

Robust Human Rights Governance: Developing International Criteria

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Abstract—Many states are now committed to implementing international human rights standards domestically. In terms of practical governance, how might effectiveness be measured? A face-value answer can be found in domestic laws and institutions relating to human rights. However, this article provides two further tools to help states assess their status on the spectrum of robust to fragile human rights governance. The first recognises that each state has its own 'human rights history' and the ideal end stage is robust human rights governance, and the second is developing criteria to assess robustness. Although a New Zealand case study is used to illustrate these tools, the widespread adoption of human rights standards by many states inevitably means that the issues are relevant to other countries. This is even though there will always be varying degrees of similarity-difference in constitutional background and developed or emerging human rights systems.

Keywords—robust human rights governance, fragile states.

I. INTRODUCTION

MANY states have ratified international human rights treaties and thereby accepted international obligations in relation to human rights. This article suggests that each country has its own 'human rights history', which has affected the way its state sector works to make it reasonably compliant with international human rights obligations. Twenty criteria relating to robust (as distinct from fragile) human rights governance are therefore developed to help assess international best practice in the implementation of ratified treaty rights.

For states that participate in the international human rights framework the mesh between international and domestic human rights implementation has often occurred incrementally. Over time the core international human rights conventions, international and domestic institutions, and domestic laws, policies and practices will have all strengthened and become increasingly inter-linked. Implementation is also an ongoing evolving process. Having adopted the UN Convention on the Rights of the Child (UNCROC), for instance, new issues around children's rights arise over time and these are dealt with by ratifying states on a case-by-case basis.

Ongoing compliance for a country committed to human rights is effectively about getting the margins right. UN reporting could be conceived as an ongoing test of those margins.

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The fact that a country ratifies many human rights treaties is in a sense a large 'intrusion' into the way the state operates, and taking these treaties into account has enormous ramifications for a government's public policy programme.

This is a key reason why the system needs to be functioning optimally. Not only is the face a country presents to the UN important; 'getting human rights right' at the domestic level is a major part of the everyday work of its state sector.

The term 'robust' is used to mean that the processes for implementation are progressively strengthening, and that this continuous development will withstand changes of government and circumstance. This does not imply fixed answers, but rather adaptability and robustness of processes related to the implementation of ratified rights. The concept of 'fragile', in contrast, is used with its connotations of weak, tenuous and unsound [1]-[3]. The spectrum here would range from states where government institutions are actively attacking human rights, to the more benign notions of states that have good intentions, but are still developing institutions and processes.

A hallmark of robust human rights governance is a good understanding of and interaction with the UN framework, particularly the international instruments that have been ratified and obligations entered into. With fragile human rights governance there may be a rush to sign treaties so a state 'appears' to be a good international citizen, but the implications of fully implementing the rights involved are not really understood. Several decades have passed since the establishment of the UN and resulting international human rights law, but it has become clear that having the treaty body system in place does not necessarily improve human rights in all countries. That is, there is no simple equation of 'treaty ratification = improved human rights'. While implementing international treaty rights is difficult for developed nations, it is even harder for developing states with fewer resources, possibly more corruption, and less respect for the rule of law.

The human rights frameworks of many developed countries have built up slowly over decades, suggesting that robustness has occurred incrementally. There is now a period of stepping back and 'taking stock'. Action plans are being used as tools to progress, or grow, the realisation of rights in some countries [4]. It is an approach that mirrors the preamble of the International Covenant on Economic and Social Rights (1976) urging each state party to take steps to progressively achieve the full realisation of rights in the covenant. The path towards robustness is therefore a progression of small movements and incremental changes that, over time, build a stronger framework.

Also over time some states have become more susceptible to the standards that emerged after World War II. For a few countries it was their participation in the formation of the UN that gave them a bedrock human rights focus. This long evolution is not something that is easily transported into other states which did not help set up the international human rights architecture and which have difficult human rights records.

Each country that joins the UN is invited to accept the international human rights framework, but there will always be states that do not act on these principles. It is possible to show these countries the mechanisms that they need to build robustness – such as bills of rights, national human rights institutions (NHRIs), domestic laws and policies, and a state sector that needs to own these mechanisms for them to have any real meaning. The ideal environment in which human rights are taken seriously has a rights-sympathetic state sector, a political system compatible with the international human rights system, and citizens willing to create a climate that allows for rights acknowledgement. If a state is fortunate in having all three present, then human rights are given a central position as a public policy goal. When there is fragility, however, a state can struggle to accept any core human rights standards and can itself be complicit in crimes against its own population such as genocide.

II. ANALYZING A STATE'S HUMAN RIGHTS HISTORY

Taking the example of New Zealand, rather than viewing the last several decades since its involvement in the establishment of the UN in 1945 as one segment, it is helpful to categorise its human rights history as comprising six phases.

Phase One (1940s–ongoing) concerns the growth of international architecture – the UN-New Zealand interplay. It was marked by international collaboration, structural development and international law-making. *Phase Two (late 1970s–ongoing)* was about the growth of domestic architecture. It featured structural development and domestic lawmaking. *Phase Three (1994-2005)* related to stock-take initiatives and was concerned with reviewing and restructuring. *Phase Four (2005-2009)* was about planning initiatives and long-term strategising. *Phase Five (2000 – ongoing)* relates to the more effective implementation of international human rights and concerns themes of clarification, education, cooperation. Finally, *Phase Six (ongoing)* is reached when there are signs of robust human rights governance including best practice, good governance, acting as a role model, and developing criteria to measure effectiveness in this area.

Phase one marks out the early processes of New Zealand helping to develop the UN as an organisation, this being a time of considerable input towards that institution. During this phase human rights in New Zealand were largely protected by the common law and social services since at this stage no international treaties had been ratified. Even by the mid-1940s in New Zealand, for instance, there was already a strong base upon which to build a human rights framework. Universal free education was introduced in 1877, the Old Age Pensions Act passed in 1898, and the 1935 Labour Government also began work on a comprehensive

social welfare system coupled with increased labour standards [5]-[6]. Phase Two saw the growth of domestic human rights institutions and structures, the start of a steady ratification era, and the enactment of a stream of human rights legislation. Phases Three and Four cover the stock-take and planning initiatives of the 15-year period 1994-2009, undertaken once the structural and legislative build-up had largely come to an end. By this point New Zealand had finally put the right structures and legislation into place, which is why it is suggested that Phase Five has now been entered, which concerns the more effective implementation of international human rights. Phase Six is reached when aspects of robust human rights governance have been established. The stages are analytical and not a simple progression, since elements of all might be in progress simultaneously but to varying degrees of effectiveness.

III. DEVELOPING CRITERIA TO ASSESS ROBUSTNESS

It is now possible to take the six phases and add to them the criteria to assess robust human rights governance. A number of factors help assess New Zealand's status in this respect. Table 1 below sets out a four-part scale for such an assessment using the following categories: strong; developing; weak; and non-existent. This basic scale has been used to give some nuance to otherwise bald assertions that an area is simply 'weak' or 'strong'. Treaties are ratified after a careful check for compliance in New Zealand, so it seems reasonable to say this area is 'strong'. Early mainstreaming of human rights considerations into policy-making is 'developing'. There is no formal inter-departmental group of officials in the state sector focusing on human rights issues, so it is fair to categorise this as 'non-existent'. Although there is no formal inter-departmental group of officials there have been very good instances of cross-agency coordination on certain projects.

TABLE I
NEW ZEALAND'S STATUS – ROBUST HUMAN RIGHTS GOVERNANCE

Phase One

Growth of international architecture – UN-NZ interplay

1) Involvement in UN structural development and international law-making (Strong)

Phase Two

Growth of domestic architecture

2) Evolving domestic architecture and institutions, especially NHRI; legislation, policies and practices (Strong)

3) Ongoing incorporation of international obligations into domestic law if relevant and possible (Strong)

4) Clear lead government department with overall domestic oversight for international human rights treaty body reporting and implementation (Weak)

5) 'Formal' inter-departmental network of officials (Non-existent)

Phases Three and Four

Stock-take and planning initiatives

6) Streamlined institutions and legislation, and stock-take and planning initiatives carried out when necessary (Strong)

Phase Five

More effective implementation

7) Judiciary/legal system enforcing international obligations (Strong)

8) Treaties ratified after careful check for compliance (Strong)

9) Exploring proactive approaches instead of always being reactive (Developing)

10) Four-fold human rights domestic framework: organisations, legislation, policy, human rights governance level (Developing)

11) Increasing parity across first, second, third and fourth generation rights (Developing)

- 12) Early mainstreaming of human rights considerations into policy-making (Developing)
- 13) Cultural relativity issues being worked through (Developing)
- 14) Effective public human rights education programme (Developing)
- 15) State sector and NGOs working together on human rights issues (Developing)
- 16) Internal human rights training in government departments and cross-agency training of policy advisors to ensure good understanding of international instruments and obligations (Weak – Developing)
- 17) Concluding Observations recognised as important (Weak – Developing)

Phase Six

Robust human rights governance

- 18) Good international citizen and role model – human rights abuses much less likely (Strong)
- 19) Good governance practices: democracy, rule of law adhered to, judiciary and officials not corrupt; public participation (Strong)
- 20) Individuals can get redress for civil and political rights through domestic remedies (Developing – Strong)

Other researchers may have developed a different scale, but these are considered sound choices using two primary influences. First, the UN Economic and Social Council identified key features of national human rights protection systems in 2003. Some of the Council's criteria are used here: e.g. the rule of law, an independent judiciary, the incorporation of human rights standards into domestic law, good governance practices, human rights education and specialised human rights institutions [7]. The second includes ideas raised in New Zealand's stock-take and planning initiatives of 1994-2009 which included the need for a formal inter-departmental network of officials, increasing the status of second generation rights, and early mainstreaming into policy-making [8].

The 'strong' status in Table 1 is largely related to legal and structural factors i.e. Phase One (international law-making); Phases Two to Four (creation of domestic architecture and streamlined institutions and legislation); Phase Five (judiciary/legal system enforcing international obligations and treaties are ratified after careful checking); and Phase Six (rule of law adhered to, domestic remedies for breaches of international rights). This progression is not surprising. The legal aspect of human rights implementation has always been more developed than any other, including several decades of academic support. The West's focus on civil and political rights has meant that such first generation rights have received more legal protection and this is reflected in New Zealand's points of strength.

It is clear from Table I that the 'developing' status is almost solely related to Phase Five concerning more effective implementation. Again this is not surprising because New Zealand had only just completed a 15-year period of review of stock-taking and planning initiatives. Considered here were problems of implementation which, having only just been identified in the stock-take phase, will take some time to set in place. The 'weak' and 'non-existent' status areas are in Phase Two and Phase Five. In fact, two out of the four Phase Two factors are not at all strong which indicates this is a phase that definitely needs more work. Summarising, Phases One, Three, Four and Six are strong and Phases Two and Five need to be addressed.

In New Zealand it is therefore possible to characterise not 'total' effectiveness in robust human rights governance, but 'a great measure of' effectiveness, having entered the sixth stage

of robustness but with work still to do to strengthen Phase Two and Phase Five issues.

IV. CONCLUSION

This article has used New Zealand as an example, as it has a multi-faceted and generally well-functioning domestic human rights framework and a good human rights record. The more understanding we have about systems that work – their strengths and weaknesses – the better we are able to help other states on a currently fragmented human rights journey. Two tools with which to assess this status have been suggested – a six-phase history and 20 criteria for assessing robustness. These tools (or a modified template) could possibly prove useful to developed countries when looking more closely at the stages in their human rights history and where they are at on the robust-fragile spectrum in each phase. It may also help developing states (or small emerging nations) try to assess more clearly international best practice in the implementation of ratified treaty rights, and to discern future areas for development or improvement.

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