



Human Rights and Domestic Violence Fact Sheet Justice

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 the justice system. 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 State laws and regulatory frameworks that relate to family violence and discrimination that are not considered in this fact sheet. You should contact 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 violence and justice, depending on the circumstances. For example, the *International Covenant on Civil and Political Rights* (ICCPR) requires that all persons must be granted equal access to the justice system.

How do these rights relate to justice and domestic violence?

CEDAW requires governments to establish legal protection of the rights of women on an equal basis with men and also ensure victims of violence 'have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate.'^[4] Governments must also adopt measures that 'ensure women are able to make complaints about violations of their rights under the Convention and have access to effective remedies'.^[5]

In *Opuz v Turkey*, the European Court of Human Rights finds that 'the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence' and found a violation on the rights to life, torture or to inhuman or degrading treatment or punishment and non-discrimination.^[6]

In *Kell v Canada* the UN Committee on the Elimination of Discrimination against Women recommended that the Canadian Government ensure that Indigenous women who are victims of domestic violence have effective access to justice.^[7]

In *V.K. v Bulgaria* the UN Committee on the Elimination of Discrimination Against Women found that Bulgaria had violated V.K.'s rights under CEDAW because the courts had neglected to consider her emotional and psychological suffering and history of domestic violence in deciding to refuse to grant her a protection order.^[8]



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.^[9]
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.^[10]
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*.^[11]



Emma's Story

Emma sought an intervention order against her violent ex-husband. On the day of the hearing Emma had to wait for hours in the court's foyer where she was abused by her ex-husband. There were no security personnel present. Emma felt unsafe and had to leave court, so the Magistrate dismissed her application.

In this case, the Government's 'due diligence' obligation requires that the intervention order process be accessible for women experiencing violence. This may involve the provision of appropriate security arrangements and a 'safe room' where Emma could have waited for the hearing.

Thanks

Thanks to Aboriginal Family Violence Prevention and Legal Service Victoria, Domestic Violence Resource Centre Victoria, Domestic Violence Victoria, Federation of Community Legal Centres, Maddocks and Women's Legal Service Victoria for their advice and assistance.

Contact

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

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; *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, E/CN.4/2006/61, 20 January 2006
3. Ibid
4. United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation 28, *The Core Obligations of State Parties under Article 2 of the Convention on the Elimination of Discrimination against Women*, 19 October 2010 (General Recommendation 28), [34]; *V.K. v Bulgaria*, 25 July 2011, [9.4]
5. General Recommendation 28, [36]
6. *Opuz v Turke*, 9 June 2009
7. *Kell v Canada*, 2 March 2012 [11]
8. General Recommendation 28 [9.9]; *Vertido v Philippines*, 16 July 2010
9. *Charter of Human Rights and Responsibilities Act 2006* (Vic), s.38; *Human Rights Act 2004* (ACT), s.40B
10. For more information see: <http://www.humanrights.gov.au/complaints-about-breaches-human-rights>
11. 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 Women's Legal Services Victoria

Information current as of September 2013



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Funded through the Legal Services Board Grants Program