

**Analysis of Issues Relating to the Review of the
Periodic Report Submitted by Ukraine to the
UN Committee on the Elimination of Discrimination Against Women**

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In late January 2010, representatives of the government of Ukraine will appear before a Geneva-based United Nations body of experts to defend Ukraine's efforts under the Convention on the Elimination of All Forms of Discrimination against Women to realize the elimination of discrimination against women in Ukraine. The hearing, the written communications between Ukraine and the treaty body committee, and the cooperation between the UN and UNICEF officials in Ukraine and Ukrainian women's organizations in preparing and submitting a "shadow report," evidence the significant degree to which United Nations officials are interfering at the national level in the governance of social and cultural affairs in Ukraine. To highlight the potential threats to national sovereignty, the rule of law, and democracy arising from the treaty reporting process, the following analysis explains the treaty reporting process and examines certain issues that have been raised in the pre-hearing written communications between Ukraine and the treaty body.

Introduction

Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly in 1979 ("CEDAW"), States Parties to CEDAW are obligated to submit to the UN Secretary General, for consideration by the Committee on the Elimination of Discrimination Against Women (the "CEDAW Committee"), periodic reports on the measures which they have adopted, and the progress they have made, in

achieving the rights recognized within CEDAW. The CEDAW Committee is a treaty-based body, comprised of twenty-three international experts on women's rights, established to carry out the monitoring functions assigned to it under Article 17 of CEDAW. Representatives from each State whose report is scheduled for review at a particular session are invited to make statements on their respective report and answer questions that may arise from the CEDAW Committee members.

On 21 January 2010, during the CEDAW Committee's 45th Session, which is being held in Geneva, Switzerland, the CEDAW Committee will review the combined Sixth and Seventh Periodic Reports of the Government of Ukraine ("Ukraine") and will meet with Ukraine's government representatives in this regard. In preparation for this review, in July 2009, the CEDAW Committee submitted to Ukraine a list of thirty-two issues regarding its compliance with CEDAW (the "List of Issues"). Generally, the issues concern Ukraine's commitment to particular articles of CEDAW, such as the prevention of violence against women and human trafficking and the elimination of gender-based discrimination in education and the workplace. In November 2009, Ukraine responded to the questions.

Since its creation, the CEDAW Committee has evolved from one dedicated to monitoring State compliance with the spirit of the aspirational provisions contained in CEDAW into one that, with the help of international, non-governmental, and civil society organizations, attempts to enforce at the national level the human rights expressed in CEDAW. In short, the CEDAW Committee and its New York and Geneva-based staff housed in the Office of the United Nations High Commissioner for Human Rights ("UNOHCHR") are attempting to globally govern social and cultural rights. Solidarity Center for Law and Justice, P.C., a public-interest law firm based in Atlanta, Georgia, USA, is attempting to inform interested national parties about the efforts of the CEDAW Committee so that they can 1) take steps to monitor and educate others about the

CEDAW Committee's attempt to influence national domestic laws and policies and 2) embolden national authorities to resist the CEDAW Committee's human rights global governance efforts.

This Memorandum addresses specific issues raised by the CEDAW Committee and responded to by Ukraine that have important implications on national sovereignty, the rule of law, and democratic processes. It addresses these issues in the same format and order as was used by the CEDAW Committee in framing its original questions to Ukraine.

I. General

In the General section of the List of Issues, the CEDAW Committee inquired about the degree to which Ukrainian authorities involved civil society organizations in the preparation of its report. Ukraine responded that it had only consulted governmental agencies involved in matters relating to discrimination against women and had not included civil society organizations in the preparation of its periodic reports. Because the CEDAW Committee increasingly partners with civil society organizations to globally govern human rights at the national level, the CEDAW Committee expects States Parties to CEDAW, such as Ukraine, to partner with civil society organizations in preparing responses to the List of Issues and in implementing CEDAW at the national level. Obviously, when it became a party to CEDAW, Ukraine did not become obligated to partner with civil society for the implementation of CEDAW, the terms of which are very general, are susceptible to multiple interpretations, and are to be instituted over time with sensitivities for national sovereignty, the rule of law, and democratic processes.

Perhaps anticipating that Ukraine authorities would not cede responsibility for preparing its periodic reports to representatives of civil society, in 2008, *with the organizational and technical assistance of the United Nations office in Ukraine and the United Nations Children's Fund ("UNICEF")*, the Women's Consortium of Ukraine, a group of 22 civil society organizations based in Ukraine, prepared and submitted to the CEDAW Committee "An

Alternative Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women in Ukraine” (the “Shadow Report”). Basically, the 51-page Shadow Report contains a detailed petition for the full and immediate realization in Ukraine of each specific CEDAW provision without regard to any contrary or undetermined legal interpretations, financial or practical considerations, political differences, or democratic process limitations.

In its response to the List of Issues, Ukraine made it very clear that the government is solely responsible for the content of the report and that consulting with civil society organizations at the preparation stage could undermine its responsibility for the content of the report. Under Article 18 of CEDAW, it is the sovereign government *alone* that is obligated to submit periodic reports. By deciding not to open the report preparation process up to a group of civil society organizations with unrealistic expectations regarding the complicated process of interpreting and implementing CEDAW, Ukraine has protected its national sovereignty, the rule of law, and democratic processes. Ukrainian authorities must continue to control the reporting process, from its earliest stages until completion, and should not cede authority for this process to civil society organizations that have a specific agenda. The Ukrainian government represents the people; civil society organizations represent issues.

Obviously, *all* civil society organizations concerned about the status of women’s rights in Ukraine have the right to engage in the political process to promote the implementation of CEDAW and to educate the public about the CEDAW reporting process and demand the right to participate in it. However, the CEDAW Committee abuses its mandate by using the CEDAW reporting process to criticize Ukraine, in essence, for not permitting a group of civil society organizations to take control of the CEDAW Committee reporting process and force Ukraine to include in its report a detailed description of the manner and degree to which the Ukraine

government has failed to fully and immediately realize each and every provision of CEDAW. Even more troublesome, however, is the fact that, by providing technical assistance to selected civil society organizations with respect to the preparation and submission of the Shadow Report, the UN office in Ukraine and UNICEF violated Ukraine's national sovereignty and the organic democratic development of women's rights in Ukraine.

Most disturbing is the fact that the Shadow Report was released in late 2008, seven months prior to the July 2009 date on which the CEDAW Committee submitted its List of Issues to Ukraine. This timeline means that, apparently without the official involvement of Ukraine government officials, in anticipation of Ukraine's upcoming reporting obligation to the CEDAW Committee, the UN Office in Ukraine and UNICEF formed a coalition of women's groups in Ukraine and conducted a national assessment of the degree to which Ukraine has not realized all of the rights contained in CEDAW. This coalition then submitted its Shadow Report to the CEDAW Committee 1) to guide its production of the List of Issues to which Ukraine would have to respond and 2) to evaluate (and criticize) Ukraine's responses accordingly. In essence, knowing that Ukraine would not cede control over the production of these important human rights periodic reports to civil society organizations with a one-sided agenda not representative of all Ukrainian viewpoints, the UN, UNICEF, and the CEDAW Committee directly interfered with Ukraine domestic affairs by forming a partnership with civil society organizations to control the outcome of the investigative and interrogatory stages of the CEDAW Committee reporting process.

The CEDAW Committee is part of a matrix of human rights governance networks, which includes UNOHCHR staff, national and international non-governmental and civil society

organizations, national and regional courts, and international foundations.¹ The participants in this Matrix use the CEDAW Committee reporting process to entrench themselves in the domestic affairs of reporting nations, such as Ukraine.

II. Legal Status of the Convention

In the section of the List of Issues titled “Legal Status of the Convention,” the CEDAW Committee posed questions designed to determine the degree to which Ukrainian citizens can directly enforce the provisions of CEDAW in national courts. In the view of the CEDAW Committee, CEDAW, not the Constitution of Ukraine or the duly enacted laws of Ukraine, is the ultimate legal authority on the question of women’s rights in Ukraine. In its view, if the Constitution and national laws do not address a particular women’s right covered by CEDAW, the relevant provisions of CEDAW should be applied. Also, if, in the opinion of the CEDAW Committee, the provisions of the Constitution and national laws regarding women’s rights conflict with, or inadequately address, a particular right contained in CEDAW, the relevant provisions of CEDAW should apply.

Thus, in this section of the List of Issues, the CEDAW Committee attempted to ascertain the 1) degree to which Ukrainian citizens could directly enforce the provisions of CEDAW in Ukraine’s national courts; and 2) measures being taken by Ukraine to educate members of the judiciary, law enforcement officials, and lawyers about the provisions of CEDAW. Ideally, in the CEDAW Committee’s opinion, the provisions of CEDAW are absolute and individuals should be able to introduce them in national courts as a “trump card” that supersedes any existing constitutional or statutory arrangement, regardless of the “democratic deficit” associated with such an arrangement.

III. National machinery for the advancement of women

¹ Kelly, James, “The Matrix of Human Rights Governance Networks,” *Engage*, Vol. 9, Issue 1 (Feb. 2008), http://globalgovernancewatch.org/docLib/20080211_Kelly_Governance_Networks.pdf

In the List of Issues, the CEDAW Committee inquired about the national institutions and procedures that exist in Ukraine for the advancement of women. Under Article 3 of CEDAW, States Parties agree to take, “in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” To that end, the CEDAW Committee pressed Ukraine on the specific programs it has implemented to bring about gender equality in the country. Ukraine responded by explaining that Ukraine’s Council of Ministers, among other measures, approved the State Programme on the Establishment of Gender Equality in Ukrainian Society in 2006 for the period up to 2010 with the overall goal of establishing equal rights and opportunities for women in Ukraine. Unfortunately, some of the Programme’s main tasks show Ukraine’s willingness to surrender national law and public policy-making to oversight by regional, international, and civil society organizations.

For example, although Ukraine is not a member of the European Union, the Programme calls for the adaptation of Ukraine legislation on women’s rights to that of EU legislation on women’s rights. In the same vein, the Programme is tasked with ensuring the cooperation of government and research institutions in the study of gender issues, involving civil society organizations and international agencies in the conduct of scientific and expert studies.

Finally, in what is perhaps the most egregious example of Ukraine’s willingness to cede control over its law and public policy-making to outside influences, the Programme is tasked with involving “domestic and international non-governmental organizations in the drafting of decisions of executive and local self-government bodies on gender equality.” Clearly, the Programme, coupled with Article 11 of Ukraine’s Equal Rights and Opportunities Act, calling for a central executive body to “[c]ooperate with international organizations and the relevant

foreign authorities in matters relating to the status of women and observance of international standards relating to equal rights and opportunities for women and men,” are causes of concern for those citizens of Ukraine interested in protecting national sovereignty, the rule of law, and democratic processes in their country. While achieving gender equality through laws and public policy initiatives should certainly be promoted, it should be done solely at the national level through democratic processes, not under the direction of outside organizations that do not share congruous social, cultural, and economic concerns.

V. Health

Article 12 of the Convention provides that States Parties “shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” Thus, in the section of the List of Issues dealing with health, the CEDAW Committee asked the Ukrainian authorities to provide information on the degree to which Ukraine has implemented the provisions of the CEDAW Committee’s General Recommendation No. 24, which stresses that women’s access to health care, including reproductive health care, is a basic right under CEDAW. Specifically, the CEDAW Committee inquired whether Ukraine had followed the General Recommendation’s call for comprehensive research on the health needs of women, specifically reproductive health.

In addition to citing the overwhelming number of women that comprise the student bodies of its medical schools, Ukraine responded by discussing specific measures it has taken to improve women’s health in the country, including changes in school curricula with increased focus on gender studies, governmental programs to improve the family planning system, and increased scientific investigations into reproductive health issues.

Ukraine also reported that, under UNICEF's direction, the nation's Ministry of Health is currently working to implement a "Youth friendly clinic" project. UNICEF was created in 1946 in response to the immediate needs of children left starving in Europe after the Second World War. Since then, the organization has increasingly abandoned its original mission of ensuring the survival of children in order to promote a more politically-oriented women's rights agenda. In 2007, UNICEF released its "State of the World's Children Report" which argued that the achievement of "gender equality" and realization of women's rights, including the right to abortion, are necessary for the well being of children. Moreover, the Report encourages an increase in the number and activity of women's groups that can "set in motion a process of broad social change that promotes the rights of girls and women for generations to come." Ultimately, UNICEF is implementing its "Youth friendly clinic" project at the national level to promote a political program for the realization of women's rights that could have the effect of undermining the due consideration of important women's and children's health policies through the democratic process.

Conclusion

This paper has discussed only a few of the issues that will be considered at the 21 January hearing on Ukraine's report at the 45th Session of the CEDAW Committee. Hopefully, by highlighting the agenda and work of the CEDAW Committee and the manner in which the CEDAW Committee and the other members of the matrix of human rights governance networks are interfering with domestic policies on women's rights, Ukrainian citizens will better understand the resulting threats to national sovereignty, the rule of law, and the democratic process.

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