

MALAYSIA'S LAND POLICY FRAMEWORK

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Abstract— This paper illustrates a brief concept for the National Land Policy framework which can be found in many parts of land registration regime in the National Land Code 1965. This paper is prepared by the writer as a complementary series to stimulate discussion on formulating the documentation for the Malaysia's Land Policy Framework. It is intention of the writer to provide basic information for a visit by Land Resource Management Post-Graduate Programmes, Universiti Putra Malaysia on May 15, 2010.

Keywords- *Legislative instruments, land policy framework, issues and challenges, implementation strategies.* .

I. INTRODUCTION

All countries will have some form of land policy and land planning systems which are implemented to correct physical, economic, social and spatial imbalances. In a multiethnic society such as that which exists in Malaysia, land policy and planning systems are implemented within a broader framework, which is supervised by the Government. Malaysia's experience in this regard has been varied as it moves from an agrarian economy to that of one which characterizes a rapidly industrializing country.

This paper will attempt to outline Malaysia's land policy instruments in view of the National Land Code 1965 (Act 56 of 1966) and highlights the overall framework of defining the formulation of National Land Policy.

II. BACKGROUND

In Malaysia just like in any other capitalist economy, ownership of land is also ownership of the means of production. Rural land is the base for the production of food and urban land is the base for the production of living space.

The various races in Malaysia's plural society propogate various attitudes towards the ownership

of land through their customary practices and commercial decisions. These attitudes operate within a broader framework where the institution of private ownership of land exists. Ownership of urban land and therefore access to business opportunities have indeed become a major issue in South East Asia's plural societies (Evers, 1984)¹. The existing land laws in Malaysia and the system of registration which guarantees indefeasibility of title allows land to be leased, transferred and mortgaged. This eventually leads to the ability of land to be used as a symbol of wealth creation.

In the rural areas vast tracts of land are owned by corporations for the cultivation of merchantable agricultural produce alongside smallholders who own land for commercial production of crops and self sustenance. Individual State Governments in Malaysia place a heavy emphasis on the use of land and since land is a State matter the degree of urbanised land is an important revenue generator to the State.

Increased urbanisation has put pressure on the use of land and this has led to the problems of squatters, traffic congestion and increased land values. Conflict between landlords and squatters prevail as rural - urban migrants compete among themselves for urban land to take part in the higher income opportunities in the urban areas. In essence the poor in cities are shifted around and relocated through the dynamics of urban property development.

In Malaysia, perhaps more in any other South East Asian country, there has been a tendency towards rural/urban residential and occupational specialization by ethnicity. Thus there were the policies such as the New Economic Policy (NEP), National Development Policy (NDP) and national development plans including 1Malaysia's Vision,

and New Economic Model (NEM) to reduce the imbalance by 'restructuring society'.

There are therefore three crucial issues on land that prevail in Malaysia: firstly, public power over land which involves planning, development control, compulsory, purchase, public development and land taxation; secondly, the land market includes legal and fiscal frameworks for commercial transactions such as buying, selling, leasing and mortgaging and thirdly, institutional structures that exist to control the use of land and this includes local and central public authorities and the general regulatory framework for decision making in the field of urban land (McAuslan, 1982)².

A substantial part of the national development will inevitably be in the form of physical development on land. Therefore, the success of the national development policies and strategies in Malaysia will depend largely on complementary land legislation, which formulates land policy and physical planning framework.

Thus, Malaysia's land policy comprise of legislative instruments, statutory organizations and statutory controls. Some of these legislative instruments are summarized below.

The National Land Code 1965

It is the main land law in Peninsular Malaysia. The law was made effective from 1st January 1966. From this date a uniform system of land tenure was created for the twelve States in Peninsular Malaysia.

The National Land Code is based on the Torrens system of land registration and it was the result of the International Bank of Reconstruction and Development's effort in consolidating the various land laws prevailing in the country (IBRD, 1955)³. The NLC achieved two objectives (Sihombing, 1989)⁴:

- (i) it has established a uniform clear cut system of land tenure and dealing in place of a confused system and,
- (ii) it has incorporated all those new provisions required to adapt the

new system to the social and economic changes.

The National Land Code (Penang and Malacca Titles) Act 1963

Penang and Malacca were part of the Straits Settlements and were ruled by the British Crown. The early land law in these States, therefore, were based on the English System of Grants in Penang and a mixture of English, Malay and Dutch tenures in Malacca. By the 1960's the system of land tenure remained somewhat confusing. To overcome this, the National Land Code (Penang and Malacca Titles) Act was passed in 1963. The transfer of land titles from the former systems to the Torrens System began in 1965.

There are special provisions in the 1963 Act which deal with Customary Land in Malacca. Customary Land in Malacca which is subject to the category 'agriculture' can only be transferred, charged, leased to a Malay who was born in Malacca or whose descendents were born in the State. However, in the case of customary land in Malacca which is subject to the category 'building' or 'industry' the above restrictions do not apply. The land policy here under customary tenure is to ensure such land remains in the hands of the Malays (the indigenous populace).

Within Malacca, tracts of Malacca Customary Land are situated within prime's areas of towns. Due to their limitations on ownership by non Malays, development has by passed these parcels. Realizing this, the Malacca State Government has created a Malacca Customary Land Company which will function to develop customary land in Malacca. An interesting feature of the scope of this Company is that it will be able to sell the developed customary land to non-Malays on tenures of 30 years leasehold and less. An Amendment of Section 108 (1) (a) of the Act has been tabled to Parliament.

On the subject of customary land, it is also pertinent to mention here that customary land also exists in the state of Negeri Sembilan and is governed by the Customary Tenure Enactment Chapter 215. Under this law dealings in respect of customary land can be effected only in the favour of female members of the same tribe. On death land is to be transmitted to the female heirs.

The Sabah Land Ordinance Chapter 68

The Sabah Land Ordinance Chapter 68 (Government Printer, 1930) provides the framework for land policy in Sabah. It is also based on the Torrens system of land registration. Categorization of land is into two broad categories namely "Town Land" and "Country Land". The four pillars of land ownership in Sabah are:

- (a) The State holds the allodial estate and all others hold land in fee from the State.
- (b) Ownership of estates in land comprises surface rights only. Minerals and materials are reserved to the State.
- (c) Possession is the root of titles especially in claims of native customary rights.
- (d) Ownership of land is inheritable.

The Ordinance also deals with lands held by natives under customary tenure. There are provisions for the issue of communal titles for common use and benefits of natives. The special features of native titles are:

- (a) Native titles are issued with a term in perpetuity. This is nearest to a freehold title;
- (b) Native titles are issued strictly to natives;
- (c) Native titles are restricted for agricultural purposes only.

The Ordinance prohibits the dealing of native land with non-natives. However, any native desirous of selling his or her native titled land to a non-native must surrender the titles to the State for fresh alienation of a lease subject to a premium and enhanced quit rent charges. The object of the restriction is to keep such lands in the hands of natives and to prevent the entry of non-natives in areas where their presence is not desired.

The Sarawak Land Code Chapter 81

Land policy in Sarawak was successively evolved by the Brooke family which introduced the Torrens system of land registration into Sarawak through various Land Orders. Land law in Sarawak today is governed by the Land Code Chapter 81 (Government Printer, 1958).

Land in Sarawak is classified into the following types:

(i) Interior Area Land is land not falling within other classifications and which is not a Government Reserve. This land can be declared a Native Area Land only if the area consists of unalienated Mixed Zone Land.

(ii) Native Customary Land comprises land over which natives are entitled to exercise customary rights. This also covers lands which had been acquired by natives on the basis of a communal nature. Any area of State Land can be declared a Native Communal Reserve for the use of the native community. Native Customary Land also comprises Interior Area Land over which a native has been permitted to acquire customary rights with the permission of the District Officer. This is to prevent the possibility of excessive jungle clearance by the natives.

Native Area Land is land held by a native under a document of title but does not include Mixed Zone Land. Any land can be declared Native Area land only if it consists of unalienated Mixed Zone Land.

(iii) Mixed Zone Land is land which is such by virtue of prior law or which becomes such by virtue of a declaration by the Minister under the Code. Any privileges or rights under the Native Area Land, Native Customary

Land or Interior Land can only be acquired by a native of Sarawak.

The non-native is therefore limited to occupying and dealing with Mixed Zone Land. There is a prohibition on foreigners owning land. This extends to any person not a Malaysian citizen who is a permanent resident in the State and foreign companies, societies, associations, trusts or other bodies not registered in Malaysia. There is also an absolute prohibition on the issue of a document of title to an area of over five thousand acres.

State Land Rules

Section 14 of the National Land Code provides for the State governments to draw up individual State Land Rules. These Rules outlined the various procedures pertaining to land in the particular State.

These also include procedures for the application for land from the State, permit applications to remove rock material and the rates for conversion premiums for the conversion of land use categories. The State Land Rules have to be in conformity with the National Land Code, however, where applicable, since land is a State Matter, provisions of previous land ordinances for the particular State are also applicable.

Town and Country Planning Act 1976

In 1976 two pieces of legislation were enacted to overcome the deficiencies of land use planning for Malaysia which was experiencing rapid change and development. The Town and Country Planning Act 1976 (Act 172) stipulates that every local authority shall be the local planning authority for the area of the local authority. This gave the primary physical planning responsibility at the local level to local governments which were given a consolidated legal framework via the Local Government Act 1976.

The Federal Territory of Kuala Lumpur has its own planning legislation in the form of the Federal Territory Planning Act 1982 (Act 267). Essentially the Act is similar to the Act 172, however in the place of the local planning authority, the

Commissioner (or Mayor) is given wide discretionary powers to administer the provisions of the Act.

Act 172 and its associated regulations is an adoptive act providing the strategic and spatial implications of land use planning with local spatial implications. It is the effective medium of translating broad government policies into physical policies which are land based but have wide social and economic implications (Singh, 1988)⁵.

The State is responsible for the general land use policy in all local authorities within the State. Within the framework of the national policy each State carries out its land use planning functions through State Planning Committees and Local Planning Authorities.

The process of land use control through the Act 172 is the preparation of the Structure Plan a policy document which is approved by the State and a detailed Local Plan which is a map based plan outlining physical details translating the policies in the structure plan. The local planning authority produces both plans.

Land Acquisition Act 1960

The Malaysian Constitution provides in Article 13 that no person may be deprived of property save in accordance with law and no law may provide for compulsory acquisition or use of property without adequate compensation. Under the Land Acquisition Act 1960, the State Government could acquire land for a specific public purpose. By virtue of an amendment in 1973, land could also be acquired for mining, residential, commercial or industrial purposes.

For the government this is a method of land assembly. Public purpose projects are also a means through which broad sectoral policies of the national development policies are translated into physical projects for the benefit of the population. There have been many public purpose projects which have brought development and basic facilities to the rural areas.

The existing law provides for a cumbersome framework for acquisition of land. Compensation is paid for all land taken. However, where an element

of betterment is present there have been instances where adequate compensation in the form of nominal sums have been paid. Where aggrieved parties are not satisfied with the compensation received there are mechanisms for appeal to the courts. The framework allows the government to take possession of the land even though the compensation is being appealed in court. This is to ensure that public projects are not delayed.

Section 3 of the Act was amended to provide for the compulsory acquisition of land for any purpose deemed beneficial to the economic development of Malaysia or to the public or any class of the public. The reason given by the government for this amendment was that Government could not conform to Article 86 (1) of the Constitution which gives the right to Government to alienate land to anyone who is qualified as the Act does not provide for the alienation of compulsory acquired land to third parties.

The Environmental Quality Act 1974

While land use control remains the prerogative of local authorities, the Federal Government influences land use through the Department of Environment (DOE). The Environment Quality Act 1974 and the Environmental Quality (Prescribed Activity) (Environmental Impact Assessment) Order empowers the DOE to request for an Environmental impact Assessment (EIA) for certain projects and activities.

As the requirement for an EIA covers a wide range of projects and activities, the EIA has become a major element in the approval of projects and activities. This has become even more critical in today's age of environmental degradation. Recently, the Government indicated that it would be amending the Act to include provisions which will ensure that the EIA requirements will cover a wider net of projects.

The Strata Titles Act 1985

The Strata Titles Act was enacted in 1985 (Act 318) and the State Strata Titles Rules are essentially govern the administration of strata titles for subdivided buildings and subdivided lands in respect of Gated Community living. The Rules also outline the obligations of the property developer to ensure that strata schemes are properly managed

before the management corporation is formed. This is in line with the overall policy to ensure that the sustainability of housing in terms of acceptable living environment.

Malay Reservations Enactments

The Malay Reservations Enactments of the respective Malay States seek to ensure that certain land in the State is alienated only to Malays and that the land thus alienated or any interest in it will continue to remain in the hands of Malays.

Article 89 of the Malaysian Constitution deals with Malay reservations land. Only a Malay may own land or possess an interest in a Malay Reservation area. But in the States of Kedah and Perlis a Siamese agriculturist permanently resident in the state may also own land in a Malay Reservation. A Malay Holding includes any registered interest of a Malays a proprietor or co-proprietor in any alienated land included in Malay Reservation Area which has been duly declared and gazetted. In the state of Terengganu it includes any registered interest of a Malay in any alienated country land comprised in any holding not more than 10 acres. As such, in Terengganu a Malay holding can be within or outside a Malay Reservation area (Marbeck, 1982)⁶.

Land Taxation

All land in Malaysia is subject to an annual tax administratively known as 'Quit Rent' which is collected by the State Government. The tax structure is based on the State Land Rules and is determined by the size, location and use of the land. This form of tax has little influence in encouraging the development of vacant land as tax on vacant land is low.

Property tax or 'Assessment Tax' is another form of tax levied on property within a local authority which is collected by the local authority. The tax levied is determined under the provisions of the Local Government Act and varies from one local authority to another. The more improved or built up a property is the higher the assessment tax. Assessment tax is a form of revenue to the local authority to provide for public services and facilities.

The Real Property Gains Tax Act 1976 ensures that profits made from the sale of land are taxed. This is to prevent property speculation and it is not designed to tax unearned increment in land values or to increase the supply of land for development.

III. MALAYSIA’S LAND POLICY FRAMEWORK

The term “policy” can be seen as an abstraction of reality and is defined as a group of decisions taken by authoritative decision makers which can at least analytically be linked to some degree of coherence and which are concerned with the selection of prime goals and the means to achieve them (Gray, 1983)⁷. Land policy therefore provides the boundaries and parameters which provide the framework, direction and continuity of decisions made for the function of land in the implementation of national development plans which involve regional, statewide and local plans.

The Constitution of Malaysia provides for the doctrine of private ownership of property including land. The National Land Code (NLC) supports this through the creation of a comprehensive and organized system of land ownership, registration and dealing which ensures the indefeasibility of title to land.

As stated above, the right of land being a State matter is provided in the Constitution. This would mean that there are as many land policies as there are States. Where the third tier of government exists i.e. Local Authorities, there exist further “localized” land policies which are in turn controlled by State Land policies.

Article 91 of the Malaysian Constitution provides for the establishment of a National Land Council comprising of State representatives with a Federal Minister as a Chairman. The main function of this Council is to formulate a national policy for the promotion and control of the utilization of land throughout the country for mining, agriculture, forestry of any other purpose in consultation with the Federal and State Governments and the National Finance Council. It is mandatory for the Federal and State Governments to follow the policy formulated. The Council has in the past formulated

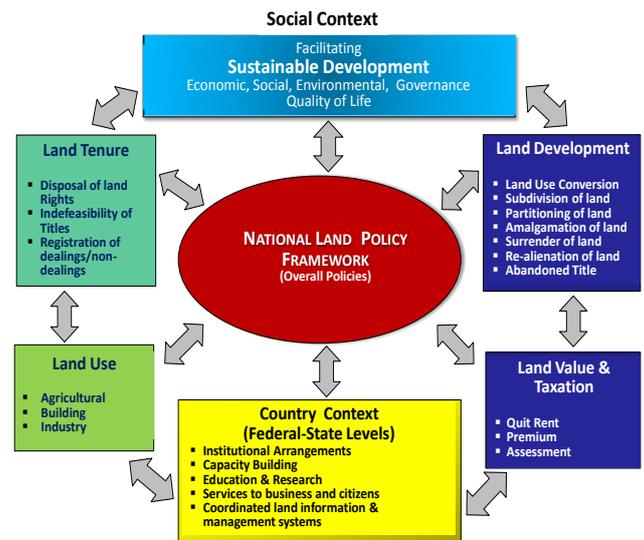
broad based policies on squatters, land speculation and use of land for industries.

These policies however, have been kept confidential and there is no known assessment of their effectiveness. As land is a State matter it can be expected that each State will want to decide on what it can do with its land first rather than be subjected to a national policy.

Thus adoption of the land policy framework in Malaysia could be envisaged as shown in the Diagram below⁸:

Diagram 1

Architecture Framework for the National Land Policy
(envisaged by the Federal Constitution & The National Land Code)



Vision

Towards Sustainable Development through Excellence Land Resource Management

Policy Statement

Ensure that land resources are utilised on a sustainable basis for the continued progress of socio-economic development of the nation.

Policy Objectives

- To enhance the continuity of access to land and security of tenure.
- To encourage the sustainable use of land.

- To improve productivity, income and living conditions and eradicate poverty.
- To reduce land-related competing interests and disputes.
- To develop an efficient and effective system of land administration and management.
- To encourage land ownership by Malaysian citizens.
- To balance the competing interest of one policy to another.

Policy Principles

Principle 1: Access to land for all citizens

This principle needs to be stated in the face of ever-increasing pressures on the land resource and its administration. The principle recognizes that guarantee of land access, clearly defined property rights and secure tenure has to play in human resources development.

Principle 2: Integration of this National Land Policy (NLP) with the vision and goals of the National Vision 2020

The Vision 2020 is the long-term guide to Malaysia's development. Therefore, a principle of this national land policy is to ensure optimum utilisation of land resource to assist in achieving the socio-economic development vision and related goals of the Vision 2020.

Principle 3: Institutional coherence/alignment of land-related agencies

This deserves its status as a principle rather than simply a strategy because of its fundamental importance in achieving all the NLP's objectives. That is, it is a fundamental principle of this policy that institutional coherence and efficiency is a necessary precondition for the achievement of all the above objectives.

Principle 4: A process of capacity building upon Malaysia culture and institutions

This principle recognises that, historically, lasting progress is built incrementally, one step at a time. Practices and institutions that encourage such growth are to be facilitated: that is, all existing use and management rights are to be recognised and modified if need be.

Principle 5: Community participation, accountability and transparency in land administration and management

This principle follows from the one above and the human resource development principles of the Vision 2020. This policy principle is directed towards local communities taking their future more and more into their own hands, with the government being available to them to service their requirements. The principles of transparency and accountability are to apply to all levels of this process - from the communities themselves to the highest echelons of land administration and management.

Principle 6: Gender equity

Obstructions to the human resource development of any individual should not be imposed on the basis of gender or races or marital status. Land-related legal impediments to gender equity are to be removed. The growth towards gender equity in customary tenure is to be encouraged.

Principle 7: A process of stimulating land and property markets

National Vision 2020 recognises the private sector as holding the key to economic growth. The effective operation of the private sector is dependent upon the establishment

of clearly defined of property rights-including land-related property rights - by a legal framework, and their efficient administration through an institutional framework.

Principle 8: *Optimal sustainable use of the land resource*

Natural resource management and development are the basic strategies towards improving sustainable food security.

Philosophy

- Generate economic development by maximising equitable benefits to the entire society from land on sustainable basis.
- Provide quality land administration services, hospitality and infrastructure required by the population.
- Emphasize security of land tenure through innovative legal framework.
- Ensure the quality of land management fabric is based on the local cultures of the nation.
- Ensure the continuous preservation and conservation of the environment.
- Promote national unity and social development.
- Promote participation of the multi-races society in their respective community development towards enhancing good governance.
- Eradicate poverty.
- Responsive and innovative towards technological advancement and development.

Issues and Challenges

- (i) Ownership of land and urbanisation pressures.

- (ii) Land rights control under the National Land Code (NLC) – land is a State matter.
- (iii) Planning regulations and laws - freedom of the States to adopt all or part of it for all or part of their area or not to adopt it at all means that the area coverage desired is likely to be sporadic.
- (iv) Compulsory land acquisition – a method of land assembly by the government.
- (v) Environmental degradation.
- (vi) Malay Reservations Land.
- (vii) Housing policy – provide affordable and adequate housing to low income group.
- (viii) Deforestation.
- (ix) Indigenous peoples and customary land rights.
- (x) Land administration issues – Qualified Titles, urban land management, lack of coordination between government agencies, technological issues, legal issues of land registration, etc.

Policy Thrusts

- Thrust 1: Security of land tenure for all segments of society
- Thrust 2: An adequate supply of land for all segments of society
- Thrust 3: Building on existing land rights and practices
- Thrust 4: Land rights administration: Lowering transaction costs and securing rights
- Thrust 5: The role of land market to enhance productivity and access to land
- Thrust 6: An efficient and sustainable land-use administration

Thrust 7: Development of a good land administration system

Implementation Strategies

Strategy 1: *Improve the Land Literate Knowledge Base*

Develop land law literate experts, and undertake studies to identify the potential threats to land administration and management, and how they may be countered.

Strategy 2: *Enhance Sustainable Utilisation of Land*

Identify and encourage the optimum use of the land, diversity, ensuring fair distribution of benefits to the nation and to local communities.

Strategy 3: *Develop A Centre Of Excellence In Land Administration and Management*

Establish Malaysia as a centre of excellence in land administration and management in Asia region.

Strategy 4: *Strengthen The Institutional Framework For Land Management*

Establish and reinforce the mechanisms for planning, administration and management of land.

Strategy 5: *Coordinate and Integrate land administration policies, practices and programmes in various fields*

Increase efforts to coordinate and integrate land policies and land administration practices programmes.

Strategy 6: *Integrate Land Policy Considerations Into Sectoral Planning Strategies*

Ensure that all major sectoral planning and development activities incorporate considerations of land policy requirements.

Strategy 7: *Enhance Skill, Capabilities and Competence*

Produce a pool of trained, informed and committed manpower in the field of land administration and management.

Strategy 8: *Encourage Private Sector Participation*

Promote private sector participation in land resource conservation, exploration and sustainable utilisation.

Strategy 9: *Review Land Legislation To Reflect Industrial and Peoples Needs*

Review and update existing land legislation to reflect industrial and people's needs and introduce new legislation where appropriate.

Strategy 10: *Minimise Impacts of Human Activities on Land Resource Degradation*

Take mitigating measures to reduce the adverse effects of human activities on land resource degradation.

Strategy 11: *Develop Policies, Regulations, Laws and Capacity Building on Land Administration and Management*

Introduce measures for the incorporation of land policy principles and concerns, especially in relation to business re-engineering, and the global evolution of land administration.

Strategy 12: *Enhance Institutional and Public Awareness*

Promote and encourage the understanding and participation of the public and institutions for the effective administration and management of land administration.

- Strategy 13: *Promote International Cooperation and Collaboration***
Promote international cooperation and collaboration in order to enhance national efforts in land administration and management.
- Strategy 14: *Exchange of Information***
Promote and encourage the exchange of information on land administration and management at local and international levels.
- Strategy 15: *Establish Funding Mechanisms***
Identify and establish appropriate funding mechanisms for land administration and management.
- Strategy 16: *Implementing good culture of corporate governance and modernisation through ICT***
Identify and establish good culture of corporate governance and modernisation through ICT in land administration and management.
- Strategy 17: *Coordinating relationship between National Land Policy and other Government's Policies of the various sectors***
Increase efforts and establish a workable mechanism to coordinate the impact of relationship between National Land Policy and other Government's Policies as general and specific policies of the various sectors.

IV. CONCLUSION

It can be concluded that land policy in Malaysia is the result of an interplay of land related instruments which more than adequately administer and control land use and development for compliance with national development objectives. The environment for the

implementation of land policy and land use planning strategies is controlled by a plethora of regulations. Hence, it would not be incorrect to say that it is over regulated. An important feature of land policy and land use planning implementation in Malaysia is the effort to improve the economic base of the Malays. The attitude towards foreign ownership of land is also changing with increasing attention being paid to the diseconomies being created by speculation and increasing land values. Administrative controls such as those imposed by the Foreign Investment Committee play an important role in the control of foreign land ownership and hence foreign investment which has enormous spin-offs on other sectors of the economy.

A major consideration in the effective implementation of land policy and land use planning is the fact that land is a State matter. It is interesting to note that whilst there exist various pieces of land legislation applicable to the country as a whole, each State eventually decides what is best for itself. In some instances this can be seen as an obstacle to national development and uniformity of policy implementation.

It is apparent that the land policies that have evolved from the various legislative instruments have not considered the issue of sustainable development and management of resources in detail. It is now imperative for the government to seriously look into implementing the spirit of sustainable development and management of resources in all land related legislation. This will also bring the overall policy in line with the national development policies and programmes where one of the main facets is to give adequate attention to environmental protection.

It is also necessary for the Government to seriously consider a regulatory audit of all legislation and administrative regulations which affect the property development process especially housing. The protracted time periods encountered in the provision of housing is antagonistic to the policy of providing adequate and affordable housing to the people. It is acknowledged that land is a State matter and hence this can be difficult. However, it must be borne in mind that the diseconomies created by tedious procedures and systems will also affect the flow of investments into the States.

Biographical Notes

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