

'Rising up' to end violence against women – how far have we come in twenty years?

This article was first published in Volume 22(1) of the Human Rights Defender, May 2013.

On 14 February 2013, people in over 150 countries left their homes, offices and schools, taking to the streets to 'dance, rise up and demand an end to violence'. 'One billion rising', an initiative of V-Day,ⁱ marks the fact that one billion women around the world will be victims of violence in their lifetime, and called for worldwide action from one billion people to demand an end to violence. The event became a global phenomenon, with hundreds of 'rise-up' dances shared through the internet. It was, however, disappointing that the event was not well reported in the mainstream Australian press, and received little acknowledgement by Australian governments.

Over the past two decades, significant progress to address violence against women has been made at the international level. More specifically, national governments have been called upon to respond to domestic violence as a serious human rights violation. In Australia, for example, the development of the National Plan to Reduce Violence against Women and their Children (National Plan) is a significant step forward, although many of the crucial recommendations suggested by expert NGOs were not included in final plan. In other areas, however, progress has seemed painfully slow. This article charts some of the important developments in the international sphere, and argues that the primary challenge for our community is to hold our government accountable for its international commitments to a society free of violence so that this becomes a lived reality for women.

The first global treaty dedicated to women's rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), came into force in 1981.ⁱⁱ While significantly advancing women's rights under international law, it contained no explicit mention of gendered violence as a form of discrimination against women. It was not until 1992 that the CEDAW Committee, in its General Recommendation No. 19, made it clear that 'gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately' is a form of discrimination as envisaged by Article 1 of CEDAW.ⁱⁱⁱ

Over the past 20 years, General Recommendation No. 19 has underscored significant global advocacy and jurisprudence. As well as shaping decisions in international courts,^{iv} General Recommendation No 19 has been utilised by the CEDAW Committee and cited by NGOs, women's rights groups and many others to remind State parties of their obligation to refrain from acts of violence against women. In addition, the Recommendation has been invoked to hold States to their positive due diligence obligations, namely to prevent and protect women from violence, investigate acts of violence, punish perpetrators; and provide reparations, including compensation for victims.^v Moreover, if State parties fail to act with due diligence, they may also be liable for private acts.^{vi}

A further important development in relation to CEDAW was the coming into force of the Optional Protocol to CEDAW on 22 December 2000.^{vii} Following Australia's accession to the Optional Protocol in 2008, individuals can now bring a complaint to the CEDAW Committee if they have exhausted their domestic legal remedies. In 2011, the Australian Human Rights Commission published *Mechanisms for advancing women's human rights: A guide to using the Optional Protocol to CEDAW and other International Complaint Mechanisms* to assist individuals to effectively use human rights accountability mechanisms to enforce their rights and hold states accountable.^{viii}

In 1994, the first United Nations Special Rapporteur on violence against women and its causes and consequences was appointed. The Special Rapporteur is an independent expert who collects information from a range of sources, including government and non-government organisations, and individuals. She undertakes formal visits to countries, and receives communications, each of which are made public in her annual report. This year, the theme of the Special Rapporteur's annual report is 'State responsibility for eliminating violence against women'. The Special Rapporteur can also make recommendations regarding the elimination, prevention and remedying of violence against women. Significantly, victims/survivors of violence do not have to exhaust all domestic (legal) remedies before making a complaint to the Special Rapporteur.

In 2012, Special Rapporteur Rashida Manjoo visited Australia to undertake a study-tour at the invitation of the Australian Human Rights Commission. While not a formal mission, Ms Manjoo's presence focused attention on the many forms of violence against women in Australia and its impact on Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with disabilities, older women, young women, LGBTIQ communities, and women in prison. The Special Rapporteur also highlighted the need for adequate resourcing and independent monitoring of the National Plan in order for it to be effective.

International jurisprudence on violence against women has also been developed through regional human rights instruments,^{ix} and through treaty bodies. For example, the Committee Against Torture (CAT) has recognised violence against women as a form of torture or other cruel, inhuman or degrading treatment or punishment.^x Of the 16 states reviewed by the CAT Committee in 2011-2012, 14 received recommendations that they improve their efforts to eliminate violence against women, including recommendations related to addressing domestic violence.^{xi} In light of this progress, it is concerning that the Australian Government, in its *Draft Fifth Report on the Convention against Torture* in 2012, stated that it did not recognise domestic violence as falling within the scope of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.^{xii}

The United Nations has also led a concerted effort to bridge the gap between national and international laws, by encouraging each of its member states to enact, monitor and implement legislation addressing all forms of violence against women. The launch of the Secretary-General's UNiTE campaign in 2008 made the enactment of appropriate frameworks to regulate violence against women the first of five key pillars of action to be

achieved in all countries by 2015.^{xiii} A model framework for legislation on violence against women has now been developed as a guide.^{xiv}

In spite of these advances, significant challenges remain in making international commitments a reality for women worldwide. In March 2013, the fifty-seventh session of the Commission of the Status of Women focused on the theme of ‘elimination and prevention of violence against women’. As Zarin Hamid, from the US-based Center for Women’s Global Leadership, noted, too often UN Member States ‘support the elimination of violence against women and girls when they are at the UN table’ yet fail to ‘use human rights-based solutions’ and ‘honestly engage with the problem by identifying its root causes of patriarchy, economic inequality and lack of access’.^{xv}

In Australia, the most recent challenge to translate international law into a domestic protection has been highlighted by calls from the Australian Human Rights Commission, trade unions, health organisations and NGOs to enact legal remedies for discrimination on the basis of domestic violence. While the Australian Federal government has taken positive steps to ensure domestic violence provisions are now included in some industrial and award leave standards (such as leave and flexible working provisions), providing comprehensive legislative protection against discrimination on the basis of domestic violence in Australia’s enhanced Human Rights and Anti-Discrimination legislation would go some way further to meeting our obligations under both General Recommendation No 19 and Article 2 of CEDAW. Such protection would extend to all areas of public life, including employment, accommodation, education, and goods and services^{xvi} and would also serve an important educative role, giving visibility to an issue ordinarily confined to the ‘private sphere’ and requiring the whole community to be involved in devising an enduring solution.^{xvii}

It is heartening that in its recent Inquiry into the Human Rights and Anti-Discrimination Bill, the Senate Legislative and Constitutional Affairs Committee recommended the inclusion of domestic violence as a protected attribute in the consolidated statute.^{xviii} Yet in spite of these welcome steps, the struggle is far from over. It now falls to all Australians, to ‘rise up’ and speak out to family, friends, work colleagues and politicians about why Australia should support protection from discrimination on the basis of domestic violence. It is only through continual and sustained pressure on governments, both from ‘above’ and ‘below’ that we can ensure that public commitments translate into lived realities, for all women.

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ⁱ V-Day is an annual day of activism to end violence against women and girls. On the One billion rising campaign, see: www.onebillionrising.org, accessed 18 March 2013.

ⁱⁱ Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. A/34/46, entered into force 3 September 1981.

ⁱⁱⁱ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), [7].

^{iv} See, for example, *González v. Mexico* (Inter-American Court of Human Rights, 2009).

^v *General Recommendation No 19*, above at n 3.

^{vi} *General Recommendation No 19*, above at n 3, [9]. Two salient examples of where States have been attributed responsibility for private acts of violence against women are: *Maria da Penha v. Brazil* (2000), in which the Inter-American Commission on Human Rights held the State of Brazil had violated the petitioner's human rights by failing to prevent and punish violence by the petitioner's husband against her, after judicial delays for over 15 years failed to result in a final verdict against him; and *González v. Mexico* (2009) in which the Inter-American Court of Human Rights found the State of Mexico had violated the right to life of three women, killed by unknown persons in Ciudad Juárez, by failing to take immediate and urgent measures to search for the women after they were reported as having disappeared.

^{vii} Australia acceded to the Optional Protocol to CEDAW on 4 December 2008.

^{viii} Australian Human Rights Commission, *Mechanisms for advancing women's human rights: A guide to using the Optional Protocol to CEDAW and other International Complaint Mechanisms*, Sydney, 2011.

http://humanrights.gov.au/sex_discrimination/publication/mechanisms/opcedaw.pdf

^{ix} See, e.g., Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, adopted 6 September 1994.

^x Committee Against Torture, General Comment No.2 regarding the implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008 [18].

^{xi} Report of the Committee Against Torture, 47th – 48th sessions, A/67/44, 2012, Belarus [52.22], Bulgaria [53.25], Djibouti [54.21], Madagascar [56.13], Morocco [57.23], Paraguay [58.21-58.22], Sri Lanka [59.22], Albania [60.14] Armenia [61.18] Canada [62.20] Cuba [63.21], Greece [63.23] Rwanda [64.16] Syrian Arab Republic [64.20(a)].

^{xii} Attorney General's Department, *Draft Fifth Report on the Convention against Torture Draft Fifth Report under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2012).

^{xiii} Secretary-General's Campaign UNiTE to end violence against women:

<http://endviolence.un.org>, accessed 18 March 2013.

^{xiv} United Nations Department of Economic and Social Affairs, *Handbook for Legislation on Violence Against Women* (2009).

^{xv} Z Hamid, 'More than Just a Theme: Violence Against Women and Girls, Centre for Women's Global Leadership, 8 March 2013:

<http://www.trust.org/trustlaw/blogs/international-womens-day-2013/more-than-just-a-theme-violence-against-women-and-girls/>, accessed 18 March 2013.

^{xvi} For a more extensive list of reasons to support domestic violence as a protected attribute, see submissions made to the Inquiry into the Exposure Draft of Human Rights and Anti-Discrimination Bill 2012, by, eg., Women's Legal Services, National Association of Community Legal Centres, National Aboriginal and Torres Strait Islander Legal Services, Australian Women Against Violence Alliance, Equality Rights Alliance, Australian Domestic and Family Violence Clearinghouse, Women's Working Centres, Domestic Violence Victoria.

^{xvii} A Durbach, ‘Domestic Violence discrimination and the consolidation of Commonwealth anti-discrimination laws’, speech delivered to the Safe at home, safe at work conference, 5 December 2011.

^{xviii} Legal and Constitutional Affairs Committee, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*, [7.30].