

# HOMELESSNESS, HUMAN RIGHTS AND SOCIAL INCLUSION

PHILIP LYNCH

There are clear causal and consequential links between homelessness and social exclusion.<sup>1</sup>

Social exclusion can cause, contribute to, exacerbate and maintain homelessness. Similarly, homelessness can cause, contribute to, exacerbate and maintain social exclusion. The United Nations (UN) Office of the High Commissioner for Human Rights argues that '[l]ack of ... rights and freedoms is both a cause and a consequence of poverty. Socially and politically excluded people are more likely to become poor, and the poor are more vulnerable to social exclusion and political marginalization'.<sup>2</sup> However, there are strong associations between the realisation of human rights, on the one hand, and the promotion of social inclusion and the reduction of homelessness and poverty on the other.

This article examines the relationships between homelessness, social exclusion and social inclusion and the utility of analysing and addressing these issues in a human rights framework. This framework for analysis has been chosen because:

The human rights approach offers an explicit normative framework — that of international human rights. Underpinned by universally recognized moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation of national and international policies, including poverty reduction strategies.<sup>3</sup>

This article considers governmental obligations in relation to the realisation of human rights and argues that the international human rights framework is useful and important in identifying, monitoring and addressing factors which contribute to homelessness and social exclusion. It also argues that policies, programs and services for the alleviation and eradication of homelessness and the promotion of social inclusion should be founded on the human rights principles of non-discrimination and participation. This article concludes that homelessness and social exclusion can be significantly reduced by governmental implementation of obligations to respect, protect and fulfil human rights.

## Homelessness and the international human rights framework

There is a strong positive correlation between a state's respect for human rights and that state's success in addressing homelessness and poverty, with the realisation of human rights ensuring the enabling

conditions of social inclusion, participation and empowerment.<sup>4</sup>

The international human rights framework enshrines a body of rights, the realisation of which is necessary for people to live with human dignity and to participate in civil, political, economic, social and cultural life. Human rights contained in the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, both of which have been ratified by Australia, include:

- the right to life, liberty and security
- the right to adequate housing
- the right to education
- the right to the highest attainable standard of health
- the right to social security
- the right to freedom of opinion and expression
- the right to freedom of association
- the right to work
- the right to vote
- the right to privacy
- the right to non-discrimination
- the right to participation.

Together, these rights form a strong normative framework for establishing and maintaining the enabling conditions necessary for social inclusion.

Importantly, as well as enshrining rights, the international human rights framework also imposes responsibilities and obligations of realisation in relation to those rights. By ratifying the *ICCPR* and the *ICESCR*, the Australian government has committed, at the federal, state and local levels,<sup>5</sup> to the full implementation of the human rights contained in those treaties. This includes respecting human rights, protecting people from human rights violations, and taking positive action to fulfil human rights.<sup>6</sup> In relation to the fulfilment of civil and political rights, such as the right to vote or the right to privacy, art 2(2) of the *ICCPR* requires that Australian governments take all necessary steps to immediately implement such rights. In relation to economic, social and cultural rights, such as the right to adequate housing and the right to health, art 2(1) of the *ICESCR* requires that Australian governments use the maximum available resources to progressively realise such rights.

The steps taken must be targeted and directed towards the most expeditious, effective and full realisation of human rights possible. They should include legislative,

## REFERENCES

1. See generally Andrew Jones, 'Social Inclusion and Exclusion: A New Perspective for Analysing Homelessness?' (2005) 18(1) *Parity* 11; Maureen Crane and Anthony Warnes, 'Exclusion and Homelessness in Britain' (2005) 18(1) *Parity* 8; Adrienne Lucey, 'South Eastern Sydney Area Health Service Homelessness Health Strategic Plan 2004–09' (2004) 17(8) *Parity* 6, 7.
2. UN Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) 48.
3. UN Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework* (2004) 33.
4. See generally, Amartya Sen, *Development as Freedom* (1999) 49, 87, 90, 144; UN Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework* (2004); *Draft Guidelines*, above n 2.
5. *ICESCR* art 28; Human Rights Committee, *General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, [4], UN Doc CCPR/C/21/Rev.1/Add.13, (2004).
6. 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (1998) 20 *Human Rights Quarterly* 691.

*... federal, state and territory equal opportunity and anti-discrimination laws should be amended to prohibit discrimination on the ground of social status, including a person's status of being homeless or at risk of homelessness.*

financial, social, educational and administrative measures. Retrogressive measures, such as cuts in funding to homelessness assistance services, public housing or health care, are generally prohibited by international law. Further, even while Australian governments are developing and implementing measures to more fully realise fundamental human rights, they are under a 'core obligation' to ensure that certain non-derogable 'minimum essential standards' relating to these rights are met, including the provision of basic housing, nutrition and health care for marginalised or disadvantaged people.<sup>7</sup>

Additionally, the international human rights framework also enshrines important principles of human rights-based policy design and service delivery, requiring that policies, programs and services be:

- fair and non-discriminatory — the policy or service must be targeted at the alleviation of disadvantage and the elimination of discrimination<sup>8</sup>
- participatory and empowering — the policy or service must be informed by the active participation of key stakeholders and expand their range of choice and freedoms<sup>9</sup>
- holistic — the policy or service must have regard to the civil, political, economic, social and cultural determinants of wellbeing of affected persons<sup>10</sup>
- transparent and accountable — the policy or service must identify the persons or entities responsible for implementation, set targets and indicators to measure progress, and establish mechanisms to ensure accountability.<sup>11</sup>

This article focuses particularly on two essential elements of effective policies for addressing homelessness and promoting social inclusion; namely, the right to non-discrimination and the right to participation.

### The right to equality and non-discrimination

There are strong links between discrimination against people experiencing homelessness or poverty and the social exclusion and marginalisation experienced by those groups: 'as discrimination may cause poverty, poverty also causes discrimination'.<sup>12</sup>

The World Health Organization considers that 'discrimination violates one of the fundamental principles of human rights and often lies at the root of poor health status'.<sup>13</sup> This view is consistent with an emerging consensus that discrimination and stigmatisation are major causal factors and

consequences of social exclusion and ill health among people experiencing disadvantage, including higher anxiety, depression, worsened quality of life, a sense of loss of control and difficulty coping.<sup>14</sup> As St Mary's House of Welcome, a drop-in centre in Fitzroy, Victoria for people experiencing homelessness, identifies:

Our service users include homeless people, people in financial crisis, people who are suffering hardship, people with alcohol, drug and gambling addictions, mentally ill people and others of low social status. They experience discrimination because of their social status, their appearance and their lack of access to amenities and services. The effect of this discrimination can be detrimental to health and well-being, result in further financial hardship, and impact negatively on ability to cope.<sup>15</sup>

Discrimination can exclude people from access to goods and services, health care, adequate housing, education and employment, all of which are powerful influences on and determinants of societal participation and social inclusion.<sup>16</sup> Discrimination can also increase vulnerability to or magnify homelessness and poverty, leading to social exclusion and diminished wellbeing.<sup>17</sup> Indeed, according to Jesuit Social Services:

Discrimination, especially in the areas of private housing, room and caravan rental, and also in health, is both widespread and can result in significant psychological deterioration as well as material deprivation of the recipient. Indeed, consistent discrimination of this nature results in deepening of identification with the marginalised condition so as to make negotiation through their issues more difficult.<sup>18</sup>

Despite these clear correlates, discrimination against people experiencing homelessness, including in the provision of housing, education, support services and health and medical services, is not only widespread in Victoria and at a national level; it remains lawful.<sup>19</sup> At a state level, the *Equal Opportunity Act 1995* (Vic), for example, does not prohibit discrimination on the ground of social status, homelessness, poverty, unemployment or on the basis that a person is a recipient of social security or welfare assistance. This lack of legal protection causes and contributes to homelessness, poverty, social exclusion and deprivation.

Such a deficiency is also a violation of Australia's obligations under international human rights law. The right to equality and freedom from discrimination is an integral component of the international human rights normative framework and is entrenched in both the ICCPR and ICESCR.<sup>20</sup> The obligation of all Australian

7. Committee on Economic, Social and Cultural Rights, *General Comment 3: The Nature of States Parties' Obligations*, 18, UN Doc HRI/GEN/1/Rev.5 (2001); Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, 4–5, [15]–[18], UN Doc E/C.12/2001/10 (2001).

8. *Draft Guidelines*, above n 2, 2.

9. *Draft Guidelines*, above n 2, 2 and 4. See also Gerry Mulgan and Andrea Lee, *Better Policy Delivery and Design: A Discussion Paper* (2001); Mark Moore, *Institute for Political and Economic Governance* 9 <<http://www.ipeg.org.uk/Paper%20Series/PVM.pdf>>.

10. *Draft Guidelines*, above n 2, 2–3.

11. *Draft Guidelines*, above n 2, 2, 4–5. See also Geoff Mulgan and Andrea Lee, *Better Policy Delivery and Design: A Discussion Paper* (2001); Mark Moore, *Creating Public Value: Strategic Management in Governance* (1995) 10.

12. *Draft Guidelines*, above n 2, 14. See also Sofia Gruskin, 'The Integration of Human Rights into Public Health Programming' (Paper presented at the International Symposium on Human Rights in Public Health: Research, Policy and Practice, The University of Melbourne, 3–5 November 2004) 1.

13. World Health Organization, *Health and Freedom from Discrimination: WHO's Contribution to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (2001) 6.

14. Lisa Waller, 'Living with Hepatitis C: From Self-Loathing to Advocacy' (2004) 180 *Medical Journal of Australia* 293; S Zickmund, E Y Ho, M Masuda et al, 'They Treated Me Like a Leper: Stigmatization and the Quality of Life of Patients with Hepatitis C' (2003) 18 *Journal of General Internal Medicine* 835.

15. Letter from St Mary's House of Welcome to the PILCH Homeless Persons' Legal Clinic, 20 August 2002.

governments to guarantee, by law, equal and effective protection against discrimination is set out in art 26 of the *ICCPR*:

All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Although 'discrimination' is not defined in the *ICCPR*, the UN Human Rights Committee has defined it as 'any distinction, exclusion, restriction or preference ... which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, by all persons, on an equal footing, of all rights and freedoms'.<sup>21</sup>

The norm of non-discrimination is also enshrined in art 2(1) of the *ICCPR* and art 2(2) of *ICESCR* which provide that:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In addition to being enshrined in other international human rights treaties, such as the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *International Convention on the Elimination of All Forms of Discrimination Against Women* and the *Convention on the Rights of the Child*, the norm of non-discrimination probably constitutes a peremptory (or non-derogable) principle of customary international law.<sup>22</sup> In the *Namibia Case*, Ammoun J of the International Court of Justice stated, '[o]ne right which must be considered a pre-existing binding customary norm which the Universal Declaration of Human Rights codified is the right to equality'.<sup>23</sup>

The norm of non-discrimination prohibits unfair, unjust or less favourable treatment in law, in fact, or in the realisation of any right. It is a norm that is immediately realisable, which means it is not subject to progressive realisation with respect to economic, social and cultural rights. That is, Australian governments have no excuse, in international law, for any discrimination against people experiencing homelessness.

The implementation of the norm of non-discrimination has two key facets in relation to people experiencing

homelessness. First, the right to freedom from discrimination imposes an immediate obligation on Australian governments to ensure that their legislation prohibits discrimination against homeless people and is itself non-discriminatory. To this end, federal, state and territory equal opportunity and anti-discrimination laws should be amended to prohibit discrimination on the ground of social status, including a person's status of being homeless or at risk of homelessness. Second, the right imposes a further substantive obligation on governments to take positive steps to address the special needs of people experiencing homelessness so as to enable them to realise all of their rights and freedoms.<sup>24</sup> These steps should include legislative, educative, financial, social and administrative measures that are developed and implemented using the maximum available government resources.

An important legislative step is that the *ICESCR* be scheduled to the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). This would empower the Human Rights and Equal Opportunity Commission to investigate and monitor discrimination against people experiencing homelessness, particularly in relation to the implementation of economic, social and cultural rights such as housing and health. Further steps required include the adoption of special measures with respect to groups of homeless people that are particularly vulnerable to discrimination or that may experience intersectional discrimination, including Aboriginals and Torres Strait Islanders, young people, women and girls, elderly people and people with disabilities.<sup>25</sup>

## The right to participation

It is a central principle of the international human rights framework that all people have the right, without discrimination, to participate in public affairs and, in particular, in decision-making processes that affect them.<sup>26</sup> The right to active, free and meaningful participation, enshrined in art 25 of the *ICCPR*, art 13(1) of the *ICESCR* and art 2(3) of the *Declaration on the Right to Development*, covers all aspects of public administration, decision-making and policy formulation at international, national, regional and local levels.<sup>27</sup> It requires positive action to ensure that marginalised groups and individuals, such as people experiencing homelessness or poverty, are consulted with and included in the development and implementation of public policies and programs.<sup>28</sup>

Furthermore, the participation of homeless people in decision-making and policy formulation is instrumentally

16. Paula Braveman and Sofia Gruskin, 'Poverty, Equity, Human Rights and Health' (2003) 81(7) *Bulletin of the World Health Organization* 539.

17. *Health and Freedom from Discrimination*, above n 13, 6, 10.

18. Letter from Jesuit Social Services to PILCH Homeless Persons' Legal Clinic, 22 August 2002.

19. Philip Lynch and Bella Stagoll, 'Promoting Equality: Homelessness and Discrimination' (2002) 7 *Deakin Law Review* 295.

20. CESCR, *Substantive Issues*, above n 7, 3. See also *ICCPR* arts 2(1) and 26 and *ICESCR* art 2(2).

21. Human Rights Committee, *General Comment 18: Non-Discrimination*, 136, UN Doc HRI/GEN/1/Rev 5 (2001).

22. See, eg, K Parker and L B Neylon, 'Jus Cogens: Compelling the Law of Human Rights' (1989) 12 *Hastings International and Comparative Law Review* 411, 441–2.

23. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* [1971] ICJ Rep 16. See also *Barcelona Traction, Light and Power Company Limited Case (Belgium v Spain) (Second Phase)* [1970] ICJ Rep 3, 34.

24. *General Comment 18: Non-Discrimination*, above n 21, 136.

25. CESCR, *Substantive Issues*, above n 7, [11].

26. *Ibid* [12].

27. Human Rights Committee, *General Comment 25: Article 25*, 157, UN Doc HRI/GEN/1/Rev.5 (2001).

28. See also *Draft Guidelines*, above n 2, 16–17 [Guideline 5] and 48–52 [Guideline 14].

*... discrimination against people experiencing homelessness, including in the provision of housing, education, support services and health and medical services, is not only widespread in Victoria and at a national level; it remains lawful.*

and substantively important and intimately linked to meaningful social inclusion. Instrumentally, their participation in the development and implementation of programs to address the needs of homeless people can enhance individual autonomy, independence, sense of control, sense of value and self-esteem.<sup>29</sup> As James, a 29-year-old homeless man, reports, 'there is nothing worse than not being able to understand or control what is happening to you. We should have the main say, because it's for us, and we know what's really going on.'<sup>30</sup> As the UN Office of the High Commission for Human Rights has stated, '[i]t is now widely recognised that effective poverty reduction is not possible without empowerment of the poor. The human rights approach to poverty reduction is essentially about such empowerment.'<sup>31</sup>

Substantively, the meaningful and informed participation of homeless people can enhance programmatic development by informing governments and service providers about people's needs and the most effective and targeted way to address those needs.<sup>32</sup> According to the UN Committee on Economic, Social and Cultural Rights, 'a policy or program that is formulated without the active and informed participation of those affected is most unlikely to be effective'.<sup>33</sup> This is an insight shared by people experiencing homelessness themselves. As Anne Gosely, a spokeswoman for the Homeless People's Association, has argued, 'we understand that you think you are doing your best but until such time as you stop and ask the people themselves what their needs are, you will keep going around in circles and wasting money that could be put to good use'.<sup>34</sup>

Notwithstanding the importance of such participation and the instrumental role it could play in social inclusion, homeless people are significantly underrepresented, if at all, on government advisory and reference groups on homelessness and on the boards and committees of homelessness assistance services. Further, although the Preamble to the *Supported Accommodation Assistance Act 1994* (Cth) provides that it is essential that homeless people have the opportunity to be involved in the development of policies and programs relating to them, no Supported Accommodation Assistance Program (SAAP) funds are committed to the establishment or support of homelessness community groups or organising processes. The international human rights framework requires that:

- federal, state and territory governments commit to ensuring that people who are homeless or formerly homeless are directly represented on all governmental and departmental reference groups,

advisory groups and steering committees that relate to homelessness or to issues that impact on people experiencing homelessness

- all homelessness assistance services be required to directly involve people who are homeless or formerly homeless in organisational management, development and operation
- through SAAP, federal, state and territory governments should fund and support people who are homeless or formerly homeless to form groups and associations to participate in governmental and sectoral policy development, decision-making processes and service delivery.

## Conclusion

On any given night, more than 100 000 people experience homelessness across Australia.<sup>35</sup> While the causes and consequences of homelessness are complex and varied, the experience of social exclusion is common. For this reason, there are significant positive correlations between alleviating homelessness and social exclusion on the one hand, and realising human rights and social inclusion on the other.

Enshrining human rights principles in legislation and institutions provides a useful and important framework to identify and address determinants of social exclusion and to overcome capability failures that are constitutive of homelessness. The integration of human rights principles, particularly those of non-discrimination and participation, into homelessness policy and services increases the likelihood that they will be 'effective, sustainable, inclusive, equitable and meaningful to those living in poverty'.<sup>36</sup>

A human rights approach to homelessness and social exclusion requires that their underlying factors, including discrimination and lack of participation, be identified and addressed through a range of legislative and institutional measures. It requires that these measures be concrete, progressive and directed to the full and expeditious realisation of the right to adequate housing and interconnected human rights, including the right to human dignity and respect.

Homelessness, social exclusion and vulnerability to discrimination would be significantly reduced if Australian governments and services took seriously their obligations to respect, protect and fulfil human rights.

PHILIP LYNCH is Coordinator, PILCH Homeless Persons' Legal Clinic in Melbourne

© 2005 Philip Lynch

29. Deena Hurwitz, 'Lawyering for Justice and the Inevitability of International Human Rights Clinics' (2003) 28 *Yale Journal of International Law* 505, 516; Andy Blunden, 'Capital Investment' (2004) 14(5) *Eureka Street* 30.

30. Department of Human Services (Vic), *Charter of Rights and Enhanced Complaints Mechanism: Report on Consumer Consultations* (2004) 13.

31. *Draft Guidelines*, above n 2, 1.

32. Robert A Solomon, 'Representing the Poor and Homeless: A Community-Based Approach' (2000) 19 *St Louis University Public Law Review* 475, 483.

33. CESCR, *Substantive Issues*, above n 7, [12].

34. Anne Gosely et al, 'Stop and Listen ... Don't Assume: Why the Homeless People's Association was Formed' (Beyond the Divide: The 3rd National Homelessness Conference, Brisbane, 6-8 April 2003).

35. Australian Bureau of Statistics, *Counting the Homeless 2001* (2003).

36. CESCR, *Substantive Issues*, above n 7, [13].