Rule by Exception: Development, Displacement and Dissent
In Greater Kuala Lumpur, Malaysia

By

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1

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Abstract:

My thesis looks at the relationship between development, displacement, and dissent in Greater Kuala Lumpur, Malaysia. Barring a brief four year period, independent Malaysia has continuously operated under a near-permanent state of constitutionally imposed emergencies. I look at the operation of one of the emergency regulations, the Essential Clearance of Squatters Regulations (ESCR, promulgated initially in 1969 and used until 2013) for the purposes of displacement and urban planning. Relying on archival research, interviews, and an in-depth case study, I seek to characterize the nature of urban development, particularly the operation of the law, in Kuala Lumpur. I make three broad arguments:

1. The use of squatter regulations for the purposes of urban planning started with the colonial emergency of 1948, when urbanization and development were used as primary elements of a military strategy to combat the Communist emergency.

2. Post-independence, however, the Malaysian state has increasingly used laws meant initially for counter-insurgency operations for the purposes of development. I argue that the urban planning in Kuala Lumpur must be seen as a form of urban law-fare (the use of techniques of war for political or economic ends; Comaroff, 2001) and that the creation of a "state of exception" (Agamben 2005), through the declaration of emergencies, has enabled the use of military ends as a normal technique of government.

3. Lastly, I look at the case of Kampung Berembang, perhaps the only successful case of resistance against the use of ESCR. I argue that the residents' re-positioning of themselves as *peneroka bandar* or urban pioneers (as opposed to squatters), using claims originating in Malay Customary law, were critical to reclaiming their rights as citizens.

Thesis Advisor: Balakrishnan Rajagopal
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Table of Contents

List of Figures

Chapter I: Introduction: The Fog of Planning

"How does planning happen in Malaysia? How are decisions made? Who makes them?

No one knows how decisions are made here. We don't see the ones who make the decisions behind closed doors. We don't know what happens. It's as if a cloud has engulfed the decision-makers and decisions. We only see the bulldozers coming for us after the cloud clears[1] "

1. Setting the Context and Research Questions

Over the past two and a half decades, the Greater Kuala Lumpur region, home to approximately seven million people, has witnessed rapid growth[2]. Often growing faster than its residents can make sense of, Kuala Lumpur continues to be a site of constant construction. The Petronas towers, the SMART (Stormwater Management And Road Tunnel) tunnel, a growing Mass Rapid Transit (MRT) network, the construction of high speed expressways like the DUKE (Duta–Ulu Klang Expressway) , the Tun Razak exchange, the Multimedia Super Corridor are just some of the megaprojects that dot the urban landscape of this megaregion. Each of these megaprojects, however, have another story to tell; one of violent and systematic dispossession and displacement. Indeed, an alternate map of Greater Kuala Lumpur could be conceived; one that is composed entirely of places and people that the city's frenetic urban expansion has rendered invisible.

This thesis attempts to work towards developing an understanding of the institutional logics and legal rationalities that undergird Kuala Lumpur's quest to become a "world-class city"[3]. It seeks to characterise the rapid growth of the city from the perspective of those who have been

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[1] Interview with resident of Kampung Puah Seberang. Kuala Lumpur. January 2017
[2] In the thesis, I use the term Greater Kuala Lumpur to refer to an agglomeration of ten municipalities. Specifically, they are Kuala Lumpur City Hall, Putrajaya, Shah Alam City Council, Petaling Jaya City Council, Klang Municipal Council, Kajang Municipal Council, Subang Jaya Municipal Council, Selayang Municipal Council, Ampang Jaya Municipal Council and Sepang Municipal Council.
[3] Kuala Lumpur Structure Plan 2020. Dewan Bandaraya Kuala Lumpur. 2004

dispossessed and displaced. As the epigraph to this chapter conveys, "illegal" residents of the city or "squatters", as they are commonly referred to, have struggled to understand the decisions and processes that have robbed them of their land and livelihoods, and upended their lives. Often, the only tangible manifestation of the fog that hangs over planning and development decisions, to them, is the violence that accompanies it. This violence takes several forms- the surprise eviction notices that the city serves on them; the denial of legitimate rights, fair compensation, and alternate shelter options; the lack of judicial recourse to challenge their status as squatters; or as the epigraph notes, in the form of bulldozers that arrive to dismantle their homes.

A primary recipient of this violence in Greater Kuala Lumpur has been the "squatter". Understood largely as an illegal occupier of a parcel of land, or one who occupies land without a legal title, the squatter is more than a legal category in Malaysia. In conversations with planners, policy and decision makers, the "squatter" is often used as euphemism for criminals, illegal migrants, and other "socially undesirable" denizens of the city. This is manifested in the city's programmatic approach to "eradication" of squatters in the form of slum clearance projects and in everyday conversations with Kuala Lumpur's citizens[4]. Squatters are seen by the Malaysian state as the anti-thesis of Kuala Lumpur's hyper-modern vision for itself. It reminds the city and its affluent citizens of the dirty underbelly of the city- of poverty, of inadequate and substandard housing, of systematic state neglect, of a primitive image, the modern city has deluded itself into believing it has long left behind. My research inquiry begins with the squatter- how has such a conception of the squatter as bare life- humans as animals in nature without political freedom (Agamben, 2005) come to be? What are the origins of the

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[4] For instance, see Tan, Kevin. *Squatter problem will persist if 'low-cost' houses are expensive.* Malaysiakini.com. 2 October 2001. Available here: https://www.malaysiakini.com/news/4940#ixzz4gP5Q6csq or Keuk et al (2016) on *Eradicating Squatters through Resettlement Programme: A Conceptual Paper*

"squatter problem" in Greater Kuala Lumpur? How has the term gained currency as more than a legal category, as a social and administrative category?

While the squatter may exist as more than a legal category, their displacement in Greater Kuala Lumpur is aided by legal operations. They are in violation of a host of laws at the state's disposal- the National Land Code, the Land Acquisition Act, and until recently, the Essential (Clearance of Squatters) Regulation (ECSR), among others. In this thesis, I focus on the operation of the Essential (Clearance of Squatters) Regulation, an emergency regulation passed initially during the constitutionally declared emergency of 1969. The use of an emergency ordinance to clear squatters must be seen within the context of Malaysia's near-permanent state of emergency. Since 1948, Malaysia (and formerly Malaya) has declared five constitutional emergencies with at least two of the emergency promulgations continuing to be in operation till 2013. The emergency declared in 1969, following which the ECSR was passed, has perhaps had the most far reaching consequences in Malaysia. Often combined with other draconian laws including the Internal Security Act and other Emergency Ordinances that curb political dissent and freedom of expression, ESCR has been the most violent and indisputable of laws threatening squatters. In subsequent chapters, I try to answer the following questions- what historical factors underlie the intricate relationship between the Malaysian state's programmatic approach to squatter clearance and the promulgation of emergencies? How can the violent lived experience of the law, particularly the emergency ordinance, by Kuala Lumpur's dispossessed be characterised? What allows for the near impunity of the state in deploying such legal use of violence for the purposes of urban planning?

The residents of Kampung Berembang, located a mere fifteen minutes away from Kuala Lumpur's city centre, woke up to this violent operation of the law when eviction notices were slapped on homes that they had been living in for over four decades. Initially charged with violating the National Land Code, they were subsequently served with notices under the ECSR.

In a struggle that lasted for almost a decade, 68 families from Kampung Berembang faced multiple rounds of violent evictions, saw their homes demolished repeatedly, and were detained and arrested by the police. Perhaps, the only case of a successful resistance against the use of ECSR, the resistance at Kampung Berembang was a defining moment in the struggle for the legitimate rights of Kuala Lumpur's "illegal" denizens. The campaign which drew significant attention from the print and electronic media and civil society offers a starting point in examining how so called squatters have been able to resist the violence of the law. Using the campaign at Kampung Berembang as a case study, I ask the following questions: how have residents of Kuala Lumpur, seen by the state as illegal squatters, resisted the label and the associated operation of the law? What are the modes of resistance they use in their attempt to reclaim their rightful place as citizens? How have such resistance re-theorised the state's conception of them as squatters?

2. Research Methods

The research for this thesis was conducted between January 2016 and February 2017. This included three trips to Greater Kuala Lumpur: a two-week trip in January 2016, a two-week trip in August 2016, and lastly, a five-week trip in January-February 2017. The first trip, as a part of a practicum course at MIT, was my first trip to Malaysia where I worked with a team towards developing an understanding of three sites of active displacement- Kampung Baharu, Kampung Dato Keramat, and Kampung Chubadak Tambahan. The second trip in 2016 involved more structured field visits in the Greater Kuala Lumpur region, particularly sites of displacement, interviews with civil society members, academics, policy makers, and planners at the Kuala Lumpur City Hall. The last trip in 2017 involved detailed archival work at the National Archives of Malaysia in Kuala Lumpur, a set of in-depth interviews with residents, activists, and members of civil society who were actively involved and leading the resistance campaign in Kampung Berembang, the site of my case study. In addition, I interviewed

officials from both the planning and legal enforcement offices of Kuala Lumpur City Hall, two experts in Malaysian land law, one advocate involved in the Kampung Berembang case, a high-ranking member of the Malaysian People's Volunteer Corps or RELA, three members belonging to Parti Socialis Malaysia (PSM or Socialist Party of Malaysia), a significant opposition party and a Member of the Malaysian Parliament. The work below relies primarily on archival data collection, my set of interviews, and a review of secondary literature.

3. Thesis

I make three main arguments:

First, the use of squatter regulations for the purposes of urban planning has its origins in the colonial emergency of 1948, when urbanization and development were used as primary elements of a military strategy to combat the Communist threat to colonial hegemony. (Chapter II)

Second, post-independence, however, the Malaysian state has increasingly used laws meant initially for counter-insurgency operations for the purposes of development. I argue that the urban planning in Kuala Lumpur must be seen as a form of urban law-fare (the use of techniques of war for political or economic ends; Comaroff, 2001) and that the creation of a "state of exception" (Agamben, 2005), through the declaration of repeated emergencies, has enabled the deployment of military ends as a normal technique of government. (Chapter III)

Lastly, I look at the case of Kampung Berembang, the only successful case of resistance against the use of ESCR, to examine how "squatters" are reclaiming their rightful place as citizens. I argue that the residents' repositioning of themselves as *peneroka bandar* or urban pioneers, using claims originating in Malay customary law and Islamic land law, and their explicit rejection of the state's perception of them as squatters were critical to the success of the resistance. (Chapter IV)

4. Chapter Outline

The remainder of this thesis is organised as follows: Chapter II traces the historical evolution of the term "squatter" and its intricate relationship with the deployment of the emergency law in Malaysia. Specifically, I will show how the term was conceived and transformed into a legal, social, and administrative category as a part of a counter-insurgency strategy to contain the Communist uprising in Malaya. The creation of this category had little to do with the actual legality of land occupation but was rather motivated entirely by the needs of security. The solution to the squatter problem, I argue, must be read as a military doctrine which involved two components- the creation of an architecture of surveillance in the form of dense, settled agglomerations called New Villages and the deployment of development as a military strategy.

Chapter III examines the enduring links between the Emergency of 1948 and the subsequent emergencies, particularly the Emergency of 1969. I identify three key elements that underscore the relationship between the two emergencies. First, I examine the repeated invocation of the "squatter" during the time of emergency rule as a primary mode through which the Malaysian state has achieved political ends, particularly for the purpose of development. Second, I examine judicial challenges and reviews of the emergency provisions related to squatters and find that the judiciary has offered little support in resisting the continued use of emergency powers to deal with squatters. Third, I look at the repeated mobilisation of a version of the Home Guards currently named People's Volunteer Corps or RELA during times of emergency rule. Taken together, I argue that these three elements form the main mechanisms through which the Malaysian state has continued two key aspects of the Peninsular Malaysia's first emergency, noted earlier- the creation of an architecture of surveillance, and the use of development as a military strategy.

Furthermore, I argue that the extended use of the Emergency Ordinance for the purpose of urban planning in Malaysia, particularly in the Greater Kuala Lumpur region, constitutes a form of urban lawfare, where the violence of the law has been deployed with alarming effect for the purpose of urban planning. What makes this violence possible is the operation of the Malaysian state under a permanent "state of exception". Through the extended use of emergency powers in Kuala Lumpur, I argue that the Malaysian state has created a "normalised" state of exception, where displacement and dispossession define normality for the marginalised.

Chapter IV chronicles the sage of Kampung Berembang, examining in specific the campaign's reformulation of the state's view of residents as squatters to their self-description as *peneroka bandar* or urban pioneers. Reclaiming the Malay customary law notion of *peneroka* or the one who opens up land, I examine how citizens repositioned the legal argument against squatters as individuals with no rights. Through this, they demanded that the state recognise their dignity and labour which contributed to the making of the city of Kuala Lumpur. I argue that the repositioning of squatters as urban pioneers is crucial to understanding the violence of the law and its deployment for neo-liberal growth strategies in Kuala Lumpur. Furthermore, I situate the campaign for rights in Kampung Berembang within two contexts: first, similar global movements that has repositioned the rights of the city's invisible citizens, particularly the city makers movement in Delhi, India; and second, within contemporary debates on the role of civil society and social movements in society. I argue based on Rajagopal (2003) that the *peneroka bandar* movement should be viewed as a form of "subaltern counterpublics", a space of oppositional refuge where citizens reformulate and re-theorize notions of rights, citizenship, and identities.

Chapter V concludes the thesis with a note on future directions and broader implications of the arguments presented in this thesis.

5. Scope and Limitation

First, while this thesis relies on archival and historical evidence to support its arguments, it is not a complete historical treatment of the deployment of emergency rule in Malaysia. I focus instead on three historical vignettes: the Malayan emergency of 1948, imposed by the colonial British government; the emergency promulgated in 1969, focussing specifically on the Essential (Clearance of Squatters) Regulation; and the period of Kampung Berembang's resistance between 2002 and 2013. By focusing on these three snapshots in time, I hope to bring out the enduring links between the deployment of development and urban planning as a primary mode of military strategy and the repeated use of these methods as a normal technique of government. In adopting such an approach, I am aware that several important aspects of the previous emergencies have not been explored in my thesis.

Second, the victory of Kampung Berembang's resistance is an exceptional one and cannot be claimed to represent the normal experience of displaced communities in Greater Kuala Lumpur. During my field work, I visited more kampungs and ladangs whose resistance and demand for compensation and alternate housing went unheeded by the state. In deliberately choosing to focus on Kampung Berembang, I attempt to grapple at the threads of a resistance that saw an unlikely yet limited victory. In this, my thesis does not answer the question of why Kampung Berembang won and why other resistance efforts did not. I am more interested, rather, in examining the relationship between state and citizen as evidenced by the campaign.

Third, researching the plight of *peneroka bandar* in Greater Kuala Lumpur falls in contentious domain. Government officials and residents often see the topic as politically sensitive and controversial and I was denied several requests for interviews. My set of interviews omit several key actors in my narrative including the police, private real estate developers, and officials of the enforcement department. Furthermore, my set of interviews with government

officials are limited to Kuala Lumpur City Hall, excluding other municipal councils in the Greater Kuala Lumpur region. In several cases, I gained entry to government officials obliquely by starting primarily with questions on squatter compensation policies, and not their direct displacement.

Fourth, my own position as an Indian researcher, studying in the United States of America, has an influence on the information shared with me during my interviews. Furthermore, while the residents of Kampung Berembang and other kampungs welcomed me into their homes and provided generous accounts of their experience of dispossession and displacement, my ability to communicate with them in Bahasa Malaysia was mediated by the use of translators. All errors in translation and interpretation remain mine alone.

Chapter II: Development as a Military Doctrine: the History of the "Squatter Problem" in Malaysia

"These squatters are criminals. They have illegally occupied the lands they live on. They have no rights under the Malaysian constitution. They are a threat to society and must be firmly dealt with. Do you know that nowadays there are professional squatters? People have made squatting into a lucrative enterprise.[5]"

In several conversations and interviews conducted during my field work in the Greater Kuala Lumpur region, the idea of the "squatter" as a person with no rights, as a criminal, and as a social pariah was repeatedly invoked. Often laced with casual racism, xenophobia, and attributions of criminality, the archetypical image of the squatter was reminiscent of Giorgio Agemben's conception of 'bare life'- humans as animals in nature without political freedom. In this chapter, I examine how such a conception of the squatter in modern Kuala Lumpur came to be. What are the origins of the term "squatter" in the Malaysian context and how did it come to be used and deployed in this specific manner?

In the first section, I trace the historical evolution of the term "squatter" and examine its intricate relationship with the deployment of the emergency law in Malaysia. Specifically, I will show how the term was conceived and transformed into a legal, social, and administrative category as a part of a counter-insurgency strategy to contain the Communist uprising in Malaya. The creation of this category had little to do with the actual legality of land occupation but was rather motivated entirely by the needs of security. The solution to the squatter problem, I argue, must be read as a military doctrine which involved two components- the creation of an architecture of surveillance in the form of resettlement sites called New Villages and the deployment of development as a military strategy.

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[5] Anonymous (Official in the Dewan Bandaraya Kuala Lumpur (DBKL) or Kuala Lumpur City Hall). Interviewed in January 2017

The creation of an architecture of surveillance built by the colonial regime as a part of their military doctrine involved two key elements: one, the New Villages were designed and constructed in the form of military encampments in order to maximise the potential for monitoring the delinquent squatter; and two, the state built additional institutional architecture in the form of an energised Special Branch and strengthening the Special Constables to guard New Villages until they were able enough to form their own Home Guard.

Furthermore, the emergency saw the beginning of the use of development as a central mechanism to discipline an entire population, and monitor and surveil their movement. In this, the solution to the squatter problem and indeed development itself was conceived as a central part of a military doctrine, which has continued to have an effect on post-independence Malaysia. I begin, below, with a brief overview of the Malayan Emergency of 1948.

1. The Malayan Emergency of 1948

The Federation of Malaya declared a state of emergency on 16th June 1948 as a measure to combat the outbreak of an armed Communist revolution that aimed to usurp political power from the British Government. The insurgency sought to create a "People's Democratic Republic" in Malaya. The emergency was officially repealed on 31st July, 1960. While a full historical account of the emergency is beyond the scope of this chapter, I will focus specially on aspects of the emergency that are relevant to our present discussion on the framing of the squatter problem as a military strategy and the creation of the squatter as an administrative, military category.

The period of the extended Malayan emergency was a critical period in the making of the modern Malaysian state. As Harper (1999) notes, "during the emergency the classic functions of the state- military, fiscal, administrative- were greatly extended and new ones adopted. A centralised federal government grew in strength and its ranks of administrative personnel

swelled. The state became, for the first time, a physical presence in the lives of its subjects. An immediate manifestation of this was the issuing of identity cards, and the taking of thumb prints." Furthermore, the state crucially expanded its reach to include sectors such as power-lines, radio and metalled roads by opening up roads to hitherto unreached areas such as northwest Kelantan. The capabilities of the Malayan bureaucracy, including the police force, kampong guards, and a wide ranging intelligence gathering and surveillance mechanism, were expanded in this period.

Furthermore, the period of the Malayan Emergency permanently altered the settlement patterns of peninsular Malaysia. The emergency period resulted in the creation of over 600 new settlements and lead to a change in the pattern of urban settlement in Malaya. For instance, in a decade since the imposition of the emergency, the total population of urban dwellers increased from 26.5% to 42.5%, an increase of about 105% in the total urban population of the country. At the end of the decade, Malaya was the most urbanised country in Southeast Asia.

Two key facets of this state building process require closer examination: one, the definition and the treatment of what was described as the "squatter problem" and two, the resettlement and relocation campaigns forged under the Briggs plan, which proved to be a decisive factor in the urbanisation of peninsular Malaysia.

2. The Origins of the "Squatter Problem" in Malaya

The Newboult Report

In December 1948, the British government set up a "Squatter Committee" with Chief Secretary Sir Alex Newboult as its chairman. The Committee had a threefold objective: one, "to examine the facts regarding the squatter problem"; two, to recommend the policy to be adopted with regard to "the legal and illegal occupation of land by squatters"; and three, "to advice the Governments concerned what further legislation, if any, is necessary to implement" the

recommended policy (Report of the Committee Appointed by His Excellency The High Commissioner to Investigate the Squatter Problem, 1949). The Newboult Committee Report will form the foundation on which the squatter problem is transformed into a military strategy.

The Committee identifies four factors that have caused the present squatter problem: one, natural population increase in the Malay peninsula, especially due to the migration of Chinese women; two, the displacement of workers caused by the war-time Japanese occupation, which rendered several thousand employees of mines and estates jobless and forced them to relocate and occupy lands in more fertile regions of the country; three, illegal migration during the Japanese occupation; and four, the population flight from the towns into the countryside as a result of the war and subsequent occupation.

The Newboult report, while recognising that "squatter areas serve as ideal cover for the bandits", does not call for the massive displacement scheme it eventually engendered. On the contrary, the report emphasises the usefulness of squatters to the country, especially for food production and cultivation. The report also points out the limitations of the earlier efforts to relocate squatters warning that such a policy is likely to cause "hardship to the people concerned" and that displacement of some 300,000 squatters could be prohibitively expensive for the government. The report concludes that, "the most satisfactory solution is to settle the squatters, wherever possible in the areas which they already occupy". The report even suggests that a notice period "of six months or such other time as may be reasonable in the circumstances" should be provided to illegal occupants of land.

The recommendations of the Newboult Committee were later summarised into five:

(i)   "wherever possible squatters should be settled in the areas already occupied by them",

(ii)   "where settlement was not possible, an alternative suitable area should be made

available for resettlement",

(iii)   "if a squatter should refuse settlement or resettlement..., he should be liable to

compulsory repatriation",

(iv)   "emergency measures to deal with the security problem of certain areas should be

supported by administrative measures designed permanently to re-establish the

authority of Government", and

(v)   "legal means should be introduced to provide for the eviction of squatters by

summary process[6]"

The use of Emergency Regulations

Even as the Newboult Committee was finishing its report, the government introduced a series

of Emergency Regulations in 1948 (these were revised in 1949 and later amended in 1953)

covering issues such as clearance of squatters, food supply, arrest and detention powers, and

possession of firearms. I discuss relevant sections of the Emergency Regulations below.

Emergency Regulation (ER) 17D aimed "to deal with certain squatter communities who were

frustrating the efforts of the Security Forces" by aiding, harbouring, or providing information

to "armed terrorists". ER 17D empowered the High Commissioner "to order that the whole of

the inhabitants of a specified area should be detained" and provided for the repatriation of non-

British subjects or non-Federal citizens so detained. In addition, ER 17C provided for the

deportation of non-citizens back to their country of origin. As Sandhu (1964) notes, military

operations using ER 17 D involved the clearance, arrest, detention, and deportation of squatters.

For example, in 1949 alone, sixteen operations against squatters were reported. Between 1949

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[6] The Squatter Problem in the Federation of Malaya in 1950. Paper to be laid before the Federal Legislative
Council by command of His Excellency the High Commissioner. 1950. National Archives of Malaysia, Kuala
Lumpur, Malaysia.

and 1952, approximately 40,000 squatters were arrested and 26,000 people, primarily Chinese, were deported.

A subsequent report titled "The Squatter Problem in the Federation of Malaya in 1950" assesses the progress of the policies initiated by the Newboult Report and recommends three main methods to tackle the squatter problem:

(i)   Settlement, or providing legal recognition in the form of a licence, lease, or title to the occupied land

(ii)   Resettlement, or the relocation of squatters to "new resettlement areas" either directly or post-detention

(iii)   Regrouping, or the reorganisation of squatters into a more "compact community within the same locality"

In order to provide teeth to the last two recommendations of the Committee, two further Emergency Regulations were passed- ER 17E and 17F respectively. ER 17E, created to hasten the process of resettlement empowers "the Ruler in Council in each state to issue eviction orders requiring all unlawful occupants of land in specified areas after a minimum of one month's notice to leave those areas and proceed to specified places". The duration of notice time had been reduced to one month from the recommended six months by the time the ERs were passed. This was done in order to retain "the element of surprise and the backing of force" required to clear squatter settlements.

On the other hand, ER 17F gave power "to order individual squatter families to move from one place to another or to restrict the residence of a family within a limited area". In other words, effective regrouping of squatter families was done through the use of ER 17 F. The crucial difference between ER 17D, passed before the completion of the Newboult report, and ER 17E is that the latter did not provide for detention of squatters. Instead, the regulations provided for

the immediate settlement of the squatter to a new location. ER 17 E was to become the chief weapon of the resettlement process. As explained in the Report on Squatter Problem in Malaysia (1950), ER 17E was a "lasting insurance against the danger of further support to terrorists being given to the squatters concerned, who, on suitable land, and protected from Communist domination, are able to become self-supporting again within a few months and live as law-abiding citizens".

Winning Hearts and Minds: The Briggs Plan

These recommendations, however, were not deployed in full effect until the arrival of General Harold Briggs, who, soon after taking over as Director of Operations of the counter-insurgency, made resettlement the foundation of his military strategy[7]. For instance, his first directive called for "the people of Malaya to identify themselves with the battle against the Communists, ordering the re-deployment of the police and army and an all-out drive for resettlement" (Sandhu, 1964). The Briggs Plan, as it came to be called later, relied on a policy of protecting densely populated areas from the Malayan Races Liberation Army, the armed, guerrilla wing of the Malayan Communist Party by forcibly relocating them. The Briggs Plan borrowed two essential recommendations of the squatter reports: one, a process of relocation, where by rural populations were displaced from their original settlements to new sites. Often called "New Villages", these sites were expected to have pre-built amenities including piped water, electricity, schools etc. Two, there was a concomitant process of regrouping, where by labourers and their families were resettled, often within plantations for instance, to a central node of agglomeration.

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[7] For instance, the number of persons detained under ER 17D by March 1950 was 4,085. In Kuala Lumpur, for instance, out of an estimated 62,000 squatters, only 13,000 persons had been settled and 2,000 regrouped. The scale of operations were to intensify with the crystallisation of the Briggs Plan.

Between 480 and 600 New Villages were created in Malaysia during the period of the emergency and a total of 573,000 people were relocated in a decade since 1950. The reported population of these new settlements were largely Chinese (86%). The regrouping process, on the other hand, is estimated to have affected 650,000 persons. While a large proportion of them were on plantations and estates (72%), the process also encompassed mines, and industrial agglomerations as well. Indians formed a majority of those workers who were disciplined through this process.

The process of relocation was aided by a mass propaganda campaign run primarily by the Emergency Information Services (EIS)[8]. As much as the emergency was fought through military strategy, it was also "fought overwhelmingly via information and the management of imagination" (King 2008). One of the emergency leaflets proclaimed that "concentration of (squatter) farmers means greater security". It informed its readers that the "Government is determined to wipe out communist banditry" and that "Government can ensure safety and livelihood of (squatter) farmers as soon as outlying squatters are gathered together". Furthermore, it assures the farmers that their relocation is being conducted solely in their own best interests[9].

Figure 2.1, for instance, shows a leaflet distributed in 1950 that shows the picture of a resettled farmer (squatter) in his new dwelling. The picture and the text call attention to the welfare projects that are being undertaken in the new resettlement areas; for instance, a new house, a good well for irrigation and safety from banditry. Such leaflets, featuring images of happy farmers or traders who had relocated to New Villages were a common mode of propaganda

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[8] The chief propaganda machine for the emergency, the EIS, was set up by Hugh Carleton Greene, brother of writer Graham Greene. As King (2008) notes, "it is not coincidental that Graham Greene's literary preoccupation with spies, espionage, and propaganda was heavily instrumental in forging the British Cold War imagination".
[9] Emergency Leaflet No. 293. Concentration of (Squatter) Farmers Means Greater Security. 1950. Accessed in January 2017 at the National Archives of Malaysia, Kuala Lumpur

through the period of the emergency and aided the massive process of resettlement initiated by

the Briggs Plan.

你們須要遷移

為保護你們不致受匪徒侵害起見，政府當局決將你們遷移至較安全的地方。現在當局會通知你們何時遷移，不須有所動作。每個遷移至指定的安全區的家庭，可獲得土地與金錢。當局將協助你們搬遷。在馬來亞巳有很多華人移遷至新殖區內而過着快樂的生活，他們現在居住的土地，將會成為他們的家產。你們的機會不久就會來了。

△ 有良好的新屋，清潔的水井，遮蔭的樹木，又可免被匪徒所騷擾，無怪他是如此的快樂。▽

No. 444 B

Figure 2.1: <u>You are to be resettled</u>

Main text: To protect you from bandits the Government is going to move you to another safer area. You will be told when the move is to take place. DO NOTHING NOW.

Every family moved to this safe area will be given land and money. The Authorities will help you to move.

Thousands of Chinese in Malaya are living happily in the new resettlement areas on land which they will own. Your turn will come soon!

In line with picture: A Good New House. A Good Well. A Shady Tree and Peace from Bandits- No Wonder He is Happy

Source: PR 968/50. Emergency Leaflet. 1950. Accessed at the National Archives of Malaysia, January 2017.

The dual processes of relocation and resettlement under the Briggs plan illustrates the new

mechanics of state making- labour was to be disciplined, state surveillance was to be

intensified, and dissent to be forcefully dealt with. As Harper (1999) argues, "The imprint of

government was felt most keenly in the New Villages. In many places, the state even dictated

the content of a family's meal, by imposing a shared diet of communal cooking. The body itself

was invaded through medical inspections and screening of labourers. Food-searches led to

sexual assaults, most famously at Semenyih in Selangor. It is a measure of the tenacity of the

colonial regime that its authority was imposed with the minimum of sustained resistance."

Outside of the New Villages, the emergency was also leading to sweeping changes in the societal make-up of Malaya. For instance, Harper notes that one of the most tangible effects of the imposition of the emergency was not the presence of police, or militarised counter-insurgency forces, but "the flourishing of the towns, which often flaunted a new affluence." For instance, the emergency period saw the expansion of the territory of the municipal authority of Kuala Lumpur which increasingly took in marginal areas outside its original boundaries. Furthermore, by 1951, there were an estimated 140,000 squatters in the city. By the time of independence from the British, "squatting was for the first time becoming a Malay problem. The use of the term 'squatter' with regard to Malays- and indeed a Malay word for the phenomenon- came with the movement of rural Malays to the towns in this period as *tempat mancari makan*- a place to look for food. In KL, settlements such as Kampong Kerinchi took in large numbers of migrants" (Harper, 1999). Furthermore, the municipality embarked on a process of master planning and capital modernisation.

3. Who is a squatter? : The Creation of a Social and Administrative Category

From a survey of the early reports of the squatter committees, it is clear that the British colonial government did not define the term "squatter". This becomes clear when the Perak State Squatter Committee (1949) states in its report that, "since the term 'Squatter' was not defined in the Terms of Reference, we decided at the First Meeting that it should be understood to include occupants of land under Temporary Occupation Licence (T.O.L) in addition to squatters on sufferance, and trespassers[10]. The Committee did not, however, consider the problems of Malays settled in rice growing areas on T.O.Ls." While commonly understood to mean an unlawful or illegal occupier of land, it is striking that the word "squatter" did not exist

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[10] A Temporary Occupation Licence is a permission granted by the State Authority to any person or body for the purpose of a specified activity on the land, without which, the person or body would be deemed an unlawful occupier. (Maidin et al, 2008)

as a legal category or was at best, ambiguously defined. As I discuss below, the use of the word

squatter had little to do with the actual legality of occupation of the land. Instead, the use of the

term had more to do with the perceived security threat posed by occupiers of land. This enabled

the colonial administration to deftly ascribe connotations of criminality, racial identity, and

delinquency to the term.

Defining a squatter: does legality matter?

The Report of Perak State Squatter Committee (1949) discusses, curiously, a category defined

as *legal squatters* or individuals with a Government approved licence to occupy the land. The

Report notes a marked difference between the number of such licences or T.O.Ls issued in

1948 and 1949. While most squatters in 1948 were occupying their lands with explicit

permission from the government, the policy changed in 1949 when the government decided

not to issue new licences or renew old ones, particularly in areas where counter-insurgency

operations were being planned or already underway. As the Report notes, "This decision

reversed a pre-war ruling with the result that a great many squatters who were in legal

temporary occupation of the land in 1948 became illegal occupants in 1949. In consequence, it

is true that in 1949 the great majority of squatters are illegal, but the number who have been

refused licences is at least as large as the number who have neglected or refused to apply".

Furthermore, the Report identifies five different categories of squatters: fishing squatters or

those settled along marshes or river banks; taungya cultivators or those permitted to practice a

form of shifting cultivation within Forest Reserves[11]; agricultural squatters or those who are

completely dependent on cultivation for their livelihood; industrial squatters, mostly members

working on mines or plantations; and urban squatters, those living in the "suburbs of the towns

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[11] According to Chamshama et al (1992), "The taungya is a system whereby villagers and sometimes forest plantation workers are given the right to cultivate agricultural crops during the early stages of forest plantation establishment. Cultivation is often allowed to continue until trees shade crops due to canopy closure."

and working in factories, offices etc.". The Committee then singles out the Taungya Cultivators in particular as being "well controlled" and not presenting a security problem, in the context of the military operations.

The idea that the definition of squatters as a category had a logic that was divorced from the legality of land occupation becomes more evident when we look at how other reports published during the emergency define the term. For instance, an Interim Report on squatter resettlement in Malacca discusses the term in the following manner:

> "The word 'squatter' includes all rural Chinese cultivators who are not easily accessible to the Administration and beyond effective police protection, and who live in that undefined 'no-man's land' where parties of armed Communist bandits hunt, and are hunted by parties of armed soldiers and police. The squatter is an unenviable position. He is subject to pressure from both sides, and also subject to economic pressure at the narrow margin above bare subsistence at which he lives. He is bewildered, suspicious, and feels that neutrality and conformation to immediate force majeure is the only course open to him. But neutrality successes in pleasing neither side, and his real desire is to follow where he gets the strongest lead. If he is driven, he will be resentful; he must be made to feel that he is following and that it is to his advantage to follow.
>
> In order to give him a feeling of greater confidence and in order to prevent him from giving comfort and aid to the bandits, whether voluntary or under duress, it has become necessary to devise and execute means to isolate him as far as possible from opportunities of coming into contact with them[12]"

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[12] Interim account of Squatter Resettlement in Malacca by G.H Jollyce, M.C.S. (Deputy Commissioner for Labour & Adviser Chinese Affairs, Malacca). 1950

Squatter as a social and administrative category

This excerpt from the Interim Report is worth examining for two key reasons. First, the report defines, in unambiguous terms, the racial identity and occupation of the squatter. The squatter that the colonial government wishes to target is a "rural Chinese cultivator". As mentioned before, it remains no coincidence that the Chinese bore much of the brunt of the resettlement program under the Briggs plan- 86% of the entire resettled population. As Harper (1999) notes, "counter-insurgency inevitably wore a communal guise" and Islam as repeatedly raised as a theme in Emergency propaganda. For instance, one of the emergency leaflets used in the Emergency read, "The Communist Party is trying to steal your country- protect yourselves and guard your kampongs", in a clear message to the Malay speaking, Muslim population of Malaya. A policy of spatial segregation heightened the sense of resettlement being used as a tool to discipline a delinquent population and transforming them into law abiding citizens. As the Perak Squatters Committee Report succinctly summarises, "our object must therefore be to eliminate the squatter who is an irresponsible and uncontrolled element and replace him by the settler who will be a responsible citizen secure in his position and aware of his obligations". Furthermore, the colonial government devised a series of "loyalty tests" to domesticate the Malayan Chinese population, most notably through Anti-Bandit months aimed at disrupting the support that the Min Yuen, the civilian channel for supply of information and goods to the Malayan Communist Party. The racialized discourse surrounding the word "squatter" allowed it to be deployed as a social category- the rural Chinese cultivator was not necessarily a rule breaker, he was an irresponsible, delinquent, squatter who needed to be disciplined into becoming a law-abiding, and economically productive citizen.

Second, the report does not speak to the legality or illegality of the occupation of land by the squatter. The squatter is identified as an individual that is beyond the reach of the colonial Administration. As the report states, he is in a "no man's land" hunted by both the bandits, and

the soldiers and police. The colonial project of resettlement was driven by the need to bring them under the "effective administrative control" of the colonial bureaucracy. The Report on the Squatter Problem (1950) admits that while the mode of life of unlawful and lawful occupants of land may be indistinguishable from each other, "from the security aspect, it is equally necessary that they should be brought under effective administrative control". The recommendations of the Newboult Committee, discussed earlier in the chapter, explicitly endorse the use of "emergency measures" to deal with the "security problem" of squatters as a means to "permanently re-establish the authority of the Government". Furthermore, they sanction the creation and use of "legal means" to summarily evict squatters. It is clear from the recommendations that there is a both a security and a state building logic at play ("permanently re-establish the authority of the government") in the framing of the so-called "squatters problem". As Harper (1999) notes, "from the outset, the needs of security dominated the government's approach to the squatter problem". Therefore, the squatter was less a legal, and more an administrative category that would enable the colonial government to deploy resettlement as a military and security strategy

4. The Squatter Solution as a Military Doctrine

In this section, I trace the crystallisation and deployment of solution to the squatter problem as a military doctrine. Employed with ferocious effect during the Emergency of 1948, I argue that two elements formed the core of this military doctrine- first, the creation of an architecture of surveillance and second, the use of development as a military strategy. It is of vital importance to understand the operation of these two elements in conjunction with each other. As I shall explain in later chapters, these two aspects of the Emergency were transformed into normal techniques of governance by the post-colonial Malaysian state.

4.1 The architecture of surveillance

In this section, I look at two aspects of the architecture of surveillance built by the colonial regime as a part of their military doctrine: one, the New Villages were designed and constructed in the form of military encampments in order to maximise the potential for monitoring the delinquent squatter; and two, the state built additional institutional architecture of surveillance in the form of an energised Special Branch and strengthening the Special Constables to guard New Villages until they were able enough to form their own Home Guard. These two elements of the military doctrine went hand in hand and were critical to the effective implementation of the Briggs Plan. As Comber (2007) notes, "under the plan, squatters were moved into some 400 or so heavily guarded and protected New Villages to bring them under government control and disrupt their contact with the communist jungle army. With the squatters concentrated in this way, the Special Branch was able, as intended, to develop a wide network of 'spies' and informers among them".

Design of New Villages

First, we look at the overall design of New Villages and how they were planned to be built in relation to each other. For example, presenting a proposed architecture for the New Villages under the Sepang Squatters Scheme, the Resettlement Officer for Selangor argues that the scheme should provide for "four fenced-in villages, quarter-of-a-mile apart, and provided each householder is guaranteed by two shopkeepers...The whole area should be surrounded by pig-fencing and ... a good British Sergeant could be stationed there to command the police, organise the auxiliary police if these are allowed and keep an eye on the settlement in

general.[13]" Resembling a colonial panopticon, this design and arrangement of resettlement villages enabled the government to closely monitor the activities of the resettled population.
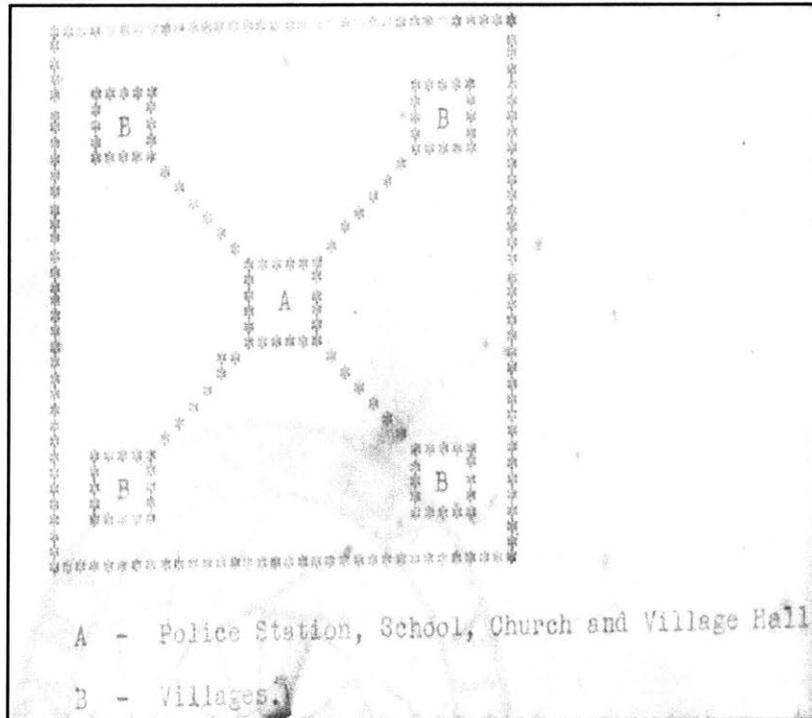

Figure 2.2: The Sepang Squatters Scheme proposed a conurbation of four villages branching out from a central node (A, pictured above), which would contain a police station, school, church and village hall.

Source: PR 1957/0296131. Sepang Squatters Scheme. 1949. Accessed at the National Archives of Malaysia, January 2017.

Second, we look at the internal design and layout of each New Village. King (2008) describes the New Villages created during the emergency as follows: "they followed a standardised pattern of grid streets that scarcely varied with size or location, with very basic attention to public health, although open space and some public facilities were provided. There would be space for a piggery and for fruit and chicken farming, a Chinese temple, but little consideration for employment that could replace previous sources of livelihood. New Villages were usually surrounded by barbed wire, gated and with controlled entry and exit points. In all but name, they were concentration camps for suspected supporters of the MCP enemy." Such a layout that effectively fenced off the resettled population from their surrounding environs, reduced their mobility, and policed them constantly were to prove an effective mechanism to oversee

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[13] 1957/0296131. Davis, Bernard. Sepang Squatters Scheme. Accessed at the National Archives of Malaysia, Kuala Lumpur, January 2017

the process of transforming the "squatter" into a "settler". This combined with several other measures, most notably, the imposition of strict food controls- while food could be brought into the settlements, usually with police oversight, very little could be moved out without being subject to police scrutiny.

Figure 2.3: The schematic plan of a New Village showing the imposed order of a military encampment.

Source: King (2008)
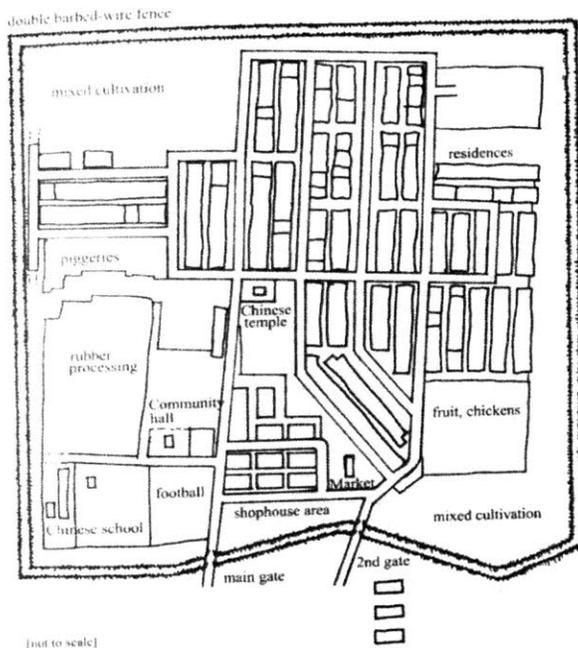
Figure 2.2 Schematic plan of a New Village (the prototypical gated community): a disorderly assemblage of subsistence agriculture and struggling production, in the imposed order of a military encampment. Author's drawing based on Lee (1998: 105).

Institutional Mechanisms for Surveillance

While the security of the resettled population (particularly maintenance of law and order in the villages, tin mines, and plantations) and the neutralisation of the communist guerrilla cells were considered to be the main tasks of the police, the Special Branch was strengthened under the Briggs Plan with the primary objective to infiltrate the Min Yuen (Comber 2007). The need for intelligence gathering and surveillance, however, was recognised long before the arrival of Harold Briggs in Malaya. This is evident from that fact that a Malayan division of the Special

Branch had already been created as early as August 1948. In a Report on the Civil Aspects of the Squatter Resettlement in Johore (1950), the Acting British Adviser notes, "Lack of an extensive intelligence network is hamstringing our efforts. When it is organised, the whole outlook will be different...It will enable the civil administration to unravel the thread of Communist intrigue and leave the Military free at last to go after the active and itinerant terrorist gangs beyond the populated areas. Development can then proceed naturally and no longer along the lines of artificial concentrations for these are but temporary measures touching only a small percentage of the total Chinese population which must be brought down on our side of the fence". It is important to note the relationship between the architecture of surveillance and the use of development as a military strategy- the report argues that development can successfully proceed, in a "natural" manner, if the surveillance infrastructure to dismantle the communist threat was in place. The two strategies, as mentioned before, went hand in hand.

With Gerard Templer taking over the reins of the counter insurgency operation in February 1952, greater emphasis was put on the reorganisation of the Special Branch. Several changes were introduced including the addition of Military Intelligence officers to the Special Branch (Comber 2007), the establishment of a Special Branch training school in 1953, and the creation of a collection, analysis, and dissemination (CAD) system for sharing best-practice techniques, with officers being trained through specific short courses (Hack 2009). As Komer (1972) notes, "the great majority of successful contacts with guerrillas came to be brought about by Special Branch work".

In addition to revamping the Special Branch, two additional forces were created for security and surveillance operations: the Special Constabulary and the Home Guards. The former was initially meant as a force to protect commercial assets in the mines and estates. However, they were reorganised by the end of 1948 as a unit within the police force. The number of such

officers rose to 40,000 by the end of 1951 (Komer 1972). Five hundred former personnel from the disbanded Palestine Police were brought into Malaya to train them[14]. By the end of the counter insurgency, the Special Constabulary was working in close coordination with the Special Branch on police patrolling, monitoring, surveillance and reconnaissance efforts.
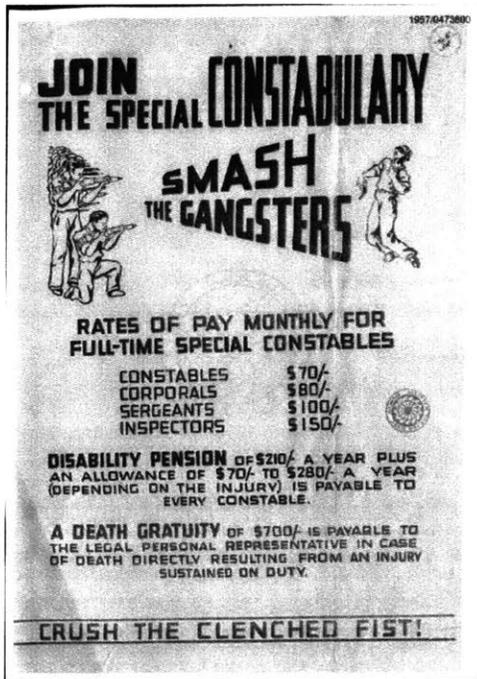
Figure 2.4: A poster advertising the benefits of joining the special constabulary forces. 1950.

Source: PR 1957/0473800 Accessed at the National Archives of Malaysia, Kuala Lumpur in January 2017.

A second volunteer led force that was established to reinforce the resettlement schemes was the creation of the Home Guards. Meant as much to "mainstream" the delinquent Chinese population as to protect new settlements, their numbers rose to 150,000 by the end of 1953 (Komer 1972). In addition, it absorbed the auxiliary police forces that were already established to safeguard kampungs and plantation settlements. Although the Home Guards did establish a presence in as many as 173 New Villages, their personnel (as many as 100,000) consisted predominantly of Malays and were constituted largely outside the new settlements. The Home

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[14] The police chief, Colonel W.N Gray was a former officer stationed in Palestine and led the efforts to bring training staff to the Malay Peninsula.

Guards, in effect, served as the eyes and ears of the colonial government. As Markel (2006) argues, "The formation of this Home Guard not only removed a manpower burden from government forces, it also actively involved squatter communities on the side of the government."

4.2 Development as a military strategy

The Malayan Emergency has been lauded by security analysts as a "counter-insurgency paradigm" (Hack, 2009). Several aspects of the insurgency has been studied and examined, with 'lessons' drawn out for on-going counter-insurgency operations from Chhattisgarh in India to the ongoing occupation in Afghanistan. For instance, in an extensive report titled "The Malayan Emergency in Retrospect: Organisation of a Successful Counterinsurgency Effort", published by the RAND Corporation, Komer (1972) remarks, without irony, that "of great value to the counterinsurgency effort was the British reputation for impartial administration and fair-minded justice. While UK/GOM enforced strict controls and occasionally took ruthless measures, it was done within a recognised framework of rule of law and subject to frequent public debate." As he explains, "the Malayan C-I (Counter-Insurgency) effort was *not* primarily military. Instead the UK/GOM (United Kingdom/Government of Malaya) employed a mixed strategy encompassing civil, police, military, and psychological warfare programs, all within the context of a firm rule of law". Indeed, as Hack (2009) argues, at the core of the counterinsurgency paradigm's success was the ability of the British to resettle close to 15% of the population and the provision of extending "effective administration"- the ability to provide land, housing, roads, wells, and police protection. As Harper (1999) notes, "the Emergency exemplified, perhaps more than any other colonial campaign, the imperialism of power-lines, radio, and metalled roads".

Effective administration through the provision of land made suitable for cultivation through drainage of the area, a network of internal roads, temporary lodging until the squatters constructed their own dwelling, anti-malarial and allied health measures, supply of food and other necessities until the population become self-sustaining, the provision or loan of agricultural equipment and tools were considered of utmost necessity by the colonial administration (Report on the squatter problem in the Federation of Malaya in 1950). In fact, the line items marking the purposes and budgetary allocation for resettlement reads like a development program. Construction of new roads, road improvement, drainage, subsidies to new settlers, and subsistence allowances dominate the budget. The framing of such welfare or development projects as a necessary component of military strategy was recognised from the very beginning. The Newboult Report, for instance, points out that, "whether the solution is one of settlement or of resettlement the Committee wishes to emphasise that the provision of effective administration is a *sine qua non*. No scheme can succeed unless the authority of the Land Office is firmly re-established and a proper respect for law and order inculcated. This will entail the provision of adequate communications, police stations, schools, health facilities and the like and will necessarily have to be borne in mind in selecting areas for settlement and resettlement."

The Emergency also laid the foundation for a broader plan for development for the Malay Peninsula. For example, a Federation Development Plan was adopted in 1950 and incorporated within the Colombo Plan for South and South East Asia[15]. A Rural Industrial Development Authority (RIDA) was established in 1950 with the explicit objective of helping Malays

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[15] The Colombo Plan was an ambitious plan for inter-regional cooperation for economic development forged primarily by Commonwealth nations in the Asia-Pacific region. As Blackton (1951) notes, "the program aims at economic expansion coupled with direct social gains in such fields as housing, health, and education. Political objectives are admitted only in the sense of preparing non-self-governing territories for ultimate self-government. The Colombo Plan does not advertise itself as a device for halting the spread of Communism, but as "a comprehensive attack upon the problem of poverty and under-development""

overcome their economic backwardness compared to the Chinese. It emphasised self-help, and worked to develop the spirit of Malay entrepreneurship. By 1956, over 2,000 cooperatives were established through RIDA (Komer, 1972). The resettlement of squatters to New Villages was in itself the largest development project of its time, perhaps the largest development project undertaken by any colonial government. In addition to the creation of roads, health centres, and cultivable land, the colonial administration also invested in developing electricity networks through the Central Electricity Board.

Furthermore, the Emergency also witnessed the registration of and distribution of ID cards to all citizens above the age of twelve. By the end of 1949, some 3,000,000 ID cards had been issued. A Federal Registration Department was created with the explicit mandate to carry out the task. The ID cards, much like modern day bio-metric ID systems or Social Security Numbers, regulated access to government services, particularly in the New Villages where access to food rations, building concessions, and other welfare schemes were contingent on registration with the federal authority.

Conclusion

There is an unmistakable nexus between development, security, and surveillance in the way the infrastructure projects were conceived and carried out in the Malay Peninsula during the period of the Emergency. Development was a key component of the military strategy devised to counter the threat of Communist insurgency in the Peninsula and was deployed, on a large scale, through the creation of New Villages and allied infrastructure projects to support them. As the RAND Report notes, "while the programs were intended primarily to help lead Malaya as a whole toward viability and stability, they were also designed with CI benefits in mind". The Emergency period, thus saw, the beginning of the use of development as a central mechanism to discipline an entire population, and monitor and surveil their movement. As

Rajagopal (2008) has argued in the context of post-conflict development, "the discourses on security and development were natural allies....Development interventions tended to be seen by Western leaders as one of the best tools available to fight the communist menace, offering incentives for restive rural peasant populations not to rebel, while cementing the patron-client relationships between friendly regimes in power and their key domestic constituencies"

The solution to the squatter problem, identified as the core threat to the colonial hegemony in the Malay Peninsula, must therefore be read as a military doctrine which involved two components- the creation of an architecture of surveillance in the form of new villages and the deployment of development as a military strategy. Key to ensuring the success of this military doctrine was the term "squatter" and its codification into a social and administrative category. As shown in this chapter, the creation of this category had little to do with the actual legality of land occupation but was rather motivated entirely by the needs of security. In trying to convert the "squatter" into a "settler", the colonial administration laid the foundation for a development rationale that would play itself out in the subsequent emergencies that the independent Malay State would impose. I turn to this in the next chapter.

Chapter III: Urban Planning under a State of Exception

"Once again
History repeats itself
By savage deeds
In a civilised age

Once again
Hidden Hands appear
Seeking the blood
Of the poor and the wretched

Once again
Colour, race, religion and language
Become sharp blades
To use in carnage

It has happened
In every corner of the earth
Where the few eat bread
And the rest sand

It has happened
Where the few clothed in velvet
Sleep in palaces
The rest go naked, squeezed into shacks

It has happened
Then hidden hands reappear
Spilling the blood of the poor
To cling on to power"
- Hidden Hands by Said Zahari, May 1969[16]

"The emergency (of 1969) was good for several reasons. While it is true that there was no check and balance and that politicians extended their powers, things became much more organised during the time of the emergency. Also, the other benefit was that the Emergency controlled the Chinese. It taught them a lesson in self-discipline[17]"

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[16] Said Zahari as quoted in Kua (2013)
[17] Anonymous (University Professor). Interviewed in January 2017. Kuala Lumpur.

Since 1948 (barring a brief four year period), the state of Malaysia has been under a state of constant emergency. As many as five emergencies have been proclaimed over the past six and a half decades, with at least two of them being in force until 2013. In this chapter I look at the enduring links between the Emergency of 1948, discussed in the previous chapter, and the subsequent emergencies, particularly the Emergency of 1969. I identify three key elements that underscore the relationship between the two emergencies. First, I examine the repeated invocation of the "squatter" during the time of emergency rule as a primary mode through which the Malaysian state, much like its colonial predecessor, has achieved political ends, particularly for the purpose of development. Second, I examine judicial challenges and reviews of the emergency provisions related to squatters and find that the judiciary has offered little support in resisting the continued use of emergency powers to deal with squatters. Third, I look at the repeated mobilisation of a version of the Home Guards currently named People's Volunteer Corps or RELA during times of emergency rule. I argue that these three elements form the main mechanisms through which the Malaysian state has continued two key aspects of the Peninsula's first emergency, introduced in Chapter II- the creation of an architecture of surveillance, and the use of development as a military strategy. Crucially though, in the emergency lasting over four decades, the latter aspect of the Emergency has undergone a critical reversal. In its quest to become a modern, world-class city by 2020, the Malaysian state, particularly in Kuala Lumpur, has repeatedly resorted to the use of military powers- to this end, militarised strategies and the violence of the law that permit it have become the normalised experience of development for Kuala Lumpur's subaltern underclass.

In the latter half of the chapter, I seek to answer two key questions. First, how does one characterise the violent operation of the law, particularly the emergency laws, in Kuala Lumpur? Second, what allows for the law to operate in such a violent manner? To answer these questions, I rely on two key concepts- first, idea of lawfare or the use of legal means to achieve

political, economic, or military objectives, first articulated by John Comaroff; and second, Giorgio Agamben's theory of a state of exception. Using these ideas, I make two further arguments in this chapter: first, I argue that the extended use of the Emergency Ordinance for the purpose of urban planning in Malaysia, particularly in the Greater Kuala Lumpur region, constitutes a form of urban lawfare, where the violence of the law has been deployed with alarming effect for the purpose of urban planning. Second, I argue that what makes this violence possible is the operation of the Malaysian state under a permanent "state of exception". Through the extended use of emergency powers in Kuala Lumpur, I argue that the Malaysian state has created a "normalised" state of exception, where displacement and dispossession define normality for the marginalised.

1. Malaysia: A Near Permanent State of Emergency

Malaysia declared its independence from colonial rule in 1957 (then called, the Federation of Malaya) while the Emergency declared in 1948, discussed in the previous chapter, was still in effect. The Emergency imposed by the colonial government to combat the threat of an armed Communist rebellion was officially revoked in 1960. Since then, the independent state of Malaysia has declared four additional emergencies. The first emergency post-independence was declared in September 1964 on account of a confrontation with Indonesia with regard to the latter's opposition regarding the transfer of Sabah and Sarawak to the Malaysian state. The second emergency was declared in September 1966, two years later, was limited to the state of Sarawak on account of "irreconcilable conflict of interests between the Federal Government and the State Government of Sarawak" (Omar, 1996). The third emergency, the second nation-wide emergency, was declared in the aftermath of the May 13th incidents that saw widespread ethnic rioting, primarily in the Kuala Lumpur region. In 1977, the government declared a fourth emergency, this time in the State of Kelantan, due to conflict between the Federal and State governments. As late as 2013, all four emergencies, both national and localised, were in effect

in the state of Malaysia. The only emergency to be revoked until then was the colonial emergency imposed first in 1948.

Under Article 150 of the Malaysian Constitution, an emergency is declared by the Yang di-Pertuan Agong, the monarch and head of state in Malaysia. In the widely cited *Teh Cheng Poh v Public Prosecutor* case, the Privy Council of Malaysia observed that " a proclamation of a new emergency declared to be threatening the security of the Federation as a whole must by necessary implication be intended to operate as a revocation of a previous Proclamation, if one is still in force" (Omar 1996). In response, the Malaysian Parliament passed the Emergency (Essential Powers) Act 1979 which re-enacted the Ordinance of 1969 and all its subsidiary legislation as an Act of Parliament (Hoong 1981). Furthermore, the Parliament amended the constitution in 1981 in order to allow for the simultaneous operation of previous emergencies.

The Emergency of 1969

While a full treatment of the emergencies declared in Malaysia is beyond the scope of my thesis, of particular interest is the Emergency declared in 1969, perhaps the one with the most far reaching consequences for political rights in Malaysia's history. The origins of the 1969 Emergency go back to 13th May, 1969- a red lettered day in the history of modern Malaysia. In the aftermath of the 1969 election, in which the UMNO-led Alliance won the majority but lost the two-thirds majority required to amend the constitution[18], ethnic riots primarily between the Chinese-led opposition parties and UMNO supporters broke out in several parts of Kuala Lumpur. Following a second day of violence, the government proclaimed that an emergency was in effect in all the territories of Malaysia and effectively suspended the constitution. In addition, the Yang di-Pertuan Agong promulgated the Emergency (Essential Powers) Ordinance 1969. Under the force of this ordinance, the Head of State could make Essential

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[18] As King (2008) notes, the UMNO-led Alliance's seats in Parliament reduced to 66 from 89 in the 1964 election while its share of popular vote reduced to 48.5% from 58.4%

Regulations aimed at "securing the public safety, defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community". In addition, the Ordinance paved the way for the arbitrary detention, exclusion, and deportation of persons in the interest of the public safety and defence of the country. A second Ordinance was proclaimed a day later (Emergency (Public Order and Prevention of Crime) Ordinance, 1969) which allowed for the arbitrary detention of persons for the purpose of "suppression of violence or the prevention of crimes involving violence" for a period of up to two years (Omar 1996).

As a Human Rights Watch Report (2006) noted, under the Emergency Ordinance, "the police are not required to obtain a detention order from a magistrate, and thus, the appropriateness of detention is not reviewed by a judge." The ordinance also provided provisions for controlling the freedom of movement, place of employment, and place of residence of a suspect for up to two years. In addition, the ordinance gave sweeping powers to the executive branch to keep a person in detention based on "a subjective view of a person's alleged involvement in a crime without a process whereby evidence of the "necessity" is presented to a court of law."

During the emergency, the role of the executive and legislature was taken over a National Operations Council (NOC) or Majlis Gerakan Negara, with Tun Razak, the sitting Prime Minsiter taking over as the Director of the NOC. The NOC, which held primarily the responsibility of restoring law and order in the country, effective ran the country's administration until 1971 when the Parliament was restored. A mini-cabinet was also formed to assist the NOC.

The main effects of the Emergency can be summarized as follows:

i.   Proclamation of Emergency under Article 150 and suspension of the constitution

ii.   The suspension of all uncompleted elections

iii.   The suspension of all state legislatures under Article 150 (4) of the constitution

iv.   The Internal Security Act, 1960 was declared to be in effect throughout the Federation. Under Part 2 of the Act, the entire Federation was declared as a security area. (Kua 2013)

During the emergency rule, the judiciary in Malaysia, expected to be the bulwark against the excesses of the executive, has been particularly weak in checking the expansion of powers under the emergency ordinances. As Omar (1996) notes, "the Court in Malaysia has persisted in a formal style of interpretation of the constitutional and statutory provisions relating to citizens' rights and liberties". I will return to the question of judicial responses to the emergency, particularly with regard to squatter's rights, in a subsequent section of this chapter.

Internal Security Act, 1960

A key instrument that allowed for the continuation of emergency powers even after the formal revocation of the colonial emergency in 1960 was the Internal Security Act of 1960 (ISA). As King (2008) argues, "In 1960 the Emergency was officially declared over but replaced by the ISA with virtually the same powers". The key element that made the use of the ISA a particularly lethal instrument was the extension of powers which enabled detention without trial, even after the official withdrawal of the emergency. The ISA provides for "arbitrary arrest and detention without trial for an indefinite period based on mere suspicion that one "may be likely" to commit an act deemed dangerous to national security. A detainee is, therefore, presumed guilty without trial. It further allows a detainee to be held under solitary confinement for 60 days without legal counsel." (Human Rights Watch, 2004). While the Act initially allowed for judicial review, this has since been removed through an amendment. The ISA also allows, in striking parallel to the Emergency of 1948, for restriction on "freedom of assembly, association, and expression, freedom of movement, residence and employment." The

Emergency of 1969 saw the broad use of both the expanded powers of the state under the Emergency Regulations, described above, and the draconian use of the Internal Security Act.

Both acts have since been repealed (and effectively replaced) - the ISA in 2011 and the Emergency (Public Order and Crimes Prevention) Ordinance 1969 in 2013. While my thesis examines the Emergency declared in 1969 in specific, it is important to note the repeal and replacement of both the Emergency Regulations and the ISA. Recent legislation, particularly, the Security Offences (Special Measures) 2012 Act (SOSMA) and the National Security Council (NSC) Act, enacted in August 2016 clubbed with the increased use of the Prevention of Crime Act 1959 continue the near permanent state of emergency in Malaysia (Human Rights Watch 2016).

2. Military Strategy as Development

In this section, I present three main channels of governance through which the Malaysian state has deployed the use of measures, formulated initially for the purposes of counter-insurgency operations, for the purposes of development needs: the Essential Clearance of Squatters Regulations, the lack of judicial overview of emergency regulations, and the reconstitution of the Home Guards.

2.1 Squatters and the Emergency: Essential Clearance of Squatters Regulations (1969)

In Malaysia, there are three main laws under which eviction can be carried out and land expropriated by the state, namely: the National Land Code of 1965; Land Acquisition Act of 1961 (Amendment); and the Essential (Clearance of Squatters) Regulations (ECSR). The last of the three, the ESCR, 1969 was promulgated under the Emergency (Essential Powers) Ordinance 1969, which proclaimed the emergency in Malaysia post-ethnic rioting in 1969. As mentioned in the earlier sections, the Emergency Ordinance of 1969 provides wide-ranging powers to the King to make regulations for "securing public safety, the defence of Malaysia,

the maintenance of public order and of supplies and services essential to the life of the community." (Abdul Kader, 2013) However, the imposition of the emergency saw the re-emergence of the colonial trope of the squatter. As examined in the previous chapter, the Emergency of 1948 saw the deployment of development as a military strategy, primarily through the transformation of the squatter into an administrative and social category. As the quote used on the epigraph of this chapter makes clear, the primary objective of the re-invocation of the squatter was to discipline the Chinese who had gained political prominence and power post the election of 1969. However, the emergency measures, lasting over four decades, outlived its initial use and was increasingly used as a mode of governance for the purposes of development.

Regulation 4 of the ESCR provides sweeping powers to the "local authority or its agents or servants to enter land, by day or by night, to summarily demolish any squatter hut on such lands (land declared to be under an emergency). The authority may remove any person or movable property in any squatter hut and is not bound to serve any notice of eviction on the evictee where the land is not private land." In the case of private land, the local authority has been vested with the power to "demolish any squatter hut erected on his land" (Regulation 6). Furthermore, when an owner is not able to demolish any squatter hut constructed within their land, "the owner may, upon depositing a sum of money, request the local authority to carry out the demolition of the hut". In such an event, the local authority is bound to provide the seven days' notice in writing to the residents being evicted. The regulations also empower the local authority to enter private land to evict and demolish squatter huts even without the express consent or request of the landowner. For instance, Regulation 10(1) provides that, "if in the opinion of a local authority it is expedient and necessary to do so having regard to the public interest, then notwithstanding regulations 6 and 7, the local authority, its agents or servants may, after giving 7 days' notice in writing to the occupier:

a. Enter by day or by night any private land for the purpose of summarily demolishing any squatter hut; and

b. Remove any person or any removable property in any squatter hut; and

c. Summarily demolish any squatter hut on the land." (Abdul Kader, 2013)

ECSR is often used in conjunction with other provisions of the EO like preventive detention, which according to a Human Rights Watch (2006) report is "used to arbitrarily detain or restrict the movement of suspected gang members and criminals who the police find difficult to bring to justice due to lack of evidence. Instead of arresting suspects and charging them for offenses under Malaysian criminal law, the police simply lock up hundreds of persons for two years or more under the Emergency Ordinance." The Emergency Ordinance and its excessive use has been described by several civil society actors as the imposition of a near permanent state of emergency. Furthermore, the use of the Ordinance has been found to be in contravention of international law including the fundamental right to liberty, right to due process, and a fair trial (Sreenevasan, 2008).

2.2 Judicial challenges and responses to the use of the Emergency Ordinance

In this section, I examine the judicial grounds for challenging and resisting Essential Clearance of Squatters Regulation (ECSR) of the Emergency Ordinance (EO). For this section, I rely on primary data in the form of court records and judgments, collected on field visits to Malaysia in January and August 2016, and analysis of key judgements and precedents collected thorough a secondary review of literature. As mentioned earlier, judicial review of orders promulgated under EO is restricted. As Human Rights Watch (2006) reports, an amendment passed in 1989 abolished the need for judicial review of the merits of detention without trial under EO. Furthermore, Section 7c prohibits the judiciary from reviewing challenges to the EO. To quote directly from the law:

"There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect, of any act done or decision made by the Yang di-Pertuan Agong [the Malaysian King] or the Minister in the exercise of their discretionary power in accordance with this Ordinance, save in regard to any question on compliance with any procedural requirement in this Ordinance governing such act or decision."

In accordance with the 1989 amendment, judicial challenges to the ECSR can be broadly described as challenges based on adherence to procedures. Based on an analysis of judgements and opinion of the court in cases related to ESCR, I identify four grounds of legal challenge.

In *Noor Azman vs. Datuk Bandar Kuala Lumpur (2008)* (DBKL or Kuala Lumpur City Hall), the defendant, the Mayor of Kuala Lumpur, issued eviction notices on the plaintiffs under the ECSR, 1969[19]. The notice provided the plaintiffs fourteen days' notice to vacate the land they currently occupy and "to demolish buildings and structures built on the land failing which the respondent will demolish the buildings with costs to be borne by the applicants." The plaintiffs challenged the legality of the eviction notice on procedural grounds including challenging the right of DBKL to issue notices as they are not the owner of the land. The court disagreed with the counsel's submissions on the following grounds: the court argued that DBKL is the authority vested with the charge of administering municipal affairs of the City of Kuala Lumpur as per the Federal Capital Act 1960 and the City of Kuala Lumpur Act 1971. This provides City Hall with the power to exercise control over land within the defined territory and confers on them the power to enact regulations as necessary. The courts takes the case of *Datuk Bandar Majlis Bandaraya Shah Alam & Anor v Yusuf Awang & Ors (2007)* as precedent and states that Regulation 10 of ESCR provides that "a local authority may enter on any private land for the purpose of demolishing any squatter hut...[20]" While the Mayor of Kuala Lumpur is not an

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[19] Noor Azman v. Datuk Bandaraya Kuala Lumpur. High Court of Malaysia at Kuala Lumpur. 2008
[20] *Datuk Bandaraya Shah Alam & Anor. v Yusuf bin Awang & Ors.*[2007] 7 MLJ 327

elected position, the court argues that "the meaning assigned to the expression 'public authority' in the Federal Constitution also includes a local authority".

Second, in several cases, plaintiffs have sought to challenge their status as squatters as defined under the EO. For instance, in *Datuk Bandar Kuala Lumpur v Abdul Aziz & Ors (2007)*, the defendants argued that the notices served by DBKL on them under ESCR to evict them from their homes were invalid[21]. The plaintiffs argued that they were "equitable licensees on the said land by virtue of the encouragement by the Government" which allowed them to stay in the said land (Kampung Semarak) over a significant period of time during which they had undertaken expenses to build and improve the buildings and other structures on the land. Furthermore, the plaintiffs argued that Kampung Semarak had built infrastructure and services including a workshop, community centre, roads etc. Taking the arguments above into consideration, the defendants argued that they cannot be considered *squatters simpliciter* and cannot be evicted under the ESCR.

The court adopts a clever line of reasoning in this case by arguing that the "issue is not whether they (the defendants) are squatters but whether buildings are squatter huts". Adopting this line of argument, the court opines that "the provision of amenities and facilities do not in any way alter the fact that the buildings and structures on the land had been built without the necessary approval from the local authority and are therefore 'squatter hut' under the Regulations." The same line of reasoning was adopted by the courts in other cases including *Datuk Bandar Majlis Bandaraya Shah Alam & Anor vs. Yusuf Awang & Ors (2007)*. Under Regulation 3 of ECSR, a squatter hut is defined as ""any house, hut, shed, stall, lean-to, shelter, roofed enclosure or any extension or structure attached to any building or other erection, of whatever materials and

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[21] Datuk Bandar Kuala Lumpur v. Abdul Aziz Mohamed Ginan & Ors
(Appeal against decision of High Court granting an interim injunction restraining defendant from acting upon eviction notices served upon plaintiffs until full trial of case) [2007] 3 CLJ 399

whether used for the purpose of a human habitation or otherwise which has been erected or is in the course of erection *otherwise than in accordance with a plan approved by a local authority* or in respect of which a licence issued by a local authority has been cancelled, withdrawn or has expired and is situated on any land" (emphasis mine). In both cases, the court declined to assess the status of occupants of the land as squatters by arguing that the buildings were not created in accordance with the plan approved by a competent local authority.

Third, in the judgment of the Court of Appeal in *Yusuf Awang & Ors v Datuk Bandar Majlis Bandaraya Shah Alam & Anor*, the court refused to entertain an injunction to stop the eviction notice arguing that issuing an injunction would be an indirect grant of title to the occupiers of the land. The court argued that "*the effect of the perpetual injunction granted in this instant appeal would be tantamount to the respondents having established their right that they can continue to occupy the squatter huts erected on the said property and that the appellants cannot take any fresh action or act further under reg. 10 of the said regulations against the respondents. The perpetual injunction would also be tantamount to vesting of a right to remain on the said property and indirectly the vesting of a right to occupy land by prescription, viz., the vesting of a right by reason of lapse of time.*" In Malaysia, which operates under the Torrens system of land registration, it is assumed that possession of title is critical. For instance, in *Sidek and Ors v Government of the State of Perak* (1982), the court clearly stated that "being squatters, having not shown otherwise, they have no right in law or equity.[22]" Furthermore, the court noted in *Yusuf Awang* that the effect of serving an injunction would be "akin to injuncting the Respondent from performing his public duties".

Fourth, while we have thus far examined cases where the land belongs in the public domain, Malaysian courts have taken steps to encourage eviction of illegal occupiers of land by private

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[22] *Sidek bin Haji Muhamad & 461 Ors v Government of the State of Perak & Ors.* [1982] 1 MLJ313

actors. For instance, the judgment of Grafton v. Griffin argues the following: "*It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers. We would like to say this at once about squatters. The owner is not obliged to go to the courts to obtain an order of possession. He is entitled if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly. This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question*" (Maidin Jaria et al, 2008).

An initial analysis of the judicial responses challenging the use of ECSR suggests that judicial remedies to the use of emergency provisions have not been forthcoming. As Abdul Kader (2013) note, "apart from sympathizing with the plight of squatters and describing the Essential (Clearance of Squatters) Regulations 1969 as 'draconian', courts in Malaysia have not gone further than restating the law against squatters." As mentioned earlier, it needs to be noted that the operation of the ECSR is often in conjunction with other provisions of the EO, including preventive detention and detention without trial. As Human Rights Watch (2006) notes, the operation of the EO is bottom up, "the police, having failed to collect evidence to prosecute a criminal suspect, request an EO detention order from the minister." According to the report, there were more than 712 detainees under the Ordinance in 2006 in Simpang Renggam prison alone. The use of the ECSR in conjunction with the EO's other provisions renders civil society mobilisation easy to dismantle since key leaders of agitations are often detained under preventive detention provisions.

2.3 The Home Guards Revitalised: RELA

"RELA is the people. We are not different from the people. RELA become the eyes and ears of the government on the ground. They give us information about what is going on. Nothing happens in any kampung without our knowledge[23]"

The Home Guards, created during the Emergency of 1948 as an auxiliary force to both protect New Villages and serve as a local surveillance and monitoring unit for the colonial state. As mentioned in the previous chapter, by 1953 their numbers had swelled to 150,000 and worked as an effective method to both fill the shortfall in manpower for counter-insurgency operations and more importantly, to co-opt the local population into the ongoing counter-insurgency. When the emergency was revoked in 1960, the Home Guards were disbanded. During the Emergency declared in 1964, the Malayasian government created Pasukan Kawalan or a Force Control Guard with the objective of helping the military as an auxiliary support force. Following the end of the conflict with Indonesia, this force was dissolved in 1965.

The official website of the Ikatan Relawan Rakyat Malaysia or Malaysian People's Volunteer Corps, commonly referred to as RELA refers to the May 13th incident as the starting point for the creation (or re-creation) of this force. According to the website, the incident "opened the eyes of the current leaders of the country on the importance of the establishment of a fixed volunteer team (pasukan sukarela) to assist the government in handling problems and security threats"[24]. RELA was subsequently created under Section 2 of Act (Essential Powers) Ordinance 1964. After further amendments, RELA has been brought under the Essential Regulations (People's Volunteer Corps) (Amendment) Regulations 2005. In 2012, the

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[23] Interview with RELA official at the Kuala Lumpur branch of RELA. January 2017.
[24] The official website of RELA is here: http://www.rela.gov.my

Malaysia Volunteer Force Act was created as a separate Act following the repeal of previous emergency ordinances and Acts.

According to Human Right Watch's World Report (2008), before the new Act, RELA was empowered "to arrest and detain 'undesirable persons' and suspected illegal migrants". Force members were authorised "to enter and search any public or private premise without a warrant" and have been accused repeatedly of violence and illegal search and raid operations. The 2005 Amendment granted more powers permitting RELA "where it has reasonable belief that any person is a terrorist, undesirable person, illegal immigrant or an occupier, to stop that person in order to make all such inquiries or to require the production of all such documents or other things as the competent authority may consider necessary.[25]" Since the enactment of the new legislation, RELA's powers have been circumscribed, to an extent. For instance, the forces no longer have the power to arrest and detain individuals; rather, they can only "hand over" suspected persons to the police and assist them in police raids. RELA often act to offer perimeter control in police operations, most notably during "raids" on illegal immigrants and anti-squatter operations. In perhaps the most infamous case of use of extra-judicial powers, RELA officials, on the pretext of distributing flyers of court orders, helped a real estate developer evict 50 families in Kampung Berembang. Several more houses were torn down during the course of the operation and several villagers protesting the police action arrested[26]. I will examine the case of Kampung Berembang in more detail in the next chapter.

During my interview with a high-ranking RELA official of the Kuala Lumpur branch, the officer cited two key factors in the reduced role of his forces. One, the repeal of the emergency resulted in RELA having less autonomy "to move on their own"; they're now seen primarily

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[25] *Malaysia: Disband Abusive Volunteer Corps.* May 9, 2007. Human Rights Watch. Available here: https://www.hrw.org/news/2007/05/09/malaysia-disband-abusive-volunteer-corps
[26] *Ibid*

as an auxiliary force involved in anti-immigrant operations and administration of detention camps for illegal immigrants. Second, RELA has been accused of several violations of human rights law by both national and international civil society groups. The role of SUARAM, an NGO monitoring human rights abuses in Malaysia, was central in the enactment of the new legislation and curtailing of RELA's powers. A leading Malaysian reform movement, Aliran, has, for instance, repeatedly questioned RELA's expansive powers and asked for a scaling back of the Volunteer Corps, symbolic of the country's growing militarisation[27].

The use of RELA during times of Emergency has been one of the most enduring legacies of the Emergency of 1948 in Malaysia. The Volunteer Corps has been used repeatedly, over multiple emergencies, to serve some form of its initial purpose- to serve as the eyes and ears of the government on the ground. Thus, the architecture of surveillance, laid out in the previous chapter, continues to be deployed by the post-colonial state in Malaysia. Over the years, the use of RELA has morphed into acting as an auxiliary force for the police and combating illegal immigration. However, as the episode of Kampung Berembang shows, RELA was also used extensively in anti-squatter operations, particularly when the EO was the preferred law used for dispossession.

3. Urban Planning as Lawfare: The Violence of the Law in KL

"In Malaysia, we have inherited the colonial British legal system. It has been applied all over our own constitution. The law of the land is the law of the elite. It is the law of the ruling classes. The law, in Malaysia, is a violent entity[28]"

In the section above, I have demonstrated three modes through which the Emergency of 1948 continues to endure in post-colonial Malaysia. The Emergency Provisions, particularly the ones

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[27] *RELA and Malaysia's Invisible War*. January 24th, 2007. Aliran. Available here: https://aliran.com/aliran-monthly/2006/2006-9/rela-and-malaysias-invisible-war/
[28] Interview with Dr Michael Jeyakumar Devaraj, Member of Parliament, Parliament of Malaysia. January 2017

relating to clearance of squatter communities, forms a direct mechanism through which the administrative and social category of the squatter has been used to achieve political ends, supress dissent, and discipline labour. Judicial oversight of these regulations have been scant and have mostly encouraged only procedural challenges to the emergency provisions. The continued use of a colonial mode of surveillance in the form of RELA or the Volunteer Corps, a morphed form of the older Home Guards forms a third mode of colonial inheritance that has endured in Malaysia. In this section, I build on the previous section using the idea of lawfare or the use of the law as a means to achieve political or economic ends. I argue that the extended use of the Emergency Ordinance for the purpose of urban planning in Malaysia, particularly in the Greater Kuala Lumpur region, constitutes a form of urban lawfare, where the violence of the law has been deployed with alarming effect for the purpose of urban planning. Furthermore, I extend Harper's argument that the modern Malay state was forged in the wake of the 1948 Malaya Emergency by arguing that the 1969 Emergency Ordinance must also be seen as a reassertion of Malaysian state sovereignty. Crucially though, this recasting of Malaysian sovereignty has been achieved through the construction of a normalised state of exception, a topic I discuss in the subsequent section. However, unlike the earlier "war-like" emergencies, the use of the EO has enabled the Malaysian state to reassert sovereignty and engage in state building under the guise of normality. Before introducing the concept of lawfare, I first review two previous studies that have aimed to characterise the nature of the law's operation in Kuala Lumpur.

Baxstrom (2007) examines the relationship between the state, law, and the politics of everyday life by looking at the two development project in the Brickfields area of Kuala Lumpur- the KL Sentral station and the construction of the KL monorail system. These two projects, Baxstrom argues, brought the residents of the area directly in contact with the "arbitrariness, uncertainty, and unpredictability of the law" in Kuala Lumpur. These projects represent the

imposition of a techno-spatial order that is intended to simultaneously create a more modern public space. Baxstrom illustrates two significant elements of the everyday resident's encounter with the apparatus of law and planning. First, the residents of the area acknowledged and indeed, accepted the notion that the government must possess the ability to modernize the area. However, for the very same reason, their exclusion from the very legal processes that mandated the annexation of their land and subsequent displacement left an experience of the law as unjust and arbitrary. Second, the residents' experience of the law left a stark contrast between their notions of justice based on local histories and attachment to the land, which included both the recognised legal owners of private property and long-standing illegal occupiers of the land. Despite the willingness of DBKL to provide housing to the displaced residents, in a move to avoid both political fallout and an increasing number of homeless in the city, the residents' experience of the law failed by avoiding "the overall recognition of local principles of justice and association by the state and its proxies" during the transformation of Brickfields. As Baxstrom argues, "the expectation that institutions responsible for urban development and governance should pursue their projects according to clearly defined legal standards that recognized the stake of the community at large was almost entirely absent from the actual process."

In his insightful work on the dispossession and displacement of Tamils in Kuala Lumpur, Andrew Willford argues that Tamils in Malaysia face two kinds of displacement- physical displacement, which has produced "the most visceral awakening to the violence with the Law" and second, a cultural displacement, which has produced "its own narrative of growing intolerance and betrayals of an idealised and nascent nation to be". According to Willford, communities that have successfully claimed compensation for displacement and allied costs have not done it through recourse to the law. Instead, such communities have often had to improvise "campaigns of civil disobedience increasingly in transgression of the letter of the

law". In this sense, there is an overwhelming sense of betrayal that pervades the engagement of dispossessed Tamil workers with the law. This sense of betrayal and the law's violent performance and contingent violence has been revealed to Malaysian Tamils, in particular, through acts such as "the defiling of the temple, the land, and the body by the State, or by private capital working in tandem with it" (Willford in Hui, Yew-Foong, ed, 2013). For Tamils in Malaysia, thus, there is a delinking of the law from notions of justice. As Willford (2015) argues in the context of retrenched Tamil plantation workers, "there is a haunting of justice in Malaysia because certain acts of the law are haunted by the force of the decisions that inaugurated them. The instantiation of Law is violent in its performative act, but it is also supplemented in its lack through the sustaining violence of various juridical evidences".

Urban Planning as Lawfare

Comaroff (2001) defines lawfare, a portmanteau of law and warfare, as the use of legal means for political and economic ends. As Comaroff argues, the deployment of law is central and perhaps, endemic to the technology of modern governance. For instance, modern states rely heavily on instruments of law including constitutions, charters, mandates, treaties and warrants to discipline their citizenry. For instance, in *Johnson v. M'Intosh* (1823) the US Supreme Court lays down the doctrine of discovery, where it grants to the US State "the exclusive right of the discoverer to appropriate the lands occupied by Indians" (Singer et al, 2014). As Comaroff describes, this "mode of warfare-or rather lawfare, the effort to conquer and control indigenous peoples by the coercive use of legal means" has been a central, defining characteristic of colonial overrule. We can identify two strands of lawfare: one, the colonisation of "vernacular dispute-settlement institutions, their jurisdictions and mandates" which were circumscribed through the use of force and "incorporated into the colonial state at the lowest levels of its hierarchy of courts and tribunals". The second mode of lawfare can be described to have taken the "form of commissions of inquiry instituted to investigate, document, and legislate such

things as "traditional" authority, land-holding patterns, property relations, marriage practices, rituals, and beliefs", laying the ground in the process for a system of native administration.

A key element of lawfare is the deployment of violence inherent within the law. In the previous sections, I explored both the violence unleashed on marginal communities by the EO, particularly the ECSR and the historical context in which the use of the EO between 1969 and 2013 should be viewed. As discussed earlier, the making of the state in Malaysia was inexorably linked to the expansion of its military function. The Universal Periodic Review process of the United Nations in 2009 has cited the use of emergency provisions to clear informal settlements as a violation of the right to social security and to an adequate standard of living. Furthermore, the National Land Code (NLC) of Malaysia, 1965 stipulates that "ownership of land is established through registration, and that occupying land or buildings without permission is an offence". The NLC also provides for provisions where "squatters can be arrested without warrant, and contains no requirement for authorities to give residents notice before an eviction." In conjunction with the ECSR, these provisions of the law allow for direct deployment of security personnel in the process of evictions (Setiawen, 2013). This is well illustrated in the case of the eviction of residents of Kampung Berembang, which led to the arrest of 23 people, several of whom sustained severe injuries. The residents of Kampung Chubadak Tambahan, for instance, have long been threatened for their insurgent activism by the police and several cases of intimidation and use of violence by security forces have been reported. The logic at the play in the clearance of informal residents in Malaysia still seem to echo the recommendations of the Squatters Committee, 1950: the use of emergency provisions to reassert the authority of the government and the use of legal measures to summarily evict residents.

4. Ruling Under a State of Exception

"Sovereign is he who decides on the state of exception[29]*"*

"If terror was merely lawlessness, a major obstacle to its suppression was the existence of the rule of law. Gurney's problem was that 'in order to maintain law and order in present conditions in Malaya it is necessary for government itself to break it for a time'.[30]*"*

As Schmitt (1985) defines, a sovereign is he who decides on the state of exception: "if there is some person or institution, in a given polity, capable of bringing about a total suspension of the law and then to use extra-legal force to normalize the situation, then that person or institution is the sovereign in that polity". In this section, I use Giorgio Agamben's notion of a state of exception to argue that through the extended use of EO and ECSR in KL, the Malay state has created a "normalised" state of exception, where displacement and dispossession define normality for the marginalised in Malaysia. I begin, however, with an overview of Agamben's theory of the state of exception and examine its brief use in urban planning literature.

Giorgio Agamben and the State of Exception

In this book, State of Exception, Giorgio Agamben defines the state of exception to contain two elements: one, the "extension of military authority's wartime powers into the civil sphere", and two, a suspension of the constitution. In the state of exception, these two elements merge into a single juridical phenomenon. Agamben chronicles, in his brief history of the state of exception, the progressive normalisation of a provisional and exceptional measure into a "technique of government". The state of exception, he argues, "tends to increasingly appear as the dominant paradigm of government in contemporary politics".

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[29] Schmitt, in Agamben 2005:1
[30] Harper 1999: 152

In England, for instance, the power to declare a state of emergency (an *etat de siege* or martial law) was confined, under the Mutiny Acts, to the times of war. During World War I, however, the Defence of the Realm Act of 1914, provided the executive with wide-ranging powers to control the wartime economy. By 1920, emergency powers were used to curb strikes and social tensions, under the Emergency powers Act. In the United States, Agamben notes the gradual extension of the exceptional powers of an emergency to deal with economic and political crisis. I cite two examples from his book. First, Agamben provides the example of the New Deal, which was conceived by transferring powers, through a series of statutes resulting in the National Recovery Act, 1933, to the president. This gave the president close to "unlimited power to regulate and control every aspect of the economic life of the country". Second, Agamben illustrates, through the example of the USA Patriot Act of 2001, how the legal status of an individual was transformed into a legally unnameable and unclassifiable being. As he notes, "not only do the Taliban captured in Afghanistan not enjoy the status of POWs as defined by the Geneva Convention, they do not even have the status of persons charged with a crime according to American laws. Neither prisoners nor persons accused, but simply 'detainees'."

Central to Agamben's notion of state of exception is the term force of law. In his words, "*force of law* refers in the technical sense not to the law but to those decrees (which, as we indeed say, have the force of law) that the executive power can be authorized to issue in some situations, particularly in the state of exception". While Carl Schmitt argues that the state of exception is "precisely the moment in which state and law reveal their irreducible difference (in the state of exception "the state continues to exist, while the law recedes"), Agamben argues that the state of exception is "less the confusion of powers..., than it is the separation of "force of law" from law". That is to say, the state of exception is an "anomic space in which what is at stake is a force of law without law (which should therefore be written: force-of-law)". Thus, the state of

exception is neither anarchy nor chaos, not is it a special kind of law. Rather, "insofar as it is a suspension of the juridical order itself, it defines law's threshold or limit concept".

Urban Planning as Exception: A Brief Review

Gray and Porter (2015) show how exceptionality measures included in the Glasgow Commonwealth Games Act (2008), under which the state is authorised to use expanded power to acquire land for the purpose of hosting the Commonwealth Games, constitutes a state of exception. The authors identify three distinct elements that make the Compulsory Purchase Orders (CPOs), the use of enhanced eminent domain powers, in other words, constitute a state of exception. First, norms of law, especially with regard to accountability, democratic process, and justice were suspended by making a "public good" argument. The CPOs, thus, served as an exclusionary device of neo-liberal development through the carving out of an exception. Second, this instrument of exclusion contains a necessary paradox of suspending private property rights for the advancement of a public good; in other words, "in the service of the public good is a necessary fiction" required to create a state of exception. Third, the use of the exceptional CPOs required the temporary suspension of norms of equality before the law. In the words of the authors, "CPOs in this case are a specifically classed strategy of urban restructuring, reserved for the poorer, working class and non-establishment property interests of a city, while establishment property interests are treated very differently."

Farı´as and Flores (2017) discuss the creation of a state of exception in Chile after the massive earthquake and resultant tsunami that hit the Chilean coast on 27th February, 2010. The authors use Agamben's theory to illustrate two types of exceptional governance institutions that were created in the aftermath of the earthquake and tsunami. First, the creation of a state of exception allowed for the deployment of a neo-liberal logic where private corporations were heavily involved in the reconstruction efforts through a combination of municipal authority and private

capital and enterprise. Second, in the Biobı´o Region, the state created a "supra-municipal governmental office" which comprised a team of experts in order to devise a series of master plans for the devastated coastal settlements. Thus, in both cases, the state of exception allowed for the entry of private actors to address what was, in essence, a public emergency. As the authors argue, the "controversial process of implementation of exceptional governmental agencies took place, leading to the practical suspension of territorial planning prerogatives, normally in the hands of municipalities, and their temporal displacement to experts from the private and academic sectors." However, it should be noted that paper's conception of a state of exception differs in one significant aspect from Agamben's thesis. The authors argue that the creation of these exceptional governance mechanisms "did not constitute a 'bare life', but rather a 'bare territory', one in which the state can intervene and govern without legal bonds."

Conclusion: Displacement and Dispossession in Kuala Lumpur under a State of Exception

In comparison to the studies cited above, my use of Agamben's theory in explaining the landscape of displacement and dispossession in Greater Kuala Lumpur is markedly more ambitious. The repeated use of the emergency provisions in Kuala Lumpur, the lack of judicial oversight, and the remarkable use of violence for the dispossession and displacement of communities in Kuala Lumpur have been made possible because of the use of the emergency to periodically declare states of exceptions. As discussed earlier in the chapter, the Malaysian state continued to operate within a state of exception by never revoking the emergencies that were promulgated. Indeed, it would be no exaggeration to assert that the entirety of post-colonial Malaysian history has played out within a state of exception. The state has repeatedly used the force of law (without law) in the form of emergency regulations that were passed by circumventing the authority of the legislature. The use of emergency provisions, encompassing both the extension of military authority's wartime powers into the civil sphere and the periodic suspension of the constitution, has evidently become the normal paradigm of governance for

the Malaysian state. Under this normalised state of exception, displacement and dispossession have come to define normality for the marginalised in the city.

It is this use of the state of exception as a normalised technique of government that has allowed the post-independent Malaysian state to both continue to operate using the same mechanisms of governance of the colonial state. Through the use of such states of exception, initially conceived during the Emergency of 1948, the state has continuously used a technique meant for war-time or military governance for everyday governance. If the colonial state used the strategy of development as a part of its counter-insurgency and military doctrine, the post-colonial state in Malaysia has used powers and categories (the squatter) defined under the military doctrine for the ends of neo-liberal development. In this manner, the widespread use of the military doctrine and violence under the doctrine remains the defining feature of development in Greater Kuala Lumpur. In the next chapter, I examine one such case of violent dispossession and displacement- the case of Kampung Berembang.

Chapter IV: Peneroka Bandar: Re-formulating Citizenship From Below

"Kami bukan setinggan! Kami peneroka, macam Felda!"

"We're not squatters! We're pioneers, like Felda!"

- Resident of Kampung Berembang[31]

The deployment of the Essential (Clearance of Squatters) Regulation, 1969 must be examined in conjunction with state and federal policies to create a city without squatters. In 2001, the Selangor state government announced Zero Squatter 2005, a policy initiative to "eradicate" the city of squatters by the year 2005. This would form a key component of the state government's plan to make Selangor a "developed" state by the year 2006. As the Kuala Lumpur Structure Plan 2020 declares, "the presence of squatter settlements in the City is unacceptable"[32]. The Greater Kuala Lumpur region, encompassing primarily the Federal Territory of Kuala Lumpur and the state of Selangor, saw wide spread use of the Emergency Ordinance in the pursuit of the state's target of eradicating all squatters. While the exact number of evictions conducted using the Emergency Ordinance is unavailable, two prominent cases of its use are in Kampung Berembang and in Ladang Bukit Jalil, the last plantation in the city of Kuala Lumpur. As the state continued its policy of robbing informal residents and slum dwellers in the city of their legitimate rights as citizens, Kampung Berembang become the epicentre of a resistance movement to claim fair compensation and on-site low-cost housing for the evicted residents. In this chapter, I attempt to tell the story of this resistance, perhaps the only successful case of a kampung that won against the use of the Emergency Ordinance.

In the first section of this chapter, I rely on newspaper reports and in-depth interviews with residents, activists, and leaders of the resistance campaign to chronicle the story of Kampung

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[31] As quoted in Source: *Fragile Rights of 40 years*. Ng Tze Yeng. *The Sun*. December 27, 2006
[32] Kuala Lumpur Structure Plan 2020. Dewan Bandaraya Kuala Lumpur. 2004.

Berembang. In a saga that lasted well over a decade, residents of Kampung Berembang saw the use of multiple laws to evict them including Section 425 of the National Land Code and ESCR, 1969. Facing violence and harassment from both the state and private goons, 68 families in Kampung Berembang lived in tents and makeshift camps for a period spanning six years. This section attempts to narrate the story of their resistance. In the subsequent section, I look at the campaign's reformulation of the state's view of them as squatters to their own idea of themselves as *peneroka bandar* or urban pioneers. Reclaiming the Malay customary law notion of *peneroka* or the one who opens up land, citizens repositioned the legal argument against squatters as individuals with no rights. They demanded that the state recognise the dignity and labour that constitutes the making of the city of Kuala Lumpur. I argue that the repositioning of squatters as urban pioneers is crucial to understanding the violence that the law and its deployment for neo-liberal growth strategies in Kuala Lumpur. In the last section, I situate the campaign for rights in Kampung Berembang within two contexts: first, similar global movements that has repositioned the rights of the city's invisible citizens, particularly the city makers movement in Delhi, India; and second, I situate the resistance within contemporary debates on the role of civil society and social movements in society. I argue based on Rajagopal (2003) that the *peneroka bandar* movements should be viewed as a form of "subaltern counterpublics", a space of oppositional refuge where citizens reformulate and re-theorize notions of rights, citizenship, and identities. I conclude the chapter by using the case of Kampung Berembang to critique both the operation of the law, particularly systems of land governance, and the broader power asymmetry between state and citizen in Kuala Lumpur's quest for neo-liberal growth.

1. The Saga of Kampung Berembang

On November 1, 2002, the residents of Kampung Berembang woke up to a rude shock- the Ampang Jaya Municipal Council (Majlis Perbandaran Ampang Jaya; MPAJ henceforth) served the residents eviction notices under Section 425 of the National Land Code[33]. Kampung Berembang was, at the time of the eviction notice, an informal settlement of approximately five hundred families who had been living there since the 1960s. As Noorali Izan, resident of Kampung Berembang and one of the leaders of the resistance movement against the eviction explained, "In the 1960s and 70s, the government asked labourers from the countryside to come and develop the city. We were invited by the then government to move to the city. My forefathers moved here because the government asked them to. They supported us living in Kampung Berembang. No one asked us or gave us land titles then. We trusted the government. And today, the same government has turned around and called us 'squatters'.[34]"

Kampung Berembang, located a mere 15 minute ride away from Kuala Lumpur's city centre, lies within the jurisdictional boundaries of the MPAJ, one of the ten municipal councils that constitute Greater Kuala Lumpur. As the city of Kuala Lumpur grew, Kampung Berembang like several other kampungs faced increasing threat of evictions. For instance, in an interview with the New Straits Times (Malaysia), an Ampang State Assembly member said "squatters such as those in Kampung Berembang are already feeling the pressure to relocate as they seem to be an island amid the development all around them[35]." In 2002, the pressure to relocate materialised in the form of the first eviction notice served on the residents. Around the time of the initial eviction notice, the residents were promised alternate, on-site low-cost housing to be developed by a subsidiary of the Selangor state government (Permodan Negeri Sealngor

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[33] Section 425 of the National Land Code deals with unlawful occupation of State land, reserved land or mining land.
[34] Interview with Noorali Izan. January 2017. Kampung Berembang, Ampang Jaya.
[35] *Mufti believes squatters must be taken care of.* New Straits Times (Malaysia). June 20, 1997

Berhad or PNSB). PNSB was tasked with developing an area of about 33 acres and building approximately 3000 new units of low to medium cost flats in the area. In 2003, as a part of the zero squatter policy, DBKL (Kuala Lumpur City Hall) signed a memorandum of understanding with the Selangor State Government to temporarily accommodate 300 families from Kampung Berembang to Taman Wahyu, 20 kilometres away, for an initial period of one and a half years[36]. While several families accepted the offer to move to the new location, several residents began to grow wary of the government's plan, particularly due to the experience of other kampungs where the government reneged on their promise of delivering alternate housing. For instance, the city made a second offer of moving residents to existing low-cost housing projects in Puchong, some 30 kilometres away from Kampung Berembang. As the residents rejected the offer and pressured the city to deliver on their initial promise of delivering on-site low-cost housing projects, negotiations between the residents and the municipal council officials broke down. Furthermore, the state openly warned residents that a pursuit of legal options would entail a necessary loss of any compensation through a negotiated settlement[37].

As the standstill continued, on 21 December 2005, the residents were served with a second eviction notice, this time under the draconian Essential (Clearance of Squatters) Regulations, 1969. As explained in Chapter III, the Emergency Regulation can only be challenged on procedural grounds and are virtually, beyond judicial review. The residents moved a plea in court challenging the grounds of the eviction notice and asserting that the residents had occupied the land with the implicit approval of the city. The residents cited the existence of municipal services such as piped water connections, electricity networks, the city-aided

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[36] *City Hall Assists Selangor State Government Achieve 'Zero Squatter Population'*. Kuala Lumpur City News. Kuala Lumpur City Hall. September 2003.

[37] For instance, the Chairman of the Selangor Housing, Building, and Squatters management Committee said in an interview, "Take the case of Kampung Rimba Jaya squatters. When the court decided in favour of the Shah Alam City Council, the squatters lost all benefits accorded to them under the squatter relocation programme involving compensation and low-cost units". Source: *Mokhtar: Think twice about legal* options. Geetha Krishnan, The Star Online. March 13, 2007.

construction of a community hall, and a *surau* or prayer hall as examples of this implicit recognition of their legitimate occupation of the land. Meanwhile the developers (now a joint public-private project between PNSB, a government owned subsidiary and the Acmar Group) filed a case against the residents asking the court for summary possession of the site. A summary judgment would have obviated the need to move for a full-trial before claiming ownership of the land. In March 2006, the residents obtained an injunction order from the High Court which directed the developers and the city to not evict the residents. The injunction order was valid until 14th November, 2006. On the expiry of the injunction order, the residents filed a new petition to request the court to extend the injunction and the court set a trial date for April 2007[38].

Apart from pursuing legal options against the developers, the residents had placed great faith in the United Malays National Organisation (UMNO), the largest political party in Malaysia and a founding member of the ruling Barisan Nasional alliance. Kampung Berembang was almost exclusively settled by Malay speaking Muslims, who had been staunch supporters of the ruling party- the kampung even housed a local UMNO party office. As one of the former residents explained, "All of us had been voting for UMNO and were strong supporters. We believed that UMNO would always protect Malays and that the demolition would stop until we were given keys to low-cost flats.[39]" The residents were also supported by the Coalition of Housing and Urban Settlers and JERIT (Jaringan Rakyat Tertindas or the Oppressed People's Network), a non-governmental coalition associated with the Socialist Party of Malaysia (PSM) working on, among others, anti-evictions work. Furthermore, the residents had written or filed petitions to the Prime Minister's office and SUHAKAM (Suruhanjaya Hak Asasi Manusia Malaysia), Malaysia's Human Rights Commission. The residents even received a letter from

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[38] *Kampong demolition opens villagers*. Rani Rasiah. *Aliran*. 7 February 2007. Available here: https://aliran.com/aliran-monthly/2006/200610/kampong-demolition-opens-villagers-eyes/
[39] Anonymous (Former resident of Kampung Berembang). Interviewed in January 2017 in Kuala Lumpur

the Prime Minister's Department addressed to the Chief Minister of Selangor requesting that the evictions be deferred to April 2007, when the court had scheduled the hearing for extending the injunction plea.

On November 17th 2006, within a few days of the injunction notice's expiry and the day after an UMNO National General Assembly was held, the MPAJ began proceedings to demolish the houses. On the first day of evictions, the MPAJ officials and police demolished two houses. However, they faced stiff opposition from the residents and had to put the eviction plans on hold. A second round of evictions was initiated on November 21st when between 51 and 65 homes were demolished by the MPAJ. The violence that the evictions brought that day was unprecedented, in several ways. As the monthly digest of *Aliran*, a Penang-based social movement reported, "Men, women and teenagers locked arms to form a human barricade and terrified children screamed at the menacing bulldozers and the hundreds of advancing uniformed. The Kampung Berembang Committee argued and pleaded for the demolition to be deferred pending a court decision due in April 2007 and for negotiations to be held instead. But after a tough seven-hour stand-off, the entire village of wooden and brick houses was razed to the ground. By evening as the enforcement officials were finishing off the last few houses, crying children and babies, terror etched all over their little faces, huddled in makeshift tents as the rains lashed down.[40]" There were reports of journalists being harassed and being forced to delete images from their cameras[41]. As one of the activists present that day noted, "It was clear on that day that the developer was working in cahoots with the state government and the MPAJ. The police, the developer's goons, RELA, and the enforcement official were all coordinating with each other. It was clear to us watching that this was a well-planned and

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[40] *Kampong demolition opens villagers*. Rani Rasiah. *Aliran*. 7 February 2007. Available here: https://aliran.com/aliran-monthly/2006/200610/kampong-demolition-opens-villagers-eyes/
[41] Setiawan (2013)

coordinated operation.[42]" The activists alleged, in a memorandum submitted to Malaysia's anti-corruption agency, that the developers and the government were working in close coordination with each other. In the memorandum, they alleged that the MPAJ has conducted the demolition operations using the developer's machinery and equipment, that the meeting where the decision to demolish Kampung Berembang was taken was held in the developer's office, and that the MPAJ officials were served food by the developer[43].

After the demolitions, the residents either took shelter in the local prayer hall or surau, built make shift tents around their demolished homes, or in some cases, started to rebuild their homes from the demolished material. However, the events of November 21st were followed by another round of demolitions on November 30th when the local prayer hall or surau was razed by the MPAJ. According to JERIT, the police and the Federal Reserve Unit (FRU), a paramilitary force used normally for riot control activities, entered the premises of the surau and forcibly evicted the women and kids[44][45]. The destruction of the surau and the preceding demolition was widely condemned by Malaysian and global civil society groups[46]. However, in an act of incredible resistance, the 68 families decided not to move out of the area and continued to live in make shift tents and camps. After a brief lull in evictions due to the attention in local media and widespread public disapproval of the government's handling of the evictions, the MPAJ initiated another round of evictions in March 2007. In an action that involved the police, FRU, and RELA units, the 68 resident families were forced out of the land they occupied and the

[42] Anonymous (Member of JERIT). Interviewed in January 2017. Kajang, Selangor.
[43] *ACA urged to probe 'food for demolition'*. Wong Yeen Fern. Malaysiakini.com. Dec 7, 2006
[44] *Kampung Berembang Struggle : The Story of Malaysian Unity*. Jaringan Rakyat Tertindas. July 2012. Available here: http://jerit.org/index.php?option=com_content&task=view&id=721&Itemid=30
[45] In one reported instance, one woman who had locked herself with a steel chain to the surau was forcibly removed. Source: *Chaos Reigns in Kampung Berembang*. November 30, 2016. Malaysiakini.com
[46] Groups including the Asian Human Rights Commission, Sisters in Islam, the Malaysian Human Rights Commission, Women's Development Collective and leaders like Maria Chin Abdullah condemned the violent demolitions

developer built barricades around the area by fencing it[47]. The residents continued to occupy the land surrounding the fenced area and rebuilt their demolished camps and wooden houses, this time under high-tension wires[48][49]. As Human Rights Watch noted, "On March 6 and 7, RELA volunteers, who had come to Kampung Berembang, a village near Kuala Lumpur, supposedly to hand out flyers related to court orders, instead helped a developer evict 50 families and tear down their houses. Several villagers were arrested. The demolition went ahead despite an injunction to desist until a scheduled hearing was held. By helping the developers, RELA volunteers engaged in activities – some were spotted operating bulldozers – well beyond their mandate. In addition, they used excessive force while doing so[50]"

The residents received limited reprieve from the Shah Alam High Court in December 2007 which overruled the developer's plea for summary possession of the land. The court announced, instead, that a full trial would be needed in order to establish whether the developers were the rightful owners of the land. Furthermore, the court directed the developer to pay compensation in lieu for the damages caused during the evictions drive and demolition of residents' houses. In a fortuitous turn of events, the UMNO-led Barisan Nasional Coalition lost the election in the state of Selangor to the opposition party Pakatan Rakyat. At a time when the developer was mulling the protracted process of claiming ownership over the land, the election result came as a turning point. The new government promised to build on-site low cost housing for the 68 families and allowed them to continue living on-site until the completion of the project. In January 2013, the last batch of families received keys to their hard-won houses.

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[47] *Kampung Berembang Struggle : The Story of Malaysian Unity*. Jaringan Rakyat Tertindas. July 2012. Available here: http://jerit.org/index.php?option=com_content&task=view&id=721&Itemid=30

[48] *Last batch of Kg Berembang villagers moved to flats*. Star Property. January 8, 2013. Available here: http://www.starproperty.my/index.php/articles/property-news/last-batch-of-kg-berembang-villagers-moved-to-flats/

[49] A separate eviction notice would later be served on the residents by Tenaga Nasional Berhad, Malayisa's electric utility monopoly for occupying the land under the high-tension cables.

[50] Malaysia: Disband Abusive Volunteer Corps. Human Rights Watch. May 9 2007. New York. Available here: https://www.hrw.org/legacy/english/docs/2007/05/08/malays15885_txt.htm

2. Re-theorising the State Narrative: The Idea of *Peneroka Bandar*

The success of the residents of Kampung Berembang was an unlikely and exceptional victory-perhaps, the only case of a group of residents having successfully challenged the use of ESCR. Reflecting on the residents' victory, one could point out a number of factors that were crucial-the court verdict that denied summary possession of the land to the developer, the election victory that brought a sympathetic opposition party into power, the strength of organisation and mobilisation that witnessed a coalition of kampungs under the threat of displacement coming together to protest, or the tenacity of the residents themselves. The 68 families leading the resistance camped outside their kampung for a period of approximately six years in an act of extraordinary resistance. As one of the residents explained to me, "My children grew up entirely during the resistance. We faced severe hardships- our camps were demolished several times, I was arrested multiple times; even my children were detained by the police. Many of us faced violence and harassment from the developer's goons, the police and RELA. But we had to put up a fight- the government had to recognise that we were not squatters, we are *peneroka bandar* (urban pioneers)."

In this section, I focus on the idea of *peneroka bandar* or urban pioneers, a term that the residents use to refer to themselves. The term situates itself in direct opposition to the state's view of residents without possession of land titles as "squatters". As explained in Chapter 2, the squatter is not merely a legal category in Malaysia; it is a term that is also deployed as a social and administrative category. The term is often laced with casual racism, xenophobia, and attributions of criminality. Furthermore, it virtually strips individuals of their political rights as legitimate citizens of the country. As I explain below, the use of *peneroka bandar* repositions the social and administrative category of the squatter into an individual whose labour and dignity must be recognised by the government. As the epigraph at the beginning of this chapter conveys, *peneroka bandar* centres the squatter as key to the growth of modern

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Kuala Lumpur comparing their role to a state agency like FELDA (Federal Land Development Authority), formed in the mid-1950s to aid the construction of new urban settlements to relocate the urban poor. Furthermore, the term *peneroka* has its origins in Malay customary law and Islamic land law doctrines, where ownership belongs to the individual who opened up "dead land".

Figure 4.1:

We are Urban Pioneers, Not Squatters!

Repeal the use of the Emergency (Clearance of Squatters) Regulation, 1969

A poster used by the residents of Kampung Berembang during the resistance to their displacement.

Source: JERIT (Oppressed People's Network). Accessed in January 2017.

Peneroka in Malay Customary and Islamic Law

According to Azizah (1983), in pre-colonial Malaya, uncultivated or unopened land was essentially considered to be "no man's land". If a person cleared, cultivated, and occupied a piece of land, she was regarded as having made possessory claims over it. This claim or right to occupy the land remained as long as the person continued to cultivate the land and would be considered lost if the land was "reverted to jungle, i.e. become *tanah mati (lit. dead land)*". As noted by the author, while "there was no legal machinery to enforce such right … it was

respected since it was accepted by the community as a whole." This mode of land acquisition was called *meneroka*, i.e. to open up land. *Peneroka* was a person who opened up the land in such a manner and a *penduduk*, a person who settled on such land.

This idea of opening up an uncultivated piece of land has strong resonances with the idea of *Ihya' Al-Mawat* or revival of dead land under Islamic land law[51]. As Maidin Jaria et al (2008) explain, the principle of *ihya' al-mawat* refers to "a system whereby a person can acquire ownership of a dead land by developing it to life or by way of rehabilitating it". The principle derives directly from the *ahadith* or sayings of Prophet Muhammad. While schools of Islamic thought differ on the actual definition of *mawat* or dead land, it is generally agreed that the idea encompasses both land which has never been under cultivation or been under the ownership of an individual, and land that was previously owned by an individual and subsequently abandoned. The actual act of reviving or rehabilitating the land or *ihya'* could encompass irrigation works, digging wells, planting trees or plants, ploughing the land or constructing a house. Broadly, it is understood that a parcel of land is revived or rehabilitated if three conditions are met. One, the dead land has been fenced or enclosed; two, the work of reclamation has been completed; and three, the dead land has been placed under cultivation if reclaimed for agricultural purposes.

Legal recognition of peneroka bandar

In the case of *Sentul Murni Sdn Bhd v Ahmad Amirudin bin Kamarudin & Ors* (1998), the court ruled in favour of the squatters arguing that the residents were "squatters with consent" rather than "squatters simpliciter"[52]. The case involved residents of Kampung Chubadak Tambahan,

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[51] According to Maidin Jaria et al (2008), there are two broad principles or systems through which an individual could acquire land- first, the *iqta* system through which an individual acquires the right to develop a cut-off piece of land or to develop dead land and second, the *ihya' al-mawat* explained above.
[52] *Sentul Murni Sdn Bhd v Ahmad Amirudin Bin Kamarudin & Ors* (1998) 1998 MLJU LEXIS 1001; 378 MLJU 1.

an urban village in Kuala Lumpur that lies on former mining land. Initially recognised as a Malay Reserve Land (in 1916), the area was de-gazetted in June 1932. Despite plans in the 1960s to divide the land into individual sub-lots for the residents, the land was transferred to a private developer in July 1990. Since the early 1990s, the residents of the Kampung were engaged in a legal battle with the private developer. The developer argued in court that the residents were trespassers on the property and sued for damages from trespass and allied costs. The initial judgement in 1998 concluded that the residents of the Kampung were not squatters or trespassers but were residents who have been in occupation of the land with the explicit approval of the Dewan Bandaraya Kuala Lumpur (DBKL), the Kuala Lumpur City Hall. For example, the court pointed to over three decades of improvements in infrastructure and service delivery by DBKL in the area including the construction of a town hall, water and electricity services, a health clinic and telephone services. While recognising the private developer as the legal owner of the land, the court ordered the payment of fair compensation to the residents who would be displaced due to the development.

In a similar case involving *Shaheen bte Abu Bakar v Perbandaran Kemajuan Negeri Selangor and other appeals*, 1996, the petitioners filed her father was encouraged to open land the new land for cultivation by the *Penghulu* or village head. The initial settlers cleared the jungle, constructed housing, and irrigation network including canals, wells, and ponds. Overruling the decision of the High Court, the Federal Court ruled that the occupants of the land were not squatter simpliciter but had occupied the land with the "implicit consent of the State Government". In both the cases reviewed above, the petitioners and the court have relied on the idea that the individual who opens up the land, even without the possession of a land title, cannot be considered a squatter and has some compensable rights to the land they occupy by virtue of both their labour in developing the land and the implicit recognition provided by the state.

According to Bunnell and Nah (2004), *peneroka bandar* serves as a crucial positive identification that "resonates with complex geo-histories of socio-legal rights to place among certain groups without registered land titles." The authors argue that identification as *peneroka* confers upon the informal residents without possession of land titles "a conviction that their settlement is not simply 'illegal'." As the authors note, "possibilities for recognition 'in place' are bound up with identities that signify a particular relationship with the land or ways of being seen in the landscape. Proven state foreknowledge of 'squatters' enabled them to be remapped as 'settlers with consent', while '*peneroka bandar*' deployed by activists suggested their role in 'improving' the land and contested the illegality of *setinggan* in relation to pre-colonial land rights through practices of *meneroka*." Thus, *peneroka bandar* forms a term through which squatters reclaim "in-place rights and belonging".

Peneroka bandar repositions the legal argument against squatters as individuals with no rights. It demands that the state recognise the dignity and labour that constitutes the making of the city of Kuala Lumpur. Central to the victory in Kampung Berembang was the articulation of this idea of the citizen as central to the city. The staunch resistance would perhaps have not been possible if the residents did not actively reject and re-articulate the state's view of them. Through this act of re-articulation and re-theorisation, the residents protested the inequity of the present system of land law which renders anyone without title documents rights-less. Furthermore, it foregrounds the injustice of the law by re-claiming older, customary forms of land governance and administration which explicitly recognises the intimate relationship between labour on land and its ownership. As Dr Michael Jeyakumar Devaraj, Member of Parliament, Parliament of Malaysia asks, "What is happening in Malaysia today is that land value is appreciating not because of any improvement in the land done by the individual. He gets the full value of the appreciation of the land from vacant possession. But, who created the

increased value? The increased value was created by the entire economy of the surrounding region. Hence, it needs to be shared with the entire community.[53]"

3. Reclaiming citizenship and the "right to the city"

City Makers of Delhi

The use of *peneroka bandar* as a tool to counter the state narrative of citizens as squatters mirrors attempts by citizens to reclaim their legitimate right to the city around the world. For instance, in the city of Delhi, residents have countered the state narrative of "homeless", a description that anchors citizens to their deprivation by calling themselves "city makers". City makers including labourers performing low-end wage work in the construction, domestic service, informal transportation, and solid waste collection services have been an attempt to reclaim the dignity of labour and assert the vital nature of services that are provided by low-wage labourers in the city. As Roy (2010) asserts, the "vast army of the underprivileged ... are pushed to the periphery of the city and are regarded as a burden". The author notes how the real makers of the city are constantly under the threat of evictions and demolition by planners who refuse to acknowledge their existence and crucial role in the city's political economy. As a report on homelessness by a group of Bangalore-based NGOs in 2010 (Rajani & Goswami, 2010) argues, "The term 'city makers' was coined by a group of activists who have been working for the cause of the homeless people across cities in India. It was understood during the various interactions with the homeless persons that the primary occupation of these people was mainly restricted to rag picking, being street and public facility sweepers, domestic workers, street vendors, construction workers etc. It was seen that these are thankless jobs usually done by people rarely visible, because of the timing and the nature of work. However if these persons were not at their jobs one cannot imagine the plight of the city, the garbage

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[53] Interview with Dr Michael Jeyakumar Devaraj, Member of Parliament, Parliament of Malaysia. January 2017

dumps piling, the unclean roads, the missing domestic help etc. However, these services are rarely acknowledged by the larger society" The term city makers, thus, not only makes the invisible labour of the city makers visible but also renders the labourers themselves visible to the state and society.

Peneroka bandar: The creation of a "subaltern counterpublic"

The reclaiming of the residents' rightful place in society as *peneroka bandar* must be examined in the light of the extraordinary violence and dispossession that neo-liberal growth has unleashed on Kuala Lumpur's marginalised. *Peneroka bandar* have increasingly found themselves facing both the violence of the law and development, manifested primarily through a denial of political rights and stripping of land use and ownership. The rise of the *peneroka bandar* movement has its origins in resistance to previous attempts to cleanse the city of squatters, particularly in the 1980s and 1990s. The use of pamphlets such as *Peneroka Bandar Menuntut Keadilan* (Urban Pioneers Demand Justice) published by the Urban Pioneer Support Commmittee (JSML) are widely in circulation in Kuala Lumpur[54]. In this section, I attempt to situate the resistance of Kampung Berembang within contemporary debates on the role of social movements and civil society as a key actor in development. Furthermore, I argue, based on Rajagopal (2003) that the re-articulation of squatters as *peneroka bandar* constitutes a form of "subaltern counterpublic", a space of refuge where alternate and often, oppositional ideas of citizenship, rights, and development are formulated. This oppositional re-formulation, as I have argued earlier, has been crucial in the move to demand rights of the dispossessed from the state.

Tracing the rise of civil society, Appadurai (2001) argues that the emergence of civil society as a critical agent of development as a clear response to the exhaustion of what he calls "two great paradigms for enlightenment and equity", the demise of the Marxist vision of class-based

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[54] Mohd Nasir Hashim, 1994. As quoted in Baxstrom (2007)

emancipation and the multiple failures of development and modernisation. Appadurai (2001) notes two manifestations of this new world order that makes the rise of civil society possible. One, the nation state today faces a crisis of "redundancy", perhaps best illustrated by the voluntary abdication of powers and duties through privatisation. Second, globalisation has manufactured "new geographies of governmentality" most notably, in the form of "world cities" or "city states" that often function independently from the governance structures of the nation state. The space vacated by the nation state, and a politics grounded in the shared global experience of poverty and disenfranchisement has created opportunities for a new form of governmentality, one that Appadurai (2001) refers to as "counter-governmentality" or "governmentality from below". The rise of civil society, thus, presents "a post-Marxist and post-developmentalist vision of how the global and the local can become reciprocal instruments in the deepening of democracy".

Fisher (1997), in his extensive survey of literature, presents a similar vision of the NGOs (Non-Governmental Organisation) as entities that are neither corrupted by the politics of the nation state nor tempted by the greed of the market. As he argues, "this is reflected in the designations that describe these associations in terms of what they are not: nongovernmental and non-profit" However, in contrast to Appadurai (2001), Fisher (1997) presents a more complex, dual imagination of NGOs founded on two distinct critiques of development. First, if development is viewed as a flawed yet inevitable process, NGOs could be seen as agents that help to correct or limit the weaknesses of the process. Second, if, as Escobar (1995) argues, development must be seen as a historical discourse in which only certain, pre-determined spaces can be imagined, NGOs represent the potential to create alternative spaces of resistance and counter-imaginations to the hegemony of development. In both cases, Fisher (1997) links the rise of civil society to the failures of the project of development.

However, as Roy (2007) shows us, the line between the supposed dual roles of the NGO is often blurred and the non-partisan nature of civil society needs to be critically examined. Furthermore, as Rajagopal (2003) argues, there is a need to expand the idea of civil society beyond the mere institutional form of NGOs to include what he refers to as "subaltern counterpublics", in the mould of Escobar's (1995) critique of development. I turn to these arguments below.

Roy (2007) proposes the idea of "civic governmentality" envisioned as "a spatialized regime that functions through particular mentalities or rationalities including an infrastructure of populist mediation; technologies of governing; and norms of self-rule" Roy (2007) argues that by both cooperating with and resisting the top-down norms of the state and international institutions, civil society recreates "the terms of rule and citizenship". First, by acting as mediators in the process of development, civil society organisations like Alliance in Mumbai or the Hezbollah in Beirut also serve "as forms of government and produce governable spaces and governable subjects" usually excluding certain sections of society they claim to represent. Fisher (1997) also calls for greater attention to be paid to the "micro-politics" of civil society organisations and power structures within the organisation, which often fail to follow through on their own rhetoric of equality. In contrast to Appadurai's (2001) notion of counter-governmentality" seen through practices such as self-enumeration and self-surveying by the poor, Roy (2007) argues that such strategies serve to reaffirm the strategies of the state and promote civic governmentality through a recalibration of the state's strategies. In such cases, civil society serves as a mirror of the state, reflecting the values of the state. Third, Roy (2007) also points to how the logic of civic rationality is also dependent on a certain "ethic of the self". For example, Roy (2007) exposes the contradictions of the argument that women are at the core of "politics of patience" by showing that even while organisations pay attention to greater equality for women, they also seek "to instrumentalize the 'essential qualities' of a woman to

achieve better processes of community development." To sum up, Roy's (2007) overall criticism is that the politics of patience promotes a form of "institutionalised inclusion", one whose morality is founded on the principles of "collaboration, participation, and mediation". Such a form of inclusion loses the ability to create a more rebellious form of citizenship that actively challenges the values and ethics of the state and the market. Specifically, Roy (2007) notes how the Alliance's politics of patience made them ineffective in responding to large scale eviction of slum-dwellers in Mumbai, or how the Hezbollah is a willing partner rather than a counterpoint to Lebanese neo-liberalism.

In contrast to these examples of social movements and the role of civil society, the *peneroka bandar* movement, as seen in the case of Kampung Berembang, embraces a more oppositional type of politics that seeks to re-formulate and re-theorise ideas of citizenship and rights. For instance, Rajagopal (2003) critiques the "NGO-ization" of civil society for ignoring the "radical democratic potential" of social movements. The current understanding of civil society (derived from Habermas) privileges a liberal, institutionalised representation of civil society. Such a definition views, for instance, the democratic vote for Islamic rule in Algeria as illiberal and fails to see social movements, often operating outside the institutional structures defined by the state, as part of civil society. Rajagopal (2003) calls for a broader interpretation of civil society as "subaltern counterpublics", "parallel discursive arenas where members of subordinated social groups…formulate oppositional interpretations of their identities, interests, and needs." Such a definition would include "competing plural publics" that are often excluded from traditional definitions of civil society including worker's unions, slum dwellers (like in the case of Kuala Lumpur's urban pioneers), gays, and lesbians. According to Rajagopal (2003), such counterpublics serve two functions: first, "they function as spaces of withdrawal and regrouping, where identities are affirmed to recover human dignity", and second, they form

spaces where alternative conceptions of rights, body and politics are re-formulated with a view to influence the public sphere.

It must be noted, however, that resistance in Kampung Berembang was an exceptional case, perhaps the only case of a community successfully winning fair compensation and free housing. The campaign at Kampung Berembang remained the exception and the broader *peneroka bandar* movement failed to translate into the state accepting the legitimate rights of informal residents and slum dwellers. Unlike the movement that gave birth to the City Statute in Brazil, for instance, the movement in Greater Kuala Lumpur has not led to constitutional recognition of legitimate rights of citizens and a wider, more sympathetic approach to the plight of squatters. In kampung after kampung, neo-liberal development has wrecked destruction and dispossession and continues to do so, as the recent case of Kampung Puah Seberang, a riverside kampung that is currently under threat of displacement due to the city's riverfront development project (River of Life) shows. While a more detailed discussion on why the campaign in Kampung Berembang did not translate into a wider movement for recognition of rights of *peneroka bandar* is beyond the scope of this chapter, I examine why the reclaiming of citizenship by the residents is important in Malaysia's political and economic context below.

Conclusion: Reclaiming citizenship- from "squatter" to urban pioneer

First, the campaign at Kampung Berembang exposed serious ruptures between how the law conceived land ownership and use rights, and the citizens' lived experience of it. In deliberating using the idea of *peneroka*, the residents implicitly rejected a colonial project of land governance that was inherited by the independent Malaysian state. As Azizah (1983) explains, "Squatting ... is not an autochthonous concept, but a foreign one introduced into the local society with the introduction of British land laws and administration in the late 19th century." In the re-claiming of an idea that has its roots in Malay customary law and Islamic land law,

the residents exposed the blatant inequities and violence of the current legal doctrine that governs the control of land in modern Malaysia. As Dr Michael Jeyakumar clarifies, "the claim of the squatters is not a request for charity. Economic growth is a contribution of thousands of people; the people who developed the land in the first place. When land becomes the primary investment vehicle, people lose out[55]" The idea of adverse possession of land is not recognised within Malaysian constitutional law and therefore, fails to see the labour that has been expended by residents, such as in Kampung Berembang, in the making of the city. In re-theorising the state's view of them as squatters, the *peneroka bandar* are, in essence, making a case for a more just and equitable form of law that recognises their rightful place as citizens. In the words of David Harvey, the citizens are reclaiming their "right to the city". As Harvey (2012) notes, "The right to the city is ... far more than a right of individual access to the resources that the city embodies: it is a right to change ourselves by changing the city more after our heart's desire. It is, moreover, a collective rather than an individual right since changing the city inevitably depends upon the exercise of a collective power over the processes of urbanization"

Second, the Kampung Berembang campaign must also be viewed as a serious note of dissent against the neo-liberal growth policies that the Malaysian state has embraced. Inherent within their critique of the law and their own invisibility within it is a stronger critique of Malaysia's violent trajectory of development. One of the residents of Kampung Puah Seberang, a river side kampung currently under threat of displacement, explained that the current model of development in Kuala Lumpur was based on the idea of *sepakat* or agreement on a contractual basis. This mode of governance reiterates the power dynamic between the state and the citizen, where the state cuts deals or forces residents to agree to their demands, particularly in the context of urban displacement. The leader of the kampung argued that what was needed was

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[55] Interview with Dr Michael Jeyakumar Devaraj, Member of Parliament, Parliament of Malaysia. January 2017

not *sepakat*, but *muafakat* or consensus based agreements, where the state treated all citizens as equals without the inherent power dynamic of the former mode of governance. Such an approach would enable the legally invisible residents of Kuala Lumpur to assert their social, cultural, and economic rights as citizens and participate in the making of the city in a democratic manner. The notion of *peneroka bandar* thus envisions the idea of a participative and democratic ethos in Malaysia' polity, where a rule by exception is replaced by a rule by consensus.

Third, as Shamsul (2001) notes, "the British colonial conquest was not only a matter of superior weapons, political and diplomatic shrewdness, and economic energy; it was also a cultural invasion in the form of a conquest of the native 'epistemological space'. To formulate this in very simple terms: the British interfered with the local thought system, and by doing this they increasingly disempowered the natives by limiting their ability to define their world; subsequently, the local order of things was replaced by a foreign one, a slow but steady process that has effectively been conducted through a systemic application of a number of so-called 'investigative modalities'" The creation of the "Malay" subject, "Malayness" or even the "squatter" are enduring examples of terms that outlived the British colonial project. In this context of a nation that is polarised along the lines of race and ethnicity, the use of the term *peneroka bandar* differed from the language of ethnicity. It enabled the creation a new imaginary, a multivalent term that empowered the "squatter" to define her rights and claims as a citizen. Furthermore, it brought together a coalition of informal kampung residents of the city who were threatened by displacement. As an activist who was involved in the campaign at Kampung Berembang explained, "We brought together a large number of kampungs under the umbrella of *peneroka bandar*. One of the reasons for the campaign's success was that people of all races who were affected by the zero squatter policy came together to fight at Kampung Berembang."

Chapter V: Discussion

1. Thesis Summary

In this thesis, I have made three arguments:

First, I trace the history of the use of squatter regulations in Malaysia to situate its origins in the colonial emergency over Malaya starting in 1948. During this period, the "squatter" was conceived not merely as a legal category but also as a social and administrative category. My analysis shows that the creation of the term had little to do with the actual legality of land occupation and was almost entirely motivated by the security needs of a counterinsurgency operation. The "squatter" was to become the cornerstone of a military doctrine that used forced urbanisation in the form of resettlement sites called New Villages and development projects in the form of roads, schools, health centres, and power and communication lines as its primary counterinsurgency methods.

Second, I argue that the independent state of Malaysia borrowed several key elements of the colonial mode of governance forged in the Malayan emergency of 1948, primarily the imposition of emergency rule itself. A repeated feature of the imposition of emergency rule has been the re-invocation of the colonial trope of the squatter. I examine specifically the Essential Clearance of Squatters Regulation, an anti-squatter law promulgated during the Emergency of 1969; judicial responses to challenges posed to the deployment of this law; and the use of civilian volunteers for squatter clearance operations. I use this analysis to provide evidence to my argument that urban planning in Kuala Lumpur must be seen as a form of urban law-fare where the violence of the law is programmatically deployed to dispossess and displace informal residents. Furthermore, I argue that what makes the systematic deployment of such violence possible is the creation of a "normalised" state of exception through the repeated promulgations of emergency rule.

Lastly, I chronicle the case of Kampung Berembang, perhaps the only example of a community of informal residents that successfully won fair compensation and free alternate, on-site housing against the use of emergency regulations. Central to the success of the residents' campaign was their ability to challenge the city council's narrative of them as "squatters" and rearticulate their rights and claims as *peneroka bandar* or urban pioneers- citizens who built the city through their labour and toil. In using the term *peneroka bandar*, which has its origins in Malay customary law and Islamic land law, the residents expose serious ruptures between how the law conceived land ownership and use rights, and the citizens' lived experience of it. Furthermore, it served as a note of dissent against the neo-liberal growth policies of the government and called for the adoption of a more humane, participatory, and consensus based democratic ethic, where a rule by exception is replaced by a rule by consensus.

2. Future Directions

In this section, I discuss four strands of future directions that emerge from my thesis:

First, development-induced displacement and contestations over land are perhaps the most pressing urban issue of our times. As Oliver-Smith (2009) notes, development-induced displacement displaces approximately fifteen million people a year, leaving people "permanently displaced, disempowered, and destitute". My thesis attempts to situate itself within the critical literature of "displacement disasters" that are affecting communities around the world. However, while recognising the global nature of the crisis, the argument presented above situates the crisis in Greater Kuala Lumpur within Malaysia's political and legal history. While global and local capital flows, particularly since the recession of 2009, have had a definitive impact on the landscape of displacement in Greater Kuala Lumpur, the modes and mechanisms of its operation in the daily life of the city's residents continues to be mediated by contextual institutional logics and legal rationalities. Of particular importance is the enduring

impact of colonial bureaucratic techniques, particularly legal techniques, in the pursuit of development objectives. By looking at the resistance of Kampung Berembang, I argue that the use of such contextual modes of dispossession necessitate an interpretation that is grounded in local history, politics, and law.

Second, I argue, in line with Levien (2015) that development-induced displacement, as presented here in the case of Greater Kuala Lumpur, cannot be seen as a function of capitalism's over-accumulation crisis alone. As Harvey (2003) argues, "displacement of peasant populations and the formation of a landless proletariat has accelerated in countries such as Mexico and India in the last three decades, many formerly common property resources, such as water, have been privatized. Accumulation by Dispossession (often at World Bank insistence) and brought within the capitalist logic of accumulation, alternative (indigenous and even, in the case of the United States, petty commodity) forms of production and consumption have been suppressed. Nationalized industries have been privatized. Family farming has been taken over by agribusiness. And slavery has not disappeared (particularly in the sex trade)." For Harvey, "The umbilical cord that ties together accumulation by dispossession and expanded reproduction is that given by finance capital and the institutions of credit, backed, as ever, by state powers." Levien argues, instead, that India's land grabs (in the context of Special Economic Zones) must be seen as a "neo-liberal regime of dispossession" where the state actively undertakes a regressive form of land distribution upwards. However, both Harvey's and Levein's analysis do not included a substantial analysis of how caste, race, and ethnicity intersect with global capital flows.

In this thesis, to a limited extent, I explain how development-induced displacement is used both to solve capitalism's over-accumulation problem but also to serve political ends. In this, we must seriously consider the centrality of race and ethnicity in post-colonial Malaysia. As Willford (2003) argues, Malaysia's urban expansion is primarily aimed at creating a "national

ethnic subject". Furthermore, "constructing the Malay–Islamic identity as the nation's modern has not only displaced the Tamil minority ("Indians") culturally, spatially, and politically but also fostered ambivalence among Malays about their own cultural identities, another kind of displacement. One consequence of this moralising discourse of development has come in the form of heightened ethnic consciousness". Thus, the dispossession of primarily Indian and Chinese residents of Malaysia must be seen not primarily as a response to capitalism's over-accumulation problem but as a project of Malay state building.

Third, my thesis uses Agamben's theory of a state of exception to explain how the Malaysian state has effectively deployed legal instruments to displace residents in Greater Kuala Lumpur. Here, I wish to make the connection between rights-less subjects under a state of exception and the nature of urban informality around the world. As Roy (2009) argues, informality in the Global South must be understood as a deregulated mode of regulation rather than an unregulated system. According to Roy, "deregulation indicates a calculated informality, one that involves purposive action and planning, and one where the seeming withdrawal of regulatory power creates a logic of resource allocation, accumulation, and authority. It is in this sense that informality, while a system of deregulation, can be thought of as a mode of regulation." My characterisation of the state of exception as a normalised technique of governance has parallels with Roy's conception of informality from above. In both cases, those who live in informal settlements exist under a normalised and calculated state of exception that reinforce their unsecured status. The very definition of a state of exception, by denying them political and economic rights, produces and reinforces their marginalisation.

Fourth, several studies, particularly related to post-disaster governance and reconstruction have noted how planning operates under a state of exception. For instance, Klein (2007) labels the rise in use of disasters as "preferred moments for advancing a vision of a ruthlessly divided world" as the advent of "disaster capitalism". As she argues, "every time a new crisis hits, even

when the crisis itself is the direct by-product of free-market ideology, the fear and disorientation that follow are harnessed for radical social and economic re-engineering. Each new shock is midwife to a new course of economic shock therapy. The end result is the same kind of unapologetic partition between the included and the excluded, the protected and the damned". In the context of the Indian Ocean tsunami, Gunewardena (2008) reveals the mechanism by which "the deployment of private capital in disaster recovery processes has hastened the further disempowerment, vulnerabilities, and social fragmentation" of populations affected by disaster in Sri Lanka. As noted earlier, in the case of Chile, Farı'as and Flores (2017) note how the creation of a state of exception allowed for the deployment of a neo-liberal logic where private corporations were heavily involved in the reconstruction efforts.

However, unlike exceptional circumstance like conflict and disasters, my account of planning, specifically through clearance of informal settlements, in Malaysia focuses on how the state of exception has been "normalised", over a period spanning four decades. This has implications for planning and development where on the one hand, we see an increase in "participatory" methods in planning where citizen participation is centred as a paradigm of democratic politics. Even in Malaysia, the creation of the Kuala Lumpur Structure Plan involved a significant public outreach program. However, as this thesis shows, such modes of outreach only serve to codify norms of democratic participation within a larger state of exception. The larger threat to democracy comes directly from the use of militaristic modes of governance that expand the reach of the state and the definition of the exception itself.

3. Looking forward: Resisting Displacement and Dispossession in Malaysia

After over four decades of use, Malaysia repealed the use of Emergency Ordinances in 2013. This included the repeal of the Essential Clearance of Squatters Regulations and the powers to detain without trial. A critical turning point that led to the repeal of the Emergency Ordinance

was the arrest of six members of Parti Sosialis Malaysia (PSM or Socialist Party of Malaysia) who were detained under the suspicion of being the main organisers of the Bersih (Coalition for Clean and Fair Elections) 2.0 protests, a coalition of civil society organisations calling for the reform of Malaysia's electoral system. This led to an unprecedented mobilisation of Malaysian civil society culminating in marches, protest pickets, candle-night vigils and a series of petitions to leaders in power. The struggle to release the EO6 (Emergency Ordinance 6), as the six arrested individuals were later referred to galvanised public opinion against the use of the Emergency Ordinance in Malaysia.

The repeal of the emergency ordinances, however, has not meant the cessation of modes of governance that the emergency engendered. Using recent legislation like the Security Offences (Special Measures) 2012 Act (SOSMA) and the National Security Council (NSC) Act, enacted in August 2016 clubbed with the increased use of the Prevention of Crime Act 1959, the Malaysian state continues to perpetuate the near permanent state of emergency in Malaysia. In December 2014, for instance, the state of Johor announced its own Zero Squatter Policy, raising concerns about a fresh round of evictions and forced relocations[56].

The partial victory at Kampung Berembang saw the residents win fair compensation and free, on-site housing. More importantly, however, the campaign, through the creation of a new imaginary of *peneroka bandar*, contained the sparks of a movement that brought together Greater Kuala Lumpur's informal residents. While the promise of this movement did not materialise into systemic changes in the law, it reformulated the rights and claims of the city's informal residents vis-à-vis the state. Despite their achievement, the future of urban poor and slum dwellers in urban Malaysia continues to be uncertain- rapid urbanisation outside the Greater Kuala Lumpur region is reproducing similar patterns of dispossession and

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[56] *Johor targets zero squatters*. The Sun Daily. 2 December, 2014.
Available here: http://www.thesundaily.my/news/1254627

displacement. Furthermore, recent political events including the 1MDB scandal (Malaysia Development Berhad) and the Bersih movement have exposed the systemic flaws in Malaysia's polity. The need of the hour is for a cross-cutting coalition of activists, disenfranchised residents, political opposition and civil society actors to create, as the campaign at Kampung Berembang did, an alternative vision for Malaysia's future.

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