New Zealand and CEDAW: An international mechanism advancing women's rights domestically

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ABSTRACT: In July 2012 New Zealand presented its seventh report under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to the Committee on the Elimination of Discrimination against Women (Committee). The rigorous presentation process allows the Committee to question States Parties on implementation of the CEDAW. First-hand observation of the process highlights the significant impact it can have for advancing women's rights domestically. The Committee operates as an international watchdog that encourages States Parties to fully justify their records on women's rights. The presentation process also acts as a focal point for the advocacy activities of domestic non-governmental organisations (NGOs).

KEY WORDS: CEDAW women's rights United Nations periodic report

Introduction

A remarkable process with implications for the rights of New Zealand women recently took place at United Nations (UN) Headquarters in New York City. On 18 July 2012, New Zealand presented its seventh periodic report under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The presentation was no pro forma process. 23 women's rights experts from different countries, forming the Committee on the

Elimination of Discrimination against Women (Committee), posed challenging questions to New Zealand's representatives, calling upon them to explain deficiencies in domestic women's rights protections.

New Zealand's presentation before the Committee has three significant implications for the advancement of women's rights in New Zealand. First, the presentation process allows the Committee to monitor domestic laws and policies that are contrary to CEDAW. Second, the process incentivises States Parties to CEDAW to take stock of their record on women's rights, and be prepared to justify any failings before the Committee. New Zealand invested considerable time and resources to prepare for the presentation, despite the Committee's conclusions lacking legally binding authority. Finally, the presentation process provides a key focal point for the advocacy activities of domestic women's rights non-government organisations (NGOs). When NGOs invoke the Committee's concluding observations, the Committee influences domestic debates on women's rights issues.

CEDAW and the Committee

CEDAW is a multilateral treaty adopted by the UN General Assembly in 1979, and ratified by New Zealand in 1985. States Parties to CEDAW undertake to eliminate discrimination against women and promote equality with men across the fields of civil, economic, and cultural rights.[1] States Parties also undertake to modify cultural practices that suggest women are inferior to men, as well as those that lead women toward fulfilling stereotypical roles.[2]

CEDAW establishes the Committee in order to evaluate state implementation of the treaty.[3] The Committee is one of several international human rights treaty bodies, established to evaluate state implementation of international human rights treaties. The Committee evaluates domestic implementation of CEDAW by requiring States Parties to submit 'periodic reports' at least once

1 See, e.g., the definition of "discrimination against women" in the Convention on the Elimination of All Forms of Discrimination against Women, article 1, on http://www2.ohchr.org/english/law/cedaw.htm.

2 *Id*., article 5(a).

3 *Id*., article 17.

every four years.[4] In their periodic reports, States Parties inform the Committee of those legislative and policy measures they have adopted to give effect to the Convention.[5]

The Committee examines States Parties' reports at sessions to which representatives of the State Party being examined are invited.[6] Committee members examine the report presented by the State Party, and ask representatives how the rights contained in CEDAW are guaranteed at the domestic level. Shortly after the presentation, the Committee issues concluding observations and recommendations to assist the State Party in implementing CEDAW.[7]

Presentation of New Zealand's seventh periodic report

New Zealand submitted its seventh periodic report to the Committee in December 2010. The 80-page report mirrored the structure of CEDAW by setting out in separate sections how New Zealand was promoting each of the rights guaranteed by the Convention.[8] Women's Affairs Minister Jo Goodhew led the New Zealand delegation presenting the report. Minister Goodhew's private secretary, two senior officials from the Ministry of Women's Affairs, and three officials from the New Zealand Permanent Mission to the UN rounded out the delegation.

Also attending the presentation were representatives from several New Zealand-based NGOs. NGO representatives met with the Committee in a separate session prior to the New Zealand government's presentation. The separate meaning allowed the NGOs to raise women's rights issues that may not have been reflected or sufficiently emphasised in New Zealand's report.

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4 *Id*., article 18(1)(b).

5 *Id*., article 18(1).

6 Rules of Procedure of the Committee on the Elimination of All Forms of Discrimination against Women, rule 51(4), on http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW_Rules_en.pdf.

7 *Id*., rules 52-53.

8 Ministry of Women's Affairs (2010), "New Zealand's Seventh Report on its Implementation of the United Nations Convention on the Elimination of All Forms of Discrimination against Women" on http://www.mwa.govt.nz/news-and-pubs/publications/international/cedaw-report-2010.

By the time of the July 2012 presentation at UN Headquarters, the Committee had digested New Zealand's report and prepared a number of questions. Questions were not made available to the New Zealand delegation prior to the presentation. Accordingly, several delegation members attended other State Parties' presentations before the Committee in the days leading up to New Zealand's presentation. Attending these presentations provided the New Zealand delegation with a greater appreciation of what type of questions might be asked, along with the tone of questioning.

New Zealand's presentation began at 10.00am with an opening statement by Minister Goodhew. The opening statement provided the Committee with an update on developments since the report was submitted to the Committee in December 2010. It also acknowledged ongoing challenges in addressing violence against women, and closing the gender pay gap.

Committee members then began posing questions to Minister Goodhew. Like the report, the questioning mirrored CEDAW's structure by dealing with each individual article in turn. On several occasions, Committee members acknowledged New Zealand's strong historical record on promoting women's rights. Despite these acknowledgments, Committee members proceeded to ask Minister Goodhew roughly 108 challenging questions.

Major lines of questioning included why New Zealand was reluctant to implement 'temporary special measures' to promote women's equality; what measures were being taken to promote awareness of CEDAW and the Committee in New Zealand; and concerns that some women in immigrant communities were being coerced into forced marriages. Two or three Committee members would pose a series of questions before giving Minister Goodhew the opportunity to respond. Other members of the New Zealand delegation transcribed the questions as they were asked, and located information via electronic and textual sources in order to assist Minister Goodhew in providing detailed answers. During a two-hour lunch break, the New Zealand delegation sourced answers to questions that the Minister was unable to respond to during the presentation's morning session.

The presentation concluded at 5.00pm. Immediately afterward, the New Zealand delegation received positive feedback on its performance from several Committee members. This positive feedback was reiterated in the Committee's concluding observations and recommendations, released on 27 July 2012.[9]

Observations

New Zealand's presentation of its latest report before the Committee has three significant implications for the advancement of women's rights in New Zealand.

First, the presentation process places the Committee in the role of 'international watchdog' with regard to domestic laws and policies affecting women's rights. The ascendancy of the treaty body model provides a clear example of how traditional conceptions of state sovereignty have evolved since the rise of the international human rights movement in the twentieth century. Domestic laws and policies were previously regarded as falling within the exclusive competence of states. States were free to formulate and enact their own laws without fear of scrutiny by outside sources. Now, States voluntarily ratify treaties that grant international bodies of experts the jurisdiction to scrutinise domestic human rights protections. The jurisdiction granted by CEDAW allows the Committee to operate as an external monitoring mechanism, able to notify States Parties that certain legislation or policies are contrary to the Convention. As a result, regressive domestic laws and policies are more likely to be exposed before the international community, rather than hidden behind a doctrine holding that states possess full sovereignty over all domestic affairs.

Second, the process encourages State Parties to take stock of their record on women's rights, and be prepared to justify any failings before the Committee. New Zealand's level of preparation prior to the presentation is remarkable when it is considered that the Committee lacks power to compel states to alter

[9] Committee on the Elimination of Discrimination against Women (2012), *Concluding Observations - New Zealand* on http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NZL-CO-7.pdf.

their domestic laws and policies regarding women's rights. Unable to rely on the kinds of binding enforcement tools available to domestic courts, treaty bodies such as the Committee invoke the threat of negative publicity when States Parties fail to justify laws and policies that are inconsistent with international human rights treaties. Treaty bodies primarily convey their disapproval via concluding observations issued in response to State Party reports. In order to maintain their reputations for upholding human rights, states like New Zealand are incentivised to prepare to answer a plethora of questions that might be raised during the presentation process.

Finally, the presentation process is significant because it acts as a focal point for the advocacy activities of domestic women's rights organisations. With sufficient funding, NGOs are able to attend UN Headquarters to meet with Committee members in advance of State Party reports. Meeting with the Committee members provides a valuable opportunity for NGOs to raise issues that the state report alone may not have brought to the Committee's attention. Following the presentation, NGOs may use the Committee's concluding observations and recommendations as 'yardsticks' by which to measure their state's record on women's rights in the intervening period between periodic reports. In this way, the Committee is able to exert a real influence on domestic women's rights debates.