

Housing as a human right

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National Conference on Homelessness

Council to Homeless Persons

Address by Chris Sidoti, Human Rights Commissioner

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Foreword

Human rights are for all people - each woman, man and child - in all places and at all times. This is the second of a series of Occasional Papers to be published examining the application of human rights to a specific area of concern confronting Australian society.

The Human Rights and Equal Opportunity Commission has recognised and promoted for many years the human rights needs of all Australians. This paper is based on a speech I gave in Melbourne, Victoria, in September 1996, which highlighted the human right to adequate housing in Australia.

Chris Sidoti

Human Rights Commissioner

Introduction

Thank you for the invitation to address this important conference and to contribute to the debate on trends and challenges in responding to homelessness.

Adequate housing is a fundamental human right. The Human Rights and Equal Opportunity Commission has consistently supported policies and programs to ensure this right is respected.

The Commission was especially pleased therefore that the recent United Nations Conference on Human Settlements, or HABITAT II as it is more commonly referred to, reaffirmed adequate housing as a fundamental human right.

During my short address today, I will discuss this central theme of housing as a fundamental human right and allude to some of the policy implications arising from this recognition.

The human right to adequate housing

Adequate housing is essential for human survival with dignity. Without a right to housing, many other basic human rights will be compromised including the right to family life and privacy, the right to freedom of movement, the right to assembly and association, the right to health and the right to development.

The right to housing has particular significance for children. Because of their vulnerability they have special needs for care and protection. Without decent secure accommodation children are unlikely to realise their right to grow and develop in an atmosphere of moral and material security, free from abuse and neglect.

The right to housing is clearly supported by international law, indeed at the very foundation of the international human rights system in the Universal Declaration of Human Rights. This Declaration, adopted by the United Nations in 1948, establishes an internationally recognised set of standards for all persons without qualification.

Article 25 of the Declaration provides, “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including housing”.

The Universal Declaration derives to a very significant extent from a draft placed before the United Nations by the American Law Institute. The Institute’s “Statement of Essential Rights” made express provision for “the right to adequate food and housing”. The statement was, in turn, inspired by then US President Roosevelt who in his State of the Union Address in 1944 defended the “right of every family to a decent home”. President Roosevelt also included among his famous *Four Freedoms* speech freedom from want. This encompassed economic understandings to secure to every nation a healthy peacetime life for its inhabitants.

Article 11 of the International Covenant on Economic, Social and Cultural Rights, to which Australia is a party, recognises the right of all people to adequate housing and commits state parties to take appropriate steps to ensure the realisation of that right. Article 11 recognises, “.... the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...” and that “States Parties will take appropriate steps to ensure the realization of this right”.

Further recognition of this right can also be found in a wide range of other international instruments including the Convention on the Rights of the Child and, in the context of non-discrimination, in the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of every human being to an adequate standard of living, including housing, was reaffirmed by the international community at the World Conference on Human Rights in Vienna in 1993. Paragraph 31 of the Program of Action adopted by that particular conference, provides for “... the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services”.

Particularly in light of HABITAT II, the Commission urges a return to the rights based approach in our dealing with housing outcomes in this country. Recent resolutions of the United Nations Economic and Social Council reaffirmed the right of every man, woman and child to a safe and secure place to live in peace and dignity. This should set the framework for the way we approach housing issues and in particular homelessness in this country.

Unfortunately, turning rights into realities is difficult. There are great social, political, economic and cultural differences between countries and peoples. Human rights are binding obligations but for many rights such as the right to an adequate standard of living compliance depends on resources. Obligations may not necessarily equate with concrete action on the part of a particular nation.

Understanding the right to housing

In 1992 the United Nations appointed a Special Rapporteur to promote the realisation of the right to adequate housing. The Special Rapporteur’s work has increased understanding of the nature and scope of the right.

In his first report to the world body in 1993 the Special Rapporteur pointed out that the human right to adequate housing did not require the State to build housing for the entire population or to provide

housing free of charge. It certainly did demand that the State undertake a series of measures indicating policy and legislative recognition of each of the constituent aspects of that right. Countries must not misinterpret and abrogate their responsibility, particularly in relation to highly disadvantaged groups such as the homeless.

In later reports, the Special Rapporteur addressed misconceptions surrounding the implications of the right to housing. He pointed out that public housing remained one of the few effective ways of guaranteeing everyone, everywhere, the right to a place to live in peace and security.

There are some who do not accept that there is a right to housing. They argue that if there were a right it would entitle every individual to demand a house and government resources would be totally insufficient to meet these demands. Such a narrow interpretation of human rights cannot be justified.

From the Commission's point of view, there is a fundamental right to an adequate place to live in peace, dignity and security. This right requires governments to endeavour by all appropriate means to ensure everyone has access to housing resources adequate for health, well-being and security, consistent with other human rights.

Habitat II

Remarkably a few countries, led primarily by the United States, sought to use the HABITAT II Conference to overturn recognition of the right to housing. This is remarkable because the right to housing is recognised clearly in the International Covenant on Economic, Social and Cultural Rights. This Covenant has been ratified by more than 130 countries.

It is remarkable because, as I have said, recognition of the right derives from President Roosevelt's Four Freedoms and from US lawyers.

The refusal of the United States to recognise the right to housing is of course symptomatic of a wider problem in the international community which arises with the tendency to give a higher priority to civil and political rights over economic and social rights.

Those few countries argued that somehow international law recognises "a right to an adequate standard of living" but not a right to housing. However, the United Nations Commission on Human Rights, the General Assembly and a host of other bodies have regularly referred to the right to housing in documents, legal instruments and other texts since 1948.

As Australia's Human Rights Commissioner I regularly emphasise that human rights include not just personal freedoms but also, and to no lesser degree, those rights concerned with the economic, social and cultural wellbeing of individuals. The United Nations Charter itself reflects the broad nature of human rights in its preamble which calls upon all nations "to promote social progress and better standards of life in larger freedom".

Fortunately, over the years Australian Governments of both political persuasions have advocated strongly for socio-economic rights in international human rights activities. The Minister for Foreign Affairs, Mr Downer, recently re-affirmed this commitment. It was certainly Australia's position at Habitat II.

The dispute over the right to housing dominated preliminary discussions leading up to the HABITAT II Conference. Under the circumstances, it was not surprising that debate on the right to housing generated the most passion during the conference itself.

The documents flowing out of the Conference talk at length about shelter and associated matters but seem to characterise them primarily as desirable goals rather than as fundamental human rights.

For the Commission this of course is a source of some frustration. As well, while every conceivable problem in the area of housing was dealt with at HABITAT, the agenda document itself fails to prioritise action or specify possible solutions.

I was not surprised to find that a major confrontation on this issue was eventually avoided, that a compromise was reached in the language and wording of the conference declaration. As a participant myself at the United Nations Second World Conference on Human Rights in June 1993, I can attest to the ingenuity with which these international conferences manage to compromise the wording of resolutions and plans of actions to achieve a final consensus.

In its final declaration HABITAT II affirmed the “full and progressive realisation of a right to housing”. This seems to have satisfied both sides of the debate. Importantly the declaration affirmed governments’ obligations to facilitate access to housing and referred to what specific policies and actions are required.

The declaration helps to move the debate beyond a narrow legalistic interpretation of what the right to housing might mean and places it firmly within and on the public policy agenda as an issue demanding a response.

However it appears to be long on rhetoric and short on specifics. The Australian Government statement itself did not include any of the 50 proposed commitments developed through the Australian NGO forums or the HABITAT II national consultative committee.

The right to housing in Australia

Australia’s response to the right to housing has been a mixed one to date. On the positive side, the right to housing is recognised and supported in such documents as Australia’s National Action Plan on Human Rights and its stated position at important international forums as the HABITAT II Conference.

The National Action Plan states that all Australians should have access to affordable, adequate and appropriate housing. It re-affirms a commitment to improving the housing and living conditions of Australian citizens and the economic efficiency, social equity and environmental sustainability of our cities and regional areas.

Notwithstanding these commitments, as this Conference is making clear there remains considerable room for improvement in Australia’s overall performance on the right to housing. Our shortcomings are evident when we look at the experiences of homeless children, people with mental illness and indigenous Australians.

Homeless children

Youth homelessness is perhaps the most serious shortcoming in this country’s policy response. In the late 1980s, the Human Rights and Equal Opportunity Commission conducted a National Inquiry into Homeless Children. It revealed that approximately 25,000 children and young people in Australia were homeless, with many more at risk of homelessness or surviving in grossly inadequate housing.

The Commission’s Inquiry demonstrated clearly how denial of the right to housing can lead to the denial of many other basic rights. Our Inquiry and later reports prove the link between youth

homelessness and such problems as mental illness, unemployment, sexual abuse and other exploitation, social isolation, exposure to violence and other human rights violations.

The Inquiry found there were insufficient resources to address this issue and structural problems that inhibit reform, such as poor co-ordination between different levels of government in the provision of services and inadequate consultation by governments with community organisations and workers in the field.

Since our report was released in 1989, the Commission has continued to monitor developments and press for effective reforms to take account of the human rights violations presently occurring with this severely disadvantaged section of the Australian community.

I am ashamed to say some seven or eight years later, that the picture of youth homelessness does not appear to have improved much at all. In fact, the picture today may well be worse than it was in the late 1980s.

Last year's report of the House of Representatives Standing Committee on Community Affairs, entitled "Report on Aspects of Youth Homelessness", confirmed that the numbers of homeless youth in Australia have increased significantly since the time of the Commission's own inquiry and that the standard of support services for young homeless people remains totally inadequate.

Homelessness is a personal tragedy for many thousands of Australia's children. It represents a failure by governments to fulfill our commitments to protect the rights of children.

The Convention on the Rights of the Child recognises that children, because of their vulnerability, need special care and protection. Article 4 of the Convention provides in part that "The child shall have the right to adequate nutrition, housing, recreation and medical services".

The Convention recognises that income support may not in itself be sufficient to guarantee effectively an adequate standard of living for children. It therefore provides more specifically for rights that support that. In particular in relation to children, mere shelter is clearly not sufficient. Adequate housing requires the provision of secure accommodation reasonably appropriate to the needs of the child, consistent with the other rights guaranteed by the Convention.

Under the Convention, children are entitled to grow up "in an atmosphere of affection and of moral and material security", to "grow and develop in health", to be given opportunities and facilities to enable them to develop "in a healthy and normal manner and in conditions of freedom and dignity", and to be free from exploitation and abuse.

The State is obliged to ensure the enjoyment of these rights. It has not met this obligation. Today many homeless children lack secure, permanent accommodation, live in conditions detrimental to their health or prejudicial to their development, live in an environment where they are exposed to abuse or even have to accept abuse and exploitation in return for accommodation.

In this International Year for the Eradication of Poverty, youth homelessness reflects badly on our country's international reputation as a humanitarian nation. Although homelessness and the issues surrounding it are not new, it is possible that we as a community are becoming immune to the problem.

Homeless and mental illness

The Commission conducted a national inquiry into the human rights of people with mental illness in 1993. The Inquiry confirmed that homeless people suffer a high rate of physical and mental health

problems. Many of them are regarded as unemployable and are generally isolated from the rest of the community.

The homeless mentally ill must be able to feel that it is their right rather than any privilege to obtain the services they need. Submissions before our inquiry repeatedly emphasised that services including night shelters, community health centres and home care must be designed for the people they are trying to help. This means a service should acknowledge and accommodate clients' mental illnesses but it must also recognise they have other needs beyond their disability.

Continuity of relationships is one of the most important factors and yet it is precisely what is missing from government health services. When it is provided it can contribute significantly to the mental health of a homeless person. Other important requirements are that services be more flexible and accessible. At present a homeless mentally ill person seeking support finds it a difficult and confusing process because service provision and methods of service delivery can vary so much.

These features of continuity, flexibility, accessibility can only be achieved if adequate resources are allocated. Homeless people with mental illnesses are clearly among the most vulnerable and abused in our society. The cost of protecting their rights is not, therefore, an optional extra. It requires urgent and effective responses.

Homeless and indigenous people

Australia's indigenous peoples experience considerable disadvantage in relation to housing rights as with other human rights. Noel Pearson has already addressed this earlier this morning. Sadly, as in many other areas of public policy in this country, the housing conditions of our indigenous peoples remain well below those of the general population. This is especially the case in rural and isolated areas where housing and infrastructure support are major contributing factors in the poor health of indigenous people particularly children.

Homelessness in Aboriginal and Torres Strait Islander communities is directly linked to dispossession. The relocation and exclusion of indigenous peoples from their traditional lands has implications for their levels of homelessness and inadequate housing.

Homelessness and the acute need of Aboriginal and Torres Strait Islander peoples with respect to housing and infrastructure require urgent attention. The continuing extreme levels of need mean that Australia's indigenous communities are denied the capacity to exercise and enjoy their human rights on the basis of equality with other Australians.

Any strategy to address homelessness in indigenous communities must take into account its diverse faces. Land rights, the nexus between past and current policies of removal and homelessness as well as housing and infrastructure must all be considered in developing and implementing policy that will effectively meet needs.

The human rights challenge

If there is one commitment the country must make to social justice, then it is that no Australian will be deprived of the basics of survival. If there is any consensus about the future of this country, then it must be that all people have enough to eat, safe water to drink and somewhere to live.

With so many Australians homeless, the right to housing challenges our governments and our communities. Homelessness is more than just a problem arising from the lack of shelter. It is a problem that affects the fulfilment of many human rights, including privacy, education and health.

That is why human rights are interdependent in nature. It is also why policy strategies to deal with homelessness need to take into account the interdependent nature of family, work, education, training and community factors if we are to effectively deal with the issue.

Much of the focus of public debate these days is on such things as eliminating the budget deficit, improving Australia's trade performance, achieving cuts in official interest rates or who is going to open the Olympic Games in Sydney in the year 2000. But these should not be the only issues of national importance on the policy agenda today.

We should never allow our community to forget that homelessness is about the lives of real people. The issue cannot be dealt with as some abstract academic problem. Homelessness is about real people, pain, struggle, poor health, loneliness, violence and ultimately powerlessness.

Responding to homelessness

Homelessness requires a comprehensive response that fosters and develops close partnerships between all levels of government and the community sector.

This approach must include awareness and respect for the right to an adequate standard of housing and understanding of how to translate this into effective strategies.

The extent of homelessness has been a contentious issue for many years. Almost fifteen years ago the Senate Standing Committee on Social Welfare conducted an inquiry on youth homelessness in 1982. The Committee noted that the available statistics on homelessness were so unreliable that it was not possible to determine with sufficient accuracy the true extent of the problem.

The Commission's own report also referred to the lack of accurate data concerning numbers of homeless youth. More recently, the House of Representatives Community Affairs Standing Committee confirmed that the information gathered continues to be unreliable and inaccurate.

This situation has implications both for our public policy process and for our human rights observance. Data collected by government departments are not readily integrated to provide a useful overview of the problem. Collecting better data remains an urgent need in addressing homelessness.

This is important for human rights compliance. The right to housing is to be realised progressively. Nations are to adopt policies and programs that will ensure full observance of the right as soon as possible. But how are we to tell whether Australia is meeting this obligation?

Without reliable and accurate information we are unable to say with any certainty whether housing policies and programs are effectively addressing homelessness, are truly meeting our commitments to our fellow Australians.

At the very least the relevant departments including the Departments of Social Security and Employment, Education, Training and Youth Affairs must establish a common client information data system that will ensure better comparability and greater cohesiveness in data collection on homelessness.

Ultimately of course acceptance of housing as a fundamental human right is not the issue here. The issue is protecting and promoting that right.

Too few governments, including our own, have acted upon the fundamental human right to adequate housing in a manner sufficiently reflecting the obligations associated with that right.

Governments must do more and society itself must do more to end violations of housing rights, do more to protect the weakest and most vulnerable among us, do more to ensure the basic necessities of life and livelihood for all and do more to find and grasp the most effective means of guaranteeing an adequate place in which people can live in peace, security and dignity.