

# A rights-based approach to housing

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## Introduction

A house is, first and foremost, a home.

*“The right to housing must be implemented in a manner that changes the way housing is currently conceived, valued, produced, and regulated”.<sup>1</sup>*

It is troubling that the main purpose of housing as shelter has been undermined in favour of a far more problematic conceptualization of housing as a commodity, both in the policy discourse on housing as well as our wider, more general conversations on the matter.

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<sup>1</sup> Farha (2019)

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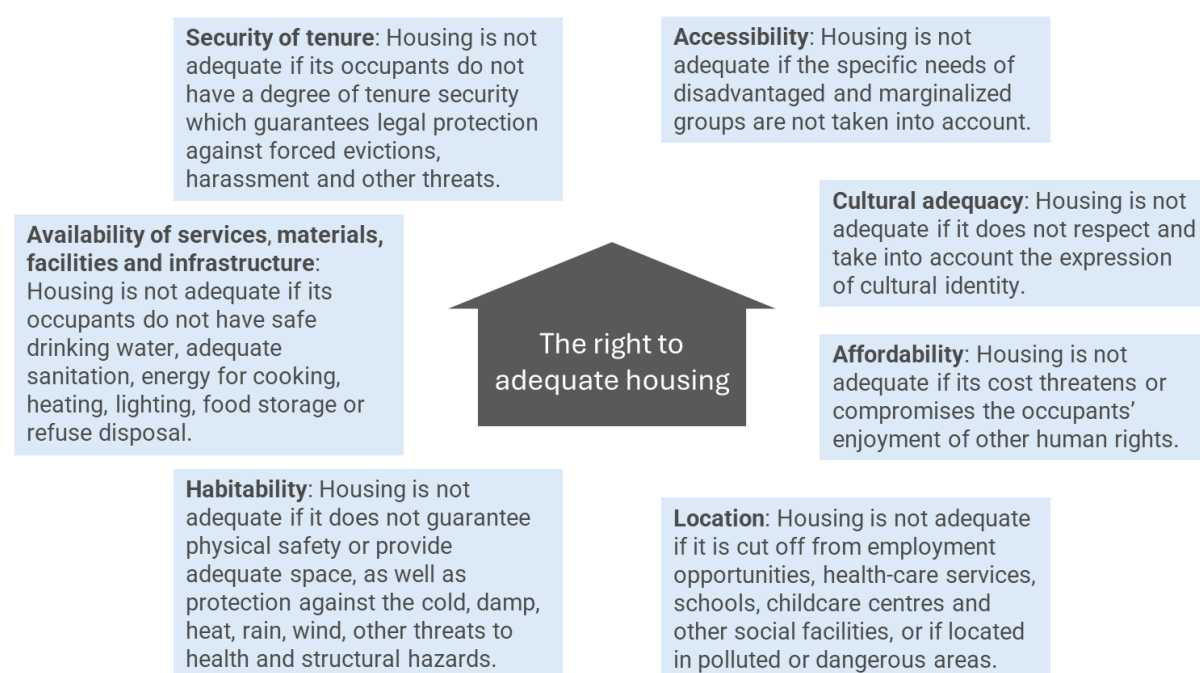
More than being just a unit that we buy, rent or sell, houses are lived in, by individuals and families that make up neighbourhoods and communities. Why then, do conversations on housing primarily revolve around its prices? Yes, houses must be affordable, but they must also serve the needs of our social, emotional, and economic lives. Above all, the houses we live in “should be a sanctuary – a place to live in peace, security, and dignity”<sup>2</sup>.

This article argues for a critical shift in the way we view housing as a basic right and what must change in our conception of housing to do so successfully.

## The basic human right to adequate housing

Houses fulfil the basic human right for shelter and is “the basis of stability and security for an individual or family”<sup>3</sup>. The right to adequate housing has been codified under several legal documents including the Universal Declaration of Human Rights<sup>4</sup>, of which Malaysia is a signatory. Under international human rights law, housing must fulfil seven key characteristics to be considered adequate, as detailed in Figure 1.

**Figure 1: Key elements of the right to adequate housing, as defined by the United Nations**



Source: Edited from Mazzucato and Farha (2023)

While international treaties on human rights are mostly not legally binding, using a human rights approach to frame our conceptualisation of housing reminds us that a house is more than just four walls and a roof. To fulfil our fundamental right for shelter, housing must allow individuals and families “a secure base from which to carry out all of life’s functions” and “full citizen

<sup>2</sup> UN (n.d.)

<sup>3</sup> ibid

<sup>4</sup> UN (1948)

participation in society and the economy”<sup>5</sup>. It is a core component that supports an individual’s “basic capabilities as/for freedom”<sup>6</sup>. That is, access to decent housing affords people the freedom to live their lives beyond just survival to actively function and participate in society<sup>7</sup>.

## **Rights determine value**

More fundamentally, the way rights to housing are defined and conceptualized in our society determines how we eventually value their worth. When our relationship with property is governed by a system of property rights, what rights are conferred and how they are allocated matter. For example, a homeowner is accorded with a different bundle of rights when compared to a renter, which allows them to do more with their house. By decomposing our rights to housing to the specific elements that are outlined within our own property rights system, we can look at how different types of rights are upheld within our institutional structure. In general, the rights to housing that are ascribed to the right holder determines the intrinsic value of the house. If you can own a house but are not allowed (i.e. do not have the right) to access, use, transfer, sell or lease it (amongst others), how much are you willing to pay for the house? Suffice to say, a house without any rights ascribed to it has no value in the housing market<sup>8</sup>.

The current postulation that markets ultimately determine the value of a property can then be said to be inherently flawed. In fact, markets are simply a medium that facilitate the transfer of rights to act upon the property between actors<sup>9</sup>. Thus, how governments and society define, shape, and regulate the primary function of a housing market and correspondingly, their housing ecosystem, whether it is to provide profits to the owners of capital or to provide shelter to families and communities, determines how housing is valued (and priced) in that society. Currently, housing is overwhelmingly viewed as a commodity and consequently, our housing market as well as systems of regulation and institutions have been designed to uphold housing as such<sup>10</sup>.

## **Which right do we prioritise? What do we value?**

We must acknowledge that the processes that define and shape the design of our housing market and its ecosystem are not random or accidental, nor are they neutral. These outcomes have been negotiated by actors who stand to benefit from “the way housing is currently conceived, valued, produced, and regulated”<sup>11</sup>. Hence, a mere declaration that the right to housing should be upheld is not enough. As with all rights, the way we interpret, institutionalise, and enforce the rights to housing determine their validity and relevance<sup>12</sup>. What rights to housing we choose to prioritise determine how we eventually value them. When housing is primarily conceived as a commodity,

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<sup>5</sup> Hearne (2021)

<sup>6</sup> Sen (1999)

<sup>7</sup> Hearne (2021)

<sup>8</sup> Nur Fareza (2023)

<sup>9</sup> Oxley (2004), Musole (2009)

<sup>10</sup> Mazzucato & Farha (2023)

<sup>11</sup> Farha (2019)

<sup>12</sup> Madden & Marcuse (2016)

the rights that allow claimants to sell, transfer, or lease their property become paramount while the right to access or use housing takes a backseat.

To illustrate this, consider what rights to property are guaranteed in our Federal Constitution. Article 13 of the Federal Constitution states that “no person shall be deprived of property save in accordance with law, and no such law shall provide for the compulsory acquisition or use of property without adequate compensation.”<sup>13</sup>. In contrast, no such provision exists to guarantee a Malaysian’s right of access or use to housing. Similarly, the persistent pushback against the suggestion to impose a vacancy tax<sup>14</sup> further demonstrates how our current system situates housing as a commodity and undermines its role as a basic right to shelter. In both examples, the current regulatory framework is anchored by the transactional nature of houses rather than its core social purpose of providing people with a place to live with security and dignity<sup>15</sup>. In both examples, a house is a commodity to be held and/or traded fairly between actors, not a place to live for individuals or families.

### **The way forward - Rights are political, but then, so is housing**

The choice to centre the right to housing on its fundamental dimensions, particularly on the right to access and use housing as shelter, is a conscious one. In countries like Finland and Scotland, the right to housing is enshrined in their constitutions, which explicitly ties access to housing to an individual’s right to a dignified life while placing the responsibility on their respective governments to ensure its fulfilment<sup>16</sup>. Internationally, sixty-nine countries attribute the responsibility of the state to provide adequate housing for citizens in their national constitutions<sup>17</sup>.

For Malaysia, a critical shift in the way we view housing as a basic right is necessary. Housing, in its conception, production, and regulation, must be anchored to the needs and rights of Malaysian households. To elevate the right to adequate housing in our policy discourse, we must acknowledge that an overhaul of the underlying mechanics of the housing sector is needed. To shift to a system where housing is situated as a human right, we must emphasize and anchor our systems to the right of access and right of use to housing for an individual. What this means in practice is to institute a rights-based approach to housing that prioritizes the fundamental purpose of housing to households as a place to live in dignity, peace, and security.

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<sup>13</sup> Federal Constitution of Malaysia

<sup>14</sup> Suggestions to impose a vacancy tax on properties that remain unsold or unoccupied have been periodically raised since 2020, with persistent pushback from various players in the housing industry including REHDA and the HBA. For further details, see The Star (2020), EdgeProp (2023) and FMT (2025).

<sup>15</sup> UN (2016)

<sup>16</sup> Hearne (2021)

<sup>17</sup> Madden & Marcuse (2016)

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