

## 2. NATIVE CUSTOMARY RIGHTS (NCR) LAND DEVELOPMENT PROJECTS

### The NEW CONCEPT of Development on NCR Land

#### PARADIGM SHIFT

#### THE NEED FOR CHANGE

##### Vast NCR Land for Development

There is an estimated 1.5 million hectares of NCR land available for development in Sarawak. These vast tracts of NCR land which are mostly kept idled, under-utilised and unproductive should be transformed into an economic asset through large-scale plantation development. This will generate substantial benefits and economic growth to the landowners.

##### Persistence of Rural Poverty

While the landowners are rich in land they have continued to remain poor. They have been engaged in traditional and subsistence agricultural activities and are very dependent on government assistance and subsidies. This has not been able to bring about much progress and stable income to the landowners. They have to be progressive and independent from solely getting government assistance in their pursuits for improved socio-economic settings in the rural areas.

##### Lack of Capital and Expertise

Although the landowners have plenty of land it is beyond their capacity to develop all of them. They could not realize the full economic potentials of their land due to their lack of capital and expertise on how to develop their land on commercial basis.

##### Private Sector's Participation

The existing government agencies cannot meet the demand of landowners to develop their land due to financial constraints and over-dependence on government funding. Realizing the constraints faced by its agencies, the government has called for the participation of reputable private sectors to expedite the development of NCR land in Sarawak. The present political stability and conducive atmosphere have gained the confidence of the private sector to invest their capital and expertise to develop and manage NCR land into large-scale plantation efficiently as a business enterprise.

##### Vision 2020

The rural communities must not be left out from the mainstream development that is taking place in the Country towards achieving Vision 2020. Landowners who are not prepared to change will be left behind; those who are left behind will lose, and those who are continue to lose will remain poor forever. Large-scale plantation development is the most logical and perhaps the best option to bring them out of poverty.

#### PARADIGM SHIFT

A radical mental revolution is required to affect paradigm shift in the attitudes and perceptions of landowners towards developing NCR. Essentially, the paradigm shift should involve:

| OLD PARADIGM |  | NEW PARADIGM |   |
|--------------|--|--------------|---|
| <b>1.0</b>   | <b>OWNERSHIP OF LAND</b>   | <b>1.0</b>   | <b>OWNERSHIP OF WEALTH</b>  |
|              | Land regarded as a heirloom                                      |              | Land regarded as an economic asset  |
|              | Land is the only form of wealth                                  |              | Land is just one form of wealth. It can be used to acquire other forms of wealth  |
|              | Land Title regarded as property that can be transferred and sold |              | Share certificate is also a form of property that is transactable at better price |
|              | Individual basis   |              | Corporate Structure   |

**2.0 PEASANT SOCIETY**  
 Traditional and subsistence farming a way of life  
 Shifting cultivation/padi planting  
 Small-scale enterprise  
 Over-dependent on Government assistance and subsidies

**2.0 MODERN SOCIETY**  
 Modern and Commercial farming, Agriculture as business investment  
 Planting of economically lucrative crops with better returns  
 Large-scale plantation  
 Progressive and independent

**3.0 REQUEST DEVELOPMENT FROM GOVERNMENT**  
 Issuance of Individual Land Title  
 Land Security  
 Subsidised development costs  
 Sincerity

**3.0 INVESTMENT PARTICIPATION SECTOR**  
 Issuance of ONE LAND TITLE.  
 Efficient, professional and profit-oriented management  
 Sharing of business risk  
 Share cost of development  
 Responsible and accountable

**4.0 PHILOSOPHICAL NARROWS**  
 Surrender only marginally suitable land for development  
 Expects Government to pay for development expenditures  
 Hesitate to participate in land development. Prefers to keep land in their original state  
 Benefits from land development are beyond individual's perception

**4.0 NEW PHILOSOPHICAL DIMENSION**  
 Surrender suitable land for development to give better returns  
 Willing to share development expenditures  
 Willing to choose better alternatives for land use  
 Assured spin-off effects of large-scale development on the rural community

**THE NEW CONCEPT**

**THE CONCEPT**

The New Concept of NCR land development is being formulated on the premise that vast tract of such land can be turned into "**LAND BANK**" with new forms of land ownership to enable it to be developed on a large scale commercial basis. Such a development is the only best way of transforming the rural sector from that of a traditional and subsistence economy into a strong, sustainable, and modern economy.

The basic assumptions in this concept are:-

- (a) Native Customary Rights (NCR) Land which are now unorganized and fragmented could be turned into an economic asset through the creation of NCR Land Bank;
- (b) NCR Land Bank once created would pool together and mobilize the resources of the natives with NCR land for large scale development from which optimum returns could be realized;
- (c) Plantation Development is the most natural and practical way of developing NCR land on a large scale basis that could provide optimum returns on investment on sustainable basis;
- (d) NCR Land Bank with areas of 5,000 hectares and above are attractive and viable for investment by the private investor and as such, will not require Government fund to develop them.

Using the framework of the above assumptions, the development of NCR land in Sarawak is conceptualized into one Commercial Development Model by:-

*the bringing together of the native landowners with their land and the private sector with its capital and expertise to develop the NCR land for commercial estate on a joint-venture basis. In order to facilitate the formation of such joint-ventures and to safeguard the interests of both the landowners and the investor, the State Government will appoint its agency such as LCDA as Trustee to manage the interests of the landowners.*

A standard land development model has been formulated and approved by the State Government which can be summarized as follows:-

### **JOINT VENTURE MODEL**

In this model, the government agency will hold in trust the interests of the NCR landowners. The trustee will form a Joint Venture Company (JVC) with a well established private sector company approved by the Government. Land title will be issued to the JVC for a period of sixty (60) years (2 plantation cycles) for an agreed value. The monetary value generated by the use of the land will be used for two types of investments:

- (a) as **30% equity** in the JVC (long term investment), and
- (b) as **cash for investment in Unit Trusts** (investment with fast return).

### **WHAT IS MEANT BY NCR LAND?**

Native Customary Rights in relation to land means rights acquired by the landowners in the manner set out in section 5(2) of the State Land Code Sec. 2 of the State Land Code defines "Native Customary Land" as:

- (a) Land in which native customary rights, whether communal or otherwise, have lawfully been created prior to the 1<sup>st</sup> day of JANUARY 1958 and still subsist as such;
- (b) Land from time to time comprised in a reserve to which section 6 applies, and
- (c) Interior Area Land upon which native customary rights have been lawfully created pursuant to a permit under **section 10**.

### **MODUS OPERANDI**

#### **(A) CO-OPERATION OF LANDOWNERS**

In order for landowners to participate in the development of NCR land, they must organize and cooperate among themselves and are:

- (a) willing to develop their land;
- (b) have enough suitable land area in **CONTIGUOUS** blocks of not less than 5,000 ha. in a block; and
- (c) willing to assign to Government Agency as **TRUSTEE** their respective rights, interests, shares, and estate in the land.

#### **(B) RECOGNITION OF NATIVE CUSTOMARY RIGHTS TO LAND**

Upon representation made by the NCR landowners and after being satisfied that the NCR landowners have acquired NCR to or over the said land (except the State land therein), the Government will:

- (a) carry out perimeter survey on the area which the landowners have mutually agreed to form the NCR Land Bank for the purpose of development. The landowners involved will have to agree amongst themselves to determine the approximate sizes of their land holdings therein. (The Ministry of Land Development has devised a format to assist the NCR landowners in the determination of their NCR claims as per **Appendix 'A'**);

- (b) with the consent of the NCR landowners, issue the title for the said land included in the NCR land development, in the name of the joint venture company that implements the project for a term of sixty (60) years. All the rights and interests of the landowners in the land will be merged into one parcel of land for the issuance of **ONE LAND TITLE** to the said company;
- (c) classify the said land as **NATIVE AREA LAND**;
- (d) allow the said land to be used only for agricultural purpose; and
- (e) impose the condition that **NO** dealing over the said land or any part thereof shall be affected without the prior consent in writing of the Minister-in-charge.

**(C) DECLARATION OF DEVELOPMENT AREA**

The land over which the perimeter survey is completed and issued with **ONE LAND TITLE** in the name of the company will be gazetted as a Development Area (DA) in accordance with sub-section 11 of the LCDA Ordinance 1981.

**(D) MANAGING AGENT FOR LANDOWNERS**

- (a) The State Government will appoint a Government Agency such as PELITA as Trustee to manage the interests of the landowners and to act on their behalf.
- (b) The NCR landowners must jointly agree to authorize the said appointed Government agency to be their sole trustee to undertake and develop for them the said land and to collect and receive on their behalf the benefits derived from the development of the said land. A Deed to this effect will have to be signed by every NCR landowner.

**(E) CONSIDERATION FOR THE USE OF LAND**

As a consideration for the use of their NCR land, the JVC will pay RM1,200.00 per hectare in the following manner:

- (a) The JVC will issue to the Trustee, to be held in trust for the NCR landowners, shares in the JVC credited as fully paid, equivalent to 60% of the value of the said land and representing 30% of the issued and paid up capital of the JVC;
- (b) The balance equivalent to 40% of the value of the said land shall be paid as up-front payment by the JVC to the Government agency as Trustee for the landowners. The Trustee will then invest for and on behalf of the NCR landowners a portion of the up-front payment equivalent to 30% of the value of the said land in any Government Unit Trusts and the remaining sum not exceeding 10% of the value of the said land to be paid in cash to NCR landowners;
- (c) The number of shares in the company which each of the NCR landowners shall be entitled to, will be in proportion to their respective interests in the said land; and
- (d) The private sector will have 60% of the issued capital of the company and will pay cash for these shares. The Trustee will have 10% of the issued capital and will also pay cash for these shares.

**(F) EQUITY STRUCTURE OF THE JVC**

The JVC equity structure will be as follows:

| <b>Parties</b>             | <b>Shareholdings (%)</b> |
|----------------------------|--------------------------|
| Investor                   | 60                       |
| Landowners                 | 30                       |
| Trustee (Management Agent) | 10                       |

The private sector and trustee will pay cash for their shares. The landowners' equity in the JVC will be paid through the land value.

## **(G) RIGHTS TO LAND AFTER EXPIRY OF TERM OF 60 YEARS**

- (a) Upon expiry of the term of the title, the NCR landowners shall decide to **EITHER** renew the title for the land for the JVC **OR** request for the land to be alienated to themselves or to another company or entity nominated in writing by them, as they think fit.
- (b) In the event that the NCR landowners are desirous to have the land sub-divided and alienated to them individually, the Trustee is empowered to undertake a survey of the land and determine the most equitable and fair manner of sub-division of the said land having regard to the extent of each of the NCR landowners' interest in the said land.

## **BENEFITS TO THE NCR LANDOWNERS**

- (a) Their idled land will be developed into modern plantations with provisions of adequate infrastructure facilities such as roads, buildings, factories etc. which will increase the value of their land.
- (b) 30% share of profit of the JVC
- (c) Investment in Unit Trust
- (d) Cash up-front payment (10% of the total value of the said land)
- (e) Job opportunities
- (f) Stable income in the form of bonus and dividend
- (g) Their individual plots of NCR land are picket surveyed and a record thereof is kept
- (h) Other benefits

The following benefits will be enjoyed by the landowners, as realized through the equity in the JVC and the up-front payment given to them:-

| NCR Land Bank | Land value per ha at RM1,200 | Investment in JVC as equity | Upfront payment of 40% |            |
|---------------|------------------------------|-----------------------------|------------------------|------------|
|               |                              |                             | 30% (Unit Trust)       | 10% (Cash) |
| 5,000 ha      | 6,000,000                    | 3,600,000                   | 1,800,000              | 600,000    |
| 10,000 ha     | 12,000,000                   | 7,200,000                   | 3,600,000              | 1,200,000  |

Based on the above, the up-front payment due to the NCR owners are as follows:

|  | <b>RM/Ha</b>  | <b>RM/acre</b> |
|--|---------------|----------------|
| 30% in the Unit Trust managed by the Trustee | <b>360.00</b> | <b>145.75</b>  |
| 10% as cash payment to landowners            | <b>120.00</b> | <b>48.58</b>   |

## **HOW TO APPLY FOR NCR LAND DEVELOPMENT UNDER THE NEW CONCEPT**

1. Village/Longhouse Jawatankuasa Keselamatan, Kesihatan dan Kemajuan Kampung to call for a discussion with all their respective households heads in order to arrive at a consensus for their NCR land to be developed under the New Concept.
2. Representatives of villages/longhouses and the Ketua Masyarakat of the area then hold a meeting among themselves for the following purposes:
  - (i) To arrive at a consensus for their land to be amalgamated to form a contiguous block for development in accordance with the New Concept;
  - (ii) To form a Pro Tem Area Development Committee;
  - (iii) To identify contiguous blocks of 5,000 hectares or more of inland soil with undulating terrain of less than 25 degree slopes and swamp/peat soil; and

- (iv) To authorize the Pro Tem Area Development Committee to prepare an Application Letter on behalf of the applicants.
3. The Application Letter should be:
- (i) Signed by the Chairman or Secretary of the Pro Tem Area Development Committee,
  - (ii) Accompanied by:
    - (a) a map on a scale of 1:125,000 with the proposed NCR land area applied for development clearly demarcated,
    - (b) minutes of the meeting, and
    - (c) the list of names of all NCR claimants involved.
  - (iii) Addressed and forward to the Ministry of Land Development, and
  - (iv) With a copy extended to their respective Resident/District Officer.
  - (v) District Officer/Resident shall then forward their comments to the Ministry of Land Development.

#### **FLOW CHART OF APPLICATION**

- Table for discussion at the Working Committee on NCR Land Development.
- Table for consideration and approval at the State Task Force on NCR Land Development.
- Application approved by State Task Force on NCR Land submitted to Ministry of Planning and Resource Management (MPRM) and Land Survey Headquarters for verification and final approval.

#### **FLOW CHART OF IMPLEMENTATION**

Project implementation involves the following activities:

- Declaration of Development Area by PELITA
- Dialogues with community leaders and Formation of Area Development Committee followed by dialogues with all villages/longhouse folks and Training of Enumerators
- Registration and Verification of land claimed
- Determination of individual landholdings through picket survey
- Signing of Deed and Trust Deed
- Environment Impact Assessment (EIA) Study
- Selection of Investor
- Formation of Joint Venture Company
- Physical Implementation
- Perimeter survey of area developed
- Issuance of Land Title

#### **Functions of the Area Development Committee (ADC)**

- To organize and unite the landowners
- To submit application
- To facilitate implementation
- To assist in solving disputes relating to the NCR claims
- As a catalyst and agent of change
- To identify sufficient reserves for the longhouse domestic uses such as farming reserve, paying rumah, burial ground etc.