

## Having our say: Australian women's organisations and the treaty reporting process

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### Introduction

Observers of international law compare treaty reporting mechanisms with the remedies available for breaches of domestic law and invariably the deficiencies of non-binding, unenforceable recommendations are exposed and derided. This paper aims to present a non-government organisation (NGO) perspective on the usefulness of reporting mechanisms under human rights treaties. The author's particular perspective arises from her experience in the preparation of a shadow report to Australia's third periodic report to the United Nations Committee for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>1</sup>

This paper records the details of the participation of women's organisations in the reporting procedure, highlights some strengths and weaknesses of the process and volunteers a number of conclusions. It concludes that human rights treaty reporting mechanisms present NGOs with a genuine opportunity to contribute to a culture of compliance with international human rights in the domestic context.

### Experience

In early 1997, taking up a suggestion made by Professor Hilary Charlesworth and others,<sup>2</sup> the Coalition of Australian Participating Organisations of Women (CAPOW)<sup>3</sup> approached national women's organisations to assist in the preparation

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1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by General Assembly Resolution 34/180 of 18 December 1979, entered into force on 3 September 1981 and ratified by Australia on 28 July 1983. See <<http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>>.

2 Charlesworth H, paper at Sharing Power Conference, YWCA of Melbourne, 1995.

3 CAPOW is an Australian network of national women's organisations, united only by their endorsement of the principles in CEDAW. This reliance on international human rights standards to form the agreed objectives of national organisations is one way in which international human rights enter the domestic consciousness.

of an alternative report (shadow report) to coincide with the Australian Government's third periodic report to the CEDAW Committee in July 1997.<sup>4</sup> Women's organisations with expertise in particular areas were invited to contribute to the commentary on specific articles of CEDAW in the shadow report. For example, the Women's Electoral Lobby drafted the commentary on women and political participation.<sup>5</sup> The shadow report was not resourced financially by government, but relied on the voluntary contributions of time and expertise by the women involved.<sup>6</sup> Ultimately, 17 national women's organisations endorsed the shadow report, representing tens of thousands of women Australia-wide.<sup>7</sup>

The shadow report was not prepared in collaboration with the Government. In part, this was because the Government did not engage in any consultative process in the preparation of its report. This was a departure from its practice for past reports, when it had consulted widely with women's organisations. Although Australia's report had been prepared four years earlier, Australia's spokesperson said in relation to the non-involvement of NGOs: 'we really didn't have time to do it'.<sup>8</sup> The failure to obtain NGO input was 'regretted' by Australia when it presented its report to the CEDAW Committee, admitting that it 'did not come before the Committee with an ideal report'.<sup>9</sup>

Moreover, women's organisations wanted an independent non-government voice on

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4 Under Article 18 of CEDAW, States are required to report every four years on their progress in implementing their obligations under CEDAW. Because of backlogs in the UN system, most reports are considered well after they are due for submission. Australia's third periodic report to the CEDAW Committee was prepared as a supplementary report in 1993, scheduled to be examined in 1995, due under the treaty in 1996 but not considered until 1997.

5 Other organisations, such as the Australian National Committee on Refugee Women and the Coalition of Activist Lesbians contributed information in relation to indigenous, migrant and lesbian women whose particular concerns are not specifically addressed by the articles in CEDAW.

6 By contrast, Defence for Children International was funded by the Attorney-General's Department to assist in the preparing of a shadow report to Australia's report on the Convention on the Rights of the Child.

7 Among the organisations which endorsed the report were Australian Women Lawyers, the Women's Electoral Lobby, the International Women's Development Agency, the Association of Non-English Speaking Background Women of Australia and the YWCA.

8 'Women's rights slipping back to 60s, UN to hear' *The Courier Mail* 10 July 1997.

9 See Australia's Country Statement to the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, July 1997 (Australia's Country Statement) p 1. See the Office of the Status of Women Internet site: <<http://www.dpmc.gov.au/osw/legal.html>>.

Australia's human rights record for women, in order to balance the positive picture likely to be painted by the Australian report. But there was considerable anxiety about how any such criticisms would be received. In particular, NGOs were worried about their funding, about their standing with government and about their future access to government. These concerns continue to be a very real, if unhealthy, bundle of pre-occupations for NGOs. Notwithstanding these concerns, organisations agreed that it was right and proper for NGOs to take up this role and that a government that was explicitly committed to freedom of expression would acknowledge this.<sup>10</sup>

Women's organisations were disturbed by trends in government policy and practice, best summarised by the statement in the shadow report: 'the status of women in Australia is currently going backwards'.<sup>11</sup> Amongst the concerns raised in the shadow report were the dismantling of human rights machinery, including the threat to the position of the Sex Discrimination Commissioner in the Human Rights and Equal Opportunity Commission (HREOC); the weakening of machinery for monitoring women's rights, especially the severe budget cuts sustained by the Office of the Status of Women; and the disproportionate or distinctive impacts on women of changes to child care, industrial relations, legal aid and the delivery of health care. Many of these concerns were exacerbated by the actions of the Australian Government elected in March 1996, and its refusal to deal with matters arising after 1995, preferring to defer them until the fourth periodic report was due in 2000.<sup>12</sup> A member of the CEDAW Committee told ABC Radio that the Australian presentation had been out of date, which prevented proper scrutiny of Australia's performance in protecting women's human rights.<sup>13</sup> Indeed, the CEDAW Committee found that 'the third periodic report did not comply with the Committee's reporting guidelines for periodic reports and that the lengthy oral presentation impeded dialogue. The CEDAW Committee also noted that the third report essentially reiterated information that had been considered at the time of presentation of Australia's second periodic report in 1994'.<sup>14</sup>

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10 In response to public statements on race and immigration by Pauline Hanson's One Nation Party, the Prime Minister consistently asserted the importance of not silencing free speech.

11 NGO Report to CEDAW on Australia (the shadow report) July 1997, p 2 (copy with the author).

12 See Australia's Country Statement, above note 9, p 1.

13 'Women hit out at equality policies' *Sydney Morning Herald* 22 July 1997.

14 See Adoption of the Report of the Committee on the Elimination of Discrimination Against Women on its 17th Session CEDAW/C/1997/II/L.1/Add.8, 22 July 1997 (CEDAW Committee Report). The Committee's concluding observations on the Australian report are found at <<http://www.unhchr.ch/tbs/doc.nsf/>

The shadow report reached New York accompanied by a set of questions to be put by the CEDAW Committee to Australia, including questions relating to cuts to overseas aid for family planning, the cancellation of the Women's Budget Papers, and the introduction of tax incentives for women to stay at home. The shadow report was presented by Barbara Palmer, an Australian woman who had been involved in the preparation of the report and who financed her visit to New York. The success of the alternative report was due in large measure to her actual presence in New York, negotiating the UN bureaucracy, giving a voice and a face to an otherwise anonymous report and pressing the CEDAW Committee to challenge Australia's predictably glowing account of its progress in implementing CEDAW.<sup>15</sup> The resource implications for NGOs of the need to have a shadow report presented in person before the Committee in New York are understandably prohibitive.

It is a credit to the flexibility of the reporting system and the responsiveness of the CEDAW Committee — contrary to the standard criticisms of UN bureaucracy — that the shadow report was considered and that its contents informed the CEDAW Committee's findings. Taking into consideration the glowing Government report, the critical shadow report and the still more critical report of the Women's Labor Caucus,<sup>16</sup> the CEDAW Committee's concluding observations included 'concern about the Government's apparent shift in attention and commitment to the human rights of women' and 'alarm about policy changes that apparently slowed down, or reversed, Australia's progress in achieving equality between women and men'.<sup>17</sup> The CEDAW Committee made specific mention of its concern that at a time of fiscal constraint, resources for programmes and policies benefiting women might be subject to disproportionate budget cuts.<sup>18</sup> A number of specific recommendations were made relating to the *Workplace Relations Act 1996* (Cth), national women's health policy, Aboriginal and Torres Strait Islander women and

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15 Australia stated 'At all levels of government, Australia has implemented wide-ranging reforms to advance the status of women. After signing CEDAW in 1980 and ratification in 1983, Australia has put in place a robust framework of anti-discrimination legislation and positive legislative measures, strategies and programmes to assist women. Australia has also been at the forefront of English-speaking countries in the range of government-funded services developed to meet the specific needs of women, and moreover, run by women for women': Australia's Country Statement, above, note 9, p 2.

16 *Back to the 1960s? Progress Report on the Australian Government's CEDAW Obligations and Beijing Platform for Action Implementation Report*, an alternative report prepared by the Federal Labor Caucus Status of Women Policy Committee for the information of the Committee on the Status of Women considering Australia's progress, July 19 1997.

17 CEDAW Committee concluding observations, above, note 14, para 27 and 28.

18 *Ibid* para 29.

violence against women.<sup>19</sup> The damage the Australian Government was doing to its international reputation on women's rights, which was previously excellent, became apparent.

The CEDAW Committee's conclusions were reported by the Australian media,<sup>20</sup> though not by the Government itself, contrary to the CEDAW Committee's request that its comments receive 'wide dissemination'.<sup>21</sup> The Minister for Women was incensed by what she regarded as 'bagging Australia overseas'<sup>22</sup> and threats to funding were rumoured. The report also came at a time when there was a growing climate of concern about, and international attention to, the Australian Government's commitment to human rights, borne of cuts and changes to HREOC and legal aid, the Commonwealth Government's failure to apologise for the Stolen Generations, its open suspicion of internationally agreed standards and its apparent tolerance of the rise of One Nation.

## Commentary

The positive aspects of the preparation and presentation of the shadow report were that, through an inclusive process: women's organisations around Australia engaged in human rights education; the CEDAW Committee proved responsive; and the impact of the shadow report in Australia was measurable. Women's organisations put their issues on the agenda; they enjoyed a broader hearing and audience as a result of the CEDAW Committee's imprimatur; they had a context in which to interpret and comment on subsequent government initiatives, such as the proposed abolition of the Sex Discrimination Commissioner; and they received a set of recommendations around which to lobby in future. Women's organisations could now borrow the moral, if not the legal, authority of an international institution.

On the other hand, resource constraints seriously limit the capacity of NGOs to have a real impact.<sup>23</sup> Additionally, although the CEDAW Committee arrived at a well

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19 CEDAW Committee concluding observations, above, note 14 paras 34 to 42.

20 See for example, 'Women hit out at equality policies' *Sydney Morning Herald* 22 July 1997; 'UN attacks Libs' stance on women' *Sunday Telegraph* 27 July 1997.

21 CEDAW Committee concluding observations, above, note 14, para 44.

22 Senator Newman said 'I'm sick and tired of Australians who don't like the change of government who go overseas and bag their country', reported in 'Minister condemns overseas bag brigade' *Sydney Morning Herald* 21 July 1997.

23 This fact does not escape governments in their funding decisions. The author believes that the involvement of CAPOW in this shadow report contributed to its inability to obtain government funding in 1997.

informed and broad ranging collection of recommendations, the reporting process does not deliver specific and focused remedies for a State's failure to meet its human rights obligations. This is not necessarily the object of a reporting procedure but it certainly highlights the need for an Optional Protocol to CEDAW with an individual complaints procedure.<sup>24</sup> Further, the publicity generated by adverse findings is confrontational and risks damage to government-NGO relations. In this instance, there were ruffled feathers and assertions that the YWCA, at least, should not have signed such an inflammatory report. Ultimately there was willingness by some in government to sit down and share in a dialogue about women's concerns, which was heartening if unproductive. Lastly, the shaming/cajoling approach involved in the traditional reporting process only works if the State concerned cares about what the international community thinks. At least when domestic NGOs become involved, the Government also has to face the indignation of its domestic constituency, a far more formidable proposition.

## Conclusion

The experience is illustrative of the growing significance of NGOs in international human rights law<sup>25</sup> and the increasing political astuteness of Australian women's organisations. International human rights law is one of the areas in which the pre-eminence of the State is under challenge. First, as individuals take their rightful place as subjects of international law and second, as NGOs develop clearer and stronger roles as watchdogs, providers of information and contributors to a culture of compliance with human rights.

The maintenance of a separate independent voice through shadow reports is preferred to collaboration between governments and NGOs in the preparation of a single report. States have no interest in reporting unfavourably, which is why reporting in isolation is an inadequate technique, so the presentation of an alternative account of a State's progress in meeting its obligations gives the CEDAW Committee a more fulsome version of events. Shadow reporting does not preclude consultation by government when it produces its reports; it simply preserves the option of a less

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24 An Optional Protocol to CEDAW was adopted by the UN Commission on the Status of Women on 12 March 1999. See UN document E/CN.6/1999/WG/L.2 for the text of the Optional Protocol.

25 See, for example, Otto D 'Non-governmental Organisations in the United Nations System: the Emerging Role of International Civil Society' (1996) 18 *Human Rights Quarterly* 107 and Ward C 'Non-governmental Organisations and the Interaction between International Law and Australian Law' (1998) 38 *International Law News* 26.

compromised, more disinterested report. However, if every NGO decided to prepare an individual shadow report, the volume of material would clearly become unmanageable for the CEDAW Committee. Paradoxically, the more important the CEDAW Committee becomes as a forum, the more likely it is that greater numbers of voices will compete to be heard.

The exercise of preparing the report is as important as the product. The Commonwealth Attorney-General has lamented the preparation of 600-plus page reports on the International Covenant on Civil and Political Rights on the ground that no one will ever read them.<sup>26</sup> There is no doubt that a 32 page document highlighting where Australia is falling short of its obligations is far more user-friendly. Yet there is also immense value in the information gathering and self-auditing exercise that a longer report entails. Reporting also encourages governments, groups and individuals to couch policy directions and decisions in human rights language. While there is a substantial debate about the usefulness and validity of talking rights,<sup>27</sup> it has achieved a degree of universal acceptance, offers considerable transformative potential and in any event, need not be the only way in which human interactions are conceived.

Finally, although NGOs cannot force unresponsive governments to recreate themselves into model human rights observers, NGO participation in the reporting process can keep human rights on the domestic agenda. Shortly after the findings by the Committee on CEDAW, the Prime Minister described Australia as a leader in the region and a model world citizen.<sup>28</sup> With a little encouragement from NGOs and others, it is hoped that governments will learn that world citizenship inevitably requires protecting and promoting human rights. ●

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26 Remarks made at the Attorney-General's Human Rights Forum for Non-Government Organisations, Parliament House, Canberra, 1997.

27 See, for example, Gabel P and Kennedy D 'Roll Over Beethoven' (1984) 36 *Stanford Law Review* 1 Williams P *The Alchemy of Race and Rights* (Harv Univ Press, 1991) and Rorty R 'Human Rights, Rationality and Sentimentality' in Shute S and Hurley S (eds) *On Human Rights: The Oxford Amnesty Lectures 1993* (Basic Books, 1993) p 111.

28 Comments made at the launch of David Barnett's biography of John Howard, Parliament House, Canberra, 1997.