Just 'a little UN Committee' or important policy driver?

The impact and effectiveness of the CEDAW Committee in New Zealand

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The Acting Minister for Women's Affairs of New Zealand, te Heuheue, wrote in 2010: 'New Zealand has often been at the vanguard of women's rights. (...) We routinely rank in the top half-dozen countries in the world when it comes to equality between women and men.' (CEDAW, 2010, p. 4) Earlier, the Minister for Women's Affairs Dalziel held that New Zealand needs to be a 'credible voice internationally in women's rights' by giving leadership to other countries and being an example (Dalziel, 2007a). The implementation of women's rights, as laid down in CEDAW, is monitored by the CEDAW Committee through a process of state reporting. All states party to CEDAW are required to submit periodically, at least every four years, a report on the measures adopted to give effect to the implementation of the treaty. Civil society and non-governmental organisations (NGOs) are allowed to submit alternative information to the CEDAW Committee in shadow or parallel reports. These reports are examined through a so-called constructive dialogue with representatives of the state party. This dialogue results in the adoption of legally non-binding Concluding Observations (COs), which contain suggestions and recommendations for an improved implementation of CEDAW. The COs for New Zealand have dealt with, amongst others, the withdrawal of reservations concerning women in armed forces and the introduction of paid parental leave, the prevalence of violence against women, the political representation of women, the decriminalisation of prosti-

tution and gender pay differences (CEDAW, 1994; 1998b; 2003c; 2007c and 2012b).¹

This article will examine whether the COs for New Zealand have been effective. It is part of a bigger PhD research on the effectiveness of the process of reporting under the UN human rights treaties. New Zealand was chosen for this special issue about CEDAW, because the author wanted to examine whether COs have been effective in a country where one would expect them to lead to follow-up measures. The author considers New Zealand a most-likely case for effectiveness for the following three reasons. Firstly, previous research showed that the process of state reporting has had the biggest impact in countries that have the bureaucratic and financial capacity to participate in the process of state reporting and submit reports relatively on time, which are usually developed Western liberal democracies (Heyns & Viljoen, 2001, p. 488).² Secondly, New Zealand is not a member of a regional (human rights) system. One reason why the impact and effectiveness of reporting under UN Human Rights Treaties, including CEDAW, was found to be limited for the Netherlands was the pervasiveness of EU and ECHR law. These regimes include binding obligations, which increasingly deal with gender equality issues or matters that affect women in particular, such as human trafficking and violence against women (Krommendijk, 2012a, p. 507). Thirdly, in New Zealand there is a separate Minister of Women's Affairs supported by a small stand-alone Ministry (MWA)³ who co-

ordinates the process of state reporting under CEDAW. This is remarkable, because in other developed countries separate women's units or ministries have been abolished or downscaled over the years (Curtin & Teghtsoonian, 2010, p. 546).

The research question of this article is whether the COs of the CEDAW Committee have (indeed) had impact and whether they have been effective. Impact is understood as the extent to which the government, Parliament, courts and NGOs have used or referred to CEDAW and the COs of the CEDAW Committee in their work. Effectiveness is defined as a change in policy and/or legislation made (partly) as a consequence of and with the intention to comply with those COs. Consequently, this article studies some of the factors and conditions under which a CO can be effective (Evan, 1965, p. 288; Griffiths, 2003, p. 73-74).

The theoretical starting point of this paper is that COs are legally speaking non-binding and that the bodies that monitor the implementation of the human rights treaties (treaty bodies) lack instruments to enforce and coerce compliance with their recommendations.⁴ This means that compliance depends, first and foremost, upon the extent to which the COs exert a normative compliance pull. Crucial for the effectiveness of COs is that governments feel bound to comply with the COs, even though they are non-binding. This compliance pull is contingent on the legitimacy, usefulness, persuasiveness and legal quality of the COs, as well as the authority of the Committee (Evan, 1965, p. 288; Franck, 1990; Kumm, 2004). Based on these theoretical insights, this paper will rely on the attitudes and perceptions of New Zealand Government officials of the process of State reporting, the Committee and the COs, which were gathered through interviews (see below). This approach is in line with constructivist

International Relations theory emphasising the views, preferences and identities of individuals (Risse, Kopp & Sikkink, 1999, p. 270). It also echoes sociological approaches to the effectiveness of law, such as Griffith's 'social working of legal rules' in which the focus is also on the importance that actors attach to the 'law', their knowledge about and their interpretation of it (Griffiths, 2003, p. 19).

The second mechanism of compliance evolves around the idea of domestic mobilisation and the extent to which domestic actors pick up, discuss and utilise COs to lobby and pressure the government (Simmons, 2009; Risse, Ropp & Sikkink, 1999, p. 276). This mechanism, grounded in International Relations theories, mirrors sociological theories that emphasise the domestic social context and bottom-up processes (Griffiths, 2003, p. 23 and 73). Moore's 'semi-autonomous field', for example, highlights that 'law' will not generate social change if it does not correspond with the interests and values of the people inside the field who are the ones to apply or comply with the law (Moore, 1973, p. 744; Evan, 1965, p. 292). Likewise, Risse et al. concluded that compliance with international norms is higher when they 'resonate or fit with existing collective understandings embedded in domestic institutions and political cultures' (Risse et al. 1999, p. 271).

The methodology for the assessment of the effectiveness of COs consists of an analysis of the documents in which a reaction to the COs is provided, in particular the periodic state reports⁵ and the internal briefings of the MWA about CEDAW 2007 (MWA, 2008). This document analysis was complemented with semi-structured interviews. Interviewees were, first of all, asked to give examples of effective COs themselves. Secondly, the author questioned the interviewees about policy and legislative changes and measures that in his view could have been potentially (partly)

The House of Parliament, the beehive. Source: Jasper Krommendijk

influenced or caused by COs.⁶ Because of space restrictions, this article will only discuss the most cited example, the introduction of paid parental leave, more in-depth as an illustration. Around 60 interviews were held with government officials, Ministers, NGO representatives and representatives from the New Zealand Human Rights Commission (NZHRC).⁷ Out of these, three former Ministers of Women's Affairs, five government officials, five NGO representatives and two NZHRC officials were directly involved in the process of state reporting under CEDAW.

The structure of the article is as follows. The first section will discuss the impact of the process of state reporting in New Zealand. After examining the effectiveness of the COs in the second section, the third section will address the factors determining the (in)effectiveness of the COs.

Domestic impact of and attention paid to the COs

Government⁸

The COs of the CEDAW Committee have hardly played a role in the government bureaucracy and in the legislative process. The government has, for example, not adopted any follow-up strategy or plan subsequent to the COs, as has been done for the COs of the UN Committee on the Rights of the Child (CRC Committee).⁹ The MWA has undertaken an assessment in consultation with other departments whether (new) action is required in response to COs.¹⁰ In addition to this, there have, however, been few instances during which the members of government referred to the COs or the CEDAW Committee. One exception is the Minister of Women's Affairs Dalziel who quoted the COs 2003 and held that the women in armed forces

amendment Bill is 'doing precisely what we were asked to do' by the CEDAW Committee (NZPD, 2007a, p. 8678).

More in general, the role of CEDAW in the policy and legislative process is limited as well. MWA officials even admitted that they tend not to use CEDAW, because they consider the argument that something should be done because of CEDAW not effective. Several former Ministers of Women's Affairs stated that they had never seen a reference in a policy statements or internal briefings that something would contravene CEDAW. The role and knowledge of CEDAW in other departments was considered even less or nonexistent. For Cabinet Papers with policy or legislative proposals there is an obligation to consider the gender impact of policy and legislative proposals. Officials acknowledged that these statements do not have any impact in practice and that they are often of poor quality and rather *pro forma* (see also Hyman, 2010, p. 39; Curtin & Teghtsoonian, 2010, p. 562).

It seems that the importance of CEDAW has especially diminished since the turn of the Millennium.¹¹ Government officials and NGO representatives made clear that CEDAW is not a driver for policy thinking anymore as it was 25 years ago.¹² Back then, the ratification of CEDAW by New Zealand and the establishment of the MWA in the same year (1984) were closely related. Several interviewees argued that in the beginning days of the MWA, CEDAW and the process of reporting were used more frequently to create a real commitment around women's issues and to give a stronger mandate and legitimacy for the existence of the MWA. CEDAW helped 'lend legitimacy to political demands' to tackle gender discrimination (Simmonds, 2008, p. 244; Aimers, 2011, p. 307).¹³ CEDAW seems to have received even less attention since the turn of the millennium. This is illustrated by the lower attention to CEDAW

in annual reports of the MWA since 2005.¹⁴ In addition, the *Action Plan for New Zealand Women 2004* only mentioned CEDAW in a rather general and superficial way, while the COs 2003 were only explicitly mentioned once in relation to the need to achieve work-life balance (MWA, 2004, 1pp. 3 and 25). One factor that might have contributed to the diminishing role of CEDAW is the organisational change of the MWA in 2003 (see section 3.1).

Parliament

Parliament is not involved in the process of reporting by the Government. State reports and COs are not sent to or tabled in Parliament for discussion. The government considers the periodic reports to be Government reports that do not require the approval of Parliament. Despite this, COs have occasionally been referred to. Individual MPs picked up on and mentioned CEDAW's COs on five occasions since 2000 in relation to the withdrawal of the reservation concerning women in armed forces (4) and the withdrawal of the reservation with respect to paid parental leave. There were another six references to the state report or the process of reporting. In addition, CEDAW itself was referred to only 7 times in this twelve years period. The low level of references to CEDAW correlates with the findings of a study of 2006, which found that MPs made fewer explicit claims about women's policies and interests from 2000-2005 (Grey, 2006).

Noteworthy is that some MPs referred to the CEDAW Committee with disapproval. While supporting the Women in armed forces amendment Bill itself, Mapp (National) was, nonetheless, highly critical of attributing the reason for the Bill to the CEDAW Committee:

I can understand that this [Labour] Government quakes at the thought of an adverse

Committee on the Elimination of Discrimination Against Women report. I guess that the Government spends all its time making sure that it is compliant with every little UN committee, tinpot or otherwise, so as not to get an adverse rating. I wonder what the public of New Zealand would say if the Government spent all of its time worrying about the UN (...). For the Government to suggest that the bill (...) has to be done for the Committee on the Elimination of Discrimination Against Women is simply a falsehood (NZPD, 2007b).

National courts and legal practice

CEDAW, let alone the COs, hardly play a role in legal practice, if at all. There are only a handful of judgments in which CEDAW is cited. Most of them merely referred to the (preamble of the) CEDAW in general terms among several other international standards in relation to equality and discrimination. Only sporadically is a specific article mentioned, and only shortly (CEDAW, 2012a, para. 2B).¹⁵ The CEDAW Committee has not been referred to at all (Allan, Huscroft & Lynch, 2007).

NGOs

The NGOs that have been involved in the process of reporting are three umbrella organisations representing women of European descent (National Council of Women of New Zealand (NCWNZ)), Maori (Maori Women's Welfare League (MWWL)) and Pacific women (PACIFICA). The most comprehensive shadow report is drafted by the NCWNZ by way of an extensive consultation process of different NGOs, women's groups and other women's rights proponents.

Especially since the 2002 fourth state report, the MWA has broadly consulted NGOs.¹⁶ The government even provided financial assistance for NGOs to attend or ad-

dress the CEDAW Committee. In the view of the MWA, this wide consultation with workshops in the context of the preparation of the fourth report facilitated a 'formal partnership' (CEDAW, 2003a, para. 55). The consultation in relation to the sixth report in 2006 was less extensive, because NGOs and women groups themselves made clear that they felt 'over consulted' (CEDAW, 2006, p. 92-94). In October 2004 a Caucus of International Women's Issues was established on the initiative of the Minister of Women's Affairs, Ruth Dyson. This caucus meets twice a year and serves as a forum for government agencies and NGOs to 'work collaboratively on international issues' and 'to enhance New Zealand's capacity to participate in and contribute to international fora arising from the institutions and instruments of the United Nations relevant to the interests of women' (MWA, 2012). The Caucus discussed the COs 2007 and the draft of the 2010 seventh report (CEDAW, 2010, p. 75 and p. 77-80).

The COs have been used less frequently as a lobby tool than, for example, the COs of the CRC Committee. The MWWL has, for example, primarily used the process of reporting under CEDAW to obtain recognition of the plight of Maori women and their involvement at all levels of governmental decision making as well as the establishment of a Ministry for Maori Women's Affairs. Because of this, the MWWL has not so much concentrated on the specific articles of CEDAW or individual COs in their shadow reports and wider involvement in the process of state reporting. The latter holds true for the NCWNZ as well. An illustration of this is that the shadow report of 2006 does not address the COs 2003. The limited lobbying on the basis of CEDAW and the COs is also visible in the rather low number of references to the COs and CEDAW in Parliament (section 1.2).

An explanation for the minimal advocacy is that pressure, lobby and advocacy by NGOs is not the way the relationship between NGOs and the government is working, according to government officials and NGOs. Grey also noted that there is hardly any noticeable external pressure on the government concerning women's issues (Grey, 2006). Interestingly, several NGO representatives showed restraint in ferociously criticising government or openly advocating something. Rather, the relationship is framed in terms of 'partnership'. The government, for example, stressed its collaboration with NGOs and women's community groups as 'partners' in relation to the delivery of social services to communities at the local level.¹⁷

A more structural explanation is that the women's movement has become more fragmented, inactive and less visible since the 1990s (Curtin & Teghtsoonian, 2010, p. 564). Grey argued that the movement is in abeyance (Grey, 2006, p. 11). Curtin even stated that such a movement has maybe even disappeared (Curtin, 2008, p. 501). The Minister of Women's Affairs, Dyson, also stated that the older generation of women, of which she considered herself to be part, had felt that constant improvements in the position of women were needed in order to implement CEDAW. She considered that the younger generation is less committed to and outspoken about this goal (CEDAW, 2007b, para. 67). This was also mentioned by several government officials and NGO representatives, who also felt that younger women are hardly aware of and lobby less on the basis of CEDAW.

Assessing the effectiveness of COs

The methodology for the examination of the effectiveness of COs was sketched in the introduction. Generally speaking, measures are not taken as a result of COs. This is, first

of all, because the concerns and recommendations of the CEDAW Committee often coincide with existing policy and legislative measures. The internal MWA briefing mentioned that 38 of the 49 COs 2007 required no additional work because there was already 'work under way'. Secondly, other COs were dismissed or not acted upon, because they were 'likely to be difficult to respond' or because 'the intervention proposed by the Committee is not preferred by New Zealand'. It was decided not to take further action at that point in the light of 'a lateral approach [that] may be taken to respond' to the COs (MWA, 2008, paras. 14-16). There were seven COs that 'may require additional work', but the only concrete action that was eventually taken was the review of the website of MWA and other communication media with a view of posting more information about CEDAW (MWA, 2008, paras 8-13).

The most cited example of an effective CO was the introduction of paid parental leave. The CEDAW Committee has consistently recommended the withdrawal of reservations and has particularly mentioned the absence of paid parental leave and the reservations in relation to article 11, para. 2 (b) CEDAW. The Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act was eventually enacted on 30 March 2002 and included a government-funded scheme of twelve weeks of paid leave for women or their partners (CEDAW, 2003b, para. 16). Minister of Women's Affairs, Dyson, stated during the launch of the fifth periodic state report in December 2002 in New Zealand that she was proud to tell the Committee in July the following year that 'we have introduced paid parental leave, following serious concern from CEDAW about the government's lack of action throughout the 1990s' (Dyson, 2002). Nonetheless, as was also argued by the interviewees, the COs hardly played a role in the

eventual decision. The introduction of paid parental leave was primarily the result of domestic imperatives. The issue had already been advocated for since the 1980s by female MPs and women's organisations.¹⁸ Decisive was the idea that New Zealand was behind other advanced industrialised countries. The interviewees noted that paid parental leave was a highly politicised issue that was directly taken up at the Ministerial level and led to considerable hefty discussions between the Minister of Women's Affairs and the Minister of Finance. Although CEDAW did not drive it, some held that CEDAW and ILO 186 were used to build up the case as a tool to explain that it is mainstream and internationally recognised. CEDAW, thus, gave a rationale or an element of credibility in the debate.

For the other potentially effective COs identified in interviews and document analysis it was also found that COs have not necessarily driven or influenced policy change as such, although they were sometimes used to support or strengthen policy arguments. The MWA has, for example, used the COs recommending a withdrawal of the reservation in relation to women in armed forces as a lever in Cabinet meetings and discussions with the Minister of Defence. COs could, thus, help to push other departments. COs have also been used by the MWA in a budget bid for funding in the case of violence against women.

Nonetheless, several other legislative and policy advances for women were not connected to CEDAW's COs at all. This is true for the amendment to the Matrimonial Property Act 1976 which applied the same property division regime to *de facto* relationships (including same sex) as to married couples as recommended in CEDAW COs 1998 (CEDAW, 2002, p. 147-148). This issue was not framed in terms of women's rights, but 'fairness' (Wilson, 2000). Curtin also concluded that several policy initiatives

that had a positive impact on women, such as the Employment Relations Act 2000 and the increase of the minimum wage, were not framed as promoting women's interests in policy statements (Curtin, 2008, p. 500). Rather, the issue was approached in terms of economic interdependence of women and their contribution to economic growth (Hyman, 2010, p. 39-40; Curtin & Teghtsoonian, 2010, p. 564).

This discussion illustrates that COs are hardly influencing the content and direction of policy and legislative changes. COs are, thus, not sufficient on their own. Often a lot of other factors are necessary. COs can accelerate a process that would otherwise take place as well. It is not surprising that both government officials and NGO representatives sought the impact of the process of state reporting above all in its positive effects on the relations between NGOs and MWA (section 1.4). The process of reporting has also supported and informed the work of NGOs. NGOs have seen it as a recognition of their demands, in the case of the MWWL. It has also provided NGOs with networking connections and collaboration opportunities.

Explaining the (in)effectiveness of COs

Factors related to the state context

One important explanation for the limited effectiveness of many of the COs is the absence of domestic mobilisation and the invisibility of COs, as was outlined in the previous section. Because Parliament, NGOs and the media hardly pay attention to or lobby on the basis of the COs, the Government can get away with almost doing nothing additional. One reason for the limited mobilisation is the limited knowledge and awareness of Members of Parliament, NGOs, judges and government officials with CEDAW and the CEDAW Committee.

The environment in which the Government and especially the MWA operated in the last two decades was difficult and not conducive to change. One government official made clear that policy change in relation to women's issues was hard won and often dependent upon strategic alliances with other government departments. This is also illustrated by the long time lapse between the Platform for Action adopted during the fourth World Conference on Women in Beijing in 1995 and the eventual adoption of the 2004 Action Plan for Women by Cabinet. One explanation for this is the delicate position of MWA and the constant threat of its dismantling, which leads to a continuous pressure to make sure that the MWA will keep on existing. An example of this is the statement of the leader of the National opposition party in 2003 that he did not see the necessity of a separate Ministry of Women's Affairs anymore and that he would not appoint a spokesperson for women's affairs (Curtin, 2008, p. 501).¹⁹

The MWA had especially been in difficult times since the turn of the Millennium. A critical review by the State Services Commission of MWA's performance in 2003 pointed to considerable challenges to leadership, which undermined the credibility and reputation of the MWA. In addition, the review found that the MWA did not have a clear focus because it combined advocacy and policy advice. Hyman also pointed to the turnover of staff, which was very rapid with experienced and feminist staff leaving the organisation (Hyman, 2010, p. 33 and pp. 37-38; Curtin & Teghtsoonian, 2010, p. 562). The position of the MWA was strengthened as a result of the review, but MWA's approach has subsequently become less idealistic and activist and more focused on policy advice. Since 2003, the MWA has 'operated more and more as a mainstream

agency, rather than as an agent of feminism within the state'.²⁰ There was also a change in leadership in the same period. CEO Lawrence resigned in March 2003, shortly before the dialogue with CEDAW 2003. A new CEO, Gleisner, took only office in February 2004. It is not surprising that – as officials admitted – the momentum was not kept after the COs 2003 and that these organisational difficulties contributed to the limited effectiveness of the COs 2003.

It is interesting to compare the impact and effectiveness of the COs of the CEDAW and CRC Committee in the light of this factor. One interviewee argued that CEDAW was not used as a dynamic instrument for the development of policy in contrast to the Convention on the Rights of the Child (CRC), which was used more frequently as a driver for policy. While the MWA was in a crisis, the Ministry of Youth Affairs (MYA) was a more dynamic department with more interest in and commitment towards CRC and addressing the COs. MYA's staff was dedicated to work on the issues and CRC and COs were used to advance the children's agenda and to secure political support via the UN-CROC Work Program. In addition, there has also been more lobbying on the basis of CRC by NGOs and the Children's Commissioner. CRC and the COs were also deliberately used by NGOs to inform their advocacy and as an awareness, information and lobby tool. As a result, several of the COs of the CRC Committee led to concrete policy and legislative measures (Krommendijk, 2012b). By contrast, the reaction towards the CEDAW Committee was more defensive. As mentioned before, since 2003, the MWA has acted less as an activist department. Interestingly, the MWA itself stated that: 'We do not act as advocates because we have found that simply advocating for issues is not an effective way for a policy agency to influence oth-

ers to achieve outcomes for women' (Curtin & Teghtsoonian, 2010, p. 561-562).

A second complicating factor is that arguments based on 'gender as part of a social justice paradigm' have had less impact and become less successful since the end of the 1990s during the Labour government. Measures that seemed to favour women sometimes have received less public support (Simon-Kumar, 2011, p. 79 and 84; CEDAW, 2007a, para. 44). This can be attributed to the 'perceived predominance of women' in key positions. Around the turn of the Millennium, the four major positions in the country were held by women: Helen Clark as Prime Minister, Silvia Cartwright as Governor-General, Sian Elias as Chief Justice and Margaret Wilson as Attorney-general. This fed the belief that women are no longer in an underprivileged position (Simon-Kumar, 2011, p. 84). The Minister of Women's Affairs, Dalziel, also argued that the perception of the populace that 'women were running the country' had caused a backlash (CEDAW, 2007a, para. 44). NGOs found that the great majority of the 1964 press items about discrimination against women between January 2000 and October 2006 were either refuting the existence of such discrimination and/or downplaying the need to act. Several articles even argued that men are now discriminated against (NCWNZ, 2006, p. 11-12). This backlash against feminism and a political and public climate hostile to the interests of women has also been acknowledged by several scholars (Hyman, 2010, p. 39; Curtin & Teghtsoonian, 2010, p. 564-565). Helen Clark's Labour government was, for example, characterised by the National party as being part of a 'feminist mafia' during the elections in 2005 (Curtin, 2008, p. 501).

A third explanation for the limited impact and effectiveness of CEDAW and the COs is the strong belief in New Zealand that the

View of Wellington, capital of New Zealand.

Source: Jasper Krommendijk

country is playing a leading role in the world when it comes to women's rights. There is also a strong perception among government officials and Ministers that New Zealand is already in compliance with CEDAW. The logic runs that New Zealand only becomes a party to international treaties when existing domestic legislation, policy and practice are in accordance with the respective treaty (CEDAW, 2006, para. 18). The delegation stated during the dialogue in 2007 that it was now in full compliance with CEDAW, since it had withdrawn the last outstanding reservation (Dalziel, 2007b). The government was of the opinion that changes to the legal framework were not necessary after the COs 2003 in the reporting period between 2003 and 2006, because it believed the legal framework to comply with CEDAW (CEDAW, 2006, p. 5). What is more, not only the legal framework was considered to be in compliance with CEDAW, but also existing policies and practices (Dalziel, 2007b). Both ideas have led to 'complacency in a seemingly ideal situation', as the CEDAW Committee cautioned against (MWA, 2003, p. 3).

Factors related to the CEDAW Committee

One important reason for the limited effectiveness of the COs is the limited legitimacy and persuasiveness of the CEDAW Committee in the view of Government officials. The previously mentioned mechanism of compliance related to the notion of compliance pull and persuasion is, thus, absent.

Government officials and other interviewees were even more critical about the CEDAW Committee, than of some of the other treaty bodies. The dialogue with the CEDAW Committee was not found to be constructive. Firstly, because the answers to a large number of questions had to be answered in a bloc.²¹ This form of interaction which compels the delegation to explain and defend was said not to lend itself to constructive advice or help. Secondly, some interviewees noted that the CEDAW Committee was too confrontational.

Officials also expressed their disappointment in the inadequate preparation on the part of the CEDAW Committee. Almost all government officials lamented the (complete) lack of understanding of the Committee of the structure and social make-up of New Zealand's society and its democratic process, with some individual exceptions. Officials also found that CEDAW in 1998 and 2003 did not seem to understand indigenous issues. Some officials also noted the odd and irrelevant questions about 'rural women' (CEDAW, 2003b, para. 23 and 26). During CEDAW 2003 there was a question whether women are allowed to own property, which an official compared to asking the question whether there is electricity in the Netherlands.²²

There was also a feeling that the COs did not appreciate the particular domestic situation and are, hence, difficult to implement. The internal MWA briefing noted that: 'it is disappointing that some of the recommendations do not fully reflect New Zealand's

domestic situation' (MWA, 2008, appendix B). NZHRC representatives concurred with this view of the MWA and noted that the CEDAW COs 2007 were out of sync with reality. There were a couple of odd COs that allegedly showed a misunderstanding, such as the access to sewage systems 'in rural and remote areas' (CEDAW, 2007c). Both government officials and NGO representatives noted the high influence of NGOs on the Committee's questions and COs. The internal MWA briefing also stated that 'some criticism ... is unbalanced. In particular, some of the criticism gives undue weight to the input of non-governmental organisation without any supporting evidence' (MWA, 2008, appendix B).

Concluding remarks: further generalisability?

It is important to consider whether these findings about the limited effectiveness of the COs of the CEDAW Committee in New Zealand have a more general validity and extend to other UN human rights treaties as well. As was already mentioned, several COs, especially those of the CRC Committee, have been (partly) effective or have influenced a change in policy or legislation (Krommendijk, 2013). This effectiveness cannot be attributed to the presence of a compliance pull or a higher quality of the CRC Committee, because the interviewees were equally critical about the quality of the treaty bodies and the COs. Crucial for the effectiveness of COs are, thus, domestic factors. There was first of all a formal follow-up mechanism at the governmental level in the form of a CRC Work Programme to implement several COs. Secondly, the COs were used quite extensively in the (domestic) lobby of strong NGOs and the Children's Commissioner. The CRC and the COs were deliberately used by these actors to inform their advocacy. This domestic

mobilisation has (still) been rather minimal for CEDAW and the other UN human rights treaties in New Zealand (Krommendijk, 2013).

Although New Zealand was selected for specific reasons, there are indications that the findings do not stand alone and are valid for other countries as well. Zwingel, for example, found that in Finland, CEDAW has seldom been directly invoked since its ratification in 1986, which resulted in the enactment of a separate Equality Act. CEDAW subsequently lost its relevance given its vagueness and in the light of the more concrete and legally binding EU instruments prescribing more specific policies (Zwingel, 2005, p. 311). Zwingel later concluded that there is only a 'low but supportive' level of international influences in Western post-industrialised democracies and that policy issues are not framed in terms of international obligations under CEDAW, even by NGOs (Zwingel, 2012, p. 125). Other studies also hint at the limited effectiveness of CEDAW in non-Western (developing) countries in Sub-Sahara and the Pacific (Jivan & Foster, 2009; Banks, 2009).

Several scholars have recently pointed to the minor role of CEDAW and the limited effectiveness of COs in the Netherlands (Janse & Tigchelaar, 2010; Van den Brink, 2012; Krommendijk, 2012a). Noteworthy is that Dutch government officials were sometimes even more critical about the usefulness, legitimacy, authority and persuasiveness of the process of state reporting and the CEDAW Committee than their New Zealand counterparts (Krommendijk, 2012a, p. 503-505). Telling is that COs are seen by most government officials as mere opinions (Janse & Tigchelaar, 2010, p. 314-315). While New Zealand government officials were rather positive about the usefulness of compiling a state report, this is approached as a necessary evil and a burdensome task that has no prac-

tical relevance for the day-to-day functioning of the administration in the Netherlands (Krommendijk, 2012a, p. 499).

There have, however, been more COs in the Netherlands than in New Zealand that had an impact and were (partly) effective as well.²³ This could primarily be explained by the slightly higher domestic mobilisation in the Netherlands. MPs have referred to CEDAW and the COs more frequently. One MP even proposed, albeit unsuccessfully, an amendment to the Law on Names on the points that CEDAW expressed its concerns. One explanation for the higher parliamentary attention is that some of the COs and the government reaction were tabled in Parliament. (Krommendijk, 2012a, p. 492). Another explanation is the 'unique provision' in the Act ratifying CEDAW, which obliges the government to send a report to Parliament about the implementation of CEDAW in the Netherlands every four years (Van den Brink, 2012). Especially the national reports and in-depth studies that were conducted at the end of the 1990s and the beginning of the 2000s led to heightened domestic attention (Krommendijk, 2012a, p. 493). Besides the more active role of Parliament, there is also a rather vocal NGO collective that monitors the implementation of CEDAW and (some of) the COs of the CEDAW Committee (Dutch CEDAW Network). Another NGO, the 'Proefprocessenfonds Clara Wichmann' took several matters to court in order to generate jurisprudence about CEDAW. They, for example, initiated court proceedings because the government was unwilling to address the concerns of the CEDAW Committee as to the reformed political party, SGP, which excludes women from membership (until 2006) and from being eligible for election. Because the NGO invoked the COs, the COs consequently played a role in some of the court

judgments with respect to the SGP as well (Janse & Tigchelaar, 2010, p. 314).

The effectiveness of several of the COs of the CRC Committee in New Zealand and some of the COs of the CEDAW Committee in the Netherlands show that COs can play a role. COs are, however, not sufficient on their own. That is to say, there are hardly any measures, which were solely taken because of COs. COs are often merely one factor in larger national discussions and processes. COs can assist and empower one side in the debate by supporting or strengthening their arguments, as happened with the introduction of paid parental leave in New Zealand (section 2). COs can also push and issue or accelerate the adoption of measures. One important precondition for the 'landing' of the COs is the existence of a political momentum in the form of an ongoing national debate on the issue. In addition, the concerns in the COs should already have been voiced by and resonate with the activities, interests and claims of some domestic actors.

The most likely scenario of COs having effect is when NGOs highlight issues in their shadow reports to the Committees that they are already lobbying for domestically, in order to obtain a useful and 'authoritative' recommendation that will give extra strength and legitimacy to their claims. They, thus, use the process of reporting strategically by not only 'translating' the COs to the domestic context, but also bringing issues to the attention of the Committees. This mechanism corresponds to the 'boomerang effect', which describes how domestic compliance constituencies and NGOs seek international support and link up with transnational networks to bring pressure on their states from the outside. These international linkages allow them to gain leverage by strengthening their demands (Risse et al. 1999, p. 4 and 237).

The CEDAW Committee is, thus, not a significant policy driver, but it can and sometimes has been helpful and supportive to domestic developments. Nonetheless, one would and should expect more from the CEDAW Committee. The Committee *and* the state parties should, thus, do everything to avoid that the Committee indeed becomes 'a little UN Committee', as suggested by a New Zealand MP.

Notes

- 1 The article will examine the effectiveness of the COs since the consideration of the second report in January 1994, because the discussion of the initial report in 1988 did not result in COs. The practice of the adoption of concrete recommendations (COs) by Treaty Bodies only started in the beginning of the 1990s. This article will not specifically discuss the role of General Recommendations. Suffice to say that the latter have neither been referred to by the government and parliament during debates in the House of Representatives nor in written and oral questions. No references were found during a search in the Hansard database (NZPD).
- 2 They concluded that: 'some countries are highly engaged with the system. They submit substantial reports, their NGOs bring individual complaints, their newspapers and academics publish information on the system, etc. With respect to these countries, the enforcement system can and does have an impact.' Australia, Canada, South Africa and Finland fell into this category out of the twenty countries included in the study.
- 3 For the MWA reporting on the status of women is an essential component of its tasks, which means that there is a certain inbuilt departmental 'ownership'. In comparison with the state reports for the other UN human rights treaties, the reports have been submitted with only small delays of a couple of months. As a result, the reporting cycle for CEDAW has been rather 'steady' since the middle of the nineties, because New Zealand has reported on a four

year basis. Noteworthy is also the consistent participation of (associate) Ministers for Women's Affairs as heads of delegation during the dialogue with the CEDAW Committee.

The 2002 report was submitted in October 2002 with a delay of 'only' eight months. For the other state reports in 2001-2002 this was: CRC (9 months), CERD (21 months), CAT (36 months), ICCPR (72 months) and ICESCR (74 months). The CEDAW 2006 and 2010 reports had a delay of respectively 2 and 3 months.

- 4 Another causal mechanism is the risk of losing face, prestige and reputation through the 'soft sanction' of 'naming, shaming and faming'. The author is of the opinion that this mechanism hardly works for COs, since they are little known outside a small circle of diplomats and government officials (Simmons, 2009, 124-125). In addition, it is questionable whether the COs for a country like New Zealand, which often involve relatively minor human rights concerns, are capable of affecting the country's reputation.
- 5 The 2002 report to CEDAW started with a part in which the COs 1998 were replicated and responded to (CEDAW, 2002, 14-24). A response to CEDAW COs 2003 and COs 2007 was given in a table appended to the subsequent reports. UN Doc (CEDAW, 2006 and 2010).
- 6 In addition to these two questions, interview respondents were also asked about their views as to the impact of the process of reporting in New Zealand and the involvement and use of the process and COs by domestic actors. They were furthermore asked about their opinion as to the quality of the CEDAW Committee, the COs and the constructive dialogue. An interview checklist was used to ensure that the same questions were asked to all interviewees. Victoria University, Wellington, has given ethical approval for this research. Consent forms were used to obtain prior consent of the interviewees.
- 7 The NZHRC was established in 1977 as an independent Crown entity. It advocates and promotes respect for human rights in New Zealand. The NZHRC has become more active

in relation to human rights in New Zealand as a result of the Human Rights Amendment Act 2001, which introduced a statutory duty to develop a National Action Plan.

- 8 Government refers to all the Ministers in the Cabinet and the respective ministries, including the MWA. Sometimes the MWA or MWA officials are referred to.
- 9 For the COs 1999 and 2003 of the CRC Committee an UNCROC work programme which contained concrete measures in response to the COs was developed by the Ministry of Youth Affairs and endorsed by the government.
- 10 The CEDAW COs 2007 were, for example, discussed by MWA with senior government officials from other departments and the NGO Caucus. The Minister for Women's Affairs sent a letter in April 2008 to other Ministers to inform them about the CEDAW COs 2007 and the necessity of reporting on the progress in 2010.
- 11 An illustration of this is the timeline in Focusing on women 2005 that did not mention the reports submitted after the second and combined third and fourth report of 1994 and 1998 (Statistics New Zealand, 2005).
- 12 An illustration is the lack of mentioning of CEDAW, women's rights or gender in the Plan of Action to Prevent People Trafficking (2009), although MWA was part of the inter-agency working group on people trafficking (Department of Labour, 2009).
- 13 Some interviewees also pointed to the membership of the CEDAW Committee of the New Zealander Sylvia Cartwright (1993-2000) that (might have) contributed to the visibility of CEDAW in the 1990s.
- 14 The annual reports from 2002-2011 were searched with 'CEDAW': 2002 (21 results), 2003 (12), 2004, (11), 2005 (3), 2006 (4), 2007 (4), 2008 (3), 2009 (0), 2010 (7), 2011 (8). www.mwa.govt.nz/news-and-pubs/publications/annual-reports
- 15 *Ye v Minister of Immigration* (2010) 1 NZLR 104 (Supreme Court), *Bullock v Department of Corrections* (2008) 5 NZLR 379 (Human Rights Review Tribunal), *Lewis v Talley's Fisheries Ltd* (2005) NZHRRT 19 (Human

- Rights Review Tribunal), *Lewis v Greene* (2004) 2 ERNZ 55 (Employment Court), *Director of Human Rights Proceedings v Cropp* (2004) AP7-SW03 (High Court, Auckland) The judgment in Refugee Appeal No 76530 (2010) NZRSAA 116, referred to GC 21.
- 16 According to the Minister of Women's Affairs, the 2002 fourth state report was very different from previous ones in terms of process and structure. Consultation was wider since a series of 22 regional workshops was organised and 'particular efforts' were made to reach out to several groups of women, in particular also beyond existing NGOs (CEDAW, 2002, 11-12).
 - 17 The Government funds and works together with NGOs 'as partners' in the field of, for example, family violence, rural women's access to benefits and awareness raising about the existence of a cancer screening register, especially among Maori and Pacific women (CEDAW, 2007, para. 28, 31 and 41).
 - 18 The campaign began in 1984 with the ratification of CEDAW. Since 1994, a coalition of community and legal organisations, Trade Unions and women's NGOs campaigned for the ILO standard of 12 weeks (Skiffington, 1998). In 1996, Dianne Yates (Labour) introduced a Paid Parental Bill. While outlining Labour's policy in February 1998, Yates referred to 'Beijing platform for action and UN agreements' (Skiffington, 1998). The issue was especially put on the public and political agenda as a result of the Private Member's Paid Parental Leave Bill introduced in September 1998 by Leila Harré (Alliance). Although the Bill was defeated, it led to significant media attention and public support for a paid parental leave scheme (Curtin, 1999). The 2002 Act was adopted under the Labour/Alliance government, which took office in the following year and in which Leila Harré was Minister of Women's Affairs and Margaret Wilson was Minister of Labour. Hyman also observed that Harré 'fought energetically for feminist policies and was key to the introduction of paid parental leave' (Hyman, 2010, 35, Curtin and Teghtsoonian, 2010, 562).
 - 19 See, for example, the question of Douglas (ACT): 'When will the Minister abolish her department; if not, could she outline what benefits the department delivers?' (NZPD, 2009).
 - 20 Hyman noted that the MWA has less idealistic feminist analysts than in the past years and pointed to the claim of CEO Gleisner that the turnover of staff has diminished as well. Several recent reviews noted the improvements in culture and quality of staff. The MWA is even considered to be in the 'top tier of policy agencies' (Hyman, 2010, 33, 37, 42 and 44).
 - 21 For CEDAW 1998, the questions were answered in writing prior to the dialogue, but they needed to be read out in order for them to be part of the official records. Hence, there was no interaction during the morning session (CEDAW, 1998a). Note that this was different during the subsequent dialogue in 2003.
 - 22 Ms. Gnancadja 'stressed the need to implement practical measures to protect the interests of rural women, including their property and inheritance rights.' Ms. Dyson stated in her answer that equal rights to property were already legally guaranteed (CEDAW, 2003b, para. 26 and 33).
 - 23 Besides the SGP case before the courts, several policy or legislative measures could be attributed, often amongst other factors as well, to the COs of the CEDAW Committee, including the Working Group Law on Names, the evaluation of the gender dimension of the asylum policy, exit programmes for prostitutes and some steps to move beyond the gender neutral formulation policy on domestic violence.

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