Human Rights Violation in Providing Adequate Post-Disaster Housing in Malaysia: An Updated Review

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Abstract: An effective policy shall be able to assist an organization to achieve stipulated strategic objectives, typically to reduce disaster risks, strengthening the legislative framework, generate or distribute funds, utilise human resources and optimise available capacities without ignorance to international requirements. Malaysia is unique due to the set up of requirements that even higher in some cases such as minimum of 3 rooms is required in providing housing. This article reviews the level of compliance in implementing national and international requirements. It first offers a theoretical framework by comparing the human rights literature to comprehend relationship between infringements occurs and implementation of effective remedies. The objective is to identify the level of influence of these international and national housing policies while exploring Malaysian disaster situation which reveals the real capability of local organisations to implement laws and regulations. Malaysia is still in the phase of restructuring and reorganising the disaster system. Any input to the awareness about the progress is important. The outcomes from this article can be used to develop strategies and actions that include awareness raising and capacity building for enhancing enforcement of current legislation. The scope is limited to the analysis of regulatory compliance with the international and national policies particularly in providing emergency housing in Malaysia which covers the area that affected by disasters without any restriction to either permanent or temporary housing reconstruction projects.

Key words: Human Rights, Housing, Compliance, Disaster Management

INTRODUCTION

According to the Centre on Housing Rights and Evictions (COHRE), there was no information in the United Nation database on relevant legislative clauses of national housing rights legislation available from the United Nation country members of Malaysia, Thailand, Singapore, Myanmar and Brunei Darussalam (OHCHR, 2008). However, Article 8 by Clause (1) in the Constitution of Malaysia provides that ‘all persons are equal before the law and entitled to its equal protection’. Malaysians are all protected under present laws such as:

1. The Syaria Law (only applicable to Muslims);
2. The civil and criminal codes; land use, planning laws and regulations;

In some cases there are some inconsistencies of national laws with international human rights standards (Roosli et al., 2011a). For example, the considerations are most likely to the subject of culture, race and religious. According to Constitution of Malaysia, there are special clauses such as under Article 153 for the reservations and special provisions for the Malays and the Bumiputras of Sabah and Sarawak and under Article 149 that allows the Parliament to pass laws to suspend a person's fundamental rights if a person is a threat to national security.

Smith (1981) argues that housing policy can only be a part of overall policy formulation towards urbanisation and that its scope and achievements interact with other sectors. That is the main consideration in placing any housing programme to suit with other policies in any country. Housing is the matter of physical development to fit into the broader pattern of present national economic and social objectives by trying to rectify what is wrong with the housing ‘envelope’ such as reactionary (eliminate housing problem for cosmetic reasons), alien (the use of imported technologies and colonial legacies) and innovative (create, develop and manage within available limited resources). Thus, housing policy most commonly does not ‘stand alone’ (Smith, 1981).

In Malaysia, a comprehensive national housing policy is called National Housing Policy (DRN). This policy document was made available as an inspiration from other housing development guidelines such as the New Economic Policy and Vision Development Policy (Roosli et al., 2012). The main reference is the Malaysia Planning that is renewable every five years (Razali, 2001). Malaysia Planning comprises the components of
thematic areas to the right to adequate housing such as general policy statements on housing, legal security of tenure, protection against forced eviction, provision of affordable housing for the poor and compliance with national laws (e.g. Housing Developers Act; Environmental Quality Act 1974; Local Government Act 1976; Road, Drainage and Building Act 1974; Strata Title Act 1985; Uniform Building By-Laws; and Town and Country Planning Act 1976).

However, as argued by Barakat (2003) the policies and requirements for providing housing after a disaster should be defined clearly because housing is considered as an essential necessity for human being and provides a platform to livelihood and other survival opportunities. In Malaysia, the MNSC Directive 20 in the ‘Policy and Mechanism on National Disaster and Relief Management’ is the main instrument for providing housing for a post-disaster programme (Aini et al., 2005). The MNSC Directive 20 characterize as a framework and outlines on the actions of land management according to the level and complexity of the disaster. Quite simply, the MNSC Directive 20 is the standard operational procedure (SOP) for all departments involved in disaster management (Roosli et al., 2012).

The process of providing shelters to disaster victims started from temporary shelters (e.g. conversion of community hall, cabin and relatives’ accommodation), transitional housing and permanent housing (Foong et al., 2006). Still, emergency housing policy is not clearly defined in Malaysia and it is always controversial due to budgeting, quality of construction, procurement and sustainability issues in project developments. Considerations are not only shown to the international legislation rather to situational legislation (local demands) in providing emergency housing in Malaysia (Roosli et al., 2011b). For example, the requirements (according to national standards) are even higher than other international standards such as 3 bedrooms to separate different genders and different worship halls for different groups of people due to religious and cultural demands.

Emergency Housing:

Emergency housing or temporary accommodation refers to disaster-affected families’ provisional place to stay at the earlier stage of disaster until they get permanent housing (Corsellis et al., 2005). It is actually the period of physical, social and emotional recovery in rehabilitation phase. Unfortunately, rehabilitation is often overlooked by related agencies to the rights of disaster victims (Blaike et al., 1994). Blaike et al. (1994) suggested that there are two simple steps of approach (other than complicated) in providing emergency housing that are the approach to satisfy the individual family and then the community as a whole. These approaches acquire ambitious plans of community reconstruction, disaster victims’ participation, guided self-help construction and holistic measures of development (Lizarralde, 2000).

Anderson et al. (1998); Bhatt (1999) and Lizarralde (2000) note that housing is an industrialised product that is provided to the affected community. However most cases of post-disaster reconstruction revealed unachievable project missions and dissatisfaction results within the last three decades because disaster community exclude the fact that housing the victims after disaster is also the work of providing houses to the community as a whole (Lizarralde, 2000). The rights to housing however preserved in the international legislations to the rights of adequate housing.

‘Shelter after Disaster: Guidelines for Assistance’ is the first guide on shelter and housing inspired from diverse 1970s disasters experience (UN/OCHA, 2007). Unfortunately, very limited supplementary work has been done in order to enhance the use and content (UN/OCHA, 2006). The ‘transitional settlement: displaced populations’ draft was then produced as a result from the revised version between 2002 and 2004 in order to inspire new ideas in risk reduction response (Corsellis et al., 2005). According to this guide, the term ‘emergency management’ typically means a major focus on the preparedness and response phases of disasters.

Trends in housing policy are very similar in the developing countries after a disaster strikes (Smith, 1981). The trends in many reconstruction programmes in the third world countries however continuously fail to help poor communities recover from destruction (Lizarralde et al., 2001). Globally, most reconstruction programmes implemented by important institutions in disaster-relief have produced insufficient results to respond to the demand of post-disaster housing and development in the long term. As mentioned by Lizarralde (2001), most frequent paradigms used in post-disaster reconstruction strategies are the local community and limited technology-based approaches. In the last fifty years, these strategies have led to a variety of organisational and technical responses and have been applied in four main levels that consist of the reconstruction policies, the reconstruction strategy, the project for reconstruction and the output per se (Lizarralde et al., 2001).

Thus, Bhatt (1999) argues that on site services and projects were condemned due to the possibility of them being ‘rubber-stamped,’ that is the development being copied exactly or nearly the same from other developments without appropriate consideration to the new adaptable situation (e.g. repetition, inappropriate distribution of private and public spaces and overcrowded houses). These types of services also led to failure in reconstruction programmes especially in the aspects of technical, architectural design, organisational design, logistics and administration because lack of local understandings.
Lizarralde et al. (2001) suggested that project planner should put into consideration the organisational internal aspects (e.g. funding, physical space, qualification, information presentation, resources available) in delivering any reconstruction projects. Multiplicity in the provision of housing, that is to say, in the sharing of responsibilities and the organisational arrangements between the participants involved in housing initiatives. Keivani et al. (2001) describes that participants are the public, private, private unofficial sector or the community base organisations. In the general performance, procurement has a direct influence in reconstruction progress (Mohsini et al., 1992; Katsanis et al., 1997). The arrangement of organisational and responsibilities distribution must then consider the aspects of local participation in decision-making in the building process in housing provision (Lizarralde, 2000).

**Emergency Housing in Malaysia:**

In the land development process in Malaysia as shown in Diagram 1, related written and unwritten rules (regulators’ behavior and skill) on land and property may initiate constraints on agents’ decisions to undertake land development (Omar, 2002). Besides the positive effect of planning and controlling, environmental requirements (e.g. soil condition, pollution and secondary hazards) may lengthen the duration of the land development process.

![Diagram 1: Land Development Process in Malaysia (Tan, 2001)](image)

Foong et al. (2006) notes that the challenge in rehabilitation and reconstruction projects for natural disaster stricken areas have always posed questions to the physical, social and financial aspects of the disaster victims. She added that livelihoods of the affected community could be better restored with appropriate measures undertaken by the respective governments in executing rehabilitation and reconstruction projects. Thus, enhancement (rectification) of socio-economic rules and administrative frameworks in Malaysia is a must from time to time to suit the latest requirements in the process of land development and the needs from disaster victims (Abdul-Aziz, 2007).

Foong et al. (2006) also describes that the Tsunami in 2004 was the first time in the history of Malaysia that its government was forced to manage such a great disaster and might be the benchmark to rehabilitation and reconstruction. Emergency evacuation and relocation plans were constructed quickly. In Kota Kuala Muda, construction of temporary longhouses as shown in Figure 1 and rehabilitation works started three weeks after the disaster and was completed within two weeks.
One hundred and four affected families whose houses were no longer inhabitable due to the Tsunami in thirteen fishing villages were relocated to these temporary longhouses before being moved to their permanent housing. One hundred and twenty units of temporary hybrid (e.g. timber and steel) longhouses were constructed approximately one kilometer inland from the affected shore. Each unit of the temporary longhouses is approximately 70m² in floor area, with three bedrooms, a living/dining room, a kitchen and two bathrooms. Ninety-six tsunami affected families whose houses were totally destroyed and eight affected families whose houses were being repaired were relocated to these units. The remaining units are used as management office, community room, prayer room and room for storage. Proposals for developing permanent housing (i.e. a New Town Development Plan) are being carried out in collaboration with a sole developer, The National Housing Corporation (SPNB), established under the Ministry of Finance of Malaysia as shown in Figure 2.
However, the Tsunami affected community in Kota Kuala Muda shows that they were more concerned about their financial and social recovery compared to physical recovery (Foong et al., 2006). A majority of them are still struggling for their livelihoods after the disaster despite showing a high satisfaction level with the provision of temporary longhouses and the new permanent housing. Foong et al. (2006) concludes that rehabilitation measures for immediate relief have failed to recognize that the major cause of the slow progress in restoration is due to the inability of the disaster victims to secure their livelihoods.

**The Human Rights Violation in Disaster Scene:**

As stated by the ‘International Federation of Red Cross and Red Crescent Societies’ (IFRC) in the ‘Article 25 of the United Nations Universal Declaration of Human Rights’, “every world citizen has the rights to health and well being and the rights to security in the event of disaster under such circumstances beyond (his or her) control” (McEntire, 1997, p. 222). Any action that leads to the ineffectiveness of disaster response is considered as a violation according to this international norm. However, the support from major dominant players in the world within the United Nations Security Council always leads to frustration due to different ideological battles and veto powers [e.g. in the absence of a right decision to solve the Cold War caused millions of live (Borton, 1993) and domination in deciding the United Nations Security Council Resolution, 2002 (Richardson, 2003)].

The studies in disaster management show that human rights are often exploited more during calamities (Conway, 2002). Research shows that many political leaders refuse to admit that their nation has been affected by disaster (Portsea, 1992). Penetrations by the international community in humanitarian works depend on a willingness of the nation’s governments to accept assistance in order to save face and avoid displaying their weaknesses and inabilities to neighbouring countries. Then, even if aid is received after a calamity, nations may violate the rights of their citizens by distributing relief preferentially (Bommer et al., 1987). Often the pressure of time, limited contingency budget and people’s needs counteract the demands of quality and suitability (e.g. amenities and service provided) (Morago, 2005) that also contribute to rights abuse.

Moreover, in order to avoid violence and domestic political conflicts, masses often migrate into neighbouring countries that are not capable of sustaining large quantities of refugees. At this stage, rights abuses among disaster victims are always expected due to limited availability of resources from international communities, pressure from the new country to which refugees migrated and large amounts of refugees that increase challenges to humanitarian workers. Thus, it is obvious why refugees are considered a major weakness of the international relief community (McEntire, 1997). Thus, there is no assurance that disaster victims are protected by international law in disaster scene. It depends much on national commitment and capability to implement comprehensive disaster planning strategies to protect the rights of their own people.

**The Human Rights Violation to Adequate Housing:**

Every man, woman and child has the right to highest possible standard of health and also has the right to access to shelter. States shall adopt necessary measures for the protection of health of the people and also by providing adequate shelter to them. The human right to housing is explicitly set out in the ‘Universal Declaration on Human Rights (1948)’, ‘International Covenant on Civil and Political Rights (1966)’, ‘International Convention Relating to the Status of Refugees (1951)’, ‘International Convention on the Elimination of All Forms of Racial Discrimination (1965)’ and ‘International Labour Organisation Convention No. 117 Concerning Social Policy (Basic Aims and Standards) (1962)’. Governments or states (UN state members) are obligated to these international provisions of human rights law that guarantee everyone the human right to adequate housing. Commitments from any states must include quotations from the UN Committee of International Covenant on Economic, Social and Cultural Rights (ICESCR) (entry into force 3 January 1976) states that:

“The States Parties to...[the International Covenant on Economic, Social and Cultural Rights] recognise the right of everyone to an adequate standard of living for himself and his family, including...housing...Each State Party to the present Covenant undertakes to take steps...with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” [ICESCR, Articles 11(1) and 2(1)].

The United Nations Committee on Economic, Social and Cultural Rights is assigned by the international community with monitoring compliance with the International Covenant on Economic, Social and Cultural Rights. It is also assigned to provide the sole authoritative interpretative pronouncements as to the content of the covenant. Despite extensive recognition of the human right to adequate housing, according to the 1996 report, the UN Centre for Human Settlements (HABITAT) estimates that over 1 billion people worldwide live in inadequate housing and 100 million are homeless, that includes those in housing that is insecure or temporary and often the product of poor construction quality. For example squatters who have found accommodation by illegally occupying someone else’s home or land and are under constant threat of eviction; those living in refugee camps whose home have been destroyed; and those living in temporary shelter for example the 250,000 pavement dwellers in Bombay (UN-Habitat, 1996).
In the UN-HABITAT Agenda II at the Istanbul Declaration on Human Settlements (1996), the United Nations has defined ‘shelter’ as providing adequate houses that should protect the people from the outside hazard, provide liveable space, victims have a rest and storage space, privacy and emotional security (UN-HABITAT, 1996). Adequate shelter should have:

“…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: should be available at an affordable cost.” (UN-HABITAT, 1996, p. 38).

Thus,

“…in shelter and urban development and management policies, particular attention should be given to the needs and participation of indigenous people. These policies should fully respect their identity and culture and provide an appropriate environment that enables them to participate in political, social and economic life.” (UN-HABITAT, 2003, p. 4).

Uvin et al. (2003) argued that all of these declarations aim to represent a dramatic rethinking of the functions of justice in a post-disaster society, stressing community participation over existing states’ legal procedure and request for restorative justice. “All partners of the Habitat Agenda, including local authorities, the private sector and communities, should regularly monitor and evaluate their own performances in the implementation of the Habitat Agenda through the status of project implementation. All of these partners’ capabilities, should be strengthened and assisted at all levels, especially the local level” (UN-HABITAT, 2003, p. 108). However, the international community has rarely invested seriously in justice and human rights as part of an attempt to restore peace and promote democracy and understanding in post-disaster recovery period (Uvin et al., 2003).

Conclusion:

There has been too great an emphasis on inputs, rather than outcome and impact in post-disaster recovery. The monitoring/reporting formats used by all the agencies concentrated mostly on physical distribution. As a result, disaster survivors do not get what they deserve and expect; what is accomplished is rather what the government wanted. The survivors’ development cannot be tracked systematically due to lack of interaction with government. Thus, compliance with regulation is not prescriptively based on input. Planners in government should also look into the fact that disaster is not the only cause of disaster victims; human actions, especially by those who have legal control over disaster planning are also to blame.

Malaysia is unique and different from other developing countries because Malaysian has to consider cultural and religious matters. Tsunami victims in Kota Kuala Muda, Malaysia have shown a high level of satisfaction with the provision of temporary longhouses provided by the government because they were provided with the minimum 3 bedrooms to separate different genders and age groups; and there were also shared community space, storage and prayer room. The requirements (according to national standards) are even higher than other international standards such as 3 bedrooms to separate different genders and different worship halls for different groups of people due to religious and cultural demands.

The process of regulatory compliance takes place through strict obedience to the law. Traditionally in Malaysia, actors will generally comply with Ministerial Directives. It would be far from ideal if regulatory compliance with the MNSC Directive 20 existed only because the Prime Minister’s Department regulations required them to do so. It would be catastrophic to the recovery development of disaster victims if they were viewed by actors as an annoyance and burden. The Prime Minister’s Department receives and studies reports concerning the developments in regulatory compliance in other countries of the world. It details these proceedings and makes an adjustment to the Malaysian context. Malaysia is still in the phase of restructuring, reorganising the National Disaster Management Mechanism to fit in the HFA by taking actions such as monitoring disaster risks, building safety culture at all private and public levels and strengthening disaster preparedness in order to ensure that disaster risk reduction is a national and local priority with a strong institutional basis for implementation.

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