

## CONCEPTUAL OVERVIEW IN PROVIDING AFFORDABLE QUALITY HOUSING FOR MALAYSIA: Policies and Legal Perspective

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### Introduction

*“Everyone has the right to a standard of living adequate for health and well being of himself [or herself] and his [or her] family, including food, clothing, housing and medical care and necessary social services...”*

Universal Declaration of Human Rights 1948

Housing provision is a physical process of creating and transferring a dwelling to its occupiers, its subsequent use and physical reproduction and at the same time, a social process dominated by the economic interests involved. Government intervention through good housing policies is needed to deliver the housing provision for the nation, either by private sector or public sector means. What is needed in housing policies and their implementing mechanisms is to make a fundamental switch from a concern about housing as an *output* to an adequate housing *input*. In a world where more than one billion people continue to live in adequate housing conditions, the imperative of renewed attention to the realization of housing rights takes on urgency. There is, therefore, government has legal responsibilities to ‘take steps by all appropriate means’ to ensure the full and progressive realization of the human rights to adequate housing.

### The Implementation of Housing Policies

According to Bauer and Gergen (1968), the term policy is used to describe “...those parameter shaping act” and “strategic moves that direct an organization’s critical resources towards perceived opportunities in a changing environment”. Policy is designed “to give direction, coherence and continuity to the courses of actions” (Lichfield, 1978). Government creates the context for development through economic and environmental policies. All development take places under a system of law and developers need to acquire sufficient legal title and permission (Fisher and Collins,

1999). Similarly, housing policies must set overall objectives and defines responsibilities and broad general direction for the nation. It will never complete, but always evolving (Van Huyck, 1986). This clearly relates that the *agent* in housing provision are not passive players, instead they are actively and continuously involved in reshaping the structure of governments’ decision through the implementation of policy (Keivani and Werna, 2001). Housing policies also must be adjusted to reflect the new concern with decentralized urban growth, which will mean decentralizing housing institution. It means de-emphasizing the public sector role in housing construction and moving this responsibility to the private sector, both formal and informal (Van Huyck, 1986). In this regard, comprehensive written housing policies are important and particularly true when the fundamental nature of the housing policies is changing from a concern with housing output targets to a focus on housing inputs. Van Huyck, (1986) emphasized that a comprehensive housing policy should include;

- 1) a statement of the background situation, and in particular the relationship between the housing sector and overall national economic development; the dimensions of the current housing problem and projections, historical review of the public and private sector response to housing, using quantified data in terms of unit constructed and capital invested; and a description of the current housing delivery system including the public, private and popular sectors;
- 2) a presentation of the central issues to be addressed;
- 3) a statement of housing policy positiveness; objectives should be formulated in the following areas: the importance of housing within the overall national development strategy; the relative priority in the allocation of housing resources between urban areas (by city size) and the rural areas; the relative priority for the allocation of housing resources by source (public sector’s, private sector and popular sector) should be related to target groups; the mobilization of housing finance; the use of subsidies in the public sector; and the establishment of the public sector role in housing; to build, to finance, and/or to facilitate;
- 4) definition of Housing Delivery System: establishing the legislative base; the government’s administrative framework

(housing policy and planning, administration and control, building capacity and finance capacity);

- 5) additional provisions: analysis of the economic impact of the housing policy; procedures for evaluation; and guidelines for preparing the national housing plan.

Therefore, the former that relates to the legal framework can be created by the economic and political organisation including legislative bodies in the delivery of housing provision. Interventions of the state at the macro and micro economic level and the social and economic values of the society regarding the housing development process are also needed. Through the implementation of housing policy, legislation is really only one of the many instruments for government intervention in controlling real estate development and other urban markets (Malpezzi, 1999). According to Malpezzi (1999) government could intervene through two major types of urban regulations in urban development known as land use and real estate regulation and second is the set of urban regulations that relate to the provision of finance.

### **Housing Provision in Malaysia**

The process involved land and property development, including housing, is identified as the relationship between the interests, strategies and actions of agents involved in land development and social economic political framework including values regarding land, property, buildings and the environment which governs or structures their decision (Keivani and Werna, 2001). Housing development is undertaken by variety of actors each also distinguished by their aims, status and roles (Fisher and Collins, 1998). The social relationships between actors and institutions in the development process are mediated by policy component (Keivani and Werna, 2001).

There is, therefore a need to understand the relation between *structure*, in terms of what drives the development process and produces distinctive patterns in particular periods and *agency*, in terms of the way individual agents develop and pursue their strategies in development process (Healey and Barret, 1990). Legislation is part of national policies which governs or structures the government decision (Van Huyck, 1986). The structural elements are difficult to disentangle (Fisher and Collins, 1999). In addition, political influences can lead to pressure for tighter planning regulation in a country (Fisher and Collins, 1999). As a result, government needs to establish the excellence context of administrative framework and legislative

base in housing provision. The provision of housing, on the other hand, has been largely dominated by non public sector, which includes the formal and informal private sector, private households and cooperatives (UNHCS, 1996a, b, c; Okpala, 1992). The share of public housing provision in developing countries has only been around 10 percent of the total housing stock (UNHCS, 1996a, b, c; Okpala, 1992).

Basically, the typology used by Drakakis-Smith (1981) the conceptual model of housing provision in developing countries can be developed by two main structures consists of *conventional or formal mode* and *unconventional or in formal mode*. The former mode represents housing that is produced through the official channels of recognized institutions and the latter mode, on the other hand, represents those housing units which are usually produced outside official channels without official development permit and do not conform to land use and subdivision regulations (Drakakis-Smith, 1981; Baros and Van Der Linden, 1990). However, with the exception of informal housing modes, this paper observed that formal housing provision in Malaysia was always evolving even when it seems that not all the policies have achieved their target. Nevertheless, all of these social agents made many efforts to implement a range of policies since colonial administration until the latest Eighth National Plan (2001-2005).

During the Eighth National Plan (2001-2005), efforts will continue to be undertaken to expedite housing development in order to meet the increasing demand of the population, particularly of the low/medium income cost houses. The policy thrusts in this period are to provide adequate, affordable and quality houses for all income groups with emphasis on the development of low and low medium cost income. Government also seeks to improve the delivery and quality of houses and fostering harmonious living among the various communities as well as trying to enhance the aesthetic aspects of life through greater participation in sports, recreation and cultural activities.

*Mid Term Review of the Eighth Malaysia Plan 2001-2005* (2004) was reviewing the achievement of Eighth Malaysia Plan in year 2003. **Table 1** below shows that, the achievement by the public sector was lower than the target mainly due to the delay in possession of sites as a result of difficulties in identifying suitable site and the resettlement of squatters (Mid Term Review of the Eighth Malaysia Plan 2001-2005, 2003). At the end of the review period in year 2003, about 112,118 units or 39.1 percent were completed by the public sector. Instead,

the private sector has completely exceeded the target which is 112.2 percent were completed. However, until the end of 2005 only 287,473 units of housing are expected to be completed for both type of housing developers. As a result, only 46.7 percent of the total 615,000 units of housing will be achieved during the Eighth Malaysia Plan (2001-2005).

**Table 1: Public and Private Sector Achievements during Mid Term Review of Eighth Malaysia Plan, 2001-2005**

Program	Target	Achievement 2001-2003
	Total	Total
<b>Public Sector</b>	<b>312,000</b>	<b>122,118 (39.1%)</b>
1. Public Low-cost Housing	175,000	45,567
2. Housing Rehabilitation	15,000	11,077
3. Sites & Services	1,000	480
4. Housing by Commercial Agencies	56,000	22,946
5. Housing by Land Schemes	3,000	2,155
6. Institutional Quarters & Staff Accommodation	62,000	39,893
<b>Private Sector</b>	<b>303,000</b>	<b>339,854 (112.2%)</b>
1. Private Developers	289,000	330,219
2. Cooperative Societies	14,000	9,635
<b>TOTAL</b>	<b>615,000</b>	<b>461,972</b>

(Source: Mid Term Review of Eighth Malaysia Plan, 2003)

## Human Rights to Adequate Housing

Housing rights are unmistakably part of human rights law. The right to adequate housing is embedded in the Universal Declaration of Human Rights 1948 and in major international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights. In 1996, world leaders reaffirmed the right to adequate housing when adopting the Habitat Agenda at the Second United Nations Conference on Human Settlements. These instruments and declarations have shaped a global social contract designed to ensure access to a secure home for all people in all countries (UN-HABITAT, 2002). In 1991, the United Nations Committee on Economic, Social and Cultural Rights identified seven aspects that form the integral component of human rights as follows:

- legal security of tenure;
- availability of service, material, facilities and infrastructure;
- affordability;
- habitability;
- accessibility;
- location; and
- cultural adequacy

In this regard, the United Nations has coordinated activities in the field of human settlements and as a focal point for the implementation of Habitat Agenda,

UN-HABITAT launched the Global Campaign for Secure Tenure 2000. The primary purpose of this campaign is to provide a voice to hundreds of millions of people living without adequate housing, including those living in slums and shacks, the homeless, and those living in temporary shelter (UN-HABITAT, 2002). Covenant on Economic, Social and Cultural Rights, UN-HABITAT also provided eleven distinct areas of legislation viewed by the committee as relevant to the human right to adequate housing as below:

- Legislation which gives substance to the right to housing in terms of defining the content of his right;
- Legislation such as housing acts, homeless person acts, municipal corporation acts etc;
- Legislation relevant to land use, land distribution, land allocation, land zoning, land ceilings, expropriations including provisions for community participation;
- Legislation concerning the rights of tenants to security of tenure, to protect from eviction, to housing finance and rent control (or subsidy), housing affordability, etc;
- Legislation concerning building codes, building regulations and standards and the provision of infrastructure;
- Legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected;
- Legislation prohibiting any form of eviction;
- Any legislative appeal or reform of existing laws which detract from the fulfillment of the right to housing;
- Legislation restricting speculation on housing or property; particularly when such speculation has a negative impact on the fulfillment of housing rights for all sectors of society;
- Legislative measures conferring legal title to those living in 'illegal sector'; and
- Legislation concerning environmental planning and health in housing and human settlements.

Paragraph 60 of the Habitat Agenda defined 'adequate shelter' as '*more than a roof over one's head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting; heating and ventilation; adequate basic infrastructure; such as water supply; sanitation and waste management facilities; suitable environmental quality and health related factors; and*

*adequate and accessible location with regard to work and basic facilities: all of which should be available at an affordable cost. Adequacy should be determined together with the people concerned, bearing in mind the prospect for gradual development. Adequacy often varies from country to country, since it depends on specific cultural, social, environmental and economic factors. Gender-specific and age-specific factors, such as the exposure of children and women to toxic substances, should be considered in this context'*

As mentioned earlier, affordability is one of the integral components of human rights. According to UN-HABITAT (2002), affordability is one of the essential elements of adequate housing. General Comment No.4 (paragraph 8.c) articulates the requirements that *'personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised...States Parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and level of housing'*.

In terms of quality, many experts defined quality as satisfying customers' expectations and anticipating their needs (Cooper and Press, 1995; Burati and Farington, 1987; Price, 1994). According to Morris in Djerbani (1998) the three areas of housing quality consists of *structural quality*, which refers primarily to durability of the shell; *service quality*, which is concerned with the kinds of equipment, facilities, and conveniences which the dwelling provides; and the *state of maintenance* and care taking. In the context of housing, some researchers have stated that the minimum of quality achievement can be defined by the concept of standardisation in any developed building (Atkinson, 1997; Leather, 1980; and Gwin and Seow, 2000). Moreover, at least the minimum physical standard is required for the appropriate level of building performance (Gwin and Seow, 2000). Eddie (2001), MacLennan and Williams (1990) noted that some given standard of housing should be given to the homebuyers. Needleman (1965) concluded his definition of housing needs as; *'... the extent to which the quantity and quality of existing accommodation falls short of that required to provide each household or person in the population, irrespective of ability to pay or particular preferences, with accommodation of a specified minimum standard'*.

*"The primary objective of the law on housing in Malaysia is to protect purchaser. Never ever lose sight of this primary objective of the law. Over the years, we will see a pendulum swing in the judicial response to the law on housing. Sometimes you will see that the Judiciary tends to favour developers; sometimes it tends to favour other parties. However, we must never ever lose sight of this*

*prime objective of the law, which is to protect purchasers..." Salleh Buang (2003).*

In Malaysia, Housing Development (Control and Licensing) Act.(Act 118) 1966, under Part VI, Section 16A refers a 'homebuyer' as *'a purchaser and includes a person who has subsequently purchased a housing accommodation from the first purchaser of the housing accommodation'*. Second interpretation, homebuyer also can be called as purchaser. Under Part I Preliminary Housing Development (Control and Licensing) Act (Act 118) 1966, the word 'purchaser' means *'any person who purchases housing accommodation or who has any dealing with a licensed developer in respect of the acquisition of housing accommodation'*. Part 1, Section 3 in the above act has also given the interpretation of housing accommodation as *'includes any building, tenement or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly for business premises but does not include an accommodation erected on any land designated for or approved for commercial development'*.

The seminar on economic, social and cultural rights, entitled "Accessibility to Basic Needs" held on 31 July 2003 guided by article 25 (1) of the Universal Declaration of Human Rights (UDHR) was organised by Human Rights Commission of Malaysia (SUHAKAM), claimed that the right to live in dignified life cannot be achieved unless all basic necessities of life are adequately and equitably available to 'everyone' in Malaysia. In addition, Navaratnam (2003) revealed that Malaysians appear to be facing a number of housing dilemmas. They include;

- the claim by housing developers that the housing industry is too highly regulated thereby unnecessary increasing costs of housing;
- the allegation that house buyers face numerous problems, including poor workmanship, the failure to rectify defect by errant developers and abandoned housing projects;
- the assertion that the lists of eligible buyers of low cost housing, which are managed by State authorities, are outdated and have led to inefficiencies in the distribution of such housing;
- concerns relating to the plight of squatters. This is a great concern because according to the Ministry of Housing and Local Government, there are approximately 114,944

units of squatters building with around 557,679 occupants in Malaysia; and

- the apparent need for a comprehensive national housing policy to be drafted after consultation with all stakeholders.

In Malaysia, there are between 50 and 60 pieces of legislation, guidelines, rules and regulations, by laws etc that govern the housing industry. It may vary from state to state, local councils, governmental and quasi governmental agencies (Loi, 2003). Several Acts and regulations might be considered in the development of housing provision and protecting housing rights for Malaysian as follows;

- Housing Development (Control and Licensing) Act 1966 (Act 118)
- Housing Development (Control and Licensing) Regulations 1989
- Housing Development (Housing Development Account) Regulations 1991
- Housing Development (Tribunal for Homebuyer Claims) Regulations 2002
- Housing Development (Compounding of Offences) Regulations 2002
- Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446)
- CIDB Standard Form of Contract for Building Works 2000
- Strata Titles Act 1985 (Act 318)
- Guidelines for Low Cost Housing Buyers Under Open Registration System
- Land Acquisition Act 1960 (Act 486) (Revised 1992)
- Uniform Building By-Laws Act 1984
- Street, Drainage and Building Act 1974 (Act 133)
- Town and Country Planning Act 1976 (Act 172)
- Federal Territory of Kuala Lumpur Land Rules 1995
- Local Government Act 1976 (Act 171)
- Malaysian Constitution, Schedule 9, Item 76(4) & 95(A)
- Fire Services Act 1988 (Act 341)
- National Land Code Act 56 of 1965
- National Land Code ( Penang and Malacca Titles) Act 1963 (Act 518)
- Sewerage Services Act 1993 (Act 508)
- Communications and Multimedia Act 1998 (Act 588)
- Continental Shelf Act 1966 (Act 83)
- Environmental Quality Act 1974 (Act 127)
- Electricity Supply Act 1990 (Act 447)

- Land and Mining Plans and Documents (Photographic Copies) Act 1950 (Act 233) (Revised 1980)
- Land Conservation Act 1960 (Act 385) (Revised 1989)
- Construction Industry Development Board, Act 1994 (Act 520)
- Mining Enactment (FMS Cap 137)
- Municipal Ordinance S.S. Cap 133
- National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966 (Act 398) (Revised 1989)
- Occupational Safety and Health Act 1994 (Act 514)
- Real Property Gains Tax Act 1976 (Act 169)
- Urban Development Authority Act (Act 46)
- Waters Act 1920 (Act 418) (Revised 1989)
- Waters Enactment FMS Cap 146

## Conclusion

Without adequate, affordable and quality housing, even the right to live and definitely the quality of life can be seriously jeopardized. For developing countries the right to housing is a very serious problem, as compared to developed countries. Malaysian right to housing is actually a human rights. Based on international standards on the right to adequate housing, it shows that seven components should be taken into account for purchaser which include legal security of tenure, availability of services, affordability, habitability, accessibility, locality and cultural adequacy. Historically, housing policies in Malaysia were always evolving and it seems that not all the policies have achieved their target in terms of completed units since colonial administration until the current Eighth National Plan (2001-2005). However, housing rights is an issue which is seldom touched either by lawyers specializing in housing law or any other party. The government and the policy makers need an excellent framework of powers and opportunities in order for housing policy to be implemented especially for the purchaser's protection as an ultimate user.

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