

Hong Kong and the Convention on the Elimination of All Forms of Discrimination Against Women

Introduction

The Convention on the Elimination of All Forms of Discrimination Against Women,¹ a treaty adopted by the General Assembly of the United Nations in 1979, is frequently described as an international bill of rights for women.² States that become parties to the Convention accept extensive obligations to address discrimination against women in all fields of social life. In addition, they undertake to submit regular reports to the United Nations on their implementation of the Convention, a procedure intended to permit international monitoring of their efforts.

Following years of lobbying by women's groups and other human rights groups, the CEDAW Convention was finally extended to Hong Kong with effect from 14 October 1996, when Hong Kong was still under British rule.³ China undertook to continue the Convention's application to the Hong Kong Special Administrative Region (hereinafter HKSAR) from 1 July 1997.⁴ In August 1998 the first report of the HKSAR under the Convention⁵ was submitted to the United Nations and the review of that report by the Committee on the Elimination of Discrimination Against Women took place in February 1999. This was not only the first international assessment of Hong Kong's record in giving effect to its obligations under the Convention, but also the first occasion on which Hong Kong appeared before one of the United

¹ GA Res 34/180, 1249 UNTS 13, available on-line at <http://www.un.org/womenwatch/daw/cedaw/frame.htm> In this article, the Convention is referred to as 'the CEDAW Convention' or 'the Convention', while the Committee on the Elimination of Discrimination against Women is referred to as 'the CEDAW Committee' or 'the Committee'.

² See generally Zagorka Ilic and Ivanka Corti, 'The Convention on the Elimination of All Forms of Discrimination Against Women', in Office of the High Commissioner for Human Rights, United Nations Institute for Training and Research and United Nations Staff College Project, *Manual on Human Rights Reporting under Six Major Human Rights Instruments* (New York: United Nations, 2nd ed 1997) (hereinafter *UN Reporting Manual*) 305-366; Lars Adam Rehof, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women* (Dordrecht: Martinus Nijhoff, 1993), and Japanese Association of International Women's Rights, *Commentary on the Convention on the Elimination of All Forms of Discrimination Against Women* (Bunkyo: Japanese Association of International Women's Rights, 1995).

³ The United Kingdom had become a State party in 1986, but did not extend the Convention to Hong Kong at that time.

⁴ China had ratified the Convention in 1981.

⁵ For material on the Convention and Hong Kong, and the hearings by the CEDAW Committee, see the CEDAW website of the Centre for Comparative and Public Law, The University of Hong Kong: <http://www.hku.hk/ccpl/cedaw.htm> (hereinafter 'the HKU CEDAW website'). For material on the Convention generally and many official documents, see United Nations Division for the Advancement of Women website: <http://www.un.org/womenwatch/daw/cedaw>.

Nations treaty committees since it had become a Special Administrative Region of the People's Republic of China.

This article examines the experience of Hong Kong in reporting under the CEDAW Convention, with a particular focus on the role that institutions of civil society played in the procedure. It argues that, while there has been extensive participation by some sectors of civil society in the process (above all, women's groups and other human rights groups), the influence that these actors and the CEDAW procedure itself have been able to exert on the Hong Kong government has been rather limited, at least so far as visible short-term results are concerned. This is because the government is largely unaccountable through political or bureaucratic processes, has no coherent policy on the elimination of gender inequalities, and has become adept at 'talking the talk' of human rights even as it fails to 'walk the walk'. The article concludes that critical to the achievement of the goals of the Convention in Hong Kong is the engagement by a range of civil society organisations to urge government to adopt institutional and policy measures in the many areas in which Hong Kong still falls short of the standards enunciated in the Convention.

The first section of the article outlines the CEDAW reporting process in general and its relevance to Hong Kong. The second section briefly introduces the concept of civil society that is employed in this article. The third section describes the role that civil society can play in the reporting procedure and in enhancing the achievement of the Convention's goals. The fourth section discusses the extent of civil society engagement in Hong Kong's experience of the CEDAW process, and seeks to identify the impact of that engagement on the process itself. The fifth section endeavours to identify the impact of the reporting exercise on government policy or practice in Hong Kong. The final section puts forward a number of recommendations as to how the Convention could be implemented more effectively, in particular the need for the Hong Kong government to establish an effective national machinery that would coordinate the development and implementation of a women's policy throughout government.

The reporting procedure under the CEDAW Convention

The CEDAW Convention is one of six core United Nations human rights treaties under which States parties are required to submit reports to an international monitoring body comprised of independent experts. In the case of the CEDAW Convention, a State party must submit an initial report to the United Nations within one year of entry into force of the Convention for the State and every four years thereafter. These reports are considered by the CEDAW Committee, the body of 23 independent experts established pursuant to article 17 of the Convention. The Committee now meets twice a year at

United Nations headquarters in New York, and as of early 2000 had held 22 sessions since it began its work in 1982. During that time it has reviewed hundreds of government reports.⁶

The CEDAW Committee's review of country reports involves a number of stages. Once a report has been scheduled for consideration at a coming session, the Committee appoints one of its members as country rapporteur for the report — her responsibility is to prepare an analysis of the report and to identify the major issues that need to be raised with the country concerned. When an initial report is to be considered, the country rapporteur presents her analysis to the Committee in a closed meeting prior to the public meeting with government representatives. At the public meeting Committee members pose questions on the report and listen to the government's responses (in pursuit of what in UN jargon has become known as a 'constructive dialogue'). In the case of a second or later report, the country rapporteur sends a list of questions to a working group of the Committee, which draws on these and questions submitted by other members to prepare a list of questions which is sent to the government before the hearing. Non-governmental organisations may also appear at the closed meeting of the working group to present information and, since January 1999, may also make oral statements on reports at a public meeting of the Committee.

Following the public discussion with the government, the Committee then formulates *Concluding comments* on the situation in the country. These set out the Committee's assessment of the advances that have been made, the problems that need to be addressed as priorities, and specific recommendations to the State party. At all stages of the process Committee members draw on information supplied by non-governmental organisations ('NGOs') and other non-state actors, for example, other activists or academics with an interest in the process.

Reporting procedures such as the CEDAW procedure can serve a number of important functions in addition to the rather formal one of ensuring regular review by an international expert body. The submission and examination of a report can raise public awareness about the Convention, and stimulate local debate about the elimination of discrimination against women, the effectiveness of steps taken to address it, and the need for future action to eliminate it.⁷

⁶ See generally Roberta Jacobson, 'The Committee on the Elimination of Discrimination against Women' in Philip Alston (ed), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Clarendon Press, 1991) 444; Andrew Byrnes, 'The Committee on the Elimination of Discrimination against Women' in Philip Alston (ed), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Clarendon Press, 2nd ed, forthcoming) and 'The Convention on the Elimination of All Forms of Discrimination against Women' in W Benedek et al (eds), *Human Rights of Women - International and African Perspectives* (forthcoming).

⁷ See Committee on Economic, Social and Cultural Rights, *General comment No 1* (1989), UN Doc HRI/GEN/1/Rev.3, at 56, E/1989/22, Annex III, and Philip Alston, 'The Purposes of Reporting', in *UN Reporting Manual* (note 2 above), at 19-24.

Indeed, if the exercise were merely an occasional, rather formal dialogue with an international body held in distant UN meeting rooms, it would have a very limited impact on the lives of those women whose rights it purports to guarantee.⁸

It is widely recognised that effective operation of the reporting procedures and — more importantly — the effective implementation of international human rights treaties is critically dependent on the role played by non-governmental organisations in the country concerned. This role may involve organising to restrain the exercise of state power or its abuse, or to influence its exercise in a manner that will help achieve the goals of the treaty. The roles played by these types of organisations have been analysed extensively in political theory and political science under the rubric of civil society. We propose to use this concept as an aid in assessing the impact and potential of international treaties such as the CEDAW Convention in Hong Kong.

The concept of civil society

The concept of civil society has a distinguished intellectual pedigree,⁹ and the last 15 years have seen a resurgence of interest in the concept.¹⁰ As one leading writer has commented, '[t]he language of civil society ... has appeared in an extraordinary variety of intellectual contexts with a variety of different meanings, and for a wide variety of purposes.'¹¹ Civil society has been described as the 'public political activity that occurs in the realm between the state and the family ... It entails collective action in which individuals join to pursue shared goals'.¹²

In this article the term 'civil society' is used to refer to this array of organizations, formal and informal, that exist in society apart from the formal State. These include economic, educational, developmental, civic, human

⁸ For examples of the way in which the Convention and the reporting procedure has been used by domestic groups, see Ilana Landsberg-Lewis (ed), *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women* (New York: United Nations Development Fund for Women [UNIFEM], 1999), especially at 35-38, also available on-line <http://www.unifem.undp.org/cedaw/indexen.htm>. See also Afra Afsharipour, 'Empowering Ourselves: The Role of Women's NGOs in the Enforcement of the Women's Convention' (1999) 99 *Columbia Law Review* 129.

⁹ See Jean L Cohen, 'Civil Society' in *Routledge Encyclopedia of Philosophy*, Version 1.0 (London & New York: Routledge, 1998); Jean L Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge, MA and London: MIT Press, 1992); and Adam B Seligman, *The Idea of Civil Society* (New York: Free Press, 1992).

¹⁰ See John Keane, *Civil Society: Old Images, New Visions* (Oxford: Polity Press, 1998), 4.

¹¹ *Ibid.*, 23.

¹² The institutions of civil society are "those intermediary and autonomous organisations which function and sometimes flourish" in a large and loosely bounded zone falling between organized sovereign authority and the family unit.' Crawford Young, 'In Search of Civil Society' in John W Harbeson, Donald Rothchild and Naomi Chazan (eds), *Civil Society and the State in Africa* (Boulder & London: Lynn Rienner, 1994) 33, at 44 (citation omitted). See also Chris Hann, 'Introduction: political society and civil anthropology' in Chris Hann and Elizabeth Dunn (eds), *Civil Society: Challenging Western Models* ((London & New York: Routledge, 1996) 1, at 5-6.

rights, professional, and neighbourhood associations. Additionally, civil society includes the mass media, and institutions belonging to the broader field of autonomous cultural and intellectual activity — universities, think tanks, publishing houses, theatres, and museums. However, civil society is not synonymous with ‘society’ or everything that is not the state. Acting as an intermediary, a civil society exists between the strictly ‘private’ sphere and the state. Civil society institutions do not seek to win formal power or office in the state. Their concern is not to engage in ‘efforts to gain and exercise control of state power’,¹³ but rather to restrain or influence the exercise of state power by the formal institutions of governance (for example, by lobbying collectively for a formal role in the design and implementation of government programmes which involve their interests). A major strand of the liberal tradition of analysis of civil society views the institutions of civil society as a bulwark against the potential abuse of power by political institutions, as well as having the potential to stimulate and direct the exercise of power and distribution of resources by those institutions. It is this understanding of the roles of civil society that we find useful in analysing the implementation of international human rights treaties and the operation of reporting procedures under them.

On the other hand, civil society does not consist only of human rights or women’s organisations or of organisations which share identical assumptions or goals. Insofar as human rights NGOs comprise a relatively small and not especially influential segment of civil society and their goals are not broadly shared (and may even be opposed) by others, the chances for effective implementation are diminished. This is particularly so in relation to women’s human rights, since much of the discrimination addressed by international treaties is discrimination by private actors, whose interests may well be represented by other groups in civil society (such as employers, or unions). A divided or fragmented civil society makes it that much harder to move government to do things which it is unwilling to do.

The role of the institutions of civil society in the CEDAW reporting procedure

It is often asserted that the involvement of civil society (particularly of human rights organisations) in the reporting procedures under UN treaties is critical to the effective operation of those procedures, and essential if the assessments made by international bodies are to be meaningful and relevant to those working to advance women’s rights in the country concerned. From an international perspective, the involvement of civil society institutions in the reporting process and their use of international standards in their work is seen

¹³ Young (note 12 above), at 57.

as critical to the achievement of the objectives of those treaties.¹⁴ It is ironic that, while these civil society institutions are pivotal to the successful implementation of international human rights treaties, they are given little or no formal recognition in the treaties themselves. The fact that these treaties have developed from mere pieces of paper hammered out in international conference rooms to statements of claims that can make a difference to people's lives has been due in large part to the evolution of civil society institutions concerned with human rights matters — institutions that have become increasingly knowledgeable about international standards and procedures.

The reporting procedure under the CEDAW Convention has evolved from a model which initially envisaged a formal role only for governments and the CEDAW Committee in the process of review of the State's record.¹⁵ Despite the lack of reference to NGOs in the Convention itself and in the Committee's rules of procedure, NGOs have for many years played an important informal role in providing information to the Committee, and in recent years their participation has become much more extensive and has also led to the Committee providing NGOs with opportunities to participate formally in some aspects of its work.¹⁶

The Committee has, for example, called on States parties to consult with NGOs in the preparation of their reports, and to make their reports widely available at the national level (many governments do this). As there is usually a time lag of a year or more between submission and consideration by the Committee, there is generally adequate time for community discussion of the report. In addition, as mentioned above, there are many opportunities for civil society institutions to participate formally and informally in the process, including formal submission of information to the Committee, submission of 'shadow reports', briefings, and informal lobbying.¹⁷ Thus, non-governmental organisations have become established as critical actors in the CEDAW

¹⁴ As Chayes and Chayes have noted in their study of compliance under a number of different types of international agreements, including human rights treaties: '[NGOs] provide the basic evaluation and assessment of party performance that is the fulcrum of the compliance process ... when there is noncompliance, they are key to public exposure, shaming, and popular political response.' Abram Chayes and Antonia Handler Chayes, *The New Sovereignty* (Cambridge: Harvard University Press, 1995) 251.

¹⁵ Article 22 of the Convention also provides a formal role for the specialised agencies of the United Nations: they are entitled to be represented at relevant meetings of the Committee and may be invited by the Committee to provide information on areas falling within their fields of competence.

¹⁶ See Jane Connors, 'NGOs and the Human Rights of Women at the United Nations' in Peter Willetts (ed), *The Conscience of the World: The Influence of Non-Governmental Organisations in the UN System* (London: Hurst & Co, 1996) 147, at 163-165.

¹⁷ See generally International Women's Rights Action Watch and the Commonwealth Secretariat, *Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women* (2nd ed 1996) and IWRAW, *Producing NGO Shadow Reports to CEDAW: A Procedural Guide* (1998), also available on-line at <http://www.igc.org/iwraw/>.

reporting process and can significantly influence the outcome of hearings by the Committee.¹⁸

The reporting procedures thus provide an illustration of how civil society institutions carry out some of the functions which political scientists see them as fulfilling. These include acting as a check upon potential abuses of state power by subjecting laws, norms and public policies and practices to public scrutiny. A vibrant civil society also facilitates communication between state and non-state actors, and contributes to the dissemination of information to citizens which may assist in the pursuit of their objectives and goals. Independent organizations are frequently able to give citizens hard-won information about government activities that make it more difficult to cover up repression and other abuses of governmental power, as well as failures by the government to implement fully the human rights obligations it has accepted.

The reporting procedures under UN treaties thus afford a good opportunity for civil society institutions to contribute to the implementation of those treaties and to the achievement of their own goals by using the review process to influence government policies and actions. While these bodies may be active in efforts to achieve similar goals using domestic avenues of influence, the opportunities to exploit international pressure may enhance coalition-building, stimulate the dissemination of information about government's activities that is not widely known, and bring government officials, legislators and others to focus on issues that may not otherwise have received such focused attention.¹⁹

The extent of civil society engagement in the Hong Kong CEDAW process

While the HKSAR report under the CEDAW Convention was the first under that treaty dealing with Hong Kong (and the first submitted under any of the six human rights treaties since Hong Kong's reversion to China), it was the eighth occasion since 1991 that a report from Hong Kong had been reviewed by a UN human rights treaty committee.²⁰ In the last years of British rule human rights and other community organisations in Hong Kong became increasingly interested in using these international procedures and they

¹⁸ Dorota Gierycz, 'Education on the Human Rights of Women as a Vehicle for Change' in George J Andreopoulos and Richard Pierre Claude (eds), *Human Rights Education for the Twenty-First Century* (Philadelphia: University of Pennsylvania Press, 1997) 96, at 104-105.

¹⁹ For examples of the use of hearings before the Committee on the Elimination on Discrimination against Women to attract international attention to issues see International Women's Rights Action Watch, *Report of the Colloquium of the International Women's Rights Action Watch and the Committee on the Elimination of Discrimination Against Women, New York, 13-14 January 1996* (1996).

²⁰ For a discussion of the experience of Hong Kong before the various UN treaty bodies from 1991-1997, see Andrew Byrnes, 'Uses and Abuses of the Treaty Reporting Procedure: Hong Kong Between Two Systems' in Philip Alston and James Crawford (eds), *The Future of the UN Human Rights Treaty System* (Cambridge: Cambridge University Press, forthcoming).

participated in the reporting procedure at the local and international level in expanding numbers as time progressed. Of course, much of the impetus for this came from the coming transfer of sovereignty and concerns about human rights protection post-1997. However, the concerns of community groups before 1997 were by no means confined to transition issues, but ranged across the many problems which have persisted regardless of the political transition (for example, housing, access to health care, social assistance, and discrimination).

In Hong Kong a core group of civil society actors which emerged in the 1990s has regularly used the opportunities offered by the international reporting process to focus public attention in Hong Kong on a wide range of human rights issues and to reinforce their own local activities which work towards the full enjoyment of those rights in Hong Kong. This core group has been joined by other groups who became involved in reporting exercises under individual treaties which touched on matters of particular concern to those groups (for example, racial discrimination or children's rights).

On the whole, the groups which have been consistently involved in the reporting exercises are human rights groups, legally oriented groups, and groups engaged in community activism — to these should be added the legislature and some elements of academia. In the case of the CEDAW reporting exercise, these were joined by groups with a particular focus on women's issues (some women's groups had also contributed to other reporting exercises). In every case the reporting exercise was seen as a strategy that might add further impetus to their existing work to address problems facing women.

Discussion of the government report in Hong Kong

The public engagement with the CEDAW reporting exercise thus built on the experience that had developed in the preceding years, as well as the considerable activism of women's groups during the 1990s which had led to the adoption of anti-discrimination legislation and the establishment of an Equal Opportunities Commission.²¹

The Hong Kong SAR government was also keen to see that the procedure adopted for the preparation and submission of reports after 1997 should be as similar as possible to the pre-1 July 1997 practice, in order to underline Hong Kong's continued autonomy in the fields covered by the human rights treaties. In fact the arrangements for the preparation and submission of the report closely followed the practice established under British rule. After publishing a draft outline of the report for public comment, the Hong Kong Government prepared its own report, which was then submitted to the United Nations through the PRC Ministry of Foreign Affairs (previously through the Foreign and Commonwealth Office). However, although the initial Hong Kong report

²¹ See generally Carole Petersen, 'Equality as a Human Right: The Development of Anti-Discrimination Law in Hong Kong' (1996) 34 *Columbia Journal of Transnational Law* 335.

under the CEDAW Convention was due for submission to the United Nations by 14 October 1997 — and was completed on time by the HKSAR government — it was not submitted to the United Nations, via the Ministry of Foreign Affairs, until late August 1998.²²

The reason for this delay was apparently the desire of the Central People's Government to submit both the Hong Kong report and an update to the combined 3rd and 4th Mainland reports²³ at the same time. Mainland China's supplement,²⁴ together with the Hong Kong SAR report, was submitted at the end of August 1998. The Hong Kong report became available to the public in Hong Kong only in mid-September 1998.²⁵ All three reports were considered in January 1999 by a pre-sessional working group of the Committee, which forwarded written questions on the reports to the government.²⁶ The full Committee discussed the report with a Chinese government delegation (including a sub-delegation from the HKSAR government²⁷) at public meetings on 1 and 2 February 1999.²⁸ The Committee's *Concluding comments* on the reports became available soon afterwards.²⁹

As a result of the delay in releasing the Hong Kong report to the general public, there were only about four months between its release and the CEDAW hearing. This made it extremely difficult for Hong Kong NGOs to examine and critique the report in detail, and to engage in coalition-building and activism around the issues arising out of the report. This undercut to some extent the potential of the exercise to advance the agenda on a number of important issues.³⁰

²² UN Doc CEDAW/C/CHN/3-4/Add.2 (1998), available on-line through the HKU CEDAW website (note 5 above) (link to Home Affairs Bureau: http://www.info.gov.hk/hab/top_issue/index_e.htm or [index_c.htm](http://www.info.gov.hk/hab/index_c.htm)).

²³ UN Doc CEDAW/C/CHN/3-4 (1997)

²⁴ UN Doc CEDAW/C/CHN/3-4/Add.1 (1998)

²⁵ In a departure from earlier practice under British rule, the HKSAR government did not release the report as soon as it had been submitted to the United Nations in New York, apparently because the Ministry of Foreign Affairs did not inform the SAR government formally of the submission of the report until more than a week after it had been submitted. Hong Kong NGOs learnt of the submission before the Hong Kong government and local office of the MFA from the UN secretariat in New York (once reports are submitted the fact of submission is, of course, public).

²⁶ CEDAW/C/1999/I/CRP.1/Add.1 (questions from pre-sessional working group), available on the HKU CEDAW website (note 5 above).

²⁷ HKSAR Government representatives included officials from the Department of Justice, the Home Affairs Bureau, the Education and Manpower Bureau, the Department of Health, and the Social Welfare Department.

²⁸ For an unofficial summary of these meetings, see UN Press releases WOM/1092 and 1093 (1 February 1999) (Mainland China) and WOM/1094 (2 February 1999) (HKSAR), available on-line through <http://www.un.org/News/Press/>.

²⁹ UN Doc A/54/38/Rev. 1, paras 308-336 (1999), available on the HKU CEDAW website (note 5 above) (hereinafter *CEDAW HK Concluding comments*).

³⁰ More serious problems may arise in the future when reports under other human rights treaties are due, because Hong Kong's reporting deadlines have now been changed to correspond to those of Mainland China where the PRC is also a State party to the treaty concerned. While China has a reasonable record in comparison to the majority of countries when it comes to submitting reports, it frequently submits them late, while Hong Kong tended to be exemplary in the 1990s in submitting reports on time. Since the HKSAR government can only prepare its report when asked to do so by the Central People's Government, Hong Kong's reports under the treaties will very likely suffer from the pattern of late submission that China's reports show.

Nevertheless, despite the limited time available, a number of groups were able to produce responses to the government's report that fed into both the local discussion and the review by the CEDAW Committee itself, and the occasion did stimulate a certain amount of coordinated action.

For example, at the urging of NGOs and certain legislators, the Home Affairs Panel of the Legislative Council followed the practice established under British rule and scheduled hearings on the government report³¹ (and subsequently on the outcome of the CEDAW hearing). Organisations were invited to make submissions to the Panel and a large number did so, drawing attention both to inadequacies in the government report³² and to deficiencies in government policy on women's issues. These wide-ranging and critical analyses of the government report and policies were generally met with fairly peremptory — though not always responsive — rebuffs from the government officials who attended.³³ This attitude, which has been the public face of the Hong Kong government over the years in response to criticism of its implementation of human rights treaties by local groups and international experts, was evident at this and subsequent stages of the CEDAW process. However, despite the government's unwillingness to shift on substantive issues,³⁴ it was nevertheless moved to provide a detailed response to the submissions made by NGOs — thus showing the importance of the legislature as a forum in which government is required to provide information and justification for its policies.

³¹ The hearings were held on 9 November, 26 November, and 7 December 1998. The Legislative Council website contains details of the groups who made submissions (in the agendas for the meetings: <http://www.legco.gov.hk/yr98-99/english/panels/ha/general/eha.htm>), and the substance of the submissions and the discussion (<http://www.legco.gov.hk/yr98-99/english/panels/ha/minutes/>).

³² In addition to the substantive criticisms of government policy and the omission of specific topics from the report, there were three major respects in which the report did not comply with CEDAW's guidelines for reports (see *Guidelines for the preparation of reports*, UN Doc CEDAW/C/7/Rev.3 (1996)). First, the HKSAR Government had not disaggregated all data and statistics by sex — in short, no systematic gender policy analysis had been applied to all existing legislation and government initiatives. Secondly, the HKSAR government report did not report on many of the matters on which CEDAW's general recommendations require States parties to report (violence was one such area). Thirdly, the report made no effort to explain or justify the reason for the reservations and understandings applicable to Hong Kong, but merely asserted their necessity, and failed to explain why no reservations had been made in relation to similar obligations under other treaties. See generally Centre for Comparative & Public Law, *Submission to the Home Affairs Panel of the Hong Kong Legislative Council on the Initial Report of the Hong Kong Special Administrative Region under the Convention on the Elimination of All Forms of Discrimination against Women*, November 1998: <http://www.hku.hk/ccpl/cedawweb/ccplcedawsubmission.html>.

³³ LegCo Panel on Home Affairs, *Minutes of the Meeting held on 9 November 1999*, LegCo Paper No. CB (2) 853/98-99, <http://www.legco.gov.hk/yr98-99/english/panels/ha/minutes/ha091198.htm> (visited 25 June 1999).

³⁴ The government's responses were in essence either that there was no problem that was not being adequately addressed (in contrast to NGOs claims that in many areas ranging from health care to retirement support the government was not doing enough), or a refusal to move on issues such as reservations or the establishment of a Women's Commission or an Office of Women's Affairs within Government. See the detailed response by the government in Home Affairs Bureau, *Response to NGOs' submissions to the LegCo Home Affairs Panels concerning the Initial Report on the Hong Kong Special Administrative Region (HKSAR) under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, February 1999, LegCo Paper CB(2) 1364/98-99 (01), <http://www.legco.gov.hk/yr98-99/english/panels/ha/papers/ha08032a.htm> (visited 25 June 1999).

The second main forum in which the government's report was analysed and interested groups brought together was a seminar convened by the Centre for Comparative and Public Law, Faculty of Law, at the University of Hong Kong. Speakers from a range of women's groups, other human rights NGOs, academics, and other experts presented critiques of the report's treatment of areas such as women's health, domestic violence, the treatment of women who had been raped, the elderly and poverty, prostitution and trafficking, education and women, and the lack of a central government machinery for women's policy in Hong Kong.³⁵

A critical overseas participant in the seminar was Dr Carmel Shalev, member of the CEDAW Committee from Israel and country rapporteur for China (including Hong Kong). During her visit to Hong Kong, Dr Shalev not only participated in the seminar, but also met with a number of women's groups and human rights groups in order to familiarise herself further with the issues which local groups considered the most pressing. The impact of these briefings and on-site visits was apparent from the questions drawn up by the pre-session working group on the Hong Kong report, which reflected many — though not all³⁶ — of the critical issues that had emerged as priority issues in the public discussion in Hong Kong. Further, during the question and answer period at the hearings in New York, the questions and comments put to the Hong Kong government officials reflected a nuanced understanding of the challenges women face in Hong Kong, to which the country rapporteur's visit to Hong Kong had clearly contributed.

An important third dimension was the participation by NGOs in the New York CEDAW hearings themselves. A number of NGO representatives attended the New York hearings, while others sent submissions to the pre-session working group or to the CEDAW Committee as a whole. In addition to these individual approaches, an informal briefing for CEDAW Committee members was organised by Hong Kong NGO representatives on 29 January 1999; a significant number of Committee members attended this meeting.³⁷

³⁵ The papers presented at this seminar: *Hong Kong and the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women*, on 28 November 1998, as well as reports submitted to the CEDAW Committee by other Hong Kong NGOs, are available on the HKU CEDAW website (note 5 above).

³⁶ Education received only one question (on sex education), and health received only two brief questions (on abortion and family planning services), while girl children, elderly women and the issue of poverty, and the situation of new immigrant women were not mentioned at all. This may have been due to the working group's desire to reduce the number of questions, so that there could be a genuine discussion with the government delegation. However, as many of the questions were open-ended invitations to 'describe' the situation in a particular field rather than focusing on specific critical issues, it was predictable that this would lead to long-winded and non-responsive replies — as it did (see discussion below).

³⁷ NGOs represented (in person or through documents) at the briefing included the Hong Kong Human Rights Monitor, the Frontier Party, the Democratic Party, the Society for Community Organisation, the Equal Opportunities Commission, Action for Reach Out, United Filipinas, the Women Workers' Association, the Hong Kong Federation of Women's Centres, Against Child Abuse, the Hong Kong Committee on Children's Rights, Harmony House, and academic experts.

During this briefing, NGOs highlighted the major issues of concern — in particular those areas where the Government had been less than forthcoming in acknowledging that its implementation of CEDAW had fallen short of its undertakings. This briefing — as well as the informal briefing of individual members by NGO representatives — appeared to have an impact on the additional questions put to the government when it appeared before the Committee the following week.³⁸

The public hearing at the United Nations

The hearing on the Hong Kong report formed part of the hearing on the combined third and fourth report of China. A day and a half was scheduled for the Chinese reports; of this half a day was set aside exclusively for Hong Kong — an arrangement which, as Chinese Permanent Representative to the UN, Ambassador Qin Huasun, pointed out, illustrated the ‘one country, two systems’ model;³⁹ it also ensured that Hong Kong issues were not submerged by those of Mainland China.

The Committee had already sent approximately 30 questions to the government on the Hong Kong report, seeking further information on a number of issues. Most of the hearing on the Hong Kong report consisted of lengthy written responses to these questions⁴⁰ which were read out by the Secretary for Home Affairs, Mr David Lan, and other civil servants. The effect of this approach was to limit severely the time for real dialogue with the Committee. As many of the answers did not respond substantively to the gist of the questions put by the Committee, it appeared to some observers that the government approach was a stalling tactic deliberately adopted to stifle the question and answer period. Following the lengthy verbal presentation (which took 2½ hours), only 30 minutes remained for Committee members to ask further questions of the Hong Kong government. Nevertheless, this was still sufficient time for a number of members of the Committee to raise additional matters and to follow up on some issues not adequately dealt with in the report or the delegation’s responses.⁴¹

³⁸ For details of the additional questions put to the delegation, see UN Press release WOM/1094 (2 February 1999), pp 7-8, available through <http://www.un.org/News/Press/>.

³⁹ Introductory statement by Ambassador Qin Huasun, Head of the Delegation of the People’s Republic of China to the 20th Session of the Committee on the Elimination of Discrimination against Women (CEDAW), 1 February 1999 (English translation), pp 4-5.

⁴⁰ For the text of the responses, see *Response to written questions raised by the UN Committee on the Elimination of Discrimination against Women on the Initial Report on the HKSAR under CEDAW*, February 1999, Annex A to LegCo Paper No. CB (2) 1429/98-99 (02), <http://www.legco.gov.hk/yr98-99/english/panels/ha/papers/ha08034b.htm> (visited 25 June 1999) (hereinafter *HKSARG Written Responses*).

⁴¹ For a summary of the meeting, see UN Press release WOM/1094 (2 February 1999).

The major issues of concern identified by the Committee in its written questions and at the hearing were subsequently reflected in the *Concluding comments*⁴² in relation to Hong Kong. They included:

- the absence of a high-level 'national machinery' within government that could formulate policy on women's issues and coordinate efforts to implement CEDAW throughout all Hong Kong government agencies;
- the fact that the system of functional constituencies privileged males to the disadvantage of women (since many of the functional constituencies were male-dominated);
- the absence of a functional constituency for housewives/home workers which might constitute indirect discrimination against women;
- the need to review and remove a number of the Hong Kong reservations to the Convention, including those concerning immigration, pension schemes, and traditional rights of the male indigenous villagers in the New Territories;
- the low representation of women in science and technology courses, and the under-representation of women at senior levels in schools, and at higher ranks in the universities;
- the need for the government to take more proactive measures (as temporary special measures or affirmative action) in a wide range of fields, including political representation;
- the treatment of foreign domestic helpers, including the cut in the minimum wage announced on 2 February 1999 (the very day of the hearing);
- the lack of a clear legislative guarantee of equal pay for work of equal value;
- the need to expand representation of women on advisory bodies, as well as the number of women candidates for elective offices;
- discrimination in the conduct of rural elections and the need to ensure that women participated as voters and candidates on the basis of equality; and
- need for the Hong Kong government to give wider publicity and coverage to the CEDAW reporting process.

While the Committee did reasonably well in covering many of the critical issues in relation to Hong Kong in its questions and *Concluding comments*, it is clear that the presence of NGO representatives at the actual meeting significantly improved the chances that the issues of particular concern to those NGOs would receive attention. In the case of Hong Kong, a number of groups present

⁴² CEDAW HK *Concluding comments* (note 29 above).

in New York put stress on the problems with Hong Kong's electoral system (in particular the lack of universal suffrage) and the arguably discriminatory impact of the functional constituency system on women. On the other hand, none of the groups present in New York was especially concerned to raise the issue of women's health or women's education, which had been of concern to many groups in Hong Kong. While the electoral issues received attention in the *Concluding comments*, health issues were almost totally neglected.

The response of the Hong Kong government in its written⁴³ and oral⁴⁴ responses at the New York hearing, and subsequently at greater length in its comments on the *Concluding comments* provided to the Legislative Council⁴⁵ was largely negative. The government showed little willingness to accept any of the Committee's recommendations and rehearsed the Hong Kong government's standard responses to the criticism of its record in ensuring the equality of women.

Impact and follow-up

Effective follow-up of international scrutiny is fundamentally important if the process is to have any significant impact at the domestic level. For this purpose the analysis and recommendations contained in the *Concluding comments* are the most important reference point for government and NGOs alike. There have been a number of efforts to follow-up the New York CEDAW hearings. These include a seminar on violence against women organised by the Equal Opportunities Commission,⁴⁶ and a follow-up seminar on the hearings organised by a number of the groups that had been involved in the hearings in New York.

One important forum for the follow-up was the Home Affairs Panel of the Legislative Council, which held hearings to consider the *Concluding comments* and the government's response to them.⁴⁷ The holding of legislative hearings following international reviews is once again a practice that has become a regular part of Hong Kong's reporting under UN treaties. However, in its

⁴³ See HKSARG *Written Responses* (note 40 above).

⁴⁴ See UN Press release WOM/1094 (2 February 1999). The Hong Kong government subsequently provided detailed written responses to the questions: see Home Affairs Bureau, *Supplementary response to oral questions raised by the Committee on the Elimination of Discrimination against Women on the Initial Report on the HKSAR under the Convention on the Elimination of All Forms of Discrimination against Women*, Annex B to LegCo Paper No. CB (2) 1429/98-99 (02), <http://www.legco.gov.hk/yr98-99/english/panels/ha/papers/ha08034b.htm> (visited 25 June 1999).

⁴⁵ See Home Affairs Bureau, *Concluding comments of the United Nations Committee on the Elimination of Discrimination against Women on the initial report on the Hong Kong Special Administrative Region (HKSAR) under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Initial Response*, Annex D to LegCo Paper No. CB (2) 1429/98-99 (02), <http://www.legco.gov.hk/yr98-99/english/panels/ha/papers/ha08034b.htm> (visited 25 June 1999).

⁴⁶ *Workshop, A World Free of Violence against Women*, organised by the Hong Kong Equal Opportunities Commission, Hong Kong, 20 March 1999.

⁴⁷ See LegCo Panel on Home Affairs, *Minutes of the Meeting held on 8 March 1999*, LegCo Paper No. CB (2) 1650/98-99, <http://www.legco.gov.hk/yr98-99/english/panels/ha/minutes/ha080399.htm> (visited 25 June 1999).

response to the CEDAW Committee's conclusions, the government made clear to the Panel that it was not prepared to accept the major recommendations of the Committee, in particular that calling on it to establish a national machinery — a call which echoed the demands of the vast majority of Hong Kong NGOs who contributed to the debate.

This reflects the fact that the government is not committed to developing a coherent policy on women's issues which can be consistently implemented and monitored according to identifiable criteria (or benchmarks), and that all the major advances in this area have come from concerted pressure from NGOs.⁴⁸ Nevertheless, it is important to recognise that the impact of a reporting exercise may be cumulative and hidden from view. It is an advance that government officials have had to engage in analysis and justification of their policies and practices in the light of the Convention's standards, both before the international community and in front of the Legislative Council.

The pattern one observes from previous reporting exercises is that the government's first instinct is to reject out of hand all major recommendations made by the treaty bodies, but in the course of time some of the recommended changes may be made. One cannot confidently assert that the international scrutiny caused such changes, but it seems likely that it may have contributed to them, by prompting government to re-examine a law or policy in the light of the critique.⁴⁹ However, international scrutiny in and of itself rarely produces immediate tangible changes, unless it is added to an existing domestic pressure, a fact of which Hong Kong NGOs that have regularly utilised the reporting procedures are well aware.

Translating the lofty goals of the CEDAW Convention into practice is a difficult task and it is clear that, despite some significant advances, there is still a long way to go before the Convention is satisfactorily implemented in law and in fact in Hong Kong. The importance of the recent CEDAW hearings has been to raise awareness of the existence and relevance of the Convention, to build and renew connections between groups committed to similar goals, and to generate suggestions of practical strategies for addressing issues of women's equality in Hong Kong.

⁴⁸ Hong Kong's existing anti-discrimination legislation was the government's response to a private member's initiatives to bring about the passage of such legislation.

⁴⁹ For example, it appears that the decision by the government to appoint Ms Anna Wu to head the Equal Opportunities Commission from mid-1999 may have been a response to domestic and international criticism of the government's lack of initiative of gender issues. Ms Wu, while a member of the Legislative Council from 1992-1995, had introduced private member's bills on discrimination issues, which resulted in the government's introducing its own bills to prohibit sex and disability discrimination in order to head off the passage of Wu's more wide-ranging bills. Since she assumed office at the Commission, the Commission has become more assertive in a number of areas than it was previously.

Recommendations for the future implementation of the Convention

The specific recommendations formulated by the CEDAW Committee⁵⁰ are important signposts set out by an expert and independent international body — indeed the Committee's conclusions in essence endorse the analysis and strategic thinking of many Hong Kong groups. In addition to implementing these recommendations, the Hong Kong government also needs to examine equally carefully the many recommendations of Hong Kong women's groups that were not included in the Committee's recommendations due to the limited nature of the Committee's review. These include the need to remove reservations to the Convention relating to policies such as the small house policy (and the abolition of that policy itself), a more energetic effort to ensure that rural elections are not carried out in a discriminatory manner, the introduction of adequate retirement protection and financial security for elderly women, the improvement of health care services available to women, the remedying of the inadequacies in the response of the health care and legal system to sexual violence against women, and the introduction of legislative measures to address age discrimination against women and to give effect to the principle of equal pay for work of equal value.

One of the constant themes of every group that was involved in the process has been the need to establish an effective national machinery in Hong Kong to develop and coordinate policy on issues relating to women in Hong Kong. This proposal was also strongly advocated by the Equal Opportunities Commission,⁵¹ which the government has sought to portray as performing this role, but which the EOC and others recognise it does not and cannot perform. It is therefore critically important that the government establish a central policy-making unit in the Hong Kong government, either in the form of a Women's Bureau, a Ministry for Women's Affairs, or a Cabinet Minister for Women's Issues, as Hong Kong's 'national machinery'.

The broad objectives of a 'national machinery' would be to monitor progress made in anti-discrimination legislation, integrate government objectives with CEDAW goals, execute newly proposed strategies and measures to eliminate discrimination, and disaggregate budgets to expose the causal chain between policy expenditure, intermediary output, and final economic impact.⁵²

⁵⁰ See text accompanying note 42 above.

⁵¹ See the submission of the Equal Opportunities Commission to the LegCo Home Affairs Panel: *The Initial Report of the Hong Kong Special Administrative Region under the Convention on the Elimination of All Forms of Discrimination against Women, Submission to the LegCo Panel on Home Affairs by the Equal Opportunities Commission*, 7 December 1999, LegCo Paper No. CB (2) 754/98-99 (01), <http://www.legco.gov.hk/yr98-99/english/panels/ha/papers/ha07121a.htm> (visited 25 June 1999). The Commission made a similar submission to the CEDAW Committee and the then Chairperson of the EOC, Dr Fanny Mui-ching Cheung, attended the CEDAW meetings in New York.

⁵² Diane Elson, 'Accounting for Gender in National Budgets', UNIFEM Seminar, 4 November 1998, New York.

The primary role of a national machinery would be to introduce gender-policy analysis at all levels in government decision-making processes. 'Gender policy analysis' is a method for ensuring that governments are accountable to the communities they serve. It requires government departments and agencies to analyse both existing and proposed legislation and policies to ensure that their impact on both women and men is taken into account.⁵³ In the long-term, gender policy analysis promotes efficiency because it foresees which, and to what extent, particular sectors of the population are affected by gender-neutral governmental policies. This streamlines governmental policy by targeting budgets and resource allocation to produce desired results. To initiate such policy changes in the allocation of resources, the systematic use of gender-specific indicators to appraise budgets, and the incorporation of various groups in the Hong Kong community in the process of such appraisals, would be required. Thus, civil society organizations would be given a permanent voice in the process of international accountability, vis-à-vis a national machinery which implemented gender policy analysis.

While the establishment of a national machinery would be a major advance, it would not in and of itself be enough, and other steps would be necessary to ensure more effective incorporation of the Convention's standards into government policy-making, administrative decision-making, and the legislative process. These include the adoption of a national (regional) agenda for women (as called for by the Beijing Platform for Action⁵⁴) and the introduction of gender policy analysis drawing on CEDAW standards into all government policy-making. One way to avoid CEDAW issues being banished to the governmental wilderness for five years until the next international hearing would be for the Legislative Council to request that the government submit a report to it on the implementation of the Convention every two years — this could then form the basis of hearings before the responsible panel.

Another important way for the Convention to be incorporated as part of all policy-making would be for the Council to insist that all new bills and requests for funding be accompanied by a CEDAW-impact analysis. This would need to be more detailed than the existing human rights-impact analysis which now accompanies bills and which generally consists of a brief denial that there are any adverse implications.

Statutory bodies with a review function could also incorporate CEDAW standards. For example, the former Ombudsman, Mr Andrew So, made the International Covenant on Civil and Political Rights and the International

⁵³ For a detailed discussion of gender policy analysis and its possible implications for Hong Kong, see Moana Erickson, *Implementing the CEDAW Convention in Hong Kong: Gender Policy Analysis*, Centre for Comparative and Public Law, Faculty of Law, The University of Hong Kong, Occasional Paper No 2, June 1999, available on the HKU CEDAW website (note 5 above).

⁵⁴ Beijing Declaration and Platform for Action, in *Report of the Fourth World Conference on Women, Beijing, September 1995*, UN Doc A/CONF.177/20 (1995), 35 ILM 401.

Covenant on Economic, Social and Cultural Rights explicitly part of his standard for measuring maladministration under the Ombudsman Ordinance;⁵⁵ the present Ombudsman (Ms Alice Tai) could do likewise with the CEDAW Convention. Similarly, the Equal Opportunities Commission may be able to strengthen the standards at its disposal in the field of sex discrimination by drawing explicitly on the Convention in its work generally and especially in areas such as violence against women.

Consideration could also be given to amending article 39 of the Basic Law to add the CEDAW Convention to the list of treaties that cannot be overridden by a local Ordinance. Already the two International Covenants are included, but so are all the international labour conventions applicable to Hong Kong, many of which are less extensive and important than the CEDAW Convention. This could be supplemented by the extension of the Optional Protocol to the CEDAW Convention, adopted in 1999,⁵⁶ to Hong Kong so that women who claim that the government has denied them their rights under the Convention and who have exhausted all remedies within the Hong Kong system would be able to seek redress from the CEDAW Committee.

As noted earlier, while the concentrated efforts of women's groups and human rights groups can make a significant contribution to the implementation of the goals of the Convention, they still comprise only a subset of civil society. It is important for them to expand the community of groups who can be persuaded to call on the government to implement the Convention, as part of the creation of a Hong Kong society that is fair and just.

Conclusion

In the final analysis, translating idealistic CEDAW principles into practice is a difficult task worthy of significant effort. The extent of activity since the release of the Hong Kong report under the Convention in mid-September 1998 speaks to that fact, and underlines the extent to which gender-sensitive norms have not been consistently integrated into practical governmental policies by the Hong Kong government. Ensuring that a government lives up to its international obligations requires not only the engagement of the Hong Kong government, but also the best efforts of NGO leaders and advocates to accept responsibility in understanding and executing the important role they play in holding the Hong Kong government accountable.

Being held accountable to an international standard as interpreted by an international body such as the CEDAW Committee continues to be a process about which the Hong Kong government feels considerable unease. Yet the

⁵⁵ Office of the Ombudsman, *The Ombudsman and the Protection of Human Rights* (Hong Kong: Office of the Ombudsman, January 1998)

⁵⁶ GA Res 54/4, UN Doc A/RES/54/4 (6 October 1999), <http://www.un.org/Depts/dhl/resfiles/a54r004.pdf>.

establishment of an effective national machinery in the form of a central policy-coordinating bureau would help to bridge the gap between international standards and domestic reality.

Until that time, however, the impact of the CEDAW Convention in Hong Kong will come from a bottom-up trajectory. Principles of equality begin with individual behaviour. As societies progress and develop, people change. Deeply-held traditional assumptions about the roles of men and women and the organization of society change, even as methods of production and communication change.

No single United Nations convention or international process can create a fair, just society. To have a vision of that which is just, however, does create momentum towards the achievement of that goal. The CEDAW process does just that. It helps to create an environment in which governments must account for their treatment of its citizenry, and it raises an awareness of what it means to incorporate democratic norms and policies into practical governmental programmes. That dynamic can be a powerful one, and it provides opportunities for and encouragement to the many people throughout the world who continue to believe in equality and work towards the realization of a society free of discrimination against any of its members.

Moana Erickson and Andrew Byrnes***

When Government Intervenes: Winding Up Fraudulent Companies in Hong Kong

Introduction

Most corporate insolvencies in Hong Kong are commenced by a creditor on the ground that the debtor company is unable to pay its debts. However, each year a small number of liquidations are commenced by a regulatory authority or a government official — namely, the Registrar of Companies, the Financial Secretary, the Securities and Futures Commission (the ‘SFC’), or the Insurance Authority — against companies that are allegedly engaged in illegal or fraudulent activities. These filings are made on ‘public interest’, unfair prejudice, or other statutory grounds, irrespective of whether insolvency can be proved. Allowing regulatory authorities or government officials to intervene against

* Henry Luce Scholar (1998-99), Centre for Comparative and Public Law, Faculty of Law, The University of Hong Kong

** Associate Professor, and Director, Centre for Comparative and Public Law, Faculty of Law, The University of Hong Kong