

Legislative Council Panel on Home Affairs

‘Monitoring Mechanisms for the Implementation of International Human Rights Treaties in the United Kingdom, New Zealand and Canada’: response to the Legislative Council Secretariat’s report

This response explains our position on the analysis in Chapter 5 of the Secretariat’s report. That is –

- (a) the United Nations (UN) reporting process;
- (b) parliamentary mechanisms;
- (c) legal mechanisms;
- (d) human rights commissions; and
- (e) other mechanisms.

The United Nations reporting process

2. Our practice of issuing pre-drafting consultation documents in the form of outline reports developed from a Canadian practice described in the UN Manual on Human Rights Reporting (1997 edition, page 51) –

“The case of Canada may be instructive in that, on four separate occasions, the government formally asked NGOs to contribute to the process of preparing treaty-body reports. In three of the cases - on the preparation of Canada's third report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the fourth report on the International Covenant on Civil and Political Rights (CCPR), and the third report on the International Covenant on Economic, Social and Cultural Rights (CESCR) - formal letters were sent to NGOs: to 42 national women's organizations regarding CEDAW and to over 200 NGOs regarding CCPR and CESCR.

While there was some variation in the three letters sent to NGOs, each mailing included a copy of the relevant Convention, Canada's previous report under that Convention, a specification of the articles to be covered,

the relevant time period for the report in question, and contact names and numbers should the NGO want further information. Moreover (as in the 1995 letter to NGOs concerning the CESCRC), NGOs were told:

All comments will be taken into consideration in the preparation of the ... report, and will also be relayed to the federal departments and agencies which are responsible for the subject matter covered. While your specific input may not be reflected in the official text, we will forward to the Committee..., under separate cover, the complete texts of all submissions received from non-governmental organizations. Also, any organization may forward its comments directly to the Committee ... [with the address provided].

The government also invited NGOs to bring to its attention any other organizations which might be interested in submitting comments, or to share this letter with them. The idea was to get the widest possible input from the NGO community.”

3. We have taken that process several steps further in that we not only advise our respondents of our thoughts as to what the reports should contain, but also invite all interested persons and organisations to respond, not just non-governmental organisations (NGOs). Each such exercise includes face-to-face meetings with NGOs and other interested parties and the Panel has actively contributed to the process by convening meetings with both NGOs and representatives of the Government before the drafting process has begun (that is, during the consultation period), after the reports have been published, and after the related hearings. Thus, the processes currently in place ensure that the reporting process is transparent and that the issues are given full public airing.

4. The Secretariat’s report covers the practices in three of the 192 countries that have ratified some or all of the treaties: less than two percent. Thus, it is not possible to determine, on the basis of the report, whether those practices – which, we observe, differ from one another – are either widespread or uncommon. We note, too, that – even within a particular jurisdiction – the practices appear to vary from treaty to treaty, so that a practice that has been applied to reporting under one treaty may or may not be applied to another. In particular (the references in brackets are to paragraphs in the Secretariat’s report) –

- in the UK, “[t]he extent to which NGOs are involved in the reporting process depends on the particular government department” (paragraph 2.4.2);
- the New Zealand government, we are told, “endeavours to release its treaty reports in draft form for public comment” (paragraph 3.4.2). But we are also told that the elaborate practices adopted in preparing New Zealand’s fifth report under the CEDAW “differed significantly from that used for previous reports” (paragraph 3.4.3). Thus, it is not clear whether the practices are to provide a template for all future reports or whether the exercise comprised a one-off experiment. Certainly, the Secretariat’s report appears to indicate that New Zealand’s reporting processes may vary; and
- in Canada, the Secretariat’s report tells us, the Canadian Human Rights Commission is invited to provide input for all reports and to comment on the drafts (paragraph 4.4.6). “The federal government also consults NGOs in the preparation of its own section of *most* major reports” (paragraph 4.4.7: our emphases). Again, therefore, it appears that the government’s practices vary. In the same paragraph, the Secretariat’s report states that “some NGOs submitted alternate or shadow reports to the relevant UN committees”. This is a common practice of Hong Kong NGOs: a practice that we encourage.

5. These things said, we note that the governments whose practices were the subject of the study are experimenting with different approaches to the UN reporting process and that some might regard those practices as a desirable way forward for Hong Kong. We are unconvinced of this but open minded and, with a view to obtaining a better understanding of these practices, have written to the respective Consuls-General, asking –

- (a) where their governments seek views on near-final drafts, whether the practice is common to all reports or only to selected ones;
- (b) when consulting NGOs on the near-final draft, whether views are invited from the public as a whole, or only from selected NGOs;
- (c) given that NGOs are encouraged to submit alternative reports to the treaty bodies and that many of them do so, what advantages there are in seeking their comments on advance drafts. And is there any substantive enhancement of human rights protection? and

(d) has the practice of consulting NGOs in this way significantly prolonged the drafting process and has it been detrimental to timely submission of reports?

6. At the time of finalising this paper we had yet to receive replies to these questions. When we do receive them, they will help us to determine whether there may be advantage in changing our own processes and, if so, how and to what extent.

Parliamentary mechanisms

7. We see this as a matter for the Legislative Council and have no comment on the position described in the Secretariat's report.

Legal mechanisms

8. The position is as explained in the Secretariat's report and we have no substantive comment on it. However, we note that the position in Hong Kong is much in line with those in the jurisdictions examined.

Human rights commissions

9. As we explained in the meeting of 22 March, an institution purporting to be a national human rights institution must conform to the Paris Principles in order to secure international recognition as such an institution. The Principles were developed in Paris in 1991, at a UN-sponsored meeting of national institutions. The Principles were endorsed by the UN Commission on Human Rights in March 1992¹ and later by the UN General Assembly on 20 December 1993². They relate to the status of national human rights institutions and aim to clarify the concept of a "national institution" by providing minimum standards for the status and advisory role of national human rights commissions. The key criteria of the Paris Principles are –

- independence guaranteed by statute or constitution;
- autonomy from government;

¹ Resolution 1992/54.

² Resolution A/RES/48/134.

- a broad mandate based on universal human rights standards;
- pluralism, including in membership;
- adequate powers of investigation; and
- sufficient resources.

Other criteria that may also be important but are not covered in the Paris Principles are –

- the power to make binding decisions; and
- the power to initiate legal action.

10. In Hong Kong, the institution that most nearly embodies those principles is the Equal Opportunities Commission, which conforms quite closely to the requirements in respect of independence, autonomy, pluralism, powers of investigation, resources, and the initiation of legal action. But its mandate is restricted to the scope of the equal opportunities ordinances³ and does not extend to universal human rights standards. Having examined the issues in detail and having carefully considered the implications, we do not envisage so extending the Commission’s mandate in the near future, nor would we envisage conferring on the Commission the power to make binding decisions.

11. Against this background we have concluded that we are not ready to take the steps necessary for the establishment of an institution that fully meets the requirements of the Paris Principles. Hong Kong is not alone in its hesitation to take such steps: as the Secretariat’s report rightly observes, the United Kingdom, which has more extensive experience of human rights development, is only now moving in that direction.

Other mechanisms

12. The Secretariat’s report is incorrect in asserting that Hong Kong has no mechanisms “within the Government or in collaboration with NGOs to monitor the implementation of international human rights treaties”

³ Namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, and the Family Status Discrimination Ordinance.

(paragraph 5.1.24). The Home Affairs Bureau convenes meetings with NGOs and other interested parties every time we initiate the pre-drafting consultation process. We also convene twice-yearly meetings of the Human Rights Forum to discuss human rights issues of topical interest and to propose a forward agenda for future meetings. The Forum first met on 8 October 2003. The second meeting will be held in the afternoon of 12 May 2004.

13. Finally, we note that the Canadian mechanisms for co-ordinating federal and provincial implementation to the treaties (paragraph 5.1.23) are of only marginal relevance to us as Hong Kong is not a federal jurisdiction. However, such internal co-ordination is analogous to our intra-government and Government/NGO mechanisms for co-ordinating the reporting process and implementation/delivery of specific human rights protection. Examples include the Steering Committee on New Arrival Services, the Committee on the Promotion of Civic Education, and the Committee on the Promotion of Racial Harmony.

Home Affairs Bureau

10 May 2004