

A Cup of Water: the long road to Housing Rights

Johan Silas. Profesor en el Instituto de Tecnología de Surabaya, Indonesia

A cup of clean water can have contrast different meanings if confronted by different situations such as when in a restaurant to those stranded in the middle of no where. A cup of clean water has also different values when posses by poor people that has less, to the affluent ones that always have more. A cup of clean water has great importance both in scarcity (when in the desert) or in plenty (when in flooded area). The discourse on clean water is true to the situations faced in the implementation of the Right to Adequate Housing. John FC Turner has for a long time believed that what is important to low-income people's housing is not the physical presentation or value but what it does to improve the livelihood of the inhabitants. Adequacy in this sense is its proximity to place of work where income is generated. To **the Habitat Agenda**, housing rights is not a fundamental and important issue to be mentioned in goals and principles. It was only later mentioned as part of the commitments in paragraph 39:

“ We reaffirm our commitment to the full and progressive realization of the right to adequate housing as provided for in international instruments..... ”

The formulation of housing right related to its adequacy raised many questions such as does housing that are not yet adequate not protected as part of one's rights? Does it also mean that when the right is not fully realized it can or may be violated such as the many evictions seen in conflict as well as in non-conflict areas? Many great cities in developing world that wanted to reach Cities Without Slums status are racing to evict thousands of in-adequate housing as it is not protected within the right as formulated in paragraph 39 of The Habitat Agenda. The interest of international community on housing rights have gained greater attention decades ago when in 16 December 1966 the General Assembly adopted the resolution no. 2200A (XXI) on the **International Covenant on Economic, Social and Cultural Rights**. However, the ratification of the covenant does not happen as fast and as smooth as was initially perceived. Until the turn of the last century, more than three decades ago, still not all members of the UN ratified the covenant. The covenant stipulates blousing right in only one simple article, no. 11 that stated: “ *Covenant recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing ...* ”

On 12 March 1986 before the implementation of the **International Year of Shelter for the Homeless** (1987)⁵⁰, the Commission on Human Rights' resolution 1986/36 entitled The Realization of the Right to Adequate Housing was adopted. It states the right of all persons to an adequate standard of living for themselves and their families, including adequate housing. The resolution that was later (4 December 1986) included in The Declaration on the Right to Development. More agencies within the UN system support in various ways the Realization of the Right to Adequate Housing. However, most of this effort stops short in the elaboration to the understanding of the basics for the right to adequate housing. Many make their own definition of adequate housing from their own perception and interest that not necessarily benefit the poor.

In many UN conferences, to include in the summit of Habitat II (Istanbul 6/1996), the formulation of the right to adequate housing was seen mainly from the point of view of what government should or should not do or how it will influence the performance of the government. Earlier in chapter 7 of Agenda 21, a reference was made to the aspects of the human rights that were elaborated to better understanding the adequate housing that among others includes:

- ÿ *access to safe and healthy shelter*
- ÿ *strengthening of national shelter strategy*
- ÿ *support the shelter effort of the urban and rural poor*
- ÿ *developing of national land resource management plans*

A few months before Habitat II Conference was convened, an Expert Group Meeting on the Right to Adequate Housing was organized in Geneva (January 1996) that concludes and recommends the role of the State in the implementation of the right to adequate housing that includes:

- ÿ *that the state is required to build housing for the entire population.*
- ÿ *housing is to be provided free of charge.*
- ÿ *the state must necessarily fulfill immediately all aspects of the right.*

In the preparatory commission meeting in New York (2/1996) prior and as part of the Istanbul meeting, the first part of the Habitat Agenda draft was discussed. When the *prepcom* was confronted to

⁵⁰ COHRE (2000), The Human Right to Adequate Housing, 1945 to 1999, COHRE, Geneve, Switzerlan.

formulate and agree on the right to adequate housing, the countries that belong to the European Union insists that the Geneva formula of the Right to Adequate Housing mentioned above be used as the basis for the formulation of the right to adequate housing in the Habitat Agenda as well. Apparently, it was not acceptable and opposed by countries such as the USA, China, Japan, etc. Until the last days of the New York meeting both sides remain with their respective reasons stood fast to the opposing positions taken. Only in the last day of the New York meeting, the Indonesian delegate proposed that the right of housing should be taken as an integral part of one's responsibilities. It is stipulated in the Housing and Human Settlement Law of Indonesia no. 4/1992, article 5 that states:

a. Every citizen has the right to stay and/or enjoy and/or own an adequate house in a healthy, safe, harmonious and orderly environment.

b. Every citizen has the responsibility to ply a role in the construction of housing and human settlement.

Although the opposing parties basically showed their interest to this idea, the decision cannot be made due to lack of time for further consultation to the respective governments of the delegates. When the meeting was re-convened later in Istanbul prior to the Summit, the issue of the right to adequate housing was resolved almost without heated debate as was expected by the outside community especially the NGO forum and the formulation as in paragraph 39 was agreed and was further elaborated in paragraph 60 and 61 of the Habitat Agenda.

Now, the Housing and Human Settlement law and the law on High Rise Housing (no. 16/1985) of Indonesia are in the process of being reformulated. This need to be done in light of the implementation of the decentralization laws (nos. 22/1999 and 25/1999 that the responsibility of housing and human settlements rest mainly on the shoulder of local government. In the discussion of the first draft of the new housing law, concern has been expressed that not sufficient attention was given to the formulation of the housing right issue. The law should include the housing right as seen from a holistic point of view that includes the protection of housing as personal possession accumulated as economic and social capital and means, as well as the right to achieve its adequacy. Therefore, three main aspects should be recognize as housing rights:

ÿ The right to own whatever housing one posses legally, to include the right to utilize, develop and as accumulated capital. This right doe not allowed any form of discrimination on the ownership.

ÿ The right of access to various resources, including water, energy, sanitation, communication means, sewerage and drainage, etc. Information on the right way to construct and develop the house is essential to the right of access in any way and cannot be denied.

ÿ The right to be assisted in any form, especially to those that have limited resource to develop the house within the first right. For the poor this includes subsidy in-kind such as basic infrastructure and in-cash such as subsidy in credit for improving and/or owning the house.

Needless to say that understanding housing right is a complex issue. It may looked simple and taken for granted to many people that already settled with their housing need, just as a cup of clear water that tends to satisfy a thirsty person. But clear water is not easy to provide and is also getting more and more expensive, more expensive than the price of fuel for motor car. Water supply as with housing is still trapped in the Pareto Paradox. The 20% of the upper class people control and utilize the best 80% of the available water or housing and the remaining 80% of the lower class people has to make do with the remaining 20% of the water or housing that is far from clear and sufficient. The 80% of the housing stock that is still incrementally self provided over a long time by the owner occupiers that belong to the 80% of the lower income people and their rights to reach an adequacy status is still a long and hard way to go.