



Human Rights and Domestic Violence Fact Sheet

Housing

What is the purpose of this fact sheet?

Domestic and family violence is a serious violation of human rights and a substantial barrier to achieving gender equality. This fact sheet outlines human rights obligations relevant to domestic violence and housing. Service providers can use this information to advocate for individual clients, or to support arguments for changes to law, policy and practice.

There are also several Federal and State laws that relate to family violence, tenancy and discrimination that are not considered in this fact sheet. You should contact a specialist housing service or your local community legal centre if you would like to discuss these.^[1]

What are the relevant human rights?

The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) recognises that violence against women is a form of discrimination. It requires governments to exercise 'due diligence' to prevent and respond to violence against women, including domestic and family violence.^[2] This means that governments must take reasonable and effective measures to prevent, investigate, punish and redress domestic violence.^[3]

Several other human rights obligations may be relevant to domestic and family violence, depending on the circumstances. For example, the right to safe and adequate housing is protected under the *International Covenant on Economic, Social and Cultural Rights*.

How do these rights relate to housing and domestic violence?

The United Nations Committee on the Elimination of Discrimination Against Women has stated that in order to act with 'due diligence', governments must provide 'appropriate protective and support services', including 'services to ensure the safety and security of victims of family violence, including refuges'.^[4]

In the case of *A. T. v Hungary*, the Committee considered a complaint from a woman who had been abused by her former partner.^[5] Despite reported death threats, she was not able, through either criminal or civil law proceedings, to exclude her former partner from the apartment where she lived with her children. She was also unable to access a shelter because none were equipped to accommodate her and her two children, one of whom had a disability.

The Committee decided that the government's failure to provide safe and accessible housing, along with other factors such as the unavailability of effective protection and exclusion orders, constituted a violation of Hungary's human rights obligations. The Committee recommended that a safe and accessible home be provided for A.T. and her children.

1. To find your local community legal centre, go to: <http://www.naclc.org.au/>. Contact details for women's legal services are available here: http://www.wlsa.org.au/contact_us
2. Committee on the Elimination of Discrimination Against Women, *General Recommendation no. 19: Violence Against Women* (1992) 5 (General Recommendation 19); *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women: Report of the Special Rapporteur on Violence Against Women, its causes and consequences*, Yakin Ertürk, 20 January 2006
3. Ibid
4. General Recommendation 19, [24]
5. *A. T. v Hungary*, 26 January 2003. See also *V.K v Bulgaria*, 25 July 2011



Rebecca's Story

Rebecca lived with her two young children in public housing. Rebecca's former partner, Neil, was abusive towards Rebecca. He had caused damage to the property and his shouting had disturbed neighbours on several occasions. The housing provider sought to have Rebecca evicted on account of damage to the property and nuisance to other tenants.

Rebecca's housing worker told Rebecca that there is a high turn-away rate for women trying to access emergency accommodation and she would probably have to sleep in her car or access a rooming house if she was evicted. Given the unsuitability of these premises for children, Rebecca was worried that her children would be removed from her care.

In this case, the government's 'due diligence' and other human rights obligations require that:

- the housing provider withdraw the notice to vacate in light of Rebecca's particular circumstances; and
- if the eviction did proceed, emergency accommodation should be made available to Rebecca and her children.

How do I make a complaint about a human rights violation?

If the government has failed to meet its human rights obligations the following complaints mechanisms may be available:

1. If you are in Victoria or the ACT you may be able to challenge the act or decision under state-based human rights laws that require public authorities to give consideration to and act in accordance with human rights.^[6]
2. If the complaint is against the Commonwealth Government or one of its agencies, you may be able to make a complaint to the Australian Human Rights Commission.^[7]
3. In some cases, you may be able to make an individual complaint to the UN Committee on the Elimination of Discrimination Against Women. Alternatively, if the issue is 'grave or systematic', you could ask the Committee to conduct an inquiry. These procedures are available under the *Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women*.^[8]

hrlc.org.au/women

Thanks

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Contact

For more information please contact Rachel Ball, Director of Advocacy & Campaigns, at the Human Rights Law Centre on (03) 8636 4433

6. *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, s.38; *Human Rights Act 2004 (ACT)*, s.40B

7. For more information see: <http://www.humanrights.gov.au/complaints-about-breaches-human-rights>

8. For more information see: <http://www.humanrights.gov.au/publications/mechanisms-advancing-women-s-human-rights-guide-using-optional-protocol-cedaw-and-other>
* Case study provided by Domestic Violence Victoria



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