

**NCOSS Conference: Perspectives on Poverty
Panel on Poverty and Rights
*Can rights solve issues of poverty?***

**Wednesday 17 October 2007
3pm-4.20pm**

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(Approx 2,400 words)

Acknowledgements

Before I start, I would like to acknowledge the Gadigal People of the Eora Nation, the traditional owners of the land on which we sit and pay my respects to their elders both past and present.

I would also like to thank the NSW Council of Social Services for inviting me to speak to you today.

Homelessness as a human rights issue

Today I would like to talk about homelessness as a human rights issue.

I am guessing that most of you in this room have a great depth of knowledge about the social, emotional, financial, mental and welfare impact that homelessness has on more than 100,000 people within our community, so I will not be focussing on those aspects of homelessness.

However, I wonder how many of you have thought about homelessness as a human rights issue, rather than a social, economic or welfare issue?

I would like to identify the many human rights issues which are raised in the context of homelessness and suggest how a human rights framework might be useful to help address what appears to be an ever-increasing problem in our society.

I should say that many of my ideas are drawn from an excellent paper written by Phil Lynch and Jacqueline Cole in the Melbourne Journal of International Law in 2003. And we at the Human Rights and Equal Opportunity Commission will shortly be publishing a short paper on our website which will cover many of the issues that I will be talking about today. So if you miss anything then please have a look at the Human Rights page on our website in a few weeks time.

What do I mean by homelessness?

Many people mistake homelessness as simply a housing issue. But we all know that having a home means much more than having a roof over our heads.

For the purposes of today's discussion I am thinking about homelessness along the lines of the definition used by the United Nations Committee on Economic, Social and Cultural Rights which provides that a person is homeless unless he or she has adequate access to a place to stay which can provide safety, security, peace and dignity.¹

That UN definition is pretty well reflected in the federal *Supported Accommodation Assistance Act 1994* and the ABS categories of homelessness.

What human rights are raised by the issue of homelessness?

So, keeping mind that homelessness is about having a place where a person feels safe and secure, what human rights issues are raised?

You may be surprised at how many there are!

A person who is homeless is unlikely to be in a position to enjoy any or all of the following human rights:

- The human right to an adequate standard of living, including the right to housing, food, clothing and improving living conditions
- The human right to the highest attainable standard of health
- The human right to social security
- The human right to an education
- The human right to liberty and security of person
- The human right to vote
- The human right to privacy
- The right to enjoy culture and take part in cultural life
- The human right to freedom of movement
- The human right to freedom of association
- The human rights to freedom of expression
- The human right to be treated with humanity and dignity

And last but not least

- The human right to non-discrimination.

¹ CESR, General Comment 4: The Right to Adequate Housing.

Of course, not all people who are homeless will be denied all of these 13 different human rights, however there is a very high chance that a homeless person will not be in a position to enjoy at least one of those rights. And in some communities the likelihood of enjoying all these rights will be severely diminished.

Indigenous Peoples, women, youth, people who are mentally ill and asylum seekers in Australia make up most of the people who find themselves homeless in Australia. And each of those groups is likely to have special protection needs like mental health care for the mentally ill; education for the youth; protection from violence for women; non-discrimination and appropriate cultural environments for Indigenous Peoples and asylum-seekers and so on.

I won't go through how each of the 13 rights are relevant to homeless people because that will clearly take me way over time. But let me just provide a few examples of how people experiencing homelessness are vulnerable to experiencing human rights violations.

Homelessness and the right to an adequate standard of living

The most obvious of the rights which are probably **not** enjoyed by any person who is homeless is the right to an adequate standard of living, including the right to adequate housing, food, clothing and living conditions.

This right is set out in four different treaties – the International Covenant on Economic Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child.² And Australia is bound by international law to comply with each of those treaties.

Whether or not housing is adequate (and therefore complies with this human right) will depend on a range of factors including:

- legal security of tenure
- availability of services, materials, facilities and infrastructure
- affordability
- accessibility
- habitability
- location
- cultural adequacy.

² ICESCR article 11; CERD article 5(e); CEDAW article 14(2); UDHR article 25; CRC article 4

A person who does not enjoy housing with these characteristics may be the victim of a human rights violation. Almost by definition, most homeless people would fall into this category.

Homelessness and the right to personal safety

The second example concerns a person's right to 'security of the person'. This right is protected under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

It is not hard to imagine that most homeless persons will be especially vulnerable to random harassment and attacks. Women who are homeless are particularly at risk of violence and sexual abuse and are often forced into harmful situations and relationships out of need.

Homelessness and the right to vote

Finally, a particularly topical example concerns homelessness and the human right to vote.

While it is absolutely the case that a homeless person has the legal right to vote, as a practical matter he or she may not be in a position to exercise that right.

Some estimates suggest that up to 90% of homeless persons are not validly registered to vote. This is probably because homeless people generally face significant hurdles in enrolling, including a difficulty in proving identity. They are also more likely to experience frequent address changes which means they will have to update their enrolment before each election.

Recent changes to the electoral laws have reduced the enrolment deadlines to the effect that a new voter must enrol by 8pm on the same day as the election writ is issued (which is today) and a person must update their address within 3 working days of the writ (which is next Tuesday 23 October). These shorter enrolment deadlines may impact on the number of homeless people voting at the upcoming election.

How might a human rights framework help to address the issue of homelessness?

Those are just three short examples of how various specific human rights may be relevant to people who experience homelessness. You may be asking yourself, so what? Does it actually help to talk about this difficult social issue in terms of human rights?

Well, that's a question that human rights advocates ask themselves all the time! And if you asked 10 different human rights advocates you would probably get 30

different responses! But I think you would find at least two common themes in amongst the many valid answers.

Human rights is a language of empowerment which fosters participation

Firstly, discussing social issues like homelessness as a human rights issue changes the way you approach it. It changes the problem from one where individuals are seeking help and compassion from the state to one where people are asserting their rights against the state.

It provides empowerment to those who experience homelessness and a moral (if not legal) obligation on those who have the power to help address that homelessness. A rights based approach also suggests a need to involve people experiencing homelessness in the design of relevant services. More likely than not, this will mean that the services available to people experiencing homeless will be far more relevant to their needs.

In other words, the rights framework seeks to shift the rhetorical power from the state to the individual.

While a shift in rhetorical power won't solve the problem by itself, it can drastically change the nature of the debate and it can provide a powerful tool for people experiencing homelessness and their advocates to assert their right to an equal place in society.

Legal enforceability of human rights

The second reason why most human rights advocates would argue that human rights are important is they create legal obligations both in domestic and international law. Let's have a quick look at that proposition.

Australia is required to protect and promote all of the rights I have mentioned because Australia has ratified all of the international human rights treaties which set out those rights (ICESCR, ICCPR, CRC, CEDAW and CERD).

At an international level this means that Australia must periodically report to the various UN treaty bodies regarding our progress in upholding these rights. For instance, in January next year Australia must provide a report to the UN Committee on the Rights of the Child so that it can assess Australia's performance against the children's rights set out in that Convention.

In the case of civil and political rights Australia may also have to answer complaints made by individuals to the UN Human Rights Committee. Although, to my knowledge no person experiencing homelessness has asserted the right to complain to the UN Committee

Australia may also be subject to scrutiny by Special Procedures of the United Nations. Just recently the UN Special Rapporteur on adequate housing – Mr Miloon Kothari - visited Australia and issued a report giving his view about how Australia is implementing the right to housing. I understand the Rapporteur met a lot of civil society groups so some of you may have met him. He issued a report making a range of recommendations as to how Australia could better protect the right to adequate housing.

While neither the UN treaty bodies nor the Rapporteur can enforce their recommendations, the recommendations can be a persuasive political force and they are very useful advocacy tools for human rights advocates and bodies like HREOC.

That takes us to the value of human rights at a domestic level.

International treaties do not become part of Australian law unless there is domestic legislation which directly incorporates those treaties. None of the human rights treaties affecting the homeless have been incorporated into federal Australian law, other than parts of CEDAW (through the Sex Discrimination Act) and CERD (through the Racial Discrimination Act).

The charters of rights in the ACT and Victoria do incorporate most of the rights contained in the International Covenant on Civil and Political Rights but they do not incorporate the rights in the International Covenant on Economic Social and Cultural Rights – which means rights like the right to adequate housing are not enforceable under Australian law.

Nevertheless, the fact that the treaties are not directly enforceable in federal law does not mean that the human rights they describe are meaningless in Australia.

For starters, HREOC can look at least some of the rights which affect the homeless. More than 10 years ago we did a national inquiry on youth homelessness. And, as I mentioned at the start of my talk, we are just about to put an updated short document about homelessness and human rights on our website. Further, the Social Justice Commissioner regularly looks at issues relating to poverty, human rights and indigenous peoples.

Again, while HREOC can't enforce our findings against the government, there is no doubt that the human rights framework provides an extremely important tool for advocacy in the area.

Further, Australian law provides that all people have a 'legitimate expectation' that administrative decision makers will act in accordance with Australia's human rights obligations. A person experiencing homelessness cannot force a decision-maker to act in accordance with human rights. However, he or she could potentially challenge an administrative decision about, for example, eligibility for

social security or allocation of public housing assistance if he or she thought it was contrary to human rights.

Finally, to the extent that current federal, state and territory legislation is ambiguous in its meaning, a court must interpret that legislation in line with Australia's human rights obligations. One example where this might be relevant is in the application of public space laws. Public space and human rights is an area that I will be exploring over the next year or so – so I may be able to update you on our thinking on this issue at next year's conference!

Conclusion

In conclusion, it is my view that homelessness can and should be viewed within a human rights framework.

There may not be very strong legal mechanisms to enforce human rights at either the international or domestic level, but the community at large must recognise that homeless people have the same rights as everyone else and the fact that they are homeless means they are unlikely to be enjoying the human rights to which everyone is entitled.

As Anne Coleman put it in a paper she wrote in 2004:

“A rights based approach behooves us to recognise what has always been true. Homelessness is the result of social, economic and political processes of which we are all a part and to which, to a greater or lesser degree, we are all vulnerable. ... If we choose to incorporate and enact human rights principles in our direct work with homeless people, in research and in policy making we will be challenged to provide the necessities of life...in a way that respects homeless people and that reflects better on us as a society.”

In other words, looking at homelessness through a human rights lens will not in itself solve the problem, but human rights provides us with a language and a framework that can help shift the debate from one of welfare and pity to one of rights and empowerment. I think that is an extremely important step, one that we should not be shying away from.

Thank you.