Reporting on human rights: the view of the reporter

Robyn Frost*

The culmination of the international human rights treaty reporting process is the formal hearing, or consideration, of a State's report by the relevant committee. The particular hearing that will be dealt with here is the consideration by the Committee on the Convention on the Rights of the Child (CROC) of Australia's first report under this Convention.[1]

Process prior to hearing

Australia ratified CROC on 17 December 1990 and it entered into force for Australia on 16 January 1991. In accordance with Article 44 of CROC, Australia was required to submit a report on its implementation of CROC two years after ratification. The report — which runs to over 400 pages — was submitted to the Committee on the Rights of the Child (the Committee) in January 1996.[2] This report was tabled in Federal Parliament in December 1995 and is the first time that any of Australia's reports under the six major United Nations (UN) human rights treaties has been tabled in Parliament prior to their submission.

The Committee actively encourages non-government organisation (NGO) input into the reporting process. The Australian section of Defence for Children International (DCI), a NGO, co-ordinated and prepared an 'Alternative Report' on Australia's compliance with CROC. The Commonwealth Attorney-General's Department provided a grant to assist the preparation of this report. The alternative report was submitted to the Committee in October 1996.

---

* Robyn Frost is a Senior Government Lawyer in the Public International Law Branch of the Commonwealth of Australia Attorney-General's Department. The Public International Law Branch of the Attorney-General's Department is responsible for preparing the Australian Government's submissions in communications under the international human rights complaints mechanisms and for the preparation of Australia's reports under the International Covenant on Civil and Political Rights, the Convention Against Torture and the Convention on the Rights of the Child. The views presented are those of the author and do not necessarily represent those of the Attorney-General's Department or the Government.

1 The author was a member of the Australian delegation which appeared before the Committee on the Rights of the Child when Australia's first report was considered in September 1997.

2 The reasons for the delay in submitting this report will not be discussed here.

In accordance with the Committee's usual practice, a working group of the Committee, meeting in private session in January 1997, considered Australia's report together with the alternative report and other material from UN agencies. As it was a private meeting, no representatives of the Australian Government were present at the working group's meeting, though two representatives of NGOs from Australia did attend. Following the working group's meeting, 45 questions on notice were forwarded to the Australian Government by the Committee together with a request that written answers to the questions be submitted to the Committee in advance of the Committee's formal hearing of the report. Although the list of questions was quite comprehensive, there were still some rather curious omissions. For example, there were no questions asked about juvenile justice.

This issuing of questions on notice far in advance of the hearing is unique to the Committee on the Rights of the Child. While the other committees do issue questions on notice, they are usually only issued a few days before the hearing of a report. For example, the Committee on the Elimination of Discrimination Against Women (CEDAW) asked 67 questions on notice in advance of the consideration of Australia's latest report under the CEDAW but these questions were only received about a week before the hearing and half of them were in Spanish. This practice of the Committee is certainly to be commended not only because it allows the Government sufficient time to respond to the questions but also because it means that the answers themselves can be fairly detailed and comprehensive. Of course, responding to the 45 questions requires considerable resources as well as collecting information from all the States and Territories and a substantial number of Federal Departments and agencies.[3] Even though there was a long time in which to respond, there were delays in getting the material from some of the States and the whole process was equivalent to having to prepare a whole report.

At the same time, the process of deciding the composition of the Australian delegation had commenced. It began some five to six months in advance of the hearing because the Attorney-General's Department, and the Attorney-General himself, thought it highly desirable to include a State or Territory representative on the delegation due to the States' and Territories' substantial responsibilities for children's issues and the co-operative approach taken between the Federal, State and Territory governments in implementing CROC. The Department wrote to each of the States and Territories asking them to nominate a representative and

3 The Attorney-General's Department received some 400 pages of material, which had to be edited and was finally reduced — and I use the word advisedly — to around 100 pages.

they conferred amongst themselves to agree on a representative.[4] This was the first time this had occurred in regard to human rights treaty reports prepared by the Attorney-General's Department. However, it is increasingly the practice for a State or Territory representative to be included in Australian delegations attending treaty negotiations.[5] This is indicative of a more open and co-operative approach to treaty making and the conduct of international affairs between the Federal, State and Territory governments. Other members of the delegation came from Federal Departments[6] and Mr Bill Taylor MP, who is the Chair of the Parliamentary Joint Standing Committee on Treaties,[7] also attended as an observer at the invitation of the Attorney-General.

Briefing the delegation was another mammoth task. As well as copies of the Australian report and the responses to the questions on notice, there was a great deal of other material provided by State, Territory and Federal governments. There was also a folder of 'talking points' on most topics that could possibly arise at the hearing. These topics were divided between the delegation, even if they were on areas outside the expertise of that member. An opening statement to be delivered before the Committee was also prepared. This statement described briefly Australia's political and legal system, some of its social traditions and the place of children in Australian society. Consistent with the general practice of Australian delegations presenting reports to human rights treaty committees, the statement acknowledged that there are areas of difficulty in the implementation of CROC by Australia and that the Government aims to address those difficulties.

Hearing

The hearing itself was conducted in three three-hour sessions in late September

4 Ms Gill Calvert, the director of the NSW Office of Children and Young People, was nominated by the States and Territories as their representative.

5 For example, there has been State and Territory representation in the Australian delegations attending the negotiations on the draft Declaration on the Rights of Indigenous Peoples.

6 The Federal members of the delegation were: Mr Richard Moss, Deputy Secretary of the Attorney-General's Department; Ms Joan Sheedy of the Human Rights Branch of the Attorney-General's Department; Ms Alison Stanford, the Director of the Family Policy Section of the Commonwealth Department of Health and Family Services; Ambassador John Campbell and Mr Crispin Conroy of the Australian Permanent Mission in Geneva; and the author.

7 One of this Committee's Terms of Reference concerns reporting under CROC and this Committee was, at the time of the hearing, conducting an Inquiry into CROC.

1997.[8] It was conducted in 'open session' so that, in addition to the Committee members, the secretariat and support staff of the UN and the Australian delegation, there were representatives of other UN agencies, NGOs,[9] and the media[10] present. So there was not only the scrutiny by the Committee but also by an Australian domestic audience. It is encouraging to have this domestic interest — although it is recent — in that it raises the profile of the reporting process, the role of the UN treaty bodies in monitoring compliance with treaty obligations and domestic awareness of the treaties themselves. However, some of this interest, at least on the part of the media, is due to the increased politicisation of human rights (particularly children's rights) in Australia.

Although the Committee on the Rights of the Child is comprised of 10 members, only six were present at the hearing. The Committee, like the other international human rights treaty committees, likes to describe its consideration of a report as a 'constructive dialogue'. The format of the hearing is for the Chair of the Committee to ask each of the Committee members present to pose a series of questions and for the delegation then to respond to all of those questions. The questions were structured according to the same grouping of the articles of CROC in the Committee's guidelines for the preparation of reports. Thus the first series of questions covered 'general measures of implementation' and the final series of questions concerned 'special protection measures'. Individual Committee members sometimes asked further questions to clarify issues.

The nine hours were insufficient to deal with all the issues, even though the delegation tried to keep its answers brief. The unfortunate consequence was that some really important issues, such as indigenous children's health, the education system and juvenile justice were barely touched upon. Indeed, in comparison to the level of questioning of a Parliamentary Committee, the examination of issues by the Committee was fairly cursory.

---

8 The hearing room and the rest of the Palais des Nations in Geneva, while in rather beautiful surrounds, was rather shabby, with long lino corridors crammed with institutional grey filing cabinets and everything coated in a rather dreary beige paint. In the hearing room itself, the acoustics were dreadful, so there was no choice but to sit there with a plastic earpiece hanging over one ear, twiddling the bakelite knob on the brass-plated control panel. Hardly hi-tech. If the state of the building is symptomatic, the extent of the UN budgetary crisis is certainly not exaggerated.

9 Including Ms Helen Bayes of the Australian section of DCI.

10 Both the Australian Broadcasting Corporation and *The Australian* newspaper had reporters there for most, if not all, of the hearing.

The format of the hearing, the huge number of issues and topics to cover and the limited amount of time, also meant that little real dialogue between the delegation and the members of the Committee could occur. The only real dialogue was on the issue of corporal punishment. The Committee has taken a strong view that corporal punishment is contrary to CROC and it is consistently stated in the Committee's concluding observations and recommendations that States take measures to ban it. Yet there is nothing in the terms of CROC or the *travaux preparatoires* to the CROC that states that corporal punishment is contrary to CROC. Accordingly, the Australian delegation pointed out the lack of an explicit proscription on corporal punishment in CROC. This led to some fairly spirited discussion on the correct approach to interpreting CROC with a couple of members of the Committee. As a consequence, the Committee's concluding observations on the Australian report sets out the Committee's justification for its stand on corporal punishment in terms of the relevant Articles of CROC.[11] This means that there is now some clearer guidance from the Committee on this issue.

It was gratifying to have several members of the Committee say during their concluding remarks that they had found their interaction with the delegation inspiring and that the principles of CROC are obviously taken very seriously by the Australian Government. It was also very gratifying to be complimented on the seriousness with which the Australian delegation had approached the hearing, the extent of its preparation and teamwork. In fact, the Chair of the Committee, Miss Sandra Mason, expressed surprise that it seemed that the delegation had a written briefing on everything.[12] One member of the Committee, Mrs Judith Karp, commented that Australia appeared, over the last decade or so, to be going through a process of change and renewal and that in this process there has been a clear acknowledgment by the Australian Government that problems exist which must be addressed. Her comment shows the extent to which human rights issues *are* raised and discussed and debated in the Australian community. Most of these issues — including children's rights — are, or have been, on the agenda in Australia and many of the problems have been acknowledged and are being addressed by governments. Therefore, there was little in the Committee's concluding observations and recommendations on Australia's report that were unexpected. This does not mean that some of the problems highlighted in the Committee's concluding observations are any less pressing or that there is room for complacency.

---

11 The Committee's concluding observations on Australia's report are found at CRC/C/15/Add 79, dated 1 October 1997.

12 The level of preparation is consistent with the practice in Australia of the Executive Government being subjected to a high level of domestic scrutiny, particularly by Parliament.

However, the Committee's concluding observations serve to reinforce the domestic debates, rather than initiating, or advancing, them.

It should be noted that Committee was among the first UN human rights treaty committees to adopt the practice of issuing concluding observations and recommendations. This practice has since been adopted by the other human rights treaty committees. This practice has much to recommend it, for several reasons. First, there is a clear, public statement by the Committee of its own impressions and conclusions arising from a report. This is valuable both for a domestic audience and for the government. Second, the Committee's observations and recommendations provide a starting point for the preparation of the next report. It is valuable to have the Committee's guidance on the type of issues it would like to see covered in the next report, especially if, in accordance with recent directives from the UN, future reports are to be kept short. Finally, the concluding observations are a way in which the Committees can impart some of their expertise — as they are a Committee of experts — both to the State that is the subject of the observations, and to other States as well. The only other means the Committees can do this is through the issuing of General Comments, however, these are very general and not directed at the particular circumstances of a particular State.

Nevertheless, there is disappointingly little detail or reasoning in the concluding observations. While the Committee has limited resources and time, this lack of detail is not helpful. For example, the Committee expressed the view that setting the minimum age of criminal responsibility at 10 would still be too low, yet there is no view expressed as to what would be an appropriate minimum age. Although it was explained to the Committee, in writing and orally, that a child between the ages of 10 and 14 years can only be held criminally responsible if the prosecution can show that the child understood that what he or she did was wrong (that is, that a child between these ages is not automatically held to be criminally responsible) this point seemed lost on the Committee.

The Attorney-General, in accordance with one of the Committee's recommendations, decided to table in Parliament the concluding observations, together with the complete summary record of the hearing.[13] The concluding observations have also been sent to all relevant Federal Departments and to the States and Territories. The Committee has indicated that they would like Australia to respond to its recommendations in its next report, which is due in five years time. This shows two of the major weaknesses of the reporting process: the long time frames involved and

13 These were tabled on 30 June 1998, Hansard P5479.

the inherently retrospective nature of reports. The Government may well have responded to these — and other — issues well before its next report and this response is more likely to be due to domestic pressures than to the Committee's recommendations. Thus, as noted above, the Committee's concluding observations tend to reinforce domestic debates rather than initiating them.

Conclusion

Reporting is an important means of monitoring the implementation of Australia's human rights treaty obligations. Implementation is itself an evolutionary process. There is cause for optimism about the greater attention being paid to reporting, its relevance to domestic human rights debates and the way in which it serves to develop greater awareness of the human rights treaties within government and the general community. However, there are still real questions that need to be asked about the effectiveness of the reporting process as a means of implementing human rights, and much that can be done by governments, NGOs and the committees themselves to improve it. ●