Assessing the impact of New Zealand’s ratification and state receptivity of the major international human rights treaties

Progress made in the quarter
An evaluative framework has been developed and agreed to by the research team in this quarter, reconciling the resources in terms of time and funding so that it is achievable and will produce original and quality research data. A copy of the framework is enclosed with this progress report. It demonstrates the linkages between ratification, reporting and impact, identifies the areas that will be examined for each treaty, examines what we will do, and how we will do it. The framework also acknowledges critical elements that have emerged in the literature review. These are:

- The issue of maintaining domestic sovereignty when ratifying international treaties including human rights treaties,
- The influence of the enforcement of international human rights obligations by overseas jurisdictions on the New Zealand courts and legislators,
- The tension between the legislature and the courts in the recognition and enforcement of human rights obligations,
- The notion of a hierarchy of human rights with civil and political rights being superior to other rights such as economic, social and cultural rights, and the rights of women, children and people with disability.

The multi-method approach to be used by the researchers in gathering data includes a legislative audit, reviews of Treaty body recommendations, case studies, interviews with influencers, desk searches and participant observations (at NZ’s CEDAW 7th report in New York in July 2012).

In addition to this conceptual and theoretical work we have begun to make contact with other overseas researchers so we can share good practice. Finally, the research team has tested the interview templates which have been developed to be used as a standard tool across the six treaties, with a peer expert who has had
considerable involvement in treaty body reporting processes. The research team has also begun interviews in relation to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), the two treaties identified for analysis in Year One of the project.

**Milestones achieved**
- An evaluative framework has been developed
- Contact made with overseas researchers
- Interview templates standardised and tested
- Researcher interview protocol agreed
- Interviews underway
- Additional material to supplement literature review

1. **Payment claim**
An invoice is attached from the New Zealand Human Rights Commission for payment as agreed for the second quarter’s work from March 2012-May 2012 totalling $12,825.

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professor Margaret Wilson University of Waikato 10% of time second quarter</td>
<td>$3,125</td>
</tr>
<tr>
<td>Research assistant University of Waikato</td>
<td>$1,250</td>
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<td>University of Waikato researcher time</td>
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<td>Dr Judy McGregor EEO Commissioner 10% of time second quarter</td>
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<tr>
<td>Sylvia Bell Principal Policy and Legal Analyst 10% of time second quarter</td>
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<td>Human Rights Commission researcher time</td>
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<td>Total researcher time for second quarter</td>
<td>$12,700</td>
</tr>
<tr>
<td>Petrol Hamilton to Auckland 4th May 2012 (Margaret Wilson)</td>
<td>$125</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>$12,825</strong></td>
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</tbody>
</table>
Evaluative Methodology Framework

The enclosed section includes a figurative representation of the methodology to be used. The interview schedules to be used for treaty body reporting participants and for those individuals instrumental in New Zealand’s recognition of human rights obligations are also enclosed, plus a research protocol to standardise interview techniques between members of the research team.

Evaluate Methodology Framework

Development of an evaluative methodology to assess the impact of New Zealand’s ratification of major international human rights treaties

The research has identified five major areas of analysis against which the six major international treaties will be assessed. These are:

- Legislative change that followed ratification
- Use of human rights norms in policy and practice
- Use of treaty bodies by the courts
- Engagement of civil society in reporting processes and outcomes
- Role of the New Zealand Human Rights Commission in parallel reporting and country examination.

Following an extensive literature review on the wide and growing literature that addresses methodological approaches to evaluate human rights, the research has identified several methodologies that will be used in the evaluation process, that are appropriate to New Zealand’s cultural context and acknowledge the contestability of human rights. They have been tested previously by academic researchers and are suitable to address the major areas of analysis. We are indebted to Australian academics Carolyn and Simon Evans for their observations about evaluative
methodologies\textsuperscript{1} and we intend to explore the utility as the research evolves, of using the ranking methodology developed by Professor Edward McMahon of the University of Vermont and UPR Info, and reported on by the Commonwealth Secretariat in its review of the Universal Periodic Review process.\textsuperscript{2}

For each treaty the five areas will be looked at against the periodic reporting processes using a variety of methods to capture data and to analysis it. In some cases the researchers will be directly involved in country reporting processes at the same time and this will allow for a verification by personal, direct experience. Parallel research activity will involve data collection from audits, desk research and interviews. The International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are the first two treaties to be researched in 2012. In addition it is planned to interview a selection of individuals instrumental in New Zealand’s recognition of its fundamental human rights obligations about their expectations following ratification of major international treaties.

Several critical factors identified in the literature review will also be explored in relation to each treaty to determine whether they are relevant or not. These are:

- The issue of maintaining domestic sovereignty when ratifying international treaties including human rights treaties,
- The influence of the enforcement of international human rights obligations by overseas jurisdictions on the New Zealand courts and legislators,
- The tension between the legislature and the courts in the recognition and enforcement of human rights obligations,
- The notion of a hierarchy of human rights with civil and political rights being superior to other rights such as economic, social and cultural rights, and the rights of women, children and people with disability.

## Evaluative Methodology

<table>
<thead>
<tr>
<th>Areas to be looked at</th>
<th>Treaty</th>
<th>What we will do</th>
<th>How will we do it</th>
<th>Exploration of critical factors</th>
</tr>
</thead>
</table>
| Legislative change   | CEDAW/ICCPR | • Examine status of reservations  
• Identify domestic legislation introduced | • Legislative audit  
• Review of Treaty body recommendations | • Domestic sovereignty |
| Human rights norms in policy and practice | CEDAW/ICCPR | • Select examples identified by participants/stakeholders | • Review of Treaty body recommendations  
• Write case studies  
• Conduct interviews | • Influence of overseas jurisdictions |
| Use by courts        | CEDAW/ICCPR | • Review judgments for Treaty body citations | • Desk search  
• Conduct interviews (perhaps) | • Tension between legislature and courts |
| Engagement of civil society | CEDAW/ICCPR | • Identify, locate and review shadow reporting by CSOs | • Desk/archival search  
• Conduct interviews  
• Participant observation | • Hierarchy of rights |
| Role of the New Zealand Human Rights Commission (NZHRC) | CEDAW/ICCPR | • Review NZHRC role in parallel reporting and country examination processes | • Desk/archival search  
• Conduct interviews  
• Reports of direct experience (CEDAW 7th report, ICCPR 5th report) | |
Interviews relating to ICCPR and CEDAW

Semi-structured interview schedules will be used in the evaluation of treaty body processes relating to ICCPR which was signed by New Zealand in 1968 and ratified in 1978 and CEDAW signed by New Zealand in 1980 and ratified in 1985. Interviews will be conducted with a selection of current and former participants (politicians, public servants, civil society and academic/experts). Given that in the past 40 years New Zealand has been examined six times (the third and fourth reports were combined and the seventh report will be in July 2012) in relation to CEDAW and five times in relation to ICCPR, research resources permit only a selection of potential participants.

The interviews are designed to develop from actor/participants an accurate and reliable description of how treaty body reporting was planned, executed and followed up. The interviews will also explore attitudes to human rights contained in ICCPR and CEDAW; their knowledge of and motivations relating to treaty body reporting; what actions they were involved in or followed treaty body committee recommendations made to the New Zealand government; the effects and effectiveness of treaty body reporting process and outcomes both in general and with specific examples.

A semi-structured interview format allows for follow-up questions, the addition of supplementary questions and for probes. As Evans and Evans (2006) note, “interviews provide a valuable opportunity to test tentative theories developed from the public record against the experiences who worked within the system”. They will enable the researchers to deepen their understanding of how previously undocumented factors and influences affected New Zealand’s capacity and capability with regard to treaty body reporting.

Interview schedule for treaty body reporting participants (to be adapted as required for politicians, public servants, civil society organisations, academic/experts).

1. What was your involvement in treaty body reporting of CEDAW/ ICCPR? (Treaty, date, position/status, did you attend country examination, role before, during and after).
2. Do you think you were adequately prepared for NZ’s country examination? If not, what would have improved the preparation?
3. How effective do you think NZ was in its country examination?
4. What are your observations of the shadow reporting processes by civil society organisations and individuals involved in the examination?
5. What impact did the treaty body reporting process have on either responding to or in progressing human rights issues in New Zealand?
6. Can you provide an example(s) of where it made a difference?
7. What follow-up occurred following the Committee’s recommendations to New Zealand as a State party?
8. Can you identify any changes to legislation, policy and practice?
9. If you could make one change that would improve the State party’s engagement with treaty body reporting what would that change be?
10. How could New Zealand improve its publicity for, and promotion of, human rights through the treaty body reporting process?
11. Should New Zealand’s reporting and the recommendations made by treaty body committees be tabled formally and explicitly in Parliament as a matter of course?
12. Do you have a view on whether there is an advantage in a dedicated parliamentary human rights select committee or should human rights considerations be “mainstreamed” throughout select committees?
13. Can you identify anyone else who could valuably contribute to this research?

Proposed interview template for individuals instrumental in New Zealand recognising human rights obligations
1. What was your role, dates, times, treaty signing, ratification?
2. Can you provide any written information/or point to any research etc that would be useful for this project?
3. What were the objectives (personal, professional) in New Zealand’s recognition of its human rights obligations?
4. Who were the drivers in relation to New Zealand becoming a signatory?
5. What were the major influences on New Zealand in relation to ratification?
6. What were the expectations after ratification? For example: (some prompts may be)
   a. Provides legal regime of accountability?
   b. Enables realisation of human rights?
   c. Strengthens adherence to the rule of law?
   d. Improves international reputation?
   e. Involves meaningful participation of civil society?
7. Can you provide specific examples of the realisation of human rights in legislation, policy and/or practice as a result of ratification?
8. Overall, what are your observations about the outcomes (at the time and in 2012?)
9. Can you identify improvements that New Zealand could make in relation to realising human rights through treaty body reporting processes?
10. How could New Zealand improve its publicity for and promotion of human rights through the treaty body reporting process?
11. Should New Zealand’s reporting and the recommendations made by treaty body committees be tabled formally and explicitly in Parliament as a matter of course?
12. Do you have a view on whether there is an advantage in a dedicated parliamentary human rights select committee or should human rights considerations be “mainstreamed” throughout select committees?
13. Can you identify anyone else who could valuably contribute to this research?

Researcher interview protocol
1. Researchers are responsible for taping and the transcription of interviews they undertake.
2. Participants consent to their interviews being taped and a common consent form to be developed, used and archived.
3. Material used will be verified with research participants and a record kept of the verification.
4. Amendments will be negotiated with participant sources.
5. Tapes should be kept as part of the oral archive of the research project.
6. These may be required for later podcasts or as oral archives on the project website.
7. Researchers will need to identify interviewee, the date and the nature of the interview at the start of the taping process for administrative purposes.