

Chapter 6: Human Rights and Homelessness

Freedom of Speech and the Right to Participate for People Experiencing Homelessness: Forgotten Freedoms for the Forgotten People

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'Any situation in which some men prevent others from engaging in the process of inquiry is one of violence... to alienate humans from their own decision making is to change them into objects.'

— Paulo Freire, Brazilian educator and philosopher

This year there has been considerable community discourse regarding what has been described as one of the traditional core human rights: freedom of expression and thought. Australia's new Human Rights and Freedoms Commissioner, Tim Wilson has asserted that freedom of expression is one of the four foundation human rights, and one of the 'forgotten freedoms'.¹ Attorney General George Brandis has also been a vociferous advocate of the need to refocus on 'the forgotten freedoms'.²

And while there has been significant attention devoted to the 'forgotten freedom' of expression for tobacco companies, high profile tabloid journalists, outlaw bikers and Holocaust deniers, there has been next to no focus on the ability of the most disadvantaged and marginalised people in our community to exercise their freedom of expression. Therefore, in this climate of burgeoning interest in the right to freedom of expression, one may ask what does this mean for those who are homeless or at risk of homelessness? It is submitted that for this disadvantaged group, freedom of expression also requires promotion and respect for their right to participate in public affairs.

Freedom of Expression for Marginalised People

People experiencing homelessness and those at risk of homelessness are often the subject of media commentary. There is constant policy analysis of their plight, and attention given to aspects of their situation,

whether it be mental illness, addiction, susceptibility to excessive contact with the criminal justice system, histories of domestic violence and abuse, inability to access crisis accommodation services, or lack of access to affordable housing.

However, given their marginalisation in society, their lack of access to mass media opportunities, and a lack of ability to marshal significant media or political influence to be able to significantly weigh into debates on the public policy issues that directly affect them, the question of freedom of expression for people experiencing homelessness and those at risk of homelessness takes on a more nuanced character.

For marginalised groups such as people experiencing homelessness and those at risk of homelessness, their right to freedom of expression is almost symbiotically linked to their right to participate in public affairs. This right is well established in international human rights law.

Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR) states that every citizen shall have the right and the opportunity, without unreasonable restriction to take part in the conduct of public affairs, directly or through freely chosen representatives.³ The underlying principle of the right to participation is that every individual should have the freedom and capacity to be involved in decision making that affects her/his interests.

For people who are homeless or at risk of homelessness, this right has several different dimensions. People experiencing homelessness are often the subject of decision making that affects their interests, whether in a service setting, accessing support services, through case-management

practices, and of course, at the government and public policy level. The right to participate relates not only to the need for an individual to be an active agent and participant in decisions and processes that significantly affect her/his interests, but also to be an effective and engaged participant in society in order to defend her/his interests and to help foster a society that advances her or his interests.

Obviously, the most common political expressions of this right are the right to vote and stand for elections, the freedoms of association and assembly. According to the United Nations Human Rights Committee (UNHRC) General Comment No. 25, the right to participate in public affairs as enshrined in Article 25 lies at the core of representative, democratic government.⁴

However, the UNHRC has also recognised that the right to participate in public affairs is broader than the right to vote or the freedom of association. The Committee stated in General Comment No. 25 that taking part in the conduct of public affairs can also be undertaken by individuals and groups exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves. Such participation is supported by ensuring freedom of expression, assembly and association.⁵ This recognises the broader principle encompassed by the right, namely that all citizens should be involved in decision-making processes that affect them.

The Committee also noted that for the right to participate in public affairs to be effectively guaranteed, governments need to implement positive measures to overcome specific difficulties for certain groups of people, including illiteracy, language barriers, poverty, or

impediments to freedom of movement.⁶ This comment recognises that all individuals in society are not equally able to exercise their right to participate, their freedom of expression and their freedom of assembly, unless there are specific measures and programs designed to overcome particular barriers and difficulties with which some people are confronted. Importantly, the Committee's comment attributes responsibility for implementing these measures with government bodies.

Developing a Human Rights Approach to Addressing Poverty and Homelessness

When considered in the light of public policy responses to poverty and homelessness, the right to participate in public affairs goes to the very core of a human rights based approach to addressing homelessness and poverty reduction. People experiencing homelessness and those at risk of homelessness must be considered as the principal actors and strategic partners for developing public policy responses to addressing homelessness. Such an approach can be compared with the 'needs-based' approach which so often underpins government policy response to these issues, or the 'charity based' approach which often characterises the activities of large welfare and faith-based organisations involved in developing responses to homelessness and poverty.

Unlike the 'needs-based' approach or the 'charity-based' approach, where those people who are homeless, in poverty or otherwise marginalised are seen as passive recipients of policy or welfare interventions, the 'human rights approach' considers these individuals to be entitled to assistance, and that they should be active agents and participants in the service provision and policy processes that will impact on their welfare and interests. Importantly, the human rights approach recognises that the process of their participation works to empower them to claim their rights.

This empowering aspect of active participation was recognised by the UN Special Rapporteur on extreme poverty and human rights in 2013, when she reported to the UN Human Rights Council:

Human rights based participation is an important tool to empower

people living in poverty by allowing them to exercise their voice to influence relevant decision-making processes.⁷

The Special Rapporteur unambiguously asserted in her report that people living in poverty are entitled to participate in the design, implementation and monitoring of poverty interventions and other policies, programmes and interventions that affect their lives. In addition, this entitlement extends to holding accountable those who have obligations and duties to ensure that they are able to exercise their right to participation.⁸

For people living in poverty, which obviously includes those who are homeless or at risk of homelessness, the right to freedom of expression is inextricably linked to their right to participate in public affairs. Given their marginalisation from the usual media by which their exercise of their freedom of expression can be conveyed to government and policy makers, the right to participate and duty on government to provide the necessary mechanisms by which they can actively participate in policy design and implementation becomes the essential vehicle by which their freedom of expression is effectively realised and effected.

For organisations involved in specialist legal service delivery to people who are homeless or at risk of homelessness, the involvement of consumers in the design, development and evaluation of those services is one way in which the right to participate can be given effect. However, given that these services are also critical in identifying appropriate law reform and policy responses to the legal and human rights issues that manifest in their casework, the right for homeless consumers to participate in this activity is equally important. (See my other article in this edition.)

Conclusion

The rights to freedom of opinion and freedom of expression are indispensable for the full development of the person, and are therefore considered essential for any society. In referring to them as two of the foundation freedoms, the Human Rights Commissioner is echoing the sentiments of the UNHRC, which consider them to constitute the

foundation stone for every free and democratic society.⁹

However the UNHRC also considers that these freedoms are closely related to the right to participate in public affairs, with freedom of expression providing the vehicle for the exchange and development of opinions. The Committee states that freedom of expression is a necessary condition for the realisation of the principles of transparency and accountability that are essential for the promotion and protection of human rights and is integral to the enjoyment of the right to participate in public affairs.¹⁰

However, for the most disadvantaged and marginalised in our community, the rights to freedom of expression and to participate in public affairs are not accessible without active, well-resourced facilitation and enabling. As part of its duty to ensure respect for these foundation freedoms, the State has an obligation to ensure that those most marginalised in society are enabled to exercise these freedoms on an equal footing to all others. Consumer participation and engagement projects such as the StreetCare Homeless Consumer Advisory Committee are strategies by which people experiencing homelessness have been so enabled to exercise their rights to freedom of expression and participation in public affairs.

Endnotes

1. Wilson T 2014, 'The Forgotten Freedoms', Speech to the Sydney Institute, 13 May 2014.
2. Brandis G 2014, 'The Freedom Wars', Speech to the Sydney Institute, 8 May 2014.
3. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ratified by Australia on 13 August 1980 (entered into force for Australia on 13 November 1980, except article 41, which entered into force for Australia on 28 January 1993). The full text of the ICCPR is available at: www2.ohchr.org/english/law/ccpr.htm.
4. *United Nations Human Rights Committee General Comment No. 25*, paragraph 1.
5. *Ibid*, paragraph 8.
6. *Ibid*, paragraph 12.
7. *Report of the Special Rapporteur on extreme poverty and human rights*, Magdalena Sepúlveda Carmona, UN General Assembly, Human Rights Council 23rd Session, 11 March 2013, A/HRC/23/36, paragraph 72.
8. *Ibid*, paragraph 80.
9. *United Nations Human Rights Committee General Comment No. 34*, paragraphs 2–3.
10. *Ibid*, paragraphs 3–4.