token or purely symbolic environmental assessment processes are often characterised by vague guidelines, limited or non-existent enforcement, with no legislative base and public comment received only to placate concerned individuals, while their involvement makes no impact on the decision process. The principal intention of symbolic law is to act as a gesture to appease the public or specific interest groups without substantive action (Ibid). Parallel to the above authors' observations, Edelman (1971, 1987) discussed the idea that politics can be used as symbolic action to legitimise the regime and help stifle potential dissenters, it influences how

people view leaders, themselves, what they will accept, what they want and what they demand (Edelman 1971, p. 175).

In summary, symbolic law occurs when the rules exist without strong enforcement thus making the legislation nothing more than procedural requirement<sup>121</sup> or a statement of good intentions. In the context of EIA, and as reminded by Hironaka and Schofer (2002, p. 226), when the decision an EIA decision is made entirely on grounds external to the EIA and EIA is unable to form an integral part of the planning process, then it becomes symbolic law.

#### **4.8.2 EIA as a Decoupling Policy**

In addition to the 'symbolic law' concept, other scholars, Meyer and Rowan (1977, p. 357) for example, have proposed the term 'decoupling' whereby activities and processes aim to avoid social conflict. The goals for this type of policy *'are made ambiguous or vacuous and categorical. Ends are substituted for technical ends, integration is avoided, programme implementation is neglected, and inspection as well as evaluation are ceremonialised'* (Ibid). Decoupling in this sense intends to control and coordinate activities in institutionalised organisations that could lead to conflict and loss of legitimacy<sup>122</sup>.

However, to Meyer and Rowan (1977) decoupling has been found to give a positive effect as it acts as an organisation buffer from the inconsistencies and anomalies that are involved in technical activities. In this regard, despite activities varying in response to practical considerations, decoupling would maintain standardised, legitimating and formal structures of the organisation. Parallel to Meyer and Rowan's (1977) observation, Scott (2001, p. 172–173) states that decoupling has put organisations under pressure to adopt particular structures or procedures. Making the changes to their formal structures was done just to signal conformity but then, through buffering internal units, it allowed them to operate independently of these pressures.

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<sup>121</sup> In the EIA field, many authors have applied different terminologies to refer to a similar concept of symbolic law such as 'tokenism', 'window dressing', 'symbolic politics model' and 'legitimating device' (see, for example, Amy, 1990; Bartlett, 1990; Bartlett and Kurian, 1999; Bhurs, 2009).

<sup>122</sup> Here, legitimacy is defined as the acceptance and justification of a shared rule by a community. This definition self-consciously combines an empirical measure of legitimacy (acceptance of a rule or institutions as authoritative) and a normative argument concerning whether the authority possesses legitimacy by providing reasons that justify it (Meyer and Rowan, 1977, p. 357).

In relation to this, Schofer and Hironaka (2005, p. 26) explained that decoupling was introduced by the neo-institutional school due to the frequent disjuncture between the institutionalised policies and substantive outcomes. To borrow Hironaka and Schofer's (2002, p. 216) words, *'it is a condition of the disconnection between plan and implementation'*. Decoupling between nation-state policy and outcomes would tend to be generated because the structure of the international system is centralised and lacking any overreaching 'world state' or centralised system of authority (Ibid).

In considering the reasons for decoupling policy, Hironaka and Schofer (2002, p. 217) opined that three (3) factors could have attributed to the situation: i) failing to meet its existing commitment; ii) the symbolic act of the policy; and, iii) the EIA tenet is based on a rationalistic and bureaucratic procedure rather than providing a substantive solution. This has led to decoupling in the following ways: i) the goal is complex and difficult to define; ii) there are great uncertainties regarding the methods and technologies of achieving it; iii) opposition from the industry that makes the EIA legislation impossible to enact; and, iv) these decoupling situations have consequently led to the actual monitoring of the environmental outcomes being overlooked. In relation to this, there is no single organisation responsible for evaluating and monitoring EIA.

After having discussed the implementation theory on the concept of symbolic law and decoupling, it is necessary to view how EIA works or does not to work in practice. To do so, the next sub-section of this chapter will discuss the six (6) models of EIA as proposed by Bartlett and Kurian (1999).

#### **4.9 The EIA Models: An Explanation on How EIA Works or Does Not Work in Practice**

In view of the fact that these models are important in order to shed light on how EIA works in practice, this section briefly discusses the six (6) EIA models. This section aims to explain the supporting concepts relating to how and why EIA works or is supposed to work in practice. This discussion has been solely based on the most cited article on EIA models – an article by Bartlett and Kurian (1999). Bartlett and Kurian (1999) propose six (6) models of EIA: i) the information processing model; ii) the symbolic politics model; iii) the political

economy model; iv) the organisational politics model; v) the pluralist politics model; and, vi) the institutionalist model.

In the information processing model, EIA is viewed as a technical process, governed by scientific and technical rationality comprising the collection of relevant and mostly technical agencies (Bartlett and Kurian, 1999, p. 417). The core assumption in this model is that the individual is making decisions based on information in a process that is apolitical. EIA in this sense is assumed to be devoid of political and economical goals (Ibid). Therefore, this model views EIA as a mere technique for generating, organising and communicating information. This is particularly true to Third World countries where EIA is regarded as a tool in order to ensure economic development (Bartlett and Kurian, 1999, p. 418). The second EIA model is the symbolic politics model, which regards the EIA legislation as merely a symbolic exercise or window dressing that is often implemented in a grossly inadequate way. EIA is a technique for duplicity legitimisation of the exercise by the powerful. According to this model, EIA is a science rhetoric that is used to legitimise decisions already made for reasons of political expediency (Ibid).

Meanwhile, the third EIA model is the political economy model where EIA is assumed to have taken place voluntarily or semi-voluntarily by private actors or businesses, which would lead to the internalisation of externalities by those actors in order to respond to the market demand (Bartlett and Kurian, 1999, p. 419). This EIA model can be integrated to promote better environmental performance in manufacturing practices through evaluation and certification; for instance, eco-labelling and eco-auditing (Bartlett and Kurian, 1999, p. 420).

The next model is the organisational politics model, under which EIA operates by changing the organisational structures and processes, including the changed values, organisational culture and even the kinds of individuals hired, retained and promoted (Bartlett and Kurian, 1999, p. 421). Meanwhile, in the pluralist politics model, EIA is simply an interpretation of the pluralist theory, a popular conception of the nature of politics in the industrialised capitalist democracies – a process of negotiation, bargaining and compromise among organised groups (Bartlett and Kurian, 1999, p. 423). The primary focus of this model is on public participation, which is deemed a necessity for any meaningful EIA. The model notes the limitations of participation. On a strong note, the model acknowledges the politics of the government IA process.

The last of the EIA models is the institutionalist model, which brings about changes in formal and informal rules that govern environmental decisions as a result of altered values, beliefs and norms of the wider society. According to this model, the success and effectiveness of EIA is measured through the degree to which the values are transformed, ways of doing things are changed, and orientations and perspectives on what should be done are modified in order to incorporate environmental values. The institutionalist model aims to enhance the normative goal of EIA as an ecological rationality device.

What can these six (6) EIA models tell us in relation to this research study, in particular, how EIA works in practice? The EIA models provided by Bartlett and Kurian (1999) are found to be important as they have systematically attempted to direct us to the core reasons why EIA works or does not work in practice. The models try to document how the actors in EIA implementation perceive EIA.

#### **4.10 Technocratic Approach in the EIA Process**

As the treatment of EIA can be gauged through public participation, it is necessary to investigate this aspect. Technocratic and participatory approaches are two (2) general development orientations that have revolved around the top-down and bottom-up approaches. In the participatory approach, public participation has always been seen as a political tool in decentralising decision-making in IA. On the other hand, the technocratic approach is an approach that tends to be dominated by elites or 'people in power' (Formby, 1990; Goldman, 2005; McCormick, 2007; Kakonen and Hirsch, 2009; McDonald-Wilmsen and Webber, 2010; Gururani and Vandergeest, 2014). Thus, the technocracy approach inclines to neglect social study or public involvement in the decision-making process (Formby, 1990; Lockie, 2001; Kakonen and Hirsh, 2009; Barrow, 2010).

Historically, the word 'technocracy' was coined after the First World War and it has received a variety of definitions.<sup>123</sup> Milne (1982), however, observed that there are different applications of the concept by ASEAN countries, namely Indonesia, Thailand and the Philippines. He concluded that, generally, technocracy is '*to describe economic thought inspired by the kind of rational analysis at the base of the physical sciences*' (Milne, 1982, p. 403). Milne (1982, p. 409) further unpacked the concept when he asserted that the

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<sup>123</sup> See for example, the extensive review by Milne (1982, p. 403–405).

technocratic approach has actually been disassociated with the concept through either educational qualifications or occupation. Rather, what is more decisive is their outlook and attitude – he provided this definition:

*Technocrats share an ideology of modernization, an aversion to politics, a belief in the free enterprise system and yet a need for government planning, an elitist view of society, and a commitment to development.*

Milne (1982) also viewed the term technocrat as mainly referring to the economist, engineer and businessman. Meanwhile, in the context of EIA, the technocratic approach is defined as '*...a particular view of society's decision-making process: that these are, or should be, comprehensively rational*'. That is, the view that such processes are, at least ideally, devoted to objectively investigating the effects of alternative courses of action and selecting that which has the great net benefits for society (Formby, 1990, p. 191). The technocratic paradigm in EIA is a result of concern about impacts on the natural environment. It is also due to domination of engineers and natural scientists in the process of preparing EIA studies and reports (Formby, 1990, p. 192). However, in the context of Malaysia, technocrats are also equated to politicians (Milne, 1982, p. 425). Technocrats gain special attention in Asia's politics; it is argued that they acquire a special kind of expertise, so they are deemed well-suited to tackle development problems (Milne, 1982, p. 413).

In the context of IA, the SIA for example, the technocratic approach is associated with rationality (Formby, 1990; Lockie, 2001). According to Lockie (2001, p. 279), at least four (4) approaches can be regarded as employing the technocratic rationality: i) SIA is regarded as a technique/method/instrumental manipulation and engineering of people (and nature) in pursuit of unexamined goals and economic development; ii) SIA is ill-equipped to deal with competing complex social situations such as interests, beliefs, values and aspirations; iii) this approach is favoured by technical/engineering/natural sciences who are uncomfortable with, or sceptical about the involvement of the public who they regard as an uninformed public; and, iv) relating to power – a technocratic definition of an impact, an aspiration, a value and a fact is considered to legitimatise and be relevant (in contrast to subjectivity and emotionality). Kakonen and Hirsh (2009), in their study on Mekong River and its tributaries, found that scientific and expert knowledge overweighed local knowledge. This technocratic approach undermined the legitimisation of the projects.

Moreover, Barrow (2010, p. 295) states that a technocratic action orientation to SIA is typically adopted by government agencies. According to Barrow (2010), this approach is also commonly used by public agencies looking to meet legal requirements associated with EIA and the natural resources planning and management, as well as by many private sector developers and consultants. He further explained that '*some favour a technocratic 'top-down' and others a more participatory 'bottom-up' strategy*' (Ibid). Meanwhile, Formby (1990, p. 192) observed that in Australia the technocratic approach has inclined to play down political dimensions and social aspects of EIA.

In relation to this, Tang et al. (2005, p. 4–5) observed that in many developing countries with an authoritarian system, environmental regulations have largely been initiated by government officials from the '*top-down*' approach, often in response to international pressure rather than to entertain public demand from within the country. It was also found that domestic environmental groups have had little involvement in drafting environmental regulations. As such, government bureaucrats tended to develop the EIA process in accordance with their interests. In turn, they tended to design the process in a way that is administratively<sup>124</sup> convenient for them to implement and allowed for little oversight by the public (Tang et al., 2005, p. 5). They went on to stress that government bureaucrats also tended to design the process in a way least likely to arouse organised opposition from political and economic elites, who have always viewed EIA as an unnecessary burden on the development project they sponsored. This in turn often means the EIA process is structured with little public participation and transparency, limiting its potential as an effective tool for environmental protection (Ibid)

In relation to the bureaucratic nature of EIA, Hironaka and Schofer (2002, p. 218) asserted that even though it brings about systematic and official procedures, the report lacked analysis and synthesis. To them, EIA merely offers a new bureaucratic procedure rather than providing environmental awareness.

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<sup>124</sup> In a specific approach to displacement, McDonald-Wilmsem and Webber (2010, p. 146) proposed the term 'managerialist'. According to them, this approach gives emphasis on policy and procedures as well as physical displacement and remuneration. The approach also tries to simplify the experiences and interests of those displaced. In addition, it is less interested in seeking PAP participation in the planning process and ignores the social complex of social changes due to displacement.

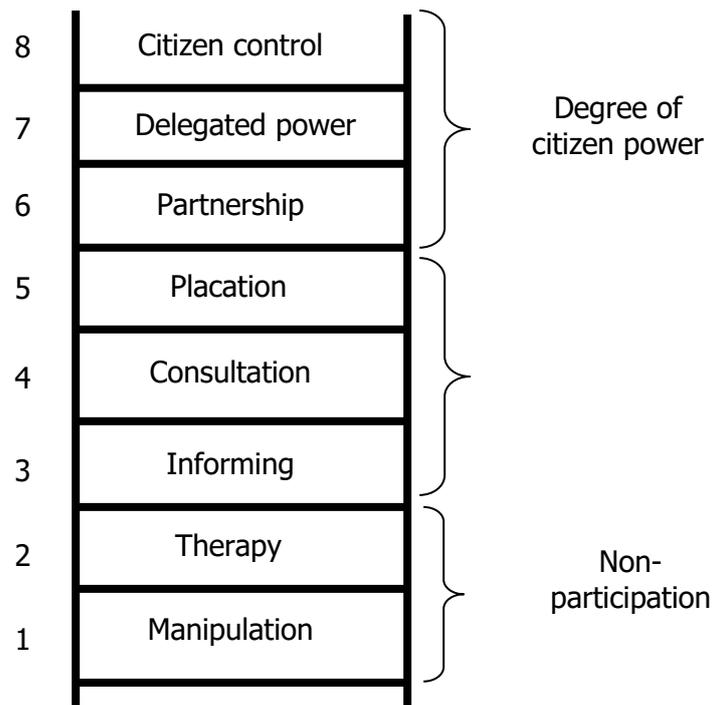
#### **4.10.1 Symbolic Public Participation in the EIA Process<sup>125</sup>**

A participatory approach uses public participation as a process of consulting the public/communities in planning development projects. In the context of EIA, public participation is an essential element in which the public can express their views through various methods such as public hearing, survey, informal meeting and so on. An important issue in public participation is how meaningful the public participation is. Arnstein (1969) provided the concept of the ladder of citizenship participation where she conceptualised participation into an eight (8) rung value-ladder (see Figure 4.1).

Not all degrees of participation can be considered as genuine participation. The manipulation rung relates to when the population is manipulated to accept the professional view. The therapy rung relates to where the participation is merely to ensure a passive acceptance of an eventual decision. Both the manipulation and therapy rungs are considered non-participation. The next three (3) rungs are regarded as more formal participation – ‘tokenism’. The three (3) rungs comprise informing, consultation and placation. Though informing is the underlying principle in participation, it is not considered participation, and consultation without the possibility of influencing a decision is viewed as ‘tokenism’. A placation is a situation where the population is encouraged to overcome distrust with non-essential items in an attempt to ensure acceptance of the significant matters. The real degree of participation is called ‘citizen power’ in which the public is involved through partnership in decision-making, or through delegated power and ultimately through citizen control.

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<sup>125</sup> In her study on the Hydroelectric EIA in Brazil, McCormick (2007, p. 240–242) found that environmental impacts tend to be accounted for only after a site has already been chosen, rather than in advance.



Source: Arnstein, 1969, p. 219

**Figure 4.1:** The eight (8) rungs on the ladder of citizenship participation

Staerdahl et al. (2004, p. 3), on the other hand, categorised public participation into three (3) categories. Their categorisation of public participation is quite similar to Arnstein's (1969) concept albeit reduced from eight (8) to three (3) groups: legitimatising participation, instrumental participation and democratic participation. Staerdahl et al. state that legitimatising participation occurs when the aim of the participatory process was only to legitimise the process and not have any influence on the substantive content. Instrumental participation would occur when public input is encouraged in order to improve the quality of the report, but the report neglects the public's prioritisation of problems and benefits. Only when the input and priorities of the public have been taken into account in the decision-making process can this type of public participation be called democratic participation.

Following on from this discussion on the reasons for conflict or threats to credibility, the next section will explain the source and manifestation of low credibility – social and environmental conflict.

#### **4.11 Manifestation of Empty or a Non-credibility Institutions: From Symbolic Law and Decoupling to Social and Environmental Conflict**

In discussing the credibility concept, the one concept that can become a threat is conflict. This is because conflict hampers the development of the socio-economic aspect. It brings less meaning to the policy or even negative effects from the policy introduced, leading to a hollow shell or empty institutions. The negative effects in this regard include conflict that is generated from the institutions. An institution that generates more conflict and increases the scale of its intensity would become an unstable institution or in this case an empty institution (Ho, 2003; Ho, 2005a; Ho, 2005b; Ho, 2006; Ho, 2009; Ho, 2013; Ho, 2014; Ho and Spoor, 2006). Therefore, this research posits that the concept of institutions and EIA cannot be separated from conflict.

According to Knight (1992, p. 40) institutions are created or are a by-product of substantive conflicts over distributions that are inherent in social outcomes. In the context of credible institutions, conflict is a manifestation of those who have intentionally developed institutional rules in order to gain strategic advantage vis-à-vis other actors. According to Oishi (2005, p. 53), the causes of conflict vary, ranging from an interpersonal to an international level.

However, the basic question at this stage is: 'What is conflict?' There is no single concept that can represent the universal definition of conflict. However, to begin with, it is useful to recap the conflict definition from Coser (1956), the influential American sociologist, who describes it as '*...a struggle over values and claims to scarce status, power and resources in which the aims of the opponents are to neutralize, injure or eliminate their rivals*'. Meanwhile, Simmie (1974) offered a similar definition when he stated that conflict occurred because individuals did not share many values and aspirations and each would seek to organise society in such a way that it served mainly his interest.

In discussing the obstacles to establishing socially efficient institutions, Knight (1992) viewed conflict as an outcome of conflicting interests of actors. The conflict between individual self-interest and social efficiency could occur because each actor would prefer to obtain a greater individual pay-off even without social inefficiency. In this light, each actor would prefer less efficient forms of organisation as long as these rules could result in an increased

individual share of profits. However, Oishi (2005) proposed a more practical definition. According to him, conflict stems from conflicts over the use and allocation of environmental resources. A similar definition of conflict is also offered by Rubin et al. (1994), who defined conflict *as 'perceived divergence of interests, or a belief that the parties' current aspiration cannot be achieved simultaneously'*.

#### **4.11.1 Sources of Conflict**

The basic question before us now is: What are the basic roles of conflict to an institution in general? Generally, there are two (2) thin lines when discussing social conflict. From the neo-liberal school view, it is a product of the inefficiency of institutions in distributing resources. On the other hand, other scholars have given more focus to the functionality of social conflict.

Firstly, let us examine the neo-liberal view on the sources of conflict. In explaining the inefficient roles of institutions, North (1990) opined that conflict is rooted in uncertainty or ambiguity in rules of human interaction that has made actors interpret rules based on their own perception.<sup>126</sup> Echoing the same line of thought as North, Vatn (2005) proves that conflict could arise due to uneven distribution or restricted resources and the problem of coordinating conflicting interests. However, Acemoglu (2003) extended both views by suggesting that societies often choose institutions, or even undertake disastrous courses of action, because these choices are not made for the benefit of society as a whole, but for the benefit of those who are in the powerful groups with vested interests.<sup>127</sup>

Meanwhile, to the functionalist scholar of social conflict, Coser (1956; 1957; 1964; 1967), for example, argues that conflict serves as a positive role for the individual and society where it maintains, adjusts and makes adaption of social relationship and social structure. In his view, conflict plays different roles in different contexts. For example, within a group, conflict helps to revitalise existent norms or contribute to the emergence of new norms. On the other hand, conflict within other groups could contribute to the establishment and reaffirmation of the identity of the group and maintain its boundary against the surrounding

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<sup>126</sup> McCormick (2007, p. 233) states conflict is due to incompatibility of knowledge structure between expert and lay people.

<sup>127</sup> However, Weingast (2009) states that the presence of rents and patronage could minimise conflict. Instead, he is of the opinion that the state's inability to consolidate control over violence, a perpetual state, and the ability to treat their citizens impersonally, including providing policies on an impersonal basis are the prime sources of conflict along with the rules of law (Weingast, 2009, p. 38).

social world. Coser (1964, p. 119–120; 1967, p. 202) also explains that any rigid system which suppresses the incidence of conflict would lead to the emergence of radical cleavages and violent forms of conflict. Conflict would also stimulate the economy and technological realm (Coser, 1967).

However, Ho (2005a; 2005b; 2006; 2009; 2014; 2015) asserted that actors' perception of a conflict can be used in measuring institutional credibility. In Ho's view, there is positive causal relationship between conflict and the state of institutions where the higher the level of conflict the higher the level of emptiness (Ho, 2006). However, the sharp warning given by Ho (2014) is worth attention here; he emphasised that the existence of a credible institution does not imply there is no conflict as the concept of conflict itself is a continuum that ranges from conflict free to heavy contest. Despite the fact that credibility can be a continuum concept, it rejects the concept of an 'equilibrium view on institution'.<sup>128</sup> In this regard, Ho (2014, p. 16) specifically emphasised that *'credibility not necessary equals balance of power. In fact, one might argue that a steady status is never reached, as the notion assumes that conflict is present in any institutional arrangement or change'*.

In credibility, institutions that govern the game are the autonomous results of endogenous power differences and interactions between actors (Ho, 2014, p. 16). On the other hand, Knight (1992; p. 19) asserted that the emergence of institutions was due to conflict over social expectation and the credibility efforts to establish them. Numerous changes or innovations in our society are found to induce social change whereby it is brought about by agency or structures. Again, Knight (1992) found the ongoing development of social institutions is best explained as a by-product of conflict over distributional gains where rational actors aim to maximise the benefits and interest. Barrow (2010), however, challenged the direct role of conflict when he said that in some situations conflict might upset the status quo of development and enable or encourage the change situation.

On the destructive view of conflict or in the macro perspective and at the national level, Everingham (2001, p. 83) states that protracted confrontation and social violence over property rights could pose a serious threat to an unconsolidated democratic institution. He also observed that persistent conflicts have left thousands of farmers and workers vulnerable to economic uncertainty and relentless legal challenges (Ibid). Meanwhile,

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<sup>128</sup> It refers to the stable (equilibrium) outcomes due to people interaction (Vatn, 2005, p. 4) or the common knowledge (Aoki, 2007, p. 10).

Sidaway (2005) opined that conflict is endemic in social life because power is differentially distributed among groups and individuals in society<sup>129</sup>. According to him, social change may respond in two (2) different ways depending on the social structures, either flexibly or rigidly. Conflict could act as a stabilising process in social groups, as it could serve the functional purpose of allowing adjustment to be made in social norms or in the power balance. Flexible social structures could tolerate conflict and may even institutionalise it so that it could be used to eliminate dissatisfaction. On the other hand, in rigid social structures, which lack tolerance or the institutional mechanism to deal with conflict, hostility could accumulate. Conflict could then become 'dysfunctional' as it would tear the system apart.

In relation to this, Ho (2014) added that a nexus between the institution and conflict is at a certain level of conflict, and particularly when an institution is no longer capable of absorbing it (conflict), it could lead to a new institution. In this light, an institution that generates more conflict would consequently become less credible, or empty (Ho, 2006). According to him, conflict would impede the operation of the socially efficient institutions because actors would maximise self-interest through rules which could limit them moving from greater individual utility to individual utility (Knight, 1992).

Conflict in this regard could aid in understanding the causes of conflict and might help developers become more accountable. It might also encourage developers to integrate diverse disciplines in planning, thereby assisting efforts to achieve sound development. Perhaps the explanation by Ho (2005) on forest tenure could be applied in this context: '*The low credibility of forest tenure is expressed in bad management practices and the high incidence of social conflict*'. The importance of investigating conflict in EIA is clearly stressed by Susskind (1982, p. 6) who suggested that conflict has been at the heart of most environmental disputes. Presence of social conflict in this regard could erode the efficiency of an institution. Thus the law that was introduced (e.g. EIA) is merely a symbolic law or 'decoupling', whereby inspection and evaluation of organisation is just ceremonialised and merely for symbolic reasons (Meyer and Rowan, 1977; Meyer and Rowan, 1991; Scott, 2001).

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<sup>129</sup> McCormick (2007, p. 237) explains that conflict over hydroelectric dams in Brazil is a response of widespread corruption.

As suggested by Barrow (2010), conflict in projects, plans, programmes, policies, cultural development, socio-economic development and environmental changes could run the risk of hindering development. He explained that conflict is an interplay process between EIA stakeholders. A development or environmental change can cause social impacts that contribute to a conflict in a negative or positive manner and then conflict can cause social impacts that affect the developer or the environment. Meanwhile, the developer can cause environmental impacts, which could contribute to the conflict too (Barrow, 2010, p. 294).

In contrast, by providing sound technical data and participation through the involvement of various stakeholders, whether in the use of EIA or SIA, could provide a management platform for conflict resolution or mediation (Prenzel and Vanclay, 2014; Peltonen and Sairinen, 2010; Manring et al., 1990). In this regard, Sidaway (2005) argues that public participation in decision-making and partnerships could be one of the methods of resolving conflict. This view is in line with the normative argument for mandating EIA, which centres on the hope that it should lead to more effective environmental protection. If EIA's procedural and process requirements are fully met, and of course are not symbolic law, EIA could provide a futile ground on coordinating conflicting interests. Public participation could be utilised for this purpose. It is also presumed that an initialisation of EIA would trigger reform and change in the existing decision-making process (Buhrs, 2009).

#### **4.11.2 From Credibility to Trust – the Causal Effect of Non-credible in Institutions**

Conflict affects the credibility of institutions, which consequently leads to the erosion of the institutional authority. According to Inglehart (1997, p. 306), the erosion of the institutional authority is usually attributed to the fact that the government was less effective, which could be in terms of incompetence or corrupt government. Meanwhile, at the society level, when there is no trust of one another, human activities need to be operating under a system of formal rules and regulations that have to be negotiated, agreed to, litigated and enforced through third-party enforcement roles. Therefore, widespread distrust in a society would impose a kind of tax (transaction costs) on all forms of economic activities and impact market efficiency (Fukuyama, 1995; Quddus et al., 2000). Rothstein (2005) found that this eventually could lead to a 'social trap' situation whereby individuals, groups or organisations are unable to cooperate due to mutual distrust and a lack of social capital even when

cooperation would benefit all. Therefore, trust plays a vital role in reducing harmful conflict, which in turn could decrease transaction costs (Meyerson et al., 1996).

#### **4.12 Synthesis of Concluding**

This chapter has discussed the theoretical lenses that have been used in this research. As highlighted, there are three (3) main theories that guide this research – institutions, property rights and implementation. The researcher argued that these three (3) theories complement each other and are together able to provide a holistic understanding as to how EIA as a social rule is being implemented in the context of Malaysia. The theoretical review in this chapter has illustrated how the threats to property rights and, to a large extent the factors that would undermine the credibility of the institutions. The chapter also provided a brief explanation of the debates in the theory of implementation policy which centres on the top-down-synthesis approach. Following on from this was discussion on the credibility concept and the concepts of conflict and symbolic law or 'decoupling', which aimed to enrich and expand the discussion on the issue of EIA. Since the credibility concept relates to the concepts of trust and legitimacy, a brief explanation were provided to distinguish them. To complement the discussion on credibility, the concept of conflict and its relation to trust was also reviewed. Lastly, the researcher traced the sources of conflict incidents from the institutional perspective.

To summarise this theoretical discussion, this chapter has highlighted the principles of analysing institutional credibility. It is obvious that the first principle in analysing institutional credibility is through the functionality aspect. In assessing the credibility of the institutions, the functions of the institutions are the main aspects of investigation. In this respect, the founding purposes of the institutions supersede its forms. As such, to apply in the context of this research study, institutional analysing has been made on: i) the roles of EIA or institutional interventions in ensuring that the project gained sustainability, as the ultimate aim of the EIA, and; ii) the functionality of the current land reform to facilitate the socio-economic livelihood and life experience of the PAP; iii) the conflict generated from the institutional interventions, and; iv) the perceived state facilitation of the PAP. Meanwhile, other theoretical nations such as symbolic and decoupled perspectives as discussed in the chapter are actually boil down and complement to the issue of institutional functions failure.

Meanwhile, the second principle in analysing institutional credibility is the way the institutions are being designed. The non-credibility aspects of institutions occur when they are being imposed to the targeted people without consideration of the functionality aspect which is the first and main principle in analysing institutional credibility. Institutions established driven by rent-seeking always tend to fall into the empty or non-credible institutions trap. As shown in this chapter, the numerous examples of fields of study and in many different countries have shown that when the newly established institutions failed to properly function it then leads to many negative consequences. Problems of enforcement, deteriorating of the socio-economic aspect of the targeted people, decrease trust towards policies or institutions, government and politicians as well as conflict incidents are clear testimonies of institutional dysfunction.

The above mentioned two conditions or principles then bring us to the third aspect in analysing institutional credibility: divergence of power. Therefore, it should be clearly stated that the institutions established are resultant of power dynamics between the state and the targeted people. It has been observed that this element is pertinent in significantly shaping and structuring institutions – be it credible, empty or even non-credible. However, this proposition does not entirely suggest that non-credibility only occurs when there is imbalance power between the actors. Instead, power works as a point of departure. In this regard, the discussion in this chapter has highlighted the importance of credibility, empty or non-credibility of institutions in providing red flag to the development. When the institutions have displayed the empty or non-credibility conditions, it then should alert the state to restore, realign or readjust the institution to its previous functions, if not to stop the imposition of the new institutions in order to make it regain credibility.

The political-economic settings such as the autocratic of governance or developmental state approach in managing the country, as well as the emphasis of technocratic way in handling decision-making process are the compounding factors to the EIA problem at macro level. Deriving from the above credibility theory parameters, it has been used as a basic framework in analysing institutional credibility in the Malaysian EIA system. In addition, it will be used in shaping and structuring the next three chapters – Chapters 5, 6 and 7 in particular, although the previous two chapters – Chapters 2 and 3 had employed such framework.

# 5

## Malaysia: Land, Ethnicity and Rent-Seeking

### 5.1 Introduction

This chapter provides an explanation of the background of an explanation on the two states in which the BHP and KDP are located: the States of Sarawak and Pahang respectively. Prior to that, this chapter will first focus on Malaysia in general, with the political institutional structures, rent-seeking activities and political patronage being briefly examined. To consider rent-seeking from the correct perspective, this chapter has laid down a general discussion on Malaysia's NEP and its founding objectives. Consequently, the discussion would focus on the two affected states where the BHP and KDP are located. A brief socio-economic background on the States of Pahang and Sarawak will be discussed. For each state the discussion will deal with, among other things, PAP and the Orang Ulu and Orang Asli land rights issue. This includes the Malaysian government policy on NT as well as its roles and the general challenges in maintaining NT rights. The discussion also touches on the conflict which was caused by land complaints. The final section of this chapter devotes its attention to dam development in Malaysia, with its relations to EIA and the impacts of the dams and motivations for construction being discussed.

This approach is deemed essential in order to illustrate the political setting of Malaysia particularly the element of ethnicity and political patronage which are shaping the country's development policy, including the EIA. The discussion is also necessary in order to provide reasons as to why the PAP perceives that they have lost their NT. Above all, this chapter aims to provide answers to the main research question – what has caused the development and EIA institutions for that matter to be perceived as having low credibility in the Malaysia. It also aims to reveal the socio-economic conditions of the PAP that could influence EIA as an institution gains a state of credibility, or, alternatively, non-credibility. Consequently, this

chapter will reveal the state of the art of the PAP which then would allow us to understand power divergence between them and the state.

## 5.2 Malaysia in General and the Reasons for Site Selection

Strategically located in Southeast Asia, Malaysia is a federation of 13 states, divided into two regions: namely Peninsular Malaysia and East Malaysia, which consists of Sabah and Sarawak (Figure 5.1). Peninsular Malaysia covers an area of 132,339 square kilometres; Sabah covers an area of 73,631 square kilometres and Sarawak, the biggest state in Malaysia, covers an area of 124,450 square kilometres (DOS, 2010, p. 1).



Source: Drawn by Nor Hisham, M.S.

**Figure 5.1:** Malaysia in the context of Southeast Asia (left) and Malaysia by states (right)

Malaysia's population in 2010 was 28.33 million, of which 17.52 million (61.83%) were Bumiputera<sup>130</sup>; 6.39 million (22.6%) were Chinese ethnic; and 1.90 million (6.7%) were Indians. Other ethnic and non-Malaysian citizens accounted for 2.51 million (8.9%) (DOS, 2010, p. 9). Malaysia practices constitutional monarchy. Its GDP in 2010 was RM (million) 765,965 with manufacturing driving the economy (see Table 5.1).

<sup>130</sup> The Malays and other Bumiputeras including the Orang Ulu and the Orang Asli are defined as '*Bumiputera*'. Other ethnic including the Chinese and Indians are grouped as non-Bumiputera. It is worth mentioning that there is no legal definition of Bumiputera in the Federal Constitution. However, it has roots in Article 153 which relates to the definition of Malay and 'aborigine' and its special recognition.

**Table 5.1:** Basic facts about Malaysia

<b>Aspect</b>	<b>Notes</b>
Area	330,290 square kilometres
Location	Between Singapore and Thailand (for Peninsular Malaysia) and Kalimantan Indonesia and Brunei (for East Malaysia–Borneo States)
Population in 2010	28,334.1 million with Malays predominant
Income level	Medium high income
Type of government	Federation of 13 states
Organization of government	Constitutional Monarchy
Economy	Manufacturing
GDP (at the current prices, 2012)	221,948 (RM million)
Major exports in 2010	Electrical and electronic products with (RM million) 249,907

Source: DOS, 2010

With Malaysia being an emerging economic country, the Malaysian EIA system is worthy for study based on the following factors: i) there is considerable criticism on the implementation of the EIA policy levelled against the credibility of the Malaysian EIA projects, particularly when it is being characterised with conflicts; ii) since EIA is a state business, it is interesting to see how and what the state's capacities are for dealing with EIA effectively; iii) consequently, from the theoretical point of view, EIA policy has raised the issue of how to design or facilitate a credible institutions, that would be willingly accepted and shared by the social and political actors in Malaysia. Parallel to this perspective, as pointed out by Gosh et al. (1999, p. 16), the dynamic role and significance of the state is the central aspect of the Malaysian political economy that its development approach has been based on; and, iv) since many of the EIA projects have taken place in rural areas where indigenous people live, it is worthwhile to examine how indigenous people<sup>131</sup> in the study areas have responded to the EIA rules that were forcefully imposed upon them. With the view that PAP have been resettled at new resettlement schemes, it interesting to examine the extent to which social engineering has played a role in the institutional credibility.

### **5.3 Malaysia Political Institutional Setting**

Since gaining independence from Britain in 1957, the ruling party in Malaysia has been the National Front (NF). It is a coalition of mainly 13 ethnic based parties with the United

<sup>131</sup> This research has consciously used the term 'indigenous'. It generically refers to the Aboriginal people, Natives or the Original people and so on. However, one must keep in mind that under the Malaysian Constitution, the term also refers to the Malays, the Orang Asli and the natives of Sabah and Sarawak. In the context of this research, the term refers specifically to the Orang Ulu and the Orang Asli (GOM, 2013a).

UMNO, a Malay ethnic party, being the dominant party.<sup>132</sup> As a federated country, each state in Malaysia has its own legislative assembly and remains autonomous through the provision of powers through the Federal and State Lists as stipulated in Part IV of the Federal Constitution (Ninth Schedule) (GOM, 2013a). Generally, Malaysia's political system can be placed between democracy and authoritarianism (Khoo and Francis, 2002). Khoo and Francis' study on the political system in Malaysia has shown that its fundamental elements of democracy are slowly diminishing. For example, the obvious executive aggrandisement vis-a-vis the monarchy – the non-level playing field in the election – accelerated the pattern of money politics as well as increasing the political and cultural fragmentation. These factors have led many political scientists to view Malaysia as moving towards an authoritarian political system (Khoo and Francis, 2002).

Despite a clear federal domination in many political areas of the Borneo States, namely Sabah and Sarawak, these states exercise different levels of autonomy from other states in Malaysia (Yusoff, 2006; Chin, 2008). This is particularly related to the constitutional protection accorded in the Ninth Schedule of the Federal Constitution; List II-State List has provided power for both states on land and natural resource matters as well as on native law and custom (GOM, 2013a). In addition, in the case of Sarawak, the state has been accorded to the 18-point-agreement which offers a bastion for state rights. The agreement was made by the State of Sarawak before it agreed to join the Federation of Malaysia in 1963. The agreement has enshrined rights of the state on staffing of the civil service, religion, language, head of government, immigration and so on. Generally the agreement intends to maintain Sarawak's identity as well as to shield the state's rights from federal intervention.

#### **5.4 The NEP, Ethnicity and Political Patronage**

The economic development in Malaysia has significantly changed through the introduction of the NEP<sup>133</sup> in 1970 by the second Malaysian PM, Abdul-Razak Hussien (1970–1976). This

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<sup>132</sup> The other component parties in the NF are: i) the Malaysian Chinese Party (MCA); ii) Malaysian Indian Party (MIC); iii) Parti Pesaka Bersatu (PBB), from Sarawak; iv) Sarawak United People Party (SUPP); v) Parti Gerakan Rakyat Malaysia (GERAKAN); vi) People Progressive Party (PPP); vii) Liberal Democratic Party (LDP); viii) Parti Bersatu Rakyat Sabah (PBRS); ix) United Pasokmomogun Kadazandusun Murut Organisation (UPKO); x) Parti Bersatu Sabah (PRS); xi) Sarawak Progressive Democratic Party (SPDP); and, xii) Parti Rakyat Sarawak (PRS) (NF, 2015).

<sup>133</sup> Articles 153 and 161 clearly enshrine the special position of Malay and aborigine; this affirmative action has treated the Bumiputera and non-Bumiputera ethnic separately where the former were entitled to privileges and the latter less so, or not at all. The Bumiputera and non-Bumiputera requirement has since existed and been

affirmative policy was a reaction from the race riots of 13<sup>th</sup> May 1969 which were, among other things, attributed to ethnic plurality and economic dualism between the Malays (traditional) and Chinese (modern) (King, 2008; Pramanik, 2007; Gomez, 2002; Jomo and Gomez, 2000). The NEP was created to correct the inequality which was too entrenched in the fabric of Malaysian society at that time (Faaland et al., 2003, p. 13)<sup>134</sup>. The NEP has two objectives: i) to eradicate poverty through raising income levels and increasing employment for all Malaysians irrespective of race; ii) to restructure Malaysian society in order to reduce and eventually eliminate the identification of race with economic function (Bruton, 2007a; Bruton, 2007b; Lim, 2011; Gomez et al., 2013; Shamsul, 1986; Milne, 1986). To achieve these noble intentions, the NEP objectives have been translated into many policies, programmes and projects.

In contrast to the state passive intervention on the economy and the emphasis given to the *laissez-faire* approach prior to the NEP period (1970–1990), the NEP has allowed the state to play an active role in economic activities through the distribution of resource allocation and the ownership and control of business enterprises (Bruton, 2007a, p. 55). However, despite this positive assessment of the NEP intentions, the implementation of the programmes had faced severe criticism. Many critics have found that it has become the source of political patronage and rent-seeking activities (Jomo, 1991; Gomez and Jomo, 1999; Jomo and Gomez, 2000; Gomez, 2002; King, 2008; Dhillon, 2009; Wain, 2009; Tan, 2008; Tan, 2015).<sup>135</sup>

Jomo and Gomez (2002, p. 279), for example, have observed that rent-seeking<sup>136</sup> resources, including access to agricultural and natural resource sectors, have become dominant in the NEP era. This is probably not surprising since the intention of business and political elites to

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enforced in most of the government policies. However, according to Faruqi (2003, p. 31) many constitutions such as that in the USA, Cyprus and India have also empowered schemes of preferential treatment to economically, socially and culturally disadvantaged communities or sections of society.

<sup>134</sup> Faaland et al. (2003, p. 13) have listed four leading factors that sparked the racial riot namely: i) the Chinese opposition political parties questioned the Malays' rights; ii) the militant way the Democratic Action Party (DAP) campaigned on the concept of Malaysian Malaysia; iii) the immediate gains of citizenship given to non-Malays have given them political strength; and, iv) Malay aspirations to improve their economic status vis-à-vis the non-Malays did not materialise as expected.

<sup>135</sup> In relation to this, Jomo (1991), for instance, has critically examined the NEP objectives in reducing poverty and interethnic economic disparities, especially between the indigenous Bumiputeras and non-Bumiputeras. Jomo has also scrutinized the NEP's ultimate aim – namely national unity – and he found that while there was significant reduction of poverty in Malaysia, the interethnic tensions have worsened due to the implementation of the NEP.

<sup>136</sup> Khan (2000, p. 70) has defined rent-seeking as the expenditure of resources and efforts in creating, maintaining or transferring rents. The expenditures could involve legal (e.g. lobbying, queuing or contributions to political parties) and illegal forms (e.g. bribes, illegal political contributions, expenditures on private mafias).

grab opportunities through the NEP was documented in the proposals and resolutions of the Kongress Ekonomi Bumiputera (Indigenous Economic Congress) in 1965 and 1968 (Shamsul, 1986, p. 190–191). According to Shamsul, many Malay capitalists strongly advocated this idea since they have long been frustrated in regard to two government agencies: i) the Rural and Industrial Development Authority (RIDA); and, ii) the failure of the Malay National Investment Company (Shamsul, 1986, p. 191). These two government agencies were perceived to be under performing and have poorly assisted the Malay participation in the state economy.

Rent-seeking and political patronage in Malaysia became obvious when it was found that personal ties or social networks were perceived as an important mechanism for significant business growth in Malaysia and development of organised business groups, particularly after the introduction of the NEP (Chan, 2012; Jomo, 1991; Gomez and Jomo, 1999; Gomez, 2007; Khan and Jomo, 2000; King, 2008; Tan, 2008). It was observed that the phenomena of patronage, rent appropriation and other forms of amalgamation of politics and economics have particularly flourished during the premiership of Mahathir (1981–2003), who started major infrastructure projects through the privatisation programme (Dhillion, 2009; Gomez et al., 2013; Wain 2009; Tan, 2008; Gomez and Jomo, 1999). The era of his 22 year rule witnessed his government actively promoting selective patronage that involved the privatisation of public enterprises which were created or developed during the early NEP years as a key mechanism to help nurture Malay capital (Gomez, 2013, p. 91). In this regard, it is interesting to recall what was observed by King (2008, p. 170):

*...political criteria became much more important in business, and economic development than technical competence or entrepreneurial experience. This did not mean that corruption and nepotism took hold completely or that these practices necessary spawned inefficiency and incompetence, but that patronage was an overriding concern for those who wanted access to government decision-makers in order to establish, develop and conduct business.*

However, White (2004, p. 389) has observed that, historically, the close relationship between politics and business has long been inherited from the colonial British rule<sup>137</sup>. Generally, political patronage was based on a relationship between a superior (patron) and

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<sup>137</sup> White (2004) has chosen the term 'crony capitalism' to describe the close relationship between the state and big business in contemporary Southeast Asia.

their inferior (client) (Khan and Jomo, 2000, p. 10–11). As mentioned by Gomez and Jomo (1999, p. 128) the patronage network alluded to in this research study is a situation where privatised contracts have been given out to businessmen with close political ties. In Gomez and Jomo's view, these networks – such as political patronages are still being developed by aspiring politicians to this day. Patronage has been associated with rent-seeking; this was observed by Pecorino (2006, p. 355) who has shown how rent-seeking could influence the market and the behaviour involved through establishing personal contact with the person who gives the rent. This relationship resembles a deal between politicians and lobbyists.

In discussing the NEP, this research study postulates that this rent-seeking behaviour and political patronage cannot be dissociated from the privatisation programme, which is the main vehicle for achieving the NEP objectives. The privatisation programme has been defined as *'the economic reform aimed at expanding the capital market and trimming the size of the public sector'* (Gomez, 1994, p. 14). The staunch proponent of the privatisation policy is none other than the fourth Malaysian PM, Mahathir Mohamad who has defined privatisation as *'the transfer of government services and enterprise to the privatised sector'* (Ibid).

The privatisation programme has been introduced because the government's view is that the companies and services owned by the government have been less successful or have run at a loss because the government's management methods differ greatly from those of the private sector (Gomez, 1994, p. 14). In other words, privatisation would bring about effectiveness through strengthened institutional capacity and more appropriate decision making regarding candidates, contract specification and regulation (Tan, 2008, p. 27). Therefore, the government is of the opinion that market-driven privatisation would eliminate the problem of poor operational and functional performance of state-owned Enterprises (SOEs) and the underinvestment in infrastructure. By reducing state intervention in economic activities, it will encourage employment and investment. Privatisation will also constrain the behaviour of politicians and bureaucrats who pursue their own utility rather than the public interest (Tan, 2008, p. 10–12).

However, again, the intention of the NEP proved to be good in print only. Tan (2008, p. 56) observed that procedures remained centralised and personalised in the hands of the Ministry of Trade and Industry (before 1990) and the Ministry of Finance (MOF) (after 1990). The consolidation of power and personalisation on privatisation became obvious when Daim

Zainuddin, a close friend of Mahathir, was appointed Finance Minister in 1984 (and held that post until 1991). It was observed that a large proportion of privatised projects were awarded through non-transparent procedures to relatively small groups of capitalists, both Malay and non-Malay. Many of them were connected to the political leadership, in particular the PM and Finance Minister (Tan, 2008; Smith, 2003). In this regard, Handley (1997, p. 239) has long observed that the Build–Operate–Transfer (BOT) projects which formed the majority of the privatised projects in Malaysia has been done through non-transparent, uncompetitive means including awarding them to politically-favoured firms. This approach undermines the basic goal of privatisation itself.

One might wonder how political parties, especially UMNO, get themselves involved in business. As mentioned by Wain (2009, p. 125), under the Societies Act 1966, UMNO as a political party was not permitted to do business. To bypass this regulation and to conceal its assets, the party used the common practice of appointing a nominee or executive, or alternatively trusted individuals (prominent businessmen), who surreptitiously held stakes in various companies on UMNO's behalf. It was clear that the ruling party, NF, or more specifically UMNO, the dominant party in the front, used its position to be involved in business activities. Wain (2009) has asserted that political patronage has produced more businessmen who were inclined to support UMNO or NF. Therefore, the NEP has led to enormous concentration of power in the hands of the ruling party of the government, i.e. UMNO. The patronage of politics and economies has become a source of wealth accumulation to UMNO and it has inevitably led to numerous conflicts of interest (Mahmood, 1994, p. 67).

Despite facing a handicap in getting direct benefit from the NEP (economy cake), Chinese ethnic businessmen managed to knot ties between the Malay political elites; so both sides complemented each other. To Chinese businessmen, providing financial assistance to ambiguous politicians would mean gaining access to government patronage as well as appointing Malay politicians and bureaucrats to chairman or managing director posts. In their view, the larger and politically well-connected enterprises allow them to enjoy better access to government-created rents; business size and political influence have interacted as part of the new Malay idiom of power in contemporary Malaysia. On the other hand, the support of Chinese businessmen has been seen to be important in order to support political campaigns (Gomez and Jomo, 1999; Gomez, 2007; Tan, 2015).

Considering this background, it is interesting and not surprising to see that Malaysia is ranked third in the 2014 crony-capitalism index<sup>138</sup>. However, not all political patronages were equated to economy inefficiency. For example, Jesudason (1997) has shown that in the context of Malaysia, development and patronage are seen compatible to economic process.<sup>139</sup> He states that the developmental clientelist<sup>140</sup> is politically stable because the economic growth and political patronage combine to bring about support for political leaders. UMNO as the backbone of the ruling party has realised that sufficient overall growth must be maintained in order to ensure the general mobility of the broad population. On the other hand, in order to suppress the Chinese and Indian or non-Bumiputera's criticism of the NEP, enough economic opportunities must be generated in the private sector in order to meet their aspirations (Jesudason, 1997, p. 160).

Mahathir has also justified and defended such a phenomenon on the basic of the spirit of the NEP which aims to correct this inequality in the socio-economic through restructuring society and the economy through state intervention and the imposition of a formidable range of requirements on business, both foreign and Chinese (Jomo and Gomez, 2000; King, 2008). In addition, although the presence of rent-seeking and political patronage has been obvious in Malaysia, Sloane-White and Beaulieu (2010, p. 384) argued that weak civic participation has been due to Malaysia's authoritarian laws and the limited public space, which have made UMNO cling to power. They have argued that even with blocked democracy, citizens were found to be satisfied.

In general, while the NEP's successes in eradicating poverty and restructuring the Malaysian society has been well acknowledged, it was nonetheless found that the Malaysia GDP has been hampered by it. For example, by using the regional standard when the NEP was introduced in 1970, Malaysia was ranked third behind Japan and Singapore. However, by 1990, it had fallen behind South Korea, Taiwan and Hong Kong (Pramanik, 2007, p. 302–303). In addition, the privatisation of the power sector in Malaysia, i.e. electricity has

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<sup>138</sup> See the full article in The Economist (2014).

<sup>139</sup> By employing transaction costs lens in South Korea, Indonesia and Philippines, Kang (2013, p. 440) argues that cronyism including family-based clans, personal relationship, and informal network does not entirely raise transaction costs. He posits that cronyism with not too few or too many actors would enhance cooperation, lead to better information or provide more opportunities. Such characteristics also would allow longer time horizons for side payment and reciprocity, reduce monitoring costs, and make enforcement of agreement easier.

<sup>140</sup> Kurrer (1996) as quoted by Jesudason (1997, p. 149) has unpacked the concept of the developmental state; he views it as a state which is characterised by, among other things, '*a commitment to economic development by political and bureaucratic elites...*'. On the other hand, the clientelist gives emphasis on the '*...maintaining of political power over commitment to economic growth, the bureaucratic is competent and ineffective, economic growth is slow and legitimacy is weak*'.

eliminated competition in power supply creating a monopoly resulting in higher prices of electricity for consumers (Smith, 2003, p. 273).

## **5.5 Rent-seeking in Construction Industry: How It Could Affect the EIA Credibility?**

Many large infrastructure projects<sup>141</sup> have been built in Malaysia in attempts to strengthen the economic structures and to instil a psychological sense of rapid technological development. These projects also aimed to symbolise the new modern image of Malaysia (Dhillon, 2009; Oishi, 2005; King, 2008). The architect behind these ambitious infrastructures was no other than the Malaysian's fifth PM, Mahathir Mohamad. Among his pet projects are the Kuala Lumpur City Centre (KLCC), Cyber Jaya, the Kuala Lumpur International Airport (KLIA), Malaysia Super Corridor (MSC), the Formula One racing track project and of course the two dam projects – BHP and KDP. Not only have these physical developments brought enormous pressure to EIA institutions, but it has also been observed that rent-seeking activity accompanied and motivated these ambitions and grand projects.

During the period of the Tenth Malaysia Plan (2011–2015), the construction sector was expected to contribute to Malaysia's annual economic growth of 3.7 percent (GOM, 2010, p. 60). Under this Plan, a total of RM (billion) 230 was allocated to the development sector (GOM, 2010, p. 62). Meanwhile, values of gross output and cost of input in 2007 alone were recorded at RM (million) 60,716 and RM (million) 42.617 respectively. This was comparatively higher than the RM (million) 41,755 and 23,361 for the same aspects in 2002 (DOS, 2011a). In this sense, Pramanik (2007, p. 303) has found that projects in construction and supplies disproportionately benefited politicians and their allies, including businessmen and local bureaucrats, rather than the intended beneficiaries – the local people.

How can rent-seeking affect rules or regulation? To put it in the context of EIA, the state's ability to monitor, enforce and abide by EIA regulation was found to be at stake. Therefore the tendency of groups or individuals behind the privatisation to violate EIA regulation as long as their or their patrons' projects could continue has become a real worry. Any EIA project that was proposed through personal ties and political orientation would be subject to

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<sup>141</sup> These infrastructure projects and export-led industrialisation strategy introduced by Mahathir via his Vision 2020 have been accused to breed, promote and accelerate expensive investment and political patronage (Shamsul, 1991, p. 8).

less monitoring and enforcement; thus it would jeopardise the rules involved. This is because political interference can affect the EIA rules. This is also attributed to the broader context of the political economy of development in Malaysia, which has been concerned with the role of class relations in development (Ghosh and Salleh, 1999, p. 17).<sup>142</sup> Infrastructure projects, where the EIA rules is applied, were created and distributed among those who have connections to the ruling party. It was observed that the senior party members were given directorship positions in the company to ensure they maintain control in the decision-making process.<sup>143</sup> The political influence on infrastructure development has been an open secret. As the ruling party formed the government, they control the source of licensing, tender and award. The ruling party determines what and how much remuneration should be given. The infrastructure projects have been used as a tool for financial benefits, to both individuals and the party, in order to make sure that the ruling party stay in power.

As this research hopes to show, the political elites have been using their networks to get away with bending project rules and regulations, in this case EIA. Both dam projects have provided rent-seeking opportunities to political and business elitists through licensing, tender and business opportunities. The BHP and KDP are two of the many projects developed during Mahathir's premiership. Both case studies should provide a good example of how UMNO or NF has controlled access to these projects. This research takes the stance that political patronage for both projects, and the credibility of the institutions, are undermined by political patronage and state interest. Businessmen with political connections tend to abuse some of the regulations in order to obtain benefits from state institutions.

In this regard, considering a direct observation of Savacool and Bulan (2011, p. 4857) concerning the political patronage impacts to EIA is helpful:

*Corruption, an enduring political problem in Malaysia, also impacts social, economic and environmental components of the project, producing a flawed environmental impact assessment..*

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<sup>142</sup> Of course, this has also been attributed to the broader context of the political economy of development in Malaysia which is concerned with the role of class relations in development (Ghosh and Salleh, 1999, p. 17). In this case, the introduction of the NEP, which aims to uplift the socio-economic of the Bumiputera in particular, is a perfect example of how class relations are working in the Malaysian context.

<sup>143</sup> See, the next discussion in Chapter Six and Seven as to how the politician-linked companies, for example, have provided a platform for politicians and their patrons to grab the benefits.

Similarly, in another publication, Savacool and Bulan (2013, p. 130) concluded that the EIA report for the resettlement of the BHP was done simply to rubber stamp the project.

Having discussed Malaysia's problems of rent-seeking, the following section will discuss the States of Sarawak and Pahang, with the discussion touching on state populations, administrative matters and people, namely the Orang Ulu and Orang Asli, and their land legislations. This will be followed by a discussion on conflict caused by land rights conflict and dam development in Malaysia.

## **5.6 Background of Sarawak State and its Population**

The State of Sarawak, widely known as 'Land of the Hornbills', is one of the Borneo States. The State of Sarawak occupies an area of 124,450 square kilometres and is geographically located along the south-western part of the island of Borneo. It shares its southern boundary with Kalimantan of Indonesia and adjoins the State of Sabah and the sultanate of Brunei to its north-east. Sarawak is the biggest state in Malaysia, occupying more than one-third (38%) of Malaysia's total area of 330,843 square kilometres and is inhabited by multicultural ethnics including the Orang Ulu communities, which have been grouped as 'other Bumiputera'.

Since 1981, Sarawak was headed by the CM Taib Mahmud who has been the longest serving CM in Sarawak<sup>144</sup>. The latest (tenth) Sarawak State election shows that the NF, which was led at the state level by Taib Mahmud, managed to regain almost full control of the Sarawak State election. As shown in Table 5.2 and Figure 5.2, the total Sarawak population in 2010 was 2,471,140; of which Iban was the majority with a population of 713,421 or 28.9 percent, followed by the Chinese with a population of 577,646 or 23.4 percent.

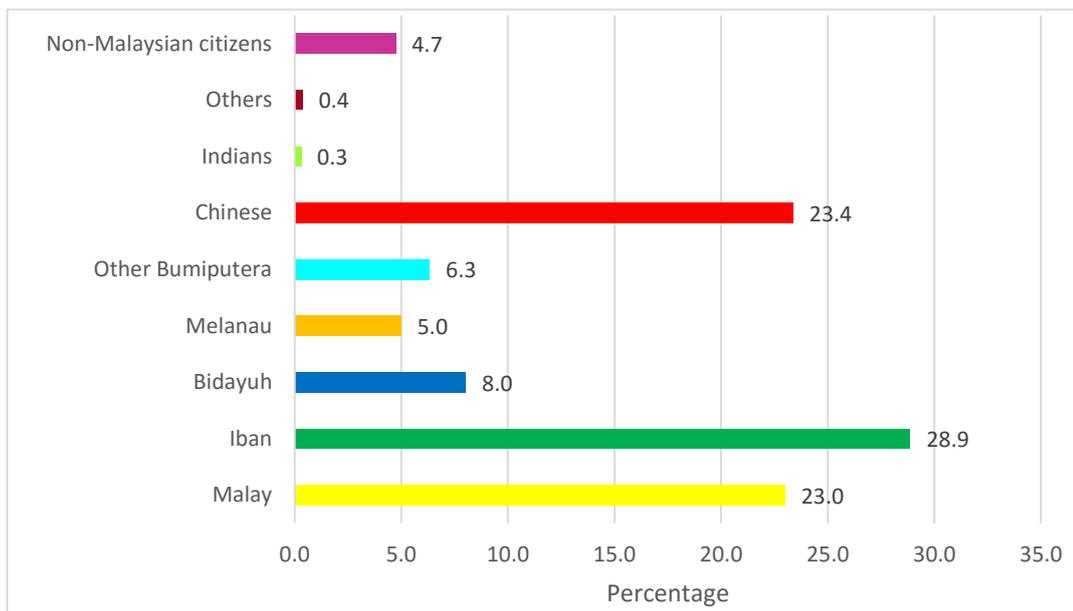
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<sup>144</sup> As of 28<sup>th</sup> February 2014, the fifth and current CM of Sarawak is Adenan Satim. He is the cousin of the previous CM, Taib Mahmud. Taib Mahmud, on the other hand, was elevated and appointed as the seventh Sarawak Head of State (Governor) on the 1<sup>st</sup> March 2014. This is the highest state position although it has no executive power.

**Table 5.2:** Sarawak’s population by ethnic group in 2010

<b>Ethnic</b>	<b>2010</b>	<b>Percentage (%)</b>
Malay	568,113	23.0
Iban	713,421	28.9
Bidayuh	198,473	8.0
Melanau	123,410	5.0
Other Bumiputera	156,436	6.3
Chinese	577,646	23.4
Indians	7,411	0.3
Others	9,138	0.4
Non-Malaysian citizens	117,092	4.7
<b>Total</b>	<b>2,471,140</b>	<b>100.0</b>

Source: DOS, 2011a, p. 74



Source: DOS, 2011a, p. 74

**Figure 5.2:** Sarawak’s population by ethnic group in 2010

Meanwhile, the Malays ethnic constituted the third highest with 568,113 or 23 percent while Bidayuh having a population of 198,473 or 8 percent. Other Bumiputeras, including the Orang Ulu recorded a population of 156,436 or 6.3 percent (DOS, 2011a, p. 74). It is worth mentioning that the Orang Ulu are the people native to the Sarawak<sup>145</sup> study area. By definition, they are classified as Bumiputera in the Malaysian Constitution<sup>146</sup>.

<sup>145</sup> Article number: 161a

161A. (1), (2) and (3) (Repealed).

Clause (6) In this Article 'native' means: (a) in relation to Sarawak, a person who is a citizen and either belongs to one of the races specified in Clause (7) as indigenous to the state or is of mixed blood deriving exclusively from those races; and, (b) in relation to Sabah, a person who is a citizen, or a child or grandchild of a person of a race indigenous to Sabah, and was born (whether on or after Malaysia Day or not) either in Sabah or to a

In the context of Sarawak context, the distinction between ethnics can be viewed from three broad geographical categories: i) the Malay-Melanau grouping, comprising predominantly Muslim Coastal dwellers; ii) the Dayaks, or non-Muslim indigenous groups such as Iban and Bidayuh (as well as the Orang Ulu), who are traditionally longhouse dwellers who practice shifting cultivation and mainly occupy the upland zones; and, (iii) the Chinese, who have officially been regarded as the non-Bumiputera and are engaged in trading and other urban based activities as well as commercial agriculture (Cramb and Dixon, 1998 in Cramb, 2007, p. 43).

The Orang Ulu, the sub-ethnic group affected by the BHP, is mainly concentrated in four divisions, namely Kapit, Bintulu, Miri and Limbang (Lian, 2003, p. 303). The Orang Ulu is one of the native tribes in Sarawak. Not only are they small in terms of population, as a general comparison to the main ethnic groups in Sarawak, the Orang Ulu are considered a socially, economically and politically weak group<sup>147</sup>.

Blessed with natural resources, Sarawak is a rich state which has great potential to become a powerhouse. Taib Mahmud has referred to his plan to make Sarawak a hydroelectric hub. In addition to BHP, Sarawak has also Batang Ai Dam<sup>148</sup> and the latest one, the Murum Dam, which is still under construction. This electricity generation will not only supply electricity within Malaysia, including Peninsular Malaysia and Sabah, but exportation to neighbouring countries like Kalimantan Indonesia, Brunei and the southern Philippines is also planned<sup>149</sup>.

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father domiciled in Sabah at the time of the birth. Under Clause I **(7)** the races to be treated for the purposes of the definition of 'native' in Clause (6) as Indigenous to Sarawak are the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, Kadayans, Kalabit, Kayans, Kenyags (including Sabups and Sipengs), KajAns (including Sekapans, Kejamans, Lahanans, Punans, Tanjongs dan Kanowits), Lugats, Lisums, Malays, Melanos, Muruts, Penans, Sians, Tagals, Tabuns and Ukits (GOM, 2013a, p. 158).

<sup>146</sup> The Bumiputera status is specially mentioned in Article 153 and Article 161 of the Federal Constitution, where special position in terms of special rights, for example in public service, scholarship, education, business and other special facilities. As to the majority of Bumiputera, a special position to Malays is also constitutionally conferred in Articles 86 and 90 that are related to the Malay Reserve Land (MLR). The Articles mainly aim to protect the land from been sold to the non-Malay (GOM, 2013a).

<sup>147</sup> In an article, Lian (2003) has concluded that despite the Orang Ulu ethnic being constitutionally conferred privileges under the Bumiputera status, in reality they are generally in a weak state. This conclusion was made after he examined the socio-economic as well as political position of the Orang Ulu as compared to the mainstream ethnics in Malaysia.

<sup>148</sup> The resettlement of the Batang Ai hydroelectric project was undertaken in 1982. This involuntary resettlement involved 3,000 people of the Iban ethnic. It was well acknowledged by Hew and Kedit in their survey in 1985 that 78 percent of respondents felt that they were much worse off than before they were moved (LCDA, 1997a, p. 5.10). Consequently, in another survey in 1989, Dimbab-Ngidang found that 90 percent of the resettlers regretted the move to the Batang Ai Resettlement Scheme (Ibid).

<sup>149</sup> However the proposal is still pending.

The next sub-section of this chapter aims to provide background information on the land rights for the Orang Ulu in Sarawak. It is important to have a brief understanding of the statutory land rights in Sarawak as it is a major part of the project grievance whereby the Orang Ulu's land rights have been affected by the BHP. Consequently, this section has also laid down the state reorganisation of NT in Sarawak.

### **5.6.1 The Orang Ulu: The Interior People of Sarawak**

The Orang Ulu, which literally means '*people of the interior*' or '*upriver people*', constitutes less than 6 percent of the Sarawak's population (Kapit Resident Office, 2009). The Orang Ulu community is a collective term for 27 sub-groups in Sarawak, which comprise, among others, the sub-ethnic of the Kanyan, Kenyah, Lahanan, Ukit and Penan communities. The Kapit, Bintulu, Miri and Limbang divisions of Sarawak are where the Orang Ulu mainly reside (Lian, 2003, p. 303). Prior to their resettlement, the Orang Ulu were involved in shifting cultivation such as farming, hunting and fishing, and gathering as well as being small traders and retailers (SPU, 1996; Lian, 2003).

Each Orang Ulu sub-group live in their own longhouse that contains about 13–16 units, each with an individual door (houses). The Orang Ulu practice customary laws which govern all areas of life including social relations, economics, politics and spirituality. This is especially true in reference to the land system as they are being governed by the Native Customary Land (NCL) laws (Fong, 2011; HRCM, 2008a; Hong, 1987). In the Orang Ulu strata, the basic corporate unit is a household which is called '*amin*'. In Orang Ulu society, generally there are only two stratas namely '*maren uma*' (aristocrat) and commoners. Tuai Uma is elected from the '*maren uma*' strata. Currently, at the local level, there are two types of leadership and administration: i) VDSC which is led by a chairman; and; ii) Tuai Rumah as the head of the custom (Adat) institutions. The VDSC consists of chairman, deputy chairman and a few bureaus such as women, youth, welfare, sport, religion and so on. Tuai Rumah is the lowest hierarchy of leaders at the village level which is a complement to the higher level of community leaders namely '*Penghulu*', '*Pemanchar*' and '*Temenggung*'. The traditional organisation of Tuai Rumah and the VDSC complement each other in order to administer the local people at the district and village level. Tuai Rumah, Penghulu, Pemanchar and Temenggung receive a monthly allowance from the government.

### **5.6.2 Statutory on Land Rights of the Orang Ulu**

Although the PAP, or Orang Ulu, have been resettled in the RSSA and they are now given individual land titles, this study views it as necessary to understand the background of the Orang Ulu land rights system as previously practiced in order to understand the current problems facing the local people at the RSSA. Therefore, this section provides a brief overview on the previously practiced land rights.

Historically, before the introduction of the Torrens Land System in Malaysia, land was in the hands of the customary tenure where it had been governed in a collective (communal) form. In Sarawak, prior to Brooke's rule and before the British administration, the indigenous communities, particularly the Ibans of Sarawak, were governed by their own respective custom. Among other functions, the customary laws were used by Sarawak's indigenous communities to claim rights over land, forest resources and their livelihood (Hong, 1987; JOANGO Hutan, 2006; HRCM, 2008a).

On the introduction of the Torrens Land System in Peninsular Malaysia (Malaya) and Sarawak all the ancestral land became state land. However, indigenous people were given the freedom to roam about and harvest the fruits of the jungle. Some of these lands have been gazetted as forest reserves (HRCM, 2008a). This shows the intention of the British colonial government to curtail and restrict indigenous land rights. This is not surprising since land was found to be essential to support the British economy. The British viewed native land as unproductive and argued native practices would hamper economic progress, particularly in respect of those natives who practiced shifting cultivation (Jomo and Wong, 2008, p. 137). Therefore, since the colonial period and progressively thereafter, through a series of laws and regulations that have been amended, the state sought to limit the exercise of NT by freezing their extension without permit and interpreting them to be weakly secured rights on state lands (Ibid).

Generally, in indigenous customs in Malaysia, land is held communally with individual members acquiring rights to use the land and its resources by being the first cultivator of the virgin jungle or by seeking permission from the community (Buang, 2010; Fong, 2011). Normally NT land has been held under state possession (state land). At village level, in the case of Orang Ulu in the particular, the approval is granted from the Tuai Rumah (headman). Under the NT system, communal rights are inherited and retained by the

indigenous community and passed down to their future generations. This also includes the right to cultivate the cleared farming land and other rights given to those who have first cleared the land. He/she may pass down the land to his/her heirs.

However, as the name suggests, NT cannot be transferred, leased, transmitted or sold outside to non-indigenous ethnic. The restriction is made based on the nature of NT; only indigenous people who have been accorded with indigenous status by the community have the right to acquire the NT (Fong, 2011). Since NT is a communal title, land technically falls under state land, unless the land had been surveyed and granted the title by the state. In terms of value, NT would achieve a lower value as compared to individual land. (Fong, 2011). In addition, it cannot be transferred from one category of land use to another; for example, from agriculture activities to industry. The reason for this is to protect the land from falling to other ethnic groups (Bulan, 2001; Bulan 2011; Fong, 2011).

In terms of governance of land at the local level, the four leaders of the Orang Ulu (or Maren Uma), namely '*Temunggung*', '*Pemanchar*', '*Penghulu*' and '*Tuai Rumah*', and the elderly/village council are entrusted with the power to manage the NT land system. Among their tasks are monitoring and enforcing rules on using, controlling and transferring rights within the community. In addition they also have the power to allocate land to their people and settle disputes on land such as boundary claims. In the case of indigenous people, including the Orang Ulu in Sarawak, the disputants can bring their dispute to the native court which is independent and separated from the civil courts. The native court operates from the village level to the district level.

Article 160 of the Malaysian Federal Constitution has acknowledged that law in Malaysia also constitutes '*custom and usage having the force of law*' whereby the state has a significant jurisdiction on custom<sup>150</sup> (GOM, 2013a). The recognition of custom over land in the Malaysian land laws and policies is further reinforced through Section 4(1) of the National Land Code 1965 (NLC) which states that '*if there is a conflict between the NLC & any customary legislation, the customary provision prevails*' (GOM, 2010b, p. 3)<sup>151</sup> By and large, the Iban's land rights including those of the Orang Ulu can be divided into three types of

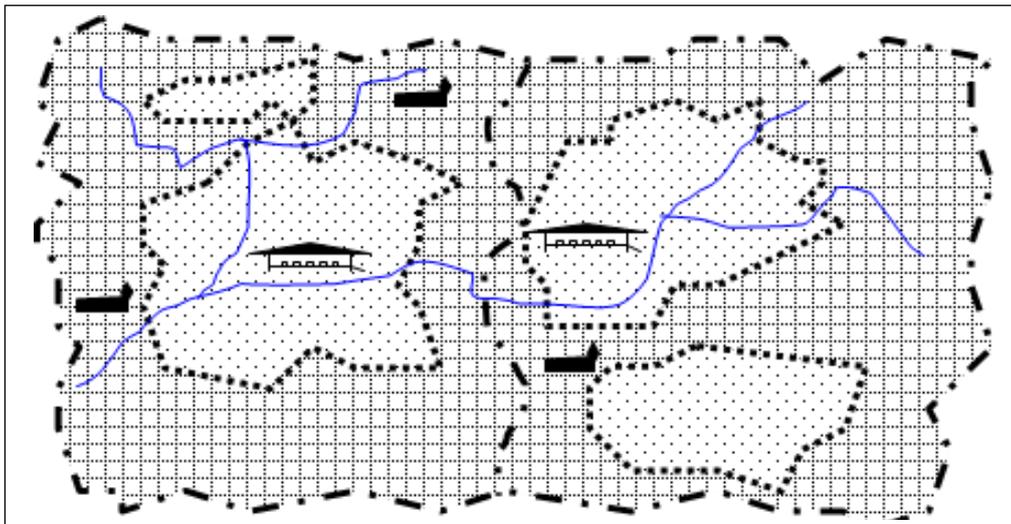
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<sup>150</sup> Customary or 'Adat Laws' is defined as '*a custom or a body of custom to which the law of Sarawak gives effect*' (Section 2 of the Sarawak Native Court Ordinance 1992 cited in Bian, 2000, p. 347).

<sup>151</sup> The customary recognitions of both the Orang Ulu and the Orang Asli are evidently recorded in land mark cases, particularly on: i) Sagong Tasi & 6 Ors vs Selangor State & 3 Ors; ii) Adong Bin Kuwau v State Government of Johor & Anor; and, iii) Nor Nyawai & Ors v Borneo Pulp Plantation Sdn Bhd & Ors (see, for example, Bian, 2000; Nicholas, 2010a; HRCM, 2008a).

land uses: i) *Pemakai Menoa*<sup>152</sup> or communal lands, also known as territorial domain; ii) *Temuda*<sup>153</sup> or land for shifting cultivation; and; iii) *Pulau Galau* or virgin forest area<sup>154</sup>. However, it is worth mentioning that the Orang Ulu customary claims of land rights goes beyond land classification of '*temuda*'. It includes their communal lands or territorial domain locally referred to as '*menua*' or '*pemakai menua*' and the 'reserved virgin forests' or '*pulau galau/ pulau*<sup>155</sup> where a preserved or reserved area is specifically created in order to meet the domestic needs of indigenous people. Generally, the Orang Ulu territory comprises longhouse areas, cultivated lands, communal jungle land, hunting and fishing ground, old longhouse sites and burial ground (refer to Figure 5.3 for the main typical elements of the NCL relating to indigenous people in Sarawak, including the Orang Ulu). According to HRCM (2008a), the recognition of the NCR position in Sarawak can be traced to Section 2 of the Sarawak Land Code 1958 (SLC) which has defined the NCL as:

*Land in which native customary rights, whether communal or otherwise, has lawfully been created prior to the 1<sup>st</sup> day of January 1958 and still subsist as such.*



Source: BRIMAS, 1999, p. 3–4

**Figure 5.3:** Indigenous interpretation of the NCL of the Bumiputera

<sup>152</sup> Pemakai menoa is the geographical location of the longhouse community which offers suitable land for farming, water, fishing, hunting and forest produce.

<sup>153</sup> Temuda or '*Taluri*' in Orang Ulu language, is originally Iban terminology. It refers to the land formerly cultivated with crops but left fallow to regenerate into forest.

<sup>154</sup> Pulau galau or '*Tuan Long*' in the Orang Ulu term refers to an area within '*menoa*' where the Orang Ulu can get their communal products.

<sup>155</sup> '*Tuan Long*' in the Orang Ulu terminology.

LEGEND	
	Long house
	Grave yard
	Border between Menua
	Temuda
	Menua
	Rivers

It further details:

1. *That a cut-off point by which a native has to prove the date of creation of NCR; i.e. before 1<sup>st</sup> January 1958. (If a native creates NCR over land after 1958, the native must be provided with a permit under Section 10, as provided for under Section 5 of the Code).*
2. *That the said NCR Land can be created and therefore claimed by a community or an individual.*
3. *That it subsists as such until today.*

In principle, the SLC has stated that prior to 1958 the indigene must demonstrate that they have carried out certain lawful activities in order to establish NCR. Section 5(2) Part 11 states the following activities apply (HRCM, 2008a):

1. *The felling of virgin jungle and the occupation of the land thereby cleared;*
2. *The planting of land with fruit trees;*
3. *The occupation or cultivation of land;*
4. *The use of land for burial ground or shrine;*
5. *The use of land of any class for rights of way, and;*
6. *By any lawful method [deleted in 2000].*

However, the above statutory recognition comes with caveats. For example, the above activities are only applicable in the interior areas, and only if a permit was acquired under Section 10 from the Land and District Office (Cramb, 2007). In addition, the amendment under the Land Code (Amendment) Bill 2000, which was passed by the Sarawak State

Assembly on 9<sup>th</sup> May 2000 has nullified the additional provision (Section 5(2) 6) (HRCM, 2008a).

It should be recorded here that the issue of un-recognition of NCL always revolved around '*pemakai menua*' which was deemed by state not to be 'covered by indigenous land rights. In addition, the un-recognition also extends to the issue of compensation for NCL (Bian, 2000). This is because the time-frame definition of '*temuda*' as adopted by the Sarawak Government has a very narrow interpretation as it is only valid for a cultivated or farmed area where the '*temuda*' has been cultivated or farmed before 1<sup>st</sup> January 1958 (Ibid).

## **5.7 Pahang State**

Pahang is the largest state in Peninsular Malaysia consisting of 35,965 square kilometres and having a total population in 2010 of 1.53 million. The state is located in the east of Peninsular Malaysia and borders with Kelantan in the north. The Main Range separates Pahang from Perak, Selangor and Negeri Sembilan in the west, Johor in the south and Terengganu in the north. The Pahang coastline faces the South China Sea.

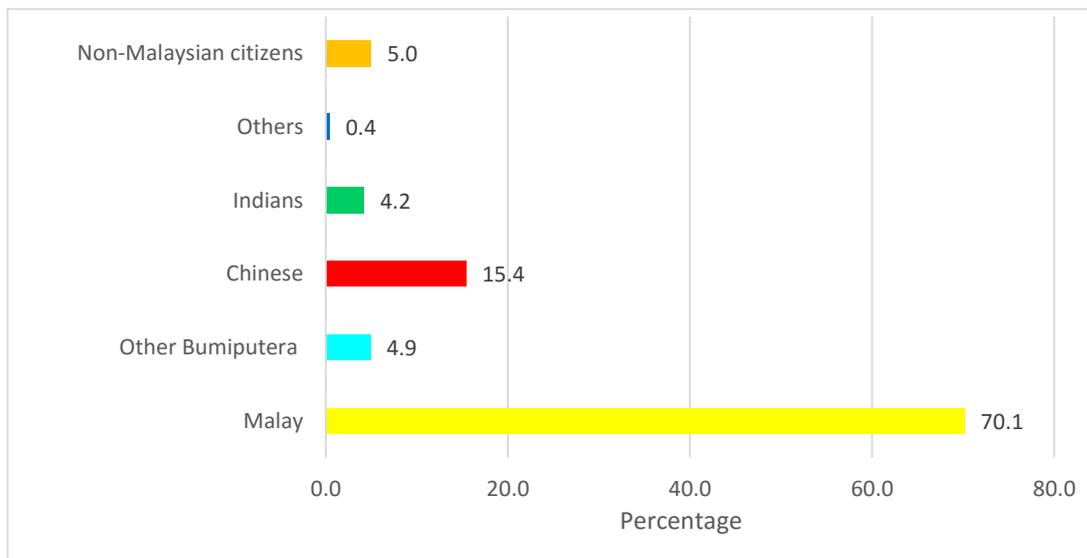
Like with other states in Malaysia, the executive power in Pahang rests in the CM's hands. The CM was appointed from among the elected representative from the party which gained the majority of seats at the state election. The current CM is Adnan Yaakub from UMNO who took over from Khalil Yaakub, who was also from UMNO. Khalil Yaakub was the CM when the KDP idea was mooted. Pahang's total GDP in 2010 at the purchaser's power in 2020 was RM (million) 24,847. Out of that, RM (billion) 13,267 came from the services sector while manufacturing constituted RM (billion) 6,735 and agricultures constituted RM (billion) 4,163 with mining only constituting RM (billion) 56 (DOS, 2011a). In 2009, Pahang's hardcore poverty was judged to be at 0.3 percent, below the national benchmark of 0.4 percent from the total 0.7 percent of the poor in Malaysia (EPU, 2010).

Like other states in Malaysia, Pahang is a plural-ethnic state. According to DOS (2011a), the state population in 2010 was 1,500,817, of which the Malays were the majority: 1,052,774 or 70.1 percent. The second largest was the Chinese: 230,798 or 15.4 percent. Other Bumiputeras, including the Orang Asli, constitute the third highest: 73,413 or 4.9 percent while the Indian population was 63,065 or 4.2 percent (DOS, 2011a, p. 67) (see Table 5.3 and Figure 5.4).

**Table 5.3:** Pahang’s population by ethnicity in 2010

<b>Ethnic</b>	<b>Total</b>	<b>Percentage (%)</b>
Malay	1,052,774	70.1
Other Bumiputera	73,413	4.9
Chinese	230,798	15.4
Indians	63,065	4.2
Others	6,159	0.4
Non-citizens	74,608	5.0
<b>Total</b>	<b>1,500,817</b>	<b>100.0</b>

Source: DOS, 2011a, p. 67



Source: DOS, 2011a, p. 67

**Figure 5.4:** Pahang’s population by ethnicity in 2010

Although the study area is located in Pahang, it is important to mention that the KDP also involved the Selangor State because the raw water from Pahang will be tunnelled to the state. Selangor is the most developed state in Malaysia, with a total GDP of 10.8 percent in 2010. Its economy is highly diversified, with sectors ranging from industry, agriculture, commercial and tourism. The state’s economy is driven mainly by the manufacturing and services sectors. In 2010, the Selangor population was recorded at 5.10 million making it the state with the highest population in Malaysia. Adjacent to Selangor is the Federal Territory of Kuala Lumpur (Kuala Lumpur) and the federal administrative area of Putrajaya with a combined population of 1.74 million (DOS, 2010). Together they form the Klang Valley which is the most developed region in Malaysia. In view of this, it is expected that Selangor’s population, industrialisation and urbanisation demand will give great pressure to natural resources including water demand.

### 5.7.1 The Orang Asli: The First Man in the Peninsular Malaysia<sup>156</sup>

Orang Asli or 'aborigines' are the main indigenous people in Peninsular Malaysia. They are considered to be the original or first settlers of Peninsular Malaysia (Nicholas, 2000; Nicholas, 2010a; Nicholas, 2010c; Hamid et al., 2011). The general population of this ethnic group in 2010 was 178,197. The Pahang State is the home for the largest Orang Asli population in Malaysia: 67,506 or 37.9 percent (DOA, 2008; DOS, 2008). The term '*Orang Asli*'<sup>157</sup> is the collective name for 18 sub-groups<sup>158</sup> (DOA, 2008). This ethnic group has been mainly involved in agriculture activities and living in remote areas. Their population is generally lagging behind the other main races in Malaysia (DOS, 2008). Like the Orang Ulu, the Orang Asli is considered to be a socially weak group.<sup>159</sup>

### 5.7.2 Statutory Land Rights of the Orang Asli

Prior to Malaysia becoming independent, the Orang Asli land reserve was named 'Sakai Reservation' (Toshihiro, 2009, p. 24). Post independence, the Aboriginal People Act 1954 (APA) was specifically meant to deal with the Orang Asli in Peninsular Malaysia; Section 7(1) of the Aboriginal People Act 1954 empowers the state authority to declare any area exclusively inhabited by the Orang Asli to be an Aboriginal Reserve by gazette notification (GOM, 2006c, p. 8).

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<sup>156</sup> There was political debate on the arguments about the Orang Asli being the first inhabitants of the Peninsular Malaysia. It mainly revolved around why the land (Peninsular Malaysia) is called Malay Land (*Tanah Melayu*) rather than Orang Asli land. The PM of Malaysia, then Mahathir Mohamad, argued that it was because the Orang Asli does not have their own state and government as compared to the Malays. In addition, historically, the British had to deal, make agreements and conduct official business with the latter rather than the former. In this sense, the Malays have more legitimate claims than the Orang Asli in the Peninsular Malaysia (Mohamad, 1970; Mohamad, 2011).

<sup>157</sup> Prior to 1960 and especially during the British rule, the widely generic term used to refer to the Orang Asli was '*Sakai*'. However, since it is considered a derogatory term, '*Sakai*' was replaced with '*Orang Asli*' (Means, 1985; Toshihiro, 2009; HRCM, 2013).

<sup>158</sup> However, this ethnic has been grouped into three main groups: the Negrito (Semang), the Senoi, and the Aboriginal-Malay (see, Nicholas, 2000; Nicholas, 2010c; Toshihiro, 2009; DOA, 2008; DOS, 2008).

<sup>159</sup> In his articles (2000; 2009; 2010c), Nicholas concluded that the Orang Asli is a weak ethnic group. This conclusion was arrived at after he examined the socio-economic and political positions of the Orang Asli ethnic group as compared to the mainstream ethnics. The same conclusion was made by Idrus (2011; 2013) on the socio-economic backwardness of the Orang Asli. Gomes (2007, Chapter 8) in his critical observation on the reason of backwardness of the Orang Asli concludes that the Menraq sub-group experience marginalisation not due to geography, physical or social-economic factors but because the society has been entrapped by the state hegemony agendas and policies – modernisation, market economy, mobilization etc. In the latest statistics by the DOA (2012), from the 36,658 Orang Asli head of families, as many as 11,423 (31.16%) of them were considered to be in the poor and hardcore poor categories. Similar trends have also shown in the school-dropout rates in 2011; out of the 4,125 of Orang Asli children who completed Standard Six in Primary School, only 3,046 continued their study in Form One at the Secondary School in 2012. Meanwhile, out of the 2,677 Orang Asli school children who attended Form One in 2008, unfortunately 1,555 did not complete their study in Form Five. Subramaniam (2011b, p. 47) also made the same observation, which demonstrated the fact that 50 percent of the Orang Asli remained below the national poverty level of 3.8 percent.

Like the Orang Ulu, the Orang Asli's NT is a collective right whereby the whole community holds the responsibility for making decisions regarding the land. In the case of the Orang Asli, at village level, the approval to clear or cultivate land, for example, is granted by the '*Batir*' and the VDSC. Similarly to the Orang Ulu, under the NT for the Orang Asli, land rights are inherited, retained and passed down to future generations. This is also true in the case of the Orang Asli; their land is unclaimed land in the present sense but has been held by aboriginal people as ancestral land ('*saka*' land). However, Orang Asli's land does not have the legal and property rights, instead on the sufferance of Malay rulers<sup>160</sup> (Nicholas et al., 2010, p. 39 & 40).

In terms of the governance of the land at local level, the Orang Asli also have their own system of governing the land and resources system. The Batin (headman) and two Orang Asli Ministers<sup>161</sup> or '*menter*' as well as the Customary Council are responsible for governing the Orang Asli's land matters. Among their tasks are monitoring and enforcing rules on using, controlling and transferring the rights within the community. In addition, they also have the power to allocate land to their people and settle disputes on land such as boundary claims. The power held by them is quite wide and powerful (Oral Conversation with Cham Beng, a Batin at RSLB on 24<sup>th</sup> November 2012). However, unlike the Orang Ulu in Sarawak, no such native court system exists for the Orang Asli in Peninsular Malaysia (Nicholas, 2010a).

However, the traditional institutions for managing their local affairs, maintaining their communal forms of ownership, and their right to the use and enjoyment of their lands have been abolished due to the relocation exercise and the setting up of a new institution by the state. For example, the previous power conferred to Tuai Rumah or Batin in managing land disputes at village level including determining the size, area and location has now been taken over by the District and Land Office. The Orang Asli land category can generally be divided into three categories, namely: i) active land – where land is cultivated; ii) inactive or '*rang*' land – where land is temporarily left fallow after it has been cultivated in order to make it regain fertility; and, iii) roaming/foraging/game areas – where products for

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<sup>160</sup> However, Yogaratnam (2003, p. 38) does not agree with the view that Malay rulers have possession of land. Instead, he held the opinion that it was only in the context of political supremacy. He went on to argue that there is no evidence from any state which identifies the relationship of the rulers with the village population. As such, he has rejected the assertion that the traditional ruler was endowed with an '*absolute property in the soil*'.

<sup>161</sup> '*Menter*' is the Malay word for 'Minister'. It is the second highest traditional position within the Orang Asli communities, coming after '*Batir*'.

communal use can be found, such as medicine, rattan, herbs, wood and house materials<sup>162</sup>. However, unlike with the Orang Ulu's land, these three land categories or terms have not been fully established<sup>163</sup> (oral conversation with Yusri Ahon, a Committee Member of the JKOSAM cum Deputy President 3 of the Association of the JOAS in Temerloh Pahang on 3<sup>rd</sup> December 2012). Within the Orang Asli ancestral territory, the Orang Asli can exercise rights of hunting, fishing, gathering and cultivation. Individual rights exist over fruit trees and swidden which are cleared and used by individual members of the tribe.

It is a fact that to some extent the Orang Asli NT has been integrated into state law by the APA. For example, the APA recognises the creation of the Orang Asli Reserve Area. It also empowers the Minister concerned to declare, through publication in the gazette, certain plots of land to be protected as Aboriginal Reserves and areas (see Section 7(1) of the Act 134). However, Section 8(2) (c) does not treat the Orang Asli as the legal owner of the reserves nor does it mandate compensation for the government's acquisition of the reserves. The best recognition obtained by the Orang Asli from the APA is a 'tenant at will' despite having lived on the ancestral land for years (GOM, 2006c).

According to Nicholas (2010b), the problem concerning land rights, among other things, relates to the issue of the federal–state relationship. Since Malaysia is a federal state, Article 8(5)(c) of the Malaysia Federal Constitution has stipulated that the federal–state power and relations concerning the Orang Asli lies in the federal government's hands. The Article concerning federal duty is stated as below:

*... for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service. (GOM, 2013a, p. 18)*

However, as land matter in Malaysia is generally under the purview of the state, it thus has raised the bureaucratic recognition of the Orang Asli land. This constitutional shortfall has

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<sup>162</sup> Since Orang Asli have heterogeneous communities, each sub-group has their own land category. For example, the Temiar generally has three land use categories, namely: i) homesteads (*kampung*); ii) swiddens (*selai*); and, iii) smallholdings (*ladang*). These land use categories bring varying usages, tenure rights and cultural obligations (HRCM 2013, p. 30).

<sup>163</sup> Despite the unclear division of land categories for the Orang Asli, the government has recognised Orang Asli's customary land as clearly shown in the two court cases which involved the Orang Asli: i) *Sagong Tasi & 6 Ors vs Selangor State & 3 Ors*; ii) *Adong Bin Kuwau v State Government of Johor & Anor*, and (*Yogaratanam*, 2003).

ties the DOA's hands as land matters have become bureaucratic and tend to involve a long process. In this sense, the constitutional shortfall has tied their hands in relation to the land titling process (Oral Conversation with Abdul-Razak, an officer of the DOA, in Kuala Lumpur on 9<sup>th</sup> July 2012; Nicholas, 2010c; Nicholas et al., 2010). Alongside this handicap, the DOA as a federal agency seems to be lacking power in preventing the territorial dispossession of the Orang Asli lands. In addition, the agency fails to act against the government in land acquisition projects and protecting the Orang Asli's interests, well-being and advancement (HRCM, 2013, p. 134). This has led the community to argue that there is a deliberate denial of Orang Asli recognition (CAP, 2000).

Another inconsistency in the Orang Asli's land rights recognition can be found in the APA. While Section 12 of the APA recognises that the compensation 'shall' and must be paid by government for the acquisition of the Orang Asli's crops on the land, Section 11 of the Act merely states that the authority 'may' pay compensation for the acquisition of aboriginal reserves or areas. In addition, Section 11 specifies that compensation is to be paid only for the fruit and rubber trees (Hamid et al., 2011; Idrus, 2011). In terms of land extinguishment, Sections 6(3) and 7(3) of the same Act allows the Federal Minister to revoke the whole or part of the declaration of aboriginal areas and aboriginal reserves made. The section implies that without a valid declaration the Orang Asli land may be easily taken over by the government and encroached on by others (Hamid et al., 2011; Idrus, 2011; Subramaniam, 2011a; Subramaniam, 2011b).

With the rent-seeking and political patronage background as well as the existing discrepancy between the state and the local land rights perception, it is interesting to see how particular conflict is manifested at the national level. Therefore, the next section of this chapter will discuss the land rights conflict which involved the indigenous people of Malaysia.

## **5.8 Land Rights<sup>164</sup> Conflict in Malaysia: Trends and Causes**

As a federal country, it is argued that the conflict and tension at the national scale are due to the federal system, which, among other things, centres on the issue of rights or control

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<sup>164</sup> In reality the land rights issue could possibly lead to environmental issues, and vice versa. However, this research posits that, by employing land rights figures, it at least provides some statistical data on the issue of environmental conflicts in Malaysia.

over state natural resources, mainly on petroleum, gas and timber<sup>165</sup>. The state leaders from the Borneo States, Sabah and Sarawak, are trying to control those rights and protect them from federal interference (Jomo and Wee, 2003; Hazis, 2012).

Land ownership has become the main issue of concern in relation to NCR in Malaysia. Despite recognition by the judicial and government policies, indigenous people have admitted that they face great difficulties in securing ownership of their native land. Many have expressed a belief that they have lost their customary land to private companies that were awarded licences by state governments for logging, land schemes plantation and dams. As a consequence of land extinguishment, indigenous people have lost their source of livelihood (HRCM, 2010a; HRCM, 2013). Therefore, to illustrate the conflict on land rights faced by indigenous people, Table 5.4 gives a brief overview of the general tension through the complaints made by the indigenous people in Malaysia from 2007 to 2011.<sup>166</sup>

**Table 5.4:** Land rights complaints by indigenous people in Malaysia (2007–2011)

<b>Year</b>	<b>Total</b>	<b>Percentage (%) of Change</b>
2007	94	NIL
2008	177	+88.3
2009	137	-22.6
2010	27	-84.3
2011	207	+666.7
<b>TOTAL</b>	<b>642</b>	<b>100</b>

Source: HRCM, 2007; HRCM 2008; HRCM, 2009; HRCM 2010b; and HRCM, 2011

Table 5.4 above shows complaints made by indigenous people in Malaysia for five consecutive years as received by the HRCM since its establishment in 2007. The total number of complaints received by the HRCM from 2007 to 2011 was recorded to be 642. In 2007 alone the HRCM received 94 complaints, while in 2008 the figures had increased almost double fold to 177 cases, about an 88.3 percent increase. However, in 2009 the number of complaints received by the HRCM had fallen to 137 cases, a decrease of about 22.6 percent compared to 2008. In 2010 the total complaints received by the HRCM again shrank sharply to only 27 cases, an 84.3 percent decrease from 2009. However, in 2011

<sup>165</sup> In this regard, it is not surprising that EIA, as a tool in managing natural resources, has become one of the bastions in protecting and strengthening Sarawak interests from federal interference (Memon, 2000).

<sup>166</sup> As of 14<sup>th</sup> October 2011, there were 249 court cases in the Malaysian High and Appeal Courts concerning various issues of land disputes. The figures were based on LexisNexis Malaysia, which is search engine software. This software, among others, provides a database of court cases. However, the figure does not include cases in the Lower Courts.

there were a very high number of complaints made by indigenous people: 207, a 666.7 percent increase compared to 2010.

In terms of the factors that have contributed to the land rights conflict between the state and indigenous people, Ngidang (2005) found that the state policy of pursuing large scale plantations has been the main culprit. For example, in Sarawak, between the 1960s and the 1980s, there was a gradual shift from the traditional land use to the semi-intensive land utilisation where cash cultivation has become a prominent feature of the farming system in rural Sarawak. The state views the traditional land use (NCR) as a competitor of the commercial plantation and has thus viewed it as a stumbling block to capitalist economic development<sup>167</sup> or a destructive and wasteful approach<sup>168</sup> (Ngidang, 2005; Majid-Cooke, 2006; Doolittle, 2007; Aiken and Leigh, 2011). In Sarawak, native land was seen as unproductive and the state has claimed that this is 'idle' land in order to justify the expansion. This has happened particularly to '*temuda*' land, beyond the recognised customary title; for example, '*pemakai menoa*' or '*pulau*' (Majid-Cooke, 2006; HRCM, 2013). To help hasten the acquisition of land rights through the registration of NT for use in the joint ventures, the Land Code Amendment was introduced in 2000. The emphasis on productivity is different from the earlier phases of plantation development which had a mixture of aims, one of which was the Dayak social and economic development which was considered in the planning circles to be 'state land'(Ngidang, 2002 in Majid-Cooke, 2006, p. 28).

According to Nicholas (2000, p. 5 & 55), the competition for scarce environmental resources has led to the persistence and genesis of the discrete ethnic groups. Since Malaysia is becoming more developed and most of the available land is located in the rural areas, where traditionally there have been home for the Orang Asli and Orang Ulu, this has created a scenario of competition for resources. For example, the HRCM (2013, p. 139–148) has identified various factors that become sources of land loss to the Orang Asli. Among other things, this is due to the policy on the Alienation and Development of Land for Orang Asli for

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<sup>167</sup> The expansion of NCL by palm oil plantation in Sarawak is primary driven by political patronage and business interest (Cramb, 2011, p. 274 & 280; Lee, 2009, p. 116–120).

<sup>168</sup> For example, Brookfield and Byron (1990) state that shifting cultivation is one of the agriculture practices on the NCL which is amongst the drivers of forest decline. However, McMorrow and Abdul-Talip (2001) are of the opinion that commercial estate agricultures, especially palm oil, is the major cause of Sabah's forest loss.

Agricultural and Residential Purposes (DPTOA); this covers plantation/agribusiness<sup>169</sup>; agricultural development for Orang Asli; logging and forest reserves; and commercial projects.<sup>170</sup> From a wider perspective, Malaysia's remarkable economic and social progress is strongly reliant on natural resources. Achievement of this progress has been accompanied by an unprecedented change in the natural environment. Meanwhile, concerning the Orang Asli land rights, the state's policy to give land titles to Orang Asli in 2009, rather than solving the problem, has raised a new problem. Nicholas (2010a, p. 53) has argued that while the policy purports to give the Orang Asli permanent individual land titles, in reality, it will cause them to lose about 74,000 hectares of land they are recognised to have rights over<sup>171</sup>.

## **5.9 Dam Development in Malaysia**

Since this research study specifically focuses on dam development, it is deemed necessary to briefly review dam development and its relation to EIA and resettlements as well as the motivations that drive dam construction. Currently, there are about 80 dams that have been built in Malaysia and their purposes range from flood control, irrigation, water supply, hydropower, recreational, silt retention, regulating reservoir to irrigation. However, the two main purposes of dam construction in Malaysia are water supply and hydropower (Department of Water Supply, 2012).

The dams in Malaysia have been built and operated from as early as 1834. The demand for dams was accelerated by economic progress in the 1980s. Out of the 80 dams that had been built and were in operation in 2012, 31 were built during the 1980s (Department of Water Supply, 2012; Latifah and Met, 2014). In a reply to the Pan-Malaysian Islamic Party (PAS) MP in the Malaysian Parliament on 28<sup>th</sup> November 2000, the then Minister of Ministry of Public Works (MOW), Sammy Vellu, stated that the government has planned to build another 46 dams in Malaysia (Said et al., 2000). Meanwhile, Sarawak is planning to build another twelve dams in order to realise the state's dream of becoming a powerhouse in

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<sup>169</sup> It is interesting to record that the DOE itself has confirmed that some of the plantation and agribusiness projects have resulted in the destruction of the Orang Asli graveyard and crops, polluted the rivers and loss of livelihoods and traditional ways of life. This is attributed to incomplete and ineffective EIA (HRCM, 2013, p. 138).

<sup>170</sup> The Temuan community in the Orang Asli Sebir Village Labu in Negeri Sembilan have complained that despite EIA approval, the quarry operation by Malaysian Rock Product (MRP) has caused noise, air and river pollution (HRCM, 2013, p. 146).

<sup>171</sup> This is in line with these research findings from the HRCM (2013) which revealed that despite the increase in the recognition status of the Orang Asli lands from 1990 and 2010, the reality is that it has failed to translate at the local level. For example, the 132,946.64 hectares of Orang Asli lands in Peninsular Malaysia which have been recognised by the government, represents only 17 percent of the lands claimed by the Orang Asli (HRCM, 2013, p. 133).

Malaysia (Hock and Cheah, 2008; ALIRAN, 2013). Despite the aggressiveness in hydroelectric dam planning and construction, critics have claimed that the current electricity supply has already far exceeded the demand<sup>172</sup> (Crack, 2001; Hock and Cheah, 2008; ALIRAN, 2013; Aiken and Leigh, 2015).

### **5.9.1 The EIA Requirement for Dam**

The building of dams is one of the land use activities that are subject to Malaysian EIA, under the EQA (Prescribed Activity) EIA (Order 1987) (DOE, 2009, p. 60). Dams in Malaysia are governed by EIA guidelines for dams and/or reservoir projects<sup>173</sup>. Dams for power generation and transmission projects are subject to EIA due to the following activities: i) conversion of hill forest land to other land use covering an area of 50 hectares or more (Schedule 6a under forestry activity); ii) logging activities covering an area of 500 hectares or more (Schedule 6c under forestry activity); and, iii) dams and hydroelectric power scheme projects with either or both of the following: a) dams over 15 metres high and ancillary structures covering a total area in excess of 40 hectares (Schedule 13b (i)); and, b) reservoirs with a surface area in excess of 400 hectares (Schedule 13b (ii)) (DOE, 1995; DOE, 2000; DOE, 2009). Meanwhile, EIA is prescribed for the construction of dams for water supply in: i) construction of dams or impounding reservoirs with surface area of 200 hectares or more (Schedule 19a under water supply activity); and, ii) groundwater development for industrial, agricultural or urban water supply of greater than 4,500 cubic water per day (Schedule 19b (a) under water supply activity).

Constitutional jurisdiction in dam construction and its activities normally falls under the State List as stipulated in Ninth Schedule – legislative lists; e.g. land, water and land use, forestry, impounding of inland water, and diversion of rivers, electricity and the production of electricity generated by water (GOM, 2013b, p. 193–202).

### **5.9.2 Dam and Resettlement**

The location of the hydropower and water supply dams are normally located in remote areas where the settlements of indigenous people, including the Malay, are located. Therefore, to

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<sup>172</sup> Association of the Electricity Supply Industry of East Asia and Western Pacific (AESIEAP) (2011) cited in Aiken and Leigh (2015, p. 77) has revealed that the Malaysian energy capacity in 2010 was 24,245 megawatts while the peak demand was only around 15,809.1.

<sup>173</sup> See detail at DOE (1995).

pave way for the dam construction, the land of PAP has to be appropriated by the government; thus forcing them to relocate. In many instances, the resettlement exercises have generated conflict and resistance between local people and the authorities.<sup>174</sup>

The Malaysian government views resettlement is an integral part of project implementation.<sup>175</sup> To minimise the impact of development projects on PAP, the government also views resettlement as an opportunity to rebuild and improve the socio-economic of PAP (EPU, 1996; MEGTW, 2010). As such, modern infrastructures are provided at new resettlement schemes as well as the introduction of other key development components which include cash-crops agricultures, e.g. palm oil smallholder (EPU, 1996; Nicholas, 2000; MEGTW, 2010).

### **5.9.3 Dam Development: Impacts and Motivations**

Despite the current presence of EIA in assessing land use and environmental planning prior to dam construction in Malaysia and developing countries especially, there is increasing concern surrounding dam development due to the growing conflict generated from such development. There are numerous reasons for dam or resettlement conflict.<sup>176</sup> Among other things, and as related to this research study, there is increasing scrutiny on the role of EIA in dam planning and development. EIA failure in this regard could be related to the inability of EIA to empower public through good practice of public participation. Majid-Cooke, one of the expert witnesses for the HRCM's National Inquiry into the Land Rights of Indigenous People in 2010, has admitted that Malaysia's failure to commit to the model of development which upholds the FPIC principles is among the main reasons for conflict in dam and resettlement projects (HRCM, 2013, p. 87). Besides, the inquiry was made to understand that about 16 cases of complaints by indigenous peoples because their NCL land have been

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<sup>174</sup> See the previous discussion on land conflict in Section 5.8 of this chapter. The statistic provided in Section 5.8 is partly attributed by conflict in dam projects.

<sup>175</sup> It is worth mentioning that the resettlement exercise is not only conducted when the project developments have affected PAP settlements. It is policy commenced by the Malaysian government for various purposes, e.g: i) to improve socio-economic– e.g. FELDA (Federal Land Development Authority), DARA (Pahang Tenggara Development Authority), SALCRA (Sarawak Land Consolidation and Rehabilitation Authority); ii) to insurgency and pacification matter – the Orang Asli Resettlement Scheme, the Chinese New Villages. See, *Evolution of Policies Affecting Land Settlement Schemes In Malaysia* by Rejab (1978).

<sup>176</sup> Scudder (2005, p. 62) concluded several factors of dam-induced resettlement failure: i) the absence of the specific responsibility unit in dealing with resettlement and resettler; ii) lack of capacity of the project authorities including funding, expertise, political will and opportunities; iii) lack of resettlers' participation in project planning; iv) impoverishment including landless, joblessness, food insecurity, marginalisation and the loss of common property resources.

taken for infrastructure projects, including dams, without informing or consulting the affected communities (HRCM, 2013, p. 99).

Above all, despite the claims that the resettlement projects could uplift the PAP's socio-economic, the reality paints a different picture. For example, Abdullah et al. (2015, p. 77) pointed out that the Orang Asli at Desa Temuan in Bukit Lanjan Kuala Lumpur had expressed their frustration on their low socio-economic and the low level of assistance received from the government. Meanwhile, the first resettlement scheme in Sarawak, the Batang Ai, has demonstrated several shortcomings; for example, the project fell short of meeting the socio-economic and well-being of the resettlers. In a study done by the Asian Development Bank (1999, p. 11 ) it was revealed that the resettlers of the Batang Ai scheme had an average income which had decreased to RM 230.00 (USD 73.70) per month from the RM 523.00 (USD 167.95) they previously earned 10 years ago, i.e. before the resettlement. Even the average monthly income for those who did not participate in the resettlement exercise was far above them at RM 675.00 (USD 216.29).<sup>177</sup>

In his critical observation on the resettlement<sup>178</sup> scheme policy relating to the Orang Asli in Peninsular Malaysia, Nicholas (2010, p. 111–113) views that the policy has been designed to control people in order to enable the government to consequently control natural resources, e.g. land and forest resources. His observation was based on the failure of the government to provide enough houses and adequate basic facilities in 18 resettlement schemes designed for the Orang Asli resettlers, as well the delay in the alternative income-generation projects. On the other hand, it was observed that the land appropriated by the government for commercial purposes such as palm oil plantation and logging has been taken over by the private sector through its political connections (HRCM, 2010a, p. 82).

However, the motivation to build dams itself is not entirely based on national interest as the players in the construction industry gain much benefit from it.<sup>179</sup> The Pergau hydroelectric

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<sup>177</sup> The impoverishment of local livelihood was also experienced in the dam involuntary resettlement programs in India and Sri Lanka (see, Bisht, 2014; Perera: 2014).

<sup>178</sup> In the case of the Orang Asli, Nicholas (2010a, p. 113) has used the term 'regroupment' instead of resettlement. However, this research study found that the concept is similar to resettlement. This perspective is also in line with the study by Rejab (1978).

<sup>179</sup> Rent-seeking activities in dam construction not only happened in Malaysia but also occurred in other developing countries. Huppert (2015, p. 265) in his observation as an Senior Technical Advisor for GIZ (formerly GTZ) Germany observed that rent-seeking and corruption is too attached to the water agricultural management, e.g. dam. In his observation on irrigation infrastructure in Haiti, Huppert found that rent-seeking behaviour did actually perpetuate technical and economical inefficiency. Meanwhile, in his analysis on rent-seeking in the large dam industry in Indonesia, Aditjondro (1998, p. 34–35) revealed that the dams built during Suharto's New Order

dam in Kelantan, one of the eastern states in Peninsular Malaysia, provides a good example of how the British's financial aid of £316 million pounds sterling was used as a 'sweetener' to persuade Malaysia to accept an arms deal (Lankester, 2013). It was also revealed that the dam construction was motivated by commercial and political interest rather than the need for development itself. Despite the existence of EIA, it was revealed that the project had commenced at the expense of the environment. This being so despite the cheaper alternative sources being available (Lankester, 2013, p. 127–128). Lankester (2013, p. 51–53) has further revealed how the Pergau Dam hydroelectric was favoured by Malaysian's prominent politicians cum executive actors in Malaysia, namely the PM of Malaysia, then Mahathir Mohamad, the Finance Minister and Treasurer of UMNO, Daim Zainuddin and the Energy Minister, Sammy Vellu. The project was also supported by Apovoo Packiri Arumugam, a local representative from General Electric Company (GEC) Malaysia. GEC is a major UK-based industrial conglomerate involved in consumer and defence electronics, communications and engineering.

The British contractors, Balfour Beatty Cementation International were awarded the Pergau hydroelectric dam without open tender, i.e. through direct contact with Mahathir Mohamad, the then PM of Malaysia (GOM, 1994, p. 218). It was also found that the Malaysian ruling parties, especially UMNO, had made profits from the privatisation of National Utility Energy shares, the electricity company in Malaysia (Lim, 1994, p. 4). On the other hand, the benefits of the arms deal went to Mahathir's eldest son, Mirzan Mahathir (Ibid). These actors in the Pergau hydroelectric dam – politicians and businessmen – were identified to have vested interests, in relation to either their own party, i.e. UMNO, or personal benefit.

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was driven by three actors: cement industry, the Department of Public Works-related companies and Japanese financial aid. It was found that Suharto's extended family controls 75 percent of the cement industry in Indonesia which is an impetus for building large dams. To complement the driving force, the companies belonging to retirees of the Department of Public Work act as 'revolving doors' for the ex-staff to get income. Meanwhile, the Japanese financial interest has caused the Japanese engineers to be hired in Japanese-funded dam projects. All these driving factors inevitably have motivated dam development. Meanwhile, the tied-aid rules and dollar loan financing had also been identified as the reason why the international financial institutions agreed to give loans to the Nepalese Government (Rai, 2005, p. 4). In Africa, Okidi (1987, p. 20) has long observed that the political consideration outweighs technical and other considerations in dam contracts. Also, employment choices are based on political patronage or nepotism which is prone to use political rather than technical consideration in managing the dam project. Rent-seeking and political patronage do not spare developed countries. Japan's construction also presents strong rent-seeking behaviour as observed by Feldhoff (2002). He found that the politicians tend to tolerate overpriced contracts for public works projects. However, they expect generous campaign funds, votes and lucrative positions either directly in the big construction companies or semi-public bodies after the retirement in return (Feldhoff, 2002, p. 37).

The latest example of rent-seeking in dam construction in Malaysia involves the Paya Beda Dam. The RM 348 million dam is located in Besut Terengganu and under the purview of the Ministry of Agriculture and Agro-based Industry. The dam contract was awarded through direct negotiation with the JKAS Resources Berhad, a local group of companies which primarily engages in the integrated water works industry (JKAS, 2009a). The Public Accounts Committee (PAC)<sup>180</sup> has found JKAS Resources Berhad not to be credible and that they did not possess a qualifying certificate from the Construction Industry Development Board (CIDB) (CIMB, 2014). In addition, the contractor was found to not have enough equipment; the company has only one technical officer, thus delaying the project (Ibid). The online search done by the researcher showed that one of the JKAS Resources Berhad board of directors is a relative of prominent UMNO leaders (see, JKAS, 2009b).

As previously stated in Section 5.4 and 5.5, rent-seeking activity is the prime motivating factor in gearing development projects in Malaysia. It also shows that political patronage assists in gaining benefits from project implementation.

## **5.10 Synthesis of Concluding**

This chapter has laid down the context of this research study by giving a brief explanation of the socio-economic and institutional setting of Malaysia in general. The reasons for the site selection for this study were also provided. The discussion in this chapter has detailed two case study states, namely Sarawak and Pahang, where a brief explanation of the Orang Ulu and Orang Asli has been provided. This chapter has also provided a discussion on past land rights practiced by indigenous people. In conclusion, while there certain provisions in Malaysian law and policy have been put in place to recognise the land rights of the Orang Ulu and Orang Asli, they carry some limitations. Above all, it is clear that indigenous people have enjoyed many land rights accorded to them prior to the resettlement. Therefore, the next chapters examine how the local indigenous people have perceived the impacts of land rights since they have had to move out of their original, traditional longhouses or villages to live in the new resettlement schemes. This has eventually led to a conflict between the state, its corporation and indigenous people

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<sup>180</sup> The PAC aims to give transparency in public finance in Malaysia. The committee is set up under the Federal Legislative either by parliament or under the State Legislative Assembly.

Then, the chapter discussed the element of rent-seeking and political patronage in order to show how these elements have been clearly embedded in the socio-economic structure in Malaysia. At macro level, this chapter has demonstrated that Malaysia developmental state or clientelist state influences the development policy implementation including EIA. This chapter has shown that, as the backbone of the NF, UMNO has taken undue advantage in becoming involved in business; this is justified in the name of 'correcting' the social and economic balance, particularly of the Malays ethnic. In this regard, ethnicity serves to validate the need for rent-seeking.

In addition, the strong position of UMNO (read the state) provides it with enormous leverage in imposing new institutions i.e. to perform social engineering. This is clearly demonstrated in the imposition of land laws - the SLC and APA which clearly failed to consider the functionality aspect of the customary laws which previously had successfully governed the NT. Put differently, these new institutions fail to reflect the customary practices of indigenous people. In fact, these institutions have been established at the expense of local institutions, thus has threatened the livelihood of local people. It is not surprising then that these new institutions have been accompanied by local protest. They (the institutions) have failed to rally support from the targeted people. In addition, it has been observed that these new institutions which are engineered by state provide rent-seeking platform to the politicians and business actors.

Against this background, it is clear that the construction industry, i.e. the dam where EIA as a project based assessment operates, has provided a futile ground for rent-seeking breeding and growth. Considering the heavy interference in development projects, it poses a great pressure to EIA as a tool for development. As such, its establishment as an institution that governs land use planning and development activities in Malaysia fails to sufficiently rally social and political support, as evident from conflict generated from projects. Therefore, it is safe to say that EIA in this light has been used more as a symbolic law or empty institutions - the institutions that force upon to the PAP but does not really give the real meaning and practicality. Instead, it creates enforcement problems and becomes a platform of rent-seeking. To compound the EIA problem in Malaysia, the technocratic approach in development further hinders its credibility.

This chapter has revealed that the enormous of state leverage as compared to insufficient leverage of the targeted people or PAP. Low socio-economic, small population, live in

remote areas and lack access to economic and social services are attributing factors that make the indigenous people have insufficient leverage. From the theoretical point of view, the indigenous characteristics highlighted the divergence power as discussed in chapter 4. Therefore, it is interesting to continue examining this aspect in the next two empirical chapters – the BHP and KDP.

# 6

## The Bakun Hydroelectric Project (BHP): Project, People and Conflict

### 6.1 Introduction

The discussion in this empirical chapter solely focuses on the BHP, a dam-generated-electricity project in Sarawak, East Malaysia, and provides an examination of the project that includes its rationale and development chronology. This chapter also traces elements of rent-seeking activities and political patronage in the project planning and implementation. Following that, the discussion touches on the issue of EIA irregularities in both the procedural aspects and the content of the project's EIA. In order to understand the socio-economic background of the PAP (i.e. the Orang Ulu, who have specifically been directly affected by project implementation) this chapter will zoom in to the RSSA level. There is also a brief discussion on the geography and socio-economic position of the Bakun area, the sub-district of Sungai Asap and the Belaga District. The review and analysis at this stage intends to show how the project actors, especially the government, have demonstrated their real attitude towards EIA. The discussion derives mainly from secondary data.

As a general guide, this chapter aims to answer the similar research questions formulated in Chapter 1 as follows:

- i) What has caused the EIA institution to be perceived as having low credibility in the BHP context? In this regard, to what extent are the EIA rules being shared by BHP social and political actors?
- ii) Under what socio-economic conditions could EIA as an institution gain a state of credibility, or, alternatively, non-credibility?
- iii) What is the nature of the conflict occurring in the BHP, including the sources of such conflict and the strategies used by its actors? What are the roles played by the social conflicts in EIA and how have they contributed to the credibility of the institutions?

- iv) What are the manifestations of low credibility of the institutions in the BHP area?  
What are the manifestations of the conflicts that relate to low credibility and lack of trust in the state and in politicians?

As shown in previous chapters particularly in Chapters 3 and 5, it was clear that in the macro and general perspective, the EIA in Malaysia is facing eminent threats in term of credibility<sup>181</sup>. Therefore, it is interesting to further examine whether the evidence from the BHP concur with the other researchers' observation on EIA empty or even non-credible institutions - failures to function as they ought to be. Therefore, the following case study protocols for questionnaire survey and field works were used for data collection by examining local people's perception on six thematic components, namely: i) EIA practice; ii) land rights issues; iii) life experiences at the new resettlement scheme and the compensation issue; iv) the nature of conflict; v) local residents' perception of government and politicians; and, vi) suggestions and recommendations to improve project acceptance. Meanwhile, the local indigenous people interview sessions centred on the respondents' comments regarding their experience in dealing with EIA and their life experiences at the resettlement schemes, particularly on land rights and resettlement issues. The questions also dealt with the issue of conflict. Lastly, the questionnaire survey investigated respondents' perception of the government and politicians' roles in assisting their life at their current resettlement schemes. On the other hand, the interview questions for organisations mainly emphasised issues that are related to EIA practices for the projects: compensation and relocation, and land right issues. The questions also dealt with conflict and the measures taken by the organisations in their efforts to rally local acceptance of the projects.

The review and analysis hopes to show how project actors describe their experiences of dealing with EIA and land rights. It also aims to show the impact of land rights on the local community due to project implementation, as well as the causal effects of conflict on local people's trust for government and politicians. Ultimately, this chapter aims to demonstrate the factors that have limited the project's credibility.

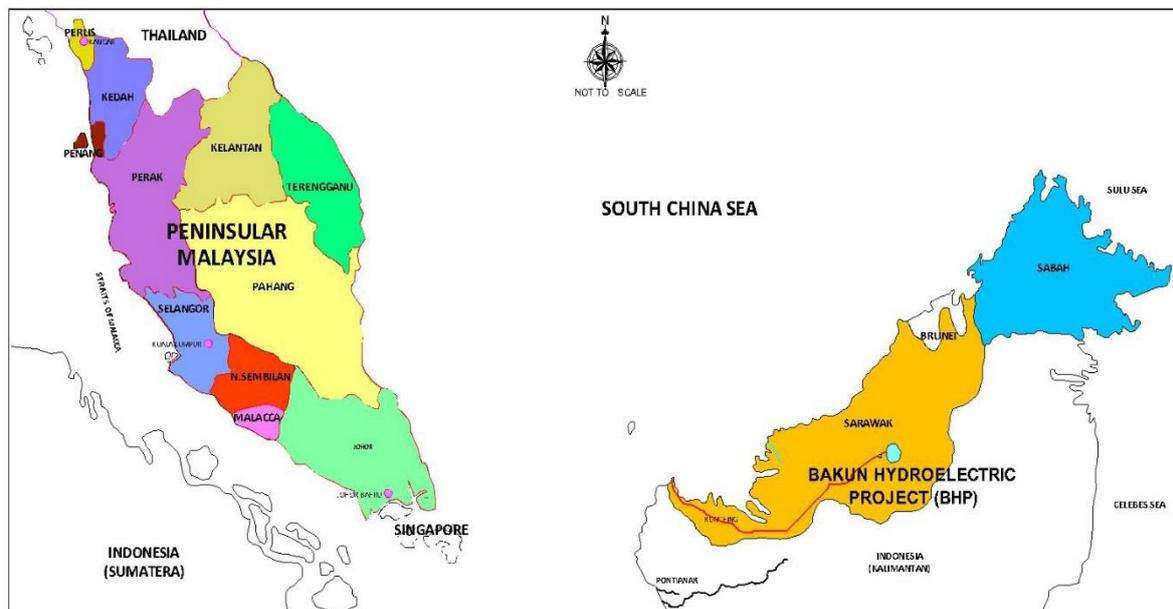
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<sup>181</sup> This specifically refers to rent-seeking and political patronage in construction industry (see Section 5.4 and 5.5). In addition to the conflict generated from the land projects (Section 5.8) as well as the example of specific of rent-seeking presence in dam construction in Malaysia. All these lead to enormous pressure to EIA as a tool for land use planning.

## 6.2 Project Information: BHP

In 1986 the Malaysian government embarked on the historic construction of the BHP, which has put Sarawak on the world map. It was Asia's first dam project of this size and level of electricity-generation capacity.<sup>182</sup> When fully operational, the BHP will generate a maximum capacity of 2400 megawatts. The BHP is known as the second tallest concrete-faced rock fill dam (Wikipedia, 2016).

The BHP involves the creation of a reservoir of approximately 70,000 hectares, or roughly the size of Singapore. One purpose of the BHP is to support Sarawak's ambition to become a powerhouse in Malaysia. The electricity generated from the BHP will not only be exported to Peninsular Malaysia<sup>183</sup> but also to neighbouring countries, namely Brunei, Indonesia and the Philippines. Figure 6.1 shows the location of the BHP in the context of Peninsular Malaysia and the Sarawak State. Figures 6.2 to 6.5 show the BHP's aerial view and its access routes. Table 6.1 describes the exact location of the BHP.



**Figure 6.1:** Project location: Bakun Hydroelectric Project (BHP), Sarawak, Malaysia

<sup>182</sup> Other dams in Malaysia such as the Kenyir Dam in Terengganu, the Pergau Hydroelectric Dam in Kelantan, the Beris Dam in Kedah and the Temenggor Dam in Perak are relatively smaller in size and have much lower electricity production capacity.

<sup>183</sup> However, up until now, the idea of supplying electricity to Peninsular Malaysia via an undersea cable has still not materialized (Ng, 2010). There was a rumour that the undersea cable idea will resume in 2012 (Wikipedia, 2015b); however, as of 2015, there project is still on the drawing board.



Source: Sarawak Hydro Sdn Bhd, 2012  
**Figure 6.2:** Aerial view of the BHP



**Figure 6.3:** View of the BHP from the spillway bridge



**Figure 6.4:** Road signage giving directions to the BHP dam



**Figure 6.5:** The Bakun-Tubau-Bintulu road (access road to the RSSA and the BHP) (The road is always busy with logging trucks)

The federal government of Malaysia owns the BHP through the MOF. The BHP was executed under the Malaysian privatisation programme, through methods of BOT<sup>184</sup> and build-operate (BO) (Gomez, 1999, p. 85). On 30<sup>th</sup> January 1994 the project concession was awarded to a company that was inexperienced in dam construction, Ekran Berhad (hereafter Ekran) – a company belonging to Ting Pek Khiing (hereafter Ting), a Sarawakian timber tycoon and developer.<sup>185</sup> Bakun is situated in the Belaga District, which is one of the three districts in the Kapit Division of Sarawak. The Kapit Division is the largest division in Sarawak: it covers

<sup>184</sup> According to Usher (1996, p. 124) among the reasons for the BOT method adoption is the absence of 'technical expertise'.

<sup>185</sup> Ekran is the first project proponent of the BHP before leaving the project in 1999 due to a disagreement on the government's decision to defer the project and a disagreement with its engineering consultant, ABB. The BHP was then taken over by Sarawak Hydro, an entity wholly owned by the federal government through the MOF. Ting was declared bankrupt in 2010 by the Kuala Lumpur High Court because he defaulted on the loan amounting to RM 60.79 million that he had borrowed from the Bank of Commerce in 2004.

an area of 15, 596 square kilometres (DOS, 2011a, p. 5). The Kapit Division borders Central Kalimantan of Indonesia to the south and Brunei to the north (see Figure 6.1).

Topographically, the Kapit Division has a rugged and mountainous terrain with 84 percent of its area still forest; the Bakun area is very hilly and predominantly forest. The Batang Rajang River and its tributaries – namely the Batang Boleh, Batang Katibas, Batang Balui and Belaga – flow into the Belaga District and then on to the South China Sea. Currently, the Belaga District is the home for two hydroelectric dams, namely the BHP and the Murum Dam. While construction of the BHP is complete and the dam has been in operation since September 2011, the Murum Dam is still under construction. The Murum Dam, like the BHP, has generated conflict and resistance intensively from the Orang Ulu.<sup>186</sup>

**Table 6.1:** Basic facts about the Bakun Hydroelectric Project (BHP)

Location	District of Belaga in the Kapit Division of Sarawak, East Malaysia.
Impounded rivers	Batang Rajang and its tributaries.
Size	44 kilometre dug tunnel
Capacity	2400 megawatts
Current status	Completed
Date of commencement	Officially, it was supposed to commence in 1996 but in September 1994 the official earth-breaking ceremony was performed by Mahathir.
Date of operation	September 2011
Cost	The original cost was estimated to be RM (billion) 2–3 (USD 0.64 -0.96 billion), but the final total was approximately RM (billion) 7.3 (USD 2.33 billion).
Project proponent	The federal government through the MOF. The MOF assigned it to the Sarawak Hydro Sdn Bhd, a federal company – a wholly owned subsidiary of MOF – to administer the project until completion.
Project contractor	At first, the tender was awarded to Ekran in 1994. It was then taken over by a joint venture between Sime Darby (a Malaysian company) and Sinohydro of China in 2002: Malaysia–China Hydro Joint Venture (MCHJV).
Relocation of people	The Orang Ulu at the RSSA.
Date EIA approved	27 <sup>th</sup> March 1995 (INSAN, 1996, p. 65)
Date of EIA submission	8 <sup>th</sup> September 1994

<sup>186</sup> For example, the Penan sub-group of PAP staged a series of blockades and were arrested by the police (Then, 2013). Also, a protest on the Murum Dam was held outside the Malaysia Parliament in Kuala Lumpur (Ramani, 2013)

### **6.3 The EIA Requirements for the BHP**

EIA reports for the BHP were mainly prepared by The Centre for Technology Transfer & Consultancy at University Malaysia Sarawak (UNIMAS). Sarawak's EIA legislation, namely the Natural Resources Environmental Ordinance (NREO) (Prescribed Activities) Order 1994, formed the basis of the legal requirements for the BHP. Initially the BHP's EIA was thought to be subject to the federal EIA requirements, considering that the project would involve the construction of the dam and reservoir which were activities covered by the Prescribed Activities (Environmental Impact Assessment) Order 1987; this Order classifies these activities under the federal EIA lists.

The BHP was also considered to be subject to the federal EIA requirements because it involved at least one or more of the following prescribed activities (which are subjected to federal EIA): i) the conversion of hill forest land to other land use covering an area of 50 hectares or more; ii) logging activities which cover an area of 500 hectares or more; iii) dam and hydroelectric power schemes projects with dams over 15 metres high; and, iv) ancillary structure installations covering a total area in excess of 40 hectares and/or reservoirs with a surface area in excess of 400 hectares. The project also involved a proposal for a High Voltage Direct Current (HVDC) transmission system to connect the Bakun Sarawak (from the Rajang River) to the coastal point of Peninsular Malaysia (Ulu Sedili in Johore) via an undersea cable. To reinforce public belief that the project would be subject to the federal EIA requirements, up until 20<sup>th</sup> April 1995 the Sarawak government, or the Sarawak Natural Resources and Environment Ordinance 1949 (Sarawak Ordinance), did not have responsibility for monitoring the satisfaction of EIA requirements. Under normal circumstances, this inter-state project would require a DEIA, which was under the purview of the federal DOE. However, due to Ekran's influence, the BHP's EIA was instead shifted under the Sarawak's EIA requirement, i.e. NREO.<sup>187</sup>

State EIA law gives discretion to the project proponent as to whether to conduct a public EIA review or not. In this case Ekran failed to carry out a public review; this was revealed in the 1997 court judgement case of the Director of DOE and Anors vs Kajing Tubek and others (1997).<sup>188</sup> This was contrary to the federal EIA law, i.e. the Order 1987, which normally requires a compulsory public review (Nijar, 1997).

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<sup>187</sup> This anomaly will be further discussed in Section 6.8.4

<sup>188</sup> This anomaly will be further discussed in Section 6.8.2

## 6.4 The BHP: Rationale and Needs

The BHP was intended to provide security for the future energy demand of Malaysian, which due to the current state of technology and availability of the existing energy sources was subject to depletion. The BHP would be cost effective in terms of economic perspectives as well as its external costs and benefits (EPU, 1996a; EPU, 1996b). Table 6.2 shows the demand for electricity in Peninsular Malaysia between 1995 and 2005, based on the 1995 forecast.

**Table 6.2:** Fuel mix electricity generation – Peninsular Malaysia, 1995–2005 (by percent)

Year	Oil	Gas	Hydro	Coal	Others
1995	10.2	69.3	9.7	10.8	0
2000	4.9	69.8	7.3	18.0	0
2005	3.0	47.2	19.7	28.8	1.3

Source: EPU, 1996b, p. 8

In view of the above projections, the BHP would ensure efficiency and the sustainability of energy demands; it could also reduce potential energy import and consequently reduce foreign exchange outflow. It was also expected that the BHP would bring about a lower cost of electricity production in the long term (EPU, 1996a; EPU, 1996b). In addition, the BHP could result in an overspill of socio-economic benefits to the Bakun area; for example, the enhancement of ecotourism as well as the creation of a new resettlement in the area could help equip the area with modern infrastructure. This could result in a vast improvement in the living standards of local communities (Ibid). Therefore, the relocation exercise formed part of the efforts to bring the local communities into the mainstream development (Numpang, 2012).

The much-published rationale of the need for the project given by the then PM of Malaysia, Mahathir Mohamad, is as follows:

*We in the poor countries would like to have some cheap hydroelectric power. But all manner of campaigns are mounted against our proposals. The World Bank will be used to deprive poor countries of cheap hydroelectric power. And all this after the rich countries have developed most of their hydro potential...*<sup>189</sup> (Mohamad, 1991).

<sup>189</sup> This logic has also been strongly advocated by Ujang (1992) who views environmental protection politics in developed and developing countries as being the hidden agenda of the former to colonize the latter under the neo-imperialism banner – environmental protection. Western agents are using the local NGOs who are

The statement formed part of Mahathir’s speeches delivered during the plenary of the forty-sixth session of the United Nations General Assembly on 29<sup>th</sup> September 1991. To counter the critique that the BHP would undermine indigenous life, Mahathir reportedly said that the project would be *‘the government’s way of helping the poor’* (Mohamad, 1991). He also attacked critics of the project, accusing them of being unpatriotic and irresponsible, and blamed ‘foreign’ hands for stirring unrest (Allison, 2000). At the state level, the Sarawak CM, then Taib Mahmud, echoed the same line of argument as Mahathir:

*Bakun is a huge gift from the federal government – proof of the lie of the outdated idea that the Federal Government wants to rob us of our resources and colonise us. With Bakun, Sarawak will be the powerhouse of Malaysia.* (INSAN, 1996, p. 83).

Taib was of the opinion that the BHP would also give security to the future energy and development needs of the state and boast Sarawak potential to become a powerhouse of Malaysia (Department of Information and Communication Sarawak (DOIC), 2007).

## 6.5 The General Actors in the BHP: Roles and Interests

It was obvious that the actors involved in the project were numerous and complex, ranging from those involved in the planning to those involved in the implementation stages. However, this research will focus on events prior to 2001 and particularly on the events that related to EIA implementation. Moreover, it is worth mentioning that details of the actors’ interests are also examined throughout this chapter. In view of this, Table 6.3 illustrates the actors and group’s affiliations involved in the BHP planning and implementation.

**Table 6.3:** The key actors in the Bakun Hydroelectric Project (BHP)

Group/Organisation	Actor
Politicians (federal)	Mahathir Mohamad, (PM) Daim Zainuddin (Minister of Finance) Samy Vellu (Minister of Works)
Businessmen/Company	Ting (Ekran)
Chief Minister (CM) (state level)	Taib Mahmud (CM of Sarawak)
Project affected people	Orang Ulu
Main regulatory agency on EIA	DOE and NREB
Proponent of the project	MOF
Main NGOs	IRN, SAM, FOE and SUARAM

collaborating with the West because of jealousy of Malaysian success and a desire to destabilise and impoverish the nation (Weiss and Hassan, 2003, p. 11). See also the previous discussion in Section 2.4.2 on the study by Abaza (2000).

**Footnotes:**

IRN	International Rivers Network	SUARAM	Voice of the Malaysian People
MOF	Ministry of Finance	SAM	Sahabat Alam Malaysia
DOE	Department of Environment	FOE	Friends of the Earth International
NREB	Natural Resources and Environmental Board		

From the political side, the staunch proponent for the BHP was none other than the former PM of Malaysia, Mahathir Mohamad. Briefly, he was of the opinion that the BHP was necessary in order to provide reliable electricity supplies for Malaysia's industrialisation and urbanisation. He also argued that, through the resettlement schemes, improvement of the socio-economic position of the Orang Ulu could be realised. As such, the BHP documents, including the EIA, were finalised and kicked off during his premiership. Daim Zainuddin was another strong proponent of the project from the federal government. He was the former and influential Finance Minister during Mahathir's administration. Meanwhile, at the Sarawak level, the CM of Sarawak, Taib Mahmud (the fourth CM of Sarawak), strongly supported the BHP.

Mahathir took part in the earth-breaking ceremony of the BHP on 30<sup>th</sup> September 1994. He made harsh remarks about those who opposed the project. Even before the project received Cabinet approval, he had already given the project the green light. Hiding behind the pretext of 'public interest' and development rights, Mahathir and Taib labelled the BHP's opponents as 'anti-development', foreign agents, and with other negative labels<sup>190</sup>. Mahathir considered the BHP to be a national project priority item and this was reflected in his privatisation lists (Pura, 1996).

However, politicians' interest in this project was not purely due to public interest. The next section of this chapter reveals that political patrons received significant benefit from the project, either through their links to UMNO or NF companies or through personal interests. The BHP contract was awarded without open tender to Ting, the first contractor, who had a personal connection to Mahathir, Daim Zainuddin and Taib Mahmud (INSAN, 1996; Gomez, 1999; Wain, 2009). It was not until 1997, when Ekran completely withdrew their involvement in the project, that the BHP taken over by a joint venture between a Malaysian company (Sime Darby led) and a China company (Sino Hydro). The consortium was named the Malaysia-Sino Hydro Corp Joint Venture (MCHJV).

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<sup>190</sup> According to Ramakrishna (2003) such negative labelling was a common approach employed by the government aimed to silence local opponents' voices, or at least to divert public attention from the real issues.

Meanwhile, at the international level, among the actors involved were the NGOs including Friends of the Earth International (FOE)<sup>191</sup> and the International Rivers Network (IRN)<sup>192</sup>. They were working hand in glove with the local NGOs such as Sabahat Alam Malaysia (SAM)<sup>193</sup> and the Voice of the Malaysian People (SUARAM).<sup>194</sup> These NGOs formed a coalition of NGOs (Gabungan). At the district and village levels, the affected local people also formed two separate local action groups. Those who were against the project set up the Bakun Regions People's Committee (BRPC) while those who supported the BHP established the Bakun Development Committee (BDC). Meanwhile, regulation agencies dealing with EIA approval for the BHP were represented by the federal DOE and the NREB at the state level.

## **6.6 The BHP: Planning and Development**

This section discusses the milestones in project planning and development. It also aims to reveal actors' roles and interests in the project. Development of the BHP dates back to 1962 when the first study assessing and identifying a potential site for hydroelectric power in Sarawak was conducted by a German–Swiss Consortium, namely the SAMA Group. In 1970, the Sarawak Electricity Supply Corporation (SESCO) conducted a second site survey in order to assess the potential of the Bakun project. Historically, the first person who mooted the idea of choosing the Bakun area was William Lai, who was the SESCO<sup>195</sup> General Manager, acting together with SESCO's main consultant from Britain, the PCR consultant (Tate, 1999, p. 354). The PCR consultant was entrusted with the task of conducting the preliminary study before it was taken up by the EPU in Kuala Lumpur. At the same time, Lai also managed to win the interest and support of the Deputy Minister for Works and Utilities, Dr. Goh Cheng Teik. The last and most convincing person endorsing the project was Mahathir Mohamad, who at that time was the DPM (Ibid).

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<sup>191</sup> FOE is a global NGO representing more than two million activists in 75 different countries. FOE is based in Washington, D.C. and Berkeley, CA, and has members from all 50 States; it was established in 1970. FOE aims to defend the environment and work towards a healthy environment for all people (FOE, 2015).

<sup>192</sup> The IRN is an NGO based in Berkeley, USA with special interests in environmental and human rights. The IRN was established in 1985 and devotes its work to protecting rivers and defending the rights of the communities that depend on them, particularly in Latin America, Asia and Africa (IRN, 2015).

<sup>193</sup> SAM (Sabahat Alam Malaysia) or 'Friends of the Earth Malaysia' is an NGO which champions the issues of indigenous peoples. SAM empowers communities in defending indigenous customary rights and natural resources. It was established in 1977 (SAM, 2011, p. 7).

<sup>194</sup> SUARAM is a local NGO with a vision to protect and promote human rights in a society that is just, equal, and democratic. SUARAM was established in 1989 with the aim of defending all aspects of human rights including freedom of expression and information, and the rights of minorities (SUARAM, 2015).

<sup>195</sup> SESCO is Sarawak's energy agency; it is a wholly owned by the state government (SESCO, 2013).

During Mahathir's visit to Sarawak to officiate the Biawak River Power Station in 1978, the CM of Sarawak at that time, Abdul Rahman Ya'kub (the third CM of Sarawak), told Lai to brief Mahathir regarding the BHP. Mahathir found it a very interesting idea. The EPU was then instructed to ask the German Agency for Technical Cooperation (GTZ) to conduct a formal evaluation of the project (Tate, 1999, p. 356). However, in 1985 the project planning work was put on temporary hold due to financial constraints. Later in 1987, the project was officially put on hold when Malaysia was hit by the world economic recession. The gloomy economic climate caused the government to be less optimistic about the growth of the electricity market (EPU, 1996b). In 1987, the World Bank produced a report which stated that the BHP was not 'economically viable' for the 1990s. Against this background, the government was of the opinion that there was no urgent need to continue with the construction work for the BHP during that time (Tate, 1999).

The decision to halt the project was not officially endorsed until 1990 when the Malaysian Cabinet announced the intention to cancel the whole BHP project. Mahathir was quoted as saying '*...Malaysia has made a big sacrifice for the sake of the environment...by not going ahead with the project*' (Utusan Konsumer, 1993). Such a decision, according to Mahathir, '*is proof that we care for the environment*' (Utusan Konsumer, 1993). The cancellation did not stand for long, however, as a review undertaken in 1992 suggested that the project was economically viable and must continue. The decision to revive the BHP was also attributed to the fact that billions had already been spent on it. Thus, in September 1993 the project resumed and completion was rescheduled to 2005 (EPU, 1996a). The announcement was made by the Federal Minister of Works and Public Utilities (MWPU), then Samy Vellu.

In a separate development, in view of the fact that that the BHP would require a huge capital investment, the government decided to implement the project through a joint venture method. Thus, National Utilities Energy (TNB), SESCO and Malaysia Mining Berhad (MMB) formed a joint venture (INSAN, 1996). On 30<sup>th</sup> January 1994, the project was awarded to Ekran, a public listed company despite rumours that the project would be awarded to SESCO. This decision was made partly because Ekran had experience in the dam industry (INSAN, 1996; Gomez, 1999; Gomez and Jomo, 1999). According to Wain (2009, p. 186), Ekran was chosen without open tender and after private negotiation was conducted in just a few weeks. Considering its lucrative project status, the tender was regarded as 'a deal of the century'. It was widely proved that Ekran won the BHP project because Ting promised a speedy delivery of the project as well as providing substantial equity to the Sarawak

government, Taib Mahmud and his key business supporters in Sarawak.<sup>196</sup> To justify the decision on the revival of the BHP, Mahathir was quoted as saying '*...a small sacrifice has to be paid (to bring to the state and its people), and the project might result in the loss of trees, some animals and the displacement of the local residents...It is a waste not to use the gifts of nature*' (Utusan Konsumer, 1994a).

On 22<sup>nd</sup> April 1994 the CCTC at the local public university, UNIMAS, was appointed by Ekran as the main consultant for BHP's EIA. Ting claimed that the EIA would be completed by June 1994. This time frame raised the question of whether there would be rushed and hasty work (Utusan Konsumer, 1994b). In May 1994 the socio-economic study was carried out separately by the Sarawak SPU, a unit under the Sarawak CM's Department.

On the ground, Ekran had already carried out the preliminary construction work by September 1994 when an earth-breaking ceremony for the BHP was officiated by the staunch proponent of the BHP, Mahathir (INSAN, 1996, p. 61). Other earth works followed, including land clearance, construction of the access road and river diversion work. This was despite the fact that the first EIA report for the project (the DEIA for the reservoir) only obtained approval on 27<sup>th</sup> March 1995, six weeks after submission (INSAN, 1996, p. 65). Moreover, this was only one of the four parts of the EIA report for the BHP. The decision on the EIA for the reservoir was made without public review as well as being assessed without the complete EIA report, despite the fact that EIA procedures clearly required it (Utusan Konsumer, 1995a; Utusan Konsumer, 1995d).

On 20<sup>th</sup> April 1995 three PAP from the longhouses of Long Bulan, Uma Daro and Bato Kalo of Ulu Balui filed an originating summons at the High Court in Kuala Lumpur. They were seeking a declaration that the applicable law (in this case the EQA 1974 passed by the federal Parliament) had been breached, and asked that they be given the right to make representation as provided for under this law (Nijar, 1997, p. ccxxx-ccxxxi). However, in 1997 the project was delayed for a second time due to the global recession and the falling

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<sup>196</sup> It was argued that Ekran's speedy delivery of construction of a five-star hotel, the Sheraton Langkawi Beach Resort with 170 rooms in Langkawi Kedah, in just 53 days really impressed Mahathir; this led the government (read Mahathir) to give the BHP tender to Ting (INSAN, 1996, p. 10; Gomez, 1999, p. 171; Wain, 2009, p. 184). On the other hand, Gomez (2002, p. 91) also stated that the award given to Ekran, a non-Bumiputera company was the federal government attempting to encourage inter-ethnic ties, especially after the federal government has realised the contribution the Chinese communities had made to Malaysia's economic growth (particularly in the mid-1980s during the economic recession). The BHP tender was given to Ting after the NF and UMNO realised that the division among the Malay community had escalated while at the same time the support among the non-Bumiputera had been decreasing for the NF component parties. Therefore, the award of the tender to Ting was a kind of persuasion to the non-Malays (or non-Bumiputera) business fraternity (Ibid).

value of the Ringgit Malaysian (RM). It was also acknowledged that the project contractor, Ekran, was having a disagreement with the Swiss–Swedish engineering contractor, Asia Brown Boveri Limited (ABB). It was about an objection by ABB over the issue of the RM (billion) 9 contract being awarded to four companies under Ting’s control without tender<sup>197</sup> (Gomez, 1999, p. 175; Wain, 2009, p. 188). That year also witnessed the federal government taking over the project from Ekran when the latter withdrew from the BHP<sup>198</sup>. As a result, the compensation paid to Ekran amounted to between RM (million) 700 to RM (billion) 1.1.

In May 2000 the BHP was revived again, this time through a company wholly owned by the Federal Government, Sarawak Hidro. Its completion was rescheduled in order that it would come into operation in 2003. However, this time the planning for transmission of the undersea cable power from Sarawak to Peninsular Malaysia was put on hold. Shocked by the government’s reversal, on 22<sup>nd</sup> January 2001 a group of NGOs, including SUARAM, the National Human Rights Society (HAKAM), the International Movement for a Just World, Save Ourselves Penang, Save Our Sungai Selangor (SOS), the Women's Development Centre, the Centre for Orang Asli Concerns (COAC) and political parties like the Malaysian People’s Party (PRM) and the Socialist Party of Malaysia (PSM), strongly urged the government to scrap the BHP. With one strong voice, they claimed that the BHP revival was gravely flawed, and also that the project information was limited and public access to it was restricted (Malaysiakini, 2001).

In 2002 the main contractor for the BHP was confirmed to be the Malaysian–China Hydro Joint Venture (MCHJV). Sarawak Energy was set up as the company manager in order to oversee project implementation. The main civil works commenced in 2002. Other consortium partners included WCT Engineering Services Berhad, MTD Capital Berhad, Ahmad Zaki Resources Sdn Bhd, Ismail Ibrahim Sdn Bhd and Edward and Sons Sdn Bhd (EM) (Sime Darby, 2010). The electromechanical works for the turbines were awarded as a turnkey project to IMPSA of Argentina and Alstom of France. The BHP target completion

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<sup>197</sup> According to Allison (2000), the disagreement revolved around dateline and cost estimates as well which party would be responsible for any payments in the event of overruns. It was also due to Ekran's insistence on using subcontractors linked to it without going through the tender process.

<sup>198</sup> The decision was made by Ekran because the company had objected to the government’s decision to defer the BHP work (Lopez, 1997; Ritchie, 2005). However, critics claimed that Ekran had ‘withdrawn’ from the project because the government wanted to help Ting through ‘bailout’ (Shameen, 2000; Ritchie, 2005). It was found that Ting was hard-hit by the turmoil in the stock market (Ritchie, 2005, p. 156). Ting’s personal debts amounted to more than US Dollar 1 billion (Shameen, 2000).

date was rescheduled to September 2007, and then again revised to February 2008. The total sum to be paid to this consortium was approximately RM (billion) 1.8.

Finally, after going through a number of uncertain years, on 13<sup>th</sup> October 2010 the BHP began its first step of operation. In 2010, in a related development, the federal government again shelved the proposal to build the multi-billion RM undersea power transmission cable between Sarawak and Peninsular Malaysia (Then, 2010). The final cost of the BHP project had overrun from an estimated RM (billion) 3–4 to RM (billion) 7.3. By that time, the project had been successfully delivered to the federal government (Leong, 2011).

## **6.7 The BHP: Rent-seeking Activity**

This section discusses rent-seeking activity and the economic interest gained by the BHP actors from project implementation. In order to put the discussion on the BHP and the related rent-seeking activity into the right perspective, it is essential to have a brief understanding of the BHP's role in Sarawak's regional planning context. It is obvious that while the damaging effects of the BHP mainly affected the livelihoods of local people, the fruits of development would go to other actors, including the politicians, business elites and foreign companies, and not the local people. As rightly claimed by Mark Bujang from BRIMAS<sup>199</sup>:

*Orang Ulu were forced to be relocated to make way for the BHP where electricity will be generated. They left their ancestor's land and in addition, they left the ancestors' graveyard – something that is not comparable with monetary reward. However, while they have made a huge sacrifice, at the same time we clearly see, the businessmen and our politicians gained the economic benefits from the project [BHP] execution (Oral conversation with Mark Bujang, an Executive Director of Borneo Resources Institute (BRIMAS) in Miri, Sarawak on 21<sup>st</sup> September 2011).*

To investigate this aspect, this research study examines the most beneficial actors in a chronological order. It is clear that Ekran has enjoyed huge economic benefits from the BHP through their success in being awarded the project, including an estimated 1 to 4 billion

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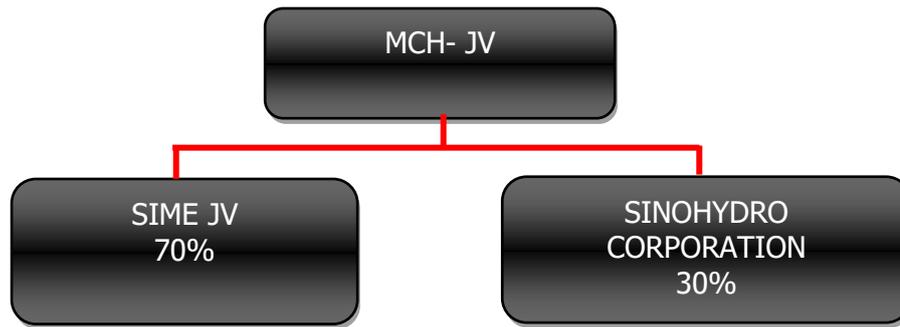
<sup>199</sup> BRIMAS is an NGO operating in Sarawak. The NGO was established in 1993, which is mainly concerned on Indigenous Dayak communities and their NCR, resources, environment and development taking place in their traditional land (BRIMAS, 1999a).

tonnes of timber valued around RM (billion) 1. In addition, Ekran received compensation when the company withdrew from the project in 1998. Ekran demanded RM (billion) 1 because they had carried out the preliminary work. As well as being awarded compensation, Ekran was also awarded 11, 578 acres of plantation in the Sungai Asap. The company also managed to win the contract for constructing the 165 kilometre road from Bintulu to Tubau with a total cost estimated at RM (million) 300 (INSAN, 1996; Gomez, 1999; Gomez and Jomo, 1999). Approximately RM (million) 500 of resettlement cost was paid to the other contractors, including the British contractor, Bucknall Group – a British company based in Birmingham, England (Hutnyk, 1999).

After the government took the BHP over from Ekran in 1997, the MCHJV replaced Ekran as the most benefited party in 2002. The shareholdings of the companies involved in the BHP are illustrated in Figure 6.6; Sime JV<sup>200</sup> obtained about 70 percent and Sinohydro Corporation about 30 percent. What is the connection between Sime Darby and UMNO? It is proved that the chairman and the board of directors of Sime Darby are normally those from UMNO or NF members. Sime Darby is a Government Linked Company (GLC). Its chairman is always selected from previous UMNO leaders who have retired or failed to win general elections. For example, the previous Sime Darby Chairman was Musa Hitam, a former DPM and ex-UMNO Deputy President. The current one is Abdul-Ghani Othman, the former CM of Johore who was defeated by the DAP, Lim Kit Siang, in Gelang Patah, Johor during the thirteenth General Election of Malaysia.

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<sup>200</sup> Sime JV is a subsidiary of the Sime Darby Company. It is a Malaysian flag conglomerate and its business roots originate in plantations; it emerged from the restructuring of the Kumpulan Sime Darby Berhad, Golden Hope Plantations Berhad and Guthrie Berhad Group. Sime Engineering is a wholly-owned subsidiary of Sime Darby and a member of the Sime Group, which concentrates mostly on engineering, project management services and land-based construction, the petroleum industry, power plant and infrastructure work.



Source: Sime Darby, 2010

**Figure 6.6:** The distribution of shares between Sime JV and Sinohydro Corporation

Foreign companies also gained financial benefits from the BHP implementation. For example, it was recorded that, as of June 2008, Sinohydro had claimed RM (million) 892 for Package 1B (Sime Darby, 2010). Among other projects, the company also managed to win the Bakun–Similajau Transmission Line Project. On 24<sup>th</sup> December 2009, Sarawak Energy Services Sdn Bhd (SESB), the project owner, acknowledged that Sinohydro had been awarded Package B of the Bakun–Similajau Transmission Line Project. The 134 kilometre 275 kilovolt double circuits and four-bundle conductor transmission line had a total contract value of RM (million) 210 (USD 62 million) (Borneo Post, 2010). In addition, the BHP is proved to have a direct link between the electricity it generates and the Sarawak Corridor of Renewable Energy (SCORE), or to be exact, the Simalajau Heavy Industry Park in Bintulu. It is intended that SCORE’s electricity demand will be met from a variety of sources, but approximately 71 percent of its energy source will come from hydropower and, presumably, the biggest portion will come from the BHP (Kapit Resident Office, 2009).

The Simalajau Heavy Industry Park is one of the industrial hubs under SCORE. It is one of the five economic development corridors initiated by the fifth Prime PM, Abdullah Badawi. The aim of the regional development corridors is to spread development and to reduce the physical barrier, and to correct the socio-economic development imbalance.<sup>201</sup> In Sarawak, SCORE’s specific aim is to develop and transform the central region of Sarawak to make it a developed region by 2020. As such, SCORE would act as the regional engine for Sarawak’s

<sup>201</sup> Iskandar Malaysia is one of the regional corridor developments in Malaysia. It is located in Johor, the southern part of Peninsular Malaysia. The Iskandar Investment Bhd, the project developer of Iskandar Malaysia, has secured a RM (billion) 1.8 real estate investment from a China-based company, Qingdao Zhouyuan Investment Holdings (iproperty.com., 2011). Other regional development corridors established under the fifth PM Abdullah Badawi are: i) Northern Corridor Economic Region (NCER); ii) East Coast Economic Region (ECER); iii) SCORE; and iv) Sabah Development Corridor (SDCR). The regional development planning in Malaysia aims to mitigate a disparity in the development of regions.

economic growth and development, which eventually will improve the Sarawak people's lives.

As such, it is planned that electricity produced by the BHP will be used for the SCORE projects where power hungry industries like smelter factories will be located. A proposed aluminium smelting plant in Similajau, Bintulu, situated approximately 184 kilometres inland from the dam, is part of SCORE's big dream to develop central Sarawak. The Minister of the MEGTW, Peter Chin, was recorded as saying that *'The electricity from Bakun is to be channelled for industrial use within the Sarawak Corridor of Renewable Energy (SCORE) belt. The power from Bakun will be used for those projects under SCORE'* (Then, 2011).

Two smelter companies have shown an interest in operating within SCORE. The first company in a joint venture between Cahaya Mata Sarawak Berhad (CMS) and Rio Tinto Alcan (Rio Tinto Alcan, 2008; Singh-Sidhu, 2010). The plan to study the construction of the plant was initially linked to CMS and Rio Tinto in August 2007. The consortium of smelters managed to get a licence to build a smelter in Similajau, Bintulu. There was talk that CMS has a strong connection with Taib Mahmud's family, headed by Onn Mahmud, brother of Taib (Gomez, 1999, p. 176). CMS and Rio Tinto Alcan, a giant smelter company from Australia, negotiated with Sarawak Energy Berhad (SEB) regarding the power supply from BHP to the smelter factory in the Similajau Industrial Park. However, the plan to have a RM (billion) 7 aluminium smelting plant fell through after the three parties involved amicably terminated their agreements. Rio Tinto, a potential investor for SCORE, officially withdrew from the negotiation table (Reuters, 2012).

## **6.8 The BHP's Environmental Impact Assessment (EIA): Incompliance and Irregularities**

This section examines the way in which the BHP's EIA was conducted. This research posits that the credibility of the EIA can be investigated through the way it has been treated, or to the extent to which the project actors abided by its rules. The investigation in this section is based on chronological events. Sub-sections 6.8.1 to 6.8.5 touch on events involving EIA procedures, while Sub-section 6.8.6 discusses the reliability of the EIA's contents.

### **6.8.1 Commencing the Project First, Obtaining EIA Approval Later**

The most glaring in compliance of EIA procedure was the fact that even without EIA reports being obtained and approval provided by the DOE or Sarawak NREB, the BHP had been launched officially by none other than the PM of Malaysia himself, Mahathir Mohamad on September 1994 at Kuching Santubong Resort. This earth-breaking ceremony was made in advance of the DEIA procedures (EQA 1974), particularly Section 34 A (6) which clearly states that '*any person who intend to conduct a development project must conduct an EIA study*'. It is also explicitly stated in Section 10 of the Sarawak Natural Resources Environment (Amendment) Ordinance 1993 that any proponent or developer '*undertaking activities having impact on the environment and natural resources must conduct an EIA study and submit the EIA report to the Board*' (NREB, 1995, p. 3).

This has prompted the DAP, one of the opposition parties in Malaysia, to lodge a complaint against Ekran. However, Peter Chin, the then Deputy Minister of Science, Technology and Environment, was recorded as saying that Ekran had not flouted any of the EIA regulations and they (Ekran) just cleared a few hectares of land. SAM on the other hand stressed that the preliminary earth works had been conducted without EIA approval and that this was a serious violation of the EIA procedures (Utusan Konsumer, 1994a, p. 8). SAM also raised the question of whether Ekran had submitted a complete set of EIA reports to the NREB before the project tender was awarded. There was an acknowledgement from Ting that the EIA report for the BHP would be ready only in June 1994, almost six months after Ekran was awarded the Bakun project (INSAN, 1996). SAM itself had written to the Minister of Science, Technology and Environment, Law Hieng Ding, expressing its grave concern that '*The proposed BHP had been approved and awarded to a private company – even before a detailed EA had been conducted, reviewed publicly and approved by the DOE*' (Utusan Konsumer, 1994b, p. 4). In the letter SAM also conveyed their fear that '*the EIA process will become a mockery and that an EIA study on the project will be a mere formality, endorsing and legitimising the project without a comprehensive study of its economic viability, environmental and social impact*' (Ibid). In addition, since there was no definitive direction as to whom the EIA reports were to be submitted, if at all, this also made SAM sceptical and confused as to whom the reports should be submitted to.

In September 1993, despite the fact that the project had been resurrected, and despite strong demands from the public, the government promised a public review would take place

later. However, the EIA remained out of public view. In order to calm down the public request for project information, on 28<sup>th</sup> September 1993 the Minister of Works, Samy Vellu, reportedly said:

*Some EIAs [on the project] have been conducted and submitted...further EIA studies are being done to ensure that the environmental impact is minimized to acceptable levels. The various studies conducted indicate that the economic gains of this project far outweigh the environmental impacts. (Utusan Konsumer, 1993, p. 7).*

However, on 14<sup>th</sup> December 1993 Samy Vellu was quoted as saying that the EIA reports were not ready yet. He stressed that once the EIA reports were ready and had been submitted, the government would decide whether to continue with the project. Moreover, the federal DOE, who was the responsible agency for EIA at that time, never received the EIA reports – although some feasibility studies on the BHP were commenced during the 1980s (Utusan Konsumer, 1994a, p 4).

Ironically, on 23<sup>rd</sup> February 1994 the Deputy Minister of Science, Technology and the Environment, Peter Chin, reported that the government had just set up a Special Environmental Committee to study any impacts of the project on the environment (Utusan Konsumer, 1994b, p. 4). This confirmed the public belief that the DOE had yet to receive the EIA reports. On 6<sup>th</sup> February 1994 the DOE asserted that any work should not be allowed to commence prior to the approval of the EIA. The announcement was made by the DOE through its EIA section, namely Hasmah Harun, who had indirectly given the indication that the EIA for the BHP would be placed under the federal EIA procedures and regulation, which was then under the DOE's jurisdiction. (Utusan Konsumer, 1993).

Another indication that those behind the BHP were keen to proceed at any cost is the fact that they remained interested in progressing the BHP even after it had been halted for the second time (in 2001) due to a court order. The High Court of Kuala Lumpur gave victory to the local people. However, the authority was still eager to proceed with the project, in this case SESCO and EPU; they did not view this as an obstacle. Instead, as acknowledged by Tate (1999, p. 368):

*Despite the official cancellation of the Bakun project in 1990 when Cabinet made an official cancellation decision, SESCO did not abandon hope, and neither did the state*

*Government which saw in Bakun the key to Sarawak's economic future. Lai<sup>202</sup> and his team of planners kept in close liaison with the EPU in Kuala Lumpur, continuing to work with them on various details of the project so as to keep it alive.*

This attitude was also clearly expressed by Ekran:

*The adviser said that Ekran had yet to begin construction work on the dam, saying that 'there's nothing to stop – it's all preparatory'. (Pura, 1996).*

### **6.8.2 Project Information and Public Participation: Access Denied!<sup>203</sup>**

From the very beginning of the BHP planning and construction, the public and NGOs demanded more access to information on the BHP. For example, on 23<sup>rd</sup> February 1994 16 NGOs urged the government to be more transparent in releasing information on the project. The DAP joined the chorus by asking for more information on the safety aspects of the BHP to be given to the public. However, the government was reluctant to share information on the project. This can be best illustrated by the incident where a public forum was planned to be held in Kuching and to be attended by the Sarawak Finance Minister, Chair of the BDC, the representative of the Orang Ulu Communities and NGOs. However, two days before the event, the hotel booking was cancelled at the last minute. This act was viewed by the public as an attempt to delay and hide information (Aliran Monthly, 1994, p. 7).

In March 1994 members of the NGO asked the Federal DOE to follow its own procedures by allowing the DEIA reports to be accessed by the public. Realising that the project was not favoured by opposition parties, local and international NGOs, or the Orang Ulu, Taib Mahmud warned local people not to allow themselves to be manipulated by those who were not in favour of the BHP. The CM was particularly baffled at the opposing views of certain groups of Orang Ulu, who in his opinion were harping on about the so-called democracy, human rights and environmental concepts (Spires, 1995, p. 39). In response to the growing public concern about the EIA for the BHP, the Minister of Science, Technology and

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<sup>202</sup> As previously mentioned, Lai is a SESCO General Manager.

<sup>203</sup> There are two basic stages where the EIA process requires public participation: i) during the 'Conducting the EIA Study and Preparation of the Report' stage. In this phase, the project proponent through the EIA consultant must consult the PAP through: a) citizens committees; b) public meetings and workshops; and, c) public opinion sampling (DOE, 2009, p. 23); ii) during the 'Report Review and Approval' stage. In this stage the EIA report which has been compiled and produced by the project proponent has to be displayed for public inspection including by the PAP. Again, PAP input must be sought although it is not necessary for it to be abided by (DOE, 2009, p. 24).

Environment, Law Hieng Ding gave his assurance that public input would be sought before submission of the EIA report to the DOE (Utusan Konsumer, 1994b, p. 4.). Meanwhile, in order to allay the fears on the project, in June 1994 the Sarawak government organised a public forum in Sibu where five dam experts, a delegation from China, gave their assurance on the safety of the BHP (Aliran Monthly, 1994, p. 7; Spires, 1995, p. 40).

In September 1994, the CM again warned the public that certain groups, including the opposition party and environmentalist groups, were trying to manipulate the local people into rejecting the dam (Wong, 1994). Meanwhile, Ding gave an indication that the EIA reports for the BHP would be handled by the Federal EIA (Order 1987). He asserted that the project would not be given special treatment or permission to bypass any EIA requirements and the public would be given a chance to express their input. While the BHP controversy was getting heated up, Mahathir criticised the interest groups and NGOs for expressing concerns over the project *'Some parties, like NGOs, oppose the EIA report merely because they want to reject it without listening to clarifications'* (Utusan Konsumer, 1995b, p. 6). In fact, the CAP and SAM, for example, pointed out that although after four months the EIA for the project had been approved, there was no copy of it for public review (Ibid).

Another testimony to the EIA being treated with little importance in respect of the BHP can be traced through the intention to limit public participation in the process. After so much demand from the public, the DEIA reports for the BHP were put on display, but this actually had little meaning since the reports were displayed for only a very short time. It is important to mention that two months are normally given for public review or comments. In Belaga and Kapit the DEIA was displayed for only one day, on 23<sup>rd</sup> June. This was happened after on 23<sup>rd</sup> June 1995, the DPM stepped in, Anwar Ibrahim<sup>204</sup> gave assurances that the Sarawak government had been asked to display the DEIA for the BHP, but it had to be limited to two towns only, namely Kapit and in Belaga. He also gave the assurance that public views would be considered in the project but warned that it should not be politicised (INSAN, 1996). While in Kuching on 24<sup>th</sup> June 1995, it was only after a strong protest by the NGOs that the EIA reports were made available, and even then it happened one month later at the DOE HQ in Kuala Lumpur on 27<sup>th</sup> July (INSAN, 1996, p. 65).

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<sup>204</sup> Anwar Ibrahim at that time was the Deputy Prime Minister (DPM). He was the Chairman of the Cabinet Committee of the BHP.

On 24<sup>th</sup> June 1995, the realisation that the release of one EIA report (the reservoir EIA report) out of three would definitely not give the public a holistic view on the project, and the limited space available for the EIA reports to be displayed, prompted SAM to urge the Sarawak State to temporarily suspend the public participation exercise (Utusan Konsumer, 1995c, p. 6). During an interview with Radio Television Malaysia (RTM), Mahathir was quoted as saying '*Normal practice for the government is to approve an EIA before displaying it to the public*' (Utusan Konsumer, 1995b). This made the CAP and SAM argue that the PM had been gravely misled.

This approach of limitation and secrecy in dealing with project and EIA matters was extended when most EIA studies and BHP reports were classified under the OSA.<sup>205</sup> The Deputy Minister of Science, Technology and Environment, Tajol Rosli Ghazzali stated on 18<sup>th</sup> October 1993 that '*seventeen feasibility and design studies have been carried out on Bakun but these are classified under the Official Secrets Act and not for public distribution*' (INSAN, 1996, p. 54). At the time of writing, the EIA reports for the BHP are still confidential documents. No reports of studies on the project can be accessed in any of the DOE libraries in Peninsular Malaysia. Nonetheless, they can be read and reviewed after written approval from the SPU, Sarawak. However, they are available only at the NREB Sarawak. Treating the EIA report for the BHP with such secrecy has reinforced the public perception that the project had been conducted with less, or no, transparency and accountability.

### **6.8.3 The EIA Submission in Parts/Stages: No Problem!**

Ideally, and in practice, the assessment of the EIA report should be based on one complete study.<sup>206</sup> However, this was not to be in the case of the BHP; statements made by Ekran have shown that the EIA reports for the project were divided into at least three parts. This can be traced to events in December 1994 when Ting stated that the EIA would be divided into three parts: i) the reservoir; ii) the dam; and, iii) transmission lines. In February 1995, the Minister of Primary Industries, Lim Keng Yaik echoed Ting's approach by announcing that the Cabinet '*had agreed on such an approach which aims to speed up the construction*

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<sup>205</sup> The OSA or Act 88 was gazetted on 30<sup>th</sup> September 1972 and it was amended in 1982. The OSA is a law aimed at protecting confidential information from being circulated when the information could pose a threat to national security.

<sup>206</sup> After having reviewed Section 34A of the EQA 1974, the main section concerning the EIA in Malaysia and the EIA handbook produced by the DOE, the researcher has found that there is no specific guideline on the EIA report format for submission, i.e. whether it should be submitted in one complete set or by reports. This loophole has been fully utilised by the project proponent in this case study in order to avoid a complete EIA to be submitted for the DOE assessment.

*of the RM 15 billion BHP dam by dividing the EIA into three parts, namely the reservoir; the dam and the transmission'* (Utusan Konsumer, 1995d, p. 8).

On the other hand, SAM rejected the approach by saying *'what if the reservoir has been completed and the dam was rejected?'* (INSAN, 1996, p. 64). SAM stressed that if the government decision was to consider such an approach, then the submission of the EIA was a mere formality. SAM also stressed that there was no provision under the law for the approval of a project's EIA in stages (Utusan Konsumer, 1995c, p. 6). SAM slammed the move as *'impossible and illogical since the three parts are part and parcel of the same project'* (Mohamad, 2004, p. 65). The government's attitude in accepting the BHP's EIA reports in stages made SAM assert that *'...the government's decision to consider the EIA in stages, gives further credence to our initial fears that the EIA would be a mere formality'* (Utusan Konsumer, 1995c, p. 6).

In February 1995, Ekran received a letter of intent to go ahead with the project without getting EIA approval. Ting was recorded as saying that he was confident that all three parts of the EIA would be approved by the DOE (INSAN, 1996, p. 42). In March 1995, the DAP launched a nationwide petition campaign asking for the release of all feasibility studies (Spires, 1995). In response to the nationwide demands, the then Deputy CM of Sarawak cum Minister for Infrastructure, Development and Housing, Dr Wong Soon Kai, said that the government had entrusted the study on the dam project to international experts and stressed that the Orang Ulu would not be able to understand such a report because it was too technical was in English (Ibid).

#### **6.8.4 From Federal EIA to State EIA: Setting an Awkward Precedent**

On 1<sup>st</sup> April 1995 Ekran announced that the federal DOE had approved the DEIA for reservoir construction six weeks after its submission and the other two parts of the EIA had only been submitted at the end of March 1995. Ting informed the public that the EIA approval was given by the DOE because Ekran had followed all the DOE guidelines in preparing the report. An announcement was made at the DOE headquarters (HQ) in Kuala Lumpur (INSAN, 1996). The claims, however, were far from the truth as six days later the DG of the federal DOE, then Dr. Abu Bakar Jaafar, issued a press statement which claimed that the DOE had not approved the BHP's EIA.

How could this happen? It happened because Ting sought approval from the NREB on 27<sup>th</sup> March 1995 to exclude the construction of the dam from the purview of the EQA (Order 1987), or the federal EIA. At the same time, the amendment of the EQA was promulgated and came into force only on the date of its publication in the Gazette on 20<sup>th</sup> April 1995 (Nijar, 1997, p. ccxxxi). It thus put the EIA for the BHP under the NREO, or Sarawak's EIA law. One big question remained: How was the DEIA for the dam project put under the control of Sarawak and the NREB? To answer this, it is necessary to reproduce the report as published in The Star (Sunday Star) cited in INSAN (1996, p. 67-68) as follows:

*The report was submitted in February after Sarawak's EIA legislation. The Natural Resources and Environment (Prescribed Activities) Order 1994 was introduced on September 1<sup>st</sup>. The reasoning does not hold. However, the events are viewed chronologically. Science, Technology and Environment Minister, Datuk Law Hieng Ding signed the amendment to repeal the Federal EIA legislation for Sarawak only on March 27<sup>th</sup> 1995, with the effective date on the amendment backdated to September 1<sup>st</sup> (1994). Ekran also seemed oblivious to the Sarawak Natural Resources and Environment (NREB) jurisdiction over the Bakun EIAs. On March 31<sup>st</sup>, when executive chairman, Tan Sri Ting Pek Khiing declared the approval of the first EIA reservoir preparation, he also submitted two EIAs – on the dam and the transmission lines – to the DOE. Shouldn't the report have gone to the NREB? The 48-man Bakun Review Panel formed by the DOE was also unaware of the new Sarawak legislation, and even held a third meeting last November. Members, who had not even seen the EIA when it was approved, only realized that the panel had been dissolved sometime in April when they received a 'thank you' note from the ministry. One question which remained unanswered is 'Who actually reviewed and passed the EIA?' Apparently the NREB has yet to have such expertise. If so, did it appoint any experts to do the job? It is also unclear what recommendations, conditions or orders were issued by the NREB for approval. And how will the implementation of the project be monitored and by whom? These disparities hint at an orchestrated plan, where laws are conveniently circumvented and made retrospective purely to ensure a speedy green light for the project.*

Consequently, putting the EIA of the BHP under the Sarawak's EIA law gave a huge advantage to Ekran as a project proponent as public participation was placed entirely under the discretion of the project proponent. This can be evidenced by a statement of James

Mamit, a director of the NREB at the time: *'The Board would first ask the project proponent whether it wants the words "confidential" to be removed from the report.'* Ekran seemed to be hiding something, but said that *'We do not want to release the report and be reprimanded. If they [NREB] want to, they can release the report without asking us since it was submitted to them for approval'* (INSAN, 1996, p. 65).

### **6.8.5 Project Privatisation Procedures: Just Bypassed It!**

As previously mentioned, the BHP is not an ordinary project. Rather it was a pet project for Mahathir. The competition between the Mahathir and Anwar camps resulted in the factionalism among UMNO, the ruling party. The intense power struggle between Anwar and Mahathir centred on the way that the privatisation projects were implemented and this included the way in which the BHP was awarded to businessmen loyal to the Mahathir–Daim camp while bypassing Anwar who was the Finance Minister of Malaysia (Dhilon, 2009, p. 88). It was also observed that Anwar had control the mainstream media through his proxies and associates, e.g. the News Straits Times (NST) and Television Malaysia Bhd (TV3)<sup>207</sup> which had carried a number of unfavourable reports relating to the BHP and also questioned other issues related to the BHP's EIA (Ibid).

Consequently, in 1999, after being sacked by Mahathir Mohamad, Anwar Ibrahim lodged a police report accusing Mahathir of giving the tender to Ekran without complying with the privatisation procedure or the EIA procedures. In the report, among other things, Anwar highlighted that:

*He [Mahathir Mohamad, the PM] had approved the Bakun project without complying with the privatisation or tender procedures. He had launched the project even before the Cabinet approval. As per my previous police report with regards to Perwaja, he had established direct links with Tan Sri Ting by bypassing the Ministry and agency concerned.* (Hornbill Unleashed, 2010a).

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<sup>207</sup> The Malaysian press and media are not isolated from political affiliation or control. The NST and TV3 are examples of two media entities controlled by UMNO or to be more specific by Anwar's associates, Kadir Jasin and Nazri Abdullah (Gomez, 2002, p. 88). Currently, the NSTP and TV3 are 98 percent and 100 percent owned (respectively) by Media Prima Bhd (Media Prima, 2014). Media Prima was established on 23<sup>rd</sup> September 2003 and controlled by UMNO (Chin, 2015, p. 400). Through the acquisition of these media entities, the editorial content was controlled by the owner (Kim, 2001, p. 72-73). See other detailed discussions on media ownership and political affiliation in Gomez (1994), Netto (2007) and Abdul-Latif, Wan-Mahmud, and Salman (2013).

Although action taken by Anwar Ibrahim seemed quite late, it once again reinforced the general belief that the BHP was awarded to Ting in a secretive and non-transparent manner and without abiding by EIA procedures.

#### **6.8.6 The Reliability of the Data and Facts in the EIA Reports: The Anomalies Continue**

Following the above review of the BHP's EIA in terms of the process and procedures, this research goes on to examine its data and contents. By doing so, this strengthens the arguments that the EIA for the BHP was just a symbolic representation of legal compliance. In addition, this section further demonstrates how the EIA was compromised in order to make sure the BHP went ahead without the EIA having to be done properly. The flaws have also been pointed out by the IRN in their report, which was published online in June 1995. Meanwhile, a second report made by Jerome Rousseau<sup>208</sup>. The IRN pointed out several flawed and inadequate assessments on the BHP's EIA. These included:<sup>209</sup>

- i) It was found that the EIA report was prepared with no consideration of alternatives. According to the IRN, it appeared that the decision to proceed with the project had been made prior to consideration '*of the social and ecological costs and the associated economic cost*' (IRN, 1995, p. 6).
- ii) '*There are unclear physical impacts with no clear computation of the project's life-span. After reviewing eight technical reports, there are no agreements on the sedimentation rate estimates, and most estimate with supporting data and estimation on the water quality*' (IRN, 1995, p. 10). There is no convincing supporting evidence as to whether '*the release of this water into the downstream will endanger the aquatic life and public health of the region*' (Ibid).
- iii) In terms of the ecological impacts, the assessment was found to be flawed because of the limited scope of the study on the loss of vegetation in the inundation zone. Instead, the study focused mainly on the loss of the economically important timber species. The assessment did not include changes in species composition resulting from the altered hydrologic regime downstream

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<sup>208</sup> He is a Professor of Anthropology from The McGill University, Quebec, Canada. He was invited by the Sarawak Government to do a study on the Orang Ulu and review the reports on the Orang Ulu by other researchers, including the ethnographic studies by Alexander Guerreiro, Tsugami and the SAMA-Consortium. The report reviewed by Rousseau was then submitted to the Sarawak SPU.

<sup>209</sup> Previously the report could be obtained at: <http://www.rengah.c2o.org/pdf/19950600.pdf>. However, the website page is no longer accessible.

of the dam or the loss of habitat and biodiversity values resulting from the loss of vegetation resources.

- iv) The exclusion of the terms of reference on the socio-economic and socio-cultural studies of the population within and in the vicinity of the proposed inundation area. It was also found that the study posed a serious lack of any systematic analysis on the socio-economic impacts. While there was acknowledgement that the community involvement and participation in the project was crucial, unfortunately, there was no evidence of any intention to include local people's views in the decision-making process.

The second review on the BHP specifically concerned the PAP, i.e. the Orang Ulu in Bakun, which was carried out by Jerome Rousseau. Rousseau identified the methodological and data flaws in the socio-economic study. Among the interesting findings and shortcomings highlighted by Rousseau (1994) are:<sup>210</sup>

- i) The resettlement of the Orang Ulu communities in the Belaga River with a combined area of 45,000 hectares was mostly within land Class 3 (i.e. of lesser quality).
- ii) The report produced by the SAMA-Consortium did not provide a sound basis for the planning of the relocation of the upper Balui population particularly on a few aspects: a) it failed to consider alternatives to the resettlement schemes, despite obvious and more preferable alternatives being available. It also failed to consider the problems of a radical shift from subsistence agriculture to commodity agriculture; b) the report contained a misunderstanding on the significance of hill paddy cultivation. It assumed that the shifting cultivation was seen not to be important; and, c) the report recognised that the people living on the Balui at that time were not favourable to the relocation plan in terms of religion, social and cultural habits. However, the evidence had contradicted the concerns in relation to these factors.
- iii) The Orang Ulu's reactions to the resettlement programme included: a) The people demanded significant information and consultation on an ongoing-basis, which was currently absent from implementation; b) They had a strong desire to

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<sup>210</sup> Previously, the report could be accessed on-line at: <http://www.rengah.c2o.org/pdf/19940927.pdf>. However, the website page is no longer available. The report can now be accessed at: [http://www.researchgate.net/publication/242597367\\_REVIEW\\_OF\\_SOCIOECONOMIC\\_STUDIES\\_AND\\_PRELIMINARY\\_RECOMMENDATIONS\\_FOR\\_THE\\_RESETTLEMENT\\_OF\\_THE\\_KAYAN\\_AND\\_LAHANAN\\_OF\\_THE\\_UPPER\\_BALUI\\_A\\_report\\_submitted\\_to\\_the\\_State\\_Planning\\_Unit\\_Jabatan\\_Ketua\\_Menteri\\_\(Chief\\_Minister's\\_Deaprtment\)\\_Sara\\_wak\\_Malaysia](http://www.researchgate.net/publication/242597367_REVIEW_OF_SOCIOECONOMIC_STUDIES_AND_PRELIMINARY_RECOMMENDATIONS_FOR_THE_RESETTLEMENT_OF_THE_KAYAN_AND_LAHANAN_OF_THE_UPPER_BALUI_A_report_submitted_to_the_State_Planning_Unit_Jabatan_Ketua_Menteri_(Chief_Minister's_Deaprtment)_Sara_wak_Malaysia).

be included in the discussion on the location of the resettlement sites, the amenities to be provided in the villages, the economic activities in the resettlement areas, and compensation for lost resources; c) They requested resettlement areas which were large enough to accommodate a growing population; d) The longhouses provided for them should be of at least the same quality as their existing longhouses, and they wanted water and electricity to continue to be provided on a free basis; and, e) In terms of compensation, the people wanted negotiations in order to establish the value of the resources which were to be flooded, and they requested full compensation to be paid before they moved to the resettlement.

In general, this chapter has shown the attitude of the state and other BHP actors in relation to the EIA. As previously discussed, the EIA procedures were not correctly observed by the authorities. The BHP was carried out prior to EIA approval being obtained. There was also irregularity in the procedures; the EIA reports were evaluated in stages rather than in a complete set (as is the normal practice). The BHP contract was awarded to a business actor (Ting) without open tender, and without complying with the project privatisation tender and procedures, due to his personal connection to politicians at the Federal government and state levels.

In addition, public participation as a fundamental element in good EIA practice was done insufficiently and so it failed miserably. The cold reception to the EIA can probably be related to the vested interests of the state and politicians, who were argued to have unfairly benefited from the BHP implementation. Perhaps the recent statement by Dr Elli Luhah, a local scientist from the Dr Luhah Technologies (DLT) Institute, can partly explain the unreliability in the EIA data. He revealed that recent studies done by foreign universities, one of them being Shanghai Jiao Tong University, have shown that the aluminium levels in the water were at 4.41 milligram per litre, which – exceeded the level of the Malaysian National Standard's criteria for raw water of between 0.01 and 0.24 milligram per litre. Dr Luhah's statement also implies that the water of the BHP is polluted. He was quoted as saying:

*...the high aluminium levels were the result of the Sarawak government's failure to comply with the EIA recommendation to remove as much biomass in the reservoir as possible before impounding the dam.*

According to Luhut, this was because they failed to abide by the recommendations of the DEIA as stated in the EMP (Davidson, 2015).

Having discussed the BHP planning and implementation, and the EIA, the next section of this research turns to discussions on the socio-economic of the Orang Ulu who have now been resettled at the RSSA. However, prior to that, a brief background of the Orang Ulu is deemed necessary in order to explain their place of origin. The discussion then continues with an administrative profile of the RSSA and, then, a discussion on the socio-economic profile of the study area which is divided into the Belaga District and the RSSA.

## **6.9 The Resettlement Scheme of Sungai Asap (RSSA): Administrative Profile, People and the Socio-economic Profile**

The aspects discussed in this section are the administrative profile and the socio-economic data of the Orang Ulu before and during the early years of relocation. The discussion also touches on the socio-economic profile of the Belaga District and the sub-district of Sungai Asap. These discussions are intended to give a clear picture of the study area, the people involved and their socio-economic profile.

### **6.9.1 Administrative Profile**

Table 6.4 shows the basic administrative data of the RSSA. The sub-district of Asap covers an area of 275,000 hectares while the specific area of the RSSA is approximately 7,400 hectares. The RSSA was gazetted as a sub-unit under the Belaga District on 30<sup>th</sup> December 1999, the year of the relocation of the Orang Ulu (Sub-district Office of Sungai Asap, 2012).

The Orang Ulu were given individual land titles, each with a lease of 99 years. The crops cultivated were mainly for commercial use such as palm oil, pepper and rubber. It is worth mentioning that since moving to the RSSA, the Orang Ulu no longer practice shifting cultivation. The highest traditional position at the RSSA is 'Temenggung', followed by 'Pemancha' and lastly 'Tuai Rumah'. In each longhouse unit there is at least one 'Tuai Rumah'. Table 6.4 simplifies the profile of the RSSA.

**Table 6.4:** Administrative profile of the RSSA

Division	Kapit
District	Belaga
Area of Belaga District	19,403.27 kilometre
Area of the sub-district of Asap	275,000 hectare approximately
Area of RSSA	7,400.00 hectare (18,285 acre)
Gazetted date of the sub-district	30 <sup>th</sup> December 1999
Land title	Individual land titles (lease of 99 years)
Administrators (at the resettlement level)	<ul style="list-style-type: none"><li>• Temenggung – Dato Sri Nyipa Bato</li><li>• Pemancha – Umek Jeno</li><li>• Pemancha Tony Kulleh</li><li>• Penghulu – Saging Bit</li><li>• Penghulu – Danny Ibang</li><li>• Penghulu – Musa Talik</li><li>• Headmen</li></ul>

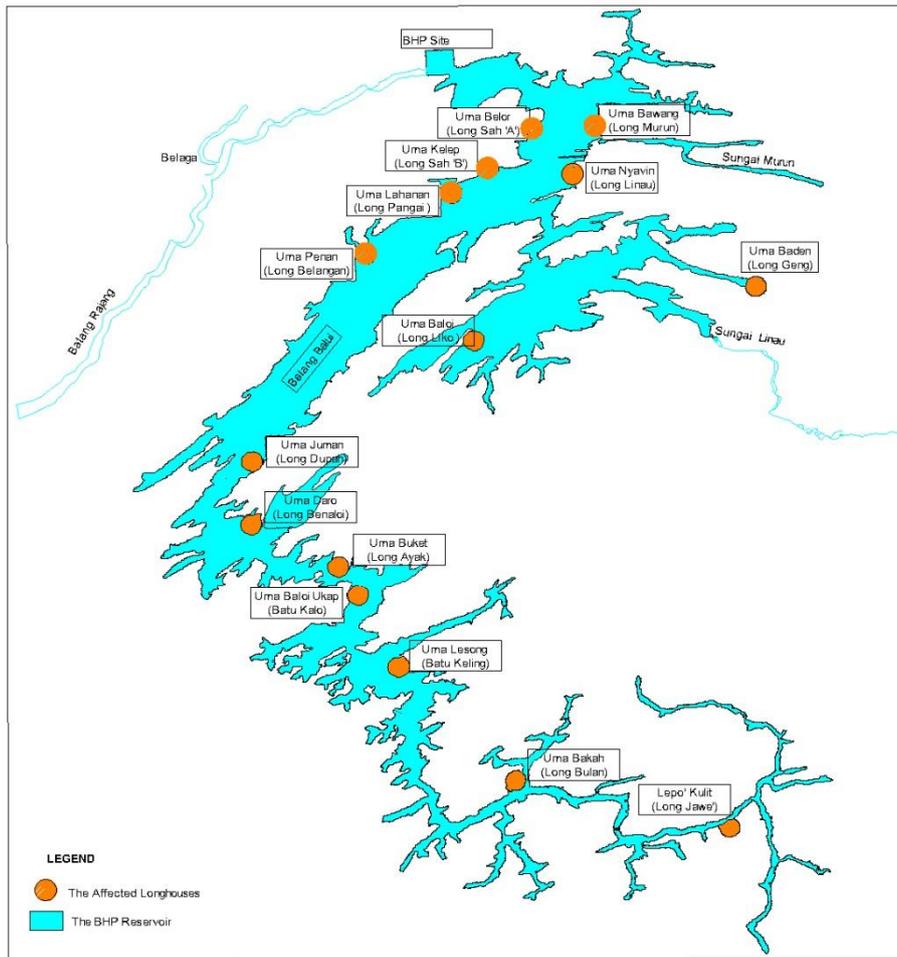
Source: Sub-district Office of Sungai Asap, 2012.

### **6.9.2 The Orang Ulu of Ulu Balui**

Prior to the BHP, there were approximately 15 Orang Ulu previous settlements located in four different sub-sections of the Balui River<sup>211</sup> in the Belaga District, namely Ului Balui, the Upper Linau, the Plieran, the Danum and Seping (see Figure 6.7). The total number of these 15 Orang Ulu longhouses communities in 1999 were 9,428 (see Table 6.5 and Figure 6.11). According to the SPU Sarawak, in 1996, there were approximately 2,141 households of the host population from the fifteen longhouses (LCDA, 1997, p. 2-3 – 3-5).

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<sup>211</sup> Or Sungai Balui in Malay.



Source: Map Drawn by Nor-Hisham, 2014

**Figure 6.7:** The 15 previous resettlements of the Orang Ulu of Balui River which were affected by the Bakun Hydroelectric Project (BHP)

The Orang Ulu who had been affected by the BHP comprise five sub-groups, namely Kenyah, Kayan, Lahanan, Ukit and Penan. Table 6.5 and Figure 6.11 below show details of the total population and sub-groups. Among the Orang Ulu sub-group, the Kenyah were the majority with 50.0 percent, followed by the Kayan with 40.1 percent. The Lahanan recorded 5.7 percent while the Penan constituted 1.1 percent (LCDAs, 1997a, p. 2-5). The PAP who refused relocation to the RSSA have now moved to a new village, Naha Jalei. This village, established by PAP, is located in the Bakun impounded lake. Figures 6.8, 6.9 and Figure 6.10 show the panoramic view of the village.



**Figure 6.8:** Naha Jalei, a village of the PAP who refused to relocate to the RSSA



**Figure 6.9:** Orang Ulu houses at Naha Jalei

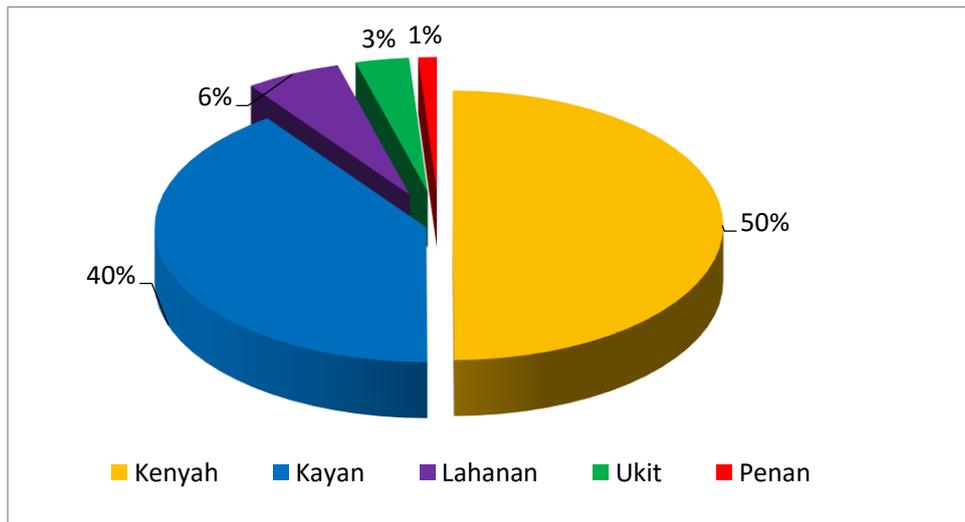


**Figure 6.10:** The Villagers of Naha Jalei just back from hunting

**Table 6.5:** The affected sub-groups of the Orang Ulu relocated to the RSSA in 1996

Sub-group	Settlement	Family	Population
Kenyah	4	1,024	4,708
Kayan	8	881	3,781
Lahanan	1	138	535
Ukit	1	74	300
Penan	1	24	104
<b>Total</b>	<b>15</b>	<b>2,141</b>	<b>9,428</b>

Note: Census carried out in 1995  
 Source: EPU, 1996a, p. 51



**Figure 6.11:** Composition of RSSA sub-groups in 1996

The PAP who agreed to resettle were relocated to the RSSA, which is 30 km away from the BHP location. This new resettlement scheme is surrounded by the existing traditional villages, namely Long Bangan, Long Nayan, Long Semutut, Long Koyan, Long Bala, Long Sibau, Long Apak, Long Urun, Long Tengah, Long Ketuet and Long Pera (LCDA, 1997a, p. 2–3). A host population from Orang Ulu sub-groups, namely the Kenyah, the Seping and the Penan, inhabit these villages.

According to the SPU (1996, p. 52), the RSSA was chosen because its soil suitability was appropriate for the resettlement sites; it was found to be fertile for cultivation of crops such as oil palm, pepper, rubber and irrigated rice. This site was also found to have a similar environment to the existing one at the Balui River area (the previous Orang Ulu resettlements before they were relocated as shown in Figure 6.7). The area is also in a strategic position in the regional context; it can act as a development catalyst for the surrounding area. In terms of compensation, the PAP have been compensated accordingly as shown in Table 6.6. Although there were a few requests made by them<sup>212</sup> to the government, only three (land, houses and money) were paid by the government.

<sup>212</sup> The Orang Ulu's requests included a free modern longhouse, free utilities bills and a communal forest reserve. When asked the reasons for their requests, they said that the three typical types of compensation were a small reward for their willingness to leave their ancestor lands and graveyards in order to pave the way for the BHP.

**Table 6.6:** Types of compensation given by the government to PAP for the BHP

<b>Types</b>	<b>Notes</b>
Land	3 acres – the usage of the land can depend on the individual's wishes, whether they want to plant cash crop or wet/hill paddy.
House	A house but each family in principle needs to pay about RM 52, 000.
Money on the loss of assets, properties, crops, livestock, etc.	Depending on the number, quality, location and other determinant criteria.

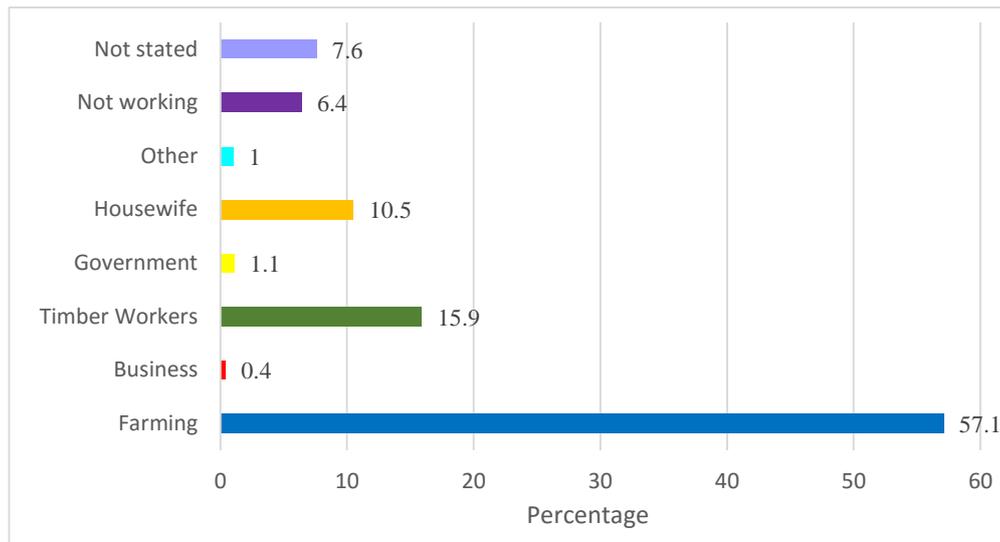
Source: LCDA, 1997a; Oral Conversation with Kuba Lusat, Assistance District Office (ADO) of the Sub-district Office of Sungai Asap at the RSSA on 25<sup>th</sup> September 2012

Table 6.7 and Figure 6.12 show the employment composition of the Orang Ulu before they were resettled at the RSSA. It clearly reflected the strong reliance of the Orang Ulu on the land; as much as 57.1 percent of the population was involved in the farming sector while 15.9 percent were involved in the timber industry (being the second highest occupation). Housewife was the third highest (10.5%) occupation at the RSSA. On the other hand, those who were 'not working' and with 'not stated' categories of occupation were quite significant in number as there were 6.4 percent and 7.6 percent respectively. These two categories were not surprising considering that the two sub-groups of Orang Ulu namely the Penan and the Ukit who were previously nomads in nature and earned a living with no specific job (LCDA, 1997a).

**Table 6.7:** Percentage of the RSSA population by employment in 1996

<b>Types</b>	<b>Percentage (%)</b>
Farming	57.1
Business	0.4
Timber Workers	15.9
Government	1.1
Housewife	10.5
Other	1.0
Not working	6.4
Not stated	7.6
<b>Total</b>	<b>100.0</b>

Source: LCDA, 1997a, p. 3-12



**Figure 6.12:** Percentage of population by employment at the RSSA in 1996

### **6.9.3 The Socio-economic Profile of the Belaga District and the Sub-district of Sungai Asap**

There are two sets of data presented here; the first is the overall data of the population in the Belaga District, which covers the sub-district of Sungai Asap and two other administrative areas, namely the Sungai Belaga and the Sungai Urun. As such, the data from this category includes resettlers from the RSSA and the surrounding host communities. The data was released by the Department of Statistics (DOS). The second set of data is specifically for the RSSA area. This set of data was obtained from the Sub-district Office of Sungai Asap. Both sets of data are presented here in order to allow the readers to have a bigger picture of the study area, particularly on the socio-economic aspects.

#### **6.9.3.1 Total Population in the Belaga District**

The 'Other Bumiputera' category is dominant in the Belaga District, which contains the sub-districts of Sungai Asap and Belaga (see Table 6.8). The Orang Ulu sub-ethnic is grouped under the 'Bumiputera' group with 66.2 percent of the total population. The non-Malaysian group is the second highest with 14.2 percent, while Iban is the third largest with 11.2 percent. Other types of ethnic were found to be less than 5.0 percent each.

**Table 6.8:** Population in the Belaga District in 2010

<b>Ethnic</b>	<b>District of Belaga</b>	<b>Percentage (%)</b>
Malays	895	2.5
Iban	3,935	11.2
Bidayuh	136	0.4
Melanau	285	0.8
Other Bumiputera	23,325	66.2
Chinese	1,462	4.1
Indians	40	0.1
Others	167	0.5
Non-Malaysian Citizens	5,002	14.2
<b>Total</b>	<b>35,247</b>	<b>100.0</b>

Source: DOS, 2010

### 6.9.3.2 Total Population in the Sub-district of Sungai Asap

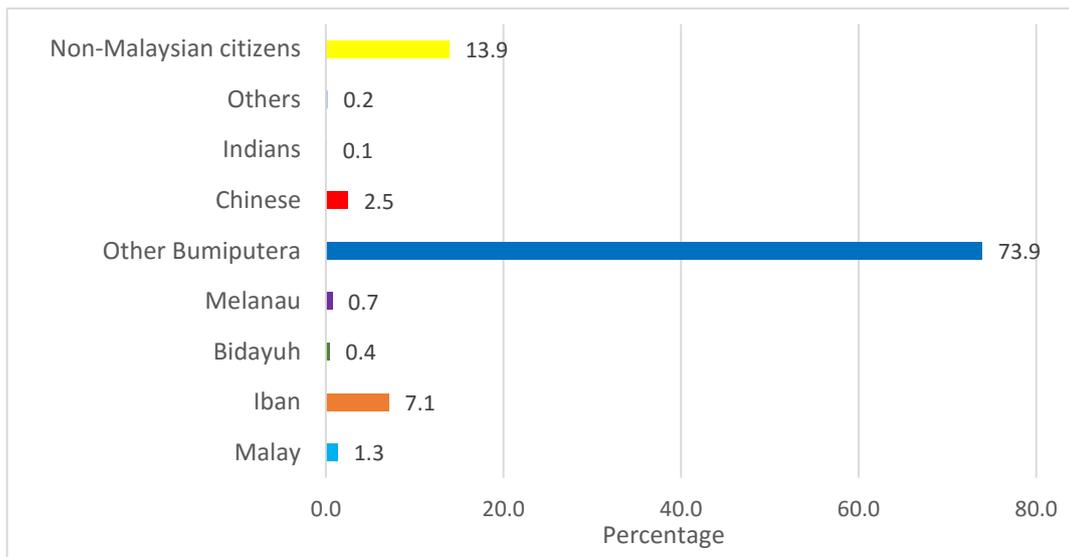
Like the Belaga District, it is obvious that the majority, or 11, 379 (74%), of the population in the sub-district of Sungai Asap is in the category of 'Other Bumiputeras', which includes the Orang Ulu sub-group.<sup>213</sup> The non-Malaysian citizen is the second highest with 2,140 or 14.0 percent, while the third highest is Iban with 1,084 (7.1%) (DOS, 2012b) (see Table 6.9 and Figure 6.13). Other types of ethnicity were found to have less than 3.0 percent each.

**Table 6.9:** Population by ethnicity of the sub-district of Sungai Asap in 2010

<b>Ethnic</b>	<b>2010</b>	<b>Percentage (%)</b>
Malay	205	1.3
Iban	1,089	7.1
Bidayuh	63	0.4
Melanau	107	0.7
Other Bumiputera	11,379	73.9
Chinese	378	2.5
Indians	12	0.1
Others	24	0.2
Non-Malaysian citizens	2,140	13.9
<b>Total</b>	<b>15,397</b>	<b>100.0</b>

Source: DOS, 2012b

<sup>213</sup> This is because the Orang Ulu are grouped as 'Other Bumiputeras' due to their small number compared to other ethnics in Sarawak.



**Figure 6.13:** Population by ethnicity of the sub-district of Sungai Asap in 2010

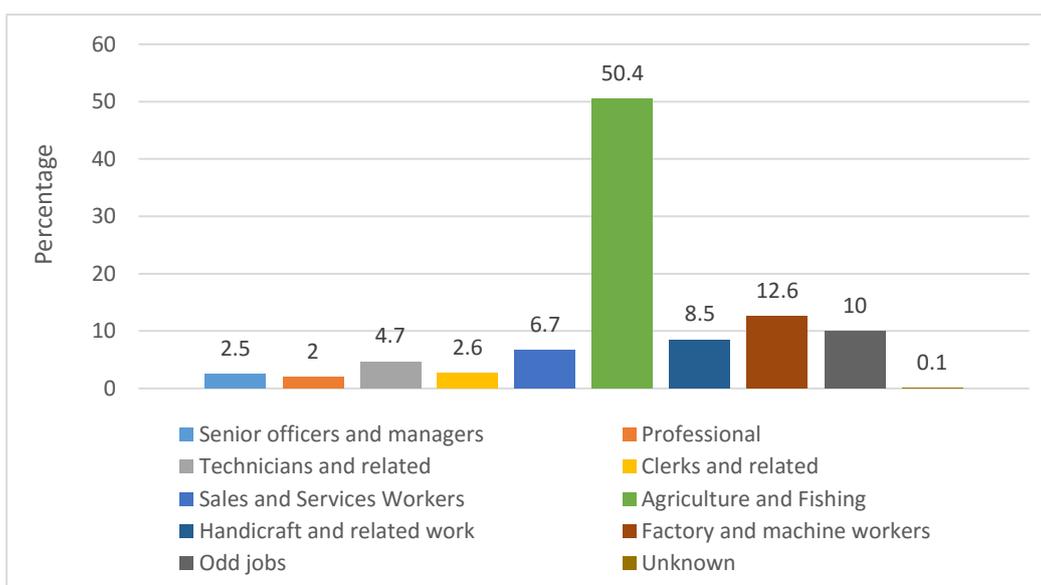
### 6.9.3.3 Types of Employment in the Belaga District

Table 6.10 and Figure 6.14 reveal that the majority, or 50.4 percent of the Belaga District population in 2010, was involved in agriculture and fishing. Factory workers and odd jobs accounted for the second and third highest occupations with 12.6 percent and 9.9 percent respectively. The fourth highest type of employment in the Belaga District was handicraft and related work, with 8.45 percent. Meanwhile, the sales and services category was ranked fifth highest with 6.7 percent. Other types of employment were found to be less than 5.0 percent each.

**Table 6.10:** Employment structures in Belaga, Sarawak in 2010

<b>Employment</b>	<b>Total</b>	<b>Percentage (%)</b>
Senior officers and managers	226	2.5
Professional	181	2.0
Technicians and related	415	4.7
Clerks and related	231	2.6
Sales and services workers	595	6.7
Agriculture and fishing	4,495	50.4
Handicraft and related work	754	8.5
Factory and machine workers	1,124	12.6
Odd jobs	885	9.9
Unknown	11	0.1
<b>Total</b>	<b>8,917</b>	<b>100.0</b>

Source: DOS, 2012b



**Figure 6.14:** Employment structures in Belaga Sarawak in 2010

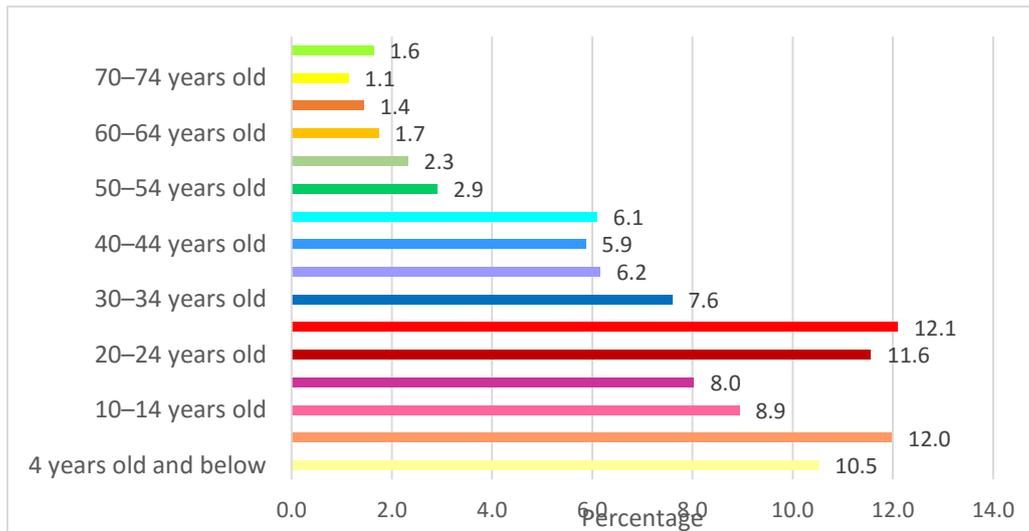
#### 6.9.3.4 Total Population by Age Structures in the Sub-district of Sungai Asap in 2010

Table 6.11 and Figure 6.15 show the population by age structure in the sub-district of Sungai Asap in 2010. The age range of 25–29 years old was the majority population – 1,867 (12.1%) (DOS, 2012b).

**Table 6.11:** Population by ages in the sub-district of Sungai Asap in 2010

Ages Structures	Total	Percentage (%)
4 years old and below	1,624	10.5
5–9 years old	1,849	12.0
10–14 years old	1,379	8.9
15–19 years old	1,240	8.0
20–24 years old	1,785	11.6
25–29 years old	1,867	12.1
30–34 years old	1,172	7.6
35–39 years old	951	6.2
40–44 years old	906	5.9
45–49 years old	941	6.1
50–54 years old	448	2.9
55–59 years old	358	2.3
60–64 years old	268	1.7
65–69 years old	222	1.4
70–74 years old	175	1.1
75 and above	252	1.6
<b>Total</b>	<b>15,437</b>	<b>100.0</b>

Source: DOS, 2012b



**Figure 6.15:** Population by age range in the sub-district of Sungai Asap in 2010

The second highest age range in this area was 5–9 years old, with a total population of 1,849 (12.0 %). The population within the ages of 20 and 24 years old were recorded as having a population of 1,785 (11.6 %), the fourth highest in this area (Ibid). The finding shows that the main population by age ranges in this sub-district were of under the active workforce age.

#### 6.9.4 The Socio-economic Profile of the RSSA

This section explains the specific socio-economic profile of the resettlers at the RSSA. Figures 6.16 to 6.21 provide photographs of the agricultural activities at the RSSA.



**Figure 6.16:** The palm oil plantations surrounding the RSSA



**Figure 6.17:** The Uma Belor, one of the longhouses in the RSSA



**Figure 6.18:** An example of the hilly paddy cultivated on their three plots allocated for agriculture



**Figure 6.19:** An example of the crops grown by the Orang Ulu on their three plots of allocated land



**Figure 6.20:** Slashing and burning the trees (forest) to cultivate with hill paddy



**Figure 6.21:** Access road to the agricultural plot for the Uma Belor Longhouse

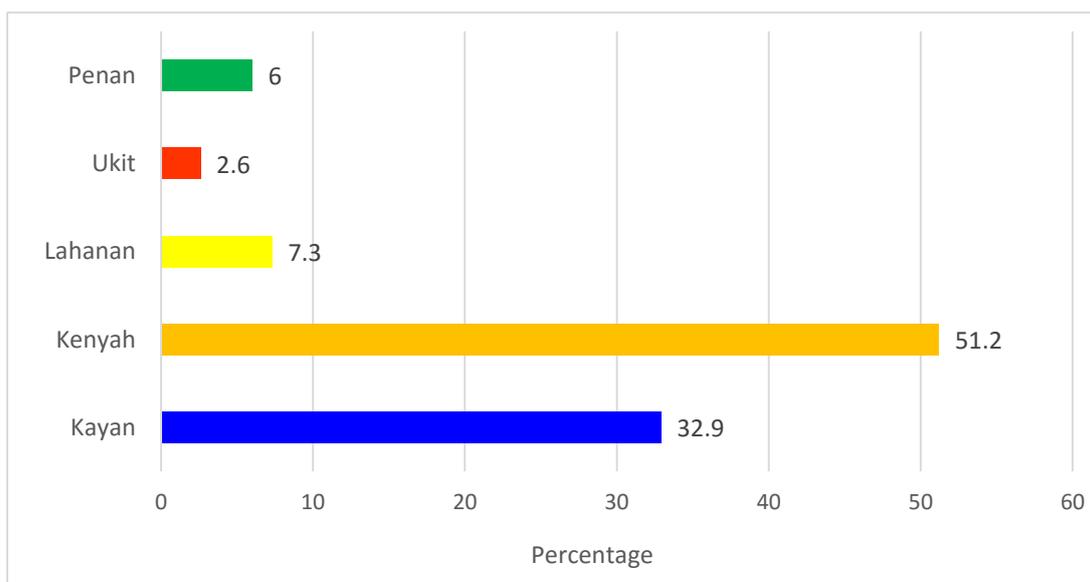
#### 6.9.4.1 Total Population by Sub-groups of the Orang Ulu

Table 6.12 and Figure 6.22 show the total population and a breakdown for the five sub-groups of the Orang Ulu who have resettled at the RSSA. As of 2007, their total population was 11,616. The Kenyah sub-group was dominant here with 51.2 percent. The second largest sub-group was the Kayan with 32.9 percent. The Ukit sub-group recorded the lowest with only 2.6 percent.

**Table 6.12:** Population by sub-group at the RSSA in 2007

Sub Ethnic	Door (amin)	Total Population	Percentage (%) of Population
Kayan	747	3,823	32.9
Kenyah	922	5,947	51.2
Lahanan	140	843	7.3
Ukit	205	305	2.6
Penan	205	698	6.0
<b>Total</b>	<b>2,219</b>	<b>11,616</b>	<b>100.0</b>

Source: Sub-district Office of Sungai Asap, 2012



**Figure 6.22:** Sub-ethnic composition at the RSSA in 2007

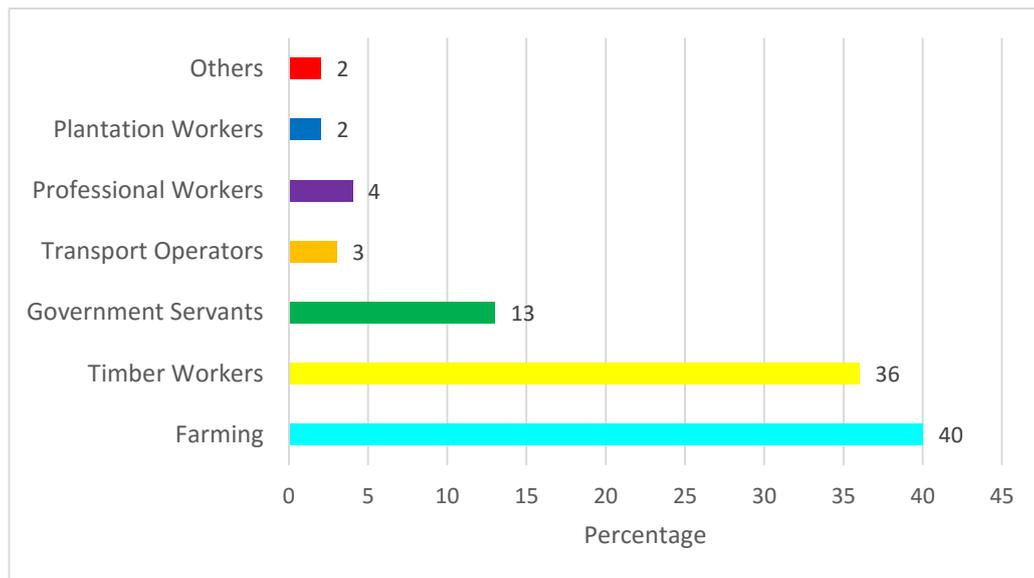
#### 6.9.4.2 The Employment Structure

Table 6.13 and Figure 6.23 show the employment structure at the RSSA. However, there are no exact figures on the number of employees for each of the categories. The best data available was in percentages, as shown in Table 6.13 and Figure 6.23.

**Table 6.13:** Percentage of employment at the RSSA in 2007

Types of Employment	Percentage (%)
Farming	40.0
Timber Workers	36.0
Government Servants	13.0
Transport Operators	3.0
Professional Workers	4.0
Plantation Workers	2.0
Others	2.0
<b>Total</b>	<b>100.0</b>

Source: Sub-district office of Sungai Asap, 2012



**Figure 6.23:** Percentage of employment at the RSSA in 2007

It was found that as much as 40 percent of the Orang Ulu at the RSSA in 2007 was involved in the farming sector. This was closely followed by those who worked at the timber company (36.3 %). Those who worked as government servants were recorded at 13 percent. The remaining types of employment categories, namely professional workers, transport operators, plantation and other categories, were recorded to be less than 5 percent each.

After having reviewed the socio-economic background of the PAP, it is necessary to briefly examine the types of conflict arising and the strategies employed by the EIA actors. The discussion in the following sub-section covers a mixture of data types, namely report reviews, interviews and direct observations.

## **6.10 Conflict and Resistance Strategies by the BHP Actors**

In order to discuss the types of conflict and the resistance by BHP actors towards project and EIA institutions, this section is divided into two parts: public resistance approaches<sup>214</sup>

<sup>214</sup> The public resistance approach is a more direct confrontation that includes demonstration; fights with authority; road blockage; encroachment into state land; moving out from the current resettlement scheme; writing petitions/letters/memos; meetings with the authorities or politicians to convey local demands; and court cases. These forms of resistance fit Scott's (1985) category of public declared form or normal resistance (see also Vinthagen and Johansson, 2013; Gutmann, 1993). In the publicly declared form, which is unlike disguised resistance, resistances made are organised, collectively galvanised, intended and conscious (Vinthagen and Johansson, 2013).

and disguised resistance approaches.<sup>215</sup> In order to discuss the resistance approach, this section will first discuss the disguised approach and then follow with the public approach.<sup>216</sup> The resistance arose from the context of the EIA policy and from the project itself (including the resettlement scheme). It is important to stress that at this stage it is less feasible to document every single type of resistance occurring in the BHP. Therefore, the intention of this sub-section is to demonstrate examples of the types of resistance employed by BHP actors.<sup>217</sup>

### **6.10.1 Disguised Resistance**

It was impossible to record all forms of disguised resistance because this research is not of an ethnographic nature. It was also not wise to distinguish between different types of resistance taken by the local people since that was not the intention of this research. However, it would be good for this research to record a few forms of resistance in order to shed light on the variety and intensity of resistance strategies undertaken by the Orang Ulu. In the case of the BHP, there are two types of disguised resistance: i) name-calling; and, ii) gossiping. The easiest and most widely used resistance was name-calling, mainly directed at Taib Mahmud – the previous CM of Sarawak who is among the main actors in the BHP. These types of resistance were also used towards community leaders at village level.

The local people would name-call Taib Mahmud without the honorific title; for example, 'Pehin', 'Datuk Seri' or 'our CM'. Instead, the negative name-calling aimed at him used 'old grey man' (or '*Tok Uban*' in Malay) to show disrespect to him. When the local people called him 'Tok Uban', they indicated his unfinished desire to accumulate wealth. 'Tok Uban' was the nickname used when the resettlers related their discussion of what a difficult life they were experiencing due to their relocation to the RSSA. They put the blame on the CM and

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<sup>215</sup> The disguised resistance approach as applied here is akin to what Scott (1985) termed 'everyday resistance'. In this definition, the resistance includes gossip, name-calling, killing of animals, petty theft, sabotage, foot-dragging, feigned ignorance, and dissimulation. Disguised resistance, also known as covert and unorganised forms of resistance, is the term used by Gutmann (1993). Scott (1985) shows that, despite being powerless and the uncoordinated nature of resistance, the peasant is able to challenge the hegemony of the authority, i.e. the policy introduced. However, this research has only discussed two forms of disguised resistance, namely name-calling and gossiping. It is the intention of this research study to only indicate the examples of everyday resistance adopted by PAP at the RSSA. Therefore, other forms of everyday resistance are considered to be beyond the scope of this research.

<sup>216</sup> It is worth mentioning that detailed resistance data on the types and frequency of resistance in the BHP will be further discussed in Section 6.11.5.3

<sup>217</sup> Bear in mind that part of the resistance taken by the BHP actors has also been partly discussed in Section 6.6 (The BHP: Planning and Development).

his cronies who gained benefits from the project.<sup>218</sup> The researcher recalled one particular incident when on a trip from Bintulu to RSSA. The whole van load of passengers referred to Taib Mahmud as an 'old grey man'. Whenever conversations touched on the difficult life experiences in the RSSA, the name 'old grey man' always popped up in their conversation. All of them had a negative perception and were angry with Taib Mahmud. One old Kayan man by the name of Jalang Arun specifically blamed Taib Mahmud for his mess up at the RSLB:

*All the problems [the RSSA problems] are because of the 'grey man' (tok uban) who is so rich. These palm oil and logging companies around our Asap [RSSA] are connected to him or his friends and family. Tok Uban is already rich but he wants to be richer. (Oral Conversation with Jalang Arun, a villager from the RSSA in Bintulu, on 3<sup>rd</sup> September 2012).*

The second form of disguised resistance is gossiping, which was particularly directed at the community leaders who had persuaded the people to resettle at the RSSA. While there are no specific people (within the community leaders) who have been labelled by the local people (the villagers), community leaders in general have been referred to as those who had vested interests or gained personal benefits from their support of the project (dam project or relocation) implementation. Local community leaders, namely 'Temenggung', 'Pemanchar', 'Penghulu' and 'Tuai Umah', were also accused of taking sides with the government. In fact, a few people have accused them of misleading the local community in order to get them to accept the relocation. The local Orang Ulu leaders were accused of being induced by monthly allowances and other monetary rewards. The researcher still remembers one interesting statement from Ajang Urun, an old Kenyah man of Uma Kelep, when he and the residents of his longhouses were asked what they thought about their leaders:

*They [the local leaders of Orang Ulu] are afraid to object against the government order to resettle. All of them don't take care about our interest but more to take side of the government. They are very calculative. They are afraid to lose their allowance, their power, and their benefits. (Oral Conversation with Ajang Urun, a villager from the RSSA on 1<sup>st</sup> October 2012).*

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<sup>218</sup> Despite accusation that he was behind the land grab, Taib remained steadfast by asserting that there was no land grab in Sarawak by asking: 'Why should the government grab the people's land when all the land that has yet to be granted to the people belong to the government?' (Saai and Ruekeith, 2012).

### 6.10.2 Public Resistance

To illustrate the public resistance employed by the project actors in the BHP, it will be useful to examine the types of strategies involved. Interested parties, including the NGOs, local opposition parties and the Orang Ulu, also employed several approaches to pressure the government to reconsider the decision on the project. At first, the protest involved the opposition party, the DAP. As an attempt to pressure the federal government and Sarawak State to release the EIA reports on the BHP; in March 1995 the DAP launched a nationwide campaign. In response to this, the then Deputy CM of Sarawak cum Minister for Infrastructure, Development and Housing, Dr Wong Soon Kai, said that the government had entrusted the international experts to carry out a study on the dam project and stressed that the Orang Ulu would not be able to comprehend such reports. According to Kajing Tubek, one of the plaintiffs who brought the BHP and the project proponent (Ekran) to court, said:

*The government was upset with us when we brought the project [BHP] to the court. The government has accused us of becoming a tool for foreign countries. We have been labelled as anti-progressive but actually we are not. We just want to protect our rights, the Orang Ulu rights. (Oral Conversation with Kajing Tubek, a villager cum plaintiff, at the RSSA on 24<sup>th</sup> September 2012).*

At village level, personal threats were made to the indigenous individuals whom the Sarawak State targeted as having the potential to pose a threat to the BHP. Besides the Orang Ulu leaders, like Kajing Tubek, Bato Bagi, and Ngajang Midin, other Orang Ulu were also harassed. For example, when met at Uma Balui Ukap, Saran Imu, one of the local residents who brought the Bakun case to court, recalled how he was 'advised' by other longhouse members:

*You should take care of yourself. Don't go against the government order. We have to obey it. Police will detain you if they think your activity will endanger the project. (Oral Conversation with Saran Imu, a villager and NGO activist, at the RSSA on 12<sup>th</sup> October 2012).*

According to Imu, when he tried to go to Kuala Lumpur to file a case in the High Court of Kuala Lumpur, the police used roadblocks. It was a kind of intimidation and threat to prevent him from bringing the matter to Kuala Lumpur. He eventually managed to find a

way to overcome this problem. In some cases, if the local people not easy to induce with development benefits, they were threatened with the shutdown of essential amenities to their villages.

The Tuai Umah of Uma Penan, Minggu Magui, admitted that he had also received a warning after he had exposed the Orang Penans' problems in the RSSA to outsiders<sup>219</sup>:

*Many were not happy. Some of the Orang Ulu leaders were not happy. Government agencies were not happy because of my exposure. They have warned me that my statements have been twisted and become political issues. However, I just told the truth. We are having a rough time here [at the RSSA].* (Oral Conversation with Minggu Magui, a Tuai Umah of Uma Penan, at the RSSA on 11<sup>th</sup> October 2012).

Several petitions, letters and memos were sent to the government agencies and political figures by the Orang Ulu in order to express their dissatisfaction. For example, there were at least seven appeal letters<sup>220</sup> sent by the Orang Ulu representatives to the state agencies, including the PM and DPM of Malaysia, concerning various issues. These issues included why they disagreed with the project; complaints about inadequate compensation for land; and the loss of their roaming areas. To diversify the campaigning and lobbying strategies, the indigenous representatives also personally met with the Sarawak and Federal politicians. For example, representatives of the Orang Ulu, led by Bato Bagi, went to meet the then DPM, Abdullah Badawi, in Putrajaya in 2001 in order to seek his intervention, but it was to no avail (Oral Conversation with Tubek, a villager and a plaintiff, at the RSSA on 24<sup>th</sup> September 2012; Oral Conversation with Imu, a villager and NGO activist, at the RSSA on 12<sup>th</sup> October 2012).

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<sup>219</sup> According to Minggu Magui, he was interviewed by someone who then put the video up on the internet. His views have been politicised and some parties viewed him as an ungrateful person despite all the assistance made by the government to his communities (Oral Conversation with Minggu Magui, a Tuai Umah of Uma Penan, at the RSSA on 11<sup>th</sup> October 2012).

<sup>220</sup> The letters and aspects of dissatisfaction are as follows: i) on 3<sup>rd</sup> September 1997 from Umah Balui Ukap to the Director of Land and Surveying of Sarawak concerning the land outside of the survey parameter; ii) on 6<sup>th</sup> October 1997 from Uma Balui Ukap to the Director of Land and Surveying of Sarawak on their dissatisfaction on the survey methods; iii) on 13<sup>th</sup> March 2000 from the Bakun Development Committee Belaga (BCDB) to Mahathir Mohamad, the PM of Malaysia, Leo Moggie, Federal Minister of Energy, Telecommunication and Multimedia, Taib Mahmud, the CM of Sarawak and James Jemut Masing, State Minister of Tourism cum Chairman of Bakun Resettlers Committee; iv) on 3<sup>rd</sup> July 2001 from the BRIC to HRCM on the problems faced by the settlers at the RSSA, Ulu Balui and Sungai Belaga; v) on 13<sup>th</sup> July 2001 from BRIC to Abdullah Ahmad Badawi, the PM of Malaysia on the problems faced by the settlers at the RSSA, Ulu Balui and Sungai Belaga; vi) on 12<sup>th</sup> August 2003 from the Action Committee of Bakun Downstream to Taib Mahmud, the Sarawak CM, on local people's fears regarding the BHP impacts; and vii) on 4<sup>th</sup> July 2005 from Uma Lesong to the District Office of Belaga concerning the claim by the local people on the 'Temuda' and 'Pulau' land.

The affected indigenous people also held demonstrations as part of their strategy. For example, a few peaceful demonstrations were held by the affected Orang Ulu at the dam site during the investors' visit. Protests were also held during the Sarawak Assembly sitting. However, state authorities asked the police to prevent the Orang Ulu representatives, i.e. the BRPC, from submitting their plea directly to the CM of Sarawak<sup>221</sup> (INSAN, 1996; Spires, 1995). The upstream river people of Balui River also demonstrated in front of the Bakun dam gate and demanded that the management of the Bakun dam pay them compensation, as they were affected by the water impoundment (Oral Conservation with Mohd-Adip Mohammad, Assistant Site Engineer of the Sarawak Hydro, in Bakun on 18<sup>th</sup> October 2012).

To achieve international coverage of local resistance the NGOs and several scientists both at the local and international levels took an interest in the project by helping the local people organise local resistance and getting media support. In both projects, the local people realised that they were in a powerless position. Therefore, they cooperated with the local NGOs like SAM, the COAC, SOS and The Treat Every Environment Special Sdn as well as international NGOs like Friends of the Earth (FOE) and IRN. Their united protests managed to consolidate and provided one united voice obtaining international attention, thus hoping to give strength to the local struggle.

As expected, the Malaysian Government was not very happy with the way the information was disseminated which consequently intimidated the local and international NGOs. For example, during the BHP, international anthropologist Professor Jerome Rousseau was almost tricked into signing a confidentiality agreement with the Sarawak government, but in the end he managed to get out of signing it (INSAN, 1999). According to the SUARAM, Dr. Wang Wei Lo<sup>222</sup> was denied entry into Sarawak due to his critical views of the Bakun study. The same entry ban was also applied to Meenakshi Raman, a lawyer from SAM because of her active involvement in the BHP (SAM, 2011). In addition, several committee members of local NGOs were also denied entry into Sarawak (Soong, 2012).

In addition to the above strategies adopted by the Orang Ulu to protest against the EIA and project implementation, their protests also extended into legal battles. The first court case

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<sup>221</sup> On 19 May 1994, Jatan, Eku, Bawai and Gara, the PAP tried to submit a petition to the Sarawak State Assemblymen but were prevented by more than 20 plain-clothes policemen. They were threaten to be detained if they did not turn back (Spires, 1995).

<sup>222</sup> He was a lecturer from the Dortmund University of Germany who was tasked to study the technical aspects of the dam.

which related to the BHP was brought on 20<sup>th</sup> April 1995, a bid to stop the BHP. The Orang Ulu had launched a court injunction to stop Ekran from proceeding with the project. The court case was initiated by three Orang Ulu representatives, namely Kajing Tubek, Tahu Lujah and Saran Imu. They were PAP who originated from the longhouses of Long Bulan, Uma Daro and Batu Kalo – the previous settlements of Orang Ulu at Ulu Balui in the Belaga District (see a detailed report and judgement of the case at High Court of Kuala Lumpur, 1996; Kajing Tubek and others vs Ekran Bhd and Others, 1997). They filed an originating summons at the High Court of Kuala Lumpur asking for a declaration that the applicable law of the EQA 1974 passed by the Federal Parliament could challenge the legality of the EIA approval, which was placed under the Sarawak NREO. As such, they requested the right to make representations,<sup>223</sup> as provided for under the law – EQA 1974 (High Court of Kuala Lumpur, 1996, p. 2 & 4; Nijar, 1997, p. ccxxxi).

As well as claiming that the BHP's EIA was flawed, the Orang Ulu claimed that the project would directly affect their livelihood and cultural attachments, e.g. longhouses, ancestral burial sites, land and forests from which they seek shelter, their livelihood, and food and medicine (Nijar, 1999; Kajing Tubek and others vs Ekran Bhd and Others, 1997). At the High Court of Kuala Lumpur, the verdict favoured the Orang Ulu. However, the verdict was overturned at the Court of Appeal and this gave the state exclusive power in managing the BHP's EIA. In this sense, Ekran managed to put the BHP under the NREB or the Sarawak's EIA law through amendment of the federal law. The verdict also stated that the plaintiffs had no 'locus standi' to obtain declaratory relief (Nijar, 1997).

In this sense, it is interesting for this research to examine how the federal law has been amended to suit the Sarawak power. The Gazette notification made by the Federal Minister of Science, Technology and Environment on 20<sup>th</sup> April 1995 excluded the construction of the dam and its auxiliary works under the EQA 1974. Instead, the Gazette placed it under the Sarawak state EIA law. Ekran sought approval from the Sarawak Natural Resources and Environment Board and the CM, as the Chairman of the Board, gave the approval on 27<sup>th</sup> March 1995. On the same day, the amendment order was promulgated and came into force on the date of its publication in the Gazette (20<sup>th</sup> April 1995). In order to legalise this, the Gazette notification was backdated to take effect from 1<sup>st</sup> September 1994 (Nijar, 1997, p. ccxxxi).

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<sup>223</sup> Or what is to be known as 'the Report Review and Approval' to EIA students. At this stage, the report is to be reviewed by the public through public participation before the EIA report for the project will either be approved or rejected.

Unlike the EQA, the NREO excluded mandatory public participation and favoured the EIA report review at the discretion of the project proponent. The Orang Ulu – the plaintiff in this case – claimed that they have been deprived of their rights to obtain a copy of the EIA, and to be heard and make representations before the EIA could be approved. They also claimed that *'their homes and land would be destroyed, their lives uprooted by the project and they would suffer far more greatly and directly than other members of the public as their land and the forest are not just a source of livelihood but constitute itself, fundamental to their social, cultural and spiritual survival as native people'* (Mohamad, 2004, p. 53). The fundamental question in this court case, as clearly exhibited in the DOE & Anor v Kajing Tubek & Ors, centred on the legality of the amendment in the EQA excluding dams from the federal law being done retrospectively and removing vested rights. It is worthwhile to reproduce the essence of the judgment by Judge James Foong:

*From the facts and arguments presented, it is understandable why the plaintiffs are aggrieved. The legislature of Malaysia has enacted the EQA to be made applicable to the entire nation. Subsidiary legislation relating there to be made by the executive delegated with power to do so. This obviously was to give effect to the meaning and purpose of the EQA. Under the guidelines prescribed by the D-G, as provided for under the EQA itself, a valid assessment of an EIA prepared by the project proponent of the prescribed activities cannot be made without some form of public participation (para 1.4.5 of the guidelines). This is essential, for interaction between people and their environment is fundamental to the concept of environmental impacts (para 1.6.1 of the guidelines). For this, a right is vested in the plaintiffs to obtain and be supplied with a copy of the EIA coupled with the right to make representations and be heard. While waiting to exercise their rights, and being assured by executive through their leaders, including those directly in charge that the relevant procedures of the EQA will be adhered to, the Minister suddenly strikes a mortal blow by gazetting PU (A) 117<sup>A7</sup>. Though it is claimed by the defendants that this amendment order only alters the procedure in the evaluation of the EIA on Bakun HEP, in substance and in fact and visible to all, it is tantamount to the removal of the entire rights of the plaintiffs to participate and to give their views before the EIA is approved. (Nijar, 1997, p. ccxxxiii)*

It is also helpful to quote the essence of the EIA procedural observation, which relates to the BHP's public participation as rightly said by Judge James Foong:

*It makes a mockery of the whole issue to say that the EIA can be approved first and if the public has any constructive ideas, they can submit later. This certainly is illogical, deprived of good sense and sound reasoning* (High Court of Kuala Lumpur, 1996, p. 16).

The second court case relating to the BHP was led by Bato Bagi and six others<sup>224</sup> against the Sarawak government. They were from the Ulu Balui and claimed to represent the indigenous people, mainly from Orang Ulu of Uma Balui Ukap, Uma Lesong, Uma Bakah, Umah Kulit and Imah Kulit from Ulu Balui of the Belaga District, Kapit Division of Sarawak. The court case was initiated in the High Court in Sabah and Sarawak in Kuching in 2006. The legal battle centred on the effects of extinguishment of the NCL to the indigenous people, i.e. PAP due to BHP implementation. The plaintiffs asked the court to declare that the native land extinguishment made by the Sarawak government through the Sarawak government Gazette<sup>225</sup> by the Minister of Resource Planning to be void because it violated the fundamental rights as stipulated in the Federal Constitution and the Constitution of Sarawak State. Bato and others sought to get adequate compensation and damages (ORFCM, 2011).

The facts highlighted in the affidavit included the loss of previous land right practices under the NCR<sup>226</sup> (Midin, 2006). The affidavit also revealed that the plaintiffs first heard about the BHP when details were telecasted over the radio at the earth-breaking ceremony (Midin, 2006, p. 13). They also claimed that the survey process was done in a shoddy manner. As such, compensations given were inadequate (Midin, 2006, p. 13–17). In the High Court of Sabah and Sarawak as well as at the Federal Court of Malaya, the claims by Bato Bagi and Others were dismissed. In essence, the judges concluded that the Sarawak government's action to take the indigenous land had not violated any law, be it the Federal Constitution or Sarawak laws. On the adequate compensation and the rights of PAP to get prior consultation, the courts viewed that the words 'adequate' or 'inadequate' must be proved and the plaintiffs failed to address this. In addition, there was no legal requirement for prior consultation (ORFCM, 2011).

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<sup>224</sup> The court case was initiated by Bit Buneng Siring Anah, Dato Lian, Awan Aing and Ngajang Midin. All of them are headmen of longhouses in Ulu Balui where their settlements have been affected by the BHP.

<sup>225</sup> The extinguishment was published on 17<sup>th</sup> June 1997 under the Sarawak Government Gazette which is known as the (Land Extinguishment of Native Customary Rights) for the purpose of the BHP.

<sup>226</sup> See the previous discussion in Chapter Five, Section 5.6.2 on statutory land rights of the Orang Ulu.

After having reviewed the project (BHP), the EIA implementation, the socio-economic data of the RSSA and the resistance strategies involved, the next sections discuss the survey and fieldwork analysis. The analysis made has incorporated document analysis and the researcher's own observations.

## **6.11 Survey and Fieldwork Analysis: Voices from the Ground**

The discussion in this section is divided into six interrelated themes: i) respondents' views on the EIA; ii) respondents' views on the land policy; iii) respondents views on the compensation, resettlement and development issues; iv) respondents views on conflict; v) respondents' views on the government and the politicians' roles; and, vi) respondents' views on enhancement of the project. In reporting the respondents' opinions, the semi-structured interview, observation and secondary data were corroborated and blended in order to strengthen the arguments. As previously discussed in the 'Chapter 1, a thematic style of reporting was applied but the respondents' survey analysis (quantitative) had been supported by oral conversation, report analysis and observations (qualitative).

This type of research design, especially for this section, provides a high degree of triangulation of the data. It is worth mentioning that in this study the descriptive analysis using the frequency statistics technique was purposely chosen by the researcher because this simple technique could easily allow the thematic analysis to be conducted. On top of that, the intention of the selection of descriptive analysis was deemed adequate to explain the characteristics of the variables and to make conclusion on the numerical data.

### **6.11.1 Respondents' Survey Profile at the RSSA**

As shown in Table 6.14, the data presented shows the respondent profile which is grouped under six variables, namely: i) gender; ii) age; iii) household size; iv) educational level; v) occupation; and, vi) monthly income. The profile analysis was intended to provide a complete picture of the socio-economic background of the respondents at the RSSA.

Table 6.14 shows that the male respondents made up the vast majority (97.7%) of the total Orang Ulu who were surveyed (220). Only 2.3 percent of them were female respondents.

**Table 6.14:** Orang Ulu respondents' profile

Gender	Number	Percentage of total
Male	215	97.7
Female	5	2.3
<b>Total</b>	<b>220</b>	<b>100.0</b>
Age Cohort	Number	Percentage of total
18–25 years	4	1.8
26–30 years	3	1.4
31–35 years	3	1.4
36–40 years	8	3.6
41–45 years	25	11.4
46–50 years	28	12.7
51–55 years	49	22.3
56–60 years	38	17.3
61–65 years	29	13.2
66–70 years	24	10.9
70 years and above	9	4.1
<b>Total</b>	<b>220</b>	<b>100.0</b>
Education	Number	Percentage of total
University	3	1.4
College	8	3.6
High school	58	26.4
Junior high school	54	24.5
No formal education	97	44.1
<b>Total</b>	<b>220</b>	<b>100.0</b>
Current Occupation	Number	Percentage of total
Professional and administrator	6	2.7
Clerical	3	1.4
Farmer	164	74.5
Logging worker	18	8.2
Transport worker	12	5.5
Others	17	7.7
<b>Total</b>	<b>220</b>	<b>100.0</b>
Household Size	Number	Percentage of total
1	1	0.5
2	17	7.7
3	12	5.5
4	46	20.9
5	67	30.5
6	50	22.7
7	20	9.1
8	7	3.2
<b>Total</b>	<b>220</b>	<b>100.0</b>

Monthly Income <sup>227</sup>	Number	Percentage of total
RM 450.00 and below	97	44.1
RM 451.00 – RM 700.00	56	25.5
RM 701.00 – RM 1,000.00	41	18.6
RM 1,001.00 – RM 1,450.00	9	4.1
RM 1,451.00 – RM 2,000.00	8	3.6
RM 2,001.00 – RM 2,450.00	6	2.7
RM 2,451.00 – RM 3,000.00	2	0.9
RM 3,001.00 and above	1	0.5
<b>Total</b>	<b>220</b>	<b>100.0</b>

The majority (22.3%) of respondents were between 51 and 55 years, followed by those between 56 and 60 years who accounted for 17.3 percent. Respondents' aged between 61 and 65 years accounted for 13.2 percent while 12.7 percent were between 46 and 50 years old. Respondents aged between 41 and 45 years old accounted for 11.4 percent while 10.9 percent were between 66 and 70 years old. The remaining respondents' age cohorts were less than 4.1 percent each.

In terms of educational level, this study found that the majority (44.1%) of respondents had no formal education at all. Meanwhile over a quarter (26.4%) of them had completed their education at the high school level while almost a quarter (24.5%) had attended junior high school. Respondents who received education at college and university level recorded 3.6 percent and 1.4 percent respectively. Concerning the employment composition, the majority of respondents (or approximately 74.5 percent) were working as farmers; logging workers accounted for 8.2 percent and other categories accounted for 7.7 percent. Approximately 5.5 percent of respondents were working as transport workers, while professional and clerical were recorded at only 2.7 percent and 1.4 percent respectively.

Regarding household size, the majority of the Orang Ulu's respondents (30.5%) had five family members per household. The second highest were those with six family members (22.7%). The third largest household size of Orang Ulu respondents (20.9%) had four members, while seven and two members per household were recorded at 9.1 percent and 7.7 percent respectively. The rest of the household sizes were found to be less than 3 percentages.

Perhaps, the most striking finding from Table 6.15 was the monthly income earned by respondents. The study found that the majority or nearly half of them (44.1%) earned a

<sup>227</sup> During the fieldwork period in 2012, the currency exchange between Malaysian Ringgit to US Dollar was around RM 0.32 to 1 US Dollar.

monthly income below RM 450.00 (USD 144.20) while the second monthly income bracket (25.5%) earned RM 451.00 (USD 144.52) – RM 700.00 (USD 224.31). Respondents who earned RM 700.00 (USD 224.31) – RM1000.00 (USD 320.44) were recorded at 18.6 percent. Other high income bracket categories contained few respondents. For example, those who earned a monthly income bracket of RM 1,601.00 (USD 513.02) – RM 1,900.00 (USD 608.84) constituted 3.7 percent of respondents.<sup>228</sup>

### **6.11.2 Views on the EIA**

This sub-section of the study intends to gauge the respondents' perception of the implementation of the EIA for the BHP. As such, this analysis provides an accurate scenario of how the EIA policy was actually translated, implemented and experienced by the local people<sup>229</sup> (who were the party directly affected party in the project implementation). This section also considers satisfaction of the EIA process as it was experienced as well as the respondents' perception on the EIA's abilities to perform its roles, e.g. roles in reducing conflict and empowering local participation were among the examined variables in this section.

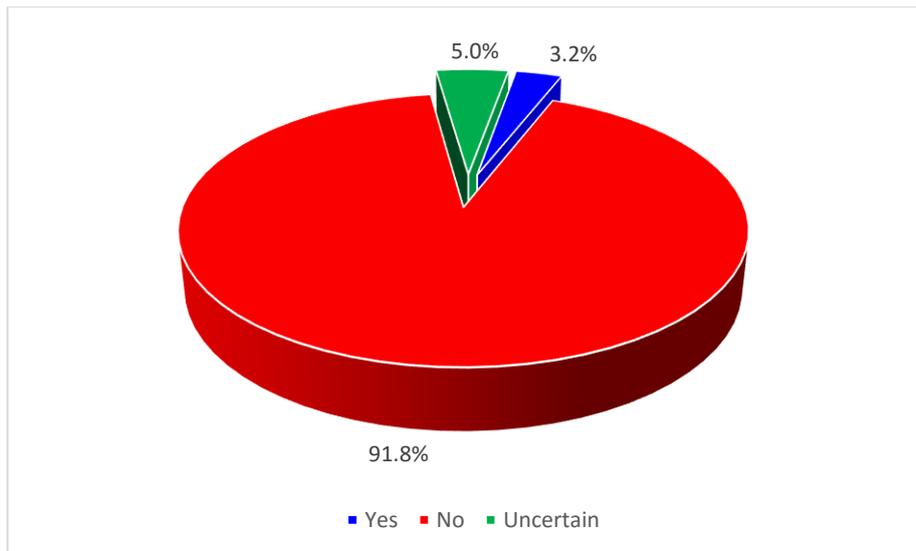
#### **6.11.2.1 Satisfaction of Involvement in the EIA Process**

This study has found that the ways the government agencies conducted the EIA for the BHP was unsatisfactory, as obviously demonstrated in Figure 6.24.

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<sup>228</sup> As a comparison to the poverty line at the national level, this monthly income finding gives us an alarming trend whereby, according to Malaysia's poverty standard for the State of Sarawak, households with a total monthly income less than RM 830.00 (USD 265.96) and RM 520.00 (USD 166.63) are considered poor and extreme (hardcore) poor respectively (ICU, 2011). The monthly income as revealed in Table 6.14 also exposed that the objective of the resettlement programme for the BHP which focuses on job-oriented activities to generate higher income for the resettlers on a sustainable basis through the restructuring of the existing socio-economic activities as aimed by the EPU (1996a, p. 52) is a long way from being achieved.

<sup>229</sup> This research acknowledges many different indicators produced by authors and organizations as to what constitutes good public participation. For example, Andre et al. (2006) have produced two sets of best practice principles – basic and operating – and which, for example, consist of the following: i) adaptive; ii) informative and proactive to the public; iii) adaptive and communicative; iv) inclusive and equitable; iv) educative and contributing to a mutual respect and understanding of all IA stakeholders; vi) cooperative; promoting cooperation, convergence and consensus; and, vii) imputable and improving the proposal under study.



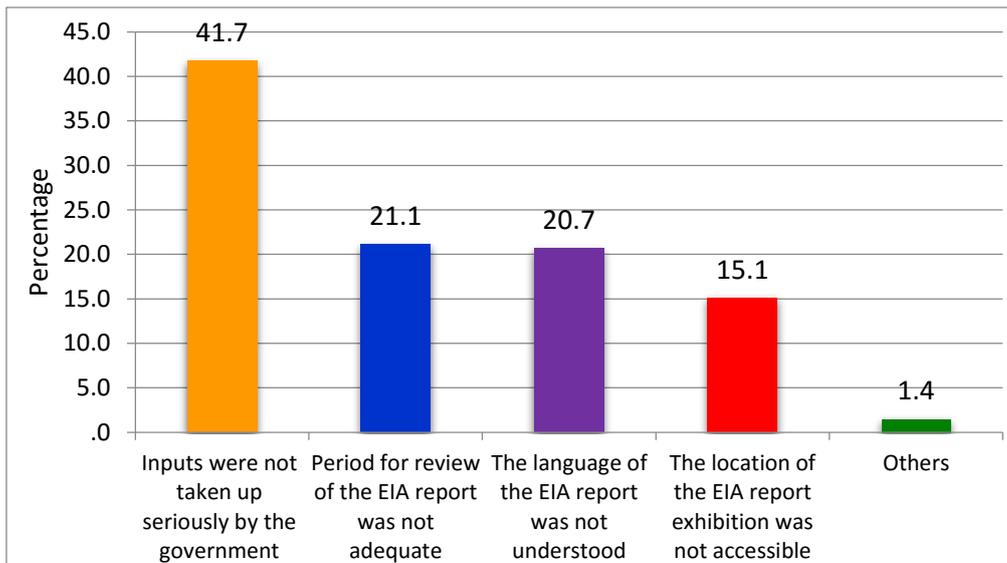
**Figure 6.24:** Are you satisfied with your involvement in the BHP's EIA?

This study found that out of 220 respondents, an overwhelming majority (87.9%) were not satisfied with their involvement in the EIA. In contrast, only 5.4 percent were found to be satisfied. This finding, however, was not surprising as local people's dissatisfaction has been documented in the previous section; largely in relation to the serious grievance of the lack of public participation in the EIA process.<sup>230</sup>

#### **6.11.2.2 Reasons for Dissatisfaction**

To further examine the reasons for the respondents' dissatisfaction of the EIA for the BHP, the respondents were asked to state their reasons for it. In this question, the respondents were allowed to choose more than one answer.

<sup>230</sup> As illustrated in Section 6.10.2, the court cases were initiated on the flawed process and procedures of the EIA where the PAP rights to participate in the EIA had been denied (Nijar, 1997; Kajing Tubek and others vs Ekran and Others, 1997). Another example of how the EIA inputs were not abided to by the authority on their compensation demands were as follows: i) twelve hectares (or 30 acres) of land per family (originally, twenty hectares); and, ii) '*pulau*' for every community (LCDA, 1997a).



**Figure 6.25:** Reasons for Orang Ulu respondents' dissatisfaction with the EIA

Based on Figure 6.25, this study found that from 484 responses, the majority or 41.7 percent of the respondents were dissatisfied because the authorities did not seriously consider their requests<sup>231</sup>. The second most common factor for dissatisfaction (21.1%) was the inability of the respondents to take part in the public participation during the report review period, which was for a very limited period. The third most common dissatisfaction was related to the use of the English language in EIA reports, which posed a barrier to them (20.7%). Meanwhile, 15.1 percent of respondents complained about the locations of the EIA report reviews; they were displayed far away from their longhouses.

Perhaps, the sceptical perception of the general public on the role of the EIA was rightly voiced by Mark Bujang from BRIMAS and it has warranted our attention:

*In many cases, the EIA process is used to legitimise the project proponent's action without the genuine intention towards empowering the public roles. Many do it just for the sake of procedure or formality, particularly when the project is strongly backed by the government. This is clearly the case in the Bakun project. (Oral conversation with Mark Bujang, an Executive Director of BRIMAS in Miri Sarawak on 21<sup>st</sup> September 2011).*

Mark also said that:

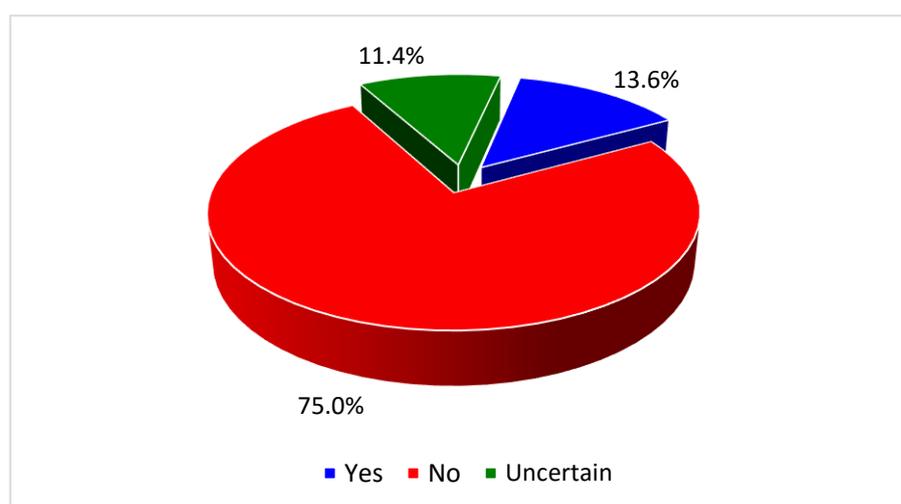
<sup>231</sup> Typical examples given by them were comments concerning their request to get adequate compensation and also on the manipulation employed by the government to get their consent to relocate. Both aspects were dealt with directly in the EIA study.

*I don't think that the government is really serious about the EIA and public participation. It was demonstrated clearly from the Bakun project that the government just did public participation for the sake of formality, without the real intention in incorporating public inputs in the decision-making process. Limitation of information to the public who are not encouraged to participate in giving views has become meaningless to the entire EIA process. (Ibid)*

### **6.11.2.3 Views on the Role of Public Participation in Conflict**

One of the EIA functions is its role as a platform where public discontent and differing views can be managed, facilitated and channelled through the public participation process. Consequently, via public participation, public acceptance towards the project can be enhanced.

Unfortunately, as shown in Figure 6.26, this study found that as much as 75 percent of respondents felt that the public participation failed to reduce conflict in the project. On the other hand, 13.6 percent felt otherwise and another 11.4 percent were uncertain.



**Figure 6.26:** Has the EIA reduced the project conflict?

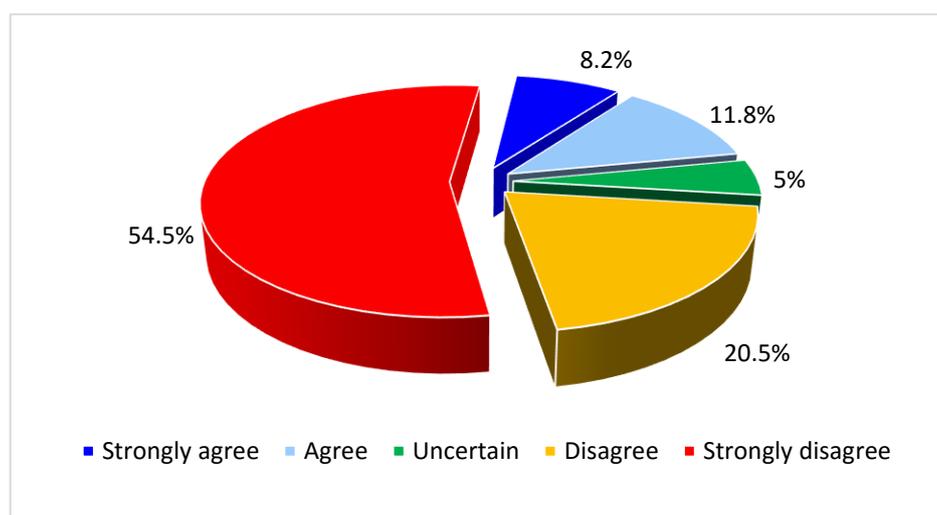
The researcher found that the Orang Ulu communities made continuous requests to the authorities and government agencies on compensation matters. Unfortunately, it was useless and this made the respondents think that their involvement in public participation was meaningless. This research survey finding was parallel to the remarks made by Madline Legan, an NGO activist from SAM Marudi:

*Public participation in Malaysia's EIA is conducted more as a procedural requirement rather than to facilitate local view in the project implementation. In the case of the Bakun dam, public participation was more a formality because so much discretion<sup>232</sup> has been given to the project proponent. (Oral Conservation with Madline Legan, an officer from SAM Sarawak, in Marudi, Sarawak on 19<sup>th</sup> September 2012).*

Madline related the continuous displays of conflict<sup>233</sup> at the RSSA or in the Belaga District despite the court cases having already passed judgements on the BHP issues, e.g. the legality of the BHP, the EIA validity, public participation and land rights. This clearly indicated the ineffective role the EIA played in reducing the conflict relating to the project.

#### **6.11.2.4 Views on the EIA Role in Empowering Local Participation**

The founding purpose of the EIA is to empower local participation in the project design. Through the EIA, the public should be provided with a channel that allows them to participate in the project.



**Figure 6.27:** Has the EIA empowered local participation?

<sup>232</sup> To Madline Legan, the discretion given to Ekran caused a serious handicap to the EIA procedures. Continuous conflicts by the local people expressed in the form of petitions, memos, demonstrations, court cases, for example, constitute direct evidence that the EIA has failed to play its fundamental role. In this sense, she opined that it was not surprising that EIA has always been regarded as window dressing (Oral Conservation with Madline Legan, an officer from SAM Sarawak, in Marudi, Sarawak on 19<sup>th</sup> September 2012).

<sup>233</sup> Section 6.11.5 discussed the types of conflicts and strategies employed by PAP to protest against the project. In addition, Section 6.11.5.3 will quantify the types and frequency of the conflicts involved.

However, as shown in Figure 6.27, this study revealed that about half of the respondents (54.5%) had strongly disagreed and about one-fifth disagreed (20.5%) that the existence of the EIA had able to empower public participation. On the other hand, only a small percentage of respondents (20.0%) viewed strongly agreed (8.2%) or agreed (11.8%) that the EIA had empowered local participation.

These findings come as no surprise. During the researcher's stay with the Orang Ulu at the RSSA, the Orang Ulu claimed that their plights and appeals were not well entertained by the government, especially in relation to the EIA and compensation.<sup>234</sup> For example, Kajing Tubek, one of the plaintiffs in the court case, made the following remarks when meeting the researcher at the Uma Bakah:

*The government does not want to consult us. In this case [the BHP], the government did not followed the [EIA] regulation.* (Oral Conversation with Kajing Tubek, a villager cum a plaintiff, at the RSSA on 24<sup>th</sup> September 2012).

Similarly, when a representative from SAM Sarawak, Jau-Evong Jok (a coordinator), was asked to comment on how he observed the public participation treatment of EIA in Malaysia, made same interesting remarks:

*Public participation in Malaysia is conducted more as a procedural requirement. Developer projects generally do not encourage it. They tend to be silent rather than to facilitate it.* (Oral conversation, Jau-Evong Jok, a coordinator from SAM Sarawak, in Marudi, Sarawak on 19<sup>th</sup> September 2012).

In the village, Umek Jeno (one of the Pemanchar), related that the court cases on the BHP were an indication of the conflict in the project:

*In my opinion, the EIA in the BHP has failed to serve its purpose. You can see that court cases on the project have been filed by the Orang Ulu. This is evidence that we are not satisfied on the way the EIA is being conducted. Local people are not*

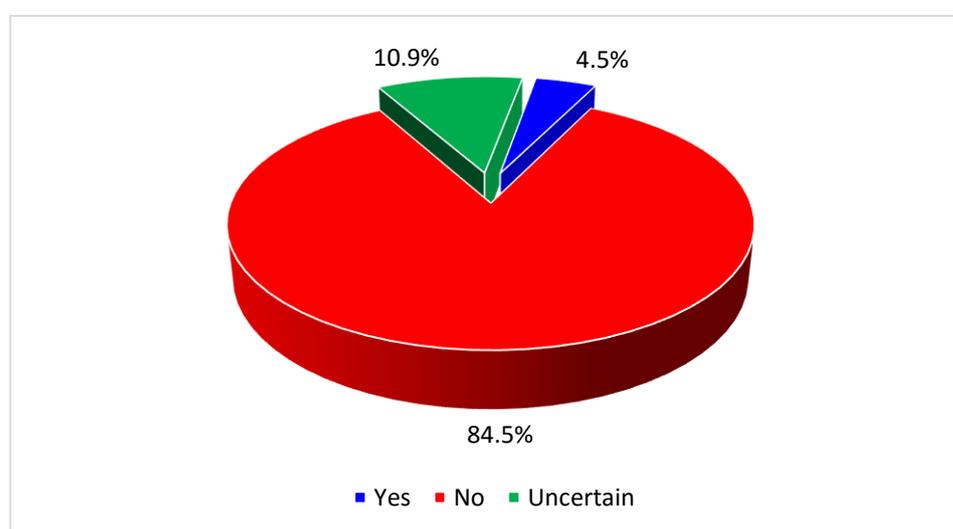
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<sup>234</sup> In the interview with CAP in 1995, Kajing Tubek made the following remarks 'It is very unfair and unreasonable that we were not allowed to give our views, as we will be directly affected by the project' (Utusan Konsumer, 1995e).

*satisfied with our limited involvement in the project and compensation issues.*<sup>235</sup>  
(Oral conversation with Umek Jen0, a Pemanchar, at the RSSA on 29<sup>th</sup> September 2012).

### 6.11.2.5 Views on the Project Consent

One of the EIA objectives is to get consent<sup>236</sup> for the proposed project. As Figure 6.28 shows, this study found that the majority of respondents (84.5%) admitted that the consent given to the BHP was non-voluntary whereas a small number of respondents (4.5%) viewed it otherwise. Only 10.9 percent were uncertain.



**Figure 6.28:** Was project consent given voluntarily?

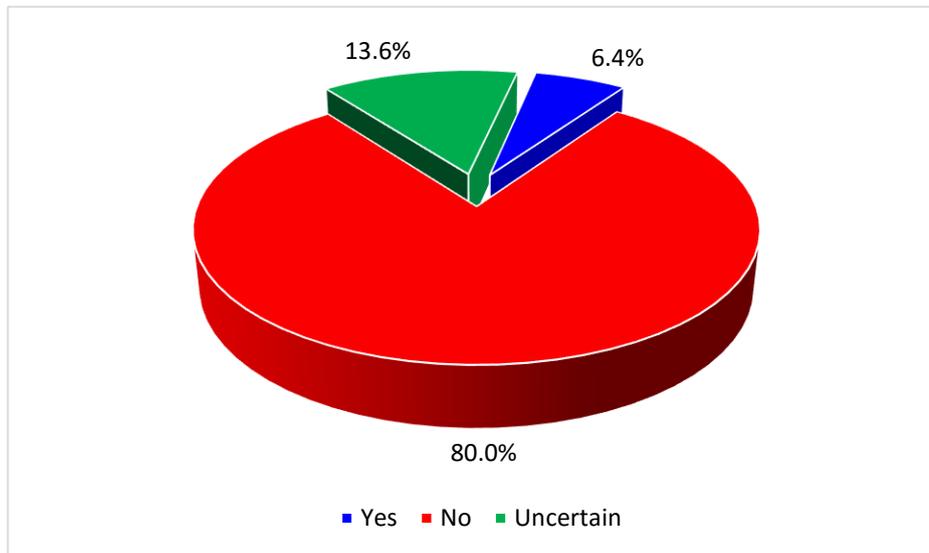
### 6.11.2.6 Views on the Authorities' Compliance with EIA Procedures

To get an idea of the public perception of authorities' procedural compliance in the BHP's EIA, the respondents were asked whether they thought that the authorities had followed the EIA procedures. The types of EIA compliance mentioned to the respondents were: sharing

<sup>235</sup> In the Ngajing Midin's affidavit filed at the High Court in Sabah and Sarawak in Kuching (Suit No: 22-7-2000-II), it was revealed that PAP only received information on the BHP after the project's earth-breaking ceremony had taken place (Midin, 2006, p. 13).

<sup>236</sup> The consent given by PAP, however, did not carry legal implication. For example, even though the majority of PAP for the proposed project did not give consent, the project could still proceed. However, this consent information obtained during the EIA data collection (or the EIA profiling) could provide useful feedback to the project proponent to anticipate measures required to overcome or improve the outcomes.

information with the public, obtaining consent from the public to relocate voluntarily and whether the respondents felt the compensation they received was fair.



**Figure 6.29:** Did the authorities comply with the EIA procedures?

As shown in Figure 6.29, this study found that the majority, or 80.0 percent, of respondents argued that the authorities had conducted the EIA without complying with the EIA procedures. Only 6.4 percent stated otherwise and 13.6 percent of the respondents were uncertain. It is worth mentioning here that during the survey most of the respondents were aware that there were court cases on the EIA. According to them, this indicated that the state had failed to comply with the EIA procedures<sup>237</sup>.

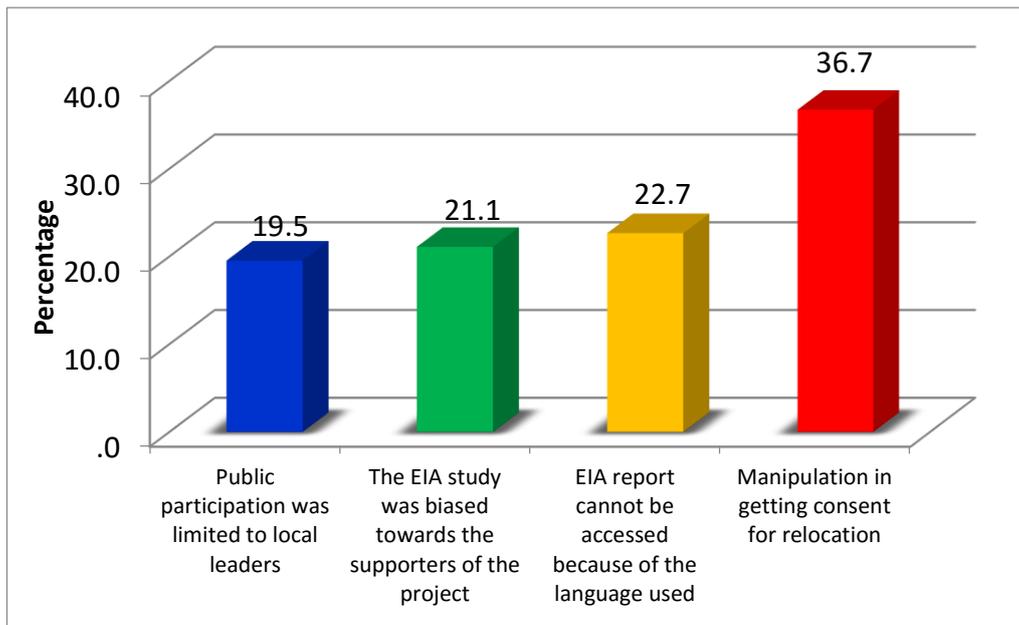
#### **6.11.2.7 Aspects of EIA Procedural Non-compliance by the Authorities**

On further examining respondents' understanding on the elements of violation of the EIA procedures<sup>238</sup>, respondents mentioned the following factors. Note that the respondents were allowed to provide more than one answer.

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<sup>237</sup> When the respondents were asked this question, the typical reference they made to EIA court cases was the 'Kajing case'.

<sup>238</sup> The examples of violation of the EIA procedures here are the contradictions of compliance as stated in the Section 6.11.2.6 (Views of the Authorities' Compliance with EIA Procedures).



**Figure 6.30:** What are the non-compliance aspects of the EIA?

As Table 6.30 shows, this study found that the majority of respondents (36.7%) viewed that there were elements of manipulation in the EIA procedures. The bias of the EIA towards the project proponents/supporters rather than those who opposed it ranked the second aspect of violation (19.5%). Respondents also highlighted that they assumed the focus of public participation was on local leaders (21.1%).

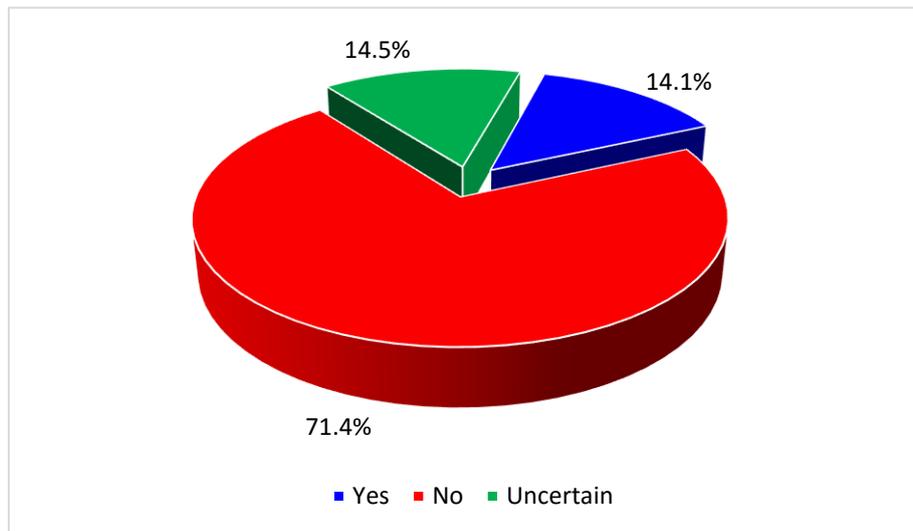
This finding is reflected in an interview with Kajing Tubek, one of the plaintiffs who brought the court case against Ekran, when he asserted that public participation in the EIA process was completely lacking.

*They [the government] just want to precede with the project at any cost. Maybe they thought we [the Orang Ulu] know nothing about the EIA or project requirements. (Oral Conversation with Kajing Tubek., a villager cum plaintiff, at the RSSA on 24<sup>th</sup> September 2012).*

#### **6.11.2.8 Views on Transparency of the Project**

One of the fundamental elements of public participation in the EIA process is the existence and availability of adequate information. This means that the project proponent or the authorities must be willing to share the information in the EIA report with the public. However, as indicated in Figure 6.31, this study found that an overwhelming percentage of

respondents (71.4%) did not agree that the EIA for the BHP had been conducted in a transparent manner.



**Figure 6.31:** Does the BHP offer transparency?

Only 14.1 percent agreed there was transparency and 14.5 percent of respondents were uncertain. The finding from this analysis is not surprising. The secrecy element of the BHP has been previously documented' in this chapter.<sup>239</sup> In this sense, SAM argued that the public had been ill-informed and the local people had not received a complete set of information. In fact, SAM found that the Orang Ulu have faced intimidation for speaking out against the project (Utusan Konsumer, 1995f).

To sum up this section, it would be interesting for this research to consider the view of the NGOs about the real obstacles to public participation. Meor Razak from SAM, a reputable NGO from Peninsular Malaysia who has reputable work in the Sarawak and Sabah, made the following remarks:

*In many cases, the EIA process is used to legitimise project proponents' action without the genuine intention towards empowering public roles. Many [who] do it just do it for the sake of procedural formality, particularly when the project is strongly backed by the government. This is clearly the case in the BHP. (Oral*

<sup>239</sup> See Section 6.8 (The Bakun Hydroelectric Project's (BHP) Environmental Impact Assessment (EIA): Incompliance and Irregularities) which documented the EIA irregularities in this project.

Conservation with Meor Razak., an officer from SAM, in Penang on 25<sup>th</sup> August 2011).

On the other hand, as the main responsible agency on environment in Sarawak the NREB had a different version of the conduct of the EIA public participation, specifically in the Sarawak context. This was rightly asserted by Jiram Sidu, an Environmental Control Officer from the NREB (a Sarawak State environmental agency):

*We have just followed from what are stated in the guidelines. We have consulted the local people through various channels and were not limited to the report review alone. (Oral conversation with Jiram Sidu, Environmental Control Officer for NREB, in Kuching Sarawak on 2<sup>nd</sup> November 2012).*

When asked why there was a difference between the Sarawak EIA regulations and the Peninsular Malaysia's EIA regulations concerning public participation, Jiram Sidu provided the below explanation:

*We have regarded public participation as important. However, we have our own way on how to get the public input in the EIA. In our country, the problem of the PAP who are sometimes illiterate has made us need to go beyond the standard procedures to get their inputs. (Ibid)*

However, Jiram Sidu's statement might not be entirely right since numerous pieces of secondary evidence have shown that despite the fact the public was eager to participate in the public participation the government refused to release the information. To that aspect, Jiram Sidu made the following remarks:

*Sometimes the public is misled by the politicians who try to gain political mileage. They are using public participation in order to influence the public despite the positive aspects of the project. (Ibid)*

### **6.11.3 Views on Land Policy**

In addition to dissatisfaction of the respondents on the issues involved in the EIA implementation, another issue, which was probably more close to their hearts, was land.

Land issues were deemed the main contributing factors in causing conflict and affecting the credibility of the EIA and the project. Therefore, this section aims to measure the respondents' perception on the NCL policy which had previously been enjoyed by them. Only by doing this will we get a holistic picture of the land and conflict issues.

The questions posed here are aimed at examining the respondents' perception of three aspects: i) the land policy related to NT; ii) land acquisition as experienced by them; and, iii) the land rights impacts of the BHP implementation due to the loss of the NCL.

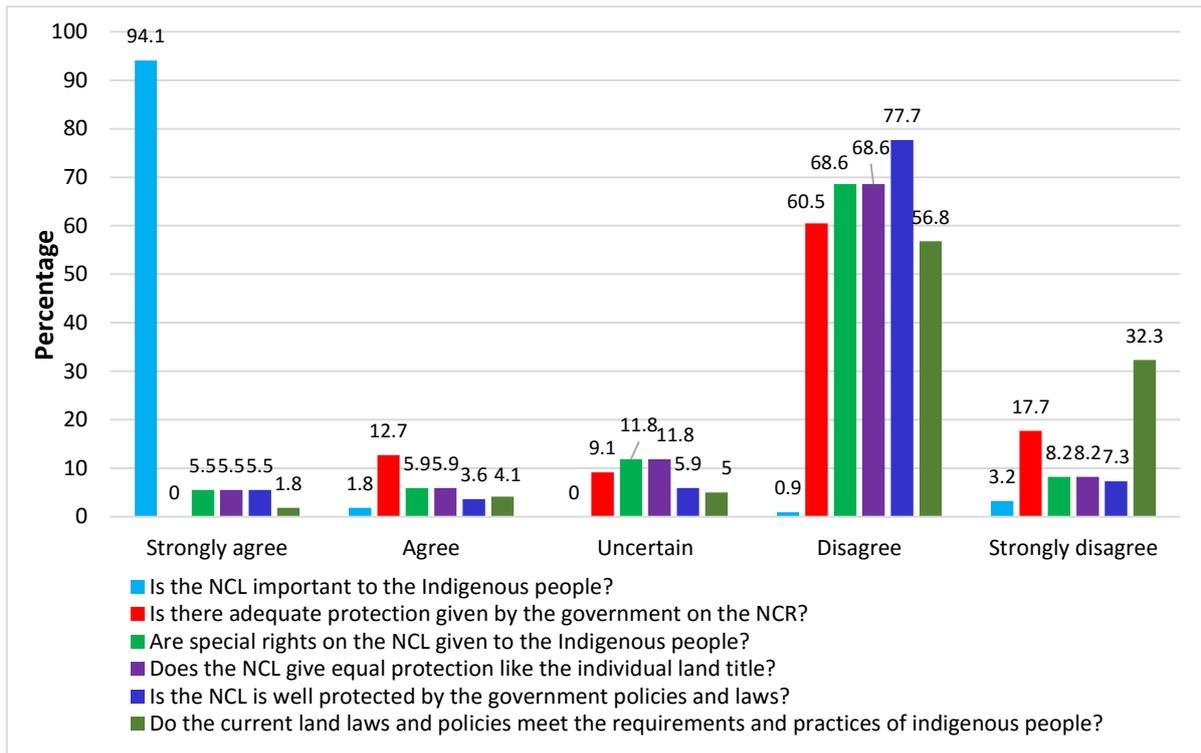
### 6.11.3.1 Views on the NT Policy

The following five questions from Table 6.15 demonstrate the respondents' views on NCL<sup>240</sup> policy. The additional four questions from Table 6.16 further examine the respondents' views on the NCL. The respondents were asked to evaluate the statements using the Likert's Scale: strongly agree, agree, uncertain, disagree and strongly disagree.

**Table 6.15:** Views on the Native Customary Land (NCL) policy

	<b>Strongly agree</b>	<b>Agree</b>	<b>Uncertain</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>% from total</b>
Is the NCL important to the Indigenous people?	94.1	1.8	0	0.9	3.2	100.0
Is there adequate protection given by government on the NCL?	0	12.7	9.1	60.5	17.7	100.0
Are special rights on the NCL given to the Indigenous people?	5.5	5.9	11.8	68.6	8.2	100.0
Does the NCL give equal protection like the individual land title?	5.5	5.9	11.8	68.6	8.2	100.0
Is the NCL well protected by government policies and laws?	5.5	3.6	5.9	77.7	7.3	100.0
Do the current land laws and policies meet the requirements and practices of the Indigenous people?	1.8	4.1	5	56.8	32.3	100.0

<sup>240</sup> To refresh the understanding on the NT and NCL, this research has considered the NCL as a type of land category and the NT as a bundle of rights generated from the NCL.



**Figure 6.32:** Views on the Native Customary Land (NCL) policy

As shown in Table 6.15 and Figure 6.32, this study found that there was strong agreement that the NCL had played an important role for the Orang Ulu. Respondents who agreed totalled 95.9 percent (including 94.1 percent strongly agreeing and 1.8 percent agreeing). Only 4.1 percent of the respondents disagreed, including 3.2 percent strongly disagreeing.<sup>241</sup> While most of them viewed the NCL as important, approximately 78.2 percent disagreed (including 17.7 percent strongly disagreeing) that the current protection given by the government on the NCL was adequate. Approximately 12.7 percent of the respondents agreed that the current protection given by the government was seen to be adequate and 9.1 percent were uncertain.

In principle, the NCL are a kind of special land rights given to the Orang Ulu. However, in practice, this study found that approximately 76.8 percent of respondents disagreed (including 8.2 percent strongly disagreed) that the Orang Ulu were entitled to the special land rights. Respondents who agreed totalled 11.4 percent (including 5.5 strongly agreeing

<sup>241</sup> The United Nations Declaration of Rights of the Indigenous Peoples (UNDRIP) (UNDRIP, 2013, p. 31–32) acknowledges the importance of land to indigenous people by it stating that “*Land is the foundation of the lives and cultures of indigenous peoples. Without access to and respect for their rights over their lands, territories and natural resources, the survival of indigenous peoples and particular distinct cultures is threatened...Land rights, access to land and control over it and its resources are central to indigenous peoples. In order to survive as distinct peoples, indigenous peoples and their communities need to be able to own, conserve and manage their territories, lands and resources.*”

and 5.9 strongly agreeing) and 11.8 percent were uncertain. Further examination on the public perception of equal protection between NCL and individual land title found that respondents who disagreed totalled 76.8 percent (including 68.6 percent disagreed and 8.2 percent strongly disagreed). Only 11.4 percent of the respondents agreed, including 5.5 percent strongly agreeing. Approximately 11.8 were uncertain.

To further investigate this NCL issue, respondents were asked whether the NCL policy was well protected by government policy and laws. Again, negative responses dominated the perception; 85 percent disagreed (including 7.3 percent who strongly disagreed). Only 9.1 percent agreed (including 3.6 percent strongly agreeing). Respondents were also asked whether the previous policies and laws related to the NT were made in accordance to the local customs and needs. This study found that almost 89.1 percent of them disagreed (including 32.3 percent strongly disagreeing) that the current laws and policies properly took this aspect into consideration. Only 6 percent felt the current policies and laws on the NT were in line with the local customs and needs.

In this sense, it is interesting to quote BRIMAS' views on the contradiction between the current laws and policies concerning the NT and the customs and practices of indigenous people<sup>242</sup>:

*In principle, there is recognition on 'Temuda', however, the local people are facing problem with 'Pemakai Memua' and 'Menoa'. In many cases, there is a problem with these land categories. The problem arose because of the unrecognised customary practice by the local people. (Oral conversation with Mark Bujang, Executive Director of the BRIMAS, in Miri Sarawak on 21<sup>st</sup> September 2011).*

Table 6.15 above illustrates the respondents' views on land policy. In particular, it examines the comparison between the current individual titles and the previous NCL rights. Based on Table 6.16 and Figure 6.33, this study found that 87.7 percent of the respondents disagreed

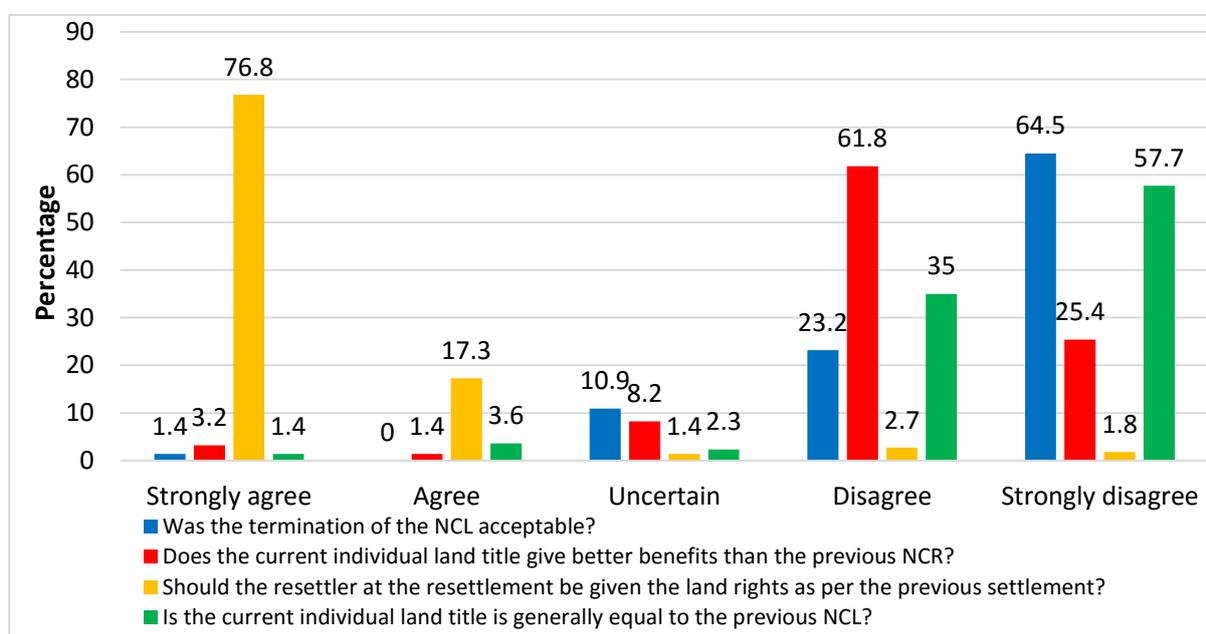
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<sup>242</sup> *The government seemed not eager to consult the public on the amendment to the SLC. The less people consulted, the less problems for the government to be deal with. The government has used the strict interpretation of the time-framed NCL which has frustrated the indigenous people. (Oral Conservation with Mai Ligue, an assistant of Tuai Umah from Uma Balui Liko, on 16 October 2012). Ligue's statement is parallel to the view of Baru Bian, a prominent advocate and solicitor of the NCL in Sarawak who explains that the present SLC has been further curtailed and restricted because the NCR gave a strict time-framed definition. Only land rights existing prior to 1<sup>st</sup> January 1958 were lawful under the definition (Bian, 2000, p. 337).*

(including a majority of 64.5 percent of them strongly disagreeing) that the extinguishment of the NCL was acceptable. Only 1.4 percent of the respondents agreed and 10.9 percent were uncertain.

**Table 6.16:** Views on the comparison between individual land titles and the Native Customary Land (NCL)

	Strongly agree	Agree	Uncertain	Disagree	Strongly disagree	% from total
Was the termination of the NCL acceptable?	1.4	0	10.9	23.2	64.5	100.0
Does the current individual land title give better benefits than the previous NCR?	3.2	1.4	8.2	61.8	25.4	100.0
Should the resettler at the current resettlement be given the land rights as per the previous settlement?	76.8	17.3	1.4	2.7	1.8	100.0
Is the current individual land title is generally equal to the previous NCL?	1.4	3.6	2.3	35.0	57.7	100.0



**Figure 6.33:** Views on the comparison between individual land titles and the Native Customary Land (NCL)

This study also found that approximately 87.2 percent of the respondents disagreed (including 25.4% strongly disagreeing) that the current individual land title provided better benefits than the previous NCR. Less than 5 percent of respondents either agreed (1.4%) or strongly agreed (3.2%) that the individual land title gave better benefits than the previous land tenure. In addition, 8.2 percent of the respondents were uncertain.

The respondents were also asked their view on whether they should be given the land rights they had previously enjoyed (before the resettlement). To this question, this study found that the overwhelming majority of respondents (76.8%) strongly agreed and 17.3 percent agreed. However, less than 5 percent of the respondents either disagreed or strongly disagreed and approximately 1.4 percent were uncertain. The last question in this section asked the respondents whether the current individual land title is generally equal to the previous NCL. In response to this question, this study found that 92.7 percent of respondents disagreed (including 57.7 percent strongly disagreeing) that the current individual land title does not equate to the NCL. Only 5 percent of the respondents either agreed or strongly agreed and 2.3 percent of them remained uncertain.

Perhaps the statement by Luhut Tungau from the Uma Belor can reflect the importance of land and the main reason why the Orang Ulu provided negative responses on the treatment of the NCL:

*Land is important for us because everything we do is related to land. We get income and food from the land and forest. In Ulu Balui, when we get sick, we get medicine from the forest and we worship rivers, hills and trees to seek blessing. Most importantly our ancestors are buried on this land. (Oral Conversation with Luhut Tungau, a villager, at the RSSA on 23<sup>rd</sup> May 2011).*

### **6.11.3.2 Views on Land Acquisition**

Table 6.17 and Figure 6.34 show the assessment of five questions over land extinguishment and termination of their NCL. The questions were formulated in order to investigate the respondents' perception on land acquisition as experienced by the Orang Ulu. In this subsection, the respondents were asked to evaluate the statements using the five options of the Likert's Scale: strongly agree, agree, uncertain, disagree and strongly disagree.

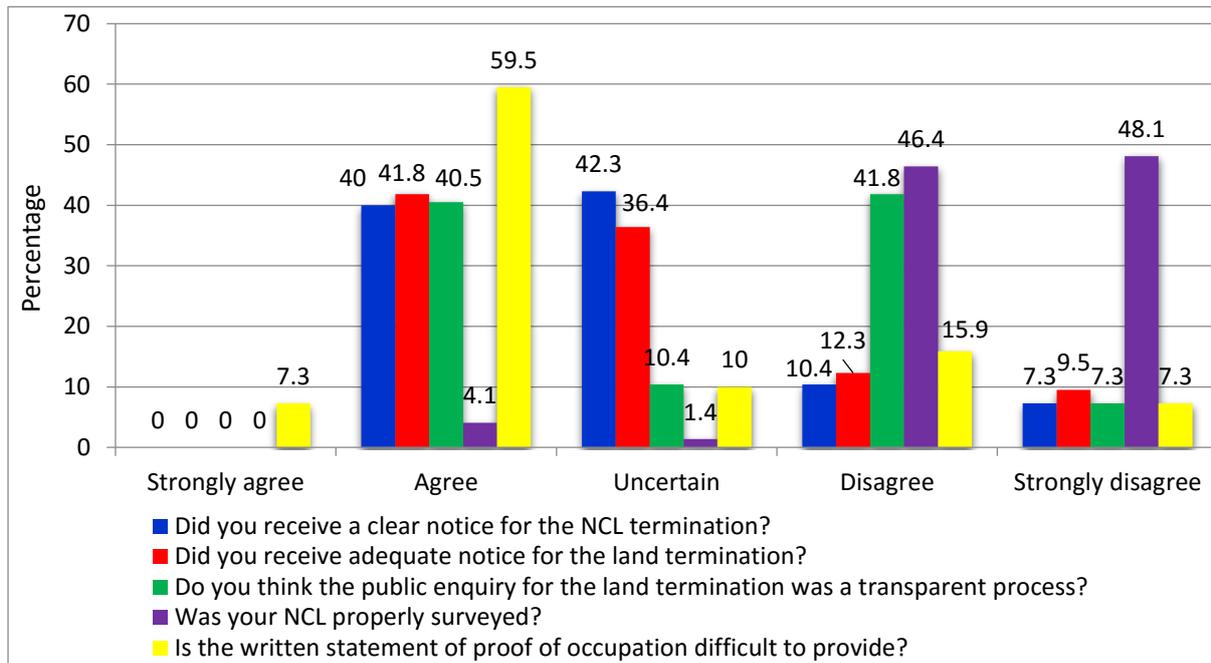
To the first question related to land extinguishment, this study found that the majority of them (42.3%) were uncertain while almost half of them (40.0%) agreed that a clear notice had been given. Only a small percentage (17.7 %) disagreed (including 7.3 percent strongly disagreeing) that a clear notice was given. This study also revealed that the bulk of the respondents (41.8%) stated that the notice period given for the land termination was also adequate. Respondents who disagreed totalled 21.8 percent (including 9.5 percent strongly disagreeing). A considerable percentage of the respondents were uncertain (36.4%).

**Table 6.17:** Views on the land acquisition process

	<b>Strongly agree</b>	<b>Agree</b>	<b>Uncertain</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>% from total</b>
Did you receive a clear notice for the NCL termination?	0	40.0	42.3	10.4	7.3	100.0
Did you receive adequate notice for the land termination?	0	41.8	36.4	12.3	9.5	100.0
Do you think the public enquiry for the land termination was a transparent process?	0	40.5	10.4	41.8	7.3	100.0
Was your NCL properly surveyed?	0	4.1	1.4	46.4	48.1	100.0
Is the written statement of proof of occupation difficult to provide?	7.3	59.5	10	15.9	7.3	100.0

When asked whether they thought that the public enquiry on land termination was a transparent process, the majority of the respondents or 49.1 percent disagreed (including 7.3 percent strongly disagreed). Contrary to this, the bulk of the respondents (40.5%) stated that the public enquiry was a transparent process. This study also found that 10.4 percent of the respondents were uncertain.<sup>243</sup>

<sup>243</sup> This is also revealed by the Orang Ulu in Bato Bagi and six others in the court case against the Sarawak Government where the plaintiffs exposed the fact that there was no prior consultation before the extinguishment of the NCL (Midin, 2006).



**Figure 6.34:** Views on the land acquisition process

On the question of whether the respondents felt that their land was properly surveyed, this study found that an overwhelming number (94.5%) of the respondents disagreed (including 48.1% strongly disagreed) that their land had been properly surveyed<sup>244</sup>. In contrast, a mere 4.1 percent agreed and 1.4 percent were uncertain. The last question in this sub-section asked the respondents whether it was difficult to provide a written statement in order for them to prove their land occupation. Approximately 66.8 percent agreed (including 7.3 percent strongly agreeing). However, 23.2 percent of the respondents disagreed (including 7.3 strongly disagreeing) and 10 percent of them were uncertain.

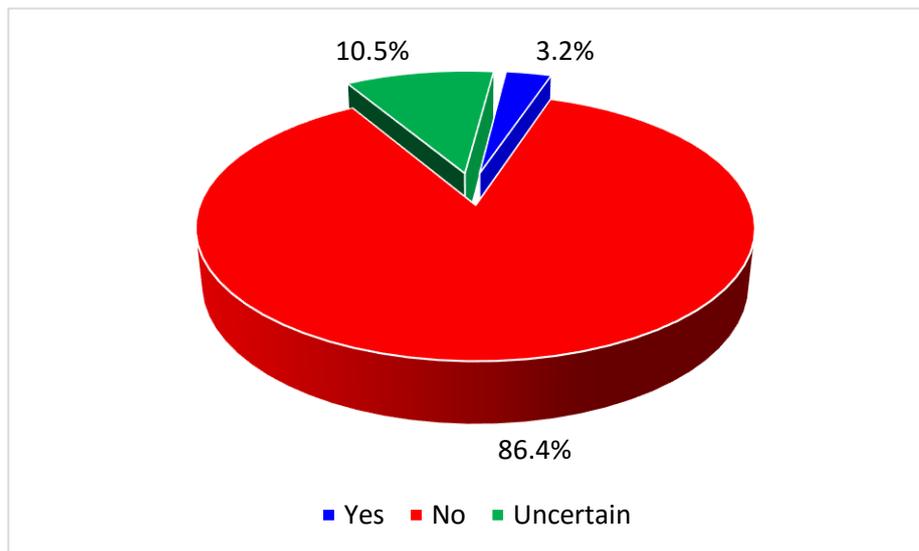
### **6.11.3.2.1 Views on the Authorities' Compliance with the Land Acquisition Procedures**

The aim of the last two questions in this sub-section is to analyse respondents' perspectives of the authority's compliance with land acquisition procedures<sup>245</sup>. As shown in Figure 6.35, this study found that the overwhelming majority of the respondents (86%) disagreed that

<sup>244</sup> The complaints can be found in the various letters sent to many parties, as mentioned in Section 6.10.2 (Conflict and Resistance Strategies by the BHP's Actors).

<sup>245</sup> Examples of the land acquisition procedures not followed includes the survey method was not transparent;; mechanism of complaints on compensation was unclear; notice to the survey was not received; and, notice survey for the land was too short

the authorities followed all the land acquisition procedures. Only a mere 3 percent of the respondents agreed and the remaining 11 percent of them were uncertain as to compliance.



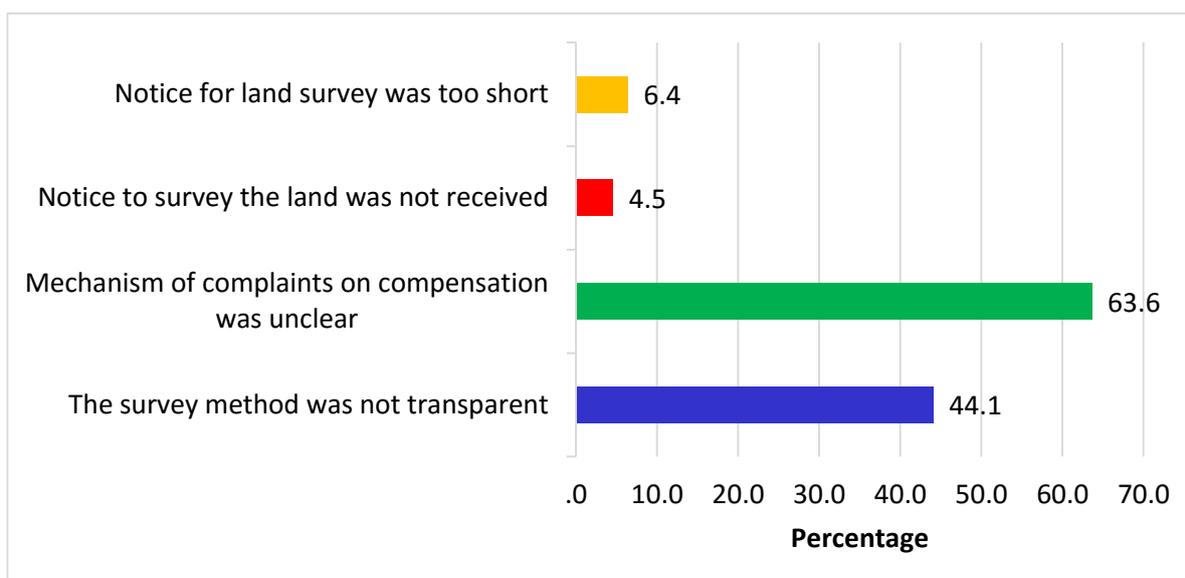
**Figure 6.35:** Did the authorities comply with the land acquisition procedures?

#### **6.11.3.2.2 Aspects of Incompliance in the Land Acquisition**

To identify incompliance in the land acquisition, the respondents were asked about the aspects of non-compliance. From Figure 6.36 it can be seen that from 261 responses received<sup>246</sup> almost two-thirds (63.6%) perceived that the mechanism of complaints on compensation was unclear and almost half of them (44.1%) stated the survey method was not transparent. The other two reasons were provided by 6.4 percent and 4.5 percent of respondents.

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<sup>246</sup> In this questions, respondents were allowed to state more than one answer.



**Figure 6.36:** What are the aspects of non-compliance in the land acquisition procedures?

Saran Imu’s remarks could shed light on this discussion about the ineffective complaint mechanism in the BHP:

*People are not happy with the compensation but don’t know how to complain. We sent letters to the authorities and politicians, but to no avail. We complained to YB<sup>247</sup> but nothing happened. We don’t know what else to do.* (Oral Conversation with Saran Imu, a villager and NGO activist, at the RSSA on 12<sup>th</sup> October 2012)

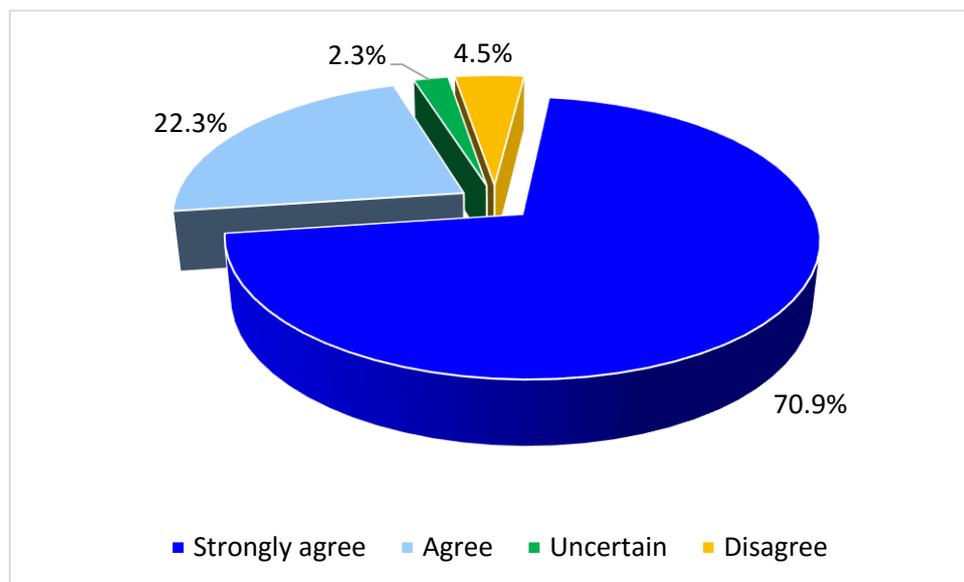
### **6.11.3.3 View on the Land Rights Impacts of the BHP Implementation**

In view of the fact that the respondents had been resettled at the RSSA, the following six questions were formulated in order to investigate the respondents’ perception of the impacts on land rights. Their displacement to the RSSA brought changes to their land rights; the PAP found that there were no longer communal rights (which they had previously). Again, in this section, respondents were asked to evaluate the statements using the Likert’s Scale: strongly agree, agree, uncertain, disagree and strongly disagree.

<sup>247</sup> YB is an abbreviation of the ‘Yang Berhormat’ or ‘the most honourable’ in English. It refers to either state or parliamentary representatives.

### 6.11.3.3.1 Views on the Absence of the Roaming Areas Affecting Their Free Food Resources

Based on Figure 6.37, the study found that an overwhelming percentage of respondents (93.2%) agreed (including 70.9 percent strongly agreeing) that the BHP project had reduced their free food resources due to the absence of the roaming area. Only 4.5 percent disagreed and 2.3 percent were uncertain.



**Figure 6.37:** Have free food resources been reduced due to the absence of the roaming area?

This finding is further reflected in a similar view given in an interview with Pemanchar Umek Jeno, one of the Orang Ulu local leaders in the RSSA:

*Previously if we want to get food such as wild boar, deer, fish, and fruits and so on, we can just easily find them in our 'pulau'. The 'pulau' is our food store. However, since we have resettled here, the 'pulau' has simply vanished<sup>248</sup>. Free food is gone and all gone! We now cannot simply go to other areas to find free food as they*

<sup>248</sup> This is clearly stated in the Bato Bagi affidavit, where the PAP complained that their free food resources were extremely diminished due to the land extinguishment (see High Court of Malaya 2007a, 2007b). In a letter dated 17<sup>th</sup> July 2010 to Abdullah Badawi, the PM of Malaysia, the BRIC highlighted that the shortage of food, in particular meat, fish and vegetables, was seriously felt, especially to Uma Ukit and Uma Penan resettlers. Local people also admitted that their compensation was drowning out, due to daily expenses among other things. It is acknowledged that the actual cost of living in Belaga (including Sungai Asap) is very high (Ritchie, 2005, p. 185) which is due to its remoteness.

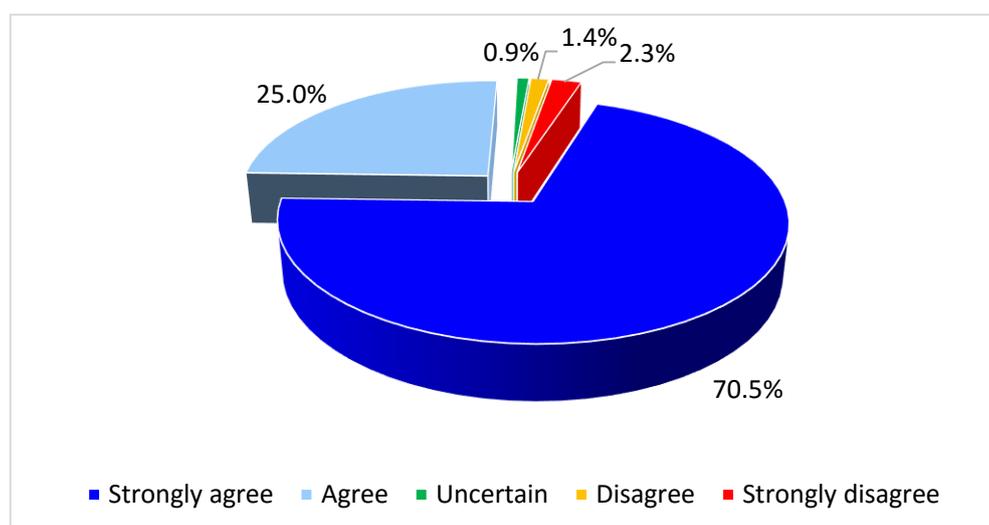
*belong to other parties. So, here everything needs money and without it [the 'pulau'] we cannot live properly.*<sup>249</sup> (Oral Conservation with Umek Jeno, a Pemanchar, at the RSSA on 29<sup>th</sup> September 2012).

When asked how the Orang Ulu got wild boar, deer or fish, for example, Umek Jeno<sup>250</sup> responded:

*Normally we go hunting with our friends. Previously, we will go with other men to Ulu Balui. Now, we cannot simply go hunting around this longhouse [RSSA] because the area surrounding the RSSA belongs to other villagers.*<sup>251</sup> (Ibid)

### 6.11.3.3.2 Views on how the Individual Land Titles have Affected the Free Food Resources

The second examination of the impact on land rights considered the respondents' perception that the project had reduced the free availability of food due to the insufficient lot size as well as the loss of the communal forest.



**Figure 6.38:** Have free food resources been reduced due to the insufficient size of the individual land titles?

<sup>249</sup> Local people claimed that they needed money for everything. Even to ferry school children from longhouses to the secondary and primary schools required a lot of money (for example, students from Uma Bawang require RM 2.00 (USD 0.64) daily or RM 50.00 (16.02) a month, per person)

<sup>250</sup> Coincidentally, on the morning of the interview (the interview was held in the evening), Pemanchar Umek Jeno had just arrived back from a hunting session with his Uma Kelep friends.

<sup>251</sup> The surrounding villages are Long Bangan, Long Nayan, Long Semutut, Long Koyan, Long Bala, Long Sibau, Long Apak, Long Urun, Long Tengah, Long Ketuet and Long Pera (LCDA, 1997a, p. 2–3).

As shown in Figure 6.38, this study found that 95.5 percent of the respondents agreed (including 70.5 percent strongly agreeing) with the statement that the free food resources have been reduced due to the insufficient size of the individual agriculture lots given to them at the RSSA. On the contrary, only 3.7 percent disagreed (including 2.3 percent strongly disagreeing) and 0.9 percent were uncertain.<sup>252</sup>

It was acknowledged that prior to resettlement the resettlers had enjoyed a large land size. For example, the largest land size allocated to each family in the Uma Balui Liko Longhouse was 66 hectares; the smallest was in the Uma Buket Longhouse at 3.9 hectares (LCDA, 1997a, p. EXE-22).<sup>253</sup> This finding has shown that the resettlement exercise has considerably reduced the size of the land to only three acres per household.<sup>254</sup> It is also interesting to quote what Tony Kulleh said on this matter:

*Each family was given only 3 acres of land which clearly were not adequate. That has become one of the main reasons why the local people have lost respect and trust of the government. Being granted an individual land title is nothing and makes no difference to us.*<sup>255</sup> (Oral Conversation with Tony Kulleh, a Pemanchar, at the RSSA on 2<sup>nd</sup> October 2012).

The researcher found that many of the Orang Ulu had complained that the land fertility and topography (i.e. it is a hilly area) had affected the crop quality and yield. For example, Huvit Imang made the following remarks:

*Previously [in Ulu Balui] with less fertilizers used, our crops grew very well. However, even now with the use of fertilizers, the crops are growing slowly. Our crops like black pepper, tobacco and corn are growing so slow.* (Oral Conversation with Huvit Imang, a villager, at the RSSA on 2<sup>nd</sup> October 2012).

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<sup>252</sup> It is interesting to quote a statement made by Lajang Nyipa: '*Many people complained that the land provided does not produce as much yields as our previous lands (in Ulu Balui). Besides, the land provided is far away from our longhouses. It was also a forest land and not a cleared land*' (Oral conversation with Lajang Nyipa, a Tuai Umah of Uma Lahanan, at the RSSA on 7<sup>th</sup> October 2012).

<sup>253</sup> See the distribution of the Orang Ulu NT prior to their resettlement at the RSSA in Appendix D.

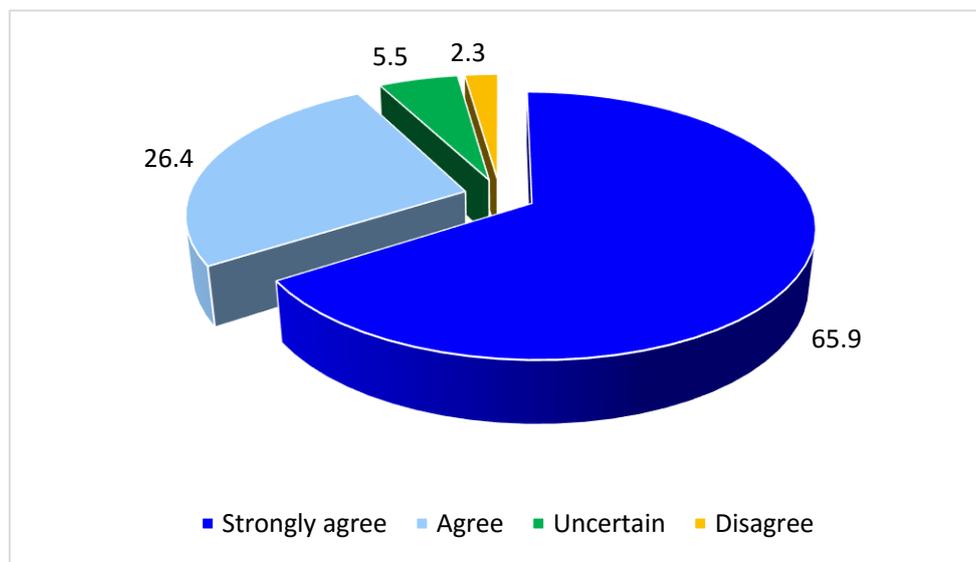
<sup>254</sup> According to Numpang (2012, p. 314), the Sarawak Government stated that the three acres of farm lot per family should be sufficient for the settlers to carry out modern farming with the guidance of the Department of Agriculture (DOAK).

<sup>255</sup> In the Nahe Jallei Village which is inhabited by the late of Bato Bagi's followers (currently lead by the son-in-law of Bato Bagi), the common reason given by them was the inability of the resettlement scheme to provide them with free food resources. When the researcher responded that at the resettlement scheme they were offered individual land titles, most of them politely answered that the offer was something that they did not find tempting enough. For them security in food supply was seen as far more important.

Humit Imang’s observation and understanding might be simple; however, it makes sense. According to Rousseau (1994, p. 4) the soil group at the RSSA is found to be largely in category three which is less fertile than the land which the Orang Ulu originally had in Balui River. This has also been acknowledged by the DOAK (Kapit Division); approximately 43 percent of land at the RSSA is of lesser fertility and has an unsuitable topography for cultivation activity<sup>256</sup> (DOAK, 2012).

### 6.11.3.3.3 Views on the Individual Land Titles Affecting Shifting Cultivation

Figure 6.39 shows that as much as 66 percent of the Orang Ulu’s respondents strongly agreed, and 26 percent of them agreed, that one negative impact the project had on shifting cultivation was that they no longer practised shifting cultivation at the RSSA. Only 2 percent disagreed and 6 percent were uncertain.



**Figure 6.39:** Has shifting cultivation disappeared due to individual land titles?

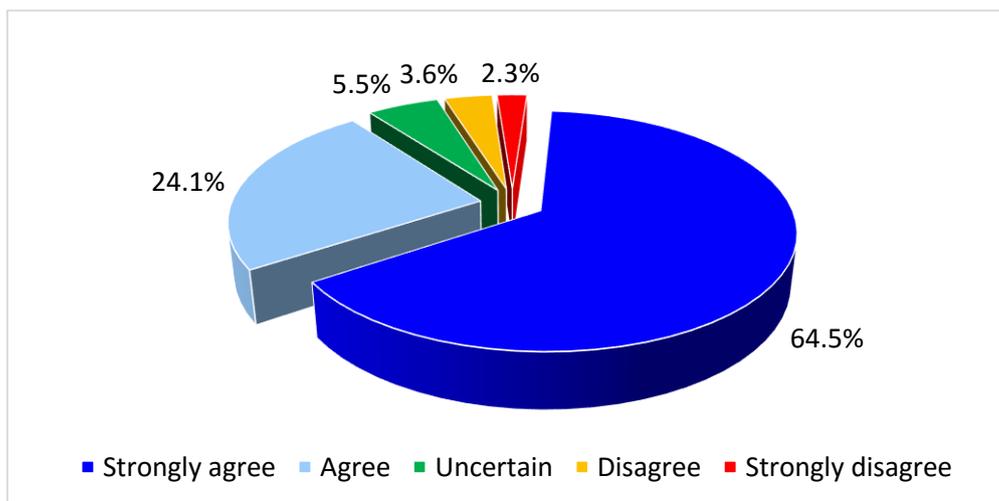
This finding was not surprising considering that the indigenous agriculture system required alternate land for shifting cultivation (rotation system). This was the system predominantly practised by indigenous people, including the Orang Ulu before they were forced to resettle at the resettlement schemes. However, the intention of the government was that the

<sup>256</sup> According to Gabungan (1999c, p. 49), the government was fully aware of the unsuitable condition of the RSSA. The soil at the site has been identified as mediocre and unsuitable for cash-cropping.

resettlement would bring about a substantial change of culture; moving it from the traditional subsistence economy into the modern cash economy (Numpang, 2012, p. 310).

#### 6.11.3.3.4 Views on Allocated Land Size and its Ability to Cope with Future Demography Growth

Despite insecurity in terms of land ownership, one of the fundamental benefits of the NCL is its ability to cater to the demands for future population growth. In this respect, it is important to see how the current land system is able to provide security for future demographic growth. Therefore, as shown in Figure 6.40, this study found that respondents who agreed totalled 88.6 percent (including 64.5 percent strongly agreed). There was merely 5.9 percent disagreeing (including 2.3 percent strongly disagreeing) and only a small percentage of respondents (5.5%) who were uncertain that the land size allocated to them had posed no problem.



**Figure 6.40:** Does the allocated land size fail to consider future family growth?

Therefore, it was clear that the allocation of three acres of land had failed to take into consideration the future extended family size of the Orang Ulu.<sup>257</sup> As mentioned earlier, the customary system managed to maintain its credibility (without formal land titles) since the social support of indigenous people in the case of land distribution and the future size of the extended family was taken into account.

<sup>257</sup> This finding is in line with the observation by Sibon (2012) who found that the three acres of land allocated to the Orang Ulu was not enough for their extended family members.

Devong Anjie, the one and only woman who elected as the Tuai Uma of Nyawing has made relevant remarks in this context:

*Previously [in Ulu Balui] we can explore the land without limit. We can cultivate what we like. We can go hunting where we want. Our land is more than enough to give food or to get money from it. However, the government now provides us with three acres of land only. It is not enough, it is not enough. What can we do with such a small size?<sup>258</sup> How about our grandchildren? (Oral Conversation with Devong Anjie, headwoman of Uma Nyaving, at the RSSA on 1<sup>st</sup> October 2012).*

As a comparison to the Federal Land Development Authority (FELDA)<sup>259</sup>, resettlers who were originally landless were given eight to ten acres when joining the FELDA Scheme, while the Orang Ulu who previously had land (the customary land) were given only three acres. In compensation this is clearly low (Oral Conversation with Nicholas, a Coordinator for COAC, in Subang Jaya on 25<sup>th</sup> October 2011).<sup>260</sup> According to Rousseau (1994, p. 2.4) to compound the issue of limited arable land, the soil quality at the RSSA is found to be largely in group three which is less fertile than the land the Orang Ulu had in their previous land settlements. Even the DOA from Kapit Division acknowledged that approximately 43 percent of the land at the RSSA was found to be less fertile and had unsuitable topography for cultivation (DOAK, 2012).

#### **6.11.3.3.5 Views on whether Insufficient Land has Affected the Encroachment into State Land**

Illegal farming by indigenous people in state land is another effect of insufficient land size. Again, as presented in Figure 6.41, this study found that a substantial percentage of the respondents (44.5%) agreed and strongly agreed (47.3%) that the illegal land

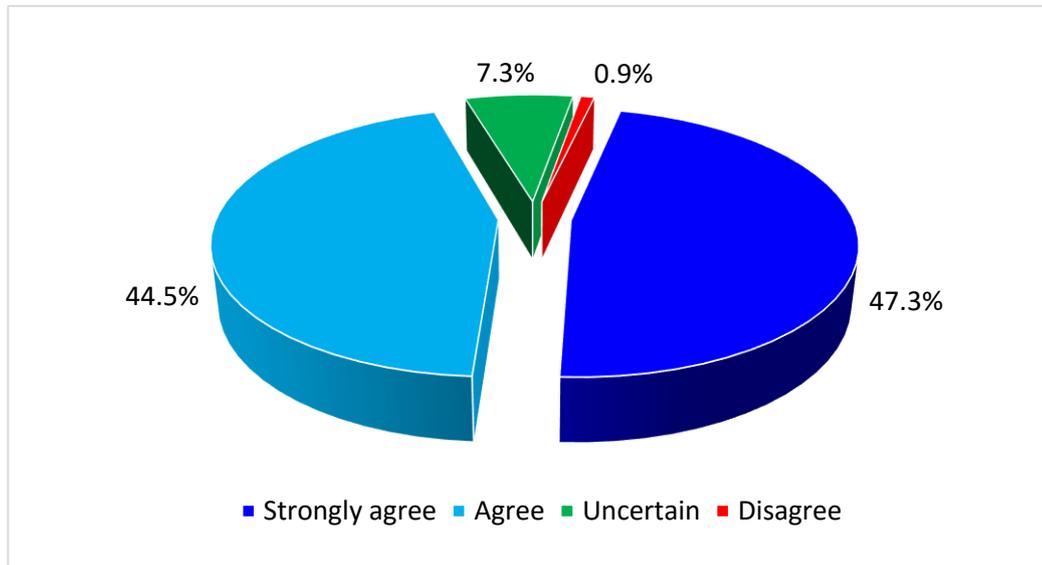
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<sup>258</sup> This plight has actually been long expressed by the Orang Ulu, as revealed by Rousseau (1994). Rousseau (1994) found that the Orang Ulu had demanded that the new resettlement areas be large enough to accommodate a growing population.

<sup>259</sup> FELDA was established on 1<sup>st</sup> July 1956 with the objective of poverty eradication through the cultivation of palm oil and rubber. FELDA's strategy is the development of land and the resettlement of the landless rural poor people into newly resettlement areas (known as FELDA schemes). Since 1990 FELDA was no longer recruiting new settlers but has engaged in a more diverse range of rural economic development and agricultural business activities (FELDA, 2014).

<sup>260</sup> Each FELDA resettler family was given 8–10 acres, excluding a standard house, a garden plot and an 8–10 acre holding (Mehmet, 2011, p. 64).

encroachment made on the state land by them were due to the limited individual land size given to them as compensation.<sup>261</sup> Only 0.9 percent disagreed and 7.3 percent were uncertain.



**Figure 6.41:** Does the limited land size encourage your encroachment on the state land?

Tony Kulleh related the causal effects of the insufficient arable land as follows:

*The three acres of land are insufficient. How can we make a living with just three acres of land? We have to make a decent income to feed our family. In order to get extra income or extra food, some settlers have to expand their farm into state land, that's because they have no choice.*<sup>262</sup> (Oral Conversation with Tony Kulleh, a Pemanchar, at the RSSA on 2<sup>nd</sup> October 2012).

<sup>261</sup> The researcher toured around the village (RSSA) and went into the agriculture plots of the Orang Ulu a few times. It was found that some of the illegal encroachments took place near their demarcated land that most of them have cultivated with oil palm, black pepper or banana. In addition, they also illegally occupied the state reserve land along the main road where they cultivate it with food crops like corn, tobacco leaves and hilly rice. Some of them have even planted their crops like banana on the logging companies' land. When asked, many of them have publicly admitted that they have illegally made expansion into state land because the present land sized allocated was inadequate. However, besides this formal reason, the researcher had noticed that this action was also a form of protest towards the government. The typical response was as follows: *This is nothing. The government took from us more than this. Don't be so calculative to us.* Clearly, this remark indicates that they regarded the illegal encroachment as nothing compared to the sacrifice they had made.

<sup>262</sup> In fact, the government clearly anticipated this problem. The report of Socio-economic Study (part of the EIA) carried out by the Sarawak government stated that two impacts could arise if the land allocated was less than five hectares: i) it is likely that many of the resettlers will expand their agricultural area from their demarcated plot; and, ii) the resettlers may return to the reservoir area, or migrate to other parts of the state (LCDA, 1997a, p. 9-2).

The observation by Luhat Tungau on the cause of the illegal land encroachment by the Orang Ulu at the RSSA warrants our attention:

*Because of this project [Bakun HEP], we have to resettle here. Before we moved in, the government made a lot of promises regarding compensations. They [the government] promised to replace our land with at least five acres. Finally we ended up receiving only three acres. It is not adequate because previously we had more than three acres. Now, we cannot simply roam to collect food or hunting wild animals as we did before. Our area is limited and many neighbouring land around our longhouses belong to the logging and palm plantation companies. (Oral Conversation with Luhat Tungau, a villager, at the RSSA on 23<sup>rd</sup> May 2011).*

The pictures shown in Figure 6.42 and Figure 6.43 demonstrate the issue of land encroachment or land shortage faced by the Orang Ulu. As can be seen, even a small area by the roadside is used by them.



**Figure 6.42:** An example of vacant land being cultivated by the Orang Ulu with corn crop along the main road leading to the community centre area in the RSSA

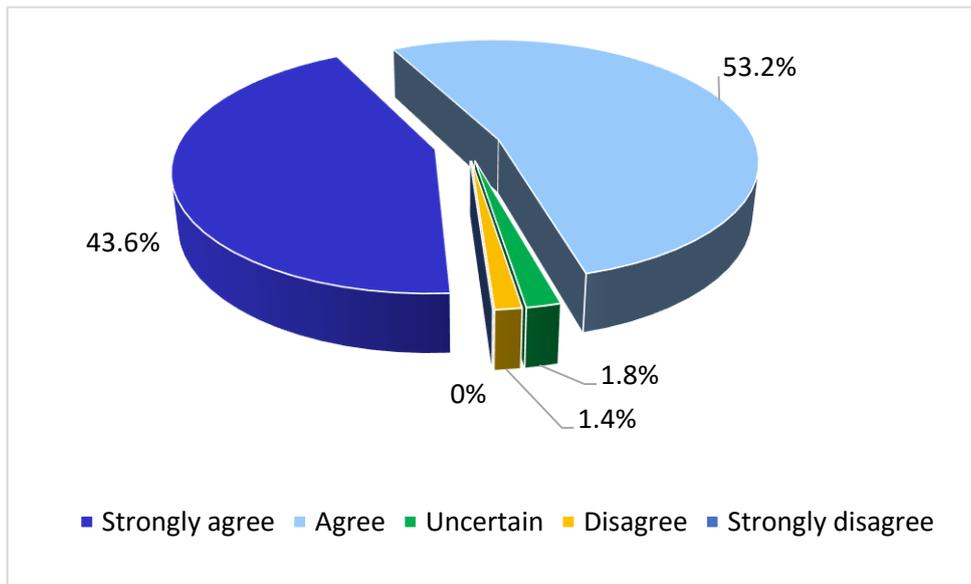


**Figure 6.43:** An example of vacant land cultivated by the Orang Ulu with corn crop along the main road leading to the Uma Belor longhouse in the RSSA

#### **6.11.3.3.6 Views on how the Limited Land Size has Affected Family Income**

Another interesting effect of land size relates to family income. As shown in Figure 6.44, this study found there was an overwhelming majority of respondents (96.8%) who agreed (including 43.6 percent strongly agreeing) that their family income has been affected by

limited land size. Only 1.4 percent of respondents disagreed and another 1.8 percent were uncertain.

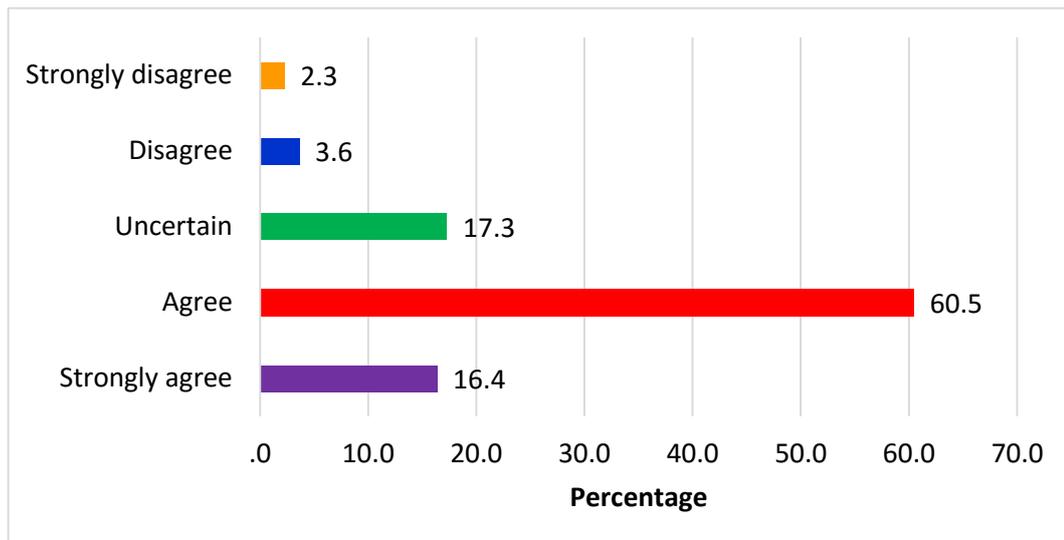


**Figure 6.44:** Has the limited land size affected your family income?

The study findings clearly show that the limited land size has had a considerable negative effect on family income. This is because the agriculture products produced do not meet expectations; which is probably due to size limitation, land fertility issues or limited exposure to modern agriculture techniques (Oral Conversation with Kuba Lusat, Assistant District Officer (ADO) of the Sub-district Office of Sungai Asap, at the RSSA on 25<sup>th</sup> September 2015; Julin Ebit, member of staff at the Sub-district Office of Sungai Asap, at the RSSA on 25<sup>th</sup> September 2015).

#### **6.11.3.3.7 Views on Individual Land Titles and the Power of the Customary Elderly Council**

Another important land rights issue is the position or status of the Customary Elderly Council. Under the Council, the land rights such as division and ownership are under the Council's control. Again, this study found that there was a huge negative perception on land rights (as shown in Figure 6.45). A high percentage of respondents (76.9%) agreed (including 16.4 percent strongly agreeing) with the statement that there was decreased power and rights of the Customary Elderly Council at the new resettlement scheme.



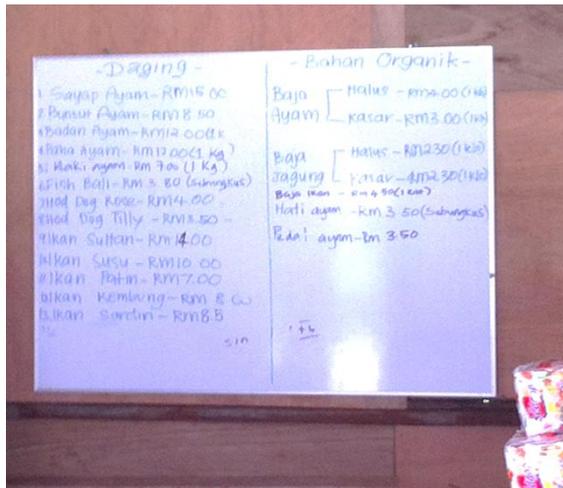
**Figure 6.45:** Has the power of the Customary Elderly Council been reduced due to the changes in land rights?

This study found that there were 17.3 percent respondents who were uncertain. On the contrary, only 5.9 percent disagreed (including 2.3 percent strongly disagreeing). These findings are not surprising because the Orang Ulu Customary Elderly Council is no longer entitled to govern land affairs for their own community (Oral Conservation with Umek Jenö, a Pemanchar, at the RSSA on 29<sup>th</sup> September 2012).

#### **6.11.4 Views on Compensation, Resettlement and Development Issues at the RSSA**

The third aspect in the survey considered compensation and resettlement issues. This researcher argued that compensation and resettlement were part of the issues that had influenced the local people's acceptance of the EIA due to the fact that these aspects were part of the EIA. In addition, compensation and resettlement issues were also part of the project implementation and, therefore, could affect EIA as an institution. As such, they must form part of EIA credibility. Although compensation was not by any means equivalent to the loss of property, in many respects it could cushion the physiological impact of the loss of property.<sup>263</sup> Figure 6.46 indicates the issue of cost of living while Figure 6.47 shown the issue of delay in providing compensation.

<sup>263</sup> It is worth mentioning here that compensation refers to the properties (e.g. land, house, money) compensated to PAP.



**Figure 6.46:** An example of a price list displayed in a grocery store in the RSSA. The prices of meats and fish are relatively more expensive compared to other places, e.g. Bintulu



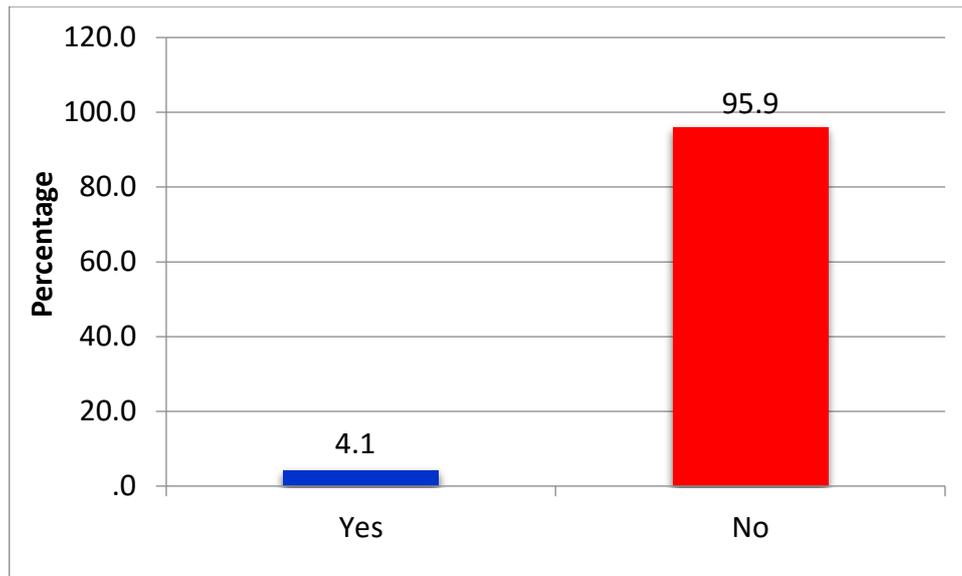
**Figure 6.47:** Approximately 13 years after they had been resettled at the RSSA, on 6th September 2012 the Uma Balui longhouse residents finally received the balance of the compensation money

#### 6.11.4.1 Opinions on Compensation Fairness<sup>264</sup>

As clearly shown in Figure 6.48, this study found that the majority, or 95.9 percent, of the Orang Ulu at the RSSA were of the opinion that the compensation given to them was unfair.<sup>265</sup> Only 4.1 percent felt otherwise.

<sup>264</sup> This research study refers to the concept of fairness on the compensation from the indigenous point of view. The respondents were asked to generally compare the package of compensation they received with other resettlement projects, e.g. FELDA resettlement schemes. The issue of unfairness of BHP compensation had been raised in the courts by the Orang Ulu (see point 4 in High Court of Kuching, 2008, p. 2). The inadequacy of compensation was also revealed by the RSSA's resettlers in a study done by Lee et al. (2015).

<sup>265</sup> Past practice has shown a variety of compensation for land taken by the government. For example, Temenggor Dam resettlers were allocated 13 acres, Kenyir Dam (10 acres), Batang Ai (11 acres) (see, LCDA, 1997b). However, the BHP resettlers' compensation was among the lowest with only three acres per household. In this sense, it is not surprising to see the negative perception on this aspect.



**Figure 6.48:** Did you receive fair compensation?

These research findings, however, do not come as a surprise because the compensation issue was very close to the respondents' heart. In fact, the perception of unfairness in this study has confirmed others' previous research studies on the subject.<sup>266</sup> However, the government defended itself by stating that the compensation given was due to differences in the compensation rates between the location of the land (town-remote area) and the land status (individual-NCL) (Ritchie, 2005, p. 183).

#### **6.11.4.2 Reasons for Unfairness and Injustice in the Compensation**

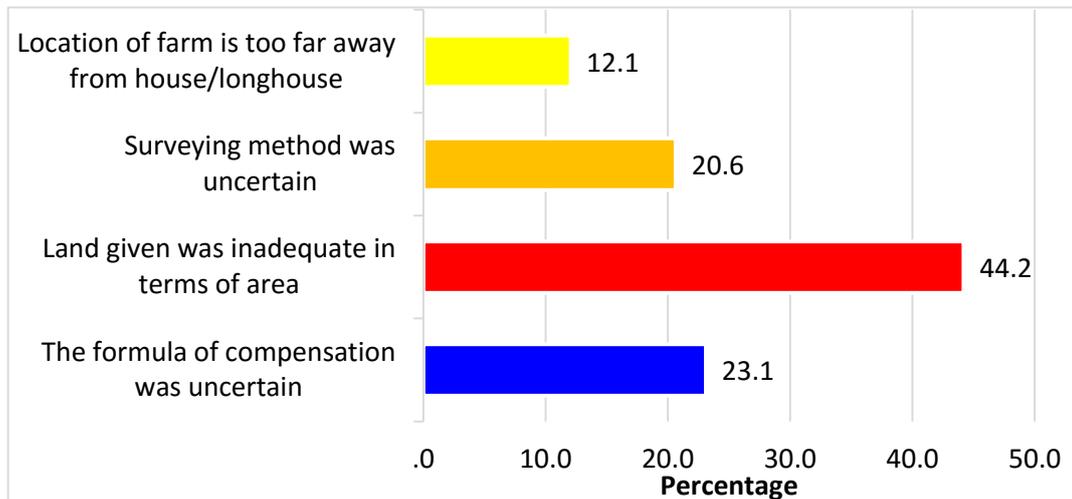
To further investigate the perception of the compensation, the respondents were asked to state their reasons. From Figure 6.49 it can be seen that from 896 responses received<sup>267</sup>, it was found that the reasons of dissatisfaction percentage were found to be equal, except for the reason of the location of the farm that were considered being too far away from their longhouses (with 12.4 percent).<sup>268</sup> The study also revealed that the majority of respondents (44.2%) were dissatisfied because the land given as compensation was inadequate in size or

<sup>266</sup> For example, according to Numpang (2012, p. 311), in Balui River, there were as many as 309 cases of land dispute among local people over the rightful ownership of NCR land which was related to the right party to be compensated. The unfairness of the compensation particularly related to the issues of the size of the land. Also, they were promised a free house and other personal materials by the government. These unfair compensation claims are abundant in a series of documentaries produced for the national broadcasting station RTM by Lam (2010a, 2010b, 2010c), and as documentary evidence as part of the fact finding mission by a coalition of NGOs on the BHP called Gabungan (1999a, 1999b).

<sup>267</sup> In this questions, respondents were allowed to state more than one answer.

<sup>268</sup> This is especially true for the resettlers of Uma Bakah and Uma Kulit who coincidentally constitute the biggest population at the RSSA.

area.<sup>269</sup> Meanwhile, 23.1 percent of respondents stated that the compensation formula was uncertain, while, 20.6 percent were dissatisfied with the methods of land surveying, which perceived as unclear.



**Figure 6.49:** Reasons for unfairness of the compensation received

Perhaps the remarks by Tony Kulleh can help sum up the Orang Ulu perception on the unfairness of compensation:

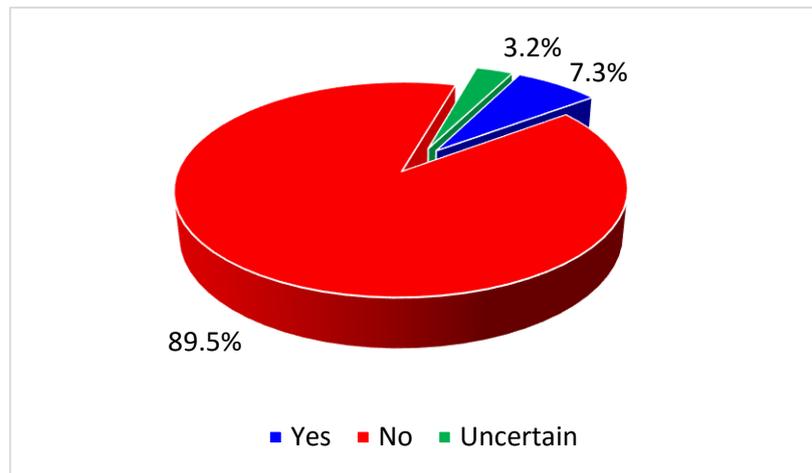
*What we had been compensated were not enough. For example, the government promised to compensate more land to us. Before relocation, we were promised to be compensated 12 acres per family, but later during the relocation we were told to get nine acres per family. Finally, when we agreed and already relocated here [at RSSA] we were given three acres only.<sup>270</sup> (Oral Conversation with Tony Kulleh, a Pemanchar, at the RSSA on 2<sup>nd</sup> October 2012).*

<sup>269</sup> Amongst the reasons of dissatisfaction in compensation were the limited size of allocated land and the loss of free food resources (Teck-Chi, 2010).

<sup>270</sup> This statement was also stated in the Proposal and Recommendations on resettlement, compensation, economic, employment, cultural and other issues confronting the people of Belaga that arose from the construction of the BHP (BDC, 1994). In addition, this local request was also mentioned in the NREB Review Panel Comments on the Bakun Resettlement EIA-Socio Economic Study (LCDA, 1997b). The perception of unfair compensation was also acknowledged by Usat-Ibit (2010) who found that the size of land allocated, location of the land, compensation paid for 'temuda' land, compensation on properties and crops had been identified as the highest dissatisfaction factors in relation to compensation.

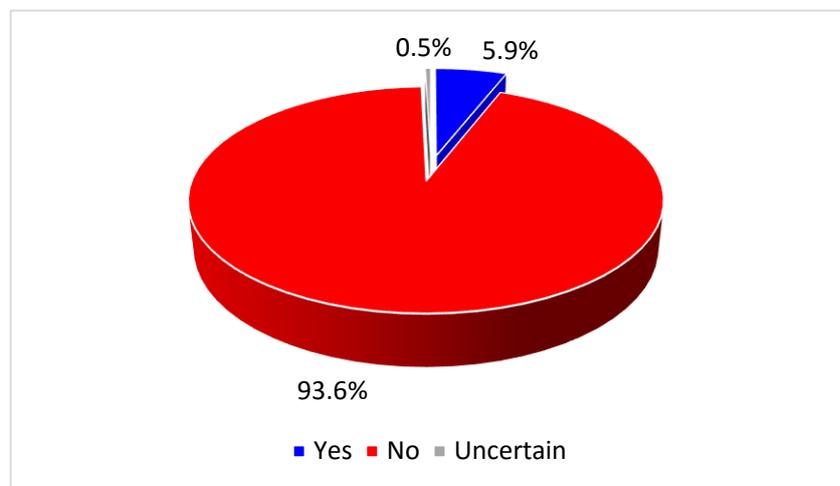
### 6.11.4.3 Opinions on the Compensation Formula

The aim of the following two questions is to understand the respondents' opinions on compensation. The first question was whether the respondent had been informed about the compensation formula; the second question was whether they understood the compensation formula used.



**Figure 6.50:** Have you been informed about the compensation formula?

Based on Figure 6.50, this study found that the majority, or 89.5 percent, of respondents were not informed about the compensation formula; only 7.3 percent responded that they were informed about the compensation formula and 3.2 percent of the respondents were uncertain.



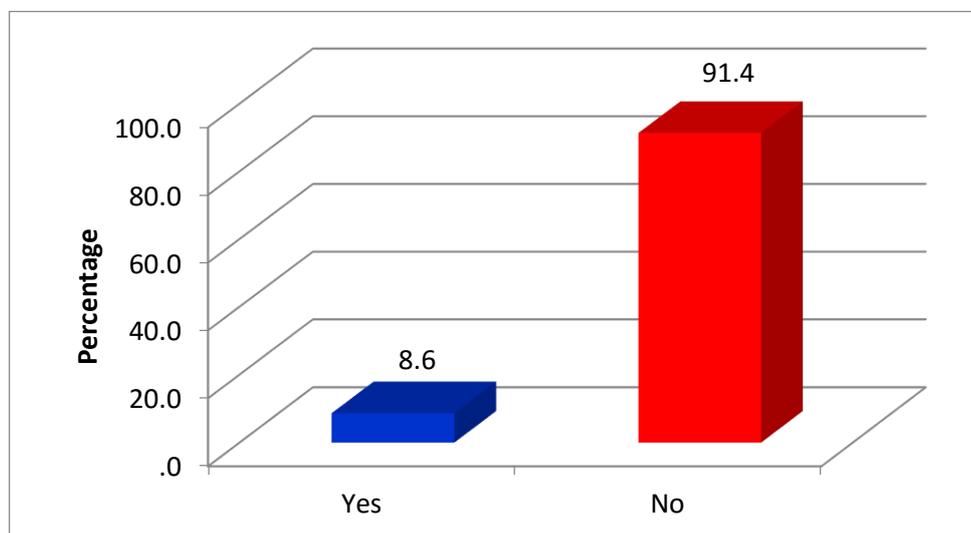
**Figure 6.51:** Do you understand the compensation formula used?

As shown in Figure 6.51, this study found that the majority, or 93.6 percent, of respondents did not understand the use of the formula; only 5.9 percent stated otherwise. Perhaps the remarks by Igang Igo, who is among one of the older men from Uma Belor, about the irregularity of the compensation process could shed some light on this issue<sup>271</sup>:

*Some of the crops were counted [to be compensated], while some were not. Some of the properties were counted, some not. Some of my friends with less land size got more compensation, whereas mine with bigger land size got less. I don't know what went wrong. (Oral Conversation with Igang Igo, a villager, at the RSSA on 2<sup>nd</sup> September 2012).*

#### 6.11.4.4 Views on the Consultation About Resettlement Planning

Inclusion in the negotiations about resettlement planning has been found to be a good indicator for credible public participation. In addition, to PAP, it can give them a sense of belonging to the project. Therefore, through meaningful involvement in the resettlement, people would have been more accepting of the BHP.



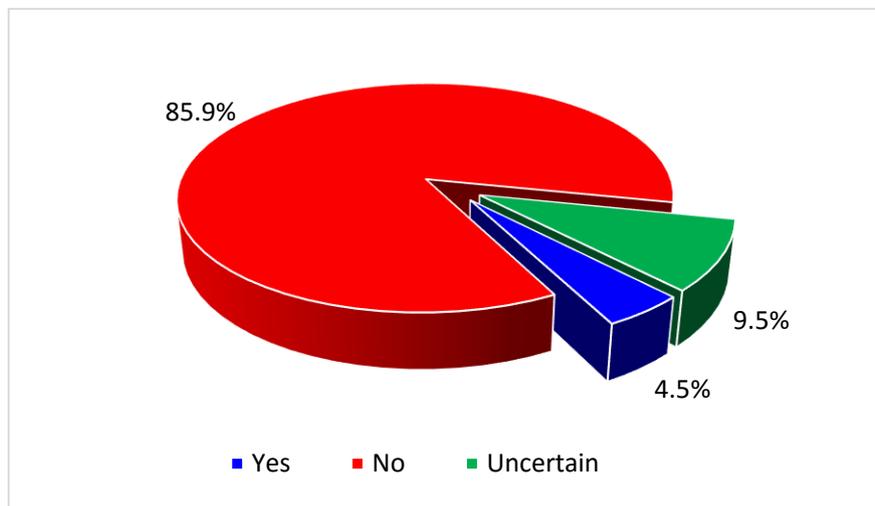
**Figure 6.52:** Have you been consulted in the resettlement planning?

<sup>271</sup> There is already an existing standard form of compensation. However, there were many cases of sliding scales. For example, crop trees such as durian were compensated between RM 14.30 (USD 4.59) and RM 48.60 (USD 15.61). There was no transparency as to how the assessments had been made (Gabungan, 1999c, p. 36). The anomalies in compensation were among the reasons for a court case initiated by Bato Bagi and six others (Midin, 2006). Ritchie (2005, p. 185) mentioned that the PAP were unhappy about the rates of compensation given to them which failed to reflect the high cost living in Belaga.

However, based on Figure 6.52, the study found that an overwhelming number of the respondents (91.4%) held the opinion that they were not consulted in the resettlement planning. In contrast, a small portion of them (8.6%) stated that they had been consulted in the resettlement planning.

#### 6.11.4.5 Opinions on the Consent to Resettle

To lend credibility to the project, consent from the PAP to their resettlement at the new resettlement scheme was seen to be extremely important. Only by having a voluntary relocation could the public feel part of the project implementation. Eventually, this could give real meaning to the EIA process<sup>272</sup>.



**Figure 6.53:** Were you resettled here voluntarily?

However, these research findings from Figure 6.53 show that an overwhelming majority (86.0%) of respondents argued that the BHP consent was not given freely.<sup>273</sup> Only 4.5 percent of them stated that their consent to relocate was given voluntarily and 9.5 percent were uncertain.

<sup>272</sup> It is worth mentioning that 53 Kenyah and Kayan families refused to relocate to the RSSA (Numpang, 2012, p. 414).

<sup>273</sup> Again, this finding is not surprising in view of to the amount of documented evidence that has shown local reports about how local people were coerced into relocation, which included intimidation, tricks and threats. For example, it was found that the government withheld the local people's compensation money in order to force the local people to accept resettlement at the RSSA (see, Utusan Konsumer, 2000, Gabungan, 1999a; Gabungan, 1999b). Another example of intimidation was observed by Hutnyk (1999, p. 82) when the author found that: '*... to facilitate the resettlement of the local people to make way for a BHP, troops were sent, which seen by many people as unnecessary and some kind of threat due to the fact that there were already 60 security police stations at the site and work continues in the piecemeal fashion*' (Hutnyk, 1999, p. 83).

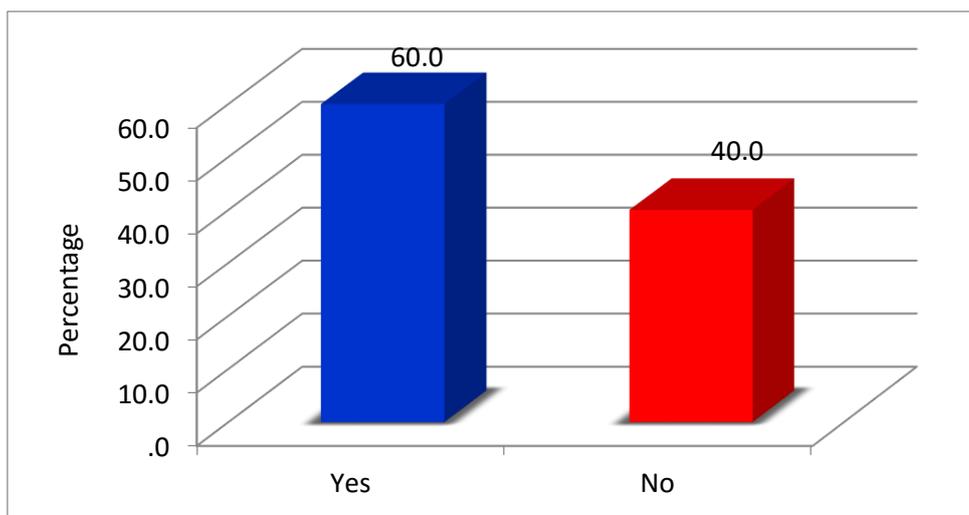
Findings from the survey have been corroborated by the interview with Tua Uma Nyaving, Devong Anjie:

*If we have an opportunity, of course we don't want to move out from Ulu Balui to here [RSSA]. However, government withheld our compensation money. They gave us 30 percent of the compensation money only first while the rest only after we agreed to move out. So, we have to agree to resettle. No option. (Oral communication, Devong Anjie, a headwoman of Uma Nyaving, at the RSSA on 1<sup>st</sup> October 2012).*

Devong Anjie's view summed up in a nutshell how the relocation consent was obtained in the BHP case. In addition, according to Raymond Abin, BRIMAS Programme Director, PAP was induced to assume that each family would get millions in compensation, which eventually made them agree to relocate (Oral Conversation with Raymond Abin, BRIMAS Programme Director, in Miri Sarawak on 20<sup>th</sup> September 2012).

#### 6.11.4.6 Opinions on Job Training

Respondents were not generally familiar with cash crops and other modern farming techniques, but they were uprooted to the semi-modern or in some cases from the shifting cultivation practice before the resettlement.



**Figure 6.54:** Have you received appropriate training for any permanent employment?

However, as presented in Figure 6.54, the study found that the majority of respondents (60.0%) argued that they had been given training for permanent jobs. However, almost half of them, or 40.0 percent, held the opposite view. It was found that this was especially true to the Penan community. When asked about this issue, Minggu Magui, the Tuai Umah, responded:

*We are used to live in the jungle where we don't need money or need to plant crops to get food. Many of my people just left their land vacant because they don't know how to work on the land in the RSSA. We are not used to this way of life [modern agriculture]. We Penan are different from other communities. Thus, we really need government help.*<sup>274</sup> (Oral Conversation with Minggu Magui, a Tuai Umah of Uma Penan, at the RSSA on 11<sup>th</sup> October 2012).

In this sense, the researcher remembers one informal conversation with an older Penan lady at Uma Penan who was making a floor mat from rattan. She admitted that she had not eaten rice for two days because she did not have money to buy it. She was hoping that the floor mat made could be sold soon and the money from it could be used to buy food. When asked why she did not cultivate the land allocated to her with fruits or cash crops, she replied that she did not know how to cultivate it as previously she had only helped her husband<sup>275</sup> to gather and hunt food from the jungle.

#### **6.11.4.7 Opinions on Training Required**

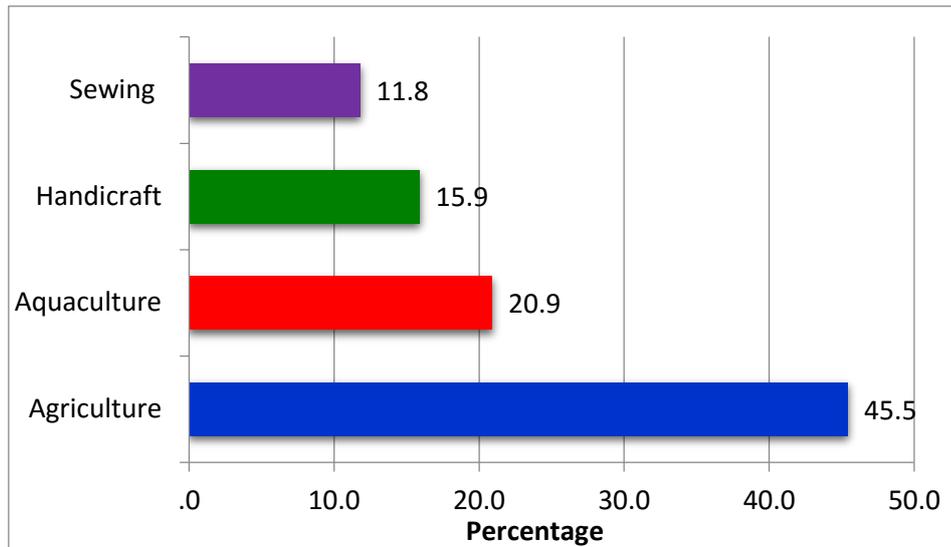
From Figure 6.55, this study found that from the 213 responses received<sup>276</sup>, almost half of the Orang Ulu's responses (45.5%) were requests for training in agriculture while over a quarter (20.9%) were interested in attending aquaculture training. A quarter, or 15.9 percent and approximately 11.8 percent, were keen to get handicraft and sewing training respectively.

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<sup>274</sup> In an interview with the CAP, a Penan named Bunga Gani, who is from Uma Penan, told the NGO how the communities had difficulty in getting food since the communities were previously hunters and gatherers (see, CAP, 2000, p. 11).

<sup>275</sup> Her husband had passed away and she was staying with her disabled son. She admitted that after her husband died her life was very difficult.

<sup>276</sup> In this questions, respondents were allowed to state more than one answer.



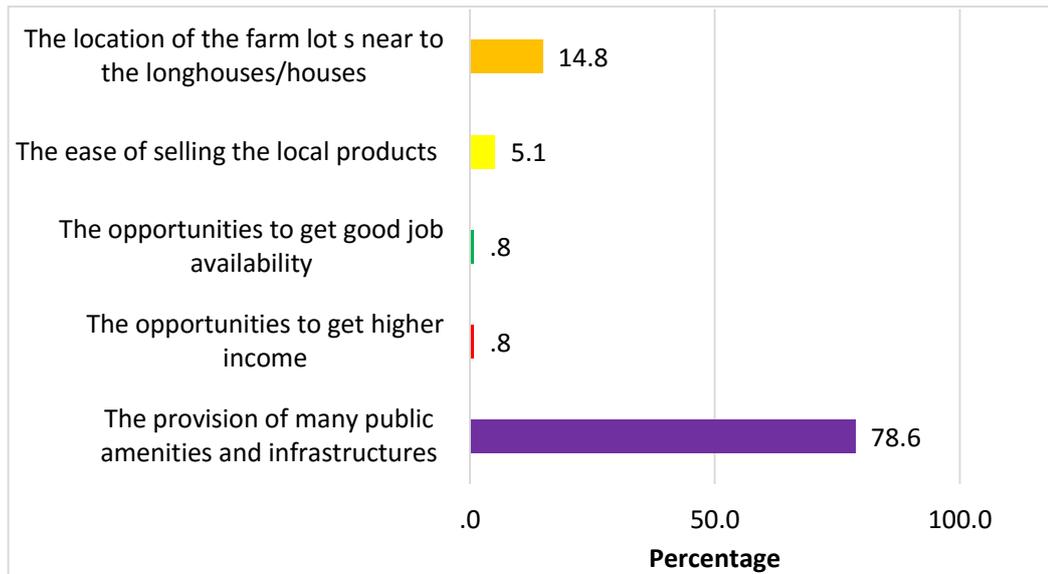
**Figure 6.55:** What types of training are required?

#### **6.11.4.8 Opinions on Positive Aspects of Living at the Resettlement Scheme**

Despite all the negative responses due to the relocation, as shown in Figure 6.56, the study found that from the 257 responses received<sup>277</sup> an overwhelming number of respondents (78.6%) agreed that the provision of many public amenities and infrastructures at the RSSA were better than in Ulu Balui.<sup>278</sup> The location of the farm lot, which is near to the longhouses, was the second most positive aspect (14.8%). The ease of selling the local products constituted the third most preferred factor (5.1%). Other positive aspects, namely the opportunities to get higher income and good job availability, received less than 1 percent each.

<sup>277</sup> In this questions, respondents were allowed to state more than one answer.

<sup>278</sup> However, despite the modern utilities provided by the government, some of the Orang Ulu resettlers at the RSSA are facing problems with utilities bills. For example, Minggu Magui admitted that most of the Penan houses (or 'amins') from Uma Penan were without electricity, as they do not have enough money to pay for the monthly bills (Oral conversation with Minggu Magui, a Tuai Umah of Uma Penan, at the RSSA on 11<sup>th</sup> October 2012).

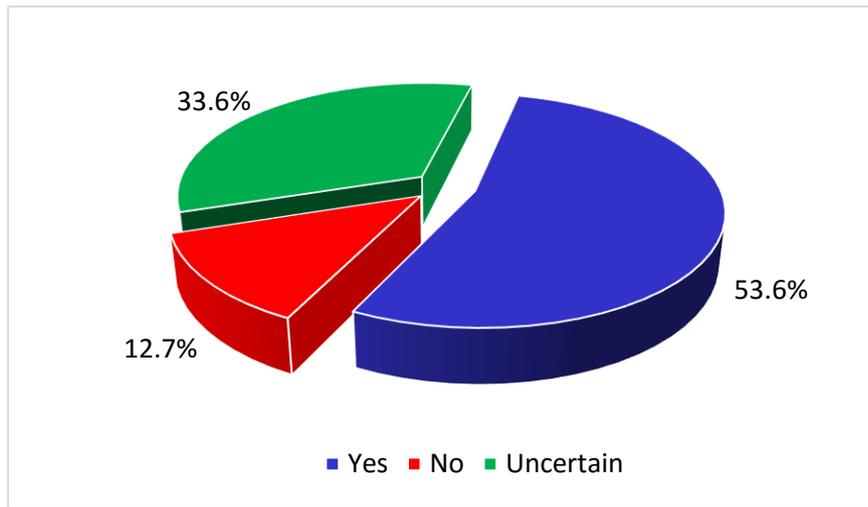


**Figure 6.56:** What are the positive aspects of living at the RSSA?

#### **6.11.4.9 Opinions on Intention to Leave the Resettlement Schemes**

To indicate whether the Orang Ulu were satisfied with their current life at the RSSA, respondents were asked whether they had any plan to move out of the resettlement. Based on Figure 6.57, this study found that more than half of the respondents (53.6%) had an intention to leave the current resettlement<sup>279</sup> while almost one-third of them (33.6%) were uncertain. However, 12.7 percent of the respondents do not have any plans to move out of the RSSA despite all the consequences and tribulations they face at the RSSA.

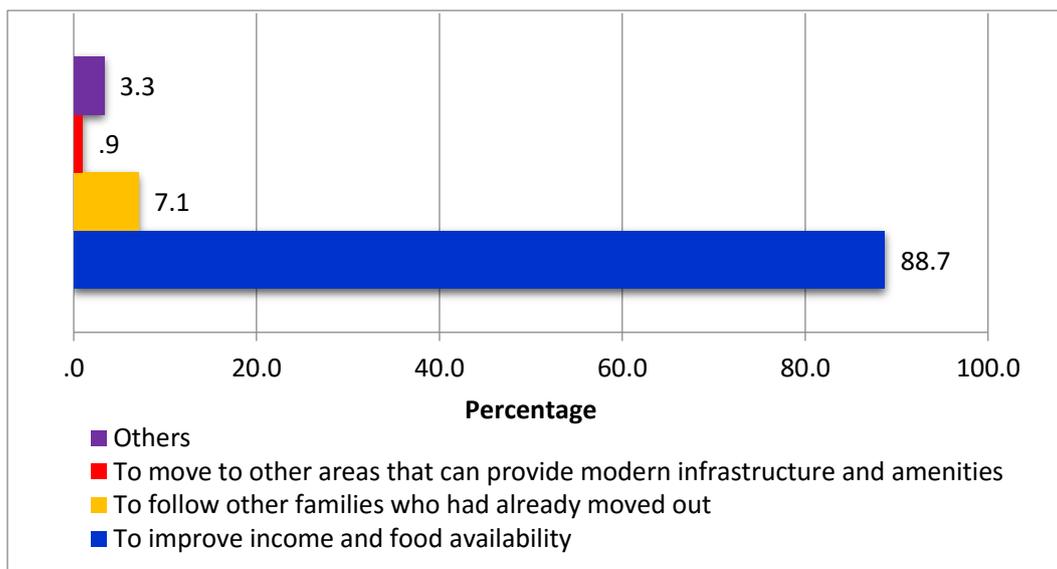
<sup>279</sup> The outcome of this finding was actually in line with the Kenyah sub-group resolution meeting (point 3) on 3 September 1994 at 7.30 pm at Rumah Anu Garing, Belaga which stated that the community had agreed to return to Ulu Balui if the situation at the RSSA was found to be in an unsatisfactory state. Moving out from the longhouse would also a form of protest to the project (see previous discussion in Section 6.11.5.2 of this chapter). In another study, Usat-Bit (2010, p. 30) has also found that the Orang Ulu dissatisfaction on the compensation issue has become another factor that has led the people to move out from the RSSA and return to Ulu Balui.



**Figure 6.57:** Do you have any plan to leave the RSSA?

#### 6.11.4.10 Reasons to Leave the Resettlement Scheme

Respondents were then asked the reasons why they did or did not have any intentions to leave the RSSA. From Figure 6.58 it can be seen that from 212 responses received<sup>280</sup>, an overwhelming majority (88.7%) of the respondents wanted to move to other areas or places in order to improve their income earnings and food availability. The influence of other families who had already moved out of the RSSA affected 7.1 percent. Other reason categories had less than a 3.3 percent response rate.



**Figure 6.58:** Reasons to move out of the RSSA

<sup>280</sup> In this questions, respondents were allowed to state more than one answer.

From the observation on the Uma Belor longhouse alone, the researcher found that there were two blocks unoccupied. According to Nora Igang who is the resident in this Uma Belor:

*Some of them are moving out because here there is no suitable job for them. Some people show to the government their rejection by moving out for various reasons. However, a majority of them have moved out to the town due to the difficulty of getting income. However, during the Christmas festive season they will return here. (Oral Conversation with Nora Igang, a Teacher and villager, at the RSSA on 11<sup>th</sup> October 2012).*

### **6.11.5 Views on Conflict: Nature and Pattern<sup>281</sup>**

Another aspect of the respondents' examination considered perception towards conflict. This section aims to illustrate the intensity of conflict during two periods – before and after the resettlement. Therefore, this section illustrates the types and frequency of resistance directly adopted by the respondents. The discussion also touches on the nature of conflict (narrative).

#### **6.11.5.1 Views on Aspects of Concern about the Project**

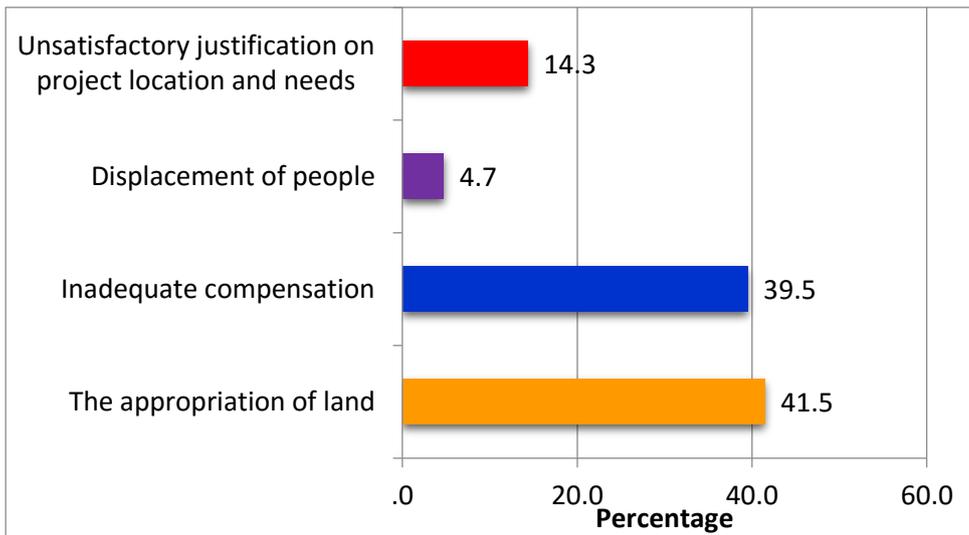
The aim of this question was to gauge the most concerning factors for the respondents in relation to the project. Responses were received from 509 respondents<sup>282</sup>, who were allowed to state their opinion for more than one answer. As shown in Figure 6.59, the appropriation of land was the greatest concern of respondents (41.5%), followed by inadequate compensation (39.5%). Unsatisfactory justification on the project location and needs were also concerns (14.3%). Displacement of people received 4.7 percent of responses.

These findings complement the widely claimed concerns by the Orang Ulu that the loss of their customary lands has undermined their livelihoods (as demonstrated in Sub-section 6.11.3.4 in relation to the impact of the project on their land rights) as well as their relentless appeals for compensation (see Sub-section 6.11.4.1).

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<sup>281</sup> This section needs to be read together with Section 6.10 (Conflict and Resistance Strategies by the Bakun Hydroelectric Project (BHP) Actors).

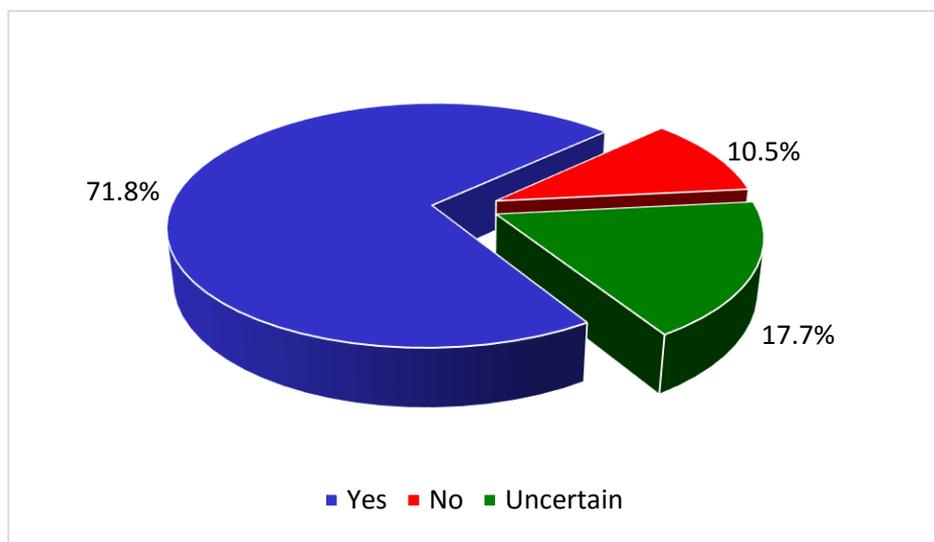
<sup>282</sup> In this questions, respondents were allowed to state more than one answer.



**Figure 6.59:** What aspects concerned you about the project?

### 6.11.5.2 Opinions on the Project Implementation

It is clear from this research study that local people have protested against the BHP. Therefore, respondents were asked whether they thought that the project should be done differently.



**Figure 6.60:** Should the BHP be conducted differently?

As presented in Figure 6.60, the study found that the majority of them (71.8%) stated that the BHP should be done differently<sup>283</sup>, whereas only a small number of the respondents (10.5%) felt otherwise and 17.7 percent were uncertain.

### **6.11.5.3 Conflict Types and Frequency**

This research study has found that there was a presence of conflict and resistance in the BHP implementation. The question is what forms did such conflict take and how frequent or intensive were the conflicts involved? Therefore, this sub-section is designed to document this aspect. As such, these research findings of this study are presented in Table 6.18 and Table 6.19, which provide information on the types of resistance employed by the respondents to protest against the BHP in two periods – before and after the PAP resettled at the RSSA. The respondents were asked to state the types of resistance that they had adopted. However, in doing so, the respondents were not asked to give the specific year or date of the resistance involved. Instead, this research is more concerned with the number and type of resistance taken against the BHP.

As demonstrated in Table 6.18, 343 responses were received; the respondents were allowed to state more than one types of resistance in their answer. This study found that over half of the respondents (53.9%) showed expressions of conflict resistance on the project through public resistance (non-violence) approach, namely the writing<sup>284</sup> of petitions, letters and memos. Out of this number, the majority of them (37.0%) had written between 2 and 4 times. Approximately 12.8 percent of them had written once only and 3.5 percent had written between 5 and 7 times.

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<sup>283</sup> For example, in the minutes of the meeting of the Kenyah sub-group on 3 September 1994, the meeting had agreed (point 1.2) that the land of the local people that was not inundated or within the danger zone is to be occupied by the local people. Consequently, in the letter dated 13<sup>th</sup> July 2001 to Abdullah Badawi, the PM at that time, the BRIC asked for public amenities at the RSSA to be adequately provided. They also demanded that additional land be given as compensation. They also stated that the three acres of land provided was insufficient. In the report produced by the BDC, a local action committee also pointed out a few recommendations for the authorities to take into account before conducting the resettlement exercise. For example, the report stated that the land-based resettlement strategies (point no. 5) and the creation of a communal forest reserve (point no. 14) needed to be taken in account by the government (BDC, 1994).

<sup>284</sup> Writing here does not mean that the respondents had actually written the documents themselves. This research held the view that as long as they understood the content of the documents and had signed or stamped their finger print on it, it qualified as the act of 'writing'.

**Table 6.18:** Types of protest and their frequency before the resettlement

Type of resistance	Frequency/Percentage (%) of total resistance								Percentage (%) of total resistance
	1	%	2 – 4	%	5 –7	%	> 8	%	
Petition/letter/memo (n=185)	44	12.8	127	37.0	12	3.5	2	0.6	53.9
Demonstration (n=59)	22	6.4	20	5.8	5	1.5	5	1.5	17.2
Road blockage (n=64)	35	10.2	18	5.3	7	2.0	4	1.2	18.7
Fight with project workers (n=33)	14	4.1	14	4.1	4	1.2	0	0	9.6
Others (n=2)	2	0.6	0	0	0	0	0	0	0.6
TOTAL (n=343)	117		179		28		11		100.0

Accordingly, the second preferred means of protest by the respondents was road blockage,<sup>285</sup> which constituted 18.7 percent of resistance. In terms of frequency, it was found that 10.2 percent of the respondents took part once only while 5.3 percent admitted they had participated between 2 and 4 times. Approximately 2 percent had participated between 5 and 7 times while a mere 1.2 percent participated more than 8 times.

The third most popular type of resistance was demonstration. The study found that 17.2 percent of responses gathered represented this approach. For this approach, the majority participated once only (6.4%); 5.8 percent participated 2– 4 times; 1.5 percent participated 5 –7 times; and 1.5 percent participated more than 8 times. Fights with project workers represented 9.6 percent of responses. Out of this, the majority participated either once or between 2 and 4 times (4.1 percent each), and 1.2 percent participated between 5 and 7 times.

Although the Orang Ulu have been resettled at the current resettlement schemes since 1999, they continued to protest against the BHP. As such, Table 6.19 below has recorded the respondents' involvement according to the types of protest and their frequency after the resettlement.

<sup>285</sup> However, the roadblocks were enacted for various reasons, such as local people protesting due to roads damaged by logging activities; encroachment into the indigenous villages; land clearing for project earthwork, etc; and blocking the government agencies from entering their settlements as an expression of protest (Oral Conservation with Nora Igang on 11<sup>th</sup> October 2012; interview with Pemanchar Tony Kulleh on 2<sup>nd</sup> October 2012).

**Table 6.19:** Types of protest and their frequency after the resettlement

Type of resistance	Frequency/Percentage (%) of total resistance								Percentage (%) of total resistance
	1	%	2–4	%	5–7	%	> 8	%	
Petition/letter/memo (n=182)	35	11.5	134	43.9	11	3.6	2	0.7	59.7
Demonstration (n=37)	30	9.8	2	0.7	4	1.31	2	0.7	12.1
Road blockage (n=56)	43	14.1	9	3.0	3	1.0	1	0.3	18.4
Fight with project workers (n=28)	14	4.6	12	3.9	2	0.7	0	0	9.2
Others (n=2)	2	0.7	0	0	0	0	0	0	0.6
<b>TOTAL (n=305)</b>									<b>100.00</b>

In general, the types and frequencies of protest during the current resettlement were found to follow the same pattern as previously demonstrated during the pre-resettlement phase. The petitions, letters and memos were found to be a popular means of protest; 59.7 percent of the responses represented this approach. For this approach, the majority participated between 2 and 4 times (43.9%); 11.5 percent participated once only; 3.6 percent participated more than five times; and 0.7 percent participated more than 8 times.

The second most preferred expression of resistance after resettlement was road blockage; 18.4 percent of the responses represented this approach. Out of this, the majority participated once (14.1%); 3 percent participated between 2 and 4 times; less than 1 percent participated more than 5 times. Demonstration was the third most popular mode of resistance: 12.1 percent of the total responses. For this approach, the majority or 9.84 percent participated once; 1.31 percent participated between 5 and 7 times; and 0.7 percent participated between 2 and 4 times. The least common type of resistance involved 9.18 percent of responses – the fights with the project workers category. For this approach, the majority participated once only; 3.4 percent participated between 2 and 4 times; less than 1 percent participated between 5 and 7 times; with less than 1 percent participating more than 8 times.

In general, Tables 6.18 and 6.19 show that the preferred means of resistance taken by the Orang Ulu were the peaceful and non-violent approaches. In terms of intensity, after the respondents were resettled there was a steady decrease: 343 incidents of resistance before the resettlement reduced to 305 incidents, a decrease of approximately 12.45 percent. This

was probably due to the fact that the local people have actually exhausted their methods of public protest since some of their demands were ignored.<sup>286</sup>

However, at the resettlement, the source of resistance is mainly due to disputes on land possession or encroachment between the resettlers, i.e. Orang Ulu and the host communities or between the Orang Ulu and the logging or plantation companies. Many of the Orang Ulu complained that the land provided for them was not adequate, thus they have to find additional vacant land, which ended up with them using land adjacent to the areas of their longhouses<sup>287</sup> or along the main road connecting Bakun to Bintulu. For example, Kajing Tubek recalled an incident when a small hut<sup>288</sup> or '*langkau*' of the Orang Ulu from Uma Bakah was demolished by Rimbunan Hijau, a plantation company:<sup>289</sup>

*Many of us heard the news that the land and survey department officers and the palm oil company workers wanted to demolish our 'langkau' we have come to the areas where our huts are located. We are almost 100 people strong. Many of us went there with machetes. The incident was very tense but the government agency and the palm oil company are clever. They bring along the police. We were told to respect the law and they accused that our 'langkau' were illegally built on the palm oil company land which were finally demolished.<sup>290</sup> (Oral Conversation with Kajing Tubek, a villager cum plaintiff, at the RSSA on 24<sup>th</sup> September 2012).*

#### **6.11.5.4 The Negative Feeling Experienced Because of the BHP**

Figure 6.61 tries to document the respondents' negative feelings<sup>291</sup> due to the BHP implementation. It is worthwhile to mention that the negative feeling as stated by respondents here were in general and regardless of pre or post resettlement. The total

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<sup>286</sup> Based on the researcher's personal conversation during a site visit, the local people were also afraid to challenge the government because they were worried that the benefits they were enjoying now would be stripped away.

<sup>287</sup> However, this has attracted inter-community conflict as well as conflict with the host communities and logging companies (Gabungan, 1999c, p. 50).

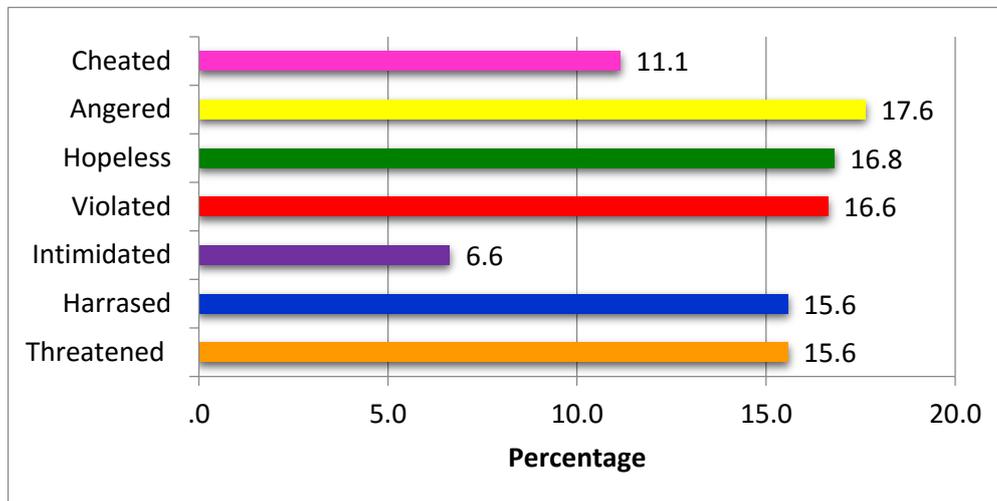
<sup>288</sup> The local term is '*langkau*' or '*lepar*' or '*lepor*'. It is prepared by the Orang Ulu farmers to store their agricultural equipment. The presence of '*langkau*' indicates that the land where the langkau was located belonged to him/her.

<sup>289</sup> It is a logging company with a logging area around the RSSA (Teck-Chi, 2010).

<sup>290</sup> When asked why they have planted oil palm beyond their three acres of compensated land, many of them said that they thought that the forest land was state land and thus could be cleared and planted by them. Above all, their current land size is inadequate; therefore, they needed to expand their agricultural activities.

<sup>291</sup> These feelings categories are not strictly or rigidly mutually exclusive. In other words, this research did not intend to distinguish between the categories and believes that the feeling categories above are interweaving.

responses received were 1,220; the respondents were allowed to indicate more than one feeling. As presented in Figure 6.61, this study found that responses for bad feeling ranged from angered (17.6%) to hopelessness (16.8%), violated (16.6%), harassed (15.6%), threatened (15.6%), being cheated (11.1%) and intimidated (6.6%).



**Figure 6.61:** The negative feelings experienced by the BHP respondents

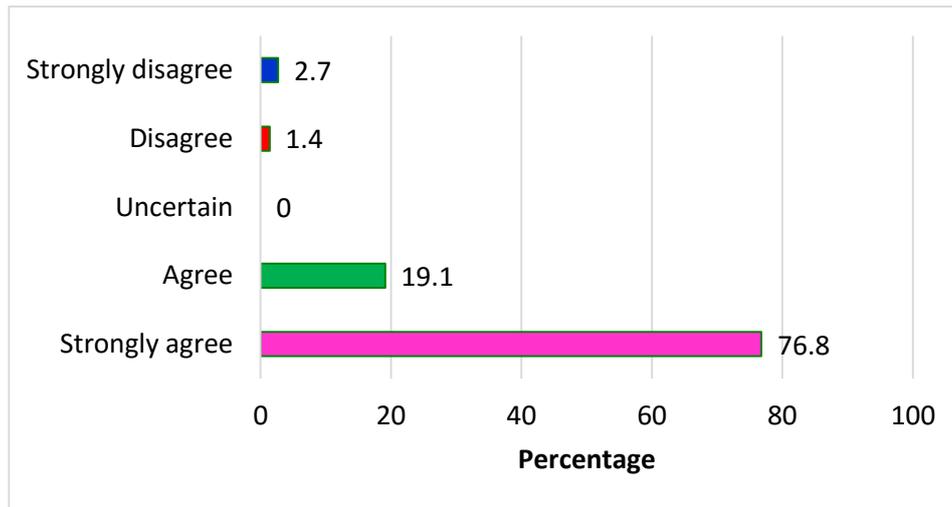
### 6.11.6 Views on the Government and Politicians' Roles

The following nine questions in this sub-section intend to investigate the respondents' perception of job, compensation and the government and politicians' roles in the BHP, including the impacts on the EIA. Respondents were asked to evaluate the statements given in the questionnaire based on the five options of the Likert's Scale: strongly agree, agree, uncertain, disagree and strongly disagree.

#### 6.11.6.1 Views on the Employment Opportunities

One of the common grounds used to justify the BHP needs, as specified in the EIA report, was that the proposed project would provide jobs to the local people. However, based on Figure 6.62, this study revealed that 95.9 percent agreed (including 76.8 strongly agreed) that there were unable to find employment opportunities generated from the BHP implementation. A mere 4.1 percent stated the opposite.<sup>292</sup>

<sup>292</sup> The businesses and jobs of the Orang Ulu in the RSSA are as followed: i) agriculture (chilli suppliers) – 2; ii) groceries – at every Uma; iii) food stalls – 8; iv) fruit supplier – 1 group; v) 'F' Class Contractors – 13 persons; vi) vehicle rental services – 12; vi) homestay– 2; and, vii) pump station – 2 (Sub-district of Sungai Asap, 2012).



**Figure 6.62:** Are you unable to get a job generated from the BHP?

During the fieldwork, the researcher encountered many longhouses residents who are advanced in age<sup>293</sup>. According to the Chairman of the Village Development and Security Committee of the RSSA, Michael Mujah Lihan:

*Many youngsters have migrated to big cities such as Kuching, Miri, and Bintulu or even to Peninsular (Peninsular Malaysia) such as Kuala Lumpur, Shah Alam and Johor Bahru. They are seeking a better life. They are less interested to work in the agriculture sector because of the lower wages and unconducive working conditions.*<sup>294</sup> (Oral Conversation with Michael Mujah Lihan, the Chairman of the Village Development and Security Committee of the RSSA, at RSSA on 25<sup>th</sup> May 2011).

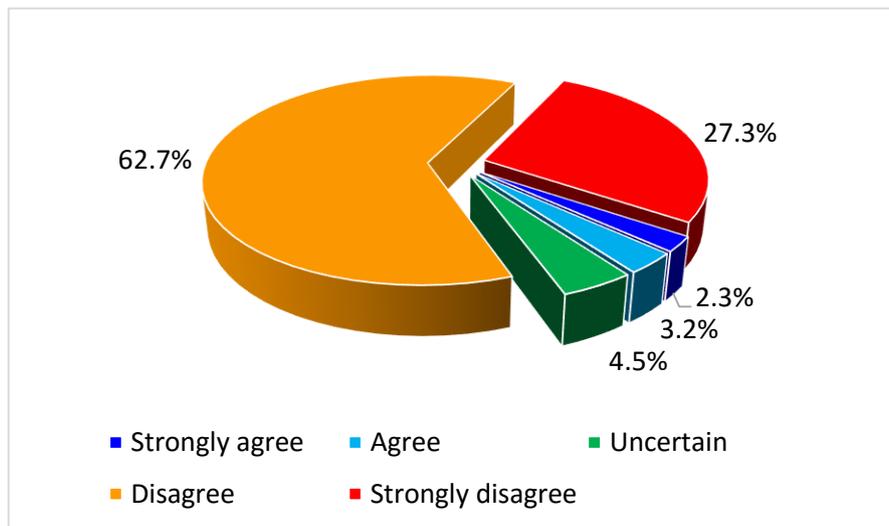
#### **6.11.6.2 Views on Government Promises for Compensation**

Based on Figure 6.63, this study found that 90 percent disagreed (including 27.3 percent strongly disagreeing) that the government had honoured its promises on compensation issues. Only 5.5 percent of the respondents perceived otherwise and about 4.5 percent were

<sup>293</sup> Usat-Bit (2010) has acknowledged the fact that there is out-migration of the Belaga residents (including the RSSA resettlers) to find jobs in the big cities in Sarawak. This is especially the case for those who are young and can be in the active workforce. Usat-Bit's observation relates to Prof. Dimbab Ngidang findings which show that little economic activity is available in the government-created resettlement schemes today (Bintulu Weekly, 2010).

<sup>294</sup> In a letter dated 13<sup>th</sup> July 2001 from BRIC to the then PM of Malaysia, Abdullah Badawi, the local people of Bakun have highlighted the limited job opportunities and uncertain monthly income they were facing. They also complained that the wages given by the palm oil companies were below RM 15.00 (USD 4.81) per day, which means that the maximum income they can get was RM 300.00 (USD 96.13) per month. According to BRIC, this was below the poverty income level of households in Malaysia.

uncertain. This finding is not surprising since the most frequent issue highlighted by local people has been the poor compensation for resettlement.<sup>295</sup>



**Figure 6.63:** Has the government fulfilled its promises on compensation?

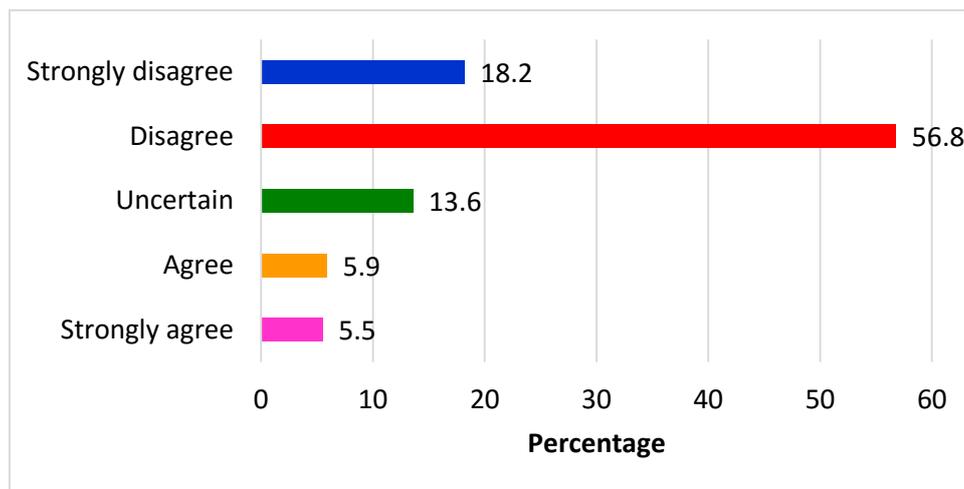
In response to this issue, Pemanchar Tony Kulleh has made the most relevant comment:

*Many promises were made by the government. Firstly, on the promise to compensate. This would be fully paid upon us resettling here. But after years of waiting, still some people have not received it. Secondly, on the land size the government promised to compensate at least seven acres to each family involved, but finally three acres only. In addition, the government promised to improve the socio-economic of the local people by providing employment opportunities but so far nothing much has been offered to the local people. This has made us loose trust in the government. (Oral Conversation with Tony Kulleh, a Pemanchar, at the RSSA on 2<sup>nd</sup> October 2012).*

<sup>295</sup> Gabungan (1999c) recorded numerous aspects of complaints on compensation. These included complaints on land size allocated, site conditions, housing structures and site infrastructures (see also the numerous letters cited in Section 6.10.2 -Public Resistance on compensation plights by the Orang Ulu).

### 6.11.6.3 Views on the Government's Efforts in Improving the Resettlers' Standard of Living<sup>296</sup>

While the Orang Ulu have acknowledged the government efforts to provide complete basic amenities, as shown in Figure 6.64, this study found that 75 percent of them disagreed (including 18.2 percent strongly disagreeing ) that the government has made serious efforts in improving their standard of living<sup>297</sup>.



**Figure 6.64:** Has the government provided serious efforts to improve the standard of living at the resettlement?

Only 5.9 percent and 5.5 percent agreed and strongly agreed (respectively) that the projects had strong positive impacts and 13.6 percent were uncertain. This sentiment was mostly felt because of their loss of NT, as has been previously discussed (see the preceding Section 6.11.3 Views on Land Policy).

This finding is in fact in line with a political study of Belaga and the RSSA by Usat-Bit (2010), a local political observer, which found that the Orang Ulu argued that the government

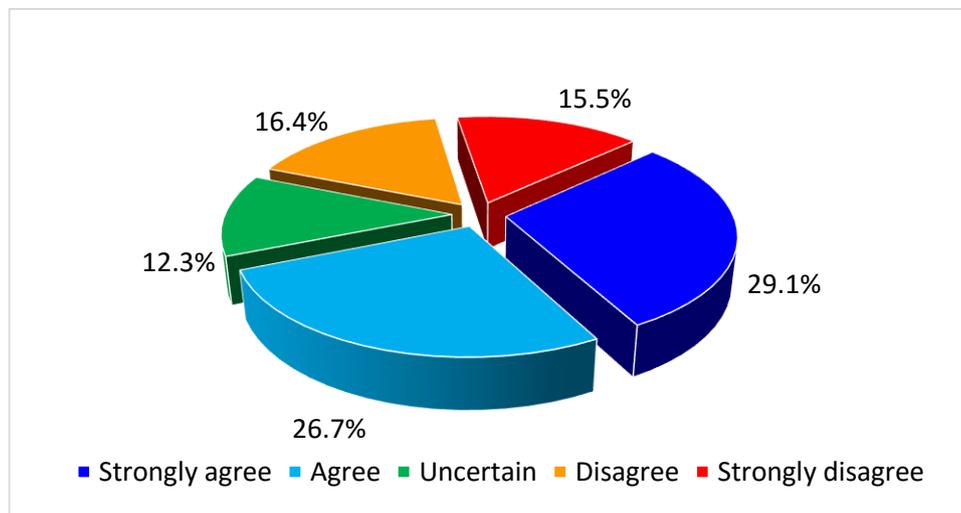
<sup>296</sup> The standard of living means the level of wealth, comfort, material goods and necessities available to a certain socio-economic class in a certain geographic area (Wikipedia, 2015). In the case of the Orang Ulu, many of them have related that standard of living has worsened with a reduction of free food, a deterioration of their personal health and the perceived low social relationship in the RSSA.

<sup>297</sup> Miku Loyang, a former Kapit District Councilor from Uma Balui Liko admitted that life is worse in RSSA compared to Ulu Balui (Teck-Chi, 2010).

played an inadequate role in assisting the local people at the RSSA despite the huge sacrifice they made in paving the way for the BHP construction.<sup>298</sup>

#### 6.11.6.4 Views on Political Awareness due to the BHP

As shown in Figure 6.65, this study found that more than half of the respondents, or 55.8 percent, agreed (including 29.1 percent strongly agreeing) that political awareness had increased due to the project implementation. On the other hand, almost one-third or 31.9 percent of the respondents disagreed (including 15.5 percent strongly disagreeing) and 12.3 percent of respondents were uncertain.



**Figure 6.65:** Has political awareness increased due to the BHP?

The steady increase of the political awareness<sup>299</sup> among the Orang Ulu at the RSSA is probably best indicated by the opening of the DAP services centre,<sup>300</sup> an opposition party

<sup>298</sup> In the conference paper entitled *'Modernizing Rural Areas of Sarawak'*, Professor Dr. Dimbab Ngidang from UNIMAS, who is one of the leading researchers in development study in Malaysia, has revealed that the RSSA had failed to generate enough income for resettlers, let alone generate high income earning. He further said that the RSSA does lack expanded economic opportunities, which has hindered the resettlers from earning extra income (Bintulu Weekly, 2010). The same observation is made by Lee et al. (2015, p. 70), who concluded that the BHP had reduced the welfare of the resettler communities.

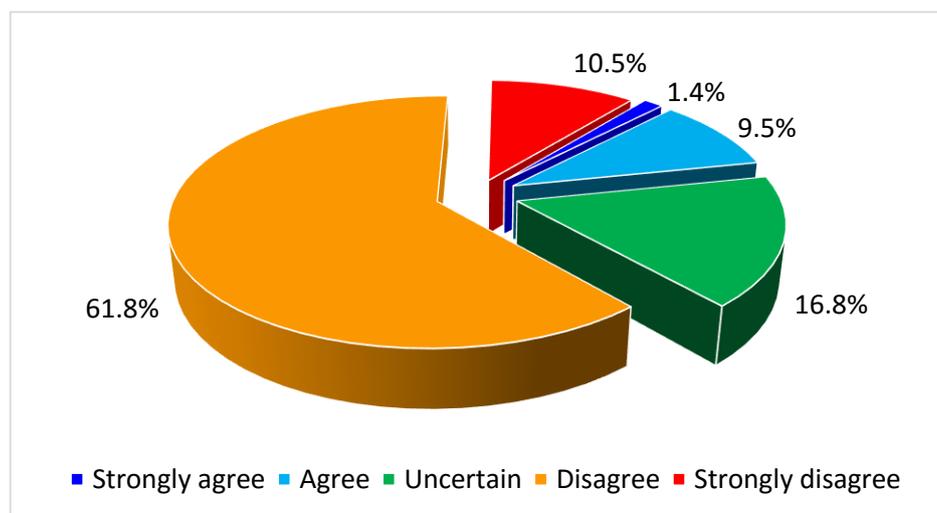
<sup>299</sup> In analysing the political scenario effects caused by the BHP, Usat-Bit (2010, p. 20) has acknowledged that the project posed threats to elective representatives from the ruling parties. This is mainly due to the economic interest reaped by certain parties while neglecting the local interests and aspirations.

<sup>300</sup> Based on informal conversations with local people, as compared to National Justice Party (NJP), which is also an ally to the DAP, the former has been more influential among the Orang Ulu. This is because, despite both parties being non-racial based parties, the DAP is tagged with the perception of a Chinese-based party while the RSSA is in a non-Chinese population area. Therefore, the battle of influence in the RSSA normally revolves between NF and NJP. The researcher also understands that among the hot issues that grab the Orang Ulu's attention in the RSSA are the requests for additional land plots and houses for new households, especially to the

which is based in Peninsular Malaysia. This has been an achievement despite the negative label hurled against the DAP (The Borneo Post, 2015). In addition, in a political study on Belaga's political scenario, Usat-Bit (2010) revealed that issues surrounding the BHP and the RSSA planning and implementation have significantly changed the Orang Ulu perception towards the government and ruling parties. They are now considered as less 'clean' and 'trustworthy' than before (prior to the relocation of the local people to the RSSA).

#### 6.11.6.5 Views on the Resettlement Impacts

In order to get the respondents' views on the resettlement impacts, the respondents were asked to grade their perception. As shown in Figure 6.66, this study revealed that the majority of respondents (72.3%) disagreed (including 10.5 percent strongly disagreeing) that the resettlement had brought positive impacts to them. Less than 10.9 percent either agreed or strongly agreed while a considerable percentage (16.8%) of them were uncertain.



**Figure 6.66:** Does the resettlement bring about more positive impacts than negative ones?

It is clear that negative views dominated the Orang Ulu respondents in this analysis. This perception probably relates to current life at the RSSA, which has been perceived as being worse than the life they experienced in Ulu Balui.<sup>301</sup>

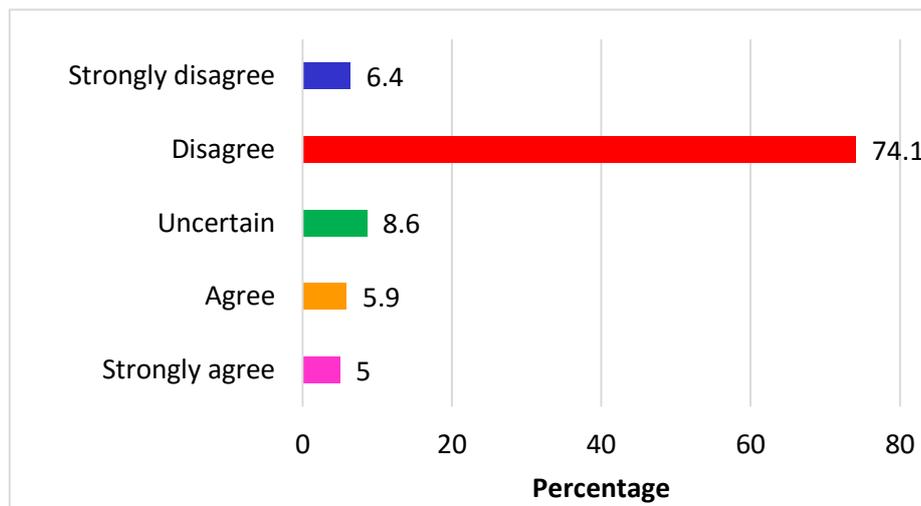
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second and third generations at the RSSA. They also demanded that the current house occupied by them be exempted from the payment as promised by the government.

<sup>301</sup> Local people facing difficulty in getting free food and having limited arable land, receiving below expectation compensation, difficulty in getting suitable jobs are examples that resulted in the negative sides of the resettlement according to Orang Ulu during the researcher's informal interaction with them.

### 6.11.6.6 View on the Trust of Government due to the BHP

Given the background of the project, it is interesting to see how much trust the local people place on the government. As shown in Figure 6.67, the majority of respondents, or 80.5 percent disagreed (including 6.4 percent strongly disagreeing) that the projects resulted in increased trust towards the government. Less than 5.9 percent and 5 percent agreed and strongly agreed (respectively) and 8.6 percent of the sample was uncertain.<sup>302</sup>



**Figure 6.67:** Has the BHP increased your trust towards the government?

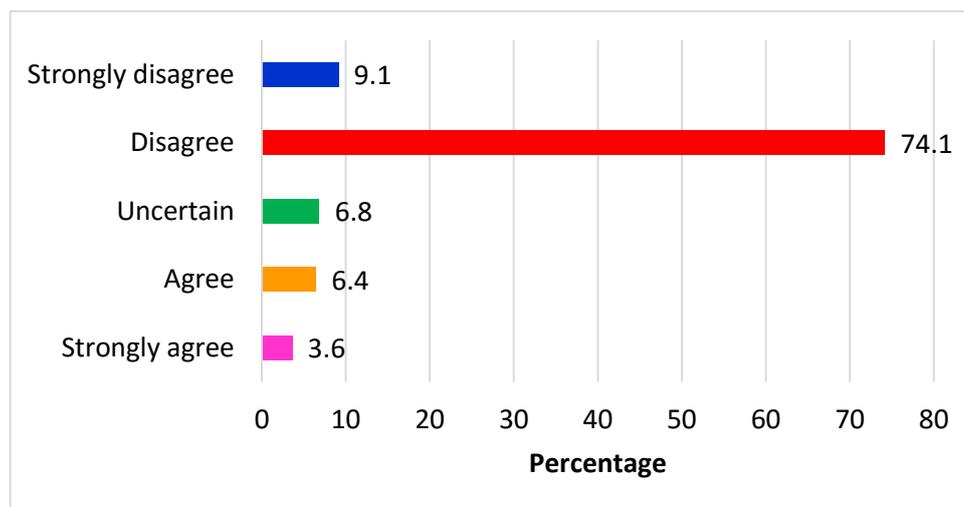
This finding is reflected in an interview with Ngajang Medin, a political activist in the RSSA and Belaga areas:

*Nowadays the Orang Ulu are more vocal and critical of the ruling parties. I think this is due to the project [BHP] which has been perceived as causing hardship to the local people. The local people also see unfair treatment. This makes the people change their perception towards the government and politicians (Oral communication with Ngajang Medin, a political activist from Belaga and RSSA areas, in the RSSA on 12<sup>th</sup> October 2012).*

<sup>302</sup> For example, a Penghulu for the RSSA from Uma Belor, Saging Bit, admitted that the resettlement people needed a lot of facilitation works from the government, particularly in uplifting the socio-economic of the local people who are not familiar with modern life. He specially mentioned the modern agriculture techniques, which are lacking (Oral conversation with Saging Bit, a Penghulu, at the RSSA on 30<sup>th</sup> September 2012). This was also specifically mentioned by Minggu Magui, the Tuai Umah of Penan, in his frustrated voice: he hoped that a lot of assistance would be offered to the Penan communities, since they are not familiar with the cash economy and are less confident in competing with other sub-groups of the Orang Ulu in the RSSA, who are more socio-economically advanced (Oral Conversation with Minggu Magui, a Tuai Umah of Uma Penan, at the RSSA on 11<sup>th</sup> October 2012).

### 6.11.6.7 Views on the Trust of Politicians due to the BHP

The respondents were also asked to state their level of trust towards politicians. As presented in Figure 6.68, this study revealed that the majority of the respondents, or 83.2 percent, disagreed (including 9.1 % strongly disagreeing) that their trust of the politicians has increased due to the project<sup>303</sup>. Many had expressed that they did not trust the politicians<sup>304</sup> especially those from the state ruling party, the NF.<sup>305</sup>



**Figure 6.68:** Has the BHP increased your trust towards the local politicians?

This finding could probably be related to the outcome of the fourteenth Malaysian General Election in 2013; the majority of the Orang Ulu in the RSLB voted for the opposition parties due to their discontentment and frustration towards the government and politicians from the Sarawak ruling party in handling the project<sup>306</sup> (Oral conversation with Daisy Igang, a

<sup>303</sup> One of the resettlers, Simon Jau, was recorded making a critical evaluation on the government's role when he said: '*Where is the change? Where is the facilitation from the government?*' (Utusan Konsumer, 2000).

<sup>304</sup> The deficit of trust towards politicians amongst the Orang Ulu was also intensified by the influence of the Orang Ulu contractors. The researcher understands that the contractors were declared bankrupt because they were induced by politicians to invest in the BHP which in the contractors' mind is one of the ways they could quickly get rich. Instead and unfortunately, these Orang Ulu's contractors were declared bankrupt due to the BHP implementation (see also Thien, 2001).

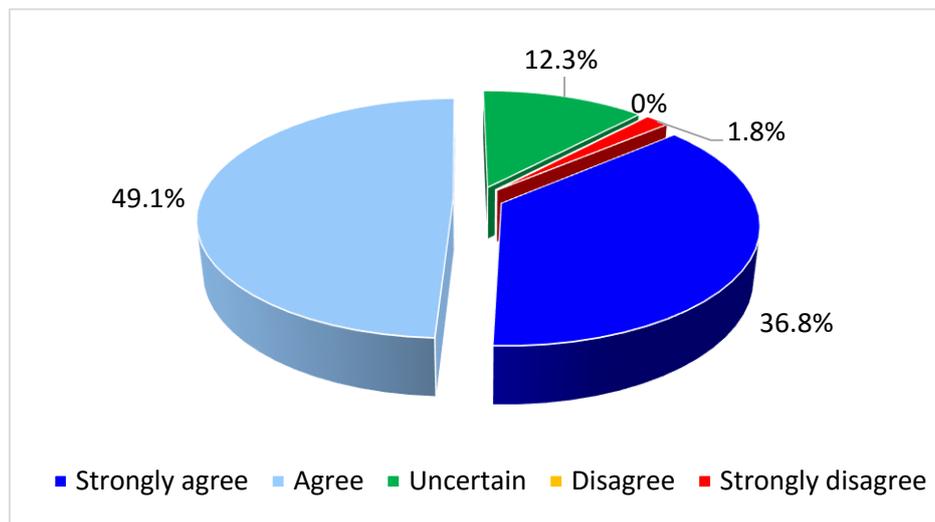
<sup>305</sup> Many have expressed that the state politicians have taken the local people's requests less seriously than those of federal politicians. For example, a house that the state government previously promised to be free turned out to require payment by resettlers. However, Najib, the current PM, has promised that the longhouses provided for the Orang Ulu in the RSSA will be free. This is because Najib is aware of the hardship and there is no proper income for the Orang Ulu resettlers (Borneo Post Online, 2011).

<sup>306</sup> The trends of the Orang Ulu in the RSSA rejection of the NF component parties can be best indicated in the voting pattern for the Belaga polling station in the ninth Sarawak general election. It was revealed that for the RSSA, the opposition and independent candidates managed to get 1,350 votes while the NF (the ruling party which proposed and strongly backed the BHP project) only gained 623 votes. If it was not for the split voting between the opposition and independent candidates as well as the voting from downstream of Bakun, the NF would have easily been defeated (Usat-Bit, 2010, p. 19). Among the issues that led to the people's rejection towards the ruling parties were the local dissatisfaction on the planning of the development; the inability to take

villager, in Lumut Perak on 7<sup>th</sup> May 2015; Oral conversation with Daisy Igang, a villager, at the RSSA by telephone on 22<sup>nd</sup> July 2013).

#### 6.11.6.8 Views on the Project’s Economic Benefits

Figure 6.69 illustrates the respondents’ perception of the economic benefits from the BHP implementation. This study found that an overwhelming percentage (85.9%) of respondents agreed (49.1%) and strongly agreed (36.8%) that the politicians were the ones who reaped economic benefits from the project implementation. Only a small percentage of the respondents (1.8%) strongly disagreed and approximately 12.3 percent of them were uncertain.



**Figure 6.69:** Have the political actors gained much more economic benefit than the local people?

It is worth mentioning that some of the local people stated that the establishment of the RSSA was, among other things, driven by the palm oil companies in order to provide cheap labour to their companies<sup>307</sup> (which belong to local politicians).<sup>308</sup> This is best illustrated by Nora Igang’s remarks:

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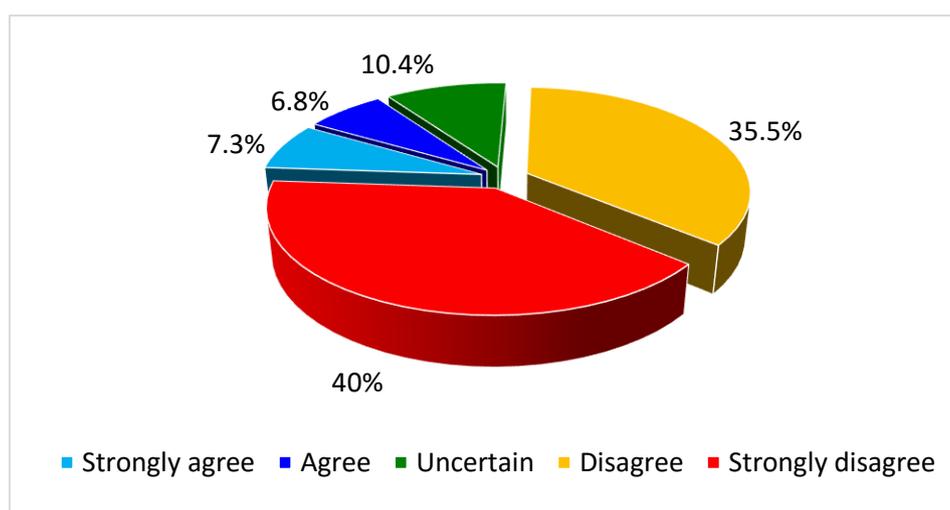
part in the agriculture planning and other socio-economic projects commenced by the government; empty promises by the government despite huge sacrifices by the Orang Ulu; being sidelined by the government whereby the allocation of the strategic and accessible land was given to companies linked to the ruling parties such as KTS, Solid, Samling and Shin Yang; an inadequate three acres of compensated land; and, unfair compensation (Usat-Bit, 2010, p. 22–24 & 28).

<sup>307</sup> This is also acknowledged by Numpang (2012, p. 314) – the government expected that the BHP would provide job opportunities for about 6,000 workers and at the same time about 3,650 workers for palm oil estates around Sungai Asap and Koyan.

*Our longhouses are surrounded by palm oil companies. We have been dumped here. No way that the surrounding physical environment here [at RSSA] imitated the Ulu Balui [the Orang Ulu previous settlement]. I think we were put here because it is to provide cheap labour to the palm oil plantation companies. They want cheap labour which they get from us. (Oral Conversation with Nora Igang, a Teacher and villager, at the RSSA on 11<sup>th</sup> October 2012).*

#### 6.11.6.9 Views on the Government Role in the EIA

The respondents were asked to state their perception on the way the government conducted the EIA for the BHP. As shown in Figure 6.70, an overwhelming majority of respondents, or 75.5 percent, disagreed (including 40 percent strongly disagreeing) that the way the EIA had been conducted was acceptable.



**Figure 6.70:** Do you agree the way the government conducted the EIA is acceptable?

<sup>308</sup> The name of the plantation and logging companies and their area (hectares) in the Sungai Asap Sub-district are as follows: Samling Plantation Sdn Bhd (5,568); Urun Plantation Sdn Bhd (1,340); Ekran Bhd Plantation Sdn Bhd (11,578); Sarawak Oil Palm Plantation Sdn Bhd (8,998); Tajang Laing Sdn Bhd (64); Solid Plantation Sdn Bhd (5,565); Shin Yang Plantation Sdn Bhd (9,030); Selangau Plantation Sdn Bhd (4,970); Dataran Seping Plantation (11,300); Linau Sinar Sdn Bhd (17,000); Dataran Sinar Sdn Bhd (10,960); and, Danum Sinar Sdn Bhd (43,500) (Sub-district Office of Sungai Asap, 2012. Unpublished). For an unknown reason, the Rimbunan Hijau logging company is missing from the list. It is also worth mentioning that the local people argue that these companies are politician related companies, e.g. Ekran Bhd Plantation Sdn Bhd is related to Ting Phek Khiing, the Ekran Bhd owner. That is also the case for Samling Plantation Sdn Bhd, which many assumed is related to Taib Mahmud, the previous CM of Sarawak (see Hornbill Unleashed, 2010b). An extensive investigative report on the Sarawak politicians' involvement with the logging and palm oil plantation companies have been exposed by a vocal Swiss NGO, the Bruno Manser Fund (BMF, 2011).

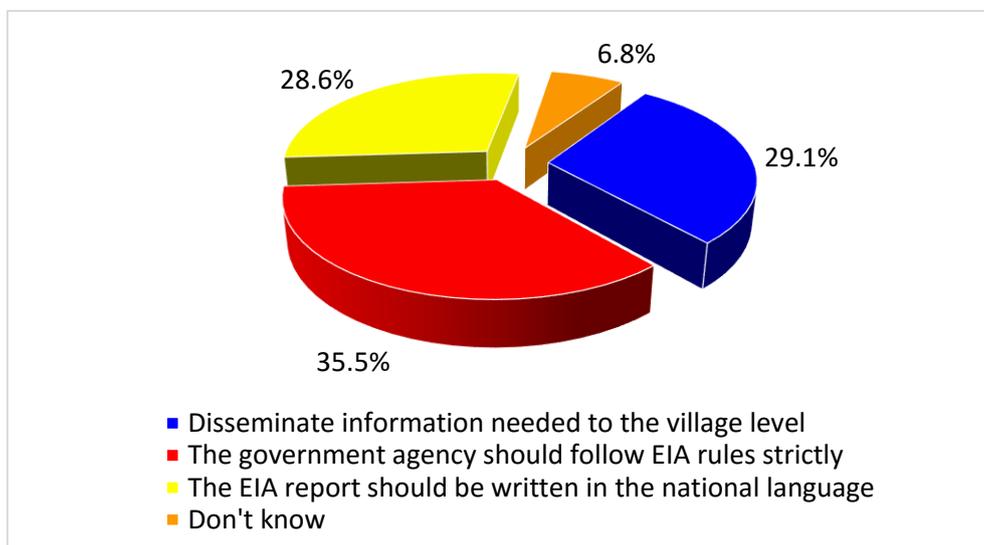
Only a small percentage strongly agreed (7.3%) and agreed (6.8%) to the government's way of conducting the EIA and 10.4 percent of respondents were uncertain.

### 6.11.7 Views on the Improvement or Enhancement of the BHP

This last survey question sought the respondents' suggestions on how to overcome the barriers in four aspects, namely public participation, project acceptance, protection of the NCL and measures to reduce conflict.

#### 6.11.7.1 Ways to Improve Public Participation in the EIA

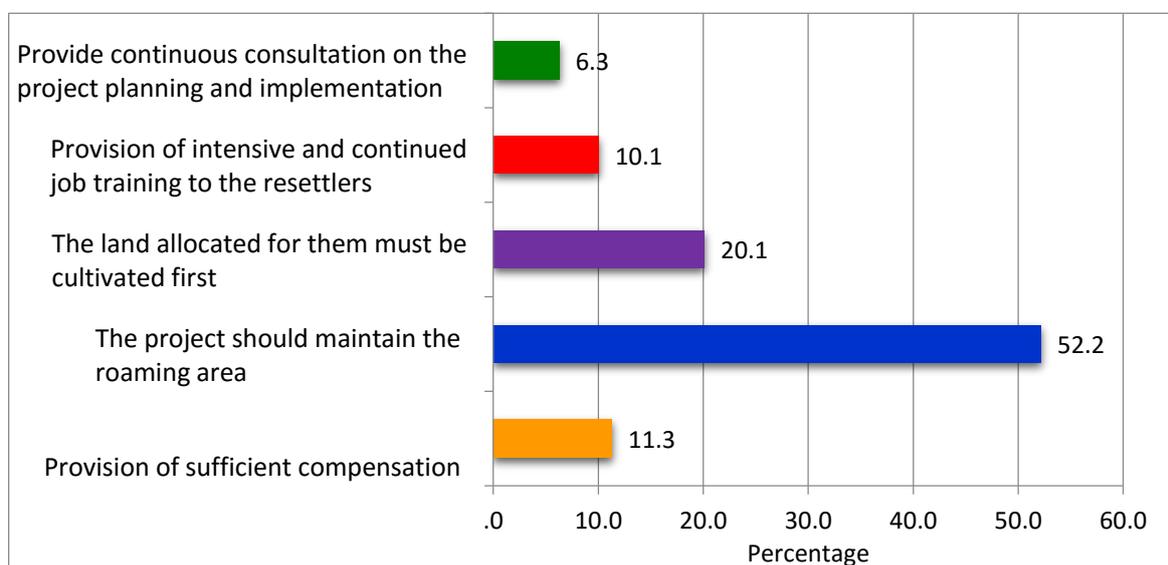
From Figure 6.71, this study found that the majority (35.5%) of the respondents argued that the government agency should follow EIA rules strictly. These rules include compliance with the process and procedures of the EIA. The respondents also suggested that the EIA report should be written in the national language (28.6%) and disseminating information needed to be extended to the village level (29.1%). Approximately 6.8 percent gave the answer of 'do not know'.



**Figure 6.71:** What are the measures the government should take in order to improve public participation?

### 6.11.7.2 Suggestion to Improve Project Acceptance

As presented in Figure 6.72, this study found that one-third of respondents (37.7%) were of the opinion that the project should maintain the roaming area as they previously enjoyed before the resettlement at the RSSA<sup>309</sup>. Almost one-fifth (14.5%) proposed that the land allocated for them must be cultivated first. Provision of sufficient compensation (8.2%) and intensive and continued job training to the resettlers (7.3%) were considered important to them. It was also found that a small percentage (4.5%) demanded more and continuous consultation on the project planning and implementation.



**Figure 6.72:** What are the measures the government should take in order to improve project acceptance?

Huvit Imang, one of the Orang Ulu elders' residents at Uma Belor, made this sharp observation:

*Before we resettled here, the government promised everything will be ready at the RSSA. However, when we arrived, our farm plots were unclear and it was still a thick forest. We needed to cut down and burn the trees by ourselves. No proper access road to go to the farm. For me, if the government wanted to resettle people, these*

<sup>309</sup> This request was a long standing demand proposed by the Orang Ulu resettlers to the government. In fact, their request was made before they moved to the RSSA. The Orang Ulu requested that each community be allocated with the 'pulau' or roaming area (LCDA, 1997b, p. 5-3).

*things needed to be ready first.*<sup>310</sup> (Oral Conversation with Huvit Imang, a villager, at the RSSA on 2<sup>nd</sup> October 2012).

As shown in Figure 6.73, the Orang Ulu resettlers had to clear and cultivate their own agriculture plots. Meanwhile, the river, which was first thought to be among the sources of protein (fish, etc), was also useless (Figure 6.74).



**Figure 6.73:** Slashing and burning the trees (the forest) in their own agricultural plot (done by the Orang Ulu)



**Figure 6.74:** The stagnant and small river makes it impossible for the Orang Ulu to get free fish

In the same vein, Saging Bit, one of the Penghulus from Uma Belor, made a relevant observation:

*The relocation has changed us a lot. Before the relocation we were used to the traditional way of life. Some changes are positive but the others are not. Take for example cultivating of crops. Previously we don't have permanent lot to be planted, but now we have to work on our own tiny plot of permanent land only. Since the soil here is not so good, we have to use fertilizers and pesticides which we did not use before. Another example is previously we can get sources of food freely from land, the forest and rivers; these are our supermarket. But now everything needs money*

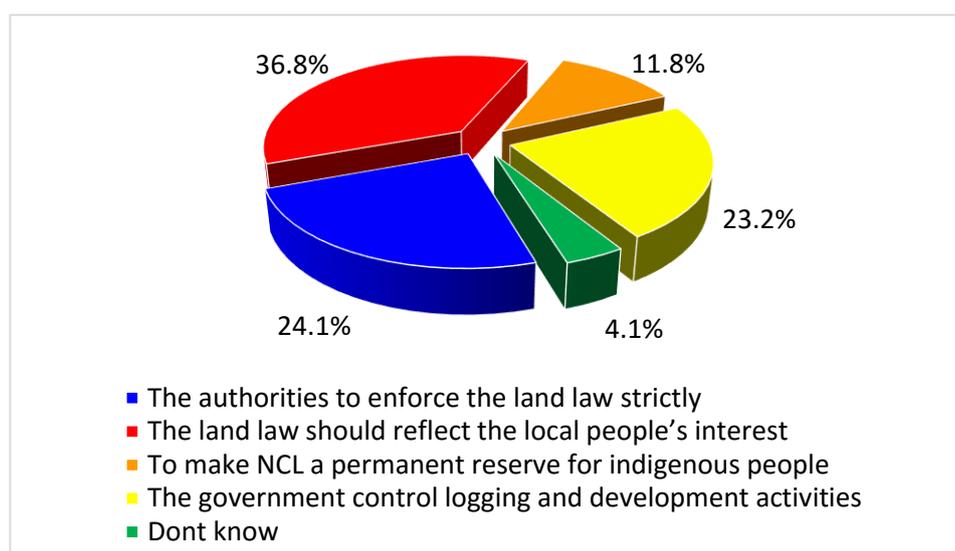
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<sup>310</sup> However, it is worth mentioning that these recommendations have also long been expressed by the community. These recommendations can also be found in petitions, open letters and minutes of meetings. For example, in the affidavit by Kajing Tube and Others against Ekran Bhd and Sarawak Government (Nijar, 1997), a letter of 3<sup>rd</sup> July 2001 from BRIC to the Commissioner of HRCM; a letter from BRIC to Abdullah Ahmad Badawi dated 13<sup>th</sup> July 2001, a letter of 4<sup>th</sup> July 2005 from Uma Lesong people to the District Office of Belaga, Kapit, Sarawak; minutes of the meeting at Ruai Uma Temenggung Talik which involved 15 of the longhouse chiefs at Uma Juman on 18<sup>th</sup> January 2004.

*and we have to buy them.* (Oral conservation with Saging Bit, a Penghulu, at the RSSA on 30<sup>th</sup> September 2012).

### 6.11.7.3 Recommendations to Protect NT

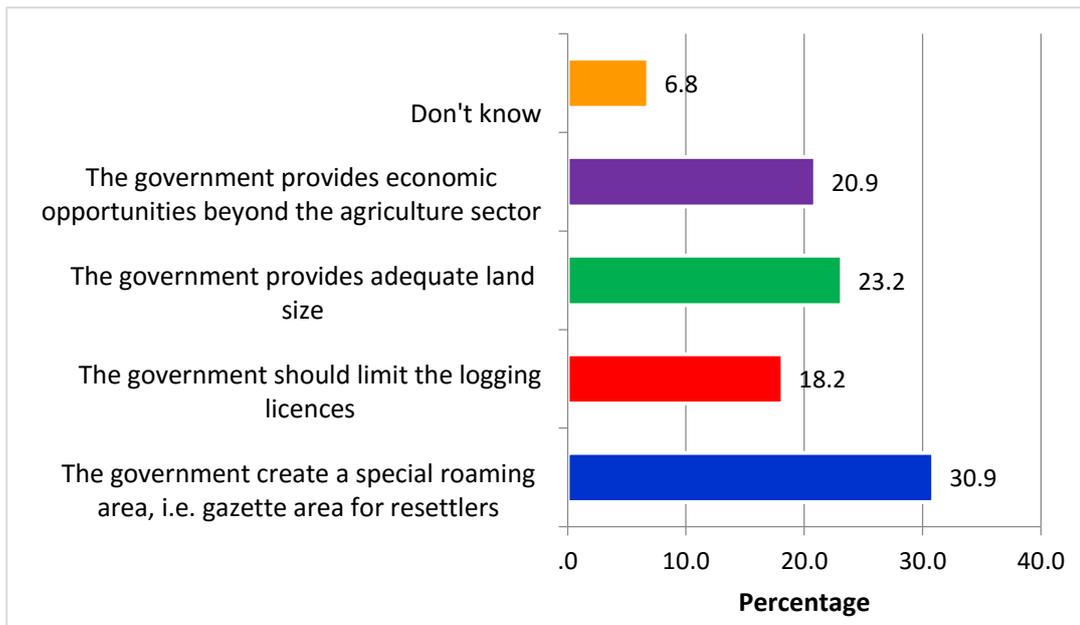
Figure 6.75 shows the respondents' recommendations on how to protect NCL. This study found that the majority (36.8%) stated that the land law (SLC in the case of the Orang Ulu) should reflect the local people's interest. The respondents also asked for: the authorities to enforce the land law strictly (24.1%); to control logging and development activities (23.2%); and to make NCL a permanent reserve for indigenous people (11.8%). About 4.1 percent gave the answer of 'do not know'.



**Figure 6.75:** What are the appropriate measures for the government to take to protect the NT?

### 6.11.7.4 Measures to Reduce Conflict

Respondents' input was also sought in relation to how conflict could be reduced. From Figure 6.76, this study found that almost one-third (31%) stated that the government idea of allocating of a special roaming area, i.e. gazette area for resettlers at the RSSA would be the best conflict solution for the resettlers. Providing adequate land size was the second highest recommendation by respondents (23%). The third highest related to economic opportunities beyond the agriculture sector (21%). Approximately 18 percent of respondents advocated the idea of the government limiting the logging licences.



**Figure 6.76:** What are the appropriate measures the government should take in order to avoid conflict between the local people and logging/plantation/project worker or villager?

It clear from these findings that the main concern of the respondents was the importance of the socio-economic aspect; or to put it in simple language – the security of life.

## 6.12 Synthesis of Concluding

This chapter has revealed factors that affected the EIA credibility, and has investigated them in terms of the procedures for conducting the BHP's EIA and the reliability of the contents and methods used in the EIA reports. These two elements were used as a base in analysing the past practice of the BHP's EIA. These research findings have suggested that the EIA for the BHP was carried out more to legitimise the project needs rather to form a basic criteria for project approval – the institutional failure as the main principle in analysing institutional credibility. This can be best explained by the violations of EIA procedures and the unreliability of the EIA as highlighted by other researchers. It is not therefore surprising that the respondents and NGOs have viewed the EIA with less credibility in the BHP case. The fundamental purpose of the EIA – its role in allowing democratic space for PAP to participate in order to reduce potential conflict in the project – failed. In this light, it is not surprising to see that the respondents were not satisfied with the role played by the EIA. Under this circumstance, it is safe to say that the functionality of EIA as an institution has been compromised. It has failed to fulfil the basic core of its establishment and match public expectation e.g. reduce conflict, protect the environment, enhance socio-economic aspects

of the public etc. Put differently, the EIA institutions in BHP has become a symbolic law – e.g. characterised by conflict, rent-seeking, deficit of trust and problem of enforcement.

To exacerbate the credibility problem, the resettlers are generally in low socio-economic conditions and are land-dependent people. While these local people have viewed land rights as a fundamental element of project acceptance, they felt that the land rights system practised by the authorities diminished their rights. The absence of land rights as practised under the NT, such as roaming areas or 'pulau', which were previously the source of their livelihoods, have completely disappeared at the RSSA, thus undermining the institutional credibility. The failure of the state to provide employment opportunities beyond the agriculture sector has caused a great disaster. Although the state attempted to introduce cash crops to the RSSA resettlers, the inadequate land provided as compensation, the soil fertility and inadequate training provided to the Orang Ulu have considerably discounted the approach.

The low socio-economic conditions of the resettlers has definitely attributed to the present discontent and consequently led to conflict. During a long conversation while touring around the RSSA, one interesting observational analogy made by Huvit Imang (a resettler from Uma Belor longhouse) reflected the importance of the socio-economic issues in designing credible institutions:

*Our abundant land and free food store were gone. Three acres of land are not enough. I have to find other [supplement] job to survive. Life is difficult here. That is why you see many people frustrated and easily get angry with the government and politicians. People here [RSSA] are like the crocodile, if its stomach is full, it becomes passive, but once the crocodile's stomach is empty, it will become aggressive. (Oral Conversation with Huvit Imang, a villager, at the RSSA on 2<sup>nd</sup> October 2012).*

Clearly, this simple observation by Huvit Imang specifically reflects the importance of sufficiently arable land as the basic production of capital to the Orang Ulu in order to achieve a conducive standard of living at the resettlement programme. Again this perceived discontent on land rights, once again exposed the failure of the institutions, i.e. land laws and social engineering to match with the Targeted people -indigenous expectation. It is clear that the institutions around land agrarian have failed to sufficiently function as what the previous customary land laws were able to rally.

The second theoretical observation on the institutional credibility is that this study confirms the theoretical assumption that the imposition of the newly institutions – be it EIA, land laws and social engineering exercise (i.e. resettlement scheme) have discounted institutional function roles. The establishment of these institutions are supposed to facilitate local people live; however, in reality it deteriorated indigenous life. Put differently, the inability of the institutions to function has threaten the local people’s livelihood. In addition, the limited land which does not consider PAP future growth has exacerbated the institutional failures. The EIA as an institution fails to sufficiently function – to protect the environment, to channel public protest and discontent or to provide a platform for a meaningful EIA roles. In addition, the state has not been sufficiently enough to facilitate the PAP life. Life experience at the resettlement scheme has continued to fuel PAP discontent.

The third interesting point regarding the theoretical observations is the divergences of power between the strong and dominant state and the PAP who do not have sufficient leverage – due to low socio-economic and low political bargaining. The findings gathered in the study area were found to follow the similar pattern from the national level. It is clear that without socio-economic strength, the mobility of the PAP to move out from agricultural activity become unfeasible. In terms of enforcement of the rules, the state does not share the rules established – the SLC and NREO, instead it manipulates the rules to accommodate patrons-clients need with rent-seeking activities.

In addition, the manifestations of conflict have involved both public and disguised resistances. As shown in this research in literature part, the nature of resistance goes beyond disguised resistance. In fact, public resistance has evidently been more dominant in the BHP case. The resistance of the resettlers at the RSSA has been demonstrated towards the EIA, the BHP project itself and to the government and politicians. The deficit of trust between the local people and the government and politicians has become very apparent in the study area. This has clearly indicated a serious manifestation of institutional low credibility, at least for the current time. Therefore, under these circumstances it not a surprise to see that theoretically the BHP is moving towards empty, if not non-credible institutions.

# 7

## The Kelau Dam Project (KDP): Project, People and Conflict

### 7.1 Introduction

This chapter examines the KDP in Peninsular Malaysia, and like with the BHP's case study, this chapter begins the discussion by focusing on the project information. The analysis begins by briefly revealing the main actors involved in the project implementation and the element of rent-seeking in the project implementation. The chapter continues by examining the EIA practices used in the project, including the issue of project justification and public participation and the way were handled and conducted. The analysis at this stage is derived mainly from secondary data. This study aims to demonstrate the anomalies and irregularities in the EIA procedures applied to the KDP. To provide a context for the KDP PAP in the KDP, the socio-economic profile of the resettlers gathered from secondary sources is discussed.

This chapter then proceeds to analyse the data taken primarily from the respondents' questionnaire survey and fieldwork. In order to enrich the analysis, other data gathering, namely observations and oral conversations as well as government documents and materials, were analysed in a thematic style. Like the BHP, generally the KDP chapter has used the similar main research questions as formulated in chapter 1 as the case study protocol:

- i) What has caused the EIA institution to be perceived as having low credibility in the KDP context? In this regard, to what extent are the EIA rules being shared by its social and political actors of the KDP?
- ii) Under what socio-economic conditions could EIA as an institution gain a state of credibility, or, alternatively, non-credibility?
- iii) What is the nature of the conflict occurring in the KDP, including the sources of such conflict and the strategies used by its actors? What are the roles played by the social conflicts in EIA and how have they contributed to the credibility of the institutions?

- iv) What are the manifestations of low credibility of the institution in the KDP? What are the manifestations of the conflicts that relate to low credibility and lack of trust in the state and in politicians?

Meanwhile, the following case study protocols for questionnaire survey and field works were used for data collection by examining local people's perception on six thematic components, namely: i) EIA practice; ii) land rights issues; iii) life experiences at the new resettlement scheme and the compensation issue; iv) the nature of conflict; v) local residents' perception of government and politicians; and, vi) suggestions and recommendations to improve project acceptance. Meanwhile and like in the BHP Chapter, the local indigenous peoples' interview revolves around the respondents' comments regarding their experience in dealing with EIA and their life experiences at the RSLB, particularly about in relating to land rights, resettlement issues and conflict. Lastly, the questionnaire survey explored respondents' perception of the government and politicians' roles in assisting their life at RSLB. On the other hand, the interview questions for organisations mainly emphasised issues that are related to EIA practices for the projects: compensation and relocation; land right issues; conflict and the measures taken by the organisations in their efforts to rally local acceptance of the projects.

In general, the whole analysis in this chapter aims to illustrate how the actors' attitude regarding EIA and land rights in relation to the project implementation can reveal the reality of EIA in practice. It also intends to reveal the life experience of PAP as well as their level of trust towards the government and politicians.

## **7.2 Project Information: KDP**

In 1998, the Malaysian government officially embarked on the construction of the KDP, a raw water transfer project from Pahang to Selangor and Kuala Lumpur as part of a holistic attempt to mitigate water resource shortage in the Klang Valley. With a length of 44.6 kilometres, the transfer tunnel for the KDP's water will be bored through the Titiwangsa Main Range; it will be the longest in Southeast Asia and the sixth biggest in the world. The project was initiated during the premiership of Mahathir Mohamad, the then fourth Malaysian PM. The KDP is sponsored by the Japanese government, which was led at that

time by the then Japanese's PMs, Keizo Obuchi (1998–2000) and Junichiro Kouzumi (2001–2006).<sup>311</sup>

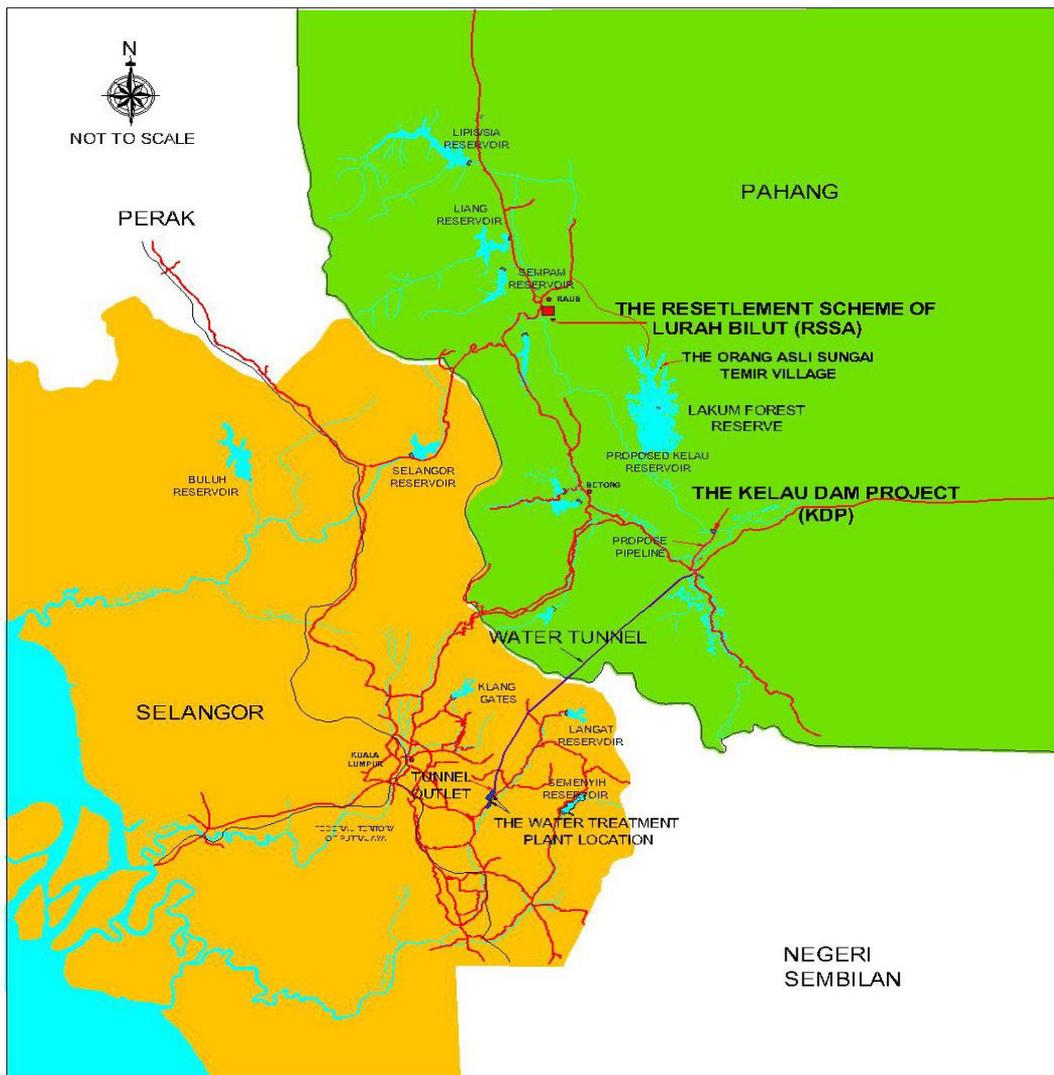
It is projected that the project will supply water to Selangor, Kuala Lumpur and Putra Jaya until 2025. The KDP is an infrastructure projects planned under the Eighth Malaysia Plan (2001–2005) (GOM, 1999) and the construction works started in 2010. The KDP is expected to carry 1.89 million litres of raw water per day. Initially, the KDP was expected to be in operation by 2014 but this has been extended to 2017. Located partly in the Bentong and Raub Districts of Pahang (see Figure 7.1), the project is expected to inundate about 24 square kilometres of reservoir area.

The construction works in Pahang partly involve the Kelau Dam, the Semantan water intake and pumping station, dual pipelines and an underground tunnel. Meanwhile, in Selangor, the construction works will involve the remaining underground water transfer tunnel, which begins in Pahang at the water treatment plant in Kuala Langat (known as Langat 2). The project owner and the proponent is the federal government through the MEGTW while the Department of Public Works (DPW) has been entrusted to execute and monitor the project's progress. Figure 7.1 shows a map of the project location. Meanwhile Table 7.1 simplifies the selected basic information of the KDP. Take note that the construction in the Selangor area (Langat 2 water treatment) is still pending due to disagreement on the terms and conditions between the federal government and the Selangor State<sup>312</sup>.

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<sup>311</sup> PM Obutchi made the promise and signed the first loan agreement while under PM Kouzumi's premiership, he finalised and signed the loan agreement with Malaysia.

<sup>312</sup> The disagreement stems from the fact that since 2006 the Selangor government has been controlled by the National Justice Party, which is one of the opposition parties from the People's Alliance. Meanwhile, according to Md-Khalid et al. (2014) the problem stems from the conflict between the water management body at the Selangor level and the constitutional rights as stated in the Federal Constitution.



Source: Map Drawn by Nor-Hisham, 2012

**Figure 7.1:** Location of the Kelau Dam Project (KDP) and the Orang Asli Sungai Temir Village

In terms of accessibility, to get to the KDP one can take the Bentong exit off the East-Coast Highway. The Bentong District where the KDP is located is situated along the central eastern edge of the Main Titiwangsa Range. Its topography is dominated by hilly and steep terrains.

**Table 7.1:** Basic information on the KDP

<b>Location</b>	Located in the Bentong and Raub Districts in the Pahang State. Adjacent to both districts is the Kuala Langat District in the Selangor State.
<b>Project purpose</b>	To transfer raw water from the State of Pahang to Selangor, which can then be distributed to Kuala Lumpur and Putrajaya.
<b>Project proponent</b>	Federal government through MEGTW.
<b>Project Funder</b>	JICA
<b>Water capacity (per day)</b>	1.89 million litres
<b>Impounded rivers</b>	Kelau, Bentong and Telemong Rivers.
<b>Size</b>	44.6 kilometre tunnel dug.
<b>Component</b>	Dam, tunnel and water treatment plant.
<b>Date construction commenced</b>	2010
<b>Expected date of operation</b>	2014 originally but extended to 2017.
<b>Cost</b>	Soft loan RM (billion) 9 (USD 2.88 Billion) of which RM (billion) 3.8 (USD 1.22 billion) or 384 billion Yen from Japan.
<b>Relocation of people</b>	Resettlement of Orang Asli from the Sungai Temir Village's 250 acres (102 hectare of Orang Asli Reserve) to a new resettlement scheme in Lurah Bilut (600 acres), Raub, Pahang.
<b>Date of EIA submission</b>	PEIA submitted in September 1998, DEIA August 2000.
<b>Date of EIA approval</b>	24 <sup>th</sup> February 2001

The PAP, the Orang Asli Sungai Temir Village and the KDP are located in the sub-district of Gali, which is in the Bentong District. The Bentong District had a population of 116,400 in 2010; the majority of the population was involved in the agricultural sector (DOS, 2010, p. 49). Initially, the KDP was to involve the construction of two dams: the Kelau Dam and Telemong Dam. However, due to cost constraints, the plan to build the Telemong Dam was finally scrapped (DOE, 2000). Figure 7.2 and Figure 7.3 show the project panoramic view.



**Figure 7.2:** The Kelau Dam Project (KDP) signage information



**Figure 7.3:** The proposed location of the main dam for the Kelau Dam Project (KDP)

The KDP is a high impact project with a total cost amounting to RM (billion) 9. It includes the cost of compensation, which was separately funded by the federal government, while

the cost for the housing scheme is borne by the Pahang State. The dam site is located about 5 kilometres upstream of the confluence of Sungai Kelau and Sungai Bilut in the Raub District of Pahang State. The dam is an earth dam with a height of 30 metres. The reservoir area will be created mostly from natural forest, palm oil plantation, including FELDA, and the small Sungai Temir Orang Asli Village area.

Like the BHP, the KDP has also involved the relocation of indigenous people, namely the Orang Asli – one of the indigenous ethnics in Malaysia. When completed, the KDP is expected to inundate the traditional Temir River Village of the Orang Asli as well as six other areas as shown in Table 7.2. They previously lived in the Sungai Temir Village, which is located 35 km from the small town of Raub. Apart from that, the project will inundate the Lakum Forest Reserve, a roaming area that was previously a free food and forest resource for the Orang Asli Sungai Temir Village.

**Table 7.2:** Land areas affected by the KDP

<b>Land</b>	<b>Area (hectare)</b>
Lakum Forest Reserve	16,800
FELDA Kelau Scheme	1,934
FELDA Krau Plantation (Krau 2, 3 and 4)	101
Orang Asli Sungai Temir Village and Reserve	6,354
Rancangan Tanah Pemuda (RTP) area	222
Kurnia Setia Plantation	104
'Ah Hong' plantation (private land)	2,084
<b>Total</b>	<b>27,599 ha</b>

Source: DOE, 2000, p. 2 – 22; MEGTW, 2010, p. 22

As of September 2011, although no construction has begun on the water impounding dam, about 30.2 percent of the construction work for site clearance and earthworks on the coffer dam have been completed (MEGTW, 2011, p. 2). However, the Orang Asli of the Sungai Temir Village were successfully resettled at the RSLB by 23<sup>rd</sup> January 2011.

### **7.3 EIA Requirements for the KDP**

Since the project is an inter-state project, the federal government is responsible for preparing the DEIA reports. The EIA reports for the KDP were mainly prepared by the MAB Environmental Consultant Sdn Bhd. Unlike the BHP case, the EIA requirement for the KDP was a mandatory requirement under Section 34A of the EQA for certain activities specified

under the Order 1987. Under federal EIA requirements, the proposed construction of the water supply including the construction of a dam or impounding reservoir with a surface area of 200 hectares or more are subject to an EIA study. In view of the fact that the project would have significant impacts on the environment and that it is an inter-state project, the DEIA report requirement applies. The PEIA for the project was submitted in 1998, and the DEIA in 2000. DEIA approval was given in 2001. However, in April 2003 due to severe criticism by the local people and NGOs on the inadequacy of the present EIA study, plus additional pressure from the Japan Bank for International Cooperation (JBIC), additional EIA study for the KDP was initiated on the flora and fauna as well as on the existing socio-economic of the Orang Asli Sungai Temir and Che Wong.<sup>313</sup>

In addition to complying with the EIA requirements imposed by the federal EIA (under the Order 1987), the KDP was also evaluated by the JBIC due to the funding requirements (DOE, 2000). There were at least two fundamental guidelines related to the environmental and social regulations (i.e. the EIA that governed the Japanese fund): i) the Official Development Assistance (ODA) Charter which requires environmental conservation and development to be pursued in tandem with the environmental and social in tandem with of developing countries (GOJ, 2003); and, ii) guidelines for confirmation of environmental and social consideration as required by JBIC, the bank in charge of the Japanese loan, which requires an environmental and social consideration review when making a decision on funding. The guidelines promoted principles of transparency, predictability and accountability (JBIC, 2015). JBIC classified the KDP as a 'Category A' project, which indicates that it would have a significant adverse impact on the environment, particularly problems related to the relocation of the Orang Asli (Furuoka, 2008; Furuoka, 2011).

#### **7.4 The KDP: Rationale and Needs**

The main reason for the KDP was that it would provide water for the industrialisation and domestic purposes of Selangor, Kuala Lumpur and Putrajaya. The federal government realised that the reliability of the water demand had become a great concern since Selangor, Kuala Lumpur and Putrajaya are urban areas with a high concentration of the population,

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<sup>313</sup> The additional EIA reports are titled: i) 'The Additional Survey of Flora and Fauna in the Lakum Forest Reserve including a survey of riverine fishery at Sungai Kelau and Sungai Semantan, Pahang'; ii) 'Environmental Impact Assessment study for the Proposed Conversion of 600 acres of Kelau Forest Reserve at Sg Bilut for The Resettlement of the Sg Temir Orang Asli, Raub, Pahang Darul Makmur.

and of commercial and domestic activities. The government's project rationale was based on the projection that the current water demand in Selangor and Kuala Lumpur will result in a water shortage by the year 2010 if no mitigation measures are taken (DOE, 2000, p. 3–6). It was recorded by the DOE (2000, p. 1–3) that from 1992 to 1998 the annual average water demand increased by 9.3 percent per annum.

**Table 7.3:** Water demand projection for Selangor and Kuala Lumpur up to 2030

<b>Year</b>	<b>Supply (MGD)</b>	<b>Requirement MLD</b>	<b>Year</b>	<b>Supply Requirement MLD (MGD)</b>
1997		2,454 (540)	2015	8,414 (1,763)
2000		3,044 (670)	2020	10,984 (2,415)
2005		4,270 (939)	2025	15,044 (3,309)
2010		5,850 (1,287)	2030	20,612 (4,534)

Source: DOE, 2000, p. 1–11

The total water supply demand for both Selangor and Kuala Lumpur in 1997 was recorded at 2,454 MLD (540 MGD) and it was expected to increase to 5,850 MLD (1,287 MGD) in 2010. It would then continue to increase to 10,984 MLD (2,415 MGD) in 2020 (DOE, 2000, p. 3).

**Table 7.4:** Projection of water demand in Selangor District and Kuala Lumpur from 1998 to 2010

<b>District</b>	<b>Demand (MLD)</b>			
	<b>1998</b>	<b>2000</b>	<b>2005</b>	<b>2010</b>
Gombak	236.9	249.4	323.3	425.7
Hulu Langat	231.7	284.0	354.9	427.3
Hulu Selangor	84.6	95.0	287.0	455.1
Klang	296.2	338.7	456.8	637.3
Kuala Langat	73.1	72.7	79.1	110.7
Kuala Selangor	52.7	52.1	58.0	70.4
Petaling	591.7	671.5	822.0	1,025.7
Sabak Bernam	48.5	52.5	70.2	81.1

Source: DOE, 2000, p. 1–11

Table 7.4 shows the water projection demand of districts in Selangor and Kuala Lumpur from 1998 to 2010. Generally, it shows a steady increase of water demand from 2,454.7 MLD in 1998 to 2,870.2 in 2000 and further rises to 3,858.2 MLD in 2005 and 5,047.4 MLD in 2010 (DOE, 2000). The water demand for Selangor and Kuala Lumpur is expected to continue to increase, as can be seen from the Kuala Lumpur Structure Plan 2020 and the Selangor Structure Plan 2020. The creation of Greater Kuala Lumpur/Klang Valley (Greater

KL/KV) includes 10 municipalities, each governed by local authorities.<sup>314</sup> This move is expected to further boost this region and to attract foreigners and local investors. Hence, it will affect the water demand of the region significantly (ETP, 2014, p. 124).

This background indicates how important this area is to Malaysia's economy, thus, the security of water supply is extremely important. In addition, the water crisis that happened in Selangor and Kuala Lumpur in 1997 and 1998 provided a wake-up call to the Malaysian government – to seriously consider the ability of the state to cope with any future water crisis. A low storage and reserved water supply has made the government worried about a spiral effect to the domestic and commercial consumers, including the industrial sector (JICA, 2005; EPU, 2000).

On the funding side, Japan's Ministry of Foreign Affairs (MOFA) has shared a similar observation by stating that the Selangor State would suffer from serious water shortages due to the rapid economic development. In addition, water resources in the state were limited thus requiring a water transfer project (Furuoka et al., 2007; Furuoka, 2008; Furuoka, 2011; JICA, 1999a; JICA, 2005). Therefore, the KDP is necessary to support the rapid economic growth in the Selangor State and Kuala Lumpur region. It is also acknowledged that the water resources in Selangor State and Kuala Lumpur region have previously been focused on river basins. However, such approach can no longer sufficiently meet the increasing water demand. Water shortages have occurred occasionally, especially during the dry season. Therefore, the idea of the inter-state raw water project came into the picture (JICA, 1999a).

## **7.5 The General Actors in the KDP: Roles and Interests**

Like the BHP, the actors in the KDP are various, ranging from those involved in the planning stages to those involved in the implementation stages. However, it is essential to identify at least the general actors involved and their main roles and interests. Therefore, Table 7.5 shows the identified actors and their main roles and interest. It is obvious that a staunch proponent for the KDP was Mahathir Mohamad. During his premiership all the planning and document preparation was finalised.

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<sup>314</sup> The municipalities involved are Kuala Lumpur Municipality City Hall (DBKL), Putrajaya Corporation, Shah Alam Municipality (MBSA), Petaling Jaya Municipality (MBPJ), Klang Municipality (MPK), Kajang Municipality, Subang Jaya Municipality (MPSJ), Selayang Municipality, Ampang Jaya Municipality (MPAJ) and Sepang Municipality.

Mahathir viewed the project as necessary in order to guarantee continual water supplies for Malaysia's industrialisation and urbanisation process. At the ministerial level, the project was strongly supported by the then Minister of Public Works, Samy Vellu who appealed frequently and convincingly to the public, especially to the Orang Asli Sungai of the Temir Village – the PAP – to accept the project.

**Table 7.5:** The key actors in the KDP

<b>Group/Organisation</b>	<b>Actor</b>
Politicians (federal)	Mahathir Mohammad (PM) Samy Vellu (Minister of Public Works)
Contractors	The Shimizu-IJM-UEM Nishimatsu Joint Venture
Chief Minister (CM) (State Level)	Khalil Yaakob (CM of Pahang) Khir Toyo (CM of Selangor)
Project affected people	Orang Asli
Main regulatory agency on the EIA	DOE
Proponent of the project	MEGTW
Project funder	Japan/JICA
Main NGOs	CAP, SAM, COAC, TrEES, SOS and FOE

**Footnotes:**

CAP	Consumers' Association of Penang	SOS	Save our Sungai
SAM	Sahabat Alam Malaysia	FOE	Friends of the Earth
COAC	Centre for Orang Asli Concerns		
TrEES	Treat Every Environment Special		

Although there was no active individual presence of business persons in the KDP, the project was awarded to the United Engineer Malaysia (UEM) and Mudajaya Construction Sdn Bhd (IJM)<sup>315</sup> as the main contractors. The UEM especially is proved to be a UMNO-linked company that has always received special treatment in government project tendering (INSAN, 1996; Gomez, 1991; Gomez and Jomo, 1999; Gomez, 1999).<sup>316</sup> In addition, the KDP has been strongly backed by the Malaysian government; as briefly mentioned, the KDP was also supported by the JICA since the loan was obtained from Japan through the New

<sup>315</sup> IJM is a merger of three companies, namely IGB Construction Sdn Bhd, Jurutama Sdn Bhd and Mudajaya Sdn Bhd. The joint-venture company was established in 1983 and it is one of Malaysia's leading conglomerates. Its core business activities encompass construction, property development, manufacturing and quarrying, infrastructure concessions and plantations (IJM, 2015).

<sup>316</sup> Another exposure of benefits gained by UEM and IJM as the UMNO-linked companies and directly involved with a party from NF and UMNO was revealed by The Star when the national newspaper reported that '*Property companies to benefit from NF doing well would be IJM Land Bhd, and UMNO-linked companies like the UEM Land Holdings Bhd, MMC Corp Bhd and Malaysian Resources Corp Bhd (MRCB), according to JP Morgan's report.*' (The Star, 2013). In the latest exposure, Berthelsen's study (2015) discovered how the UMNO-linked companies, especially UEM has been used to funnel money to the ruling party. Overpricing the contract and awarding lucrative sub-contracts to their cronies were among the kickbacks employed by UMNO and UEM.

Miazawa's Initiative<sup>317</sup>. The motives were quite clear as the grant was attached to steady bank loan interest. The JICA also obtained huge advantages in project tendering as the agency was allowed to negotiate the selection of Japanese contractors (Furuoka, 2008; Furuoka 2011). The KDP construction tender was awarded to a joint venture between the Japanese and Malaysian contractors, known as the Shimizu-Nishimatsu-UEM –IJM joint venture.

On the other hand, Shimizu has connections to the JICA. Although the project was open to international tender, critics claimed that the Shimizu-led consortium did not win the tender by offering the lowest bid as priority for the project was given to the Japanese contractors without any real form of open tender (Tan, 2009; TMI, 2009). Both Japanese contractors acquired about 30 percent of the cost of the water transfer tunnel, which was estimated to be around RM (billion) 8. Related to this, Jomo (1994) described how Japan's ODA tied aid turned into profits for the Japanese companies. NGOs both at the local and international levels were also actively involved in protesting against the project. For example, the COAC,<sup>318</sup> CAP,<sup>319</sup> Treat Every Environment Special (TrEES),<sup>320</sup> SOS,<sup>321</sup> SAM and the FOE Japan were actively staging protests and making criticism.

## **7.6 The KDP: Planning and Development**

The idea for the KDP was first mooted in 1985 by the SMHB Sdn Bhd, an engineering consultant firm in association from Japan, were entrusted by the EPU to undertake the detailed engineering work (EPU, 2000). In 1992, the EPU conducted the study 'Comprehensive Water Resources Planning and Development in the State of Pahang'. The study aimed to evaluate the potential of the inter-basin transfer between Pahang and Selangor (DOE, 2000, p. 6). Another conceptual study was then conducted in 1995 to assess the feasibility of the project.

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<sup>317</sup> This financial assistance rescue package was offered by Japan to Asian countries whose economies had been badly hit by the financial crisis (1997–1998) as well as the effect of the economic stagnation these countries faced (JICA, 1999b; MOFA, 1998).

<sup>318</sup> The COAC is a local NGO that was established in 1989. It aims to advance the cause of the Orang Asli – whether via the greater dissemination of Orang Asli news and views, assisting in court cases involving Orang Asli rights, or in developing arguments for lobbying and advocacy work (COAC, 2015).

<sup>319</sup> The CAP is a local brand NGO with its main office in Penang. The NGO was established in 1970. Its sole focus is to promote and strive for a more ecologically sound and socially just society (CAP, 2015).

<sup>320</sup> The TrEES is a local NGO that was established in 1995. The NGO's vision is not only relates to concern about the environment but also the capacity to manage resources and live sustainable lifestyles (TrEES, 2015).

<sup>321</sup> The SOS is a coalition of local NGOs and individuals who are concerned with the social, environmental and economic costs of the dam and the disruptive nature of the rivers, especially in the Selangor State. This coalition of NGOs was established in 2000 (SOS, 2015).

At the end of 1997, a water crisis erupted in the Klang Valley due to the substantial drop of water level in three reservoir dams, namely the Klang Gate, Batu and Semenyih dams, which are the sources of water supply in the Klang Valley. The El Nino phenomenon has been blamed for the water shortage, although the Klang Gate dam, for example, recorded the highest rainfall that year. The situation worsened from March to September 1998 when Malaysia hosted the Commonwealth Games in Kuala Lumpur. This water shortage led to widespread water rationing in many parts of Selangor and Kuala Lumpur that year. The government opined that this water rationing signalled a bad message to foreign investors on Malaysia's ability to secure enough water for their factory operations. In 1998, the government officially announced their plan to build dams in Kelau and Telemong in Pahang with the aim of solving the water shortage problem in Selangor, Kuala Lumpur and in Putra Jaya.

In a related development, in December 1998, during the Sixth Japan ASEAN Summit Meeting which was held in Hanoi Vietnam, the Japanese PM, Keizo Obuchi (1998–2000), promised to provide a soft loan to Malaysia, which at that time was represented by Mahathir Mohamad (JICA, 1999a; JICA, 1999b; JICA, 2005). In August 1999, another study was done by the OECF Special Assistance for project formation (SAPROF) and they produced the report '*SAPROF for Pahang–Selangor Water Transfer Project, Final Report*'. The main finding suggested that there was a need to find an option for delivering the water demand of Selangor and Kuala Lumpur. The report also projected that there would be a water crisis in the Klang Valley in the future (EPU, 2000).

In September 1998, the PEIA report for the proposed project, prepared by the MAB Environmental Sdn Bhd, was submitted to the federal DOE and the EPU and it was approved. Following this, on 17<sup>th</sup> September 1998, the DOE asked the MAB Environmental to carry out further studies in relation to the DEIA. Accordingly, on 24<sup>th</sup> February 2001 the DEIA reports for the KDP were approved by the DOE Federal. Following the approval of the DEIA, the Pahang government de-gazetted the Orang Asli Sungai Temir Village for the purpose of the KDP. Upon de-gazetting, the Orang Asli Sungai Temir were asked to resettle in a new resettlement scheme planned by the government at Lurah Billut, which is 40 kilometres away from their original village, the Sungai Temir Village in Pahang. Out of the

137 families, approximately 17 families, refused to resettle and wanted to remain in their village.<sup>322</sup>

In 2000, the EPU finally published a detailed study on the water resources in Malaysia, which had been carried out by the Ranhill Bersekutu Sdn Bhd and its associates: *National Water Resource Study Report (NWSR) 2005–2050*. The objectives of the study included the identification of future dam sites and catchment areas in each state in Malaysia. In order to avoid losses to other forms of development, the report proposed, among other things, that the Sungai Temir Village and Lakum Forest Reserve areas be gazetted and conserved (EPU, 2000, p. A1-1). This study also identified Kelau Dam and Telemong Dam together with 12 other proposed dams (Lipis, Liang, Sempan, Kenong, Chamang, Lower Perting, Benus, Lower Jeram, Kepasing, Jekatih, Aur and Pukin). Since Raub District, where the KDP is located, is close to the Kuala Langat District, which is one of the districts in the Selangor State, the federal government and the Pahang State chose both dams due to their strategic location (Ibid).

In Pahang, news on the government plans to construct the KDP began to spread. Local people started to demand that the state government share the information with the public especially the local people who were mostly concerned about the potentially inundated areas. To play down the issue, the then CM of Pahang, Mohd Khalil Yaakob, stated that the project would not displace anyone, as the site would be in a non-populated area. The CM was recorded as saying that the state government had instructed the consultant to properly study this matter and promised that nobody should be displaced by the dam project: *'We will only endorse areas which are not populated'* and *'stay clear of the population areas – that's the reminder of the state government to the consultant...'* (NST, 1999; The Star, 1999). Contrary to Khalil Yaakob's assurance that the proposed dam would not displace anyone at the Sungai Temir Village, Cham Beng (the Batin of Orang Asli Sungai Temir Village) was informed by the DOA that a dam would be built at the location of his village thus involving their area. Therefore, the Orang Asli of Temuan and Che Wong at Sungai

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<sup>322</sup> However, according to DOA, the remaining Orang Asli who refused to relocate had been given permission to live on the upper slopes of their previous location, which is at Bukit Lancar (Oral conversation with Sarjie Bakam, Assistant Director of Research and Development of DOA, on 2<sup>nd</sup> November 2011).

Temir Village as well as Bukit Lanchar were expected to vacate their settlements (High Court of Malaya, 2007a).<sup>323</sup>

At this stage, the Malaysian mainstream and alternative media began to take part by providing reports and publicity about the project, particularly by highlighting the Orang Asli refusal to relocate and worries about relocating. Unpleased with the protests by the NGOs, Mahathir Mohamad and Samy Vellu portrayed the local NGOs as trouble makers, anti-development and accused their protests of trying to deny the right of the people to get water (Omar, 2002a). Mahathir blamed the local NGOs, whom he accused of being the only reason why the JBIC loan was delayed and thus putting the project in stalemate (Omar, 2002a). In a response, the SOS Selangor pointed to the shoddy EIA study and the flawed water projection as being the real reason for the fund suspension, and stressed that the NGOs were just exercising their rights (Ibid).

In April 2002, when the Japanese government became aware of the strong protests by the local NGOs, it decided to suspend the provision of the loan to the Malaysian government for the project. Consequently, in an effort to install credibility in the project, the Japanese government insisted that at least five NGOs must support the project (The Star, 2002a). Realising that the Malaysian government would not get the loan without positive feedback from the local NGOs (as imposed by the JICA) Samy Vellu urged the local NGOs to cooperate with the government and support the project (The Star, 2002a). The then Selangor CM, Khir Toyo, echoed Samy's plea and reiterated that the project would not proceed without support from the NGOs. It is interesting to note that, at this stage, the JICA seemed to be very positive about entertaining public participation by allowing democratic space for NGOs to voice their concerns about the KDP.

On 14<sup>th</sup> April 2002, SAM, through its chairman SM Mohamed Idris, was quoted as saying *'The proposed project's Environmental Impact Assessment (EIA) states that the water supply would last only until a certain period. This does not provide a long-term solution to the water shortage problem'*. Mohamed Idris observed that the EIA for the KDP was inaccurate, inconsistent and inadequate (The Star, 2002b). However, amid the protests and controversy, in March 2003 the Japanese government finally formalised its support for the

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<sup>323</sup> However, based on the MEGTW's records, the first time the Orang Asli of the Sungai Temir Village had been informed was on 28<sup>th</sup> December 1998, where the meeting of the Resettlement of Orang Asli Committee, headed by the EPU Pahang State, was held (MEGTW, 2010).

KDP by extending the Exchange of Notes (EON), a note concerning the loan provision, and signing the agreement.

In April 2003, after much pressure from the public and in an attempt to avert the severe criticism on the inadequacy of the EIA study, a supplementary study entitled 'The Additional Survey of Flora and Fauna in the Lakum Forest Reserve Including a Survey of Riverine Fishery at Sungai Kelau and Sungai Semantan, Pahang' as well as an EIA study on the environmental and social issues related to the resettlement of the Orang Asli of the Sungai Temir Village to the RSLB were conducted. Both additional reports were approved by the federal DOE on 24<sup>th</sup> September 2003. These additional surveys provided inputs for the preparation of the EMP for the construction of the KDP.

In January 2004, FOE Japan and 23 other Japanese NGOs sent a letter to the Japanese Parliament. They were seeking justification of the loan being given to the Malaysian government despite strong protests by the Malaysian NGOs. It was argued that FOE Japan's intention was to stop the project by seeking review from the highest body of the executive branch, the National Diet, which is the highest legislative body in Japan. Two months later, in March 2004, Kuniomi Iwai, a member of the Diet, informed Parliament that the KDP project had attracted strong criticism from the Malaysian NGOs. He also asked the status of the project. The Japanese Foreign Minister, at that time Yoriko Kawaguchi, responded by saying that the Japanese government had already signed the EON and the JICA was in fact in the process of finalising the details of the grant agreement with the Malaysian government (Furuoaka, 2011, p. 40). In June 2004, despite public criticisms of the KDP, the Malaysian government claimed that they managed to obtain consent and endorsement for the project from 85 Orang Asli, who agreed to resettle at the RSLB.

In March 2005, the Malaysian government felt mounting pressure as the JICA was still withholding the loan for the KDP. This prompted the Malaysian government to express dissatisfaction. The Minister of Energy, Water and Communications, at that time Lim Keng Yaik, even suggested that alternative funding might be sought in order to proceed with the KDP. He was recorded as saying *'You cannot delay and delay. This has been delayed for seven years. If not, I'll look for other financing, other ways of doing it, cheaper ways of doing it'* (Krishnan and Bendeich, 2005). At the same time, the JICA was also aware that Malaysia could not afford to prolong the KDP implementation. Thus, this indirectly pressured the Japanese government. As a result, at the end of the March 2005, all documents and

paperwork pertaining to the loan provision and agreement between Japan and Malaysia were finally signed by the Governor of the JBIC, Kyosuke Shinozawa.

Finally, after a long drama, on 31<sup>st</sup> March 2005, an agreement totalling 82.04 billion Yen was signed and approved for the KDP (JICA, 2005). It is clear that in relation to the implementation of the project, the JICA endorsed and was satisfied with the EIA process on the KDP. Suddenly the JICA cited the reason they were satisfied with the environmental and social considerations of the KDP, a surprising change of attitude towards the local NGOs. The note was signed by the Secretary General of the Malaysian Foreign office, Ahmad Fauzi Abdul Razak and the Japanese Ambassador to Malaysia, Makasi Konichi (Furuoaka, 2011, p. 40). This official support, which was a sudden change of attitude by the Japanese government, disappointed the Malaysian NGOs who thought that the project would at least be amended, if not scrapped. This caused the Malaysian NGOs to question the JICA's sincerity and intention in upholding its own requirements – whether the JICA had seriously considered the environmental and social considerations or were just merely doing public relations work (Furuoaka, 2008; Furuoaka, 2011; Furuoaka et al., 2007).

Despite the agreement between Malaysia and Japan being completed, protests on the KDP continued. For example, on 3<sup>rd</sup> February 2007, a memorandum was sent by the NGOs and local people to the then PM, Abdullah Badawi. It was one of the means of protesting against the project and seeking the PM's intervention in order to reconsider the decision to construct the KDP. However, no response was given by Abdullah Badawi on that matter. In Bukit Lanchar, the Che Wong group who was initially relocated together with Temuan sub-ethnic from Sungai Temir Village refused to relocate, citing that their villages would not be inundated (Edwards, 2007). On 9<sup>th</sup> October 2007, a group consisting of 27 of the Orang Asli from Sungai Temir Village led by Pendor Bin Aner and others brought the case to the Kuala Lumpur High Court. On 20<sup>th</sup> November 2008, a member of the NF backbenchers and assemblyman from the Ketari constituency of Pahang, Dr Ng Keong Chye, made an accusation to the federal government that the EIA reports that were approved by the government in 2001 had not complied with the guidelines set by the DOE. He was quoted as saying *'I urge the government to make a request for a new EIA report which complies with the latest guidelines'* (The Star, 2007).

In March 2008, the Selangor State administration fell to the People's Alliance which is one of the opposition parties from the opposition coalition. Thus, it raised some uncertainties about

the KDP project particularly on the water treatment, dubbed Langat 2, which will be built in the Selangor State. The Selangor government used the Langat 2 project to tie up the federal government in order to negotiate on the water restructuring programme. Consequently, in April 2008, the federal government received three tenders for the tunnelling stages, from Shimizu-UEM-IJM JV, Taisei Corp-HRA Teguh JV and Kajima.

On 7<sup>th</sup> July 2008 at the Lower House of the Malaysian Parliament, Charles Santiago, a Member of Parliament from the DAP asked the government whether it would consider a second DEIA report for the KDP. The question aroused because of the negative impacts of climate change that could influence the KDP water supply as well as the contradiction to the assertion of the Orang Asli's willing agreement to resettle. They (the Orang Asli of Sungai Temir Village) were seeking a judicial review, which was launched in 2007. However, the government insisted that the current DEIA study had been done thoroughly and had been vetted by internal experts, thus there was no need for the second DEIA (Lower House of Malaysia, 2008, p. 11–12).

In order to appear to uphold the JICA and MOFA's social and environmental considerations, in August 2008 the JICA make an independent visit and conducted their own field survey including interviews and a survey with the Orang Asli at the Sungai Temir Village and the Bukit Lanchar Village in order to get a direct response from the Orang Asli on their consent to relocate. An independent consultant from University Kebangsaan Malaysia (UKM), namely the Pakar Runding UKM, was entrusted with the task of conducting the study on public acceptance of the relocation programme. The JICA tried to accommodate all the views expressed by the NGOs and the public. The JICA realised that there was an issue on the credibility of the MEGTW and the DOA in handling the public participation. The representative from the JBIC, Takeshi Toyoda, was quoted as saying that *'We understand that the Ministry of Energy, Green Technology and Water has followed our guidelines fully. We heard from the ministry that the procedures are in order and we believe their decision (to go ahead with the project) is right'* (Chiew, 2008b).

On 24<sup>th</sup> May 2009, the KDP's award and tender was given to the contractors of the joint venture between Shimizu-Nishimatsu from Japan and UEM Builder-IJM from Malaysia. The construction period was set for five years. The JV share was set at a 30:30:20:20 joint venture formula. Meanwhile, on 26<sup>th</sup> August 2010, The Court of Appeal (Appellate and Special Power) dismissed the Orang Asli's bid to review the judicial approval on the EIA

reports for the KDP. On 6<sup>th</sup> August 2010, at the Sungai Temir Village, a three day official working visit was held, among the participants were the Minister from the MEGTW, the District Officer from Raub, the Orang Asli of Sungai Temir, the JBIC Officers and the Embassy of Japan Representatives, the NGOs and the security forces (MEGTW, 2009). It is interesting to note here that the pressure on the Orang Asli Sungai of the Temir Village to sign the relocation form was intensified. It was later understood that this three day working visit was aimed at getting the Orang Asli to sign the consent form in order to move them into the RSLB as early as January 2010. In a tense environment, the village was crawling with police personnel and staff from various government departments. In addition to being offered goodies like rice and other rations in order to win the Orang Asli's heart, those who rejected the offer were deprived of these goodies and mocked by the Minister in his speech (Nicholas et al., 2010, p. 120).

Meanwhile, on 20<sup>th</sup> July 2010, the Selangor CM, Khalid Ibrahim, refuted the federal government's claim that there would be a state-wide water shortage by 2014 if the KDP could be not fully implemented. His claims were based on several consultant reports argued there would not be sufficient water supply until 2019. Finally, on 26<sup>th</sup> January 2011 the operation to relocate the Orang Asli was carried out. They are now resettled at the RSLB, which is near the FELDA scheme of Lurah Bilut, the first FELDA scheme in Malaysia. The RSLB consists of 123 houses that were provided by the Pahang State. Although the majority of the Orang Asli Sungai Temir agreed to move to the RSLB, about 17 families of the Orang Asli Sungai Temir are still adamant about remaining in their village and did not agree to move to the RSLB despite all the persuasions and pressures from the DOA, the Land and District Office and the MEGTW (Oral Conservation with Bedu An, a former 'Menteri', at Sungai Temir Village on 3<sup>rd</sup> December 2012; Oral Conservation with Romziah Azit, Project Assistant Director, on 18<sup>th</sup> August 2011, Kelau, Raub, Pahang; Nicholas, 2010).

In February 2012, the families remaining at the Orang Asli Sungai Temir Village who had refused to resettle made a permanent road blockage in order to prevent interested parties from entering their village. As of September 2014, the KDP construction was already 97 percent completed and it is expected to be fully completed in 2017 (The Star, 2014). However, although the construction of the tunnel and dam has been completed, the KDP main objective of distributing raw water from Kelau in Pahang to Kuala Langat in Selangor is still in the pipeline. This is because the Langat 2 project is still on the negotiation table between the federal government and the Selangor State due to some political differences.

## **7.7 The KDP: Rent-seeking Activity**

This section discusses the factors that have driven the BHP implementation. It reveals the economic interest of the actors, in particular the economic benefits to the project proponents. Clearly, many parties involved have gained much benefit from the project implementation. It would be impossible to identify each and every benefit. Therefore, this section will briefly examine the main actors and the apparent benefits they could reap in general. According to Dhilon (2009, p. 38) the privatisation project was conducted outside the established normal routine and procedures such as open bidding; thus rent-seeking has flourished. Meanwhile, the COAC director, Colin Nicholas, argues that the project is yet another means for certain parties to benefit from the construction contracts (Chiew, 2008b).

To start with, the Japanese themselves received substantial benefits. The standard answer given by the Japanese MOFA about the reason for providing the loan to Malaysia is that Malaysia, being one of the Japan's neighbours, has maintained a good relationship with Japan in many sectors. Although Malaysia is considered one of the Asian miracle economies, the country still falls short in terms of social and economic aspects, and thus it deserved to be helped. More importantly, Malaysia was also hit by the Asian Financial Crisis in 1997–1998. Since Malaysia rejected assistance from the International Monetary Fund (IMF), it really needed Japan's help to carry out its economic reforms. The 'Look East Policy' of which Japan and South Korea's culture and knowledge is imitated, introduced by Mahathir Mohamad in 1981, has attracted strong interest from the Japanese government in helping Malaysia (JICA, 1999a).

However, digging into the motive further, the loans given were also driven by interests and motives related to benefits that the Japanese government could gain from her relationship with Malaysia (Furuoka, 2008, p. 3–4). In a general sense, Malaysia's position as one of the leading members of the ASEAN has allowed it to be a diplomatic partner to Japan in the region. Geographically, Malaysia is also strategically located in the Malacca Straits on the sea route to Middle Eastern Countries from where Japan imported much of its petroleum. Japan itself is the major foreign investor in Malaysia's FDI inflows after the USA. In view of these circumstances, Malaysia carries a strategic position in the eyes of Japan. Meanwhile, the Japan ODA aims to help developing and underdeveloped countries, in the form of grants

and loans (among other things).<sup>324</sup> However, there is a claim that Japan's ODA itself has been designed to safeguard Japan's own economic interests, rather than to facilitate development of the recipient countries.<sup>325</sup>

In the context of Malaysia, as rightly claimed by Aslam and Haflah Piei (1994, p. 39): *'...Japan extended the aid to Malaysia primarily to promote its own commercial and industrial interests. Aid is extended mainly to enrich the Japanese economy at the expense of Malaysia...Improving infrastructure and telecommunications in Malaysia eventually facilitates Japanese investments in Malaysia and brings back more returns to Japanese firms'*. In this regard, Jomo (1994, p. 192) has long observed that Japan's ODA tied aid has turned into profits for Japanese companies. Jomo opined that the system has operated in such a way that once a request for aid is accepted by the Government of Japan, the funds are provided and then allocated to the company, which inevitably awards the contract, all too often, to a Japanese company. This is because if the recipient country agrees to have a Japanese company carry out the project it is more likely that the Japanese government will agree to put up the funds for it. In other words, Japanese taxpayer money goes straight into the pockets of these companies, supposedly for the benefits of the third world (Ibid).

The Japanese government through Japan's ODA and its bank, the JBIC (renamed the JICA),<sup>326</sup> has given 384 million Yen as soft loans to finance a few projects under the New Miyazawa's Rescue package (MOFA, 1998; JICA, 1999b). It is important to note that the KDP loan package funded by the JICA was granted as part of the whole Rescue Package under 'the New Miyazawa Initiative' which also funds seven other projects<sup>327</sup> It is worth mentioning that the total cost for the KDP is RM (billion) 9 (USD 2.88 Billion), thus the JICA

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<sup>324</sup>ODA is grants and loans that are:

- i. provided by official agencies, including state and local governments, or by their executive agencies; and
- ii. each transaction of which:
  - a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and
  - b) is concessional in character and conveys a grant element of at least 25 percent (calculated at a rate of discount of 10 percent) (OECD, 2015).

<sup>325</sup> Kim (2010) also highlighted the same observation on the JICA aid to the Philippines. Hiding under the pretext of 'greening', the author suggests that the vested interests of elites of both Japan and the Philippines have compromised the EIA for the project.

<sup>326</sup> The agency was established in 1999 when two large Japanese financial institutions, namely the Japan Export-Import Bank (JEXIM) and the Overseas Economic Cooperation Fund (OECF) were merged.

<sup>327</sup> The New Miyazawa's Initiative Package for Malaysia involved the following projects (in USD Million): i) the Look East Policy (121); ii) higher education loan fund (71); iii) the Beris Dam in Sik Kedah (84); iv) the Pahang-Selangor Transfer project (8); v) the Port Dickson Plant Rehabilitation (426); vi) University Malaysia of Sarawak (161); and, vii) small and medium Industries Fund (141). Total cost is 1.01 billion (JICA, 1999b; Furuoka, 2011, p. 36).

loan covers a substantial part of the project cost. The details of the loan and terms are shown in Table 7.6. The loan was to be repaid over 40 years, with an annual interest rate of 0.95 percent (Furuoka, 2011, p. 34).

**Table 7.6:** Loan amount and terms

<b>Project Name</b>	<b>Amount (Mil. Yen)</b>	<b>Interest Rate (% per annum)</b>	<b>Repayment Period/Grace Period (Years)</b>	<b>Procurement</b>
Pahang–Selangor Raw Water Transfer Project	82,040	0.95	40/10	General Untied

Source: JICA, 1999b; JICA, 2005

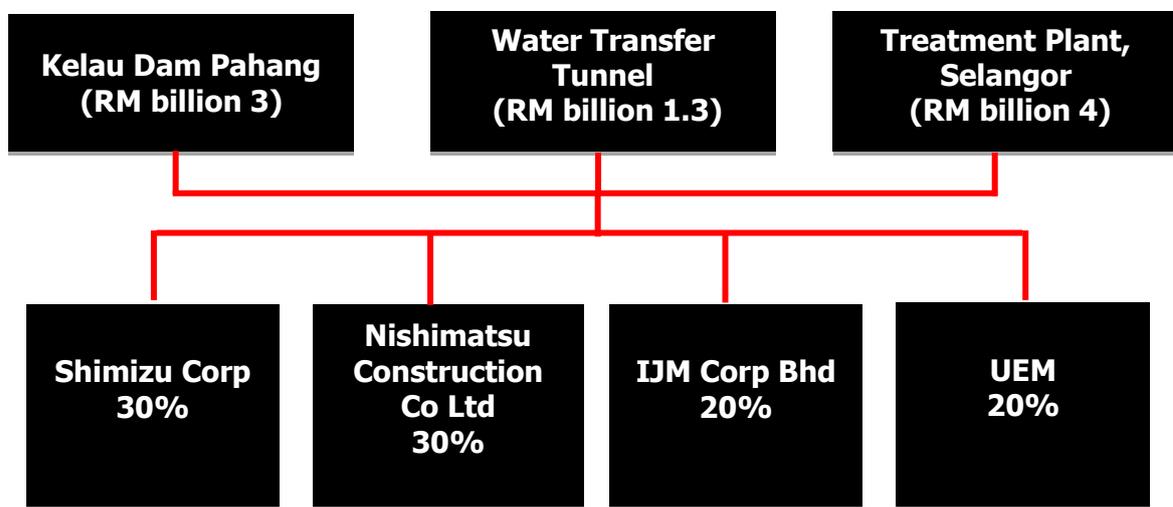
Note: Yen (ODA) Loan terms

The Japanese government presence in the Malaysian economy is not new. Industrialisation in Malaysia has been driven, among other things, by Japanese investors. As of 2007, the total of Japan’s ODA disbursement to Malaysia was 2.39 million Yen (MOFA, 2007). In 2004, Malaysia was the fourth biggest recipient country of Japan's ODA and received USD 256 million worth of Japanese bilateral aid, of which USD 210 million was given as bilateral loans. A total of 16 packages of ODA loans was provided to Malaysia, starting with the first loan project in 1969. Until today, the cumulative total of the ODA loan commitments to Malaysia now stands at 708.18 billion Yen over 69 projects.

The cumulative total of ODA loan commitments to Malaysia had been the sixth largest among the recipient countries of ODA loans (Ibid). Moreover, the funding was given in the form of loans rather than grants, thus allowing Japan to be a debt collector rather than a grant provider. In order to illustrate how these aids are actually burdening the recipient countries, Malaysia for example, it was found that between 1995 to 2000 Japan provided US 426.21 million to Malaysia as bilateral grants. During the same period, Malaysia’s repayment of loans to Japan amounted to USD 810.91 million, which was double the amount of aid obtained.

The second party that benefited from the Japanese loan for the KDP was the contractors – the main contractor for the transfer tunnel was a consortium of contractors from Japan, namely Shimizu Corp and Nishimatsu Construction Co Ltd – and each obtained a 30 percent interest thus forming a majority of 60 percent (see Figure 7.4). The contractors from Malaysia, the IJM Corp Bhd and the UEM controlled only the remaining balance of 40 percent – 20 percent each.

The selection of Nishimitsu raised doubts because the company was facing a bribe investigation in Japan and had previously been accused of negligence during works in Singapore. Tokyo prosecutors were looking into allegations involving a slush-fund to fuel questionable political donations. This led to the recent resignation of the company president, Tadashi Ishibashi, and the opposition leader in the Diet, Ichiro Ozawa. In Singapore, a public inquiry was held in 2005 to look into the collapse of the Nicoll Highway, and Nishimitsu was accused of flouting the laws involving safety standards (Ong, 2009). In addition, the construction cost of the KDP might not be as low as the JICA claimed, considering the major jobs had been bid for exclusively by Japanese contractors rather than through an open bid by qualified Malaysian contractors (Tan, 2009; Ting, 2006).



Source: Tan, 2009

**Figure 7.4:** Share division among the contractors in the KDP

The selection of the contractors also raised doubts. Although the project tender underwent open tender instead of direct appointment by the Malaysian EPU, the Japanese contractors set the conditions<sup>328</sup>. It thus compromised the integrity of the tender given and would likely increase the construction cost of the KDP (Ting, 2006; TMI, 2009; Ong, 2009; Tan, 2009).<sup>329</sup> It is understood that the Malaysian government pre-qualified only three consortiums to bid for the tunnel contract, and all three were led by Japanese contractors. Both Japanese contractors won the contract through the lowest bid, as the project was designed for them.

<sup>328</sup> On the other hand, Tokyo views such approach as a way to ensure the funded projects would complete on time, uniformly to relatively high Japanese standards and within budget. Ideally, it was also designed to shield against politicised contracting and rent-seeking controversies (Handley, 1997, p. 208).

<sup>329</sup> However, the MEGTW Minister, Peter Chin refuted such claims. He was recorded as saying that there was no issue with Nishimitsu as long as the company has the ability to deliver. The corruption allegation also occurred in other countries, which was outside of Malaysia's concern. He also stressed that there was no conditional bid set by the Japanese contractors on the KDP tender (Ong, 2009).

The JICA had influenced the choice of bidders for the contract and stressed that the contracts were to be awarded to the lowest bidder since it was offered to the Japanese contractors (Ting, 2006; Ong, 2009; Tan, 2009).

Relating to this, there was also a conflict between Malaysia and the JICA regarding awarding the tender as the Japanese contractors, namely Shimitsu and Nishitmsu, insisted that they should be given priority in the project tender since JICA provided the funding (Tan, 2009; Ting, 2006). Japan's engineering consultant, Tokyo Electric Power Services Co Ltd in association with SMEC International Pty Ltd SMHB Sdn Bhd (TEPSCO), had also provided consultancy work on the KDP's engineering aspect. UMNO, on the other hand, uses its domination in politics in order to command the Malaysian corporate economy to support party activities as well as to accommodate the interests of the elite. While the party's involvement in business has existed since the establishment of the party itself in 1946, it grew significantly during Mahathir regime. UEM is a GLC and a leading conglomerate in various sectors. The company is a wholly owned subsidiary of Khazanah Nasional Berhad. The UEM is known as a proxy for UMNO, or to be precise an UMNO-linked company (Gomez, 2002, p. 97). The company was given preferential treatment in the sense that many privatisation projects have been awarded to this company, including the North–South Highway Project (PLUS) (Ibid). According to Gomez (1994, p. 18) UEM is an UMNO-linked company, through its share controlled by Hati Budi Sdn Bhd, an UMNO holding<sup>330</sup>.

The Coalition against Water Privatisation (CAWP) coordinator Charles Santiago has alleged that the politically-linked contractors were behind the federal government rush to complete the KDP. He was quoted as saying: *'The contractors cannot do their jobs because the project is funded partly by the Japanese Overseas Development Aid but the Japanese government will not release the funding unless they see progress in the work'* (Malaysiakini, 2010b).

In order to understand the rent-seeking element in the KDP further, it is necessary for us to conduct a brief review on the Water Privatization Programme (WPP) in Selangor.<sup>331</sup> Indeed, it has a strong connection to water governance in Malaysia where water industry players are

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<sup>330</sup> In a recent development, Halim Saad, the once Malaysian main business figure in Malaysia's corporate world, is an example of how UMNO used his capacity as UMNO's nominee around Renong and its associated concern UEM (Chooi, 2013; Wain, 2009, p. 140). Gomez (2002, p. 87) revealed that Halim, a Daim protégé, publicly admitted in 1988 that he held UMNO's vast corporate holding in trust for the party.

<sup>331</sup> Also known as the Water Restructuring Programme (WPP). The reason why this rent-seeking element is extended beyond construction activities is the strong relationship between the KDP and the WPP.

expected to gain much from the project.<sup>332</sup> The issue of the KDP has been manipulated by the Selangor State in order to pressure the federal government to restructure a better water tariff in Selangor. The idea was mooted by the previous state government, which was held by NF or to be precise UMNO (before the general election in 2008). The Selangor State claimed that the privatisation of the water industry in Selangor could help in ensuring the efficiency of water usage. Thus, it could bring about sustainability in water supply and demand. Among the measures that will be implemented in the WPP in Selangor is the restructuring of the water tariff, a move that will give strong benefits to the politically connected company. Among the well-known UMNO-linked companies in the water industry in Selangor is Syarikat Bekalan Air Selangor (SYABAS).

The conflict on the water industry between the federal government and the Selangor state has revolved around the state's demands that water business must be reverted to the state where the state can ensure that people will get a better deal, rather than it is being handled by the water industry players whose objective is to increase efficiency and then asking a higher price for the result. At the same time, the Selangor State argues that the KDP, or to be more specific the construction of the Langat 2 project, need not be rushed. To push the federal government to the negotiation table, the Selangor government wanted the federal government to negotiate a better water tariff formula before the former could agree on the construction of the Langat 2.

At the time of writing, the state water distribution is handled by SYABAS, which is the main water provider for Selangor – PuncakNiaga and SYABAS are owned by Razali Ismail, an UMNO proxy who is assumed to gain the most benefit from the water restructuring programme. PuncakNiaga was established under the leadership of Muhamad Taib, the then Selangor CM before Khir Toyo took over. Razali Ismail is known as close associate of Muhamad Taib. According to the Political Secretary of the present CM of Selangor, Faekah Husin, *'The Federal Government must remember that the problems over water in Selangor began when SYABAS was allowed to raise water tariffs without considering the needs of the public who were suffering from the economic crises.* Faekah has described SYABAS as a UMNO crony company and suggested that the deal did not take the public's interest into account. She further explained that *'the NF government that was led by Khir Toyo signed a concession agreement with SYABAS which allowed rates to increase in 2009 (37 percent),*

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<sup>332</sup> In a study on the water privatisation in Selangor, Tan (2015) found that the privatisation provides rent-seeking for Bumiputera contractors who possess little know-how or entrepreneurial abilities.

*2012 (25 percent), 2015 (20 percent), 2018 (10 percent) and 2021 (5 percent)*' (Malaysiakini, 2010a).

On the other hand, the Malaysia Trade Union Congress (MTUC) President, Syed Sharir Syed Mahmud, queried why the federal government allowed the water tariff in Selangor to be hiked as requested by SYABAS despite the fact that the government had already given a grant and loan amounting to RM (billion) 3 to the company. He also questioned why the government has to use public money in order to subsidise SYABAS when its parent company has a pre-tax profit of RM (million) 100. According to the MTUC the government has made a promise that privatisation should be cost efficient. Instead, the burden has been transferred to the public (BERNAMA, 2002).

To sum up, one thing is for sure: the need for the KDP has been motivated by rent-seeking activities. Nicholas et al. (2010, p. 117) claimed that the project was driven by financial interests of the Japanese contractors and business persons who had close business links with the corridors of power in Japan as well as to UMNO in Malaysia.

## **7.8 The KDP's EIA: Incompliance and Irregularities**

Like in the BHP case study, this section examines the way the KDP's EIA was conducted. This research posits that the credibility of the EIA can be investigated through the way it has been treated or the extent to which its rules have been abided to by the actors. To guide our discussion, Sections 7.8.1–7.8.4 discuss the irregularities concerning the EIA procedures, while Section 7.8.5 concerns EIA reliability, specifically on the contents and data.

### **7.8.1 Approval of the EIA Study First, the Request for the Additional Study Later**

In both principle and practice, the complete set of EIA report studies need to be submitted in order for the DOE to make the decision whether to grant approval or refusal for the project. However, this was not the case for the KDP. Even though the EIA approval was granted in 2001, due to the criticisms by the public, the government was pressured to conduct an additional EIA study. According to Omar (2000), the inadequacy of the EIA study had been acknowledged by the DOE itself. The DOE thus carried out the additional EIA

study on the flora and fauna as well as the socio-economic study on the Orang Asli Sungai Temir and the host community in the Lurah Bilut FELDA scheme. This requirement clearly indicated that there was a grave adequacy in the previous EIA study prepared by the project proponent. This showed that this type of inadequate work would not have occurred if the DOE checked the contents of the EIA before sanctioning it for public comments and review by the Review Panel Board (that passed or rejected the EIA).

In addition, the more significant anomaly on the EIA report occurred when NGOs were invited to give comments on the KDP in 2002 when the DEIA reports had already been approved in 2000. The invited NGOs (COAC, CAP and SOS Selangor) suspected that the meeting was a public relations exercise for the expected funder of the project, the JBIC, also present. It was a JBIC requirement that a voice be given to any interested party for any project they funded (Omar, 2002b).

### **7.8.2 Public Participation or Public Relations?**

According to the COAC's Coordinator, Collin Nicholas, the public participation process for the KDP was seen to be seeking compliance rather than seeking inputs (Oral Conservation with Collin Nicholas, a Coordinator for the COAC, in Subang Jaya, Selangor on 25<sup>th</sup> October 2011). Although access to information on the KDP was not as restrictive as in the BHP case, the project information disclosure issue still existed and was not given serious attention. To demonstrate this issue, for example, the Orang Asli only knew about the project after the project was made public in the media and after the Land Survey and District (LSD) officers came to their village to do the surveying work, indicating that they were given limited information about the project (High Court of Malaya, 2007a). The JICA demonstrated a similar attitude. It failed to release adequate information to the affected communities and to the public, which was clearly against the interests of public accountability (Imhof, 2003).

It is interesting for this research study to quote the written judgement by the High Court of Malaya Judge, Mohd Zawawi Salleh on the issue of public participation in the KDP as stated in the Order 1987, and specifically Section 34A, when he said: '*Certainly, there is no provision under Section 34A that the report must be supplied to the public and that failure to do so will nullify the whole activity*' (High Court of Malaya, 2007b, p. 10). In other words, the judge had asserted that despite clear recognition of public participation in the EIA process, there was no provision in the Order 1987 that provided a legal obligation for public

participation. This implied that the EIA Handbook did not have any legal force, as shown in the concluding remarks: '*...Non-compliance with the Handbook would not render the project to be nullified which will attract the order of a declaration*' (High Court of Malaya, 2007b, p. 1).

### **7.8.3 The Project Consent**

The elements of FPIC are clearly stated the United Nations Declaration of Rights of the Indigenous Peoples (UNDRIP)<sup>333</sup>. The principles have been applied by many organisations on projects dealing with indigenous people. However, in the case of the Orang Asli in the KDP, these cardinal principles were not fully observed for this project. Issues have been raised through the way the EIA was carried out, such as time allocation for the study and report review, technicality, and the use of the English language for the EIA reports.

The government's attitude could be examined by reviewing the project chronology. The first news about the project was in 1999, by which time project planning had commenced and the PEIA for the project had already been approved (DOE, 2000). In this regard, it is interesting to highlight the views of NGOs on public participation in Malaysia. For example, according to the COAC Coordinator, Collin Nicholas, the public participation process for the KDP is best defined as seeking compliance (Oral Conversation with Collin Nicholas, a Coordinator for the COAC, in Subang Jaya, Selangor on 25<sup>th</sup> October 2011; see also Nicholas, 2010b). In addition, the PAP brought the case to court and this action indicated their rejection to the project.

However, the most disturbing thing was the attitude of the state and project consultants who were only interested in getting a 'yes' answer rather than accepting the local people's self-determination – in this case a 'no' answer to the project. This was particularly demonstrated by the contradiction that resulted from an agreement given by Batin Cham Beng during a stakeholders' meeting hosted by the EPU in 2002 and his frank answer when asked privately (Nicholas, 1997; Nicholas et al., 2010). Not only was Batin Cham Beng the only leader of Orang Asli consulted for the project, other leaders such as 'Menteri' who were

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<sup>333</sup> The UNDRIP is a declaration adopted by the United Nations (UN) on September 13, 2007. The declaration intends to provide '*the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world*' (see Article 43 of the declaration). It contains 24 principles and 46 articles that aim to be a customary international law to safeguard the rights of indigenous people to maintain their cultures, institutions and spiritual traditions (UNDRIP, 2008).

against the project were deliberately ignored. This was clearly against the spirit of consensus. Moreover, the answers given were obtained through pressure and deceitful methods (Ibid).

#### **7.8.4 The EIA Study Done in Haste**

Other concerns on the EIA report related to how certain sectors of the sectorial EIA studies had been completed in a hasty manner. For example, according to Omar (2000) the fauna study for the impact on animals was done over a mere two week period where a normal EIA study would have taken a few years. Omar also stressed that an EIA study should involve a two year minimum study on wildlife, another one year study on fishery, and yet another one year study on the flora before submitting the EIA. It was found that the flora study for the KDP was done on a one hectare plot only. In a normal case, the study must cover 5 percent of an inundated area (Ibid).

#### **7.8.5 Reliability of the Data in the EIA Report Study: The Anomalies**

This section concerns the issue related to EIA in relation to which the rationale of the project will be examined. Firstly, the water projection model was used by the EIA in order to compare the data taken from other studies. The second issue in this section is the way public participation was conducted.

The first flaw in the KDP related to the rationale and need for the project. This study examines the serious flaws in the water projection model. Since the proponents of the project strongly argued that the KDP was very much needed because of the prediction of water shortage in Selangor and Kuala Lumpur by 2012, the issue became a central topic for discussion. As recorded in the DEIA main report for the KDP, the need for the project relied strongly on the projection made by the National Water Resources Study (NWRS) that had been commissioned in 2000. The Coalition for Sustainable Water Management (CSWM) argued that NWRS projection model was used to justify the KDP and all other water supply projects that could have arisen from the recommendations. The CSWM also stated that a thorough review of the projected water demands and population growth figures in the NWRS report should be conducted due to the enormous financial cost required to implement the water transfer project and the substantial environmental impacts arising from its implementation.

In addition, the CSWM was of the opinion that the project should be stopped pending a review. This call was based on the following reasons (among others): i) the use of the questionable per capita water demand figures in the NWRS report; and, ii) the need for the proposed project to adopt the 'Climate Change Scenarios' (MENGGO, 2009). Therefore, to the CSWM, the 'Design Guidelines for Water Supply Systems' as published by the Malaysian Water Association (MWA) in 1994 was seen to be the most recommended method for estimating water demands in the country. The CSWM also argued that the NWRS preferred to use methods that excessively inflated the per capita water consumption figures in order to justify the need for the KDP (Ibid). According to the Chairman of the CSWM, Charles Santiago, the reliability of the projection was questionable since the three consultants who did the study were also interested parties in the water industry. As such, their professionalism and independence in providing the figures was called into question because of their interests, as they would gain benefit from the KDP (Santiago, 2010b). He went on to stress that the 'scare tactic' used in this case aimed to justify the project rationale:

*Both reports show different data because the methodologies used to study the matter are different from one another. The MWA report is more accurate compared to the other as it was produced by experts in the Works Ministry. The NWRS report was prepared by Ranhill Bersekutu Sdn Bhd, SMH Sdn Bhd and Jurutera Perunding Zaaba Sdn Bhd. These three companies have business interests in the water industry and we can question the report as it involves conflict of interests and the methodology used by the NRWS is highly speculative (Santiago, 2010b).*

Santiago also urged the federal government to come up with a research paper on the impact of climate change in order to substantiate claims that Selangor was facing water shortage and rationing. Santiago urged that *'Without proper studies, the Federal government cannot push through the plan to source water from the Kelau Dam in Raub, Pahang as it is not a viable answer to ensure there is enough water'* (The Star, 2010).

The SOS Selangor and other concerned NGOs such as FOE Malaysia (locally known as SAM) and CAP also questioned the rationality of the projection of the water crisis in Selangor. According to them, there was no justification for proceeding with the KDP, which was clearly too expensive. The project could cause major environmental and social impacts since the EIA study was not adequately considered and addressed. In addition, the effect of the project would extend beyond monetary value because it would result in the displacement of

the Orang Asli and the destruction of many species of plants and wildlife (The Star, 2002b; Hui and Antares, 2005).

When asked about the need for the KDP, Collin Nicholas made the following interesting statement:

*I don't deny the fact that there is the need for securing water supply in Selangor, but the projection of water shortage in 2010 as suggested in the EIA report is exaggerated. It was unjustified. Moreover, Perak has offered to provide raw water which is less costly and this can be less damaging environmentally and socially since it does not need a water tunnel. However, the government seems uninterested. This is why dollars and cents is the main intention here. (Oral Conversation with Collin Nicholas, a Coordinator for the COAC, in Subang Jaya, Selangor on 25<sup>th</sup> October 2011).*

After having reviewed the EIA practice from the secondary data, it is important for this research to divert attention to the socio-economic aspects of the Orang Asli at the RSLB. Therefore, a brief explanation on the administrative profile of the new resettlement scheme as well as the socio-economic profile of the Orang Asli will be discussed.

## **7.9 The Resettlement Scheme of Lurah Bilut (RSLB): Administrative, People and the Socio-economic Profile**

This section provides a background on the Orang Asli Sungai Temir Village, the new RSLB and the socio-economic characteristics of the resettlers. This discussion aims to give context on the study area, people involved and their socio-economic profile.

### **7.9.1 Administrative Profile**

Table 7.7 shows the basic administrative data of the RSLB. It covers an area of 275,000 hectares while the specific area of the RSSA is about 600 acres. The RSLB is located in the Raub District. In terms of land title, the Orang Asli families were each given individual land titles. The crop cultivated here is of commercial value only, namely palm oil. Although the traditional structure of the Orang Asli still exists, the sole and only functioning position of

authority is the 'Batin'. Other traditional titles such as 'Menteri' were found to exist no longer. This has been dominantly replaced by the VDSC. Unlike the Sarawak Orang Ulu's longhouse, which is a block or apartment of 16 units (houses), the Orang Asli's housing comprises individual single storey unit (a unit for each household). Figure 7.5 and Figure 7.6 show the panoramic view of the Orang Asli Sungai Temir Village while Figure 7.7 and Figure 7.8 show the panoramic view of the RSLB and farm lot.

**Table 7.7:** Administrative profile of the RSLB

<b>District</b>	Raub
<b>Area of the RSLB</b>	600 acres
<b>Land title</b>	Individual land title
<b>Administrators (at the resettlement level)</b>	<ul style="list-style-type: none"> <li>• Batin – Cham Beng (traditional)</li> <li>• Chairman of the VDSC (Esof Chin) (present structure)</li> </ul>

Source: Oral Conservation with Cham Beng, a Batin, at RSLB on 24<sup>th</sup> November 2012; Oral Conservation with Esof Chin, Chairman of the VDSC, at the RSLB on 3<sup>rd</sup> December 2012



**Figure 7.5:** The signage giving directions to the Orang Asli Sungai Temir Village



**Figure 7.6:** The main (and sole) entrance to the Orang Asli Sungai Temir Village



**Figure 7.7:** Palm oil plot provided to the Orang Asli at the RSLB



**Figure 7.8:** Modern housing area at the RSLB

### 7.9.2 The Orang Asli of the Sungai Temir Village

This sub-section describes the socio-economic profile of the Orang Asli at the Sungai Temir Village. The data presented here was taken solely from the secondary data and, as previously mentioned, the data presented here concerns the Orang Asli's RSLB only. However, in view of the relocation of the Orang Asli from the Sungai Temir Village to the RSLB carried out in January 2011<sup>334</sup>, the discussion on the socio-economic profile of the Orang Asli remaining in the Sungai Temir Village is considered part of the discussion of the Orang Asli at the RSLB in this research study.

The total number of heads of family during the study by the DOA and MEGTW in 2012 was 84<sup>335</sup> but this increased to 137 just before the resettlement commenced in 2011 (DOA, 2012).<sup>336</sup> Out of that, at least 17 families refused to move out and were adamant about staying in the Sungai Temir Village (Oral Conservation with Bedu An, a former 'Menteri', at the Sungai Temir Village on 3<sup>rd</sup> December 2012; Oral Conservation with Mohamad Ainol Johari, a DOA Officer, at DOA Raub on 12<sup>th</sup> December 2012). Initially the KDP involved the relocation of two Orang Asli sub-groups – the Orang Asli Temuan,<sup>337</sup> a sub-group from the Sungai Temir Village, and the Orang Asli Che Wong sub-group<sup>338</sup> from Bukit Lanchar (a village nearby the Sungai Temir Village). However, due to changes in the dam level from 85m above sea level to 84m above sea level, and together with the persistent refusal of the Che Wong to relocate, this community was allowed to maintain their presence at Bukit Lanchar (Edwards, 2007; Oral Conversation with Collin Nicholas, a Coordinator for the COAC, in Subang Jaya, Selangor on 25<sup>th</sup> October 2011).<sup>339</sup>

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<sup>334</sup> It is important to mention at this stage that the relocation for the KDP only involved the Orang Asli of the Sungai Temir Village and did not to include the FELDA resettlers as was reported in newspapers, books and some articles (Oral Conservation with Romziah Azit, Project Assistant Director on 18<sup>th</sup> August 2011, in Kelau, Raub, Pahang; Oral Conservation with Fadzli Mat Yassis, an Officer from the State Economic Planning Unit (SEPU) Pahang at Wisma Seri Pahang, Kuantan Pahang, on 3<sup>rd</sup> July, 2011; site visit to the new resettlement scheme of the Orang Asli at Lurah Bilut, Raub, Pahang in May 2011 to July 2012).

<sup>335</sup> The total number of Orang Asli heads of family is subject to dispute. For example, some official documents stated 83 (MOW, 2003, p. 4–10) while others recorded 84 (MEGTW, 2010, p. 10).

<sup>336</sup> However, some of the new families (the additional 57 heads of family) simply became new families (got married) just before the Orang Asli Sungai Temir relocation exercise took place. This was because they wanted to get a house and other forms of compensation (Oral Conservation with Romziah Azit, Project Assistant Director from MEGTW, on 18<sup>th</sup> August 2011). On the other hand, according to the Orang Asli Sungai Temir version, those additional heads of family were also because of those who had stayed outside of the village but still regarded Sungai Temir Village as their permanent village. Therefore, the number of the heads of family increased (Oral Conservation with Cham Beng, a Batin at the RSLB, on 24<sup>th</sup> November 2012).

<sup>337</sup> Another sub-group who had been living with the Temuan in the Sungai Temir Village is the sub-group of Che Wong.

<sup>338</sup> It is a section of the Senoi sub-group and exists in Pahang only.

<sup>339</sup> The decision not to relocate was made by the Che Wong's Elderly Committee (Edwards, 2007).

Out of the 84 families from the Orang Asli of the Sungai Temir Village, there were 17 families who refused to resettle and were adamant about remaining at the same village.<sup>340</sup> The total population of the Orang Asli Sungai Temir Village in 2012 was 381 from 84 of families. The Sungai Temir Village covered an area of 252 acres (102.4 hectares). The KDP would inundate about 3, 047 hectares which mainly involved forest areas of the Lakum Forest Reserve (16, 800 hectares). The Lakum Forest Reserve was a roaming area for the Orang Asli Sungai Temir (DOE, 2000, p. 2–22). Table 7.8 shows the data for the Orang Asli at the Sungai Temir Village and the RSLB in Raub, Pahang.

**Table 7.8:** Data for the Orang Asli at the Sungai Temir Village and the RSLB, Raub, Pahang in 2012

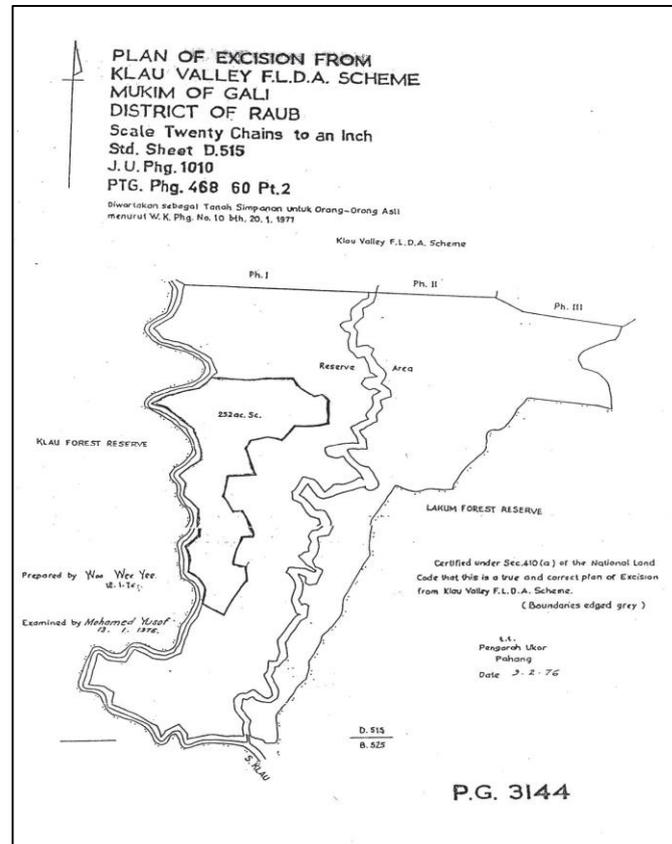
	<b>Sungai Temir Village</b>	<b>RSLB</b>
<b>Total population</b>	381	330
<b>Types of land title</b>	Sungai Temir Orang Asli Reserve	Individual land titled (as stated in the land grant)
<b>Location</b>	Ulu Gali sub-district in Raub District, Pahang	Ulu Gali sub-district in Raub District, Pahang
<b>Ethnic</b>	Mainly Temuan	Mainly Temuan
<b>Area</b>	252 acres	600 acres
<b>Village establishment</b>	20th century (at least by 1977)	23 <sup>rd</sup> January 2011
<b>Gazetted date</b>	20 <sup>th</sup> January 1977	In the process
<b>De-gazetted date</b>	13 <sup>th</sup> May 2009 (now reverted to state land)	–
<b>Batin</b>	Cham Beng	Cham Beng (62 years old)
<b>Menteri</b>	Bedu An	–

Source: MEGTW, 2011; Oral Conservation with Fadzli Mat Yassis, an officer from the SEPU Pahang, at Wisma Seri Pahang, Kuantan Pahang; Oral Conservation with Bedu An, a former 'Menteri', at Sungai Temir Village on 3<sup>rd</sup> December 2012; Oral Conservation with Mohamad Ainol Johari, a DOA Officer, at DOA Raub on 12<sup>th</sup> December 2012

The Orang Asli Temuan Village and the current RSLB are located in the Ulu Gali Sub-district, one of the sub-districts in Raub, Pahang. Sungai Temir Village is adjacent to the FELDA Krau Scheme in Raub, Pahang while the current RSLB is nearby to the Lurah Bilut FELDA scheme. The Orang Asli Temuan lived at the Sungai Temir Village, the NCL, when the land was gazetted as the Orang Asli Reserve Land (communal land) in 1977. Therefore, land titles at the Sungai Temir were gazetted under the Orang Asli Reserve where there was no individual land title (DOE, 2000, p. 21). The main land laws applied in the acquisition of the Orang Asli

<sup>340</sup> However, according to the DOA officer, the Orang Asli Temuan who refused to relocate will be relocated somewhere near to Bukit Lanjar. This is because the current Orang Asli Sungai Temir Village land has reverted to state land (Oral Conversation with Sarjie Bakam, Assistant Director of Research and Development of DOA on 2<sup>nd</sup> November 2011).

Sungai Temir land for the KDP: the Land Acquisition Act 1960 and the Aboriginal People Act 1954 (namely APA). Figure 7.9 shows the map of the Sungai Temir Village Reserve Land.



Source: DOE, 2000, p. 10–17

**Figure 7.9:** State Government Gazette No. 10, Plan No. P.G 3144, on land reserve for public use

Following the approval of the DEIA by the federal DOE on 24<sup>th</sup> February 2001, the Pahang government de-gazetted the Orang Asli Reserve Land for the purpose of the KDP. Upon de-gazetting, the Orang Asli Temuan from the Sungai Temir Village were asked to resettle into a new resettlement scheme at Lurah Billut, which is 40 kilometres away from their previous settlement. In terms of the compensation, the affected Orang Asli have been compensated as shown in Table 7.9.

**Table 7.9:** Types of compensation given by the government to the PAP for the KDP

<b>Types</b>	<b>Notes</b>
Land	Five acres of land that has already been cultivated with palm oil and one acre of fruit orchard.
House	A house with a ¼ acre land.
Income support programme during the stabilisation for 48 months	RM 638.00/month per household.
Compensation on the loss of assets and properties	Depending on the number, quality, location and other determinant criteria.

Source: MEGTW, 2010

### **7.9.3 The Basic Socio-economic Data for the Orang Asli of the Sungai Temir Village**

In order to understand the socio-economic context of the PAP, it is important for this research study to zoom in to the socio-economic status of the Orang Asli of the Sungai Temir Village. It is hoped this will allow the readers to gain a wider perspective of the study area particularly in relation to the socio-economic aspects.

#### **7.9.3.1 The Economic Structure of the Orang Asli in Sungai Temir Village**

The economy of the Orang Asli in Sungai Temir Village has been land-based activity. There are three main economies indicated in the distribution of the land use in the Sungai Temir Village, namely smallholdings of rubber and palm oil (150 acres); fruit orchards (35 acres); and multiple crops (12 acres) (see Table 7.10).

**Table 7.10:** The economy by land use category in Sungai Temir Village

<b>Economic Development</b>	<b>Area (acres)</b>
Small holdings of rubber and palm oil	150
Fruit orchards	35
Multiple crops	12

Source: MEGTW, 2010

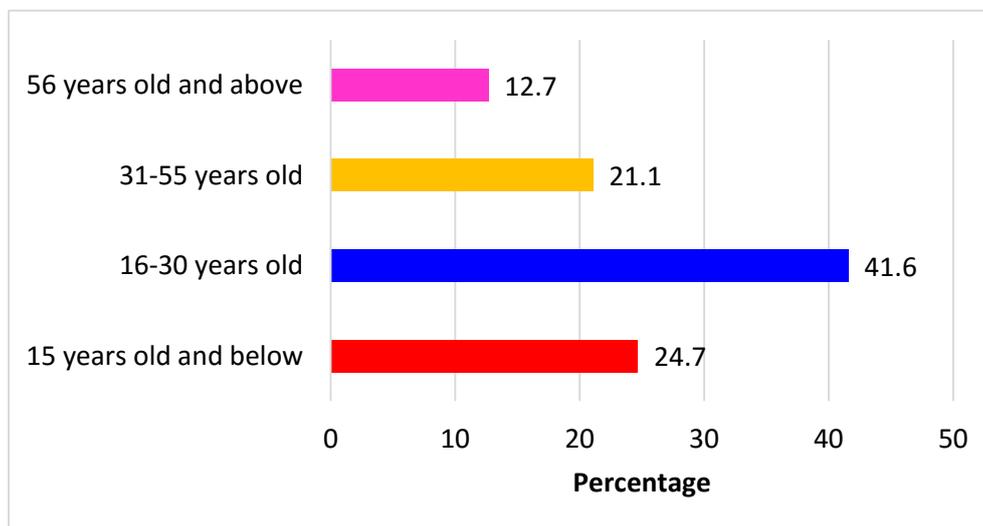
### 7.9.3.2 The Age Structure of the Orang Asli at the Sungai Temir Village

Table 7.11 and Figure 7.10 illustrate the age structure of the Orang Asli of the Sungai Temir Village. It was a loose category as it has only four age structures. In general, it is obvious that the majority of the population in the study area was from the younger age ranges (below 30 years old). It can be seen that the majority of the Orang Asli in the Sungai Temir Village was in the age bracket of 16 to 30 years old (41.6%). This was followed by those aged 15 years old and below (24.7%), while those from 31 to 55 years represented 21.1 percent. The smallest group, at 12.7 percent, was 56 years old and above.

**Table 7.11:** Age structure of the Orang Asli at the Sungai Temir Village in 2011

Age Structure	Total	Percentage (%)
15 years old and below	82	24.7
16–30 years old	138	41.6
31–55 years old	70	21.1
56 years old and above	42	12.7
<b>Total</b>	<b>332</b>	<b>100</b>

Source: DOA, 2012



**Figure 7.10:** Ages structure of the Orang Asli at the Sungai Temir Village in 2011

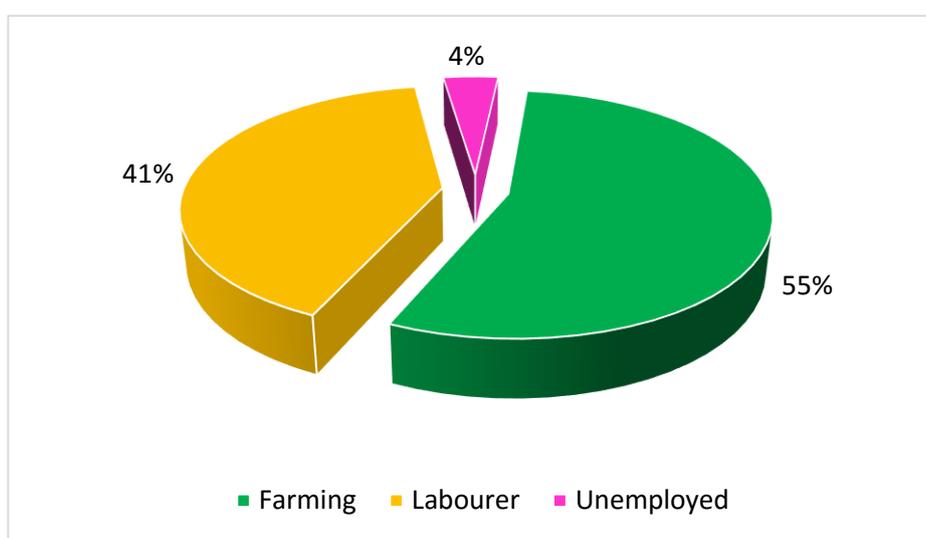
### 7.9.3.3 The Occupational Structure of the Orang Asli Sungai Temir Village

To prove that Orang Asli's dependency on land was high, Table 7.12 and Figure 7.11 provide the employment structures of the Orang Asli at the Sungai Temir Village. It was found that the main occupation of the Orang Asli in the study area was farming (55%). This was followed by working with Chinese entrepreneurs as labourers at the Chinese farms or acting as intermediaries between the Orang Asli and outsiders to collect and sell forest products (41%). Lastly, a mere 4 percent were found to be unemployed.<sup>341</sup>

**Table 7.12:** Employment structure percentages for the Orang Asli at the Sungai Temir Village

Types of Employment	Percentage (%)
Farming	55
Labourer	41
Unemployed	4
<b>Total</b>	<b>100</b>

Source: MEGTW, 2010, p. 24



**Figure 7.11:** Employment structure of the Orang Asli at the Sungai Temir Village

<sup>341</sup> Although they were classified as 'unemployed,' according to Batin Cham Beng those who were unemployed were actually catching and selling frogs, selling forest products such as rattan, scented wood, herbs, etc. (Oral Conservation with Cham Beng, a Batin at RSLB on 24<sup>th</sup> November 2012; see also MOW, 2003, p. 4-10).

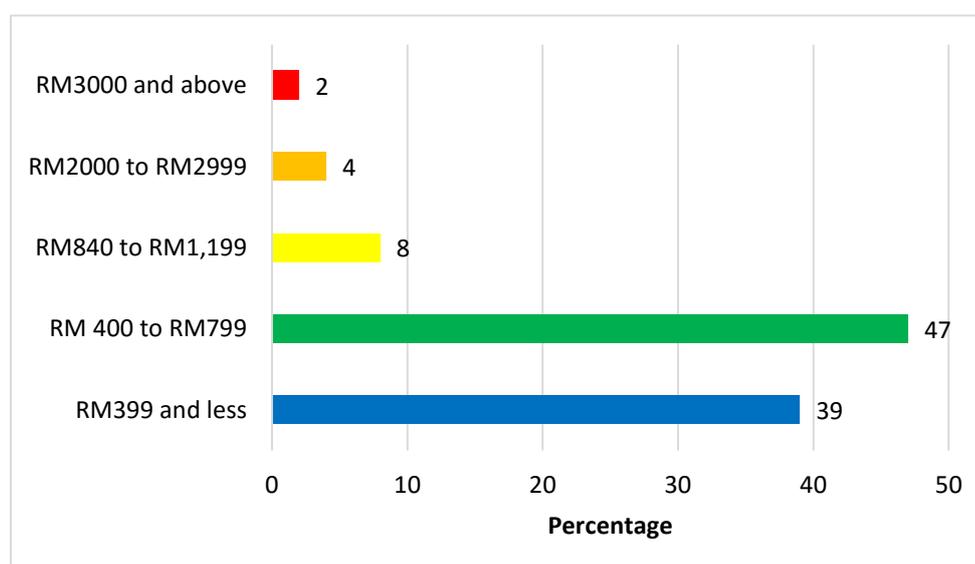
### 7.9.3.4 The Income Level<sup>342</sup> of the Orang Asli Sungai Temir Village<sup>343</sup>

Based on Table 7.13 and Figure 7.12, this study found that the majority of the population (47%) received a monthly income between RM 400.00 (USD 128.18) and RM 799.00 (USD 256.03) per month followed closely by those who earned between RM 399.00 (USD 127.86) or less (39%). The third most common income level (8%) was a monthly income between RM 840.00 (USD 269.17) and RM 1,199.00 (USD 384.21), followed by those who earned between RM 2, 000.00 (USD 640.88) and RM 3, 000.00 (USD 961.332) (4%).

**Table 7.13:** Income percentages for the Orang Asli of the Sungai Temir Village

<b>Monthly Income Average</b>	<b>Percentage (%)</b>
RM399 and less	39
RM400 to RM799	47
RM840 to RM1,199	8
RM2000 to RM2999	4
RM3000 and above	2
<b>Total</b>	<b>100.0</b>

Source: MEGTW, 2010, p. 24



**Figure 7.12:** Monthly income percentages for the Orang Asli of the Sungai Temir Village

<sup>342</sup> There are three categories of income level which indicate poverty in Malaysia: i) hardcore poor – households with income less than RM 430.00 for Peninsular Malaysia, RM 540.00 (USD 173.04) for Sabah and RM 520.00 (USD 166.63) for Sarawak; ii) Poor –households with income less than RM 720.00 (USD 230.72) for Peninsular Malaysia, RM 960.00 (USD 307.62) for Sabah and RM 830.00 (USD 265.96) for Sarawak; and, iii) Prone to poor –households income less than RM 1,500.00 (USD 480.66) for urban areas and RM 1,000.00 (USD 320.44) for rural areas (ICU, 2011).

<sup>343</sup> At the national level, the DOA (2012) found that of the 36,658 Orang Asli heads of family, as many as 11,423 (31.16%) of them were considered poor and hardcore poor.

There were a mere 2 percent who earned above RM 3,000.00 (USD 961.332) per month. According to DOA (2012), the Orang Asli of the Sungai Temir Village household average income in 2012 was between RM 400.00 (USD 128.18) and RM 799.00 (USD 256.03) per month. In general, this study's findings (from Table 7.13) have indicated that the Orang Asli monthly household incomes were relatively low.

### **7.9.3.5 The Dropout Rate for Orang Asli Students in the Raub District (Including the Orang Asli from the Sungai Temir Village)**

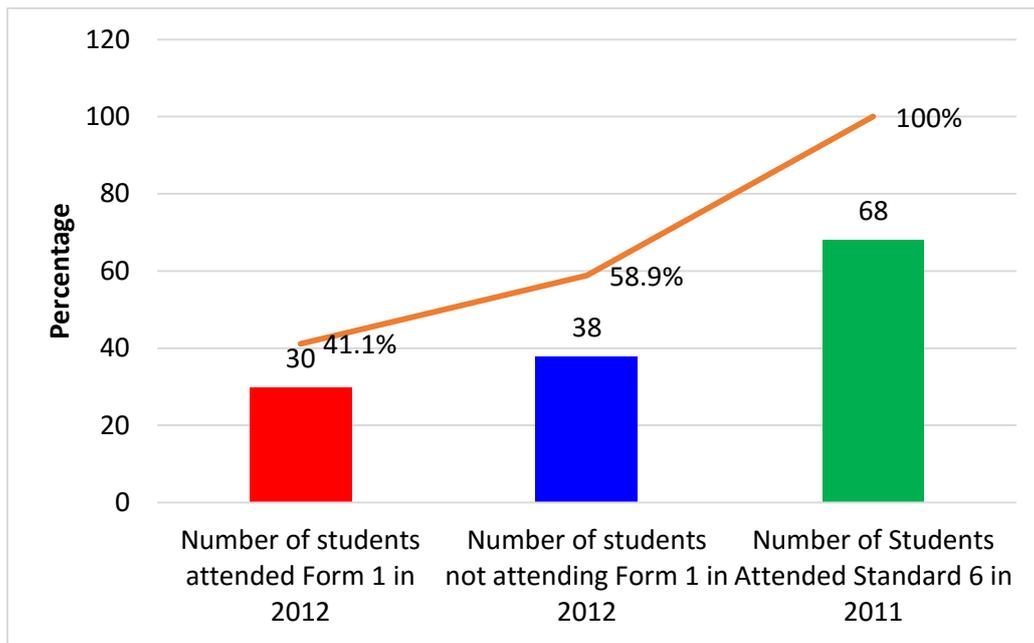
From Table 7.14 and Figure 7.13, this study found that the number of Orang Asli students in the Raub District and student dropout rate in 2012. From the total of 68 Orang Asli students who had completed standard sixth in junior school in 2011, a majority of them (58.9%) were not interested in continuing their studies to form one of a high school<sup>344</sup>. On the other hand, 41.1 percent continued their studies.

**Table 7.14:** Orang Asli dropout from standard sixth to form one in 2012 in Raub District (including from Sungai Temir Village)

<b>Schooling Status in 2012</b>	<b>Total</b>	<b>Percentage (%)</b>
Number of students attendance form 1	30	41.12
Number of students not attending form 1	38	58.88
<b>Number of Students Attending Standard 6 in 2011</b>	<b>68</b>	<b>100.00</b>

Source: DOA, 2012

<sup>344</sup> According to Mohamad Ainol Johari, an DOA Officer from the Raub District, this dropout rate existed because of the attitude of the Orang Asli parents despite educational assistance provided by the DOA, namely: i) allowance; ii) transportation fee to ferry the children to school; iii) free school uniform, especially for students from the hardcore poor families; iv) school fees, v) activities; vi) food ration; vii) allowances; and, viii) scholarship (Oral Conservation with Mohamad Ainol Johari, an DOA Officer at DOA Raub, on 12<sup>th</sup> December 2012). However, Nicholas (2010e, p. 51) revealed that the dropout problem among the Orang Asli was not completely due to their culture and attitude. Instead, he found that it was due more to structural reasons which were related to poverty; non-delivery of educational assistance; contrast in the pedagogy and the culture; gaps in attendance; and imperfections in the system. In addition, in a study of the Orang Asli's education, Kamaruddin and Jusoh (2008, p. 93) found that there was however a steady increase of financial assistance given to the Orang Asli's education from RM 8,995,000 in 2001 to RM 11,206,640 in 2005. Meanwhile, researchers also found that the high rate of poverty and the high rate of school dropouts were intimately related (Ibid).



**Figure 7.13:** Sungai Temir Village Orang Asli dropout from standard sixth to form one between 2011 and 2012

## 7.10 Conflict and Resistance Strategies by the KDP Actors

In this section, the types of conflict and strategies as well as their causes and nature are discussed according to the types of conflict and strategies involved. As employed in the BHP case study, this discussion is divided into two types of resistance, namely disguised resistance and public resistance.<sup>345</sup> The two types of resistance here were made in the context of the EIA policy or the KDP including resettlement and its related activities. The first discussion is made on the disguised approach and is followed by a discussion on the public approach.

### 7.10.1 Disguised Resistances

This section will record a few forms of resistances in order to shed light on the passive approaches. In the case of the KDP, there were two forms of passive resistance taken by the Orang Asli: i) name-calling, and, ii) gossiping.

<sup>345</sup> Both forms of resistance concept have been discussed in Section 6.10, Chapter 6.

Name-calling was directed at the community leaders who had persuaded the Orang Asli of the Sungai Temir to resettle at the RSLB. For example, Bedu An and his group who maintained their presence at Sungai Temir labelled Batin Cham Beng and his group as having sold their dignity in order to gain an easy life. On the other hand, for Bedu An and his group, Batin Cham Beng would call them a bunch of people who have no vision<sup>346</sup>.

*Bedu and others have no future planning. They are angry and hatred people.<sup>347</sup> Now we get house, farm and a new village. (Oral Conservation with Bedu An, a former 'Menteri', at the Sungai Temir Village on 3<sup>rd</sup> December 2012).*

On the other hand, Bedu An and his group claimed that Batin Cham Beng had been pressured and induced by the government's promises. One of the accusations was that he was afraid to be aggressive by protesting against the KDP because he was afraid that he could lose the monthly Batin allowance<sup>348</sup> as well as a new larger house promised by the government:

*Batin is easy to be lured by money. He is also afraid of losing his monthly allowance if he objected to the government order (to relocate at the RSLB). (Oral Conservation with Bedu An, a former 'Menteri', at the Sungai Temir Village on 3<sup>rd</sup> December 2012).*

Meanwhile, Bedu's son, Jamil Bedu, who also refused to relocate, explained that many youngsters and those who had agreed to resettle at the RSLB are now having difficulty earning an income:

*Here they can get money because they can work as rubber tappers or they can harvest the palm oil or they can even collect fern and catch frogs. But at the RSLB, they are doing nothing and just waiting for the government money [monthly allowance]. (Oral Conservation with Jamil Bedu, at the Sungai Temir Village on 3<sup>rd</sup> December 2012).*

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<sup>346</sup> In this sense, it is worth mentioning that certain parties have argued that Batin Cham Beng has been manipulated by the government to accept the KDP.

<sup>347</sup> The researcher found that Batin Cham Beng was very angry towards Bedu An and his people because the former and his men had cut down the crops (like rubber and fruit trees) which previously belonged to the former. Bedu An told the researcher that this was done because Batin Cham Beng and others had no more rights at the Sungai Temir Village because they had already moved out to RSLB. In addition, they have been compensated while those who refused to resettle (*they*) were not. In this sense, they had no more rights in the Sungai Temir Village.

<sup>348</sup> A monthly allowance reward to the community leaders at the village level, e.g. Batin Cham Beng is RM 800.00 (USD 256.35) per month (BERNAMA, 2011).

### 7.10.2 Public Resistance<sup>349</sup>

There were many types of public resistance undertaken by the Orang Asli. To start with, it would be useful to analyse the types of demonstration. The Orang Asli of Sungai Temir, Pahang took part in demonstrations during the seminar on the Lakum Forest Reserve in order to express their rejection of the project, as well as staging peaceful protests in the federal capital, Putrajaya in 2010. During the demonstrations, other mediums of resistance were used, such as letters, memos and petitions. To rally public support, a petition letter through offline and online mediums was executed by the local NGOs led by the SOS. For example, on 15<sup>th</sup> February 2008, a memo from the SOS was sent to the Selangor State on the dam and water issues in Selangor, which included the KDP. Among the issues highlighted in the memo were the flawed and impervious reports that were found by the SOS to give wrong water demand projections, a serious lack of genuine public participation with the Orang Asli and the anomalies in the EIA study. The same memo promoted the idea of water transfer from Perak, which would be a cheaper alternative, and was previously agreed to by the Perak State in order to provide water to Selangor – it had been viewed as a viable solution.

In addition, at least two petition letters were sent to the authorities. On 2<sup>nd</sup> February 2007 a memorandum was sent by NGOs to the then PM, Abdullah Badawi, to protest against the planning of the KDP. The petition centred on the questionable methods used in justifying the project needs thus appealing against its implementation. Following this, on 18<sup>th</sup> May 2007, a letter was sent to the Honourable Sultan Ahmad Shah, the supreme ruler of Pahang State.<sup>350</sup> In the letter, Batin Cham Beng, in his capacity as the highest leader for the Orang Asli of the Sungai Temir Village expressed the community's resistance on the KDP on the following grounds: i) Sungai Temir Village has been their ancestors' land; ii) there was anxiety about their future; iii) their dissatisfaction with the RM 400.00 per month from the monthly stabilisation programme; and, iv) they were forced by the DOA to relocate. Batin Cham Beng also stressed that the Orang Asli of the Sungai Temir Village were however, not anti-development.

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<sup>349</sup> According to Jenita Engi, the reason why the Orang Asli in the KDP seemed not to be as aggressive as the Orang Ulu in the BHP case is due to their low awareness of their rights and the absence of good leaders in galvanising support for protest (Oral Conservation with Jenita Engi, an officer for the COAC in Subang Jaya, Selangor, on 3<sup>rd</sup> August 2011).

<sup>350</sup> However, the Sultan has no executive power. In principle, the role of the monarchy system in Malaysia is subject to advice from the Executive.

In order to spread the protest message, the COAC produced a documentary video entitled *'Drowned Forests, Damned Lives: The Orang Asli and the Kelau Dam Project'*. This documentary revealed facts about the KDP, particularly by bringing out the voices of the Orang Asli about the project. This documentary, among others, highlighted the fraudulent representation, forced and unjustified resettlement and the strong element of FPIC.

Another interesting type of public resistance was the road blockage at the village level. To prevent interested parties from entering their village without control, the remaining families at the Orang Asli Sungai Temir Village who had refused to resettle made a permanent blockage at the entrance to their village. The Orang Asli guarded their village by putting tree trunks to block vehicles and people from entering their village. They were afraid that heavy machines such as bulldozers and other heavy equipment would be used to demolish their homes and other property of the villagers (Oral Conservation with Bedu An, a former 'Menteri', at the Sungai Temir Village on 3<sup>rd</sup> December 2012). According to Bedu An, those who wanted to enter their village area were required to inform and seek permission from him and his men before the gate would be opened<sup>351</sup>.

Accompanied by all forms of resistance was the court battle. Represented by the senior counsel of Kamarul Hisham Kamaruddin, Hasnal Rezuani and Yusmadi, 27 Orang Asli filed a court case against three defendants, namely the federal DOE, the federal government and the State of Pahang based on the following grounds: i) the KDP would inundate their ancestral land, and thus would affect the livelihood of the Orang Asli of the Sungai Temir Village; ii) no comprehensive study on the flora and fauna at the Lakum Forest Reserve or a comprehensive evaluation on the project effect on the affected areas had been done properly; and, iii) based on the two above flaws, the plaintiffs therefore claimed that the EIA for the KDP was not meaningful.

The plaintiffs also claimed that the EIA study was done without compliance with the requirements stated in the federal EIA Handbook on dam projects, and that the project had been approved without first informing and consulting the Orang Asli of the Sungai Temir Village (High Court of Malaya, 2007a). The plaintiffs sought a judicial review of the DOE DG's decision in approving the project by asking the court to declare that the project proponent had breached the government's fiduciary duty to protect the land rights and the

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<sup>351</sup> Even the researcher was reminded by Bedu An and Jamil Bedu to inform them earlier before coming visit the Sungai Temir Village.

welfare of the Orang Asli. The court case presided before the High Court of Malaya, Judge Mohd Zawawi Salleh. However, on 26<sup>th</sup> August 2010 he dismissed the plaintiffs' application by stating that the government had fully observed the requirements of the Order 1987.

The court cited several interesting points to support the judgement: i) there were adequate public participation on the KDP, whereby as many as 30 briefing sessions were held between government agencies and the Orang Asli; ii) compensation given to the affected Orang Asli was reasonable. This compensation gesture had shown that the government did not sideline the Orang Asli's welfare; and, iii) it was found that approximately 85.4 percent of the Orang Asli's heads of family had agreed to relocate (TMI, 2010). Another interesting point highlighted by Judge Mohd Zawawi Salleh was the fact that although the EIA Handbook stated that there should be a requirement for public participation, the court found that this requirement did not create a legal obligation. As such, the action of the DOE in approving the EIA, even without sufficient public participation, did not pose a problem (High Court of Malaya, 2007b, p. 10). In other words, from a legal perspective, there was no violation of the public participation rules as claimed by the Orang Asli.

## **7.11 Survey and Fieldwork Analysis: Voices from the Ground**

Like in the BHP case, the analysis in this section is divided into seven interrelated components themes: i) respondents' profile; ii) respondents' views on the EIA; iii) respondents' views on land policy; iv) respondents' view on compensation, resettlement and development issues; v) respondents' views on conflict; vi) respondents' views on the government and politicians' roles; and, vii) respondents' views on enhancement for the project. This section intends to answer the research questions as outlined in Chapter 1 as well as complementing and supporting these research findings discussed in the previous sections.

### **7.11.1 Respondents' Survey Profile at the RSLB**

Table 7.15 demonstrates six respondent variables, namely: i) gender; ii) age cohort; iii) education; iv) current occupation; v) household size; and, vi) monthly income. The

respondents' profile aims to give a proper socio-economic context of the Orang Asli at the RSLB.

**Table 7.15:** The Orang Asli respondents' profile

Gender	Number	Percentage of total
Male	35	94.6
Female	2	5.4
<b>Total</b>	<b>37</b>	<b>100.0</b>
Age cohort	Number	Percentage of total
18–25 years	0	0.0
26–30 years	8	21.6
31–35 years	3	8.1
36–40 years	0	0.0
41–45 years	1	2.7
46–50 years	4	10.8
51–55 years	9	24.3
56–60 years	2	5.4
61–65 years	2	5.4
66–70 years	8	21.6
<b>Total</b>	<b>37</b>	<b>100.0</b>
Education	Number	Percentage of total
College	2	5.4
High school	12	32.4
Junior high school	11	29.7
No formal education	12	32.4
<b>Total</b>	<b>37</b>	<b>100.0</b>
Current Occupation	Number	Percentage of total
Professional and administrator	0	0.0
Clerical	0	0.0
Farmer	32	86.5
Others	5	13.5
<b>Total</b>	<b>37</b>	<b>100.0</b>
Household Size	Number	Percentage of total
2	4	10.8
3	5	13.5
4	14	37.8
5	6	16.2
6	2	5.4
7	5	13.5
8	1	2.7
<b>Total</b>	<b>37</b>	<b>100.0</b>

Monthly Income <sup>352</sup>	Number	Percentage of total
RM 451.00 – RM 700.00	21	56.8
RM 701.00 – RM 1,000.00	14	37.8
RM 2,001.00 – RM 2,450.00	2	5.4
<b>Total</b>	<b>37</b>	<b>100.0</b>

The sample survey for the Orang Asli involved a total of 37 respondents. This study found that the majority of respondents at the RSLB were male (94.6%), whereas only 5.4 percent were female, and the majority (24.3%) of respondents were aged between 46 and 50 years old (refer Table 7.15). The respondents aged between 66 and 70 years old and between 26 and 30 years old represented 21.6 percent for each category. Meanwhile, 10.8 percent were between 41 and 45 years old. Respondents between 31 and 35 years old represented 8.1 percent. The remaining age cohorts were found to be less than 5.4 percent (or less than 2 respondents).

Concerning their educational level, this study found that a total of 32.4 percent of the Orang Asli respondents had no formal education or did not complete high school. However, over a quarter had finished their junior high school (29.7%) while only 5.4 percent had attended college. In terms of the employment structure, this study was found that a substantial number (86.5%) of the Orang Asli respondents in the resettlement schemes were involved in the farming sector. Meanwhile the remaining respondents, or 13.5 percent of them, were working in 'other categories' such as labourers, doing multiple jobs and handcraft<sup>353</sup>.

With regard to household size, the majority (37.8%) of respondents had four members per household while 16.2 percent had six members per household. Respondents having seven and five members per household represented 13.5 percent each, while 10.8 percent had two members only. A household size of six members was found to be less than 5.4 percent. In terms of income level per household, the majority or over half of the Orang Asli (56.8%) earned a monthly income between RM 451.00 (USD 144.51) and RM 700.00 (USD 224.31). Those who earned a monthly income between RM 700.00 (USD 224.31) and RM 1,000.00

<sup>352</sup> During the fieldwork period in 2012, the currency exchange between Malaysian Ringgit and US Dollar was around RM 0.32 to 1 US Dollar.

<sup>353</sup> These types of occupation also included catching and selling frogs and selling jungle products such as rattan and bamboo (Oral Conservation with Bedu An, a former 'Menteri' at the Sungai Temir Village, on 3<sup>rd</sup> December 2012; Oral Conservation with Cham Beng, a Batin at RSLB, on 24<sup>th</sup> November 2012).

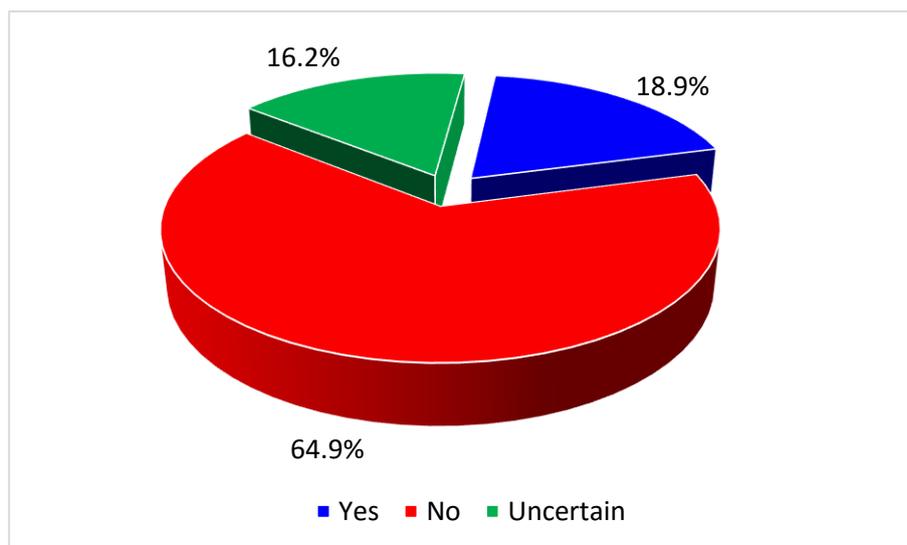
(USD 320.44) represented 37.8%.<sup>354</sup> Finally, approximately 5.4 percent earned an income between RM 2,001.00 (USD 641.20) and RM 2,450.00 (USD 785.08) per month.<sup>355</sup>

### 7.11.2 Views on the EIA

This section reveals the perception of the Orang Asli on the implementation of the EIA for the KDP.

#### 7.11.2.1 Satisfaction Involvement in the EIA Process

Figure 7.14 demonstrates that the majority of respondents surveyed (64.9%) were not satisfied compared to only 18.9 percent who were satisfied with their involvement in the KDP. Meanwhile, a reasonable percentage of them (16.2%) were uncertain.



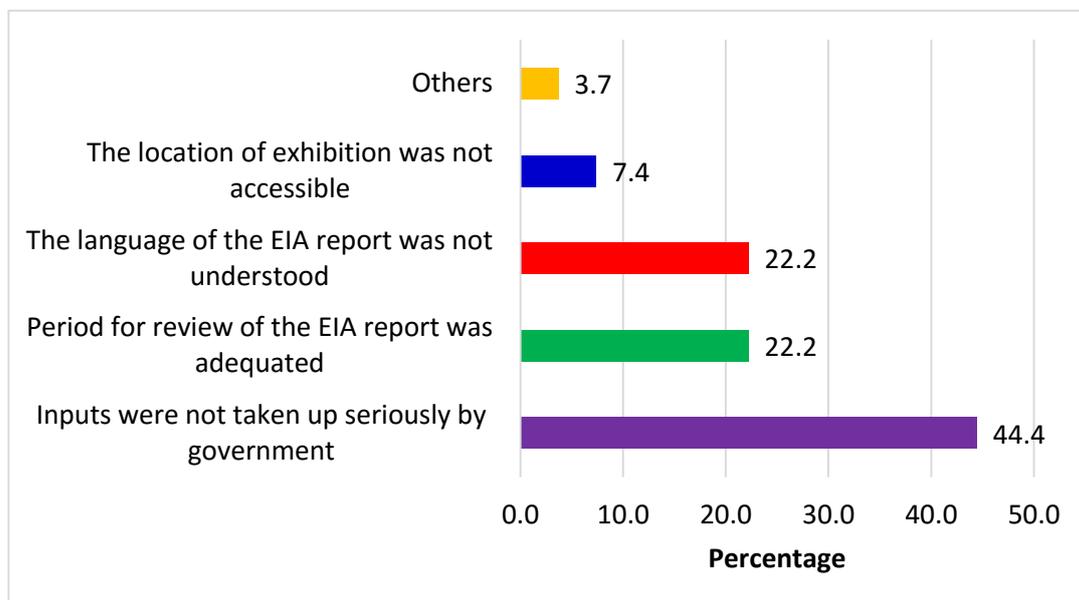
**Figure 7.14:** Are you satisfied with your involvement in the KDP's EIA?

<sup>354</sup> However, it is important to note that the income figures for the Orang Asli could be misleading because during the survey they were found to be still receiving the RM 683.00 (USD 218.86) per month for each household. This income was provided by the stabilisation programme, a programme under the compensation package. A more accurate monthly income of the Orang Asli Sungai Temir is reflected in Section 7.9.3.4.

<sup>355</sup> It is worth mentioning that, according to Malaysia's poverty standard, households with a total income of less than RM 720.00 (USD 230.72) and RM 430.00 (USD 137.79) for Peninsular Malaysia are considered poor and extreme (hardcore) poor respectively (ICU, 2011).

### 7.11.2.2 Reasons for Dissatisfaction

Respondents were also asked to state their reasons for the dissatisfaction. The total responses received for this question were 64. Based on Figure 7.15, this study found that more than half of the respondents (44.4%) stated the main reason for the dissatisfaction was that their feedback was not seriously considered by the government. On the other hand, 22.2 percent of respondents expressed their dissatisfaction on both the period for review of the EIA report being inadequate and the language used in the report, which was not accessible to them because it was written in the English language. Other reasons of dissatisfaction, including the accessibility of the location of the exhibition, were found to represent less than 7 percent.



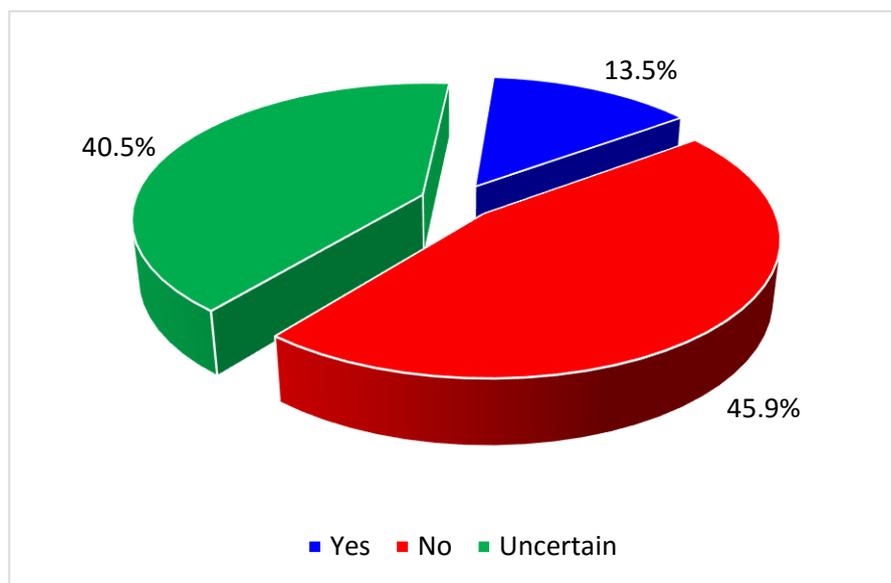
**Figure 7.15:** Reasons for Orang Asli respondents' dissatisfaction with the EIA?

The reasons why the EIA for the KDP was rejected by the Orang Asli is probably best indicated by Esóf Chin's statement:

*We wanted the government to honestly consult us. Treat us as a partner in the project development. (Oral Conservation with Esóf Chin, Chairman of the VDSC, at the RSLB on 3<sup>rd</sup> December 2012).*

### 7.11.2.3 Views on the Role of Public Participation Conflict

One of the classic claims by the proponents of EIA was that conflict in the project could be reduced through EIA. However, this study has found that this was not the case for the KDP because approximately 45.9 percent of respondents perceived the project's inability to reduce conflict and approximately 40.5 percent were uncertain (see Figure 7.16). In contrast, a mere 13.5 percent agreed that public participation managed to reduce conflict.



**Figure 7.16:** Has the EIA reduced the project conflict?

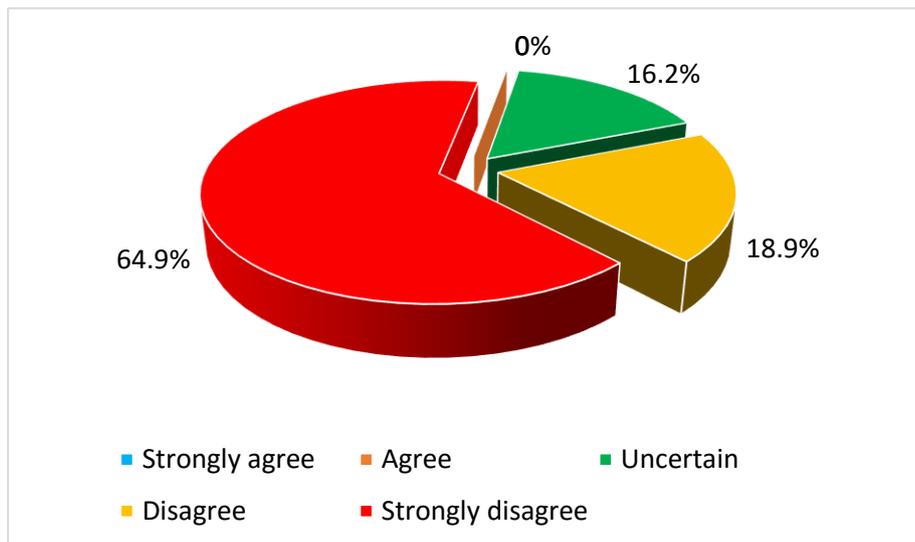
The Orang Asli at the RSLB were also aware that there was a court case concerning the local protest on the KDP. For example, Esóf Chin made relevant comments in this regard:

*Some of us have brought about a court case regarding the project because we thought the government has been unfair to us. The government has not followed the rules [the EIA] regarding our involvement in the project. (Oral Conservation with Esóf Chin, a Chairman of the VDSC, at the RSLB on 3<sup>rd</sup> December 2012).*

### 7.11.2.4 Views on the EIA Role in Empowering Local Participation

The last question in this component was on the EIA role in empowering local participation. This study found that 64.9 percent of respondents strongly disagreed and 18.9 percent

disagreed that local participation was empowered by the EIA. On the other hand, none of them agreed with the statement and 16.2 percent were uncertain (see Figure 7.17).

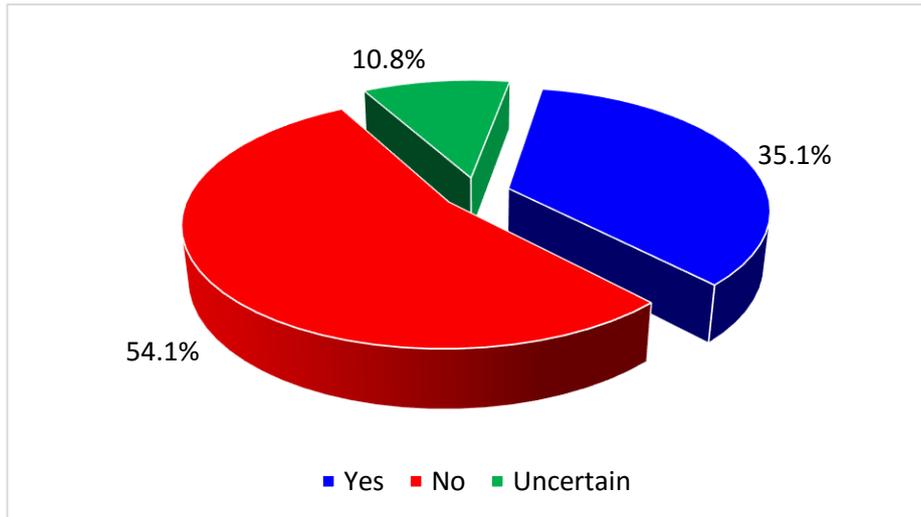


**Figure 7.17:** Has the EIA empowered local participation?

Again, this finding shows that many of the Orang Asli respondents were aware of a court case initiated by their community on the KDP's EIA.

#### **7.11.2.5 Views on the Project Consent**

To give credibility to the public participation process, the consent given by the people affected by the project must be free from forceful tactics and manipulation. However, as shown in Figure 7.18, this study found that 54.1 percent of respondents admitted that they did not consent freely and voluntarily for the project, while 35.1 percent stated otherwise. Only 10.8 percent of respondents were uncertain.



**Figure 7.18:** Was project consent given voluntarily?

In relation to this issue, Nicholas et al. (2010, p. 122) expressed his worrisome protest that the project proponent of the KDP had violated the standard of FPIC since the consent was only obtained during a one working day trip on 6<sup>th</sup> August 2010.<sup>356</sup> Without the EIA standards and requirements as set out by the JBIC, the public participation could have been worse.

The only source of information regarding consent for the project from the Orang Asli communities in Sungai Temir Village was Batin Cham and not through the consensus of the community. Many Orang Asli leaders stated that he was loyal to the government order because of self-interest. Some sections of the community did not agree to the project and did not want to relocate (Yusri Ahon, a Committee Member of the Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOSAM)<sup>357</sup> cum Deputy President 3 of the Association of the Indigenous People Network of Peninsular Malaysia (JOAS)<sup>358</sup> in Temerloh Pahang on 3<sup>rd</sup> December 2012).

Perhaps a statement from Aziz Bedu could enlighten our discussion on how consent was eventually obtained by the government:

<sup>356</sup> See the previous discussion in Section 7.6 – the KDP: Planning and Development.

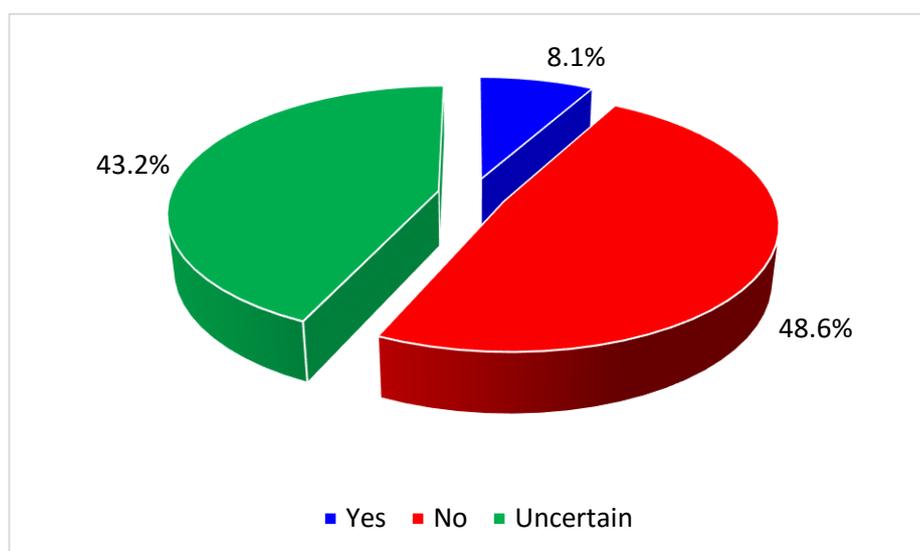
<sup>357</sup> JKOASM is the Orang Asli's NGO that operates at the grassroots level. JKOASM was established in 2009. It was instrumental in opposing the government policy on the land ownership for the Orang Asli customary land (Wikipedia, 2013).

<sup>358</sup> JOAS is a coalition of 21 NGOs in Malaysia that aims to advocate indigenous people's rights. It was established in 1993 (Orangasalblogpot, 2013).

*Our Batin is illiterate and can easily be manipulated. Batin Cham is the only representative we had regarding the project [KDP]. He is a good leader but when dealing with the government, he always says yes without discussing first with us. He always abides with the government orders as he gets many benefits because of his position. (Oral Conservation with Aziz Bedu, at the Sungai Temir Village on 3<sup>rd</sup> December 2012).*

#### **7.11.2.6 Views on the Authorities' Compliance with EIA Procedures**

In order to get the idea of the public perception on the EIA process, the respondents were asked whether they thought that the authorities had followed the EIA procedures<sup>359</sup>. As shown in Figure 7.19, this study found that the majority or 48.6 percent of respondents stated the authorities had conducted the EIA without complying with the procedures while 43.2 percent were uncertain. On the other hand, a mere 8.1 percent agreed that the authorities had conducted the EIA properly.

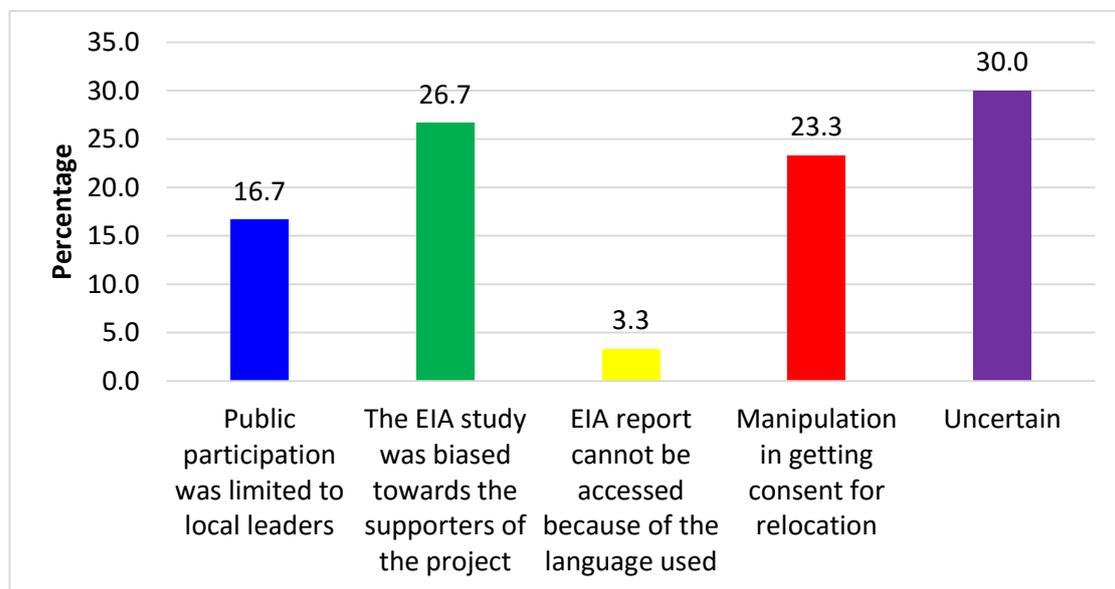


**Figure 7.19:** Did the authorities comply with the EIA procedures?

<sup>359</sup> Regarding the EIA compliance procedures, the researcher informed the respondents of the examples of the procedures involved, such as the authorities sharing information with the public, obtaining consent from the public to relocate voluntarily, as well as fairness in giving compensation for the expropriated land.

### 7.11.2.7 Aspects of EIA Procedural Non-compliance by the Authority

To understand the aspects of EIA procedural non-compliance from the respondents' point of view, 30 responses were received. As presented in Figure 7.20, this study found that the majority of respondents (30%) were uncertain on the aspects of non-compliance. However, approximately 26.7 percent argued that the EIA study was biased towards those who supported the project<sup>360</sup> and 23.3 percent thought that there was manipulation in getting consent for relocation. Approximately 13.5 percent also pointed out that the public participation was limited to local leaders (16.7%). The rest of the responses, or 3.3 percent, stated that the EIA report could not be accessed because of the language used (in this case, the English language was used).



**Figure 7.20:** What are the non-compliance aspects of the EIA?

In relation to the above findings, it is worth highlighting that the UNDRIP principles, namely FPIC must be followed when conducting an EIA study for a project involving indigenous people. However, in the KDP case, the authority failed to give adequate consideration in conducting the EIA study.<sup>361</sup> Yusri Ahong, an environmentalist and land activist for the Orang Asli who operates at the local level, made a relevant comment in this context:

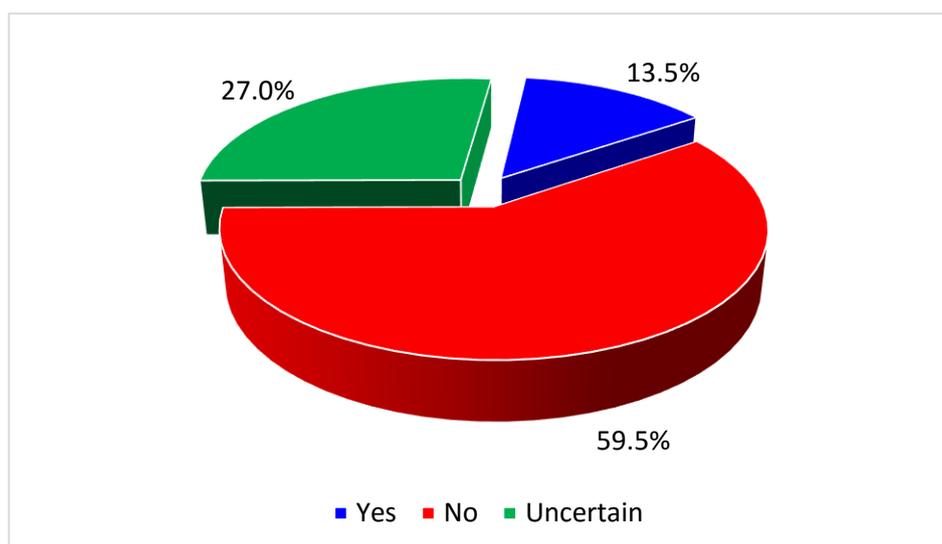
<sup>360</sup> This finding can probably best be corroborated by Nicholas' (2010b, p. 120); he found that in order to portray that the Orang Asli of the Sungai Temir Village had supported the project, the government had falsely portrayed the son of the Batin, i.e. Tanjung Cham, as the real Batin for the Sungai Temir Village when in fact being the son of Batin did not carry such a position. The Orang Asli were also offered rations as pressure to sign the consent for relocation.

<sup>361</sup> This is in line with the affidavit by Batin Cham Beng in the court injunction between the Orang Asli versus federal DOE, the federal government and the State of Pahang (see point 22 when the Orang Asli claimed that in

*The government has signed the UNDRIP declaration principles but they have not been fully observed by the government. The information given for the Orang Asli Sungai Temir Village was not transparent. (Yusri Ahon, a Committee Member of the JKOSAM cum Deputy President 3 of JOAS, in Temerloh Pahang on 3<sup>rd</sup> December 2012)*

#### **7.11.2.8 Views on the Transparency of the Project**

The last aspect in this EIA study component was the respondents' perception of the transparency in the KDP. Based on Figure 7.21, this study found that 59.5 percent of Orang Asli respondents did not believe that the project had offered transparency whereas only 13.5 percent stated otherwise and 27.0 percent were uncertain.



**Figure 7.21:** Does the KDP offer transparency?

To sum up on this EIA analysis section, these research findings discussed here are in line with the grievances stated in Bedu An's affidavit to the High Court of Kuala Lumpur. Bedu An revealed in his affidavit that the Orang Asli were asked by the Pahang EPU to sign the relocation form for the RSLB without first being consulted. There was secrecy and non-transparency of information about the KDP. In addition, the Orang Asli were not informed that the EIA report was approved (High Court of Malaya, 2007a, p. point no. 17, 19 and 22). Equally lacking in this regard was the state's attitude towards the KDP's EIA. This could

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mid-2007, the staff of the Valuation Department came to their village, Sungai Temir Village, to mark the trees to be later cut down and did not refer to the Orang Asli for consultation. On point 27 of the affidavit, Batin Cham Beng refuted the claim that the DOA had informed the villagers (High Court of Malaya, 2007a).

probably be gauged through what the COAC principal, Collin Nicholas, experienced in how his NGO was treated during their involvement in the KDP:

*The authorities tended to treat public participation more like public relations. They will welcome your existence but they don't give adequate recognition. For example, we [COAC] have withdrawn from the stakeholders' meeting with the EPU on the Kelau Dam Project because they tended to ignore our recommendations<sup>362</sup>. In fact, they have used our involvement in order to showcase that they have involved the public in public participation. (Oral Conservation with Collin Nicholas, a Coordinator for the COAC, in Subang Jaya, Selangor on 25<sup>th</sup> October 2011).*

Collin Nicholas went on to explain the reason why his NGO pulled out from the KDP stakeholders' meetings:

*They told us the dam [the KDP] has already been approved. It is obvious that we were invited for the project [KDP] meeting just for the authorities to say that they have consulted the public. This is what the Japanese funders require in order for them to release the aid money. (Oral Conservation with Collin Nicholas, a Coordinator for the COAC, in Subang Jaya, Selangor on 25<sup>th</sup> October 2011).*

Collin Nicholas further explained that:

*The EIA is not used for assessing the environmental impact in order for the approval or decline the proposed project. Instead, it has been used to provide mitigation measures, while approval decision on the project was already in the mind of the DOE and project agencies.<sup>363</sup> (Oral Conservation with Collin Nicholas, a Coordinator for the COAC, in Subang Jaya, Selangor on 25<sup>th</sup> October 2011).*

This research study found that Collin Nicholas's sentiment on the EIA in Malaysia was not isolated. In fact, this is also shared by Shamsul Ery Shamsuddin, an officer from SAM Penang:

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<sup>362</sup> The CIJ (2007, p. 44) also found that as well as secrecy in relation to EIA information, the government tended to ignore the NGOs recommendations.

<sup>363</sup> This is clearly parallel to what Ison et al. (2002, p. 53) pointed out on EIA when they said that '*in practice EIAs have tended to improve the quality of the proposal rather than to result in their abandonment.*'

*While the EIA process like public participation might follow the basic requirements but its real intention is just window dressing. There is no real public participation. Instead, it is more inclined to public relations.* (Oral Conservation by phone with Shamsul Ery Shamsuddin, an officer from SAM Penang, on 25<sup>th</sup> August 2011).

Given this background, Meor Razak, an NGO officer from SAM Penang made some interesting remarks on the element of rent-seeking when he related the difficulty in implementing EIA: *'It is difficult to see the EIA succeed when our political elites have hidden motives and business interests. They can justify their action in the name of public interest while the truth is they are enriching themselves or their cronies'* (Oral Conservation with Meor Razak, an officer from SAM, in Penang on 25<sup>th</sup> August 2011).

What are the environmental agency's (i.e. the DOE's) views on EIA? As the most responsible environmental agency on the EIA for the KDP, a Director of the DOE Pahang, Ahmad-Kamarulnajib Che-Ibrahim revealed that the DOE and the EIA had limited powers in the project decision-making:

*The public should not solely blame the DOE on every aspect of the environmental problems because sometimes it is beyond our jurisdiction. Take for example the unsuitable location. First it should be handled by the Land and District office. The government's priority always goes to economic concerns rather than environment.* (Oral Conservation with Ahmad-Kamarulnajib Che-Ibrahim, a Director of the Pahang's DOE, on 27<sup>th</sup> June 2011 in Kuantan Pahang).

When asked about the problem of weak public participation in the EIA process, Ahmad-Kamarulnajib Che- Ibrahim gave the following remarks:

*The problem in the EIA is mainly due to the communication barrier because of the language used for the report. However, the public should trust the EIA experts who have the facts and data in the technical field rather than the political opportunists who tried to create the negative perception.* (Oral Conservation with Ahmad-Kamarulnajib Che- Ibrahim, a Director of Pahang's DOE, on 27<sup>th</sup> June 2011 in Kuantan Pahang).

The above views clearly exposed the DOE's limitations in enforcing EIA regulation. They also indicated the struggle of the DOE to maintain a sound environment. One of the challenges in Malaysia's EIA or environmental policy in general is to preserve the environment while at the same time pursuing economic growth.<sup>364</sup>

Lastly, as part project funder for the KDP, the JICA realised that public participation in EIA was important. However, according to Kunihiko Sato, the Chief Representative of JICA, the role of the JICA was limited as they only acted as an observer in this project (the KDP). The agency also viewed the protest made by the public about the KDP's the EIA as entirely based on 'perception'. However, on a positive note, the JICA followed up on the KDP situation in order to ensure that it could be implemented in an appropriate manner in line with environmental and social considerations (Email Interview with Kunihiko Sato, Chief Representative of JICA Malaysia, in Kuala Lumpur on 9<sup>th</sup> September 2013). In addition, the JICA also stated that the effective public participation in the KDP was biased or prejudiced by anti/pro projects that were driven by various motives (Email Interview with Kunihiko Sato, Chief Representative of JICA Malaysia, in Kuala Lumpur on 9<sup>th</sup> September 2013).

### **7.11.3 Views on Land Policy**

The second survey of the Orang Asli's respondents was on their perception of the issues of land rights, which concentrated on three aspects: i) the respondents' general view of NT as a land policy; ii) the respondents' view on land acquisition as experienced by them; and, iii) the land rights impacts of the KDP implementation due to loss of NT.

#### **7.11.3.1 Views on the NT Policy**

The first component in examining the respondents' view on the land policy and procedures is their view on the NCL. Previously the respondents' land system had been governed by the NCL but it was now under individual land titles; therefore, the respondents' opinions on land policy and the real experiences they faced were considered important. Therefore, the following six questions of this section (shown in Table 7.16 and Figure 7.22) demonstrated

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<sup>364</sup> According to Ahmad-Kamarulnajib Che-Ibrahim while the DOE has a clear focus on protecting the environment by implementing the EIA in the best manner; other agencies, in particular the economy-oriented agencies such as the EPU or SEPU, have their own, different priority. For example, their preferences and priorities sometimes require some development projects to be carried out despite the fact that the project could force the location of the project site to an unsuitable location (Oral Conversation with Ahmad-Kamarulnajib Che Ibrahim, Director of the Pahang's DOE, on 27<sup>th</sup> June 2011 in Kuantan Pahang).

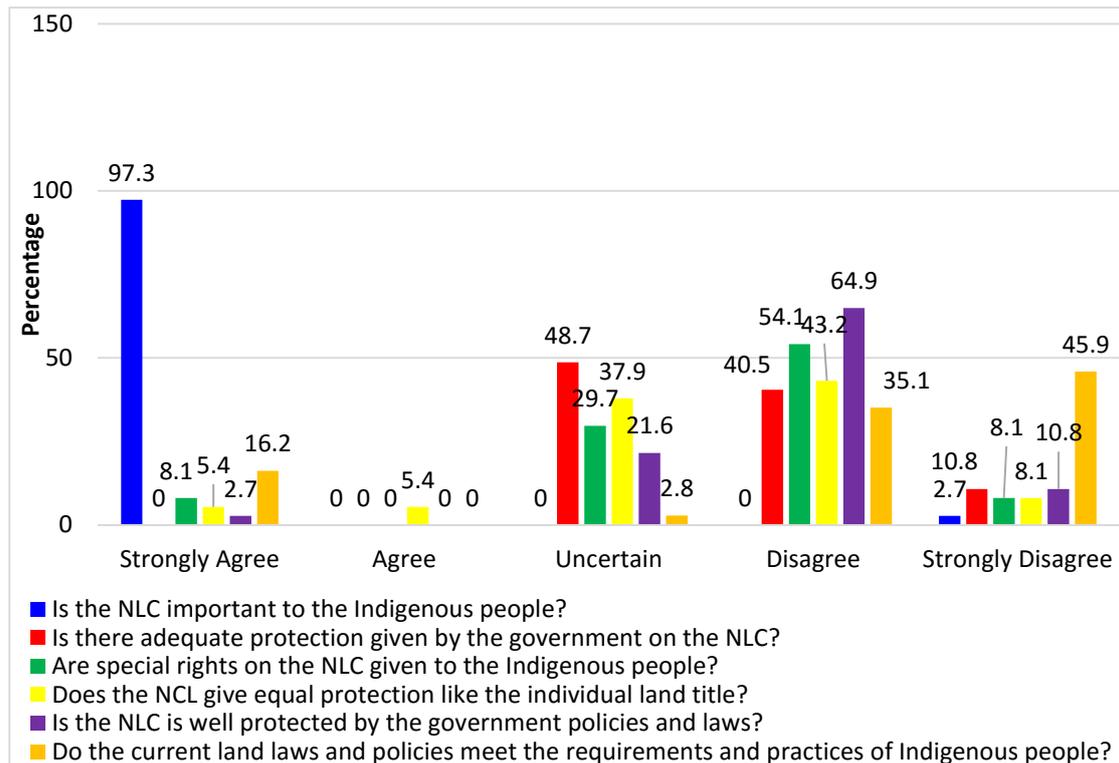
the respondents' views on the general NCL policy. Consequently, the additional four questions in Table 7.17 were aimed to further examine the comparison between NCL and individual land titles.

**Table 7.16:** Views on the Native Customary Land (NCL) policy

	<b>Strongly Agree</b>	<b>Agree</b>	<b>Uncertain</b>	<b>Disagree</b>	<b>Strongly Disagree</b>	<b>% from total</b>
Is the NCL important to the Indigenous people?	97.3	0	0	0	2.7	100.0
Is there adequate protection given by government on the NCL?	0	0	48.7	40.5	10.8	100.0
Are special rights on the NCL given to the Indigenous people?	8.1	0	29.7	54.1	8.1	100.0
Does the NCL give equal protection like the individual land title?	5.4	5.4	37.9	43.2	8.1	100.0
Is the NCL well protected by government policies and laws?	2.7	0	21.6	64.9	10.8	100.0
Do the current land laws and policies meet the requirements and practices of the Indigenous people?	16.2	0	2.8	35.1	45.9	100.0

Based on Table 7.16 and Figure 7.22, this study found that the majority of the Orang Asli respondents (97.3%) strongly agreed that the NCL was important to them. On the other hand, only 2.7 percent disagreed (1 respondent only). On the question of adequate protection by the government on the NCL, this study found that 51.3 percent disagreed (including 10.8 percent strongly disagreeing) that there was adequate protection offered by the government. However, 48.7 percent of respondents were uncertain while none of them agreed or strongly agreed with the statement.

The negative response for respondents' views on the land policy was found to continue in relation to the special rights for the NCL. A majority of them (62.2%) disagreed (including 8.1% strongly disagreed). On the other hand, merely 8.1 percent strongly agreed and 29.7 percent were uncertain.



**Figure 7.22:** Views on the Native Customary Land (NCL) policy

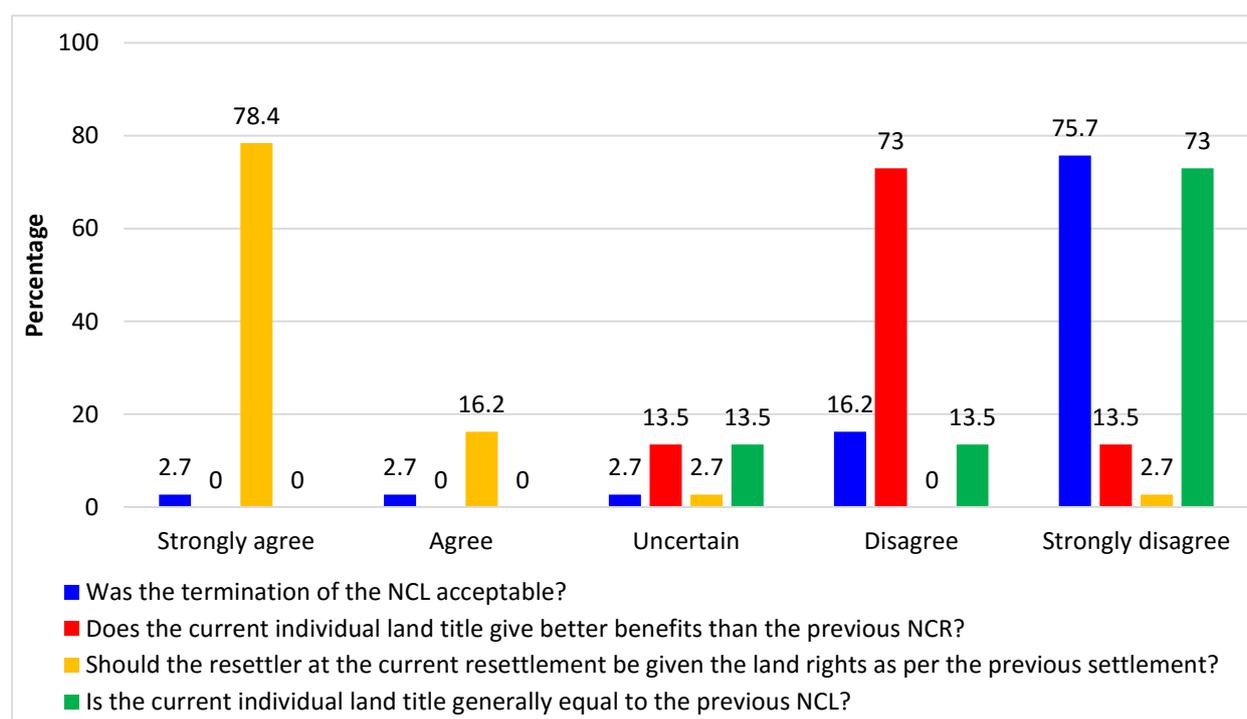
The respondents were also asked their opinions about whether the NCL could give equal protection like individual land titles. This study found that more than half of the respondents, or 51.3 percent, disagreed (including 8.1 percent strongly disagreeing). It was also found that 37.9 percent of respondents were uncertain while 5.4 percent (2 respondents only) agreed or strongly agreed.

Almost 75.7 percent of respondents disagreed (including 10.8 strongly disagreed) that the NCL was well protected by policies and laws. It was also revealed that 21.6 percent of the respondents were uncertain. On the question of whether the laws and policies met the requirements and practice of the Orang Asli, it was found that the majority of respondents strongly disagreed and disagreed with 45.9 percent and 35.1 percent respectively. However, 16.2 percent of the Orang Asli respondents agreed with that statement.

Table 7.17 and Figure 7.23 aim to examine the respondents' views on land policy further. They also intend to draw a comparison between the current individual land title and the previous NCL rights.

**Table 7.17:** Views on the comparison between individual land titles and the Native Customary Land (NCL)

	Strongly agree	Agree	Uncertain	Disagree	Strongly disagree	% from total
Was the termination of the NCL acceptable?	2.7	2.7	2.7	16.2	75.7	100.0
Does the current individual land title give better benefits than the previous NCR?	0	0	13.5	73.0	13.5	100.0
Should the resettler at the current resettlement be given the land rights as per the previous settlement?	78.4	16.2	2.7	0	2.7	100.0
Is the current individual land title generally equal to the previous NCL?	0	0	13.5	13.5	73.0	100.0



**Figure 7.23:** Views on the comparison between the individual land titles and the Native Customary Land (NCL)

As shown in Table 7.17 and Figure 7.23, this study found that an overwhelming 91.9 percent of respondents disagreed (including 74.5 percent strongly agreeing) that the

termination of the NCL was acceptable. In contrast, only 2.7 percent of respondents either agreed or strongly agreed. Another 2.7 percent were uncertain. This study also found that approximately 86.5 percent of respondents (including 13.5 percent strongly disagreeing) argue that the current individual land title gave better benefits than the previous NCL. None of the respondents agreed or strongly agreed and 13.5 percent were uncertain.

The respondents were also asked whether they should be given the land rights they had enjoyed at their previous settlement (before the resettlement). To this question, this study found that the overwhelming majority of the respondents, or 94.6 percent, agreed (including 78.4 percent strongly agreeing). In contrast, a mere 2.7 percent of respondents strongly disagreed and another 2.7 percent were uncertain. On the last question for this section, the respondents were asked about their perception of whether the current individual land title rights equal the previous NCL. Again, this study found that the negative responses dominated. It was found that 86.5 percent of respondents disagreed (including 73.0 percent strongly disagreeing) that the current individual land title generally equates to the NCL. None of the respondents either agreed or even strongly agreed and 13.5 percent were uncertain.

The Orang Asli's view on the NT could best be described by Yusri Ahong:

*The Government does not recognise our land. How many Orang Asli villages have received [land] grants? Instead, the government saw our customary land as a halt to development. (Yusri Ahon, a Committee Member of JAKOSAM) cum Deputy President 3 of JOAS, in Temerloh Pahang on 3<sup>rd</sup> December 2012).*

### **7.11.3.2 Views on Land Acquisition**

Table 7.18 and Figure 7.24 present these research findings of the survey for the second component examining land policy and procedures, i.e. the respondents' experience of dealing with land acquisition. Five questions were formulated in order to investigate the respondents' perception of the land acquisition<sup>365</sup> practice as experienced by them. In this

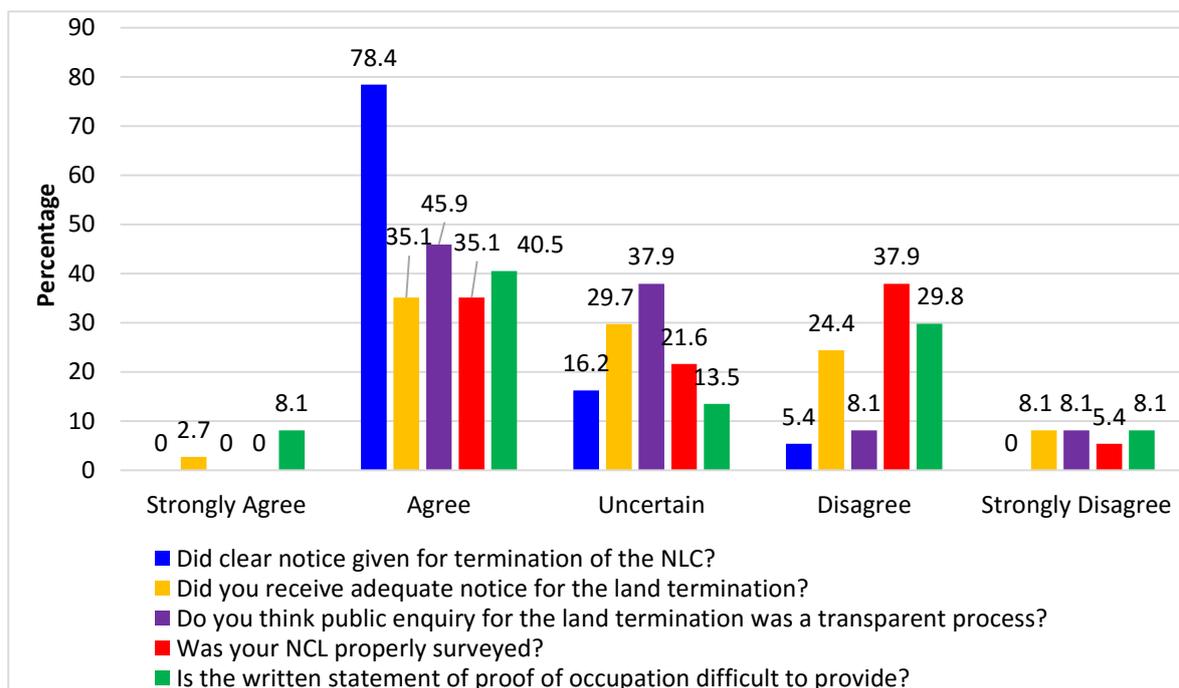
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<sup>365</sup> A related study done by Alias et al. (2010) on the Orang Asli perception towards land acquisition in Malaysia found that almost 84 percent did not support the acquisition exercise carried out by the government. It also found that most of the Orang Asli believed that promises to protect Orang Asli interests were not fulfilled. Instead, they observed that life has become more difficult (Alias et al., 2010, p. 1702).

section, respondents were asked to evaluate the statements by using the Likert's Scale: strongly agree, agree, uncertain, disagree and strongly disagree.

**Table 7.18:** Views on the land acquisition process

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	% from total
Did you receive a clear notice for the NCL termination?	0	78.4	16.2	5.4	0	100.0
Did you receive adequate notice for the land termination?	2.7	35.1	29.7	24.4	8.1	100.0
Do you think the public enquiry for the land termination a transparent process?	0	45.9	37.8	8.1	8.1	100.0
Was your NCL properly surveyed?	0	35.1	21.6	37.9	5.4	100.0
Is the written statement of proof of occupation difficult to provide?	8.1	40.5	13.5	29.8	8.1	100.0



**Figure 7.24:** Views on the land acquisition process

This study found that the majority of respondents (78.4%) agreed that there was clear notice for the termination of the NCL while 16.2 percent of them were uncertain. In contrast, only 5.4% (2 respondents) disagreed that there was clear notice for the land

termination. Concerning the notice period given for land termination, 37.8 percent of respondents agreed (including 2.7% strongly agreeing). However, 32.5 percent disagreed (including 8.1% strongly disagreeing) and 29.7 percent were uncertain.

On the transparency of the public inquiry process, this study found that a majority of the respondents (45.9%) agreed. However, the second highest percentage of the respondents was uncertain (37.8%) and respondents who disagreed and strongly disagreed totalled 16.2 percent (8.1% each) with the statement. In relation to the question on whether the NCL was properly surveyed, this study found that a majority 43.3 percent disagreed (including 5.4 percent strongly disagreeing). However, again the uncertain responses were considerable at 21.6 percent.

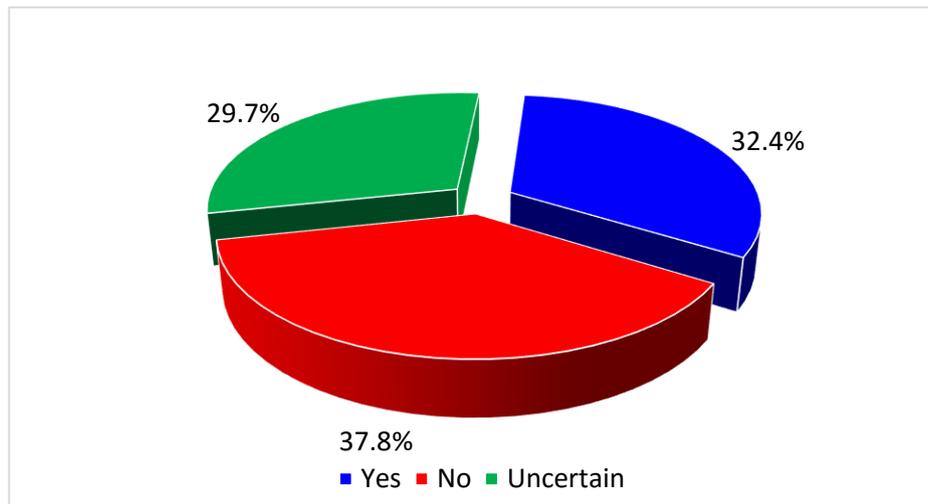
On the last question, concerning whether written proof of occupation was difficult to provide, this study found that 48.6 percent of respondents agreed (including 8.1 strongly agreeing). However, more than a quarter (29.7%) of the respondents disagreed. Those who strongly disagreed were recorded at 37.9 percent (including 8.1% strongly disagreed).

### **7.11.3.3 Views on the Authorities' Compliance with the Land Acquisition Procedures**

As shown in the Figure 7.25, this study found that more than one-third of respondents (37.8%) opined that the land acquisition procedures were not followed properly by the authorities<sup>366</sup>. On the other hand, almost one-third or 32.4 percent stated the opposite and the remaining 29.7 percent of them were uncertain as to compliance.

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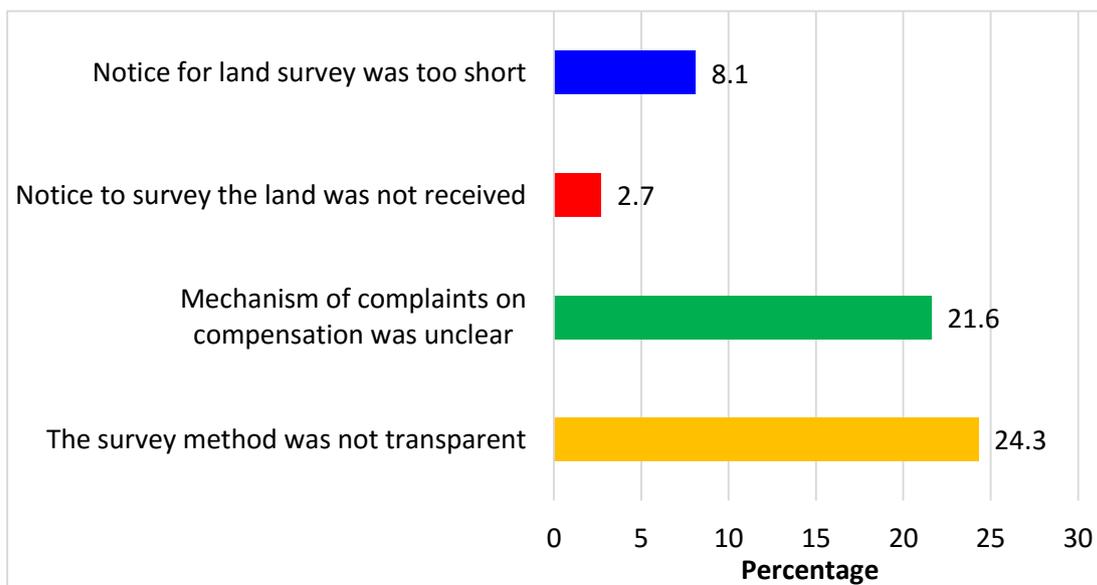
<sup>366</sup> Examples of the land acquisition procedures not being followed include: the survey method was not transparent; mechanism of complaints on compensation was unclear; notice of the survey was not received; and, notice for the land survey was too short



**Figure 7.25:** Did the authorities comply with the land acquisition procedures?

#### 7.11.3.4 Aspects of Incompliance in the Land Acquisition

The respondents were asked to state the non-compliance aspects they previously mentioned. From Figure 7.26 it can be seen that from 21 responses received<sup>367</sup> about 24.3 percent complaints went to aspect of the authorities used a non-transparent survey method. Meanwhile, unclear mechanism of complaints was placed the second highest reason for non-compliance (21.6%). Other reasons were notice for land survey was too short (8.1%) and notice for land survey was not received by the respondents (2.7%).



**Figure 7.26:** Views on incompliance aspects in the land acquisition procedures

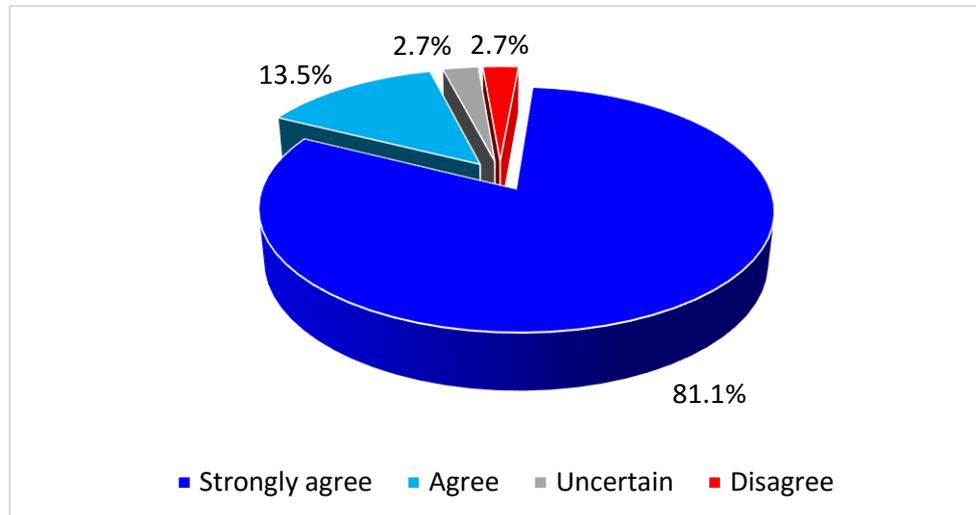
<sup>367</sup> In this questions, respondents were allowed to state more than one answer.

### 7.11.3.5 Views on Land Rights Impacts of the KDP Implementation

The following six questions constitute the last component of this study's analysis of the land policy and procedures. This sub-section intends to investigate the respondents' perception of the land rights impact because the Orang Asli have been resettled at the RSLB. The resettlement had brought about changes in their land rights. In this section, respondents were asked to evaluate the statements by using the Likert's Scale: strongly agree, agree, uncertain, disagree strongly disagree.

#### 7.11.3.5.1 Views on the Absence of the Roaming Area Affecting Their Free Food Resources

Based on Figure 7.27, this study found that 94.6 percent of respondents agreed (including 81.1 percent strongly agreeing) that the KDP had reduced their free food resources due to the absence of a roaming area at the RSLB. Meanwhile, only 2.7 percent disagreed and 2.7 percent were uncertain.



**Figure 7.27:** Have free food resources been reduced due to the absence of the roaming area?

To support this finding, perhaps the observation made by Batin Cham Beng on the reason why the Orang Asli had to make frequent visits to their original village at the Sungai Temir Village after they had moved to the RSLB could provide a better perspective in this regard:

*Life is getting difficult here. Everything needs money. We need to buy fish. Even the ferns as food needed to be bought. Previously we can freely pluck them around our village or go to the forest [roaming area] to gather them. (Oral Conservation with Cham Beng, a Batin, at the RSLB on 24 November 2012).*

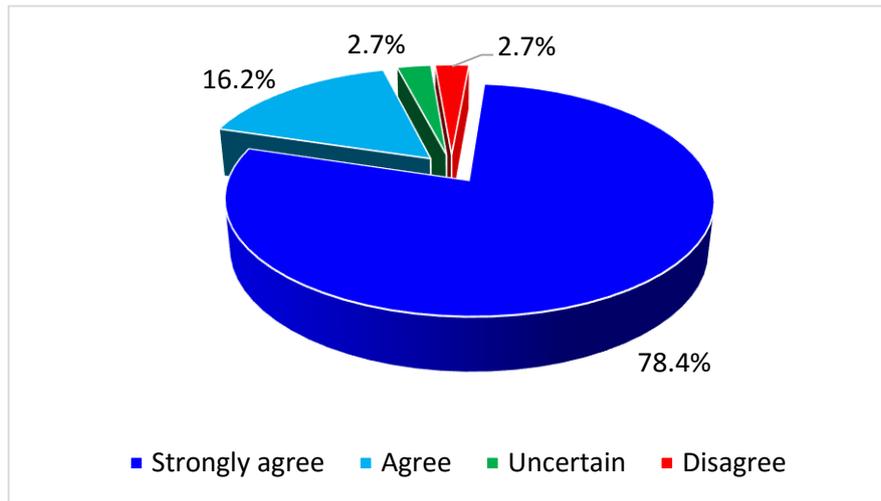
The above remarks by Ali Sanggul, who makes his living by collecting and selling fern to the middlemen, further indicated the importance of roaming and its grave effect on the Orang Asli families' income:

*Previously I could collect and sell more ferns because we had a bigger area including the roaming area. However, since we were relocated here, we no longer have the roaming area. I cannot simply roam to pluck ferns because that area belongs to the FELDA's people. I just can collect from the nearby area only. Sometimes, my wife and I went back to the Sungai Temir Village just to collect fern or other forest products because it is abundance there. The less fern we collect means the less we can sell. This has affected our family income. (Oral Conversation with Ali Sanggul, a resettler, at the RSLB on 25<sup>th</sup> September 2012).*

The above finding is found to be parallel to the statement made in the court affidavit made by Bedu An on 7<sup>th</sup> October 2007 to the High Court of Malaya which highlighted, among other things, the fact that the Lakum Forest Reserve and Bukit Lanchar Area were free resource areas for the Orang Asli in order for them to obtain forest products such as rattan and other high quality trees, e.g. scented wood (*gaharu*) (High Court of Malaya, 2007a, point 11).

#### **7.11.3.5.2 Views on How the Individual Land Titles Have Affected the Free Food Resources**

The second impact is that the KDP has reduced the availability of free food resources due to the insufficient lot size of the individual lots at the RSLB. Since the Orang Asli resettled at the RSLB, they were no longer entitled to a free communal area for hunting and roaming, which they had previously enjoyed at the Sungai Temir Village.



**Figure 7.28:** Have food supply resources been reduced due to the insufficient size of the individual land titles?

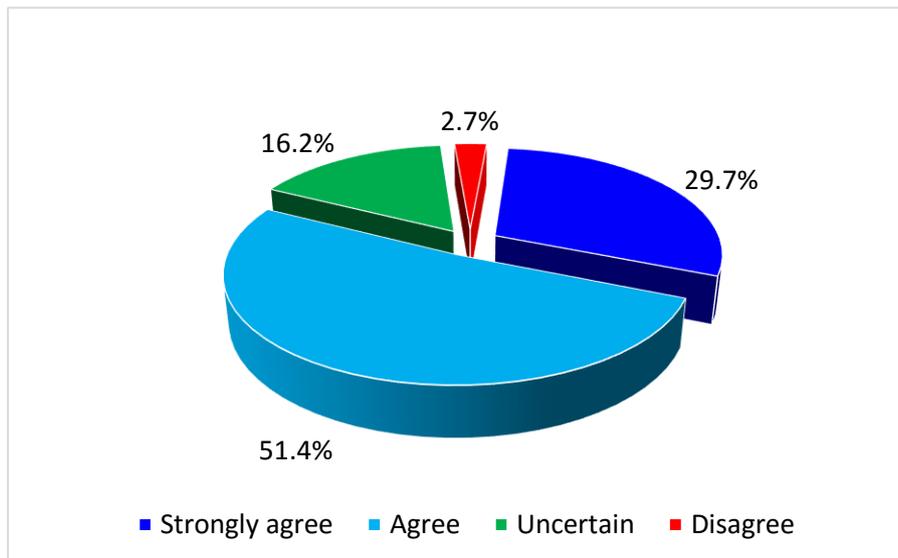
Based on Figure 7.28, this study found that about 94.6 percent of respondents agreed (including 78.4% strongly agreed) with the statement. On the other hand, 2.7 percent of respondents disagreed and 2.7 percent were uncertain<sup>368</sup>.

### **7.11.3.5.3 Views on the Individual Land Titles Affecting Shifting Cultivation**

The customary agriculture system of the Orang Asli requires alternate land that can be used for shifting cultivation (the rotation system). This was the system that was mainly practiced by the Orang Asli before they were forced to resettle at the RSLB.

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<sup>368</sup> Many of the Orang Asli met by the researcher said they demanded to be compensated with at least eight acres. According to them, besides the loss of their agriculture plot, this could also compensate the loss of the roaming area, which they previously greatly enjoyed.

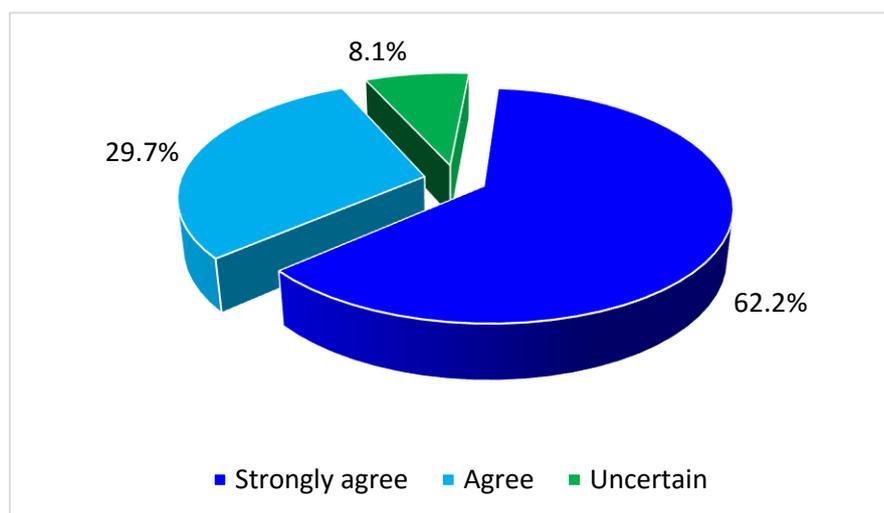


**Figure 7.29:** Has shifting cultivation disappeared due to individual land titles?

However, since the individual plots of household land were limited to only six acres per family, and there was no longer communal forest, shifting cultivation could not be practised anymore. Therefore, as shown in Figure 7.29, this study found that 81.1 percent agreed (including 29.7 percent strongly agreeing) that one of the negative impacts of the KDP on land rights was that there was no more shifting cultivation practised in the new resettlement scheme. However, approximately 2.7 percent (1 respondent only) disagreed and approximately 16 percent of them were uncertain.

#### **7.11.3.5.4 Views on Allocated Land Size and Its Ability to Cope with Future Demography Growth**

As mentioned earlier, although without formal land titles, the customary land system managed to maintain the Orang Asli livelihood since the social support of the indigenous people in the case of land distribution and the future size of the extended family were taken into account. Therefore, the following questions intended to gauge the respondents' perception of the ability of the six acres of compensated land to provide security to future generations.



**Figure 7.30:** Does the allocated land size fail to consider future additional family growth?

Based on Figure 7.30, this study found that as many as 62.2 percent of respondents strongly agreed and 29.7 percent agreed that the amount of land compensated did not take into consideration a future increase in family members. Only a small percentage of respondents (8.1%) were uncertain.

Esof Chin's observation in this respect could reflect the reason why the Orang Asli felt that the six acres of land might fail to cope with the future demography growth:

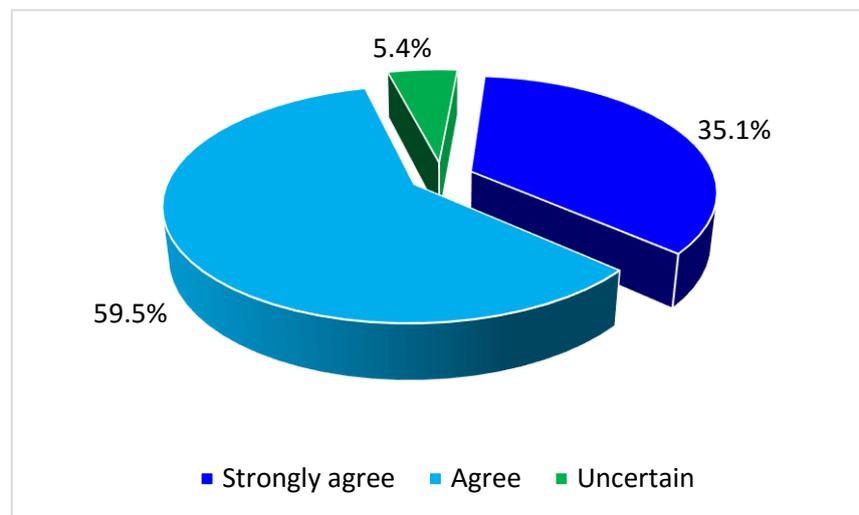
*Now we have experienced the problem of living here. After having been resettled at the RSLB for about two years, there are about 20 newly-formed households<sup>369</sup> who do not have land and houses. What more after 20 or 30 years of living here? (Oral Conservation with Esof Chin, Chairman of the VDSC, at the RSLB on 3<sup>rd</sup> December 2012).*

Meanwhile, in terms of the land compensated, the FELDA resettlers who were originally landless were given eight to ten acres per family when joining the FELDA scheme, but the Orang Asli who previously had bigger larger amount of land (and it was in the form of customary land) were now given six acres per household only. Therefore, the land allocation treatment of the Orang Asli was seen to be poor (Oral Conversation with Collin Nicholas, a Coordinator for the COAC, in Subang Jaya on 25<sup>th</sup> October 2011).

<sup>369</sup> The newly-formed households are recently married couples.

### 7.11.3.5.5 Views on Whether Insufficient Land Has Affected the Encroachment into State Land

Illegal farming by the Orang Asli into state land was found to be another manifestation of the loss of land rights. Again, as presented in Figure 7.31, this study found that 94.6 percent agreed (including 35.1 percent strongly agreeing) that the illegal land encroachment was due to the fact that the individual land size compensated was insufficient for them.



**Figure 7.31:** Does the limited land size encourage your encroachment on the state land?

This survey finding was parallel to the researcher's observations at the RSLB as well as informal conversations with the Orang Asli, who admitted that they had illegally expanded their agriculture activities into the state land mainly because the land size allocated to them is gravely inadequate (Oral Conservation with Cham Beng, a Batin, at the RSLB on 24<sup>th</sup> November 2012; Oral Conservation with Esuf Chin, Chairman of VDSC, at RSLB on 3<sup>rd</sup> December 2012). Figure 7.32 and Figure 7.33 show some of the areas that are now illegally encroached on by the Orang Asli of the RSLB. When asked why the Orang Asli encroached into the state land beyond the demarcated land Cham Beng, the Batin of the RSLB, simply replied:

*The present family lot is not enough. We need more land, at least eight acres. Besides the land provided is not as fertile as our previous land in Sungai Temir. See, this plant is not growing well [showing the cassava tree that he planted in front of*

the house].<sup>370</sup> (Oral Conservation with Cham Beng, a Batin, at the RSLB on 24<sup>th</sup> November 2012).

Perhaps this was also a reason why the EIA study for the KDP proposed the continuation of the gathering and selling of forest products as a way to improve the monthly income of the Orang Asli of the RSLB but this suggestion was totally ignored by the authorities (MOW, 2003, p. 7–4).



**Figure 7.32:** Overlooking the RSLB is the Semantan Forest Reserve, which is now being illegally encroached by the Orang Asli of the RSLB



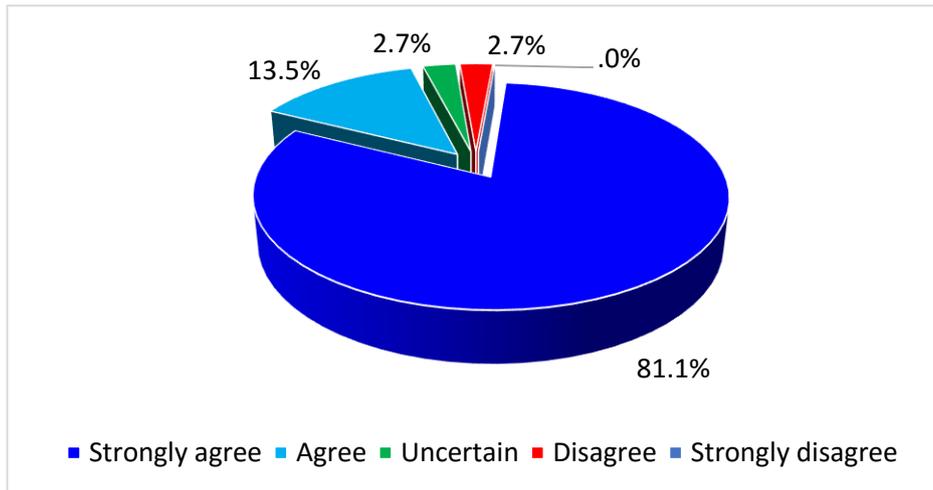
**Figure 7.33:** The second area of the Semantan Forest Reserve, which is now being illegally encroached by the Orang Asli of the RSLB

#### **7.11.3.5.6 Views on how the Limited Land Size Has Affected Family Income**

Another interesting effect of land size relates to family income. As shown in Figure 6.34, this study found that there were an overwhelming number of Orang Asli respondents, or 94.6 percent of them, who agreed (including 81.1 percent strongly agreeing) that their family income has been affected by limited land size. A mere 1 percent of respondents strongly disagreeing and 2.7 percent were uncertain.

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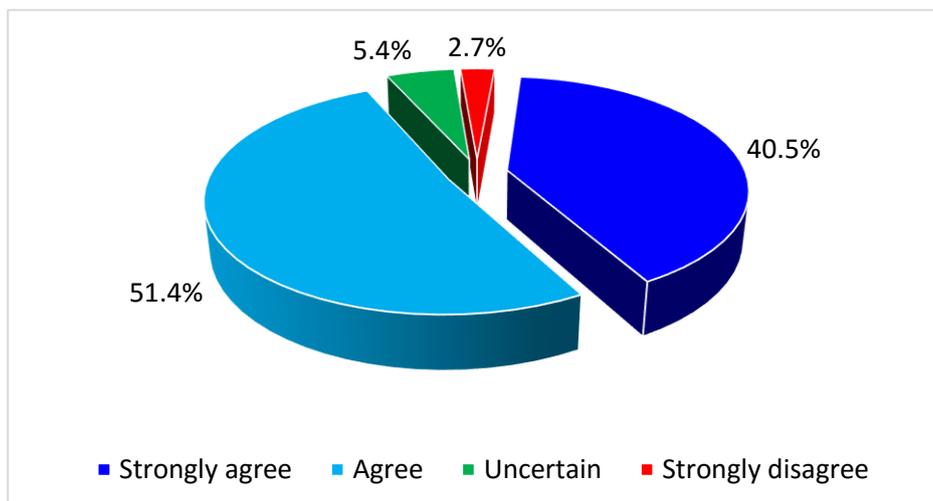
<sup>370</sup> In the EIA study for the RSLB, it was clearly stated that the Sungai Temir Village had relatively good soil fertility compared to the RSLB land (MEGTW, 2002, p. 6–1).



**Figure 7.34:** Has the limited land size affected your family income?

#### 7.11.3.5.7 Views on Individual Land Titles and the Power of the Customary Elderly Council

Based on Figure 7.35, this study found that there was a significant negative perception in this regard. An overwhelming 91.9 percent of respondents agreed (including 40.5 percent strongly agreeing) that individual land titles has affected power and rights of the Customary Elderly Council at the new resettlement schemes. The Council’s power was seen to have decreased, particularly in relation to land matters at the RSLB, and replaced by the Land and District Office.



**Figure 7.35:** Has the power of the Customary Elderly Council been reduced due to the changes in land rights?

In contrast, a mere 2.7 percent of respondents disagreed that the powers and rights of the Customary Elderly Council had decreased while about 5.4 percent were uncertain. The finding is found to be parallel to observation by Nicholas (2010c) who found that the indigenous Customary Elderly Council was no longer entitled to govern land affairs for their own community and was taken over by the Land and District Office.

In this regard, Usuf Chin's remarks on the diminishing roles of the Customary Elderly Council warrants our attention:

*Before we moved here, the Elderly Council still has the power on land matters. We can settle land disputes just amongst ourselves. We can pass down our land to our kids without grant [document]. However, now everything must go through the government officer [District and Land Office]. People feel that the Council has no more roles. (Oral Conservation with Esuf Chin, Chairman of VDSC, at the RSLB on 3<sup>rd</sup> December 2012).*

#### **7.11.4 Views on Compensation, Resettlement and Development Issues at the RSLB**

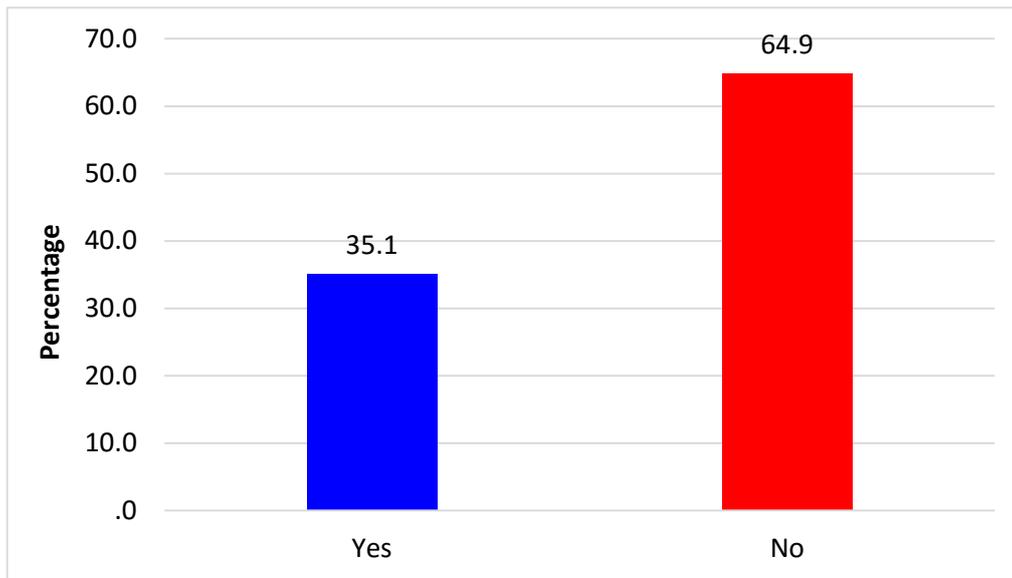
The third aspect of this questionnaire survey is on the compensation and resettlement issues. As previously mentioned in the Sarawak BHP case study, this research argued that the compensation and resettlement issue was the most important aspect of the agreement that could bring acceptance of the local people towards the EIA and the project. In addition, compensation, resettlement and development issues were found to affect EIA entirely as an institution in the KDP case.

##### **7.11.4.1 Views on Compensation Fairness**

Based on Figure 7.36, this study found that 64.9 percent of the Orang Asli disagreed that the compensation received was fair<sup>371</sup>. In contrast, only 35.1 percent agreed.

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<sup>371</sup> The unfairness in compensation was also raised by the Orang Asli of Sungai Temir Village in court (see High Court of Malaya, 2007a).



**Figure 7.36:** Did you receive fair compensation?

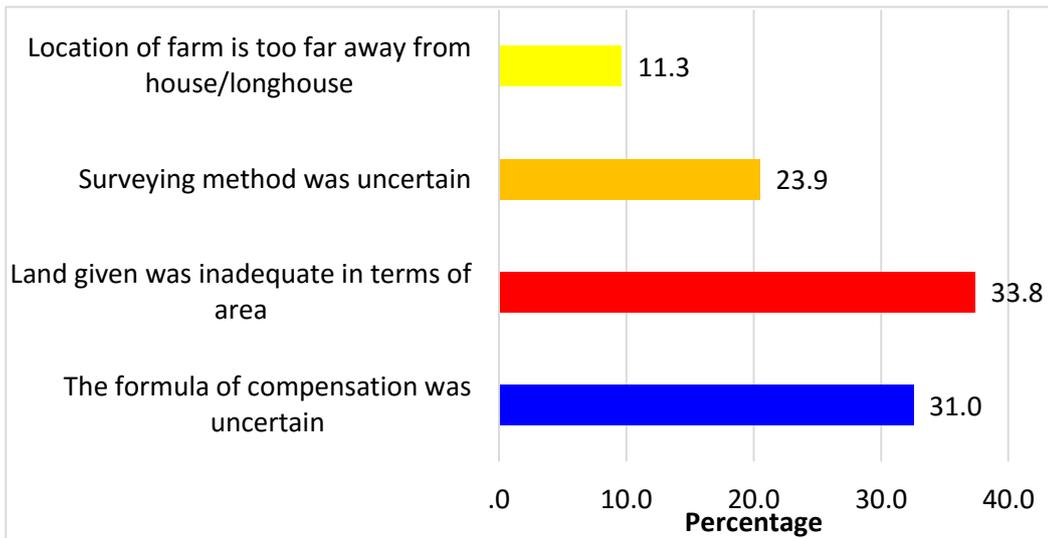
Esof Chin, the chairman of the VDSC of the RSLB made the following remarks when asked his general opinion on the compensation received in the KDP case:

*We appreciate what the government has done for us but still some aspects on compensation have really made us feel frustrated and cheated. Mostly, on the way our land was being surveyed. Some of us received more compensation money despite [having] a smaller land size in our previous village. All this has created uncertainty.* (Oral Conversation with Esof Chin, Chairman of the VDSC at the RSLB, 3<sup>rd</sup> December 2012).

#### **7.11.4.2 Reasons for Unfairness and Injustice in the Compensation**

Respondents were also asked to state the reasons for their dissatisfaction with the compensation. Here they were allowed to state more than one answer. As shown in Figure 7.37, this study found that 33.8 percent of the 71 dissatisfaction responses<sup>372</sup> were related to the land size allocated, which was perceived to be inadequate. The second highest dissatisfaction factor, or almost one-third (31.0%), was the formula of compensation.

<sup>372</sup> In this question, respondents were allowed to state more than one answer.

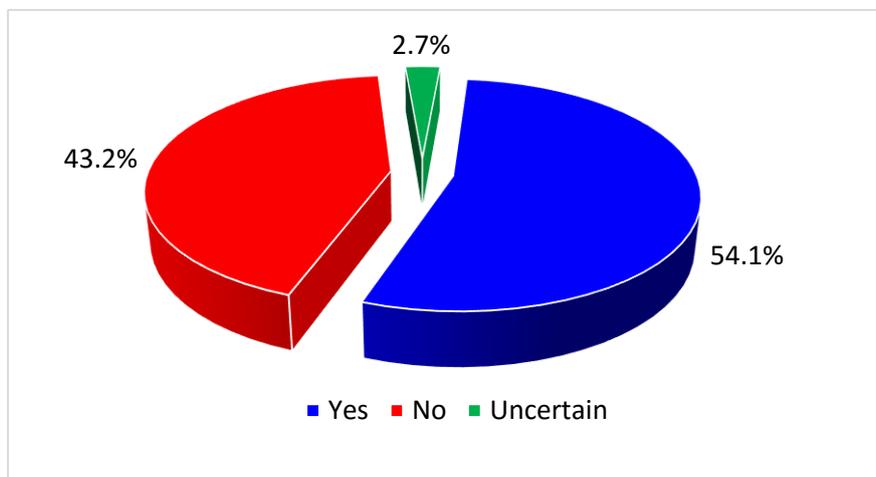


**Figure 7.37:** Why do you find the received compensation unfair?

It was also found that 23.9 percent of dissatisfaction factors were on the surveying method, which was uncertain, and 11.3 percent said that the location of the farm is far away from their houses.

#### 7.11.4.3 Views on the Compensation Formula

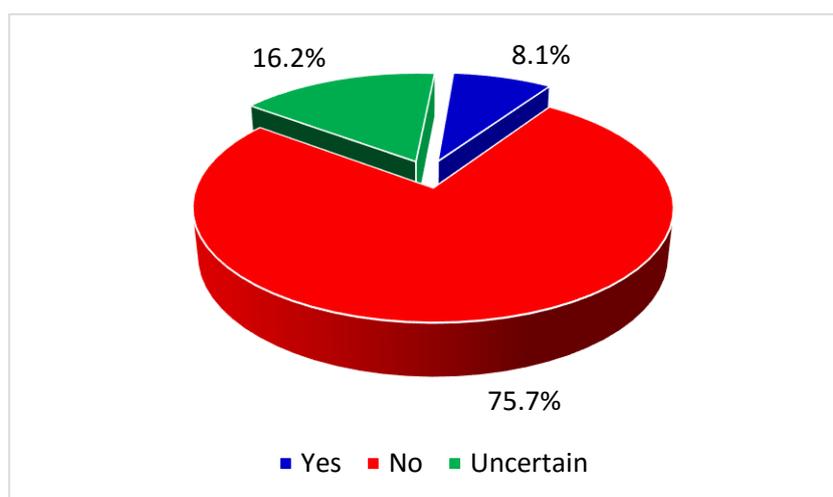
The following two questions aim to understand the respondents' opinion on compensation. The first question asked whether the respondents had been informed about the compensation formula and the second was whether they understood the compensation formula applied to the KDP.



**Figure 7.38:** Have you been informed about the compensation formula?

Based on Figure 7.38, this study found that 54.1 percent of Orang Asli respondents were informed about the compensation formula. However, 43.2 percent of them said that they were not informed. Approximately 2.7 percent of respondents were uncertain.

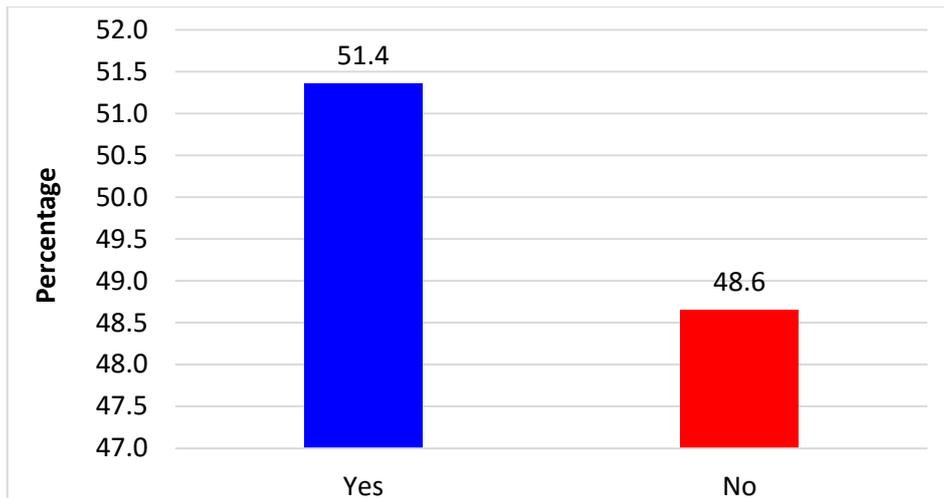
On another question on compensation, as shown in Figure 7.39, this study found that 75.76 percent, the overwhelming majority, of respondents claimed that they do not understand the formula while only 8.1 percent stated otherwise. Respondents who were uncertain represented approximately 16.2 percent.



**Figure 7.39:** Do you understand the compensation formula used?

#### **7.11.4.4 Views on the Consultation about Resettlement Planning**

In order to increase project acceptance to the project, consultation of the local people about the resettlement planning is necessary. Consultation could reduce conflict and thus provide a sense of the project belonging to the local people.



**Figure 7.40:** Have you been consulted in the resettlement planning?

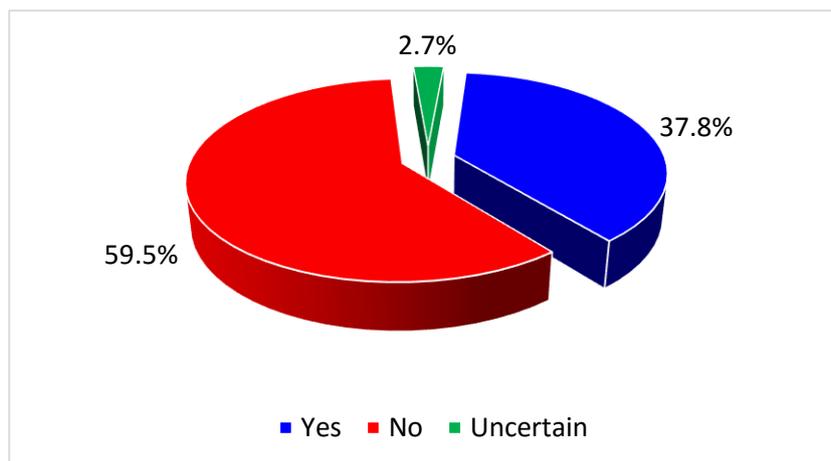
As shown in Figure 7.40, this study found that approximately over half of respondents, or 51.4 percent, agreed that the relocation involved their input. On the hand, almost half of them, or 48.6 percent, stated otherwise. This finding demonstrated a positive response from the PAP concerning the consultation issue.

#### **7.11.4.5 Opinions on the Consent to Resettle<sup>373</sup>**

It is clear that in order for the project to get acceptance the relocation undertaken must have consent from the PAP. Therefore, elements of deception, pressure or manipulation must be avoided. Based on Figure 7.41, this study found that over half of the respondents, or 59.5 percent, argued that the relocation conducted by the government was non-voluntary. On the other hand, 37.8 percent viewed otherwise and those who were uncertain only represented 2.7 percent.

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<sup>373</sup> For the record, the Orang Asli through the representative/s of the Orang Asli during the meetings of the Committee Meeting of Resettlement Scheme of Luruh Bilut gave their agreement to resettle at least seven times (MEGTW, 2010, p. 47–48). However, this research viewed that an obvious element was missing from the agreement: How was the agreement obtained? When privately meeting with the Orang Asli the answers given by them clearly contradicted the official record.



**Figure 7.41:** Were you resettled here voluntarily?

According to Nicholas et al. (2010, p. 118) the consultation with the Orang Asli affected by the KDP heavily relied solely on Batin Cham Beng. He was considered the rightful representative for the Orang Asli of the Sungai Temir Village. No other Temuan community leaders<sup>374</sup> were brought to the all the stakeholders' meetings except Batin Cham Beng<sup>375</sup> (Nicholas et al., 2010, p. 118). In addition, Batin Cham Beng's refusal to resettle was also noted. The researcher visited Batin Cham Beng and he vividly reiterated the position of the Orang Asli at Sungai Temir on relocating:

*The government told us to move, so we have to move. However, if we have an option, we don't want to move.*<sup>376</sup> (Oral communication, Cham Beng, a Batin, the RSLB, 24<sup>th</sup> November 2012).

Based on the informal conversation with the Orang Asli in both the RSLB and the Sungai Temir Village, the researcher was made to understand that they now regretted the decision

<sup>374</sup> Other traditional leaders, namely 'Menteri' were sidelined. According to Bedu An, initially he was involved in the stakeholders meeting, but later was sidelined because he constantly protested the project (Oral Conservation with Bedu An, a former 'Menteri', at Sungai Temir Village on 3<sup>rd</sup> December 2012).

<sup>375</sup> Nicholas et al. (2010, p. 119) believed that despite Batin Cham Beng courageously being against the relocation, the Batin's remarks were intentionally distorted in order for it to appear that he was very agreeable to the relocation.

<sup>376</sup> This presence of the manipulation element was parallel to a finding Nicholas et al. (2010, p. 118) recorded: *'It is true that I say support the project. Because we Orang Asli have been weakened. Others weaken us. They say resettle, we have to resettle. Officers come in and say, "Tok batin resettle". And we have to resettle. They pressure us until we cannot think anymore. If we have a choice, we want to stay where we are. The land is our ancestors' land. We have been there for a long time. But what can we do. The government wants to give water to Selangor'*.

they made and felt they had been tricked into signing the consent form to resettle.<sup>377</sup> According to Nicholas (2010, p. 121), the consent given by the Orang Asli to relocate after the Batin was deceived and told that those who resettled at the RSLB would still be entitled to tap and collect their harvests such as rubber and fruits in their old village (the Sungai Temir Village).<sup>378</sup> Nicholas (2010, p. 120) also claimed that the authority's attitude, in that they refused the take 'No' for an answer from the Orang Asli, has made the consent given less legitimate.

This finding is not surprising as Bedu Nan, in his affidavit to support the Orang Asli Sungai Temir court case, admitted that there had been pressure by the EPU Pahang to sign the relocation form but they refused to do so (High Court of Malaya, 2007a, point 17).

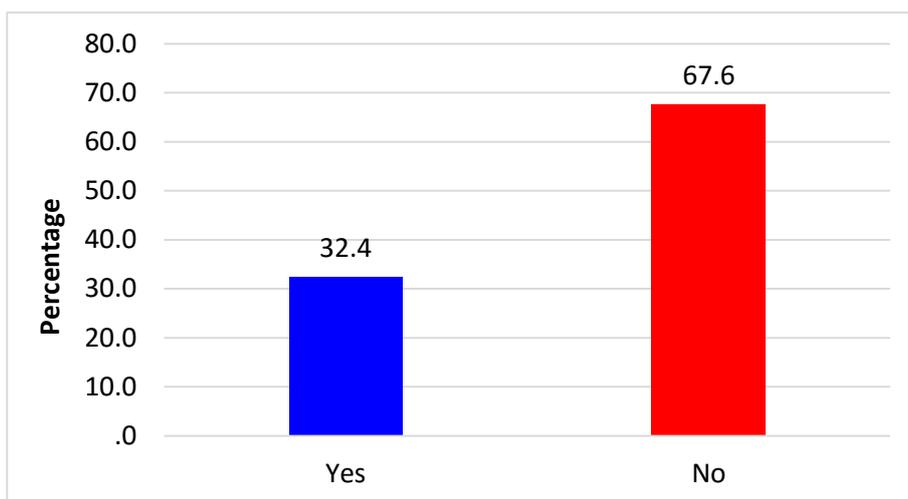
#### **7.11.4.6 Opinions on Job Training**

At the RSLB, the Orang Asli were allocated with six acres of palm oil plots per household. In order for the resettlers' communities to effectively perform their job at the RSLB and considering that they were only semi-exposed to the modern agriculture techniques previously, providing them with appropriate training was found to be crucial for their survival.

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<sup>377</sup> See also the same finding on the deception, manipulation and pressure in the KDP's consent reported by Collin Nicholas in his article titled *'Targeting the Wrong Audience: The Non-effectiveness of Visual Activism in The Kelau Dam Project'* (Nicholas, 2009, p. 50).

<sup>378</sup> This was also confirmed by Bedu An. Those who are now resettled at RSLB have frequently made visits to the Sungai Temir Village to tap rubber trees and collect forest products. However, Bedu stressed that those who are now resettled at the RSLB are no longer entitled to the rights at the Sungai Temir Village as they have already received compensation and agreed to relocate. As a consequence, Bedu An and those who have remained in the Sungai Temir Village have cut down fruit and rubber tress (not all) to prevent Batin Cham Beng and those who are now resettled at the RSLB from tapping and collecting fruits (Oral Conservation with Jamil Bedu, at the Sungai Temir Village on 3<sup>rd</sup> December 2012).



**Figure 7.42:** Have you received appropriate training for any permanent employment?

However, as shown in the Figure 7.42, this study found that 67.6 percent of them had complained that there were not receiving appropriate training. On the other hand, only 32.4 percent stated otherwise.<sup>379</sup> This finding is reflected in a statement by Batin Cham Beng:

*Some of us have a small palm oil plot before [at Sungai Temir Village]. However, here [at RSLB] we are given palm oil plot which we need to manage by our own. So, the government should provide intensive training. (Oral Conservation with Cham Beng, Batin at the RSLB on 24 November 2012).*

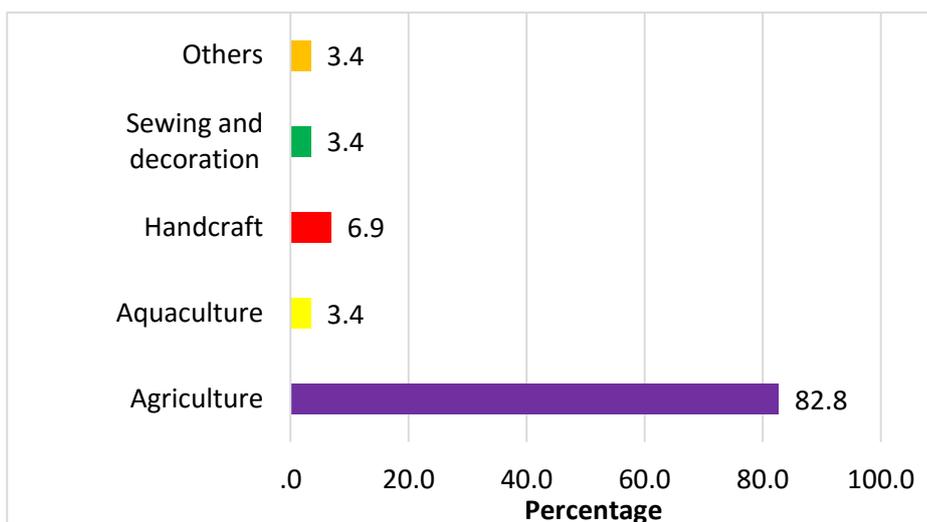
#### **7.11.4.7 Opinions on Training Required**

The respondents were also asked to state the types of training they required. As presented in Figure 7.43, it was found that from the 29 responses received<sup>380</sup>, the overwhelming majority, or 82.8 percent, of respondents stated they required agricultural training. Meanwhile, training in handicraft accounted for 6.9 percent while the remaining types of training represented less than 4 percent. This finding has raised the question of the potential of the oil farm plot's ability to provide maximum yields considering the fact that most of the respondents were not exposed to the modern systematic farming practices.<sup>381</sup>

<sup>379</sup> The EIA study has revealed that only 63.9 percent of the Orang Asli Sungai Temir households have agricultural skills. The study also found that, generally, the Orang Asli Sungai Temir households lacked skills in many fields and about 22.9 percent were without any skill (MOW, 2003, p. 4–12).

<sup>380</sup> In this question, respondents were allowed to state more than one answer.

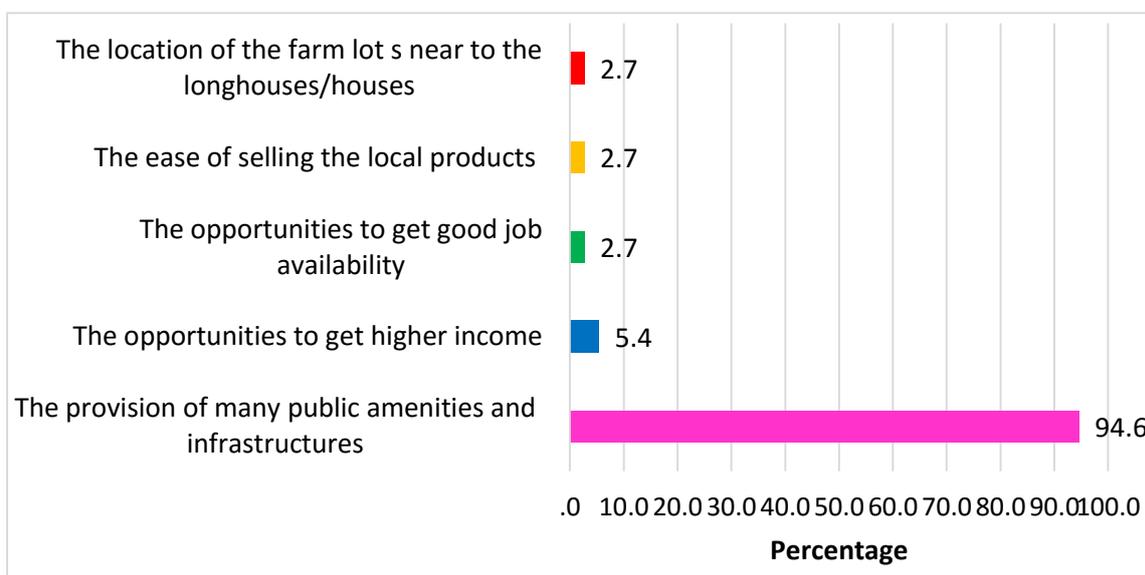
<sup>381</sup> This has been acknowledged by many Orang Asli during the informal conversations with them. In fact, the lack of modern and systematic farming skills are the reasons why the current palm oil plantations are being



**Figure 7.43:** What types of training are required?

#### 7.11.4.8 Opinions on Positive Aspects of Living at the Resettlement Scheme

From Figure 7.44 it can be seen that from 40 responses received<sup>382</sup>, an overwhelming majority of the respondents (94.6%) agreed that the RSLB has been provided with more public amenities and infrastructure compared to the Sungai Temir Village.



**Figure 7.44:** What are the positive aspects of living at the RSLB?

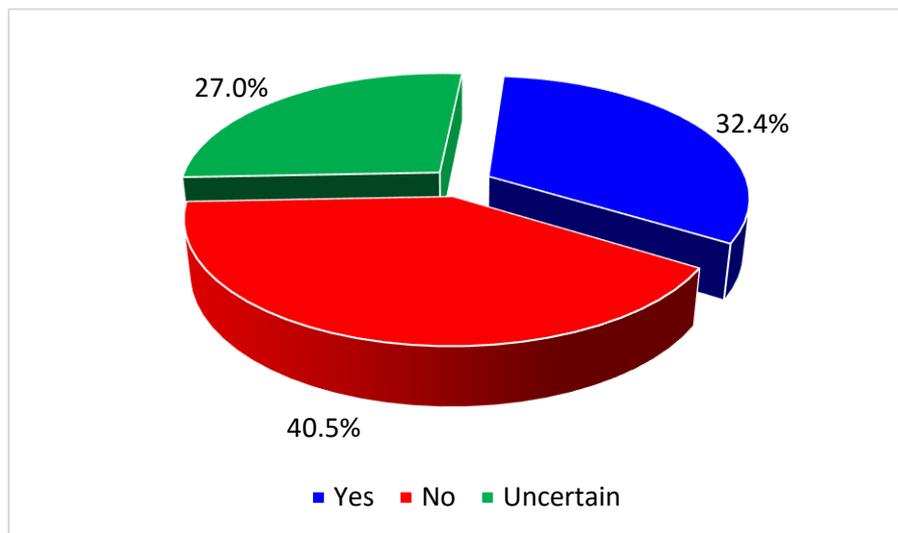
managed by a private company (Oral Conservation with Mohamad-Ainol Johari, a DOA Officer the DOA Office for the Raub District, at DOA Raub on 12<sup>th</sup> December 2012).

<sup>382</sup> In this question, respondents were allowed to state more than one answer.

The location of the farm lot, which is nearby their village was considered the second most positive aspect of the RSLB, with 5.4 percent. Other positive aspects, namely opportunities to get higher income, there being many jobs available and the ease of selling the local products constituted 2.7 percent each.

#### 7.11.4.9 Opinions on Intention to Leave the Resettlement Schemes

As in the BHP case study, the RSLB respondents were asked whether they had any intention to move out of the resettlement. If they had such intention, it would indicate that they might not be satisfied with their current life at the RSLB.



**Figure 7.45:** Do you have any plan to leave the RSLB?

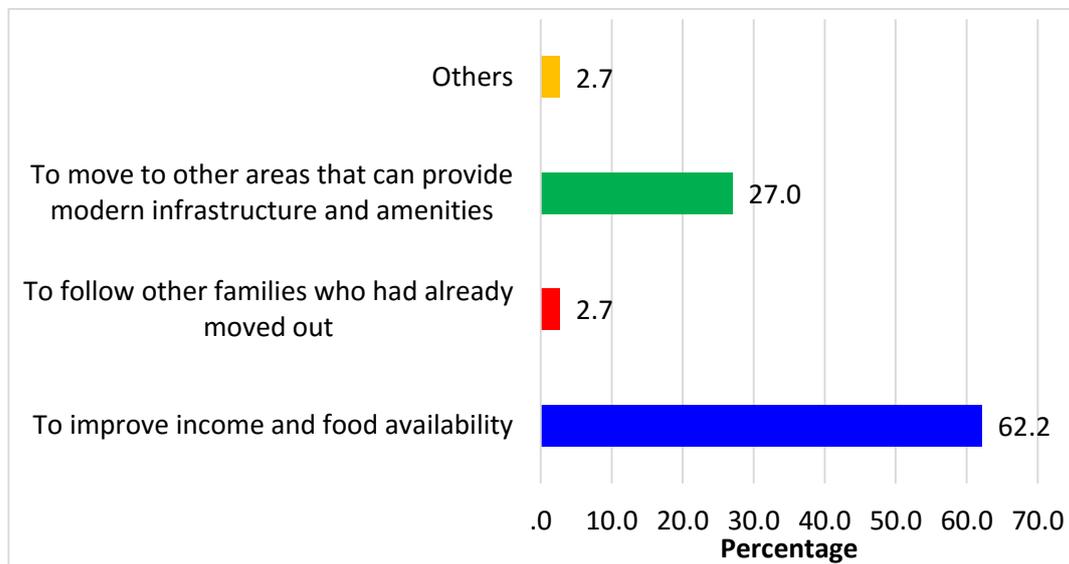
As shown in Figure 7.45, this study found that 40.5 percent of the Orang Asli had no plans to move out of the RSLB. However, 32.4 percent of them were having second thoughts and 27.0 percent were uncertain. In view of the high percentage of respondents who intended to move out or were in a state of uncertainty, it is interesting to quote what Bedu An, the leader of the Sungai Temir Village, had to say on this issue:

*There is a growing number of them [the Orang Asli from RSLB] who had now returned to Sungai Temir. They seem to be like fugitives. We are reluctant to accept them [as a member of this village] as this village is no longer their village (Oral Conservation with Bedu An, a former 'Menteri', at the Sungai Temir Village on 3<sup>rd</sup> December 2012)*

Based on the researcher’s observations and informal conversations with both the Orang Asli groups (those who stayed at the Sungai Temir Village and the Orang Asli at the RSLB), the researcher found that approximately 20 families had already re-resettled at the Sungai Temir Village. Although some of them told Bedu An that their returning to the Sungai Temir Village might be temporary, some of them had bought construction materials such as cement and bricks to build a house there. According to Bedu An, by doing so they had indicated that they might return to the Sungai Temir Village permanently (Oral Conservation with Bedu An, a former ‘Menteri’, at the Sungai Temir Village on 3<sup>rd</sup> December 2012).<sup>383</sup>

#### 7.11.4.10 Reasons to Leave the Resettlement Scheme

Respondents were asked to state their reasons for their intention to move out of the resettlement. As shown in Figure 7.46, this study found that 61.2 percent regarded improving their income and food availability as the main reason for leaving.<sup>384</sup> Approximately 27.0 percent of respondents gave the reason that they wanted to look out for areas that provide more infrastructure and amenities. On the other hand, 2.7 percent wanted to move out of the RSLB because they wanted to follow families who had already moved out.



**Figure 7.46:** Reasons to move out from the RSLB

<sup>383</sup> Based on the observation at the RSLB, the researcher found that at least 10 of the houses had been left empty. A few of these houses had been damaged because the front doors and windows were damaged as a sign of been burgled. This has suggested that the owner of the damaged house might have returned to the Sungai Temir Village either temporarily or permanently.

<sup>384</sup> This finding is parallel to a study done by Abdullah et al. (2015, p. 77) that found that 40 percent of the Orang Asli at the Desa Temuan Bukit Lanjan in Selangor had an intention to move out from the resettlement. It was also found that 64 percent of them said their intention was related to the lack of socio-economic factors including, among other factors, limited job opportunities in the resettlement.

This finding is parallel to Bedu An's observation when he was asked the reasons why some Orang Asli who were in the RSLB but now were moving out again to the Sungai Temir Village:

*That is because of the hardship they are facing in the RSLB. Here at Sungai Temir Village they can easily find jobs and free food resource and it is easy to get money and income. (Oral Conservation with Bedu An, a former 'Menteri', at the Sungai Temir Village on 3<sup>rd</sup> December 2012).*

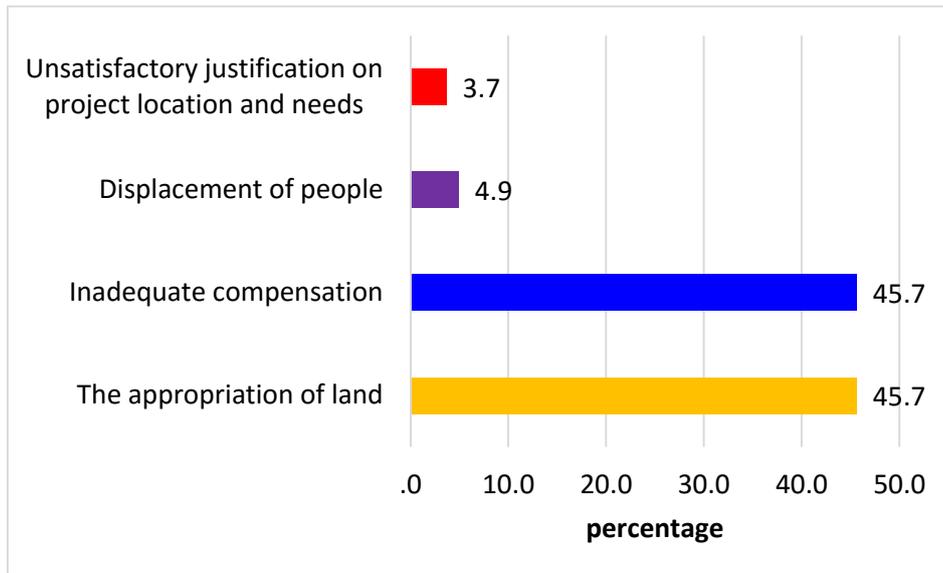
Meanwhile, Esóf Chin asserted the importance of the government handling the socio-economic of the Orang Asli more diligently: *'if we are unable to cope with the economic pressure here [at the RSLB], maybe we need to go back to Sungai Temir Village or to find other places'* (Oral Conservation with Esóf Chin, Chairman of the VDSC, at the RSLB on 3<sup>rd</sup> December 2012).

#### **7.11.5 Opinions on Conflict: Nature and Pattern**

This section intends to examine the nature and pattern of conflict of the respondents, including its related factors: the way the project was conducted, the pattern of conflict and the negative feelings experienced by the resettlers.

##### **7.11.5.1 Opinions on the Aspects of Concern Regarding the Project**

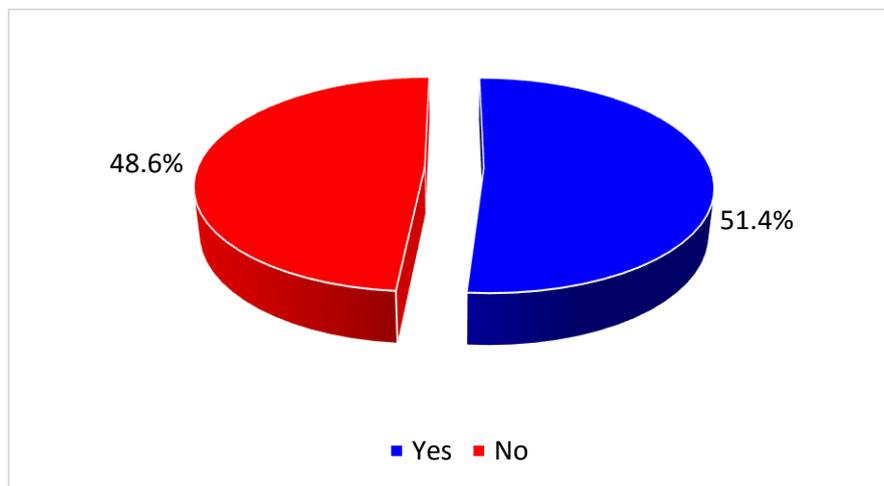
The responses received totalled 81; the respondents were allowed to state more than one opinion in their answer. Based on Figure 7.47, this study found that the appropriation of land and inadequate compensation received by them were the two most common aspects of concern: 45.7 percent of them give these reasons. Approximately 4.9 percent and 3.7 percent were concerned about the displacement due to the resettlement and the KDP location as well as its unsatisfactory justification by the authorities.



**Figure 7.47:** What aspects concern you about the project?

### 7.11.5.2 Opinions on the Project Implementation

As shown in Figure 7.48, this study found that a majority, or 51.4 percent, of respondents wanted the KDP implementation to be conducted differently. On the other hand, about 48.6 percent stated otherwise.



**Figure 7.48:** Should the KDP be conducted differently?

Tanjung Cham made the most relevant response in this regard; he had urged the government to give the Orang Asli more freedom and trust in the project design, particularly

on the need for them to manage the palm oil by themselves.<sup>385</sup> (Oral Conservation with Tanjung Cham, a member of the VDSC RSLB, at the RSLB on 23<sup>rd</sup> July 2013).

### 7.11.5.3 Conflict Types and Frequency

This sub-section illustrates the types and frequency of resistance adopted by the respondents. In doing so, this section describes two phases of conflict: before or pre resettlement (Table 7.19); and after or post resettlement of the PAP (Table 7.20). The reason for recording both phases was to understand the pattern and intensity of the resistance towards the project. It is worth mentioning that the respondents were not asked to state the specific year or the date of the resistance involved in this study.

**Table 7.19:** Types of protest and their frequency before the resettlement

Type of resistance	Frequency/ Percentage (%) of total resistance								Percentage (%) of total resistance
	1	%	2 – 4	%	5 – 7	%	> 8	%	
Petition/letter/memo (n=35)	12	26.1	23	50.0	0	0	0	0	76.1
Demonstration (n=9)	9	19.6	0	0	0	0	0	0	19.6
Road blockage (n=2)	1	2.2	1	2.2	0	0	0	0	4.3
Fight with project workers (n=0)	0	0	0	0	0	0	0	0	0.00
Others (n=0)	0	0	0	0	0	0	0	0	0.00
<b>TOTAL (n=46)</b>									<b>100.00</b>

As shown in Table 7.19, this study found that the total resistance employed by the respondents amounted to 46 cases (68.7%) of the total 67 cases of resistance in both phases). Out of these, it was found that petitions, letters and memos were the most recorded type of resistance by the respondents with 76.1 percent. In terms of the frequency of resistance, most of the respondents protested between 2 and 4 times (50.0%) followed by once only (26.1%). Demonstrations were recorded as the second most preferred type with 19.6 percent of the total cases of resistance and the respondents had participated once only (19.6%). The least frequent type of resistance recorded during the pre resettlement

<sup>385</sup> During the fieldwork period, the palm oil plots, which formed part of the compensation to the Orang Asli at the RSLB, had been managed by a private company. The company was appointed by the DOA. Some of the Orang Asli claimed that the farm had not been properly managed.

phase were road blockages, which represented only 4.3 percent. Other types of the resistance were not participated by the respondents.

**Table 7.20:** Types of protest and their frequency after the resettlement

Type of resistance	Frequency/ Percentage (%) of total resistance								Percentage (%) of total resistance
	1	%	2 – 4	%	5 – 7	%	> 8	%	
Petition/letter/memo (n=14)	5	23.8	8	38.1	1	4.8	0	0	66.7
Demonstration (n=7)	6	28.6	1	4.8	0	0	0	0	33.3
Road blockage (n=0)	0	0	0	0	0	0	0	0	0.00
Fight with project workers (n=0)	0	0	0	0	0	0	0	0	0.00
Others	0	0	0	0	0	0	0	0	0.00
<b>TOTAL (n=21)</b>									<b>100.00</b>

As presented in Table 7.20 after they had moved to the current resettlement scheme, the number of cases of resistance undertaken by the Orang Asli dropped to 21 cases (31.3% of the total 67 cases of resistance in both phases).<sup>386</sup> The most frequent type of resistance undertaken during this period continued to be petitions, letters and memos with 66.7 percent of the total cases of resistances. In terms of frequency, about 38.1 percent and 23.80 percent demonstrated 2–4 times and once only respectively. Consequently, demonstrations were recorded as the second most frequent type with 33.3 percent. In terms of frequency, about 28.6 percent of respondents participated once<sup>387</sup> while 4.8 percent participated twice. Other types of the resistance were not participated by the respondents.

<sup>386</sup> Many of the Orang Asli admitted that the drop in the resistance frequency was because there were not so much changes with such approaches. Besides, they were afraid the government could take a repressive approach in dealing with them. Some of them were afraid the government's financial grants, e.g. financial monthly allowance for poor households' given by the Welfare Department, that they were currently receiving might be terminated if they continued to openly resist.

<sup>387</sup> The researcher was made to understand that the respondents who made these demonstrations went to Putrajaya on 17<sup>th</sup> March 2010 where they voiced their opposition on the proposal for the new Orang Asli Land Ownership Policy (of which the KDP formed part of the issue) ( Figure 7.49 and Figure 7.50 shows the atmosphere of the demonstration).



Source: Personal collection of the COAC, unpublished

**Figure 7.49:** Historic protest by the Orang Asli in Putrajaya on 17<sup>th</sup> March 2010



Source: Personal collection of the COAC, unpublished

**Figure 7.50:** Historic protest by the Orang Asli in Putrajaya on 17<sup>th</sup> March 2010



**Figure 7.51:** The road leading to the Orang Asli Sungai Temir Village, which was temporarily blocked and guarded in order to avoid encroachment into their village



**Figure 7.52:** Fruit and rubber tree of the Orang Asli Sungai who were resettled at the RSLB were cut down by those who remained at the village

Overall, in terms of percentage changes, both Table 7.19 and Table 7.20 show that at the current resettlement there was a steady decrease of cases of protest (54.4%) compared to the pre resettlement period. However, one of the obvious effects of the Orang Asli having resettled at the RSLB was that there were frequent conflicts with the host community, i.e. the FELDA resettlers. According to Tanjung Cham<sup>388</sup>:

*Sometimes there were small fights between the Orang Asli and the Malays [the FELDA resettlers]. Previously, at the Sungai Temir Village there were conflicts but now here at the RSLB more frequently. Sometimes we [the Orang Asli at the RSLB] would fight over the ownership of the forest products like rattan, bamboo or fern.*

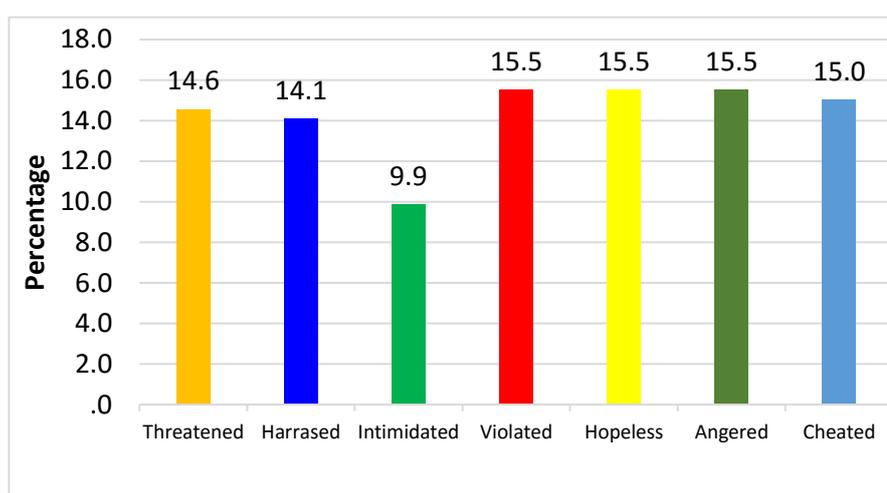
<sup>388</sup> Tanjung Cham is the son of the Cham Beng, the current Batin of the Orang Asli at RSLB. Based on the informal conversation with Orang Asli at RSLB, he is likely to replace Batin Cham.

*Sometimes we fight over banana leaves; we can sell them.* (Oral Conservation with Tanjung Cham, a member of the VDSC, at the RSLB on 23<sup>rd</sup> July 2013).

However, it is worth mentioning that this study found that the conflict between those who had resettled at the RSLB and those who stayed in the Sungai Temir Village had intensified due to the crops being destroyed by Bedu An and his followers. Figure 7.51 shows the entrance to the Orang Asli Sungai Temir Village where the blockage was made by the remaining Orang Asli led by a former 'Menteri', Bedu An. Meanwhile, Figure 7.52 shows the fruit and rubber trees owned by Batin Cham Beng and his men who were moved to the RSLB. Their fruit trees were cut down by Bedu An and his followers and this intensified the conflict between these two groups.

#### 7.11.5.4 The Negative Feeling Caused by the Project

In this study, Figure 7.53 indicates the negative feelings experienced by the Orang Asli due to the KDP implementation. From the total 213 responses received,<sup>389</sup> this study found that negative feelings of being threatened, harassed, violated, hopeless, angered and cheated shared percentage around 14 percent to 15 percent except for intimidated feelings which represented 9.9 percent.



**Figure 7.53:** The negative feelings experienced by the respondents

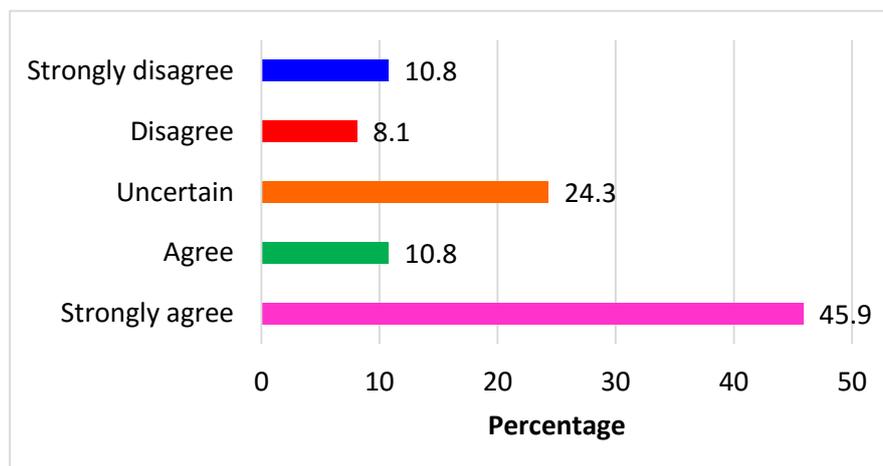
<sup>389</sup> In this question, respondents were allowed to state more than one answer.

### 7.11.6 Views on the Government and Politicians' Roles

The next component of the survey was to investigate the respondents' perception of the government and politicians' roles. This research argued that the government and politicians' roles were part of the sources of conflict that were found to be the sources of institutional credibility or empty for that matter. Therefore, the following nine questions were formulated to investigate the respondents' perceptions on the government and politicians' roles in the project, including their roles in the EIA, resettlement and the trust concept. Respondents were asked to evaluate the statements given based on the Likert's Scale: strongly agree, agree, uncertain, disagree and strongly disagree.

#### 7.11.6.1 Views on Employment Opportunities

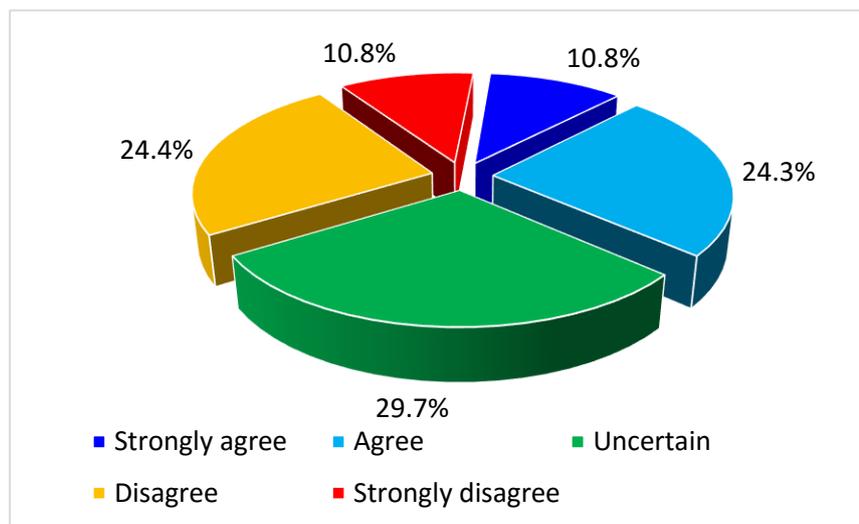
Despite the positive claim that the project (KDP) could provide employment to the local people, as shown in Figure 7.54, this study found that the majority, or 56.7 percent, of respondents agreed (including 45.9 percent strongly agreeing) that they were unable to get any employment from the KDP implementation. Only 18.9 percent of them agreed (including 10.8 strongly agreeing) that they managed to get a job generated from the KDP implementation. A substantial percentage of them, or approximately 24.3 percent, was uncertain.



**Figure 7.54:** Are you unable to get jobs generated from the KDP?

### 7.11.6.2 Views on the Government Promises for Compensation

The respondents were also asked to state their perception towards the government promises on compensation. Despite their negative responses on compensation, based on Figure 7.55, this study found that majority of Orang Asli respondents, or 29.7 percent, uncertain. About 35.1 percent agreed (including 10.8 strongly agreed) that the government had fulfilled their promises on compensation<sup>390</sup>. On the other hand, a substantial number of them, or 35.2 percent, were disagreed (including 10.8 strongly disagreeing).



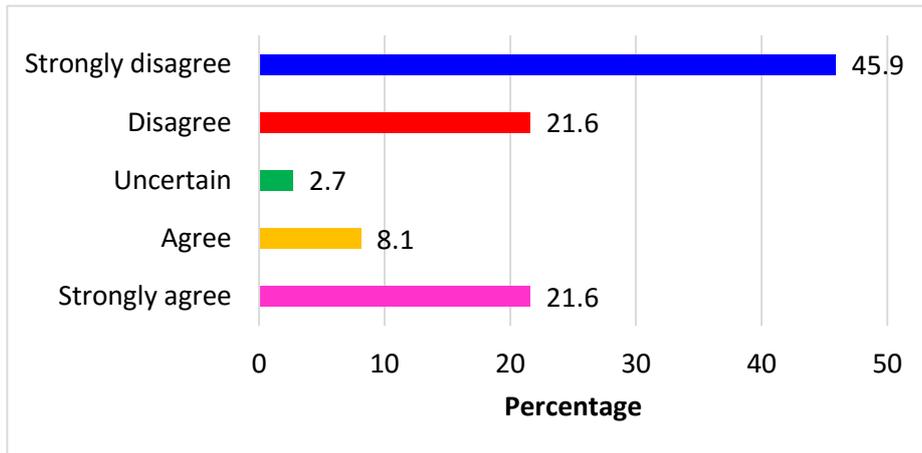
**Figure 7.55:** Has the government fulfilled its promises on compensation?

### 7.11.6.3 Views on the Government's Efforts in Improving the Resettlers' Standard of Living

As shown in Figure 7.56, this study found that the negative responses dominated with 67.5 percent disagreeing (including 45.9 percent strongly disagreeing) that the government is serious about improving the Orang Asli's standard of living.<sup>391</sup> On the hand, about 29.7 percent of respondents agreed (including 21.6 percent strongly agreeing). Approximately 2.7 percent were uncertain.

<sup>390</sup> Although many of the Orang Asli felt that the government failed to consider their requested to get additional compensated land beyond six acres, in general, many of them acknowledged that the government efforts in compensating them with houses, amenities and monthly income were good promises in relation to improving their standard of living.

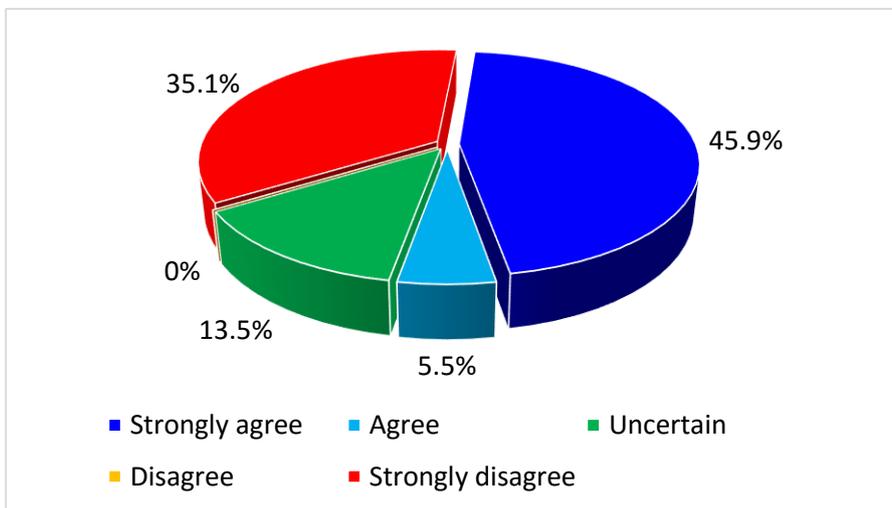
<sup>391</sup> This finding is in line with the study done by Abdullah et al. (2015, p. 78) which found as many as 78 percent of the respondents had requested extra assistance from the government.



**Figure 7.56:** Has the government provided serious efforts to improve the standard of living at the resettlement?

#### 7.11.6.4 Views on Political Awareness due to the KDP

Based on Figure 7.57, this study found that about half of the Orang Asli respondents, or 51.4 percent, agreed (including the majority of 45.9 percent strongly agreeing) that the KDP had increased their political awareness. In contrast, more than one-third, or 35.1 percent, felt otherwise and 13.5 percent of them were uncertain.



**Figure 7.57:** Has political awareness increased due to the KDP?

The researcher held informal conversations with some Orang Asli and found that there was political awareness among them. To recall one particular incident, Bedu An mocked one Orang Asli who was working at the Sungai Temir Village by pointing his finger at him and, with cynical eyes and strong voice, he said:

*See, this man don't trust us when we say that those who resettled [at the RSLB] will face a difficult life. He has been here a month staying with us and does not return to Bilut [RSLB]. Now, he is working at our palm oil plot. Next time he will vote any parties other than the 'timbang'.<sup>392</sup> (Oral Conservation with Bedu An, a former 'Menteri', at the Sungai Temir Village on 3<sup>rd</sup> December 2012).*

An increase in political awareness was not only happening to Bedu and his followers who had refused to relocate, it was also found to have extended to resettlers at the RSLB as well. For example, Tanjung Cham made the following relevant remarks:

*Because of this project [the RSLB], the Orang Asli's eyes are now open. The ruling parties are not as good as we thought them to be. (Oral Conservation with Tanjung Cham, a member of the VDSC, at the RSLB on 23<sup>rd</sup> July 2013).*

Tanjung Cham, the son of Batin Cam Beng, acknowledged that there was a wave of political awareness among them particularly after promises made by the government were not honoured.<sup>393</sup> Tanjung admitted that he had sensed this time that the support of the Orang Asli's at the RSLB for the ruling parties would be decreased.<sup>394</sup>

#### **7.11.6.5 Views on the Resettlement Impacts**

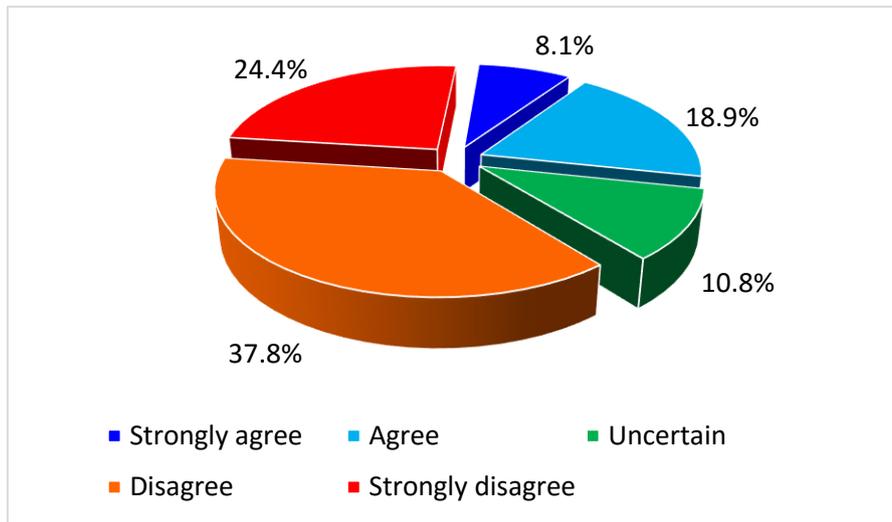
Given the nature of factors surrounding the resettlement project, it was necessary for this research to get an overall view on the resettlement impacts towards the respondents. As presented in Figure 7.58, this study found that more than half of the respondents, or 62.2 percent, disagreed (including 24.4 percent strongly disagreeing) that the resettlement had brought more positive impacts to them than negative ones.

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<sup>392</sup> The traditional 'timbang' (or the weighting scale in English) is a symbol of the NF coalition party.

<sup>393</sup> Examples given by Tanjung Cham were that there was poor quality of housing provided to them and the difficulty they faced in obtaining food at the RSLB as well as their request to manage the palm oil plots by themselves.

<sup>394</sup> This expectation proved to be true as there was decreased support towards the ruling parties. See further discussion in Section 7.11.6.6 - Views on the Trust of Government due to the KDP.

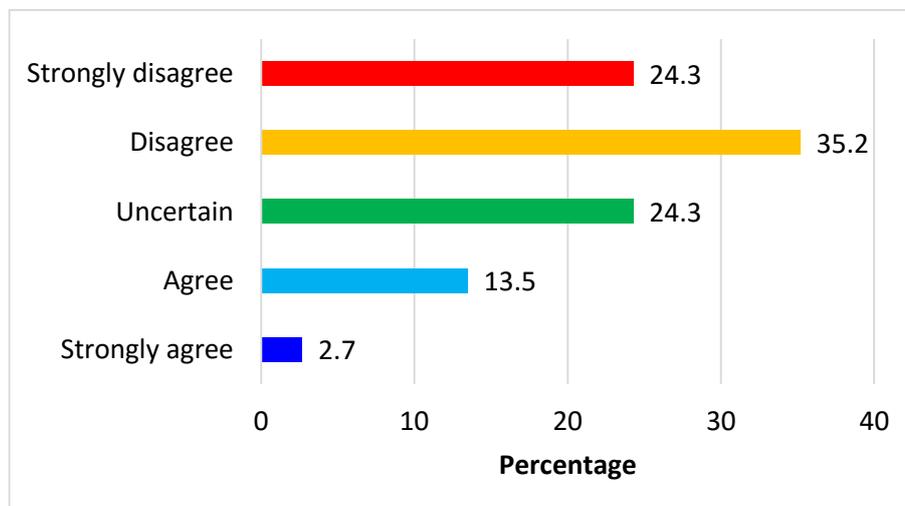


**Figure 7.58:** Does the resettlement bring more positive impacts than negative ones?

On the positive response, approximately 27 percent of respondents agreed (including 18.9 percent strongly agreeing) while about 10.8 percent were uncertain.

#### 7.11.6.6 Views on the Trust of Government due to the KDP

Given the resistance of the respondents to the KDP, it was interesting to find out how they ranked their trust of the government. As shown in Figure 7.59, this study found that the majority of respondents, or 59.5 percent, either disagreed (35.2%) or strongly disagreed (24.3%) that the project had resulted in increasing their trust in the government. In contrast, it was found that approximately 16.2 percent agreed (13.5%) and strongly agreed (2.7%) while about 10.9 percent were uncertain.



**Figure 7.59:** Has the KDP increased your trust towards the government?

This finding could probably be related to the latest outcome of the fourteenth Malaysia's General Election in 2013 when a majority of the Orang Asli in the RSLB voted for the opposition parties due to their discontentment and frustration towards the government and politicians from the ruling party in handling both the projects (Oral conservation with Tanjung Cham, a member of the VDSC, at the RSLB on 23 July 2013). Esóf Chin also pointed out on something relevant in this regard:

*With all the budget coming from the government and the existence of the DOA<sup>395</sup> long before Malaysia's Independence, the Orang Asli are supposed to be more advanced than other races in Malaysia. But where did the real budget go? How much of the budget has actually been used to improve the lives of the Orang Asli?<sup>396</sup> (Oral Conservation with Esóf Chin, Chairman of the VDSC, at the RSLB on 3rd December 2012).*

The negative perception of the Orang Asli at the RSLB towards the government was not surprising or an isolated case. It was extended to the national level; for example, during the National Inquiry into the Land Rights of Indigenous People, which was held by the HRCM on 27<sup>th</sup>–29<sup>th</sup> March 2012 in Kuala Lumpur the researcher recalled one particular session when one of the Orang Asli by the name Johari Bujang (the complainant) complained that his land in Pulau Carey in Selangor State was encroached by the Federal Land Consolidation and Rehabilitation Authority (FELCRA).<sup>397</sup> The HRCM's panel of inquiry was informed:

*The DOA has to really help the Orang Asli. What seems to be the case now is that the DOA is not serious in assisting us.<sup>398</sup> Major races determine their seriousness.*

He went on to express the negative feelings of the Orang Asli towards the government with the following remarks:

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<sup>395</sup> The DOA is a single and special agency dealing entirely with Orang Asli matters. The agency was established in 1953. The DOA objectives are: i) to increase the income of the Orang Asli and thus remove them from the poverty threshold; ii) expanding the scope of infrastructure coverage and social amenities to all the Orang Asli.; iii) empowerment of the Orang Asli people through the comprehensive development of human capital; iv) raise the standard of health of the Orang Asli people towards prosperous living; v) conserving and upholding the traditional knowledge of the Orang Asli heritage; and, vi) Improving the effectiveness of the organisation by adopting and embracing good governance (DOA, 2015).

<sup>396</sup> Tijah Chopil, a chairperson from JKOASM has questioned the allocation given by the government for the Orang Asli community but still the community has been lagging in many aspects. The JKOASM has urged the government to monitor the implementation of development projects and to make sure that the allocations reach the target group, i.e. the Orang Asli (TMI, 2015).

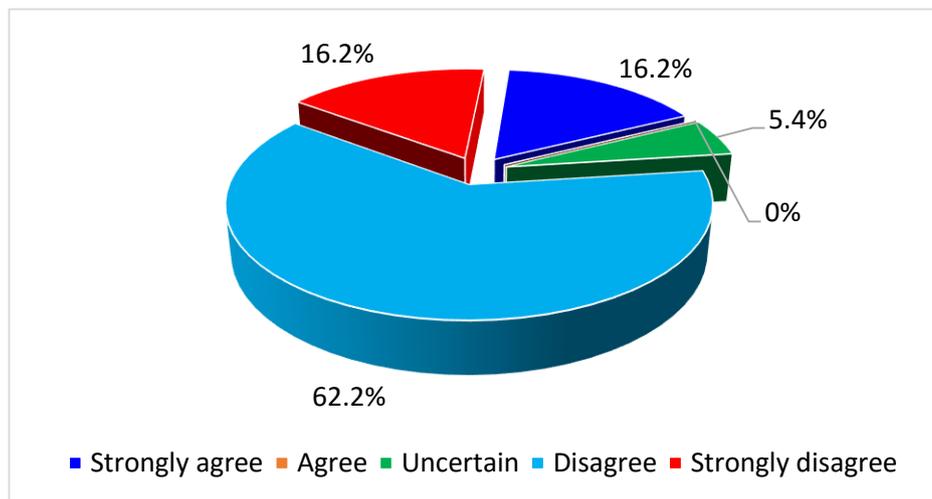
<sup>397</sup> FELCRA was established in 1966; it aims to develop the rural sector by helping its community to participate in national economic activities, thus improving the standard of living of the participants (FELCRA, 2015).

<sup>398</sup> See the same observation as recorded by Dentan et al. (1997) and Ibrahim (2000).

*It seems that the government does not really help us like other races. The government helps the Malays, the government helps Chinese, and the government helps Indians but why does the government not help us like the other races? Our rights are not treated like others<sup>399</sup>.*

#### 7.11.6.7 Views on the Trust of Politicians due to the KDP

Based on the Figure 7.60, this study found that the KDP project decreased the Orang Asli's trust of the politicians; a considerable percentage, or 78.4 percent, disagreed (including 62.2 percent strongly disagreeing). In contrast, 16.2 percent respondents strongly agreed while none of the Orang Asli strongly agreed and 5.4 percent were uncertain.



**Figure 7.60:** Has the KDP increased your trust towards the local politicians?

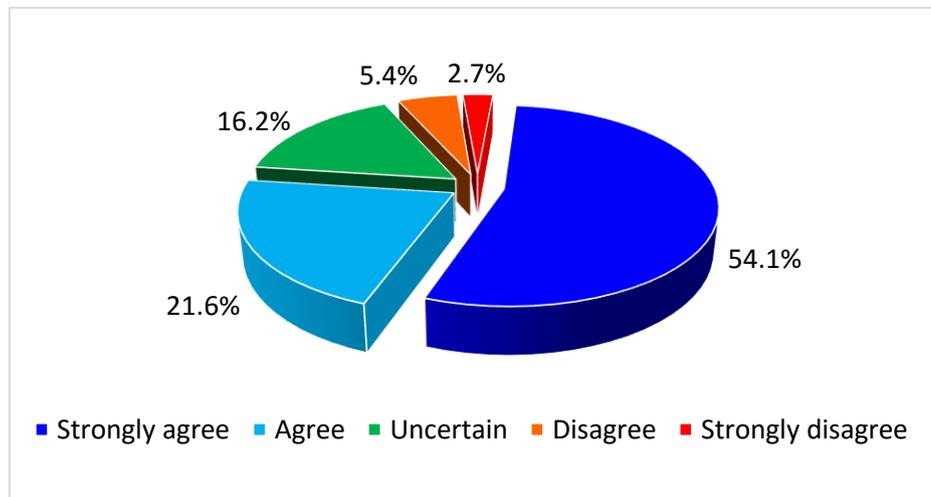
Yusri Ahon's observation on the issue of trust of politicians warrant our attention in this regard:

*The Orang Asli in general are no longer afraid to vote for the opposition parties. All the issues involving us, particularly on the land rights, have changed our perceptions toward the government and the NF. The NF parties are not as good as we thought them to be all this while. (Oral conversation with Yusri Ahon, a Committee Member of the JKOSAM cum Deputy President 3 of the JOAS, in Temerloh Pahang on 3<sup>rd</sup> December 2012).*

<sup>399</sup> The negative perception by the Orang Asli towards the DOA has also been recorded by a few researchers (see Means, 1985; Dentan et al., 1997; Ibrahim, 2000).

#### 7.11.6.8 Views on the Project's Economic Benefits

Based on Figure 7.61, this study found that 75.7 percent of respondents agreed (including 54.1 percent strongly agreeing) that the political actors had gained much more economic benefit than the local people did from the KDP implementation.

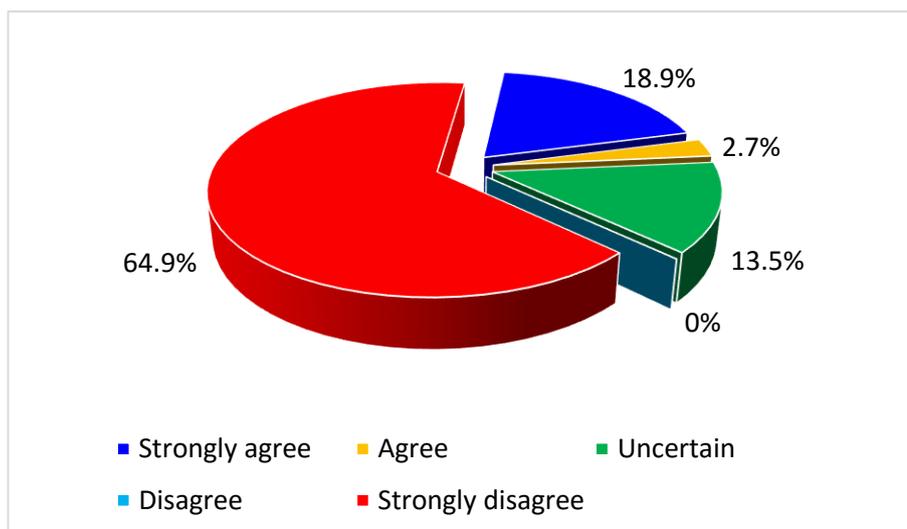


**Figure 7.61:** Have the political actors gained much more economic benefit than the local people?

Only a small percentage of the respondents disagreed (5.4%) and strongly disagreed (2.7%). This finding was not surprising as these research findings of the EIA study revealed that less than 18 percent of the Orang Asli in the Sungai Temir Village had expected positive economic improvement or benefit (MOW, 2003, p. 4–17).

#### 7.11.6.9 Views on the Government Role in the EIA

Based on Figure 7.62, this study found that 65 percent of respondents strongly disagreed that the way the government in conducted the EIA for the KDP was acceptable. Only 21.6 percent agreed (including 2.7 percent strongly agreeing). The remaining 13.5 percent of respondents were uncertain.



**Figure 7.62:** Do you agree the way the government conducted the EIA is acceptable?

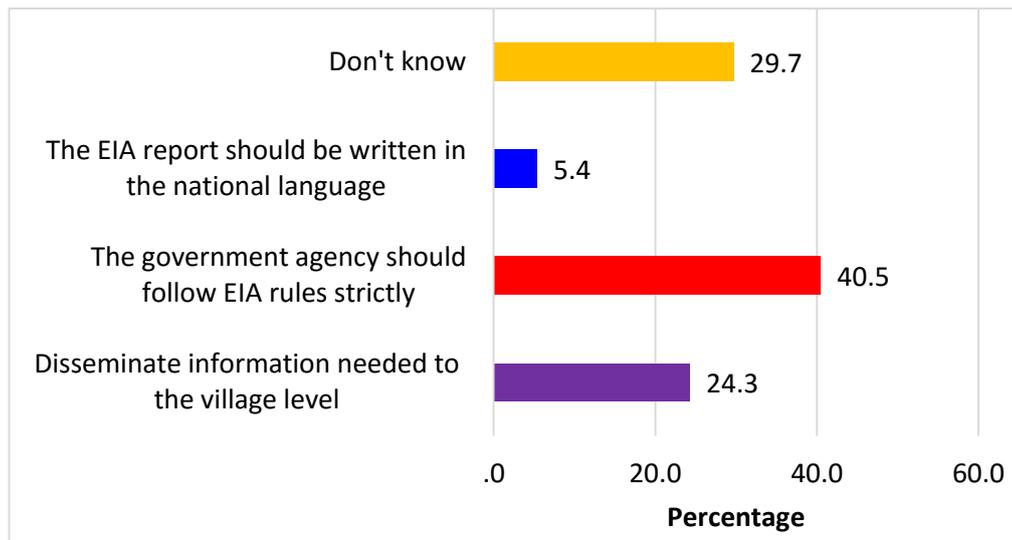
### 7.11.7 Views on the Enhancement of the KDP

The final component of this survey intended to extract the respondents' opinions on how to improve public participation, to protect NT and ways to mitigate the conflict at the resettlement scheme.

#### 7.11.7.1 Ways to Improve Public Participation in the EIA

Based on Figure 7.63, this study found that as many as 40.5 percent of respondents stated that in order to improve public participation in the EIA the government should follow the rules strictly. Meanwhile, approximately 24.3 percent of respondents argued that the information on the project should be passed down to village level. It was also suggested that the EIA report should be written in the national language (5.4%)<sup>400</sup>.

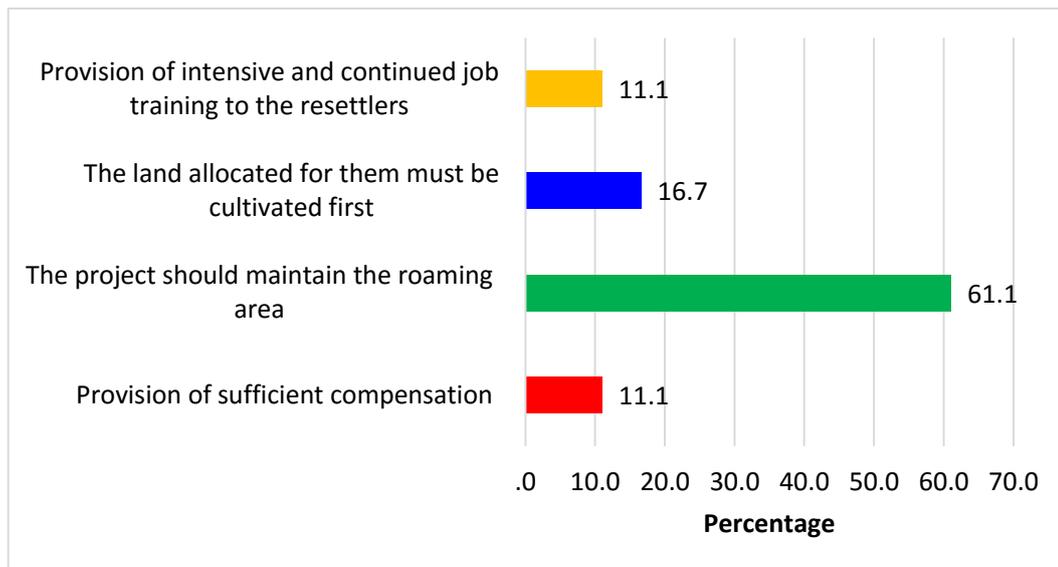
<sup>400</sup> This language barrier issue has also been identified and highlighted during the meeting between the JBIC, COAC and FOE Japan on 31<sup>st</sup> January 2004.



**Figure 7.63:** What are the measures the government should take to improve public participation in the EIA?

#### 7.11.7.2 Suggestions to Improve Project Acceptance

Figure 7.64 records the general recommendations made by the Orang Asli respondents on the ways to improve the project acceptance in general. This study found that more almost two-thirds (61.1%) of respondents stated that maintaining the roaming area as they previously enjoyed before the resettlement at the RSLB would give acceptance to the project. The second highest suggestion by respondents (16.7%) was that the Orang Asli should be allowed to manage their own palm oil lots. Meanwhile, 11.1 percent of the Orang Asli respondents demanded more space for consultation in the decision-making process by the authorities, and also to be provided with sufficient compensation.



**Figure 7.64:** What are the measures the government should take to improve project acceptance?

Tanjung Cham expressed a hope for the government to provide them with a roaming area:

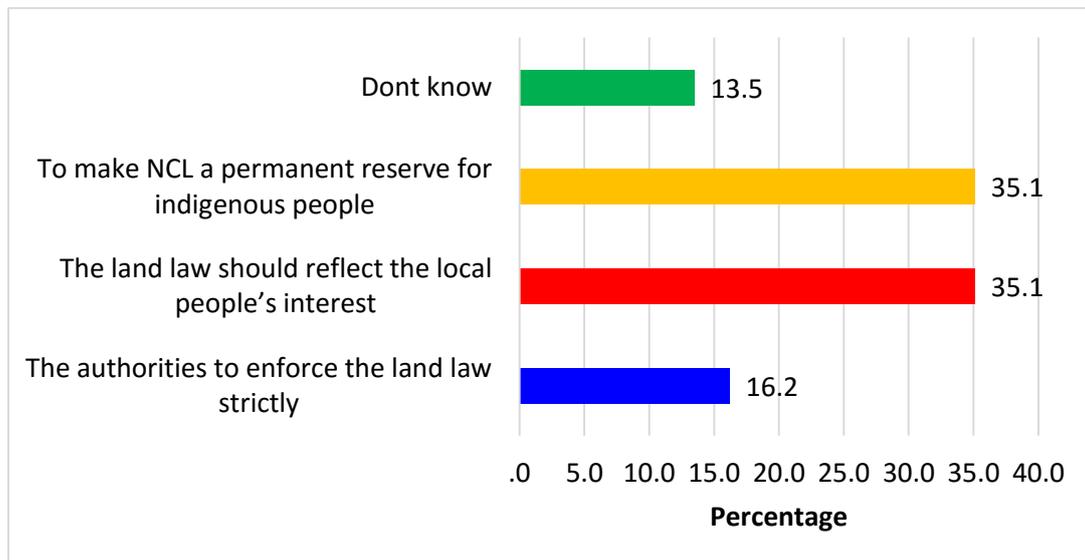
*The government should provide us with a roaming area so that we can get free food and forest products. Right now everything needs to be bought. This cost us a lot of money. Although now we still have the monthly allowance, what happen in the futures?* (Oral conservation with Tanjung Cham, a member of the VDSC, at the RSLB on 23<sup>rd</sup> July 2013).

Meanwhile, Esóf Chin emphasised that the Orang Asli Sungai Temir Village should be given the right to manage their own palm oil plantation rather than to the responsibility be given to a private company. However, when asked *'Do the Orang Asli have the capabilities to do it?'* Esóf Chin simply replied: *'The government should give us training then'* (Oral Conservation with Esóf Chin, Chairman of the VDSC, at the RSLB on 3<sup>rd</sup> December 2012).

### **7.11.7.3 Recommendations to Protect the NT**

Although the Orang Asli were no longer entitled to the NT since they had been given individual land titles, it was important to get some direct opinions from the Orang Asli on how to protect the NT. As shown in Figure 7.65, this study found that most respondents (35.1%) suggested that the NCL be permanently reserved for them as well the land laws

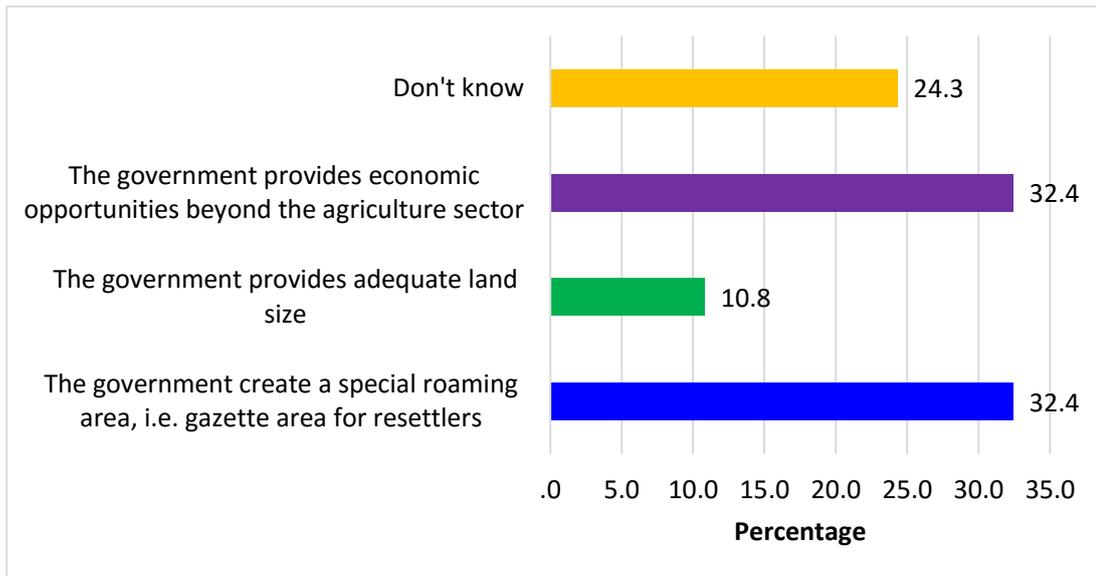
created reflecting the Orang Asli's interests (35.1%). It was also found that 16.2 percent of them suggested that the land laws should be enforced strictly.



**Figure 7.65:** What are the measures the government should take to protect the NT?

#### 7.11.7.4 Measures to Reduce Conflict

In terms of measures to reduce conflict, as shown in the Figure 7.66, this study found that the majority of the Orang Asli respondents (32.4%) proposed that the government should gazette a special roaming area for resettlers as well as providing economic opportunities beyond the agriculture sector. Meanwhile, about 10.8 percent of them had proposed that the government to provide adequate land for the Orang Asli.



**Figure 7.66:** What are the appropriate measures the government should take in order to avoid conflict between the local people and project worker or villager?

## 7.12 Synthesis of Concluding

Like in the BHP case study, this chapter has shown that the EIA in the KDP can be regarded as being far from credible. This was evident through the three aspects of credibility principles or parameters as provided in Chapter 4 namely: Discounting institutional function – EIA institutions failed to credibly function as they ought to be. In addition, the fact that the EIA had been carried out in conflict with the EIA founding purposes, and through the respondents' perception on it. It was found that the public participation and the EIA procedures had been dealt with merely for procedural requirements. Apart from the incompliance in the EIA procedures: approval was given even before the full EIA study had commenced and the study was done in haste or hasty, inadequate and unquestionable methods. Public participation as the backbone of the EIA credibility was treated in a manner less than satisfactory. Again, the treatment of the EIA aspect in the KDP included what EIA scholars have long identified a symbolic law. As such, the state does not share rules, instead, the state has manipulated the rules in order to accommodate her political and business patrons-clients with rent-seeking. In view of this, it is not surprising that the Orang Asli respondents and the NGOs had viewed the EIA with low satisfaction.

As has also been demonstrated in this chapter, the project provided a platform for rent-seeking activities where the political actors managed to reap much of the project's economic

benefits, either directly from the construction of the KDP or from Langat 2 or from the Water Privatisation Programme, which are in the construction phase or will take place soon (to be completed by 2017). In this scenario, it is clear that social and political actors who are connected to the ruling party were able to grab the opportunities, while the respondents were unable to seize much of the economic opportunities. Of course, there were numerous reasons for these inabilities. However, one thing was found to be obvious: the low, if not absence of formal education among the respondents made it impossible for them to reap the economic opportunities generated from the project.

The second finding from the theoretical observation on credibility was the imposition of these newly institutions have been discounting institutional function. State does not facilitate local institutions such as roaming area at the current resettlement. Therefore, this has threaten the ability of these institutions to credibly function. Consequently, it has threaten the local people livelihood. In addition, the limited land which does not consider PAP's future growth has exacerbated the institutional failures. As has been established, the negative perceptions of the loss of land rights dominated the respondents' perception. The absence of land rights as practised prior to the resettlement at the RSLB, particularly the creation of the roaming area that was previously a food source for the Orang Asli, had completely disappeared. It had thus undermined the institutional credibility of the project and the EIA. To compound the problem, the failure of the state to provide employment opportunities beyond the agricultural sector had caused great hardship. Although the government attempted to introduce cash crops, the inadequate land provide as compensation, at least in the current Orang Asli's view, considerably offset this approach.

The final observation from this chapter has shown that the non-compliance in project implementation, both on the EIA and the land acquisition and resettlement issues as well as the low socio-economic activities of the resettlers, attributed to the discontent among the PAP. These issues consequently led to conflict, as this research has shown. This protest occurred, despite the divergences of power between the strong and dominant state and the PAP or the targeted. This is also despite the fact that the PAP do not have sufficient leverage –low socio-economic and low political bargaining. As in BHP case, the KDP findings were found to follow the similar pattern from the national level as discussed in Chapter 5. After having reviewed the case studies for both dam projects, the next chapter will focus on explaining the gaps between what has been outlined in the theory and what has actually been demonstrated on the ground.

# 8

## Institutional Credibility Debates Revisited: Lessons Learned for Development

### 8.1 Introduction

This chapter summarises the whole discussion of this research study by focusing on the gaps between the theoretical assumptions as outlined in the theoretical chapter and the empirical evidence gathered from the ground. In addition, this chapter also aims to provide some empirical observations on the challenges of designing credible institutions for a development project or more particularly, the Malaysian EIA institutions.

The discussion in this chapter will mainly concentrate on the impacts of the actual projects i.e. BHP-KDP towards local people. However, this research study is fully aware that in reality the impacts of the actual project<sup>401</sup> could include adjacent development or it might even extend to water or energy policies. However, due to scope of this research, the approach of limiting the evaluation of the EIA into the actual projects impacts i.e. substances and procedure only is unavoidable.

### 8.2 The EIA as a Credible Institution: The question of Function

As previously discussed, there is mounting scepticism on the EIA role as a rational and systematic assessment as the assessment, in fact, has failed to provide a substantive role. Firstly, the data and content of the EIA study for the BHP and the KDP failed to give adequate consideration to the socio-economic study and the project's rationales and needs. The scare tactics through exaggeration and methodological flaws has been used to justify

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<sup>401</sup> For example, in terms of the macro actual impacts toward enhancing the efficiency and sustainability of the energy policy, reducing foreign outflow, overspill economic benefits etc.

the KDP's implementation<sup>402</sup>. In the case of the BHP, the project commenced without first getting EIA approval from the federal DOE or even the NREB. To compound the credibility issue in the BHP's EIA, the EIA reports were also submitted to the NREB in three stages; thus, it failed miserably in providing a holistic view on the BHP. Meanwhile in the KDP case, EIA approval was granted by the DOE without a full and complete study on the flora and fauna of the Lakum Forest and without full consideration of the socio-economic profile of the Orang Asli Sungai Temir Village.

Secondly, while EIA is heavily promoted as a conflict resolution platform, in reality, and as the survey and interview findings showed, EIA had played a small role in empowering public participation. The technocratic approach in both case studies imitated and concurred the widely observation in developing countries that with an authoritarian system, the environmental regulations have largely been initiated by the government officials via the *'top-down'* approach. Under these circumstances, it is fair to say that the EIA for both projects failed to provide a substantive role in conflict management or environmental protection. Instead, EIA in both cases was treated just as a symbol of law whereby its processes were gravely compromised, particularly in relation to public participation. It was used just to meet the procedural requirements. Principles such as transparency and accountability, as well as the FPIC as a tenet of good implementation practice, were found missing from the public participation in both EIA projects.

The project proponents clearly violated the rules and regulations in the EIA in order to ensure that both the projects could proceed at any cost. The empirical evidence has shown that the PAP were not satisfied with the EIA process. They also felt that the public participation for the projects had failed to reduce conflict – a substantive role of EIA. In addition, the majority of respondents in this study argue that the authority has not followed EIA procedures. In addition, the majority of them also admitted that the projects failed to provide transparency. Manifestations, conflict and resistance were demonstrated by the PAP, especially on EIA, land rights, compensation and resettlement issues.

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<sup>402</sup> For example, about 87.9 percent of the Orang Ulu and 64.9 percent of the Orang Asli respondents were not satisfied with their involvement in the EIA. The study also found that about 75 percent of the Orang Ulu and 45.9 percent of Orang Asli respondents perceived the project as unable to reduce conflict and approximately 40.5 percent were uncertain. Meanwhile, for the Orang Ulu respondents, about (54.5%) had strongly disagreed and about one-fifth disagreed (20.5%) and 64.9 percent of the Orang Asli respondents disagreed that EIA able in empowering local participation. In addition, about 80.0 percent, of Orang Ulu and the majority or 48.6 percent of Orang Asli respondents stated that the authorities had conducted the EIA without complying with the procedures while 43.2 percent were uncertain (see detail in Section 6.11.2, Chapter 6 and Section 7.11.2, Chapter 7).

The political and business actors were found to be very eager to proceed with both dam projects despite the EIA studies having displayed unfavourable findings. However, since the projects were considered to be in the national interest they were strongly backed by local politicians and leaders of the government. All the anomalies were kindly accepted, at least from the local people's perspective. This study also revealed that political elites and business actors greatly influenced and manipulated the EIA process in these two dam projects. This led the public to assume that political decisions outweighed rational assessment in the government's decision to approve the projects' EIA. Since the government had sanctioned the projects, the DOE found itself in a difficult position unable to enforce its own rules (as admitted by a DOE officer interviewed and reported in the media). This study also found that EIA rules were compromised due to pressure from the political actors who had vested interests in the projects' implementation.

The ultimate financial interest or rent-seeking and hidden agendas of the politicians affected EIA rules and the whole EIA process tended to be compromised, thus becoming merely a symbol of law rather than providing a substantive role (Burnett, 1998; Newig, 2007). In this context, the EIA rules was also failed to give effect on the social and political actors (Ho, 2005a, Ho, 2005b; Ho and Spoor, 2006). In terms of the rules shared by the actors involved, the EIA in both projects failed to function credibly – it failed to rally the shared rules from the social and political actors – a sign of empty institutions. This probably stemmed from the fact that EIAs are always politically determined by those whose have political power and are able to determine the rules of the game (Beattie, 1995, p. 112).

In terms of the EIA model, the EIA in this research study was parallel to the pluralist EIA model where the EIA was treated merely as a symbol of law that is akin to the decoupling concept. Meanwhile, from the implementation theory perspective, the case study EIAs demonstrated that, due to rent-seeking activities, political actors specially intended to enrich themselves through the manipulation of the EIA rules. The EIA rules in the case studies were tailored to accommodate their interests rather than to protect the environment. Therefore, it is safe to conclude that regardless of IA or EIA forms: be it SIA or even SA, it does not guarantee that environmental and social sustainability, or credibility in this context have been taken into account when the elements of rent-seeking and political patronage are too obvious to be ignored.

From a wider perspective, this study parallels Verma's study (2002); she found that the reason why civil society in Malaysia was weak was because of the authoritarian impulses rooted in the strong executive's hand. She found that this approach was enshrined in the Malaysian constitution and further strengthened through constitutional amendments, notably after Malaysia's independence. To make matters worse, the media failed to address public interests including environmental issues in an effective manner. The media became just the mouthpiece of the government, largely due to the monopoly of the state in media shares (Mahmood, 1994, p. 73).

### **8.3 Rent-seeking and Political Patronage: A Long Standing Key Factor That Hampers the Function of the EIA**

Although this study did not extend the examination on rent-seeking and political patronage to the district or even the village level, the study was able to show that there were elements of rent-seeking and political patronage in both the BHP and KDP. Political and business actors from UMNO or NF had been using their position to enrich their patrons or party in both cases<sup>403</sup>. It was found that in both the BHP and KDP members of the ruling party were rent-seekers and used their party and position to enrich their patronages. The rent-seeking presence was not confined to politicians; it also extended to the Japanese contractors, as demonstrated in the case of the KDP. The tenders for the projects were awarded to their patrons and in both case studies it was found that they were awarded in a questionable way.

This research has also demonstrated that the EIA rules on both the process and procedures have been gravely violated in order to ensure that the projects could continue without obstacles. The PAP and NGOs viewed the EIA as having low credibility. The PAP argued that the politicians had gained more economic benefit than the PAP from project implementation. The majority of the PAP also admitted that they were not able to take part in the economic activities generated from the implementation. Under these circumstances, it is clear that the

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<sup>403</sup> For example, an overwhelming percentage (85.9%) of Orang Ulu respondents agreed (49.1%) and strongly agreed (36.8%) that the politicians were the ones who reaped economic benefits from the project implementation. The same pattern is displayed in the KDP with 75.7 percent of Orang Asli respondents agreeing (including 54.1 percent strongly agreeing) (see detail Section 6.11.6.8, in Chapter 6 and Section 7.11.6.8, Chapter 7). Clear evidence also provided concerning the BHP's rent-seeking in Section 6, 7, Chapter 6 and Section 7.7, Chapter 7 for the KDP.

political patronage and rent-seeking activity frustrated the project implementation, including the implementation of EIA policy in Malaysia.<sup>404</sup>

In the case of the KDP, despite the JBIC having their own social and environmental considerations, the EIA for this dam project seemed to be tainted with non-compliance issues – which were driven by vested interests. In this light, the effect of rent-seeking on institutional rules is rightly asserted by Choy's (2005a, p. 965) observation that the environmental degradation was a consequence of the political institution's overriding assessment on the destructive impacts of reckless misuse of natural resources. Choy (2005a) went further to conclude that the BHP's mode of development was moulded due to vested interests rather than the general welfare of the Bakun communities.

This study parallels findings of many researchers in implementation policy study; the element of vested interests, or who gets what – the rent-seeking element – attributed to policy implementation failures (see, for example, Grindle, 1980a; Gomez and Jomo, 1999; King, 2008; Kumar and Corbridge, 2002). In this light, it is safe to say that rent-seeking not only undermines economic performance, it affects institutions with its tendency to bend or compromise institutional rules. Consequently, institutions created by the state – in this case EIA – failed to rally social and political support thus leading to social conflict (Ho, 2000a; Ho, 2000b; 2006).

#### **8.4 Institutional Function: The Need to Tackle the Socio-Economic Needs of the Local People**

Ho (2013, 2014) advocated the idea that institutions will only acquire credibility when the socio-economic of the intended policy population can be managed. In simple words, the credibility of the EIA as institutions are an isolated matter, i.e. it centres on procedures and process alone. However, a few indicators gathered in this study have shown that the PAP were not the people who received significant benefit from the institutions. It was found that their average monthly income was at the level of poverty, if not hardcore poverty, in

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<sup>404</sup> However, the Malaysian Government realised that this rent-seeking and corruption is endemic and needs to be taken seriously and remedied. Therefore, reform to eliminate rent-seeking behaviour is promoted through compliance monitoring vis-a-vis international standard (see detail in National Economic Advisory Council (NEAC), 2010).

Malaysia<sup>405</sup>. In addition, the second generation of resettlers are also facing a tremendous setback, as they are not entitled to compensation. They are landless and homeless and were very likely to fall into the hardcore poverty group unless socio-economic enhancement measures are employed, or if they migrate to big cities to find jobs. If they stay in the resettlement scheme and continued farming, they will be earning a low income forever.

It was also revealed that the PAP are not able to take advantage of employment opportunities from project implementation because they have a low educational level. The low educational level of resettlers suggest that they might have a problem working in high wage sectors. Without a good education, the resettlers are unlikely to get high income jobs. Again, with this background, it was not surprising that the PAP perceived that the current resettlement schemes had failed to uplift their standard of living. Above all, the inability of the government to provide alternative employment (beyond the agriculture sector) to the PAP in order to replace their dependency on land had worsened the problem. It was also evident that the expropriation of land was strongly rejected by the PAP since they were not in favour of the abolishment of the NT.<sup>406</sup> In this sense, this study also found that it had led to conflict and brought about negative impacts, especially to socially weak groups like the PAP who were dependent so much on land as a source of their livelihood (Cotula et al., 2009; CAP, 2000). In this sense, the PAP's inability to cope with the institutional change has undermined the local livelihood. It then consequently and ultimately threatened the institutional credibility or institutional robustness or institutional resilience of socio-ecological system – the terms use by some institutional students.

This view is parallel to the study by Kolhoff et al. (2009, p. 279) who found that the socio-economic factors that could affect EIA performance. In a more direct observation, this study's findings are also parallel to Ho's (2014) observation that the state's failures in providing employment outside the agriculture sector in their new resettlement schemes have compounded the issue of the credibility since the real socio-economic problems first need to

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<sup>405</sup> To recap and as found out in the empirical chapters, the majority or nearly half (44.1%) of the Orang Ulu respondents earned a monthly income of below RM 450.00 (USD 144.20). The second monthly income bracket (25.5%) earned RM 451.00 (USD 144.52) – RM 700.00 (USD 224.31). Meanwhile, the Orang Asli income (47%) received a monthly income between RM 400.00 (USD 128.18) and RM 799.00 (USD 256.03) per month followed closely by those who earned between RM 399.00 (USD 127.86) or less (39%). (See detail in Section 6.11.1, Chapter 6 and Section 7.11.1, Chapter 7).

<sup>406</sup> For example, in the BHP case, about 93.2 percent agreed (including 70.9 percent strongly agreeing) and about 94.6 percent of respondents in the KDP case agreed (including 81.1 percent strongly agreeing) that the dam construction projects had reduced their free food resources due to the absence of the roaming area (see detail in Section 6.11.3.3.1, Chapter 6 and Section 7.11.3.5.1, Chapter 7).

be addressed before the credibility can be gained.<sup>407</sup> It is also in line with Choy (2004); in order to ensure the development is sustainable, the welfare maximisation from the indigenous' perspective needs serious attention. In this sense, it is worthwhile to quote what Haynes (1999, p. 225) found on the relationship or the gaps between expectation and conflict: *'when the state's view what is the correct procedure and weight of the distribution of the benefits fails to meet the expectation of the local communities, the result will frequently be a political conflict, often involving violence..'*

## **8.5 Autonomy in Institutional Design: A Fallacy of Social Engineering**

As has been proposed by Ho (2013, p. 1092; 2014, p. 17 & 24) the design of institutions are not due human autonomy and does not guarantee social support. Credibility of institutions are not something that can solely be externally designed or shaped from the state's (top-down) approach through social engineering. This research study has demonstrated that the intentionality and autonomy of human choices are something that an institutional planner can impose or plant from somewhere. Instead, it must be something that considers the socio-economic context.

As shown in the case studies, through the establishment of resettlement schemes due to the EIA projects or through the imposition of new land laws, (e.g. the SLC or the APA) the attempt to replace the customary land laws (i.e. the NCR) was no guarantee of a credible institutional design. Furthermore, the study found that the rules in governing land rights in both states in the case studies (i.e. Sarawak and Pahang) through individual land titles failed to take into account the true nature of the local customs and socio-economic status.<sup>408</sup> The loss of communal land by the indigenous people and replacement with individual land titles, which purportedly could bring more security to the modern transaction, turned their life from credible to empty. The land rights impact of the absence of the NCR towards free food resources, shifting cultivation and the future of the demographic growth have discounted

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<sup>407</sup> This is also in line with the study by Kumar and Corbridge (2002, p. 74 & 96) who found that the Eastern India Rainfed Farming Project (EIRP) has failed due to the project failure to secure meaningful participation from the participants, including improving conditions of the poor and poorest. It was also due to the inability of the project to enhance social-economy' of the richest villagers.

<sup>408</sup> For example, in the BHP case, almost 89.1 percent of respondents disagreed (including 32.3 percent strongly disagreeing) and in KDP about 81. 0 percent disagreed (including 45.9 percent strongly disagreed) that the current laws and policies have properly took this aspect into consideration (See detail in section 6.11.3.1, Chapter 6 and Section 7.11.3.1, Chapter 7).

the intended institutional design. In addition, the insufficient land allocated to the indigenous resettlers, among other things, triggered the indigenous people to encroach on state land. Under these circumstances, these research findings of this study have discounted the autonomy of the institutional design approach.

It is clear from this study that the resettlement exercise and the imposition of the new land law proved to be less credible. The social change initiated by the state through the relocation of the local indigenous people and the new land system – individual land titles – exacerbated the social conflict in the study areas. The social engineering with the imposition of the new rules also brought about empty institutions proposed by the state that failed to gain social and political support (Ho, 2005a; Ho, 2005b; Ho, 2006; Ho, 2014). In this sense, it is safe to subscribe to Ho's idea (2013; 2014) that the credibility of institutions are context dependent – endogenous and exogenous.<sup>409</sup> In this sense, this research study parallels Choy's (2005a) observation that the ceremonially established, self-sustained, and self-reinforced Bakun institutions represent inefficient institutions that are incapable of adapting to changing circumstances based on the adoption of a more environmentally benign pattern of development.

## **8.6 Intentional Institutional Design and Indigenous Rules**

The above discussion (Section 8.5) demonstrates how a credible institutions – intention, spontaneous or both – is designed. As discussed, the credibility of institutions are something that cannot be planned. Does that mean it is solely spontaneous or that it requires both approaches? To answer this, we have to consider the basic rules of examining what a credible institutions is. Do the rules established need to be shared or accepted by the actors involved? In this sense, the recipe for the credible institutions are that it must go down to the local level where the target policies are perceived as credible in the eyes of the local people.

Only by acknowledging such a rule would the credibility of institutions be able to be facilitated or nurtured. As revealed in the empirical chapters in this study, the indigenous people demanded that indigenous institutions, especially *'pulau galau'* and *'pemakai menoa'*,

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<sup>409</sup> In relation to the concept of credible institutions, Choy (2005a) used the concept of the sustainable development strategy that, according to him, depends greatly on the establishment of efficient institutions that are capable of recognising and internalising the resource scarcity issue in an economic system.

and roaming areas, should be maintained. The majority of the respondents also held the opinion that the current policies and laws related to the NT were found not to be in line with local customs and needs.

The absence of the communal areas that had previously provided an abundance of food and other domestic resources have since disappeared; this has undermined the livelihood of the local people<sup>410</sup>. Although, the state attempted to introduce individual land titles that could give security in terms of land title, this did not guarantee the local people's acceptance. As previously discussed, it failed to give the resettlers security for future growth, as the land and house compensated were inadequate and entitlement only went to first<sup>411</sup> generation resettlers.<sup>412</sup> Thus, these schemes have made future generations become landless people.<sup>413</sup> With advanced generation of resettlers, plus the resettlers' limited knowledge of modern farming techniques, these problems have thus undermined the entire resettlement exercise and intention, including the EIA. Again, the PAP's inability to cope with the institutional interventions which was engineered by the state has undermined the institutional robustness. That is why, in the BHP and KDP case studies, the younger generation were found to be moving out from resettlements to big cities in order to find jobs that could offer them higher wages.

These research findings concur with the observation by Lawson-Remer (2014, p. 323) who found that property rights insecurity due to the displacement from land and forced resettlement can provoke conflict. In addition, this study is also parallel with the observation made by Stewart (2010) who revealed a correlation between income and conflict since the low socio-economic status could play a role in inciting conflict due to it widening horizontal inequality. Therefore, while displacement might encourage economic growth, this role might

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<sup>410</sup> Choy (2004, 2005a; 2005b, 2005c), for example, has shown how the absence of social sustainability in the BHP has demonstrated the failure of the industrialisation strategy with its emphasis on monetary benefit at the expense of environmental and social sustainability.

<sup>411</sup> First generation refers to the families who were relocated at resettlement scheme. Second generation refers to children of first-generation resettlers.

<sup>412</sup> The analysis of variance (ANOVA) on six variables/questions: i) Have free food resources been reduced due to the absence of the roaming area?; ii) Have free food resources been reduced due to the insufficient size of the individual lots?; iii) Has shifting cultivation disappeared due to the individual land titles?; iv) Does the limited land size encourage your encroachment on state land?; v) Does the allocated land size fail to consider future additional family growth?; and, vi) Has the power of the Customary Elderly Council been reduced due to the changes in land rights. This statistical analysis revealed that there is no statistically significant difference in perception towards land right impacts between occupation at the  $p > 0.05$  level:  $F(5, 256) = 1.746, p = 0.125$ . Appendix E shows the statistics.

<sup>413</sup> In this sense Scudder (2005, p. 315) proposed that sustaining the livelihood of the affected people is among the priority measures in ensuring the acceptance of large dams. In a similar vein, Rwabizambuga (2007, p. 201) shows that human security is interconnected with environmental security, for example, in guaranteeing people access to natural resources, e.g. land.

be hampered by the presence of conflict. In this sense, Lawson-Remer (2014, p. 337) found that in order to maintain economic growth, the marginalised groups must not be left behind by growth-enhancing policies that could strengthen property rights of some segments but at the same time weaken the property rights of the marginalised groups.

## **8.7 Development Planning Failures and Lip Service Attitude**

This research study has reaffirmed that EIA acceptance could stand alone. To ensure the development project, or EIA policy for that matter, is accepted by PAP, assurance of compensation, firm promises and objectives of the policy implementation must be abided by. The promises made which aim to induce local people to accept the project or relocation exercise in the case of the BHP and KDP proved not to be lasting. In fact, they backfired on the project proponent and threatened the institution itself. Credibility in this regard relied greatly on the ability of the project actors, especially the politicians and the government, in fulfilling their promises.

As revealed in this study, the unfair compensation awarded to the PAP and the way the project was implemented, has only decreased local trust. Despite claims that the resettlement scheme had been a vehicle for the PAP's improvement, these research findings paint a different picture. Instead of uplifting the PAP socio-economic, their livelihood has been under threat because the security system previously enjoyed by them (e.g. 'pulau galau' and 'pemakai menoa' or roaming areas) disappeared in the resettlement schemes. Despite the numerous appeals and requests to provide them with communal land, they were to no avail. In this sense, the resettlement planning failed to give serious consideration to indigenous demands. The situation deteriorated because the land compensated to the PAP was not adequate for their livelihood, at least from their perspective. Under these circumstances, it is not surprising that the resettlers had to find additional land beyond their demarcated plots in order to improve their income level, or that they have to move out from these resettlements in order to make a decent living or, at least, that this intention intensified.

In terms of resettlement, the way the resettlement consent was obtained was found to be questionable. The elements of inducement and force were obvious in this respect. Therefore, it was not surprising that the local people argued that the drawbacks of resettlement superseded the positive elements of the schemes. In addition, local input in

planning and designing the resettlement schemes was totally disregarded by the authorities. Although the resettlement schemes aimed to bring about a cash economy to the resettlers, sufficient training was not adequately provided. This oversight resulted in a grave failure of the government to consider the socio-economic characteristics of the indigenous people, who were previously hunters, gatherers or even traditional farmers and were not trained in modern farming techniques.

### **8.8 The Problem in Joint Action: The More Players Involved, the More Vulnerable to Institutional Conflict**

One of the implementation problems is the divergent interest of the stakeholders in the policies. The empirical chapters in this study have demonstrated that the large number of actors in these case studies cause a high level of complexity in the implementation process. Environmental agencies faced problems in carrying out their tasks and other related agencies were driven by economic and political concerns, and concerns of self interest in decision-making. Also making the implementation more complicated was the interference of political and business actors who were only driven by vested interests in the project implementation. In addition, this study also found that the implementation problems with EIA in Malaysia were due to the dubious and double role of the actors in the project planning and implementation.

While the politicians played their role in overseeing ministries, at the same time they needed to fulfil the patrons' needs. This conflict of interest was found prone to vested interests thus making the EIA, or development project for that matter, fail and triggering off a social conflict. This social conflict has been echoed by some implementation theorists who found that the problem of complexity of joint action or the difficulty in organising cooperative activities on a large scale could inevitably arise (Pressman and Wildavsky, 1973; Bardach 1977).

From a wider perspective, perhaps Gilpin's observation (1995, p. 159) is relevant in this context. He observed that good EIA implementation practices were unlikely to flourish in countries dominated by dictatorship or in countries positively opposed to democracy. These practices were hardly likely to flourish in countries where all criticism was considered suspect and any opposition was seen as being akin to treason. This research found clear

evidence that there was a strong role played by the political climate on conflict management. As Swain and Ming-Chee (2004) suggested, the less democratic the nation, the more suppressive and dominating methods would be employed by the authorities. This view has been found to suit the Malaysian context well in relation to conflict and public resistance.

## **8.9 Periphery in Political Leverage: an Empty and Non-credibility Trap**

One obvious drawback to the strategic political leverage of the PAP in this research was their marginal or periphery characteristic – low socio-economic status, small population and located in isolated and remotes areas. Although in principle indigenous people might be capable of influencing project implementation, in practice their weak resources<sup>414</sup> contributed to weak access and consequently weak power in influencing the decision-making in the project design.

As revealed in this study, many PAP earn low incomes. In fact, some of them are now trapped in the poverty level. In terms of population, these two indigenous ethnics are considered a marginal group due to their small population compared to the mainstream ethnic. In addition, these two unfortunate Bumiputera ethnic groups – the Orang Ulu and Orang Asli – are also characterised by low educational attainment. To make matters worse, it was found that the school dropout rate among their children was high (see HRCM, 2013). In addition, since their settlement or village is normally situated in the interior or rural areas, these conditions have made their community periphery in terms of political leverage. In view of these characteristics, it is understandable that their bargaining power with the state or federal government had not been as strong as with other ethnics. The indigenous' weak bargaining abilities was evidently shown in their letters, memos and others expression strategies that were found to be of no avail. Under these circumstances, it is not surprising to see the institutions will continue in an empty, if not non-credibility trap.

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<sup>414</sup> Aiken and Leigh (2011, p. 488) state the lack of indigenous political power, the dominance of the UMNO and the restrictive legal environment will continue to marginalise indigenous' voices. Meanwhile, King (1988, p. 266) contends that the peripheral position of the Indigenous people in in Peninsular Malaysia have made them had very little effective political voice in the decision making process in development planning in Malaysia.

## **8.10 A Causal Relationship between Trust and Credibility in Institution**

It is evident in this study that social conflict has brought about causal negative effects on the level of trust towards politicians and government – a direct manifestation of the less credible institutions. This research finding has also shown that while trust was related to actors, it also has a direct relationship with institutions – social rules. It is clear that the deficit in trust as a social capital between the PAP and the government and politicians had a serious implication to the institutional credibility. As elaborated in this study, the PAP had a negative perception of the government and politicians' roles in the EIA, land acquisition, compensation and resettlement planning. This indicated the inability of the projects to rally social and political support towards EIA and the projects.

The deficit of trust is worrisome as it could lead EIA as institutions into social traps, as advocated by Rothstein (2005). A social trap situation makes actors unable to cooperate due to mutual distrust and lack of social capital even when cooperation would benefit all. Therefore, trust could play a vital role in reducing harmful conflicts, which in turn could decrease transaction cost (Meyerson et al., 1996). The decrease of trust by the local indigenous people towards the government and the lack of confidence in politicians and the government in Malaysia was somewhat inclined to what has been observed by Inglehart (1997, p. 295). However, despite the above offsets, one thing for sure was that the indigenous political awareness had increased due to the implementation of the projects.

To sum up, this research study has been able to identify institutional credibility threats that led to low credibility because the EIA was just treated as a symbolic law rather than a meaningful policy. It was also due to the loss of the land rights, which had undermined the PAP's livelihood. Equally important was the threat from failures in the resettlement planning and the compensation issues. These cumulative and interactive factors subsequently manifested the form of conflict. Despite the fact that both indigenous ethnics were considered marginal and powerless in terms of their bargaining power, conflict expressions were expressed in both disguised and public forms – a sign of a diversification of strategies. Against this background, it is not surprising that the EIA as institutions had been perceived to have low credible or even be an empty institution in this regard.

Having discussed these research findings it is important for this research study to offer two pertinent observations:

### **8.11 The Credibility of the EIA – The Most Pertinent Question Is: For Whom?**

Given the nature of the property rights discussed in the case studies being surrounded by issues of rent-seeking and patronage, one would wonder which segment or party the credibility actually serves. In this sense, this research paper proposes that the credibility of the property rights or the EIA must transcend beyond any one particular segment of society in order to make it meaningful.

In this sense, it is clear that the EIA could be credible to the government or project proponents but the ultimate question is, does the public perceive that the EIA as an institution has enough credibility? This leads us to the more serious question on the way the EIA is currently being assessed. We need to move from the conventional way of defining the EIA role that appeared to serve only the project proponent while leaving the public as the partner to defining the credibility of the EIA. In simple words, this research is proposing that the credibility of the EIA needs to be read from the contextual (e.g. socio-economic of the PAP) and not solely on the process and procedures.

### **8.12 The Implication of Development: To Proceed or Step Back?**

In view of the factors discussed in this chapter, the pivotal questions we need to address are: i) Should we proceed with this development policy when the conditions are not conducive and not on our side?; and, ii) Should we continue with the project proposal? As previously discussed, it was not only the EIA and land rights process and procedures that were found to be compromised; in addition, there were strong negative experiences of hardship at the resettlement schemes relating to the standard of living. There was also no strong facilitation from the government to enable the local people to get employment outside of the agriculture sector. To make matters worse, the socio-economic of the PAP was found not to be conducive to the project implementation, thus deteriorating the lifestyle of the local people. The NGO's and the PAP's rejection of the projects was manifested by

conflicts, both disguised and public provided a strong indication that the projects should not go ahead, or at least not without first tackling the socio-economic conditions of the local people.

Clearly these characteristics boil down to the key principle of credibility - the precaution principle or 'no serious harm'. As has been demonstrated, this principle emerges when the institutions fail to function. In this sense and specifically in the case of land rights, it also raises question on 'institutional hand-off' or at least nurturing approach rather than one pushing for institutional change.

### **8.13 Synthesis of Concluding**

Throughout this thesis, the researcher has suggested that the EIA concept must require a credible element in order for its rules to be shared by the social and political actors. In this sense, this research study has demonstrated that the EIA evaluation of the performance concept must go beyond the effectiveness or the efficiency concept, which relies on the process and procedures, or in other words, on the technicality of the assessment alone without giving equal treatment to the substantive elements of the EIA – the functions of the EIA or in this case the credibility characteristics. In this sense, the EIA concept must embrace the roles of the EIA as an institution for the social and political actors as well as to include the livelihood experiences of local people in its assessment and project implementation. However, the practical and positive question here is how to solve or at least mitigate this drawback. Clearly, it requires a holistic change.

The first step is by following the best practice of EIA, including public participation. Only by having a clear and proper implementation process for EIA, can it then be extended to the contextual factors of the institution or EIA; for example, by reducing rent-seeking elements in the project tender.

Equally important, this research study has found that the institutional rules could not be sustained when EIA involved: i) rent-seeking or vested interests; or, ii) taking from the top without consideration of the socio-economic profiles of the affected people. In addition, in the case of the BHP and KDP conflicts were sourced from three factors: i) EIA; ii) land rights; and, iii) compensation and resettlement issues. Albeit, the EIA was found to be the impetus of conflict in both dam projects, at the resettlement schemes the real and more

obvious reasons for conflict were land rights and socio-economic deterioration. Meanwhile, rent-seeking and political patronage were found to be contextual reasons for a requirement of credibility of EIA as an institution. However, the practical question is how the Malaysian government can pluck up the courage to eliminate those elements; we know that they badly affected the institution, or EIA, in Malaysia. A sceptical view has been offered by Gosh (1999, p. 258) who found that it would be difficult to eliminate political patronage in Malaysia as it was embedded as part of the NEP. In fact, to Gosh, the elimination of political patronage could not be entertained as it could threaten the monopolistic position of UMNO (Ghosh, 1999, p. 259).

One might ask, what is the relation between the 'institutions' itself, the context in which it works? It has been stressed throughout this research study, EIA like other society rules are affected and being affected by social and economic phenomena. Credibility is the indicator that measures institutional function, and can be expressed by actors' perceptions of institutions, as well as perception of the level of conflict generated by institutional arrangements. Therefore, the problem in EIA, as an institution is real in all developing countries regardless of its style of governance or governance capacities or its socio-economic characteristics. It is clear that the problem of EIA is a problem of institutions. As EIA is an institution and it is being used to invalidate (by and large functional) customary property rights, and set up private property regime (non-functional, and non-credible). Against this background, one might further argue whether if there is any credible institutions in Malaysia or could the EIA institution be credible at all (including in developed countries), given all its complexities and inherent conflicts of interests and values. The answer is; at a meta-philosophical level, perhaps, the institutions have difficulty to achieve credibility, perhaps, it is indeed not possible. At the same time, credibility does also hide a warning; that when institutions are pushed through against the existing function of institutions, this will lead to conflict, and it might invoke to a change or decoupling of the institutions that the state desires. Clearly visible in indigenous people 'private property', it doesn't work as they encroach illegally on the state forest. Undoubtedly, that is also something that is not desirable and less anticipated from the state's point of view.

In addition, one might question to what extent the findings from the case studies inform us in terms of external validity to the credibility of institution and its implication to development? Although the case studies presented here do not provide the 'counter-factual' analysis of the case where institutional function is not crucial; the state does facilitate the

endogenous' institutions; the PAP does have sufficient leverage over the state who implements or imposes the institutions. However, the findings from this 'open-trial' has paralleled with the findings of other studies at different levels in Malaysia.

For example and as demonstrated throughout the chapters, various other research has concluded that the Malaysian EIA is generally used to pay lip service to environmental sustainability and social acceptability, while pushing through projects with significant vested economic and political interests (Gurmit-Singh, 1986a; Gurmit-Singh, 1986b; Gurmit-Singh, 1993; Nicholas, 2010a; Nicholas, 2010b; Nicholas, 2010c; Nicholas et al., 2010; Memon, 2000; Nicholas, 2000, Spires, 1995; INSAN, 1996; Nicholas, 1997; Furuoka, 2008; SAM, 2007; CAP, 2000).

Meanwhile, in the context of NT, it was found that 84 percent of the Orang Asli respondents did not support the expropriation of NT (see. Alias et al., 2010, p. 1702). It is also evidently observed by many researchers on indigenous people including the Orang Ulu in Sarawak that the imposition of the new land laws in replacement or amendment to the NT have been accompanied by wide disagreement (see, Colchester, Pang, Chuo and Jalong, 2007; Ngidang, 2005; Majid-Cooke, Doolittle, 2007; Gomes, 2007). Lastly, the BHP-KDP's findings also confirmed the wider literatures on the marginalization of indigenous people in Malaysia (Cooke, 1999; Cramb, 2007; Idrus, 2011; Idrus, 2013; Nicholas, 2000; Osman, 2000; Lian, 2003; Mason and Omar, 2003; Gomes, 2007; Gomez, 2015; Subramaniam, 2011b; Subramaniam, 2015). As a conclusion, this study's findings concur with the observations of Ho (2005a, 2005b; 2006; 2009; 2014) which propose that in order for an institution to rally credibility, conflicts need to be minimised in an institution, if not entirely eliminated from an institution. An institution that is characterised by conflict, will lead to low credibility, if not an empty institution. Therefore, it is safe to say that conflict is the threat to the credible institution and the higher intensity of the conflict, the lower the degree of credibility the institution would display.

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# Oral Conversation

Abdul- Razak, A., an officer of the DOA, in Kuala Lumpur, on 9 July 2012.

Abin, R., a Programme Coordinator for BRIMAS, in Miri Sarawak on 20 September 2012.

Ahon, Y., a Committee Member of the JAKOSAM cum Deputy President 3 of the JOAS, in Temerloh Pahang on 3 December 2012.

An, B., a former 'Menteri', at Sungai Temir Village on 3 December 2012.

Anjie, D, Headwoman of Uma Nyaving, at the RSSA on 1 October 2012.

Arun, J., a villager of the RSSA, in Bintulu on 3 September 2012.

Azit, R., Project Assistant Director, in Kelau, Raub Pahang on 18 August 2011.

Bakam, S., Assistant Director of Research and Development of DOA, on 2 November 2011.

Bedu, A., at the Sungai Temir Village on 3 December 2012.

Bedu, J., at Sungai Temir Village on 3 December 2012.

Beng, C., a Batin, at the RSLB on 24 November 2012.

Bujang, J., a complainant at the National Inquiry into the Land Rights of Indigenous people organized by HRCM on 27 March 2012.

Bit, S., a Penghulu, at the RSSA on 30 September 2012.

Cham, T., a member of the VDSC RSLB, at the RSLBon 23 July 2012.

Che-Ibrahim. A.K, Director of the Pahang's DOE, in Kuantan Pahang on 27 June 2011.

Chin, E., Chairman of the VDSC, at the RSLB on 3 December 2012.

Ebit, J., member of staff at the Sub-district Office of Sungai Asap, at the RSSA on 25 September 2015.

Engi, J., an officer for the COAC, in SubAn Jaya, Selangor on 3 August 2011.

Ery-Shamsuddin, S., an officer from the SAM Penang, on 25 August 2011.

Igang, D., a villager at the RSSA, by telephone on on 22 July 2013.

Igang, D., at Lumut Perak on 7 May 2015.

Igang, N., a Teacher at the RSSA on 11 October 2012.

Igo, I., at the RSSA on 2 September 2012.

Imang, H., at the RSSA on 2 October 2012.

Imu, S., a villager and NGO Activist, at the RSSA on 12 October 2012.

Johari, M.A., a DOA Officer from the Raub District, at DOA Raub on 12 December 2012.

Jok, J-E, a Coordinator from SAM Sarawak, in Marudi, Sarawak on 19 September 2012.

Kulleh, T., a Pemanchar, at RSSA on 2 October 2012.

Legan, M., an Officer from SAM Sarawak, in Marudi, Sarawak on 19 September 2012.

Ligue, M., an Assistant of Tuai Umah from Uma Balui Liko, on 16 October 2012.

Lihan, M.M., Chairman of the Village Development and Security Committee of the RSSA, at RSSA Bakun Sarawak on 25 May 2011.

Lusat, K., Assistance District Office (ADO) of Sub-district Office of Sungai Asap, at the RSSA on 25 September 2015.

Magui, M., a Tuai Umah of Uma Penan, at the RSSA on 11 October 2012.

Mat-Yassis, F., an Officer from the SEPU Pahang, at the Wisma Seri Pahang, Kuantan Pahang on 3 July, 2011.

Mark, B. an Executive Director of BRIMAS, in Miri Sarawak on 21 September 2011.

Medin, N., a Political Activist from Belaga and RSSA areas, in the RSSA on 12 October 2012.

Awang, M.I, from the SPU in Kuching, on 10 September 2011.

Mohammad, M.A., an Assistant Site Engineer from the Sarawak Hydro, in Bakun on 18 October 2012.

Muhammad, A., an Officer from the Federal DOE, the EIA Evaluation Section, in Putrajaya on 12 October 2012.

Nicholas, C., a Coordinator for the COAC in Subang Jaya, Selangor on 25 October 2011.

Nyipa, L., a Tuai Umah of Uma Lahanan, at the RSSA on 7 October 2012.

Razak, M., an officer from SAM, in Penang on 25 August 2011.

Sanggul, A., a resettler, at the RSLB on 25<sup>th</sup> September 2012.

Sato, K., Chief Representative of the JICA Malaysia, in Kuala Lumpur on 9 September 2013.  
Sidu, J., an Environmental Control Officer for NREB, in Kuching Sarawak on 2 November 2012.

Tubek, K., a villager cum a plaintiff, at the RSSA on 24 September 2012.

Tungau, L., a villager, at the RSSA on 23 May 2011.

Umek, J., a Pemanchar, at the RSSA on 29 September 2012.

Urun, A, a villager at RSSA on 1<sup>st</sup> October 2012)

# Appendices

**Appendix A:** Distribution of Survey Sample

No	Longhouse/Village Name	Sub-ethnic	Number of heads of family	Total Population	Total Sample	Percentage (%) from the Total Sample
1	Uma Kulit, RSSA	Kenyah	209	1,724	22	8.6
2	Uma Belor, RSSA	Kayan	101	640	11	4.3
3	Uma Daro, RSSA	Kayan	115	510	13	5.1
4	Uma Nyaving, RSSA	Kayan	92	700	10	3.9
5	Uma Kelep, RSSA	Kenyah	107	621	11	4.3
6	Uma Lahanan, RSSA	Lahanan	145	629	16	6.2
7	Uma BawAn, RSSA	Kayan	158	669	17	6.6
8	Uma Balui Liko, RSSA	Kayan	68	405	7	2.7
9	Uma Balui Ukap, RSSA	Kayan	82	402	9	3.5
10	Uma Bakah, RSSA	Kenyah	319	1,243	32	12.5
11	Uma Badeng, RSSA	Kenyah	269	1,297	27	10.5
12	Uma Penan, RSSA	Penan	34	144	6	2.3
13	Uma Juman, RSSA	Kayan	112	557	20	7.8
14	Uma Lesong, RSSA	Kayan	196	858	12	4.7
15	Uma Ukit, RSSA	Ukit	52	518	7	2.7
*16	RSLB, Pahang	Temuan	137	330	37	14.4
			2,196	11,247	257	100.0

Source: Sub-district Office of Sungai Asap, 2012

\* Note only one village for the Orang Asli, Pahang

## **Appendix B:** List of Organisations Interviewed

Association of the Orang Asal Network Peninsular Malaysia (JOAS)  
Borneo Research Institute (BRIMAS)  
Centre for Orang Asli Concerns (COAC)  
Consumers' Association of Penang (CAP), Malaysia  
Department of Environment (DOE) of Kuala Lumpur  
Department of Environment (DOE) of Putrajaya (HQ)  
Department Of Orang Asli (DOA), Raub Pahang  
Economic Planning Unit (EPU), Prime Minister's Department  
Japanese International Cooperation Agency (JICA), Kuala Lumpur  
Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOSAM)  
Ministry of Energy, Green Technology and Water (MEGTW)  
Natural Resources and Environmental Board (NREB)  
Sahabat Alam Malaysia (SAM), Penang  
Sahabat Alam Malaysia (SAM), Sarawak  
Sarawak Hydro Berhad  
Sarawak Economic Planning Unit, Kuching Sarawak  
Shitmitzu-Nishimatsu  
State Economy Planing Unit (SEPU) Pahang  
Village Council and Security of Resettlement Scheme of Lurah Bilut, Pahang

### Appendix C: Reliability Test

RELIABILITY

/VARIABLES=B1 B2 B3 B4 B5 B6 B7 B8 B9 B10 B11 B12 B13 B14 B15 B16 B17  
/SCALE('ALL VARIABLES') ALL

/MODEL=ALPHA.

Reliability (ALL)

Case Processing Summary

		N	%
Cases	Valid	20	100.0
	Excluded	0	.0
	Total	20	100.0

a. Listwise deletion based on all variables in the procedure.

Reliability Statistics

Cronbach's Alpha	N of Items
.717	17

RELIABILITY

/VARIABLES=G1 G2 G3 G4 G5 G6 G7 G8 G9 G10 G11 G12 G13 G14 G15  
/SCALE('ALL VARIABLES') ALL

/MODEL=ALPHA.

Reliability (ALL)

Case Processing Summary

		N	%
Cases	Valid	20	100.0
	Excluded	0	.0
	Total	20	100.0

a. Listwise deletion based on all variables in the procedure.

Reliability Statistics

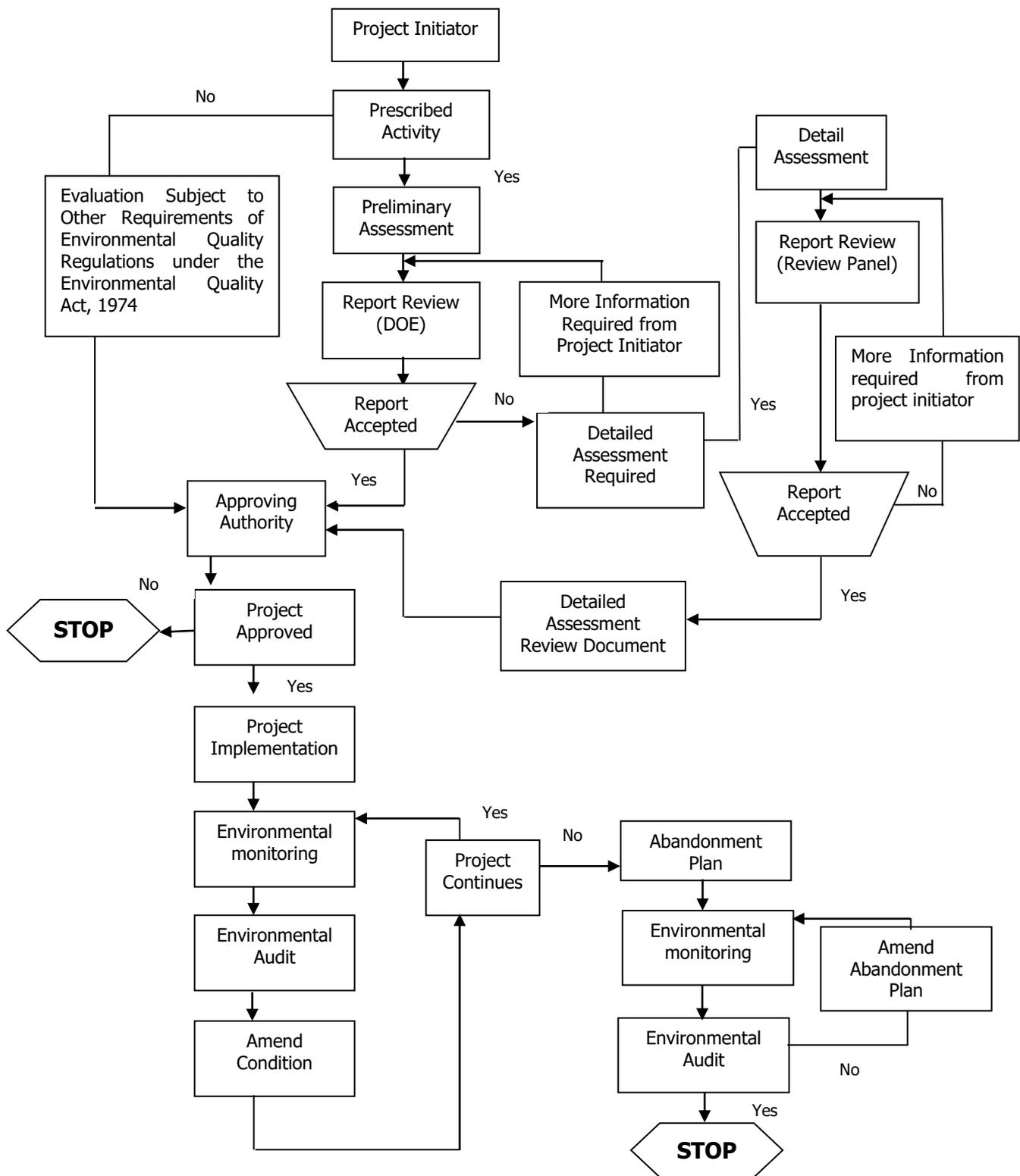
Cronbach's Alpha	N of Items
.681	15

**Appendix D:** Distribution of the Orang Ulu Native Title (NT) Prior to Resettlement at the RSSA

	Communal NCL (ha)	Number of families	NCL/family (ha)
<b>MIDDLE BALUI</b>			
Uma BawAn	4,761	111	42.9
Uma Nyaving	4,623	101	45.8
Uma Belor	2,086	101	20.7
Uma Kelep	1,483	99	15.0
Uma Lahanan	2,832	138	20.3
Uma Penan	Currently including in Balui Liko's communal NCL	24	0
Uma Balui Liko	5,346	81	66
Uma Juman	5,236	143	36.6
Subtotal	26,367	798	33.0
<b>UPPER BALUI</b>			
Uma Daro'	913	105	8.7
Uma Buket	198	74	2.7
Uma Balui Ukap	734	97	7.6
Uma Lesong	566	142	4
Uma Bakah	1,162	299	3.9
Lepo' Kulit	1,686	279	6
Uma Badeng	6,243	347	8.6
Subtotal	11,502	1,343	8.6
Total	37,869	2,141	17.7

Source: LCDA, 1997a, p. EXE-22

## Appendix E: The Malaysian EIA Procedure



Source: Mohamad-Said, 2008, p. 39

**Appendix F: Analysis of Variance (ANOVA)**

**Table F:** Mean of perception of land rights impacts by occupation

Occupation	Perception of Land Rights Impacts		
	N	Mean	Std. Dev.
Professional and administrator	6	4.4167	0.64765
Clerk and related	3	4.0000	0.60093
Farmer	196	4.4474	0.55553
Logging worker	17	4.4020	0.57148
Transport worker	12	4.0139	0.66084
Others	23	4.3333	0.57953
Total	257	4.4084	0.57014

As shown in the above Table F, the total overall mean between occupation and perception of land rights impact is 4.41, which is close to 5 score (values of maximum ). Table F shows that respondents who work as a 'Farmer' have the highest perception towards land rights impacts with average of 4.44 (SD = 0.56). This is closely followed by 'Professional and administrator' (M = 4.42, SD = 0.65) and logging worker (M = 4.40, SD = 0.57). Other occupations accounted to the second lowest with an average of 4.33 (SD = 0.58) while transport operator was placed lowest with only 4.01 in average mean or 0.66 in SD.

**Table G:** Summary of Levene's Test and ANOVA

Perception of Land Rights Impacts	p-value (Levene's Test)	Assumption of Homogeneity of Variances	p-value (ANOVA)	Significant Difference
	0.841	Yes	0.125	No

The Analysis of Variance (ANOVA) was carried out as shown in Table G above, which aims to identify mean differences in perception towards land rights impacts between respondents who work as 'Professional and administrator', 'Clerk and related', 'Farmer', 'Logging worker', 'Transport operator' and 'Others'. Table G shows the summary of Levene's test and ANOVA. The analysis shown that the variance is assumed to be equal

as the p-value of Levene's test is greater than 0.05 (p-value = 0.841). The results also reveal that there is no statistically significant difference in perception towards land rights impacts between occupation at the  $p > 0.05$  level:  $F(5, 256) = 1.746, p = 0.125$ . In other words, the respondents have similar perceptions towards land rights impacts even though they have different occupations.

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# Curriculum Vitae

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1995 – 1999            B.A. (Hons) Urban Studies and Planning, University of Malaya, Kuala Lumpur, Malaysia

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Promotor: Prof. dr. ir. drs. P.P.S. Ho

Awards                      None

# List of Publications

Nor-Hisham, M.S., Ho, P. and Dietz, T. (2013). *Institutional Credibility in the Malaysian Environmental Impact Assessment (EIA): Indigenous Outcry of Bakun and Kelau Dam Projects*. Paper presented at the Conference on Poverty Alleviation and social Protection. 9th-11<sup>th</sup> March 2013. Bangkok Thailand,

Nor-Hisham, M.S. and Ho, P. (2013). *The Perception on the Land Rights Impacts due to abolition Native Title in Malaysia: Evidence from Bakun and Kelau Dam Projects*. Paper presented at the International Conference 2013 on Spatial Planning and Sustainable Development, 30th August – 1<sup>st</sup> September 2013, Tsinghua, Beijing,

Nor-Hisham, M.S. and Ho, P. (2013). *Social conflict in the Bakun and Kelau Dam Projects in Malaysia: An Indigenous Perspective*. Paper presented at 2<sup>nd</sup> International Conference on Culture, Globalization and the Developing World. 22<sup>nd</sup> & 23<sup>rd</sup> November 2013. Colombo, Sri Lanka.

Nor-Hisham, M.S. and Ho, P. (2013). *Public participation in the Malaysian Environmental Impact Assessment (EIA): Credibility Issues and Challenges*. Paper presented at International Conference 2013 on Spatial Planning and Sustainable Development. 6<sup>th</sup> -7<sup>th</sup> December 2013. Taipei, Taiwan.

Nor-Hisham, M.S. and Ho, P. (2015). The Land Rights Impacts Toward indigenous People in Malaysia: How it threatens the Credibility of the Environmental Impact Assessment (EIA) Institution. *International Review for Spatial Planning and Sustainable Development*, Vol.3 No.1, p. 98-118.

# Propositions

1. The EIA as an institution would not be credible without its ability to full-fill its founding purposes.
2. The allegedly scientific, rational, systematic, objective and unbiased indicators of the EIA as claimed by its proponents are misleading.
3. The credible design of institutions and institutional interventions must take into account the indigenous institutions at the grassroots.
4. Social engineering as the sole approach in bringing credibility to institutions and institutional interventions are a myth.
5. Rent-seeking and symbol laws are the underlying threats to the institutional credibility of the EIA.
6. The higher the frequency and intensity of distributional conflict around the EIA, the lower the trust in institutions.
7. The mantra of publish or perish in academia will eventually kill off good academics.