

*Clarifying the Duty of the State to Protect: A Reflection on CEDAW & the Optional Protocol*

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What is the value of international human rights law when you live in a state of constant fear – without any form of security from the daily reality of violence? How useful is the human rights discourse when the oppression and subjugation you are confronted with is accepted and justified in the name of culture, religion and patriarchal and heteronormative value systems? How can women celebrate 60 years of the Universal Declaration of Human Rights when they are routinely subjected to violations which states should address but fail or are unwilling to do so? In December 1995 South Africa ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and acceded to the Optional Protocol to the Convention on the 18th of October 2005. Further to its commitments and obligations in terms of international law to end violence against women, South Africa promulgated the Domestic Violence Act of 1998. However, the incidence of violence against women has reached epidemic proportions, one of the highest rates in the world. Routine violence continues unabated, perpetrators enjoy widespread impunity and the state's response, when measured against international norms and standards, has regrettably been inadequate in effectively addressing the pandemic.

At the outset, the critical question is: are states *always* accountable for *all* violations? It is an established principle of international law that a state will be legally accountable for breaches of international obligations under customary or treaty law where it fails to exercise due diligence to prevent, control, correct, or discipline such private acts through its executive, legislative or judicial organs. In any discussion on the due diligence standard and state accountability to protect women from violence, it is critical that we remain cognizant that women are not a homogenous group and that the violence that many women experience is shaped by other dimensions of their identities including race and class which have the effect of compounding discrimination and vulnerability. This paper considers these issues, arguing that the language of rights, in particular recent developments in the international women's rights arena are powerful and empowering tools for addressing 'private' violations of women's rights. While the acquisition of rights is by no means the only solution for the worldwide domination of women, the rights discourse offers a recognized vocabulary to frame political and social wrongs and the rights-based approach remains the most valuable and relevant in reinforcing the doctrine of state accountability to prevent violations of women's human rights and fundamental freedoms.

Against this backdrop, the paper considers state obligations as set out in the CEDAW to respond effectively to violence against women, in particular, domestic violence. An analysis is conducted of the August 2007 Communication against the State of Austria by the CEDAW Committee. Similar to South Africa, Austria has established a

comprehensive model to address domestic violence, including legislation, public awareness programmes and shelters for abused women. Nevertheless, and similarly to the South African context, the communication arose as a consequence of the failure to protect a woman from domestic violence, finally resulting in her death by her abusive husband.

In reflecting on the substantive provisions of the CEDAW treaty, the abovementioned Communication and its relevance to the South African context and situating domestic violence within the international human rights framework, the paper will conclude by outlining the fundamental issues for consideration in exploring the due diligence standard and the potential of international human rights law to effectively respond to the high incidence of domestic violence in South Africa.

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