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Mandatory Health Impact Assessment in Malaysian Land Planning and Development Control System

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Abstract

The close link between land development activities to human health is undeniable. Indiscriminate land development activities and poorly planned built environment can lead to environmental degradation and subsequently adverse impact on public health. Polluted physical spaces can expose people to toxins or pollutants causing asthma and respiratory problems whilst improperly planned development without open space for recreation can influence lifestyles that contribute to diabetes, hypertension, coronary vascular disease for lack of physical movement. Public health advocates can help shape the design of cities and suburbs in ways that improve public health, but to do so effectively they need to contribute to the development planning and control process. This paper reviews the connection between public health and built environment with the aim of proposing health impact assessment procedure to be made a mandatory requirement for preparation of development plans and application for planning permission. The research relies on literature review, analysis of relevant statutes and governmental policy documents providing for policy directions for formulating the legal regulatory framework.

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1. Introduction

After achieving independence the Malaysian government has achieved tremendous growth in various sectors, but to a great extent it has undermined issues related to environmental pollution arising from

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indiscriminate land development. This is evidenced by the various research and reports on the ever increasing environmental problems in Malaysia especially landslides, flash floods loss of fertile land for agriculture to industries, and various types of industrial pollution. Land planning issues remained at the root of some of the most intractable public health problems, including the declining rates of physical activity resulting from automobile-dependent environments or the isolation of poor and minority communities in areas plagued by environmental pollutants, violent crime, and high rates of disease. Land use, community design, and transportation systems substantially impact local air quality, water quality and supply, traffic safety, physical activity and exposure to contaminated industries. Mental health and quality of life issues also are profoundly affected by factors ranging from the stress and difficulties of commuting to the presence or absence of natural areas and green spaces. There is a general realization that health specialists or planning departments cannot afford to operate in isolation from one another. Land development and exploitation of natural resources is an important aspect of human civilization and development, but it comes with a huge cost. Land development at micro or macro level will have an impact on the environment if the planning activities are carried out without taking into consideration the traffic impacts, location and siting of hazardous industries, effluent disposal, plot ratio and density of population (Ainul Jaria, 2008).

The World Health Organisation ('WHO') defines health as: "A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." Thus, public health is concerned with threats to the overall health of a community. The governments of countries developed public health policies and programs to promote public health, however, little did they realise the importance of integrating their initiatives with the land planning and development control policies and programmes. The health impact assessment ('HIA') is based on a socio-economic model of health, it recognizes that many non-health policies, programmes and projects can have an influence on a population's health, therefore, projects should be assessed for their health impact at their planning stage. Today HIA is internationally recognised and promoted as a way of considering health measures in consideration in all decision making.

Assessing health impacts from the environment, and correcting, controlling and preventing the impacts from being realized, is the main strategy and approach in environmental health. All these tasks are embodied in HIA for the purpose of ensuring the EIA report is complete. The way land is used can impact health determinants and health outcomes, yet decisions about land-use planning and regulation are often made without specific review or discussion of the potential health consequences. For example, public health professionals assert that development that does not enable physical activity (no sidewalks, dangerous intersections, poorly lighted areas), access to healthy food (no grocery stores, farmers' markets, or other convenient opportunities to obtain fresh food), or provide for clean air and water can reduce positive health outcomes and lead to increases in obesity, heart disease, asthma, and other preventable illnesses. The goal of HIA is to apply available research about health impacts to specific land-use questions to develop evidence-based recommendations to inform decision-making (Salkin P. and Ko, P. 2001).

HIA can promote public health objectives and improves communication between local governments and their associated health agencies, as HIA has its roots in assessments more familiar to planners, such as the environmental impact assessment. HIA tools may have a familiar look and feel for most planners and other key stakeholders involved in regional and local development. Furthermore, the participatory and evidence-based approaches and processes of an HIA framework may assist with plan making, project and proposal review, and regulatory ordinances in a manner that will inform, and is informed by, the specific health outcomes for a specific population (ibid).

2. Research Methodology

The research relies on literature review of secondary materials such as scholarly articles, and analysis of primary materials such as relevant statutes and governmental policy documents providing for policy directions for formulating the legal regulatory framework. Due to lack of access to data and constraint of time, the research is limited to the analysis of the legal framework regulating town and country planning system in Malaysia. A cursory comparative research is made to identify the relevance of HIA and land planning and development control system that promoted the developments in adopting of HIA as an assessment tool. This research does not intend to analyse the procedures and processes involved in conducting the HIA. The main objective of this research is to propose amendment to the Town and Country Planning act 1976 (Act 712) to make HIA a mandatory process in formulating planning policies, development plans and enforcing development control measures. Therefore, the research conducted though limited in scope, it is sufficient to enable the researcher make useful findings for purposes of making the recommendations to improve the Malaysian land planning and development control system.

3. Literature Review

The brief literature review conducted highlighted the lack of material on legal issues relating to HIA in Malaysia. There are some scholarly writings on the scientific aspects of HIA and some documents prepared for the Department of Environment. Research identified some comparative materials on HIA written by public health professionals and advocates in the United Kingdom, Canada, and Europe. These literatures articulated why and how HIA should be conducted and some stated that HIA has much in common with and builds on “environmental impact assessment” (Banken R. 1999). The following information relating to the HIA process is gathered from the literature review:

- Enhance recognition of societal determinants of health and of intersectoral responsibility for health among a broad audience, inside and outside the field of public health.
- Engage health professionals, policy makers, policy analysts, and affected communities in structured discussions about the public health implications of public and private sector activities, so as to inform strategic planning involving members of all of these groups.
- Encourage interdisciplinary work by health professionals, intersectoral work by policy makers and policy analysts, and creation of advocate-academic-policy initiatives to spur informed action to promote health and reduce health disparities, within and across diverse populations.
- Improve the environmental impact statement (EIS) development process by encouraging: (a) inclusion of health impacts on human populations as part of EIS, (b) public input from the start, rather than only at the end of the process, and (c) follow up assessment of the predictions of EIS (Gilpin A. 1995).
- Aid the further development of human right impact assessment by providing guidance regarding useful criteria, structures, and processes for conducting these assessments (UNHCR).
- Increase awareness of the need for transparency and accountability in the policy making process and of governmental action or inaction in addressing issues identified through HIA.

In summary, HIA has the potential to be a promising tool for promoting awareness of societal determinants of health and reducing social disparities in disease, disability, death, and wellbeing. However, considerable research and careful attention to the relevant processes and related weaknesses reveals that political will is necessary to ensure the efficient and effective implementation of the HIA especially within a developing economy like Malaysia.

The focus of this paper is mainly to propose the introduction of HIA to promote public health in the land planning and development control process. Thus, the literature review focussed on the Malaysian legal framework regulating land planning and development control to analyse the importance accorded to

health issues. The planning system in the Peninsular Malaysian states, is regulated by the Town and Country Planning Act 1976 (Act 172), and the rules made by the National Physical Planning Council and the State Authority and the standards and guidelines formulated by the Director General of Town and Country Planning to provide further guidance on matters related to town and country planning. It is subject to the supervisory powers of authorities including the National Physical Planning Council at the Federal level, the State Planning Committee at the state level and the local planning authority at the local government level. The basis of control of town and country planning is the development plans, which is aimed at regulating and controlling the use and development of land. The respective State Directors for Town and Country Planning formulates and keep under review the structure plans of general policy for their areas, and the other authorities maintain local plans of detailed policy for theirs. The machinery of control is planning permission, without which no development of land will be permitted. To date, the Town and Country Planning Act 1976 has been amended thrice to principally improve the quality of urban living and environment. The first amendment was in 1993 to ensure the incorporation of provisions on sewerage in the development planning process in line with the enactment of the Sewerage Services Act.

The second amendment in 1995 was made to incorporate various environmental protection measures in the land use planning process in order to promote sustainable development. This was principally to address the weaknesses in the town and country planning system that is believed to have culminated in the Highland Towers Tragedy on the 11th December 1993. Significantly, the amendment introduced the need to prepare a development proposal report for all land development activities to ensure environmental impacts are considered in the development planning process. The amendment introduced the Tree Preservation Order to promote preservation and protection of trees; provision for promoting preservation and improvement of physical environment; preservation of natural topography of an area; improvement of landscape; creation of open spaces; preservation and enhancement of heritage building and management of traffic for promoting quality and healthy urban living.

The last amendment in 2001 was made to promote and balance the sharing of powers between the Federal and State government in the process of land use and natural resources planning and environmental protection. The amendment provided for the establishment of the National Physical Planning Council chaired by the Honourable Prime Minister at the Federal government level. The Council is expected to coordinate development at the national level so as to promote sustainable development for the country. The amendment also introduced various measures to promote sustainable development and coordination of development at all levels of the government. The Council with the assistance from the Director General of Town and Country Planning and his department is expected to strengthen the role of the town and country planning process as a mechanism to promote sustainable development for the betterment of the nation including providing means for improving public health. The need to establish a regional planning unit was addressed and thus, the amendment incorporated the provision for establishing a regional planning committee for purposes of coordinating development within regions. This is an important development as it addresses effective utilisation of natural resources and prevents wastage and overlapping of developmental activities. Despite the amendments to the law to promote sustainable development via the land planning and development control system the desired protection has yet to be achieved.

4. Findings of the Research

The followings are some of the issues posing challenges to the administration system that has the effect of hindering the delivery of public health in the land planning and development control system in Malaysia:

- Lack of good quantitative data, particularly on the local level on the impact of land planning and development on the environment and direct impact on public health. National data is available, yet the local data would be more significant for making the case on the local level where actual decision is made. Also, an over-reliance on quantitative data might mean that other health problems of equal importance are not equally validated.
- Lack of cross-disciplinary education and collaboration. There is no one-stop supervisory agency that provides a meeting point for all parties involved in the land-use planning process to make a concerted and informed decision.
- Processes within the land planning and development control are compartmentalized. The recommendations made by all the various authorities involved in the process are often not taken into consideration since the ultimate decision making power resets with the planning authorities.
- Health is often too narrowly defined and it doesn't relate obesity, physical activity, asthma, and other related health problems to affordable housing, unsanitary living conditions etc. Health issues focus more on finding cure for illness without looking at the sources.
- Section 34A of the Environmental Quality Act, 1974, empowers the Minister of Natural Resources and Environment after due consultation, to prescribe any activity which may have significant environmental impact as a Prescribed Activity. The section further requires the Project Proponent of a Prescribed Activity to submit an EIA report to the Director General of Environmental Quality, before approval for the proposed activity is granted by the relevant approving authority. Activities subjected to EIA are prescribed under Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order, 1987. The EIA report must be in accordance with the guidelines issued by the DOE, contain an assessment of the impact of the Prescribed Activity on the environment, and detail the proposed measures that shall be instituted to prevent, reduce or control adverse impacts on the environment. Depending on the nature of the Prescribed Activity, the potential adverse impacts that are usually addressed in an EIA are air quality impacts, water quality impacts, impacts on flora and fauna, traffic impacts, noise impacts, soil erosion impacts, fire and explosion risks, socioeconomic impacts, and of course, health impacts. Each and every category of impacts or risks may require the submission of a specific focused assessment depending on the nature of the development projects undertaken.

5. Recommendations and Proposals for Enhancing Malaysian Land Planning and Development Control System

The following recommendations are proposed to the Malaysian land planning and development control system to promote public health in the course of developing the nation.

5.1. *Extending the role of health authority in decision making process*

Currently the health authority is merely given the role of endorsing the development plans prepared by the local planning authority. They assume a reactive role rather than a proactive role as they come in late into the review process, only being asked to make their recommendations. They are not actually involved in the decision making process. Thus, providing them the opportunity to be involved in the planning decision making process can bring about the changes as they can provide input on information related to

public health. The planning decision-making process is compartmentalised as such health authorities are brought in at the end of the reviewing process, and are thus unable to make the desired impact on the decision. The health authorities must be involved at all levels of planning decision making process. Health authorities can act as the catalysts and facilitators for change in the community. They can initiate community dialogue and use it to promote informed decision-making in relation to community design. Becoming involved early in the land use planning process allows them to play a proactive role. Public Health professionals need to move from working just on the implementation phase of community design to participating, as well, visioning and policy phase; becoming more proactive and involved early on in the process. They must improve the training and technical support for local public health agencies and other public health professionals on issues of health, the built environment and land use planning and community design processes.

5.2. Providing clear regulations to guide and empower statutory authority in implementing the HIA requirements

Regulations are required to provide both clear statutory authority for public health in the land-use planning processes and that assures that specific considerations are incorporated into the process. Local public health agencies need more education on how to increase their influence in the land use planning arena along with developing an understanding for urban and transportation design. Need for cross-educational initiatives amongst planners, public and environmental health officials, traffic engineers, community members and the leadership of professional organizations. National organizations can play a collaborating role between public health and land use planning or community design. Build local capacity and provide data and public health benchmarks for safe and health community design. Public Health professionals need to move from working just on the implementation phase of community design to participating as well as the visioning and policy phase; becoming more proactive and involved early on in the process. They should also improve the training and technical support for local public health agencies and other public health professionals on issues of health, the built environment and land use planning and community design processes.

5.3. Incorporate provision for requiring submission of HIA for development projects

It is proposed for the Town and Country Planning Act 1976 to be amended to insert provisions for making HIA a mandatory process for projects outlined in the Environmental Impact Assessment Order 1987 that are considered to have significant impact on the environment. The local authority in preparing the development plans should also be imposed with the requirement to conduct HIA to ensure the plans and policies are sustainable. The information obtained from an HIA can provide guidance on land-use decision making in a way that can promote and or improve the health of a given population and mitigate the negative effects of changes to the built environment. Planners who understand and utilize the methods or tools provided by an HIA can make important contributions to the health and sustainability of the communities they serve. Specifically, planners can

- educate public officials about the health implications of their decisions regarding growth of housing and commercial sector, overall development socio-economic, and integrated transportation;
- using information compiled during the course of the HIA, analyze local land use decisions related to transportation, safety, environment, and health in a manner that considers the diverse needs of the population, while evaluating the benefits, as appropriate, of mitigating factors such as planned unit development, mixed use development, changes to zoning laws and comprehensive plans, and crime prevention through environmental design;

- guide and or influence development and other land-use decisions in a positive manner while preserving and strengthening the communities through the creation of affordable housing opportunities, transportation options, pedestrian-safe roadways, and access to healthy foods; and
- utilize the different HIA tools available for planning and land-use decision making to determine when, and if, an HIA is appropriate.

5.4. Role of courts in protecting the rights of the public in enforcing requirements of HIA in land planning and development control system

It is undeniable that environmental degradation could eventually endanger the environment and public health of the present and the future generations. Therefore, some of the courts have interpreted the right to life provision in the Constitution in a diversified and advanced way so as to promote environmental protection. The courts in India, Pakistan and Bangladesh use various constitutional rights to protect the environment and promote protection of human rights. The judges are incorporating the right to healthy environment directly or indirectly into their judgments. Developments in conferring environmental rights in the Constitution can assure rights of interested citizens to seek relief for environmental harm. This right embedded once in the Constitution of a country will eliminate problems posed by the strict rules of standing that allow only those with sufficient interests to institute an action to demand relief for the damage to his self or his property. The *Rio Declaration* conferred rights on the people to protect the environment, by proclaiming that all human beings have the fundamental right to an environment adequate for their health and well beings. It is generally understood that although environmental rights may be derived from existing treaty rights such as the right to life, health, and property, international law has not incorporated an independent right to environmental quality (Birnie, PW. & Boyle, AE., 1992). Environmental rights include the right to be free from environmental conditions that threaten health and life itself (Aguilar, AF & Popovic, NAF, 1994).

Environmental rights can be conferred on citizens by statutory and constitutional provisions and this right can be invoked before a court of law in the event that it can be proven that the rights have been infringed. The citizens right to environmental rights can only be realised if the Courts are willing to enforce the requirement of HIA in the land planning and development control process in the event if the local authorities neglect their duties. The court can invoke its discretionary power by relying on the provision on protection of the right to life and personal liberty entrenched in article 5(1) Federal Constitution that provides, no person shall be deprived of his life or personal liberty save in accordance with law.” The provision of article 5(1) of the Federal Constitution can be read as guaranteeing natural justice where the citizens are guaranteed the right to life, which should encompass the right to a clean and healthy environment.

6. Conclusion

The link between the environment and public health can never be severed and history proves that attempts to sever the link has caused unnecessary problems to man’s well-being. Until very recently, environmental protection, public health and human rights were viewed as distinct areas of public policy by governmental institutions and non-governmental organizations alike at both the national and international levels. Human rights in the context of environment and sustainable development recognize that for human communities to survive, they must have an adequate and secure standard of living; they must be protected from harmful substances and unsafe products; they must learn to conserve and equitably share natural resources. Without environmental and public health policies in place, human rights for respect, dignity, equality, non-discrimination and the ability for the public to participate in

decisions that affect their lives cannot be achieved. The role of the local authorities and health officers in improving public health must not be taken lightly. The growing use of HIA to inform land-use decisions highlights the potential this tool has to promote positive health outcomes. The growing experience with HIA, through collaboration with the public health community, is yielding results that produce healthier and more sustainable communities. Malaysians can benefit from these developments by amending the Town and Country Planning Act 1976 (Act 172) to impose the submission of HIA report in applying for planning permission and use of HIA during the preparation of development plans at all levels.

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