



## Australian Domestic & Family Violence Clearinghouse

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### ISSUES IN GOOD PRACTICE

#### **Advancing women's rights through human rights law: possibilities and practical action**

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The year 2008 saw a number of significant developments in the struggle to realise women's equality in Australia. These developments included a review of the *Sex Discrimination Act 1984* (Cwlth), Australia's accession to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* and the commencement of a national consultation to investigate attitudes on the protection and promotion of human rights in Australia. Notwithstanding these and other important developments, gender-based violence against women remains socially pervasive and persistent in this country. For example in 2005 the Australian Bureau of Statistics estimated that one in three women in Australia experience gender-based violence in their lifetime.

Gender-based violence against women has been an important concern for those working within the international human rights arena. For instance, the UN Human Rights Committee has noted its concern regarding the "disturbing levels of domestic violence [that] persist in Australia", and the UN Committee on the Elimination of Discrimination against Women ('CEDAW Committee') has expressed its concern regarding "the continuing prevalence of violence against women, as well as ... the low rates of reporting, prosecutions and convictions in sexual assault cases".

In examining the role of human rights law in promoting women's safety, it is important to consider the unparalleled opportunities for women arising from the National Human Rights Consultation. More generally, it is important to consider how human rights norms and standards have been used as an advocacy and litigation tool for the advancement of women's safety, and how these norms and standards might be successfully harnessed by domestic violence workers and activists in Australia. This article provides a brief introduction to the National Consultation process and examines how international human rights law has been applied to specific cases of gender-based violence against women. In so doing, it shall demonstrate how the exercise and enjoyment of women's rights might be enhanced through the strengthening of rights protections in Australia.

#### **Protecting and promoting human rights in Australia: a National Human Rights Consultation**

On 10 December 2008, the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights*, the Australian Government launched a National Human Rights Consultation. The purpose of the consultation is to identify how the Australian community believes human rights should be protected and promoted in the future. The National Human Rights Consultation Committee,

the independent body appointed to undertake the inquiry, is examining three key questions, namely:

- which human rights should be protected and promoted in Australia?
- are these human rights currently sufficiently protected and promoted?
- how could Australia better protect and promote human rights?

A significant focus of the consultation is the need for, and nature of, a national 'Human Rights Act'.

The National Consultation is an important opportunity for individuals and organisations to share their views on how human rights should be protected and promoted in Australia. The Attorney-General has stated publicly, for instance, that the Consultation Committee should "hear from as many Australians as possible", and seek out diverse perspectives from across the country.

The consultation provides a unique opportunity for domestic violence workers and activists to shape the future of human rights law in a way that recognises women's rights, including their rights to physical and mental integrity. If socially pervasive and persistent forms of discrimination against women – including gender-based violence – are to be eliminated, it is imperative that women's rights are placed squarely on the agenda of the consultation, and women's diverse voices are taken into account in this important discussion. The fact that women continue to experience gender-based violence and the steps needed to eliminate this insidious wrong, should be a central focus of this conversation about human rights. One way to ensure that this happens is for women's rights advocates to make submissions to the Consultation Committee advocating for a national Human Rights Act that explicitly recognises the human rights and fundamental freedoms that specifically relate to women, and may aid in protection against gender-based violence.

In order to be an effective tool against gender-based violence, a human rights act must not only target gender-based violence itself but also its root causes (eg. wrongful gender stereotyping) and its consequences (eg. physical and mental health harms). At a minimum, a national human rights act should guarantee the:

- right to live a life free of gender-based violence against women
- right to life
- right to non-discrimination on the basis of sex and the right to substantive equality
- freedom from torture or cruel, inhuman or degrading treatment or punishment
- right to liberty and security of the person
- right to the highest attainable standard of (physical and mental) health
- freedom from wrongful gender stereotyping
- right to equality in marriage and family relations.

An effective human rights response to gender-based violence against women requires the protection and promotion of economic, social and cultural rights as well as civil and political rights. For example, the right to the highest attainable standard of health, the right to employment and the right to education are crucial in breaking the cycle of, and responding to, socially pervasive and persistent forms of gender-based violence against women. This is because gender-based violence impinges on all areas of women's lives and compromises the exercise and enjoyment of all kinds of rights, whether civil and political or economic, social and cultural.

The National Human Rights Consultation provides a once-in-a-lifetime opportunity to contribute to the future protection and promotion of human rights and fundamental freedoms in Australia. It is imperative that women's rights advocates take advantage of this opportunity to place discrimination against women, including gender-based violence, squarely on the consultation's agenda. Through making submissions and attending community roundtables, advocates can support the enactment of a human rights act that requires the elimination of all forms of discrimination against women and the realisation of substantive equality.

## Using human rights to protect against gender-based violence against women

Human rights norms and standards are often invoked in international and regional fora as tools to hold States and Territories legally accountable for their failure to exercise due diligence to ensure that women are effectively protected against gender-based violence. For example, of the 11 cases considered thus far by the CEDAW Committee, six have concerned gender-based violence against women and each of these alleged violations of human rights and fundamental freedoms guaranteed in the *Convention on the Elimination of All Forms of Discrimination against Women* ('CEDAW').

The *A.T. v. Hungary* case, discussed below, is one example where human rights norms and standards were successfully invoked in a case of gender-based violence.

### ***A.T. v. Hungary***

#### **Case study: using international human rights instruments**

In *A.T. v. Hungary*, a case concerning allegations of domestic violence, Ms AT alleged that her former common-law husband, Mr LF, had subjected her to domestic violence over a four-year period, resulting in the issuing of ten medical certificates connected to separate incidents of severe physical violence and her hospitalisation. AT was unable to seek refuge in a domestic violence shelter because none were equipped to care for her and her two children (one of whom was disabled). Moreover, the absence of protection and restraining orders in Hungary and the state's refusal to detain LF, left AT and her children vulnerable to further acts of violence. When civil and criminal proceedings at the national level proved ineffective in protecting AT against domestic violence, AT submitted a complaint to the CEDAW Committee, alleging a violation of the right to live a life free of gender-based violence, the right to be free of wrongful gender stereotyping and, for example, the right to equality in marriage and family relations. In so doing, AT alleged that Hungary had neglected its positive obligations under CEDAW to protect her against domestic violence.

The CEDAW Committee found that, in failing to protect AT against domestic violence, Hungary had violated its CEDAW obligations. In so finding, it affirmed that gender-based violence against women is a form of discrimination that States Parties (that is, countries that have ratified CEDAW) are obligated to eliminate. It also affirmed that States Parties are accountable for the conduct of private actors where they fail to exercise due diligence to prevent and remedy violations by such actors. The CEDAW Committee expressed its concern that gender-based violence against women, including domestic violence, was socially pervasive and persistent in Hungary. It criticised Hungary for failing to adopt adequate measures to protect AT and other similarly situated women against domestic violence. Significantly, the Committee condemned the primacy that domestic courts afforded LF's rights to property and privacy, over AT's rights including her right to security of the person. The CEDAW Committee subsequently urged Hungary to compensate AT and adopt measures to guarantee her physical and mental integrity.

*A.T. v. Hungary* is significant in that it enabled AT to assert her rights and obtain relief that was unavailable at the national level. It also fostered a conversation between the CEDAW Committee and Hungary about the measures required under CEDAW to address gender-based violence against women. Since the decision, Hungary has taken a number of steps to address violence, including the development of a national strategy on violence and the establishment of domestic violence shelters.

## **Moving forward to combat gender-based violence against women in Australia**

As demonstrated in *A.T. v. Hungary*, human rights can be a powerful tool in the struggle to eliminate gender-based violence against women. The enactment of a national human rights act could potentially be an important tool in eliminating socially pervasive and persistent forms

of gender-based violence in Australia. It is vital that the domestic violence sector seeks to ensure that rights that can protect women against gender-based violence are included in this Act. In addition to providing victims/survivors of gender-based violence with a means to assert their human rights and fundamental freedoms, such an Act would send a clear message that the Australian Government does not tolerate gender-based violence against women, in any of its forms or manifestations. A Human Rights Act would also provide domestic violence workers and activists with an important advocacy tool at the national level. Where victims/survivors of gender-based violence are unable to realise their rights, domestic violence workers and activists might consider working with them, in an effort to hold the Australian Government legally accountable under CEDAW and its Optional Protocol.

**To the Australian Domestic and Family Violence Clearinghouse**

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**Articles:**

Clementson, Chris (2005) 'Program focus - revisioning: the need for services to address same sex domestic violence: the state of play.' *NTV journal*, Vol. 4, No 1. pp23 -25

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