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# Voices From Asia For A Just and Equitable World

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# **THE 4<sup>th</sup> ASIAN LAW INSTITUTE (ASLI) CONFERENCE**

## ***“VOICES FROM ASIA FOR A JUST AND EQUITABLE WORLD”***

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## **SQUATTERS AND HOUSING ISSUES IN URBAN DEVELOPMENT: A MALAYSIAN LEGAL PERSPECTIVE**

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### *Abstract*

*In the process of urban planning there should be a proper system of land management. There are a few primary areas which need to be considered in the urban land management system such as the aspect of development control, land tenure, land acquisition, land administration, land taxation and many others. In this paper a study will be made on the issue of squatters and housing as this is also related to urban land management. Being a developing country undoubtedly Malaysia is facing a crisis of urban squatters which has become a challenge for the local authorities as well as the federal government. This paper will address this issue by examining the Malaysian housing policy towards providing quality and affordable housing for the lower income group in urban areas. Discussion on this topic will relate to the application of various laws and regulations pertaining to local authorities, planning and land law. It is the aim of this paper to present the legal issues relating to squatters and their appeal for equitable rights and opportunities for housing. This paper also seeks to present the approaches which have been used by the Malaysian government, especially the states of Selangor and the Federal Territory of Kuala Lumpur to achieve the objective of "zero squatters."*

### **1. Introduction**

Issues on squatters are still a relevant agenda for development in Malaysia. The squatter problem is still prevalent in certain states such as Selangor, Penang and the Federal territory of Kuala Lumpur. Despite many urban development programmes being introduced, issues such as relocating squatters to new areas, compensation, distribution of low cost houses, the criteria for the selection for low cost, affordable housing and contribution of government and private sectors in the development of low cost housing for the poor are always relevant in the agenda of urban development. There is an urgent need to address squatters' issues fairly and equitably as they may also be part of the underprivileged masses where the government has a major role to play in addressing their problems.

At present, Malaysia is working towards realising the vision of becoming a developed country by 2020. In pursuit of this purpose, development of urban areas has become the main agenda for development. Among other things, housing is one of the basic issues which need to be addressed. Despite many efforts, the main challenge is to ensure that all peoples, irrespective of the income group level will be able to own a house or a place of shelter. Among the unfortunate are the squatters in the urban areas. Rapid development sometimes ignores the presence of the squatters. Admittedly, squatters provide cheap labour to the industries, but at the same time, they are also perceived as an obstacle for development. In giving way for development, the government has in many occasions requested squatters to vacate the land they are illegally occupying and many a time, the squatters were reluctant or refused to move out from the land, and instead, claiming that they have equitable or even proprietary interest over the land. This persistent attitude has certainly delayed the projects planned by the government or the private sectors. Though the government disagrees with certain actions initiated by the squatters, the authorities have carefully looked into this problem towards ensuring that squatters will enjoy an equal access to proper housing. The number of squatters in the state of Selangor and Kuala Lumpur are shown in Table 1 and 2 below:

**Table 1: Number of Squatters in the State of Selangor**

Year	Number of Household
2005	49,000
2006	47,706
January 2007	1,422

Source: Setingan Sifar Hampir Jadi Realiti, Berita Harian, 22hb Januari, 2007.

Table 2: Number of Squatters in Kuala Lumpur

Year	Number of Household
1990	36,168
1992	34,363
1998	29,970
2003	25,000

Source: Mohd.Razali Agus *Persetingganan Di Malaysia : Penduduk Dan Penempatan Semula*, 1<sup>st</sup>. Ed., Penerbit Universiti Malaya, Kuala Lumpur, 2005.

The data shows that there is a sudden reduction in the number of squatters in Selangor from 2005-2007 and Kuala Lumpur from 1990-2003. This may be associated to the Zero Squatters Policy undertaken by both states. Under this policy, the states targeted the year 2005 as Zero Squatters year. Though the target was not achieved in 2005 but the governments have made serious efforts to clear squatters' areas by the end of 2006. In Selangor, this is in conjunction with the aim to make Selangor a Developed State in 2006. In Kuala Lumpur though, the objective was not fully achieved but to a certain extent, the government has managed to reduce the number of squatters in Kuala Lumpur. This has been done through various housing schemes which specially cater to the needs of the low income group.

## 2. A Brief View on the Historical Background of Squatting in Kuala Lumpur/Selangor

The history of the growth of squatter settlements in Kuala Lumpur can be divided into two historical periods; first, pre independence and second, post independence. Prior to the intervention of the colonial powers in Malaya, the system of land ownership was governed by customary laws. The customary land law is very much influenced by Islamic principles. In Islam proprietary rights over the land would subsist as long as the said land is cultivated and occupied. One of the principles of Islamic land law is '*ihya al mawat*' where land is not owned by anybody, unoccupied land known as 'dead land' may be cultivated and the cultivator would be entitled to possess it. The cultivator was required to pay '*ushr*' to the state. This was practiced during the Caliphate of Umar where *ushr* is to be paid as tax. This concept however was replaced by a new system brought in by the British known as the Deed system where land belonged to the Crown. The same idea was introduced in Malaysia where land now belongs to the state.<sup>1</sup> Ownership of land is only recognised through land registration. Hence, whoever occupies state land without authorisation is considered as an illegal occupier and may be prosecuted.<sup>2</sup>

Earlier, Peninsular Malaysia was regarded as a land of bounty by the British. Thus, during their occupation, their primary concern was to exploit the natural wealth and resources of the country and the economic policy was geared principally towards capitalist development of tin-mining and export-oriented agricultural industries. To achieve this purpose, the British brought in labourers from China and India to work at the tin mines and rubber estates respectively but without proper provision for their housing. Simultaneously, under the new land tenure system, building and land use regulations were introduced. Thus there was rapid increase of the population in the new town as well as the implementation of those new regulations can be considered as part of the causes of the emergence of squatter settlements.<sup>3</sup>

The global economic depression in the 1920's was also a contributing factor for the increase of squatter settlements. During the Depression, wages fell drastically and employment in the agricultural sector fell from 258,720 in 1920 to 125,600 in 1932. In the mining sector, as capital intensive methods replaced labour intensive methods, the number of labourers shrank drastically despite the fact that production capacity and the trend of production were rising. Employment fell from 230,000 in 1907 to 58,000 in 1938 despite an increase in production and profits.<sup>4</sup> The mining sector also experienced severe labour reductions, principally due to a switch to more capital intensive methods of mining. Many of the retrenched or displaced workers ended up squatting on vacant rural land, upon which they subsist and grew cash crops. It is in this context that the origins of some of the earliest Indians and Chinese squatter settlements in Malaysia are found. Some of these early rural squatters were also located on the outskirts of existing urban centers with many being subsequently incorporated into the city.<sup>5</sup>

The other reason for the increase of the number of squatter settlements was due to the Second World (1939-1945). At this time, the Malayan economy was made up solely of tin and rubber industries. When import of necessary

<sup>1</sup> See Section 40 of the National Land Code, 1965, Article 95B and Article 74(4)(2) and List II of the Malaysian Federal Constitution, 1957.

<sup>2</sup> Section 425 of the National Land Code, 1965.

<sup>3</sup> Caldwell, M., "War, BOOM and Depression", in Muhammad Amin and Caldwell, M. (eds.), *Malaya: The Making of a Neo-Colony*, Nottingham, Spokesman, 1973, p. 38.

<sup>4</sup> *Ibid.*

<sup>5</sup> Johnstone, M. Access to Urban Housing in Peninsular Malaysia: Social and Spatial Distortions in a Peripheral Economy, Ph.D Thesis, Australian National University, Canberra, 1979, p. 189.

foodstuffs (which were not being produced in significant amounts in Malaya) was seriously threatened because of the war, British authorities (as they had done during the Depression) began to encourage vigorously the cultivation of food crops throughout the country, even by squatters in urban areas like Kuala Lumpur.<sup>6</sup> Meanwhile during the Japanese army occupation in urban areas, many urban dwellers relocated voluntarily or involuntarily into the rural areas to grow food crops. This was variously due to fear of the Japanese army, a radical decline in urban economy resulting from the occupation and to the necessity of producing food locally because imports of foodstuffs and exports of tin and rubber had come to a standstill. Records show that during the Japanese occupation (1942-1945) the number of urban squatters in Kuala Lumpur was higher than that for the years 1939 to 1942.<sup>7</sup> Between 1947 and 1951 an estimated 10,000 squatter houses were built within the town limits providing accommodations for some 85,000 people. In order to deal with the problem of providing suitable land for squatters and for improperly sited industries that had arisen in Kuala Lumpur from the time of the Japanese occupation, a scheme was designed for the establishment of a new township in Petaling Jaya, Selangor.<sup>8</sup>

In 1948, Chinese squatters were suspected of collaboration with the Malayan Communist Party which was engaged in an insurrection against the Government of Malaya. A plan for squatter settlements was worked out and in order to facilitate the implementation of the plan the first survey of squatters was carried out in the late forties and early fifties. As a result New Villages were created to resettle Chinese rural squatters including several new villages in Kuala Lumpur city areas such as Jinjang, Ayer Panas and Dato' Keramat. Even though these new villages created legal settlements, it attracted many other settlers including squatters to join them.<sup>9</sup>

After Independence, the numbers of squatters increased, particularly in Kuala Lumpur due to the rapid urbanisation and industrialisation. The 13<sup>th</sup> May 1969 riots and the creation of the New Economic Policy in 1970 can be considered as a turning point for the massive migration of Malays to Kuala Lumpur. Under this new policy Malays were encouraged to migrate to Kuala Lumpur to balance the racial population and to be involved in economic activities. Most of those Malays however were poor, uneducated and landless. As a result, they became squatters.<sup>10</sup> In other words the "invitation" for the migration has not been well planned by the government in which there was no proper policy to provide them with shelter. Consequently from time to time, the number of squatter settlements in Kuala Lumpur increased despite the threat of law enforcement which do not recognise any right of adverse possession.<sup>11</sup>

From the above discussions, it is observed that the emergence of squatter settlements in Kuala Lumpur during the pre Independence period was due to the policy of the British colonials. Their policy seemed to tolerate and encouraged squatters; for instance, they encouraged squatters to produce food, especially after the war.<sup>12</sup> As a result, the locals who were landless involved in the agricultural activities on the available land, either on state land or private land. As Friel-Simon and Khoo Kay Kim<sup>13</sup> observed, the British officials did not laid down a suitable policy preparing for the emerging urban populations, particularly the need of the lower income brackets. It means that a problem of squatting has not been tackled from the beginning. The establishment of Housing Trust<sup>14</sup> in 1949 failed to settle problems of housing for squatters. The report of the committee in 1949 had classified the squatters' dwellings hovels where it lacked proper sanitation and constituted a grave threat to health of occupation and the whole township.<sup>15</sup>

Nowadays, there are many reasons for squatters to still occupying state land or other private individual's land. The current reasons may differ from the reasons available during the British period. Presently, the reasons are varies. It may be due to economic factor such as poverty, thus squatters are not afforded to acquire land or housing; social factors such as legal or illegal immigrants; urbanisation or political factors such as encouragements or promises from the

<sup>6</sup> Friel-Simon and Khoo Kay Kim, *The Squatters as a Problem to Urban Development- A Historical Perspective*, paper presented at the 3<sup>rd</sup> Convention Malaysian Economic Association, Penang, August 21-24<sup>th</sup> 1976, p. 6.

<sup>7</sup> *Ibid.*

<sup>8</sup> Pushpa Lela Ramanujam, *The Physical Economic and Social Implications in the Resettlements of Squatters: A Case Study in Kuala Lumpur*, Thesis. Degree of Master of Arts in Geography, University of Malaya, Kuala Lumpur, 1989, p. 23.

<sup>9</sup> Azizah Kassim, *Squatters in West Malaysia With Special Reference to the Malays in Kuala Lumpur*, Occasional paper No. 5, Department of Anthropology and Sociology, University of Malaya, Kuala Lumpur. 1982, p. 11.

<sup>10</sup> Friel-Simon and Khoo Kay Kim, *The Squatter as a Problem to Urban Development-A Historical Perspective*, pp. 5-10.

<sup>11</sup> Section 48 of the NLC. See also; *Kabra Holdings Sdn Bhd v Ahmad bin Sahlan & 64 Ors & Ors Person Unknown* [1992] 2 CLJ 817.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Housing Trust had been established during the British rule. Its establishment was mooted through the White Paper No. 70 of 1949. It had been a power to lease, purchase and hold land and buildings, acquire land in a accordance with existing laws and to borrow and raise capital or make loans, able to require the owners of vacant lands in appropriate cases to develop them or in default to pay a special development rate which would accrue to the trust.

<sup>15</sup> Draft of the Development Plan of the Federation of Malays, 1950-1952, p. 43.

political leaders. Looking at the various causes for squatting therefore, it is rather unjust to simply categorise all squatters as squatters per se or squatters simpliciter. It is submitted that there should be a clear category of squatters and the proper categorisation would fairly determine the right solutions for them. Similarly it is important to identify whether they are locals or immigrants because it will be related to type of solutions or actions that need to be taken. It was reported in 2002 that 14 per cent of total number of squatters were foreign immigrants<sup>16</sup> and majority of them are from Indonesia.

The reports and studies about squatters reveal that squatters prefer to remain in squatter settlements as some of them can actually make money by renting out portion or their houses to others. Some of them actually afford to stay in better houses but chose to be in squatter areas without the need to rent at other places. Furthermore, though initially the occupations are only on a temporary basis, the accessibility to the working place and high living standard has caused their stay to be longer and indefinite.

### 3. Social Impediment in Squatters Resettlement

There are many reasons that can be associated with squatters' reluctance or even refuse to move out from their settlements. Part of it may be linked to lack of job opportunities in the resettlement areas, distance to working place, family rearrangement (for instance to send children to new schools), accessibility of public transports and also new environment in the new areas. In fact, all of the reasons are the major hurdle in the government's attempts to peacefully remove squatters. Moreover there are a few squatters who feel that there is no surety of fulfillment of the promises made by the government, thus hampering them from giving their trust to the promises. In most cases, new accommodations are smaller and cannot accommodate their families. Some of them used to live in a single storey wooden bungalow with proper ventilation though lack of other facilities or amenities and after resettlement programme, they have to stay in public houses or low-cost houses which are comparatively smaller. (Due to an increase of land value and high cost of construction, the government now opts for multi-storey low-cost flats rather than single or double-storey terraced low cost houses.)

Smaller sizes of land and smaller house at the temporary shelter or low cost houses have agitated the squatters' frustration. Lack of facilities leads to lack of activities. To a certain extent, this has caused social problems, unhealthy environment, unsuitable for child bringing environment and according to a study conducted in Penang, the children from resettlement areas have poorly performed in school.<sup>17</sup>

Resettlement of squatters may cause an increase of living expenses for majority of squatters. As a result, this may pressure them and make them feel unsecured. Previously, they were complacent with a no rental stay and sometimes they are free to rent out the house to anybody they like. The worst part is that, they sometimes received support from certain quarters such as from politicians, non-governmental organisation (which is commonly known as NGO) and government agencies either in the form of promises, facilities or even moral and legal support. There was a study which revealed that squatters in most of the cases obtained support from the politician to ensure a low cost house be allocated to them before agreeing to move from the development site. In some cases, they do not want to be divorced from their previous neighbours or former voting area,<sup>18</sup> thus due consideration is given to them before agreeing to move from the development site.<sup>19</sup>

Due to their unstable income and low salary, they find it very difficult to obtain financial assistance especially from the financial institutions. Thus, they loss hope of getting new settlements and decided to remain in the squatter settlements. On the other hand, some of them are refused to pay rent for transit houses<sup>20</sup> or objected to hire-purchase term in acquiring low-cost houses. They believed that they are entitled for a new house without any cost.

Apart from the above scenarios there are a few squatters who let out their low cost units which have been allotted to them and become squatters again in another areas. Due to strategic location of the development, the investment opportunity to let out the units is lucrative. The study has found that rental of low cost units if rented out to multi-tenants can easily doubled than the borrowing amount paid to serve the housing loans. This is perceived as a good

<sup>16</sup> [http://www.utusan.com.my/utusan/archieve.asp?y=2002&dt=0716&pub=utusan\\_express&sec=parliament&pg=pt\\_03.htm&arc=hive](http://www.utusan.com.my/utusan/archieve.asp?y=2002&dt=0716&pub=utusan_express&sec=parliament&pg=pt_03.htm&arc=hive) (16<sup>th</sup> July 2002)

<sup>17</sup> Siti Nabiha Abdul Khalid, *Housing Affordability and Sustainability: A Case Study Evaluation of the Socio-Economic Impacts of Community Relocation*, paper presented at International Conference on Sustainable Housing 2006, p. 291 (286-293).

<sup>18</sup>In the business partnership venture between the state and the market in constructing the low cost units (privatization programme) in Kuala Lumpur, the study have revealed that there were interference from the politicians in terms of determining the site for development of low cost housing as well as in the decision making in relation to determining the eligible purchasers of low cost housing unit. See Wan Nor Azriyati Wan Abd Aziz & Nor Rosly Hanif, *Business Partnership in Meeting Housing Needs of the Urban Poor*, *GBER* Vol. 5 No. 2, pp. 39-48.

<sup>19</sup> Wan Nor Azriyati Wan Abd Aziz & Nor Rosly Hanif, *Business Partnership in Meeting Housing Needs of the Urban Poor*, *GBER* Vol. 5 No. 2, p. 46.

<sup>20</sup> Transit houses or also commonly known as long houses refer to temporary accommodations that are required to be provided by developers for squatters who are staying on the land that are going to be developed by that particular developers.

source of investment that lured the purchasers to move out rather than occupying their own houses.<sup>21</sup> For instance, from the study conducted at Kampung Kerinci Pantai, an area which is about 5 kilometers due south of Kuala Lumpur city centre, it was revealed that only 2/3 of the occupiers were the registered proprietors, whilst the balance were tenants.<sup>22</sup> Besides that in Kuala Lumpur in the process allocating the low cost units that is undertaken by Management Department of the City Hall of Kuala Lumpur via the Open Registration System, priority is given to squatters involved on project site regardless of their income status. A key low cost housing in this respect stated that as far as squatters are concerned, they will be guaranteed a unit of low cost housing even if they do not fulfill the criteria as low cost housing purchasers.<sup>23</sup> This policy can be one of the contributing factors why in certain areas; there is a problem of inadequacy of low cost units. It means that there are buyers who are actually not eligible at all to acquire low cost units, but yet be given a priority to purchase it.

Despite the above argument, the Malaysian government has never neglected the welfare of squatters. Though, the government is reluctant to recognise the squatters' right, nevertheless, there are direct and indirect means and efforts made to assist squatters. In relation to this, all policies and programmes must be looked as a whole. Currently there is no specific programme aimed merely for squatters. However, if they fall under the category of poor people and qualify in terms of income requirement to acquire low-cost houses, they may enjoy the same rights irrespective whether they are staying within squatter settlements or not.

#### 4. Legislation and Squatters

Under the National Land Code 1965 (the Code) which is based on the Torrens system, registration is everything.<sup>24</sup> Mere occupation of land without proper registration would not be recognised even though such occupation occurred since time immemorial.<sup>25</sup> It is clearly stated in the Code that it is an offence to occupy or to erect any building or run any activities on state land, reserved land or mining land without lawful authorisation.<sup>26</sup> The Code does not provide the requirement of notice before evicting the occupier or demolishing the building or destroying of any crops on the said land.<sup>27</sup> The person squatting on the land also can be arrested without warrant of arrest<sup>28</sup> and any property seized is forfeited to the state.<sup>29</sup>

Besides the Code, other legislation that are related to squatters in Selangor and the Federal Territory of Kuala Lumpur are the Street, Drainage and Building Act, 1974,<sup>30</sup> Federal Capital Act, 1960, Federal Territory (Planning) Act, 1982, Federal Capital (Squatters Clearance) By-Laws, 1963 and Essential (Clearance of Squatters) Regulations, 1969. The Street, Drainage and Building Act, 1974 and Federal Territory (Planning) Act, 1982 are dealt with building and planning respectively.

Under the Street, Drainage and Building Act, 1974 there is no direct provision on the prevention of the establishment of squatter huts but such prevention is understood from the provisions in Part V of the Act. It provides that no person shall erect any building without the prior written consent of the local authority.<sup>31</sup> Any person who intends to erect any building must submit to the local authority such plans and specifications as may be required by any by-laws under the Act.<sup>32</sup> Local authority has a power to demolish or remove any unauthorized building.<sup>33</sup>

As for the Federal Territory of Kuala Lumpur, the Federal Territory (Planning) Act, 1982<sup>34</sup> may be used to evict squatters occupied on the private land.<sup>35</sup> The Act prohibits any development of building without planning

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, p. 45.

<sup>24</sup> Judgment of Ali CJ in *Teh Bee v K. Marithamuthu* [1977] 2 MLJ 77

<sup>25</sup> See for instance, *Sidek bin Hj Mohamad & 461 Other v The Government of the State of Perak & Ors* [1982] 1 MLJ 313

<sup>26</sup> Section 425 of the National Land Code, 1965.

<sup>27</sup> Section 426A(1)(c) of the National Land Code, 1965.

<sup>28</sup> Section 426A(1)(a) of the National Land Code, 1965.

<sup>29</sup> Section 426A(1)(b) of the National Land Code, 1965.

<sup>30</sup> The Act has repealed the Municipal Ordinance Chapter 133 of 1936.

<sup>31</sup> Section 70(1) of the Street, Drainage and Building Act, 1974.

<sup>32</sup> Section 70(2) of the Street, Drainage and Building Act, 1974.

<sup>33</sup> Section 72 of the Street, Drainage and Building Act, 1974.

<sup>34</sup> Act 267 of 1982. This Act repealed the City of Kuala Lumpur (Planning) Act, 1973.

<sup>35</sup> If an action for eviction of squatters is taken by a proprietor himself, he may utilize Order 89 Rules of the High Court, 1980 where the proceeding may be commenced by originating summons.

permission granted under it.<sup>36</sup> Development of building includes erection of squatter huts. Even though there is no direct interpretation as to what is meant by 'squatter's hut', it can fall under the definition of 'building' which seems to be very wide interpretation under the Act.<sup>37</sup> Violation of this prohibition is an offence which is liable to a fine not exceeding RM50,000/= and continuing offence to further fine which may extend to RM500.00/= for every day during which the offence continues after conviction for the first commission of the offence.<sup>38</sup>

However for Kuala Lumpur, direct provisions in relation to squatters are available in Federal Capital Act, 1960 and Federal Capital (Squatters Clearance) By Laws, 1963.<sup>39</sup> The Commissioner has a power to make by-laws to provide for the demolition of squatters huts and the punishment of imprisonment and fine on any person erecting or offering for sale a squatter hut. The Commissioner of the Federal capital has power to demolish all unauthorised buildings on any land by giving at least 7 days notice to the occupier.<sup>40</sup> However it is not clear whether it should be an oral or written notice. The authority thereby can summarily demolish any squatter huts and may for that purpose remove or cause to be removed from such huts any person or property.<sup>41</sup> It means that squatting is not only an offence when the squatter's hut is established on state land but also if it is established on private land. However, the 7 days notice may not really adequate if they have occupied the site for years. The power to demolish squatter huts on private land also is subjected to the express provision that the said unauthorised structure is not more than 1 year old immediately preceding the date of notice of demolition and the burden to prove that such occupation has been continuous for more than 1 year shall be on the occupier.<sup>42</sup> If the land is required by the government or the municipality for a public purpose or public utility, squatter huts can be demolished regardless of the length of the occupation.<sup>43</sup>

As for the state of Selangor (and other states in Peninsular Malaysia), the statutory power to demolish squatter huts is based on the Essential (Clearance of Squatters) Regulations, 1969.<sup>44</sup> The application of the Regulations to the respective states however is subject to the specification Order by the Director of Operations.<sup>45</sup> As for the state of Selangor, the application of this Regulation is made by an Order of the Director of Operations entitled Essential (Clearance of Squatters)(Application)(Selangor) Order 1969. The Regulations provides a more detail and comprehensive procedure as to the demolition of squatter huts compared to the procedures laid down by the Federal Capital (Squatters Clearance) 1963.

Both the Regulation and By-laws provide that it is an offence to erect a squatter's hut either on the state land, reserved land, mining land, forest land or a private land.<sup>46</sup> Squatter's hut is defined to mean any house, hut, shed, stall, lean-to shelter, roofed enclosure or any extension or structure attached to any building or other erection, or whatever materials made and whether used for the purpose of a human habitation or otherwise which has been erected or is in the cause of erection otherwise in accordance with a plan approved by the a local authority or erection of building with an approved plan by a local authority but such a license has been cancelled, withdrawn or has expired.<sup>47</sup> It seems that the interpretation to the squatter's hut is very wide and at any time it may not cover all types of structures that are constructed without the approval of a local authority.

Similar with the requirement of 7 days notice to be given to the occupier under the Federal Capital (Squatters Clearance) By-Laws, 1963, the Essential (Clearance of Squatters) Regulations, 1969 also provides the same.<sup>48</sup> However the Regulation clearly states that 7 days notice would be a written notice. The 7 days written notice is also a

<sup>36</sup> Section 20(1) of the Federal Territory (Planning) Act, 1982.

<sup>37</sup> Section 2 of the Act defines building as any house, hut, shed, or roofed enclosure whether temporary or permanent and whether or not used for the purpose of human habitation, and also any wall, fence, platform, staging, gate, wireless, post aerials and antenna used for transmission purposes, pillar, piling, frame, hoarding, slip, bathing and swimming pools, dock, wharf, pier, jetty, landing, stage or bridge, or any structure, support, or foundation connected to or with any building.

<sup>38</sup> Section 26(1) of the Federal Territory (Planning) Act, 1982.

<sup>39</sup> This by-laws was made in pursuant to powers given to the Minister under section 16 of the Federal Capital Act, 1960 (Revised 1970). The by-laws was introduced to combat the new emerging problem of squatters in Kuala Lumpur.

<sup>40</sup> By-law 2 Federal capital (Clearance of Squatters) By-Laws 1963.

<sup>41</sup> *Ibid.*

<sup>42</sup> By-law 4 Federal Capital (Clearance of Squatters) By-Laws 1963.

<sup>43</sup> *Ibid.*

<sup>44</sup> This Regulations was made in pursuant to the powers conferred under section 2 of the Emergency (Essential Powers) Ordinance No. 1, 1969. The Regulations came into force on 2<sup>nd</sup> October, 1969.

<sup>45</sup> Regulation 2 of the Essential (Clearance of Squatters) Regulations, 1969.

<sup>46</sup> Regulation 3 of the Essential (Clearance of Squatters) Regulations, 1969.

<sup>47</sup> *Ibid.*

<sup>48</sup> Regulation 8 of the Essential (Clearance of Squatters) Regulations, 1969.



requirement in case of demolition of squatters' huts on a private land without owner's request.<sup>49</sup> Both under the Regulations and By laws they are not condoned with any act or activity which resulted to the establishment of squatters' huts. Not only a squatter, but also a land proprietor who allows a squatter to remain on his land as well as whoever attempt or abet to the erection of squatters' huts is also considered as an offence. As such supplying materials for the erection of such building is also considered as an offence.<sup>50</sup>

The Essential (Clearance of Squatters) Regulations, 1969 is more strict as to the demolition of squatter huts because there is no consideration as to the length of period of occupation as provided under the Federal Capital (Squatters Clearance) By-Laws, 1963. This provision is similar to the law provides in section 425 of the Code. For the purpose of assisting the eviction and demolition both the Code and the Essential (Clearance of Squatters) Regulations, 1969 provide for the involvement of the security forces.<sup>51</sup>

The earlier discussions show that the law does not recognise at all any act of squatting. The act is also baseless in equity. In fact it is an offence under the Malaysian law and thus has not been treated as social or social-economic problem. All legislations on squatters provide that the act against squatters can be preceded summarily. Nevertheless, it has been argued that the requirement of 7 days notice is inadequate period for squatters. If squatters have been remaining on the land for 30-40 years then it would not be reasonable at all to ask them to vacate the land within 7 days.

Squatting on private land is a civil wrong in which the registered proprietor may sue for trespass without having to prove any damage. It is an actionable *per se*. The law also allows the registered proprietor to file summary proceeding against the trespasser<sup>52</sup> to eject them from his/her land.<sup>53</sup>

All of the abovementioned laws and regulations are sufficient to cater squatters' problem either on private or state land. The laws are clear but unfortunately, the bottleneck is on the enforcement and implementation of the procedural matters. There is no jurisdiction *per se* that provides for a specific authority to deal with squatters. The most common complaints heard from squatters are related to certain practices of local authorities in dealing with process of resettlement of squatters. Those complaints among others are; lack of notice<sup>54</sup>, inefficient ways of delivering the notice and lack of negotiation with the squatters involved. On the other hand, there are many occasions where squatters relied on promises made by several quarters who claimed to have link to the authorities. Legally, it was upheld in several cases that promises made by person other than the State Authority are not binding.<sup>55</sup> Nevertheless, the court, in several instances agreed that the squatters may entitle to a right in equity but only for a reasonable notice to vacate the land and compensation; and not to an extent, to recognise any proprietary right of the squatters. Malaysia, being a country governed by laws which uphold integrity and code of ethics in its administration, shall not be tampered with any unjust acts or dishonesty. It is unfortunate to come across a few cases where a particular individual has misused or influenced squatters and made them (squatters) believe that they have power and authority to alienate the land. In Islam, breach of promises is sinful.<sup>56</sup> Under the present land system where "where registration is everything"<sup>57</sup> the State Authority prefers to alienate land to anybody it likes rather than to give to the person who are occupying or activating on the land. The principle practiced under the Malay Customary Tenure seems to have no place under the present land system. Similarly, squatters also cannot argue that there is a legitimate expectation as far as the government authorities' promises or implied consent is concerned. Thus, whatever facilities provided by any relevant agency, it may not amount to any implied consent as to proprietary right which may entitled squatters to raise the issue of legitimate expectation against the public authority.<sup>58</sup> Likewise, estoppel cannot be invoked against any State Authority for any promise that is against the law.<sup>59</sup>

<sup>49</sup> Regulation 10 of the Essential (Clearance of Squatters) Regulations, 1969.

<sup>50</sup> By law 5 of the Federal Capital (Squatter Clearance) By-laws, 1963, Regulation 18 and 19 of the Essential (Clearance of Squatters) Regulations, 1969.

<sup>51</sup> Regulation 15(1) of the Essential (Clearance of Squatters) Regulations, 1969 and proviso to section 426 (3) of the National Land Code, 1965.

<sup>52</sup> Section 7 and section 8 of the Civil Law Act 1956.

<sup>53</sup> Order 89, Rules of the High Court. See also *Chiu Wing Wa & Ors v Ong Beng Cheng* [1994] 1 CLJ 313; *Titular Roman Catholic Bishop of Penang v Stephen Ramachandran* [1994] 1 LNS 202; *Bohari Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 CLJ 647

<sup>54</sup> *Yusuf bin Awang v Datuk Bandar Bandaraya Shah Alam & Majlis Perbandaran Shah Alam* [2004] 1 LNS 383

<sup>55</sup> *Sidek v Govt of Perak* [1982] 1 MLJ 313; *Chong Wooi Leong & 29 Ors v Lebbey Sdn Bhd* [198] 3 AMR 2053; *Bohari Taib & Ors v PTG Selangor* [1991] 1 MLJ 343

<sup>56</sup> Al-Qur'an (16):91.

<sup>57</sup> *Ali FJ in Teh Bee v K Marithamuthu* [1977] 2 MLJ 7

<sup>58</sup> See for example, see *Sentul Murni Sdn Bhd. V Ahmad Amiruddin and 3 Ors* [2001] 4 AMR 4092.

<sup>59</sup> *Govt. of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors* [1984] 2 CLJ 579.

### 5. Housing: Essential Need of Squatters in Urban Area

The Malaysian government since its first Malaysian Plan has without failed to address the issue of poverty as well as housing of the poor people. It is a focal agenda for development. Under the 9<sup>th</sup> Malaysian Plan, the government has targeted to build about 709,400 houses to include houses for PPRT, Low cost, Low Medium Cost which form about 38.2% of the total package.

**Table 3: Expected and Achievement for Public and Private Housing Sectors 2001-2005**

Programs	Expected (unit)	Achievement (unit)	Percentage (%)
Public sector	16,000	10,016	62.6%
Poor people (Below poverty line)	15,000	9536	46.3%
Public Sector	192,000	103,219	53.8%
Low Cost House	175,000	81,108	46.3%
Houses by commercial agencies	15,000	16,386	109.2%
Private Sector	40,000	97,294	243.2%
Public sector	37,300	22,826	61%
Private Sector	94,000	61,084	65%

Note: For housing for poor people scheme, there is no contribution from private sector  
Source: Ministry of Housing and Local Government

**Table 4: Targeted Housing by Public and Private Sectors: 2006-2010**

Programmes	Housing for poor People	Low Cost Units	Low Medium Cost Unit
Public sector	20,000	85,000	37,005
Private sector	-	80,400	48,500

Source: 9th Malaysian Plan.

The above data shows that the Malaysian government is seriously making effort to provide adequate housing for its people at all various levels of income, including for squatters. The Program Perumahan Rakyat (PPR) Bersepadu (for rent) (may be translated to Integrated People Housing Programme)<sup>60</sup> has been established mainly to resettle squatters who are involved in the government development project within the Federal Territory of Kuala Lumpur and the Klang Valley in the state of Selangor. This is as part of the actions taken to achieve zero squatters in the year of 2005 in Kuala Lumpur and Selangor as well as other major cities in Malaysia. The development of PPR is considered as a fast-track project where several conditions in the ordinary process of land development are lift out in order to ensure that the project can be completed speedily.<sup>61</sup> The specific characteristics of houses developed under PPR are shown in the Table 5 below. It is based on the guidelines issued under the Construction Industry Standard 1 (CIS 1)<sup>62</sup> and 2 (CIS 2)<sup>63</sup> (as the case may be) that provide for planning specification and design of the low-cost housing. The PPR programme has now been extended to the urban areas in other states.

<sup>60</sup> The implementation of this programme is entrusted to the National Housing Council (NHC) of the Ministry of Housing and Local Government in which the construction costs and land (sites) are provided by the Federal Government and state government respectively. The NHC is fully responsible on the project under PPR including the planning, appointment of consultants, management of tender and others.

<sup>61</sup> Ministry of Housing and Local Government.

<sup>62</sup> It is the standard guidelines for the construction of single and double storey of low cost houses.

<sup>63</sup> It is the standard guidelines for the construction of multi-storey of low cost houses.

Table 5: Characteristics of PPR

Target Group	A squatter with a monthly income below RM1,500/=
Type of houses	11-12 or 16-18 storey in the major cities and 5 storey in smaller town
Size of houses	Not less than 60 sq meter (650 sq ft)
Features	3 bedrooms, 1 living room, 1 kitchen area, 1 bathroom, and 1 toilet.
Rental rate	RM124/= per month.

Source: National Housing Council, Ministry of Housing and Local Government.

As for those who are eligible and qualified to buy house, inclusive of squatters they may opt to purchase low cost houses. Before June 1998, the house price per unit was below RM25, 000/= and the target group/income per month was for those below RM750/= However after June 1998, there was an increase of the house price for the low cost unit that is below RM42, 000/= (but it is depend on location) and the target group/income per month is below RM1, 500/= (depending on type of house).<sup>64</sup> Open Registration System (ORS) has been set up in the 7<sup>th</sup> Malaysia Plan where it involved the computerisation system of registration for eligible buyers from the low and low medium level. The aim of this system is to ensure that the distribution of both public and private low cost housing will be more fair, transparent and efficient.

In the Federal Territory of Kuala Lumpur, the Federal Territory Housing Agency/Board has identified nine key sub-policies in order to identify eligible purchasers to acquire low-cost houses. Firstly, the applicant must be a Malaysian citizen, married or divorced or widowed; total household income must not exceed RM2, 000 per month; registered under the ORS, must live or work in the Federal Territory, must not own a house or land within 35 kilometers city-centre and must be eligible to obtain housing loan from the government or any financial institution.<sup>65</sup>

It is interesting to note that the immigrant squatters with permanent resident (PR) status in Selangor, who have children above 18 years old, are also allowed to apply for houses under the Public Housing Programme.<sup>66</sup> It means that foreigners are given similar rights as local squatters.

## 6. Affordable Quality Housing

Article 25 of the Universal Declaration of Human Right (UDHR) provides that adequate housing is a basic and fundamental human right that forms one of the components of the right to adequate standard of living. Thus, the issues of affordability should cover the right to ownership as well as rental. Both schemes must be able to give the owner of the tenant a feeling of security, relief and peace without the need to compromise with other basic needs such as health and security. The housing policy in Malaysia is developed based on this declaration. This policy is implemented through public low cost housing<sup>67</sup>, integrated public law cost housing<sup>68</sup>, site and services scheme<sup>69</sup>, housing loan scheme<sup>70</sup>, housing under Land and Regional Development Agencies<sup>71</sup>, housing under Economic Development Agencies<sup>72</sup>, housing develop by Urban Development Authority (private funding), institutional quarters and accommodation for staff<sup>73</sup> and housing for estate and industrial workers.<sup>74</sup> All of the abovementioned programmes are the general policies for the Federal Government and the states may embark on their own plans and strategies to achieve this policy.

<sup>64</sup> Ministry of Housing and Local Government.

<sup>65</sup> See, Wan Abd Aziz & Nor Rosly Hanif, Business Partnership in Meeting Housing Needs of the Urban Poor, *GBER* Vol. 5 No. 2, pp. 39-48.

<sup>66</sup> [http://www.utusan.com.my/utusan/archieve.asp?y=2002&dt=0716&pub=utusan\\_express&sec=parliament&pg=pt\\_03.htm&arc=hive](http://www.utusan.com.my/utusan/archieve.asp?y=2002&dt=0716&pub=utusan_express&sec=parliament&pg=pt_03.htm&arc=hive) (16<sup>th</sup> July 2002)

<sup>67</sup> It is a direct government effort to provide houses for the lower income group. The projects are financed by the Federal Government and State Governments.

<sup>68</sup> It refers to construction of low cost flats for rental. This is commonly known as the PPR.

<sup>69</sup> A programme to provide for a serviced plot plus a core house.

<sup>70</sup> A programme to provide housing loans to the lower income group that include squatters displaced as a result of implementation of development and for them to build houses in newly allotted land.

<sup>71</sup> For instance, FELDA, FELCRA and KEJORA.

<sup>72</sup> For instance, the state economic development agencies (SEDCs).

<sup>73</sup> To provide housing for public sector employees. For instance, teachers, health personnel, the armed forces and police.

<sup>74</sup> It is governed by the Minimum Standard of Housing Act, 1990 in which it is the responsibility of estate owner to provide free house with social amenities of a certain standard for their workers.

In line with the Istanbul Declaration and Habitat Agenda (1996), the Malaysian government through its 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Malaysia Plan, has committed to provide adequate, affordable and quality housing for all Malaysians with special emphasis given to the lower-income group. The affordable quality housing policy may be seen from the National Development Plan (1991-2000) in which the human settlement concept is emphasised on sustainable development. It is the aim of the National Development Plan to ensure that all people regardless of their income to live in decent house. As such more affordable housing especially low and low medium cost housing were expected to be constructed. This plan also emphasise on squatter elimination by the year 2005. The implementation of this policy is based on National Development Plan, 1991, 6<sup>th</sup> and 7<sup>th</sup> Malaysia Plan, Local Agenda 21, 1994 and the Habitat Agenda 1996. Under this National Development Plan apart from the government commitment, the private sector plays an important role but government imposed many regulations and guidelines to ensure quality housing.<sup>75</sup>

The government aims to provide affordable quality housing is continued under Vision Development Plan (2001-2010). Under this plan, the earlier policy under the National Development Plan is continued but with the additional emphasizes that housing development will be integrated with other types of development, for instance, industrial and commercial sectors. The Vision Development Plan emphasizes on ICT and the government becomes the main provider for the low cost housing and private sector for medium and high cost housing. Through this plan which is based on the Vision Development Plan 2001, the 8<sup>th</sup> and the 9<sup>th</sup> Malaysia Plan, the continuous efforts are made towards sustainable development.<sup>76</sup>

The state of Selangor has provided a low cost house priced at RM42, 000 per unit and the squatters need only to pay RM35, 000 while the balance of RM7, 000 shall be subsidized either by the government or the private developer. It is reported that Selangor government has spent RM150 million for the RM7, 000 subsidy.<sup>77</sup> The government has also set up a fund known as "Tabung Perumahan Ehsan" where the buyer needs only to pay RM1 as processing fee for 100% housing loan. Apart from that, the squatters are given a sum for removal cost and the rental for the transit house will be borne by the government or the developer before the house is ready. The squatters will be given a two weeks notice before the government demolish their house.

As for the Federal territory of Kuala Lumpur under the Kuala Lumpur 2020, it is clearly stated inter alia that the City Hall of Kuala Lumpur is aimed to improve the quality of housing and housing environment as well as to eradicate sub standard housing. It is then the policy of the City Hall of Kuala Lumpur to eradicate all squatter settlements and long houses. In lieu of this policy various programmes have been planned and implemented which are, at least in part, directed towards the elimination of squatter settlements in the City of Kuala Lumpur and sufficient housing for re-housing of squatters shall be in place before 2005.

## 7. Right to Housing: A Legal Perspective

Undoubtedly the issues of squatters and housing as discussed earlier are related to right to housing. However it is very important to note that right to housing in Malaysia must be looked from the Malaysian laws perspective. In other words not each and everybody in Malaysia (including squatters) can simply demands the government to provide them with houses. The government's duty is to provide proper mechanisms (either legal,<sup>78</sup> policies or administrative) to ensure all its citizens from all level of incomes to have access to descent houses.

In relation to this the Malaysian government through its policies has made it clear that all housing developers must at least allocate 30% of the houses constructed in their project to be low cost houses. However, it is doubtful whether this directive has any legal effect. In *Cayman Development (K) Sdn Bhd v Mohd Saad bin Long* [1999] 3 AMR 3259, the court held that the State Authority has no power to impose such condition upon its approval for any project. However, in *MPPP v Syarikat Bekerjasama Serbaguna Sungai Gelugur*, the Federal Court was in the opinion that it is proper for such condition to be imposed on the housing developer. Therefore it is crucial that the requirement of 30% as mentioned above is understood and appreciated by all levels of authorities in order to avoid inconsistency of the application of this policy.

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<sup>75</sup> Various Malaysia Plan.

<sup>76</sup> Various Malaysia Plan.

<sup>77</sup> *Setinggalan Sifar Hampir Jadi Realiti*, Berita Harian, 22 Januari 2007, p 11.

<sup>78</sup> The main laws regulating the housing industry in Malaysia are the Housing Development (Control and Licensing) Act, 1966, the Strata Titles Act, 1985 and the Town and Country Planning Act, 1976. Apart from these legislations, the members of judiciary have in many occasions upheld several principles relating to right of house purchasers. There were decisions which highlighted on the inadequacies of the previous laws as well as the existing laws. In *Public Prosecutor v Annamalay a/l Narayanan* [1989] 1 MLJ 45, it was highlighted that section 12 of the Housing Development (Control and Licensing) Act, 1966 does not include the power of the Minister to order for the refund of purchase price in the case where the developer was found to be operating without a license.<sup>78</sup> However, the court has showed a zero-tolerance for unlicensed housing developer in *Keng Soon Finance Bhd v MK Retnam* [1996] 3 AMR 3021 and also in *Arab Malaysian Finance Bhd v Chan Sai Mee* [2001] 2 AMR 1743.

## 8. Recommendations and Solutions

Squatters' issues need to be addressed holistically. Their problems are inter-related with issues on social, political and economy. Unfair treatment due to political differences is unjustifiable in determining housing needs. The Malaysian government has provided various housing schemes for the poor and special group of people including squatters. Unfortunately, the elements of quality housing, sufficient facilities, comfortableness and affordable housing have not been addressed considerably resulting in the hesitation of squatters to move to houses provided for them. Many a time, the reasons are due to inability of squatters to pay the rental fees or to buy the houses. There should be a comprehensive approach from all government agencies, private bodies and especially the financial institutions to ensure all issues and problem of squatters are addressed seriously and as a matter of priority. Transparency is crucial. NGOs should become as mediator so that correct information are disseminated among squatters. Through these bodies, more public participation can be exercised. In most cases, equity issues lie only on how to deal with the problem and not about the unjust laws or tyranny.

In this regard, the government must find ways to introduce a scheme that is affordable by squatters as well as suit to their culture and belief. The paradigm shift has now shifted from quantity to quality housing.

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