

rights applications. As a result, the use of ICTs in human rights work is only at a nascent stage.¹

But things have begun to change in the three years since that report was written. New social media, social networking sites, user-generated content sites or platforms, and a range of other ICTs make it possible for anyone with access to the necessary technology to share and report in real-time information concerning human rights violations. Technologies such as Facebook, Twitter, or crowdsourcing are relatively inexpensive and increasingly accessible and can be used to increase the speed, depth, and scope of human rights monitoring. Satellite imagery and other forms of surveillance technologies are also being more systematically exploited, albeit by human rights violators as much as monitors.

Because these new technologies are potentially widely available at the local level, even in poor countries, they also open up new opportunities for local groups to take more responsibility for and to assert greater control over the process of fact-finding. This in turn could mean less reliance upon intermediaries. The latter inevitably and not necessarily inappropriately bring their own interests and preoccupations to bear in monitoring and reporting, and these cannot always be assumed to be identical with those of the affected communities.²

As the stakes become higher, the incentives for governments to frustrate or undermine or just discredit fact-finding exercises become all the greater. Such scrutiny and criticism, in turn, help to raise the pressure on fact-finders to become more professional in terms of how they operate and the range of techniques that they employ. This may be a contentious process, but it is ultimately a virtuous cycle that compels all actors to raise their game well beyond the old technique of simple naming and shaming followed by governmental attempts to discredit the information gathered or the analysis proffered.

The challenge, however, is to explore what is meant by calls for enhanced “professionalization,” and to be more explicit about the principal shortcomings that the “new” fact-finders are being called upon to transcend or remedy. Each of the panelists in this session contributes in important ways to shedding light on these and related issues. The new technologies have immense potential but also limitations and drawbacks. All that is clear is that the field of human rights fact-finding is changing very quickly and that it is assuming an inter-disciplinary dimension that was largely lacking not so long ago. Anthropologists, information scientists, architects, forensic scientists, statisticians, and many other professionals are now increasingly involved in elevating fact-finding to a much more complex and sophisticated art and science.

FINDING, VERIFYING, AND CURATING HUMAN RIGHTS FACTS

*By Margaret Satterthwaite**

The international human rights movement is known for its work to “name and shame” abusers by investigating and “finding” facts relevant to heinous acts and egregious omissions and expose them to the world.¹ Amnesty International, Human Rights Watch, and myriad

¹ See *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, para. 5, U.N. Doc. A/65/321 (Aug. 23, 2010) (by Philip Alston).

² Philip Alston & Colin Gillespie, *Global Human Rights Monitoring, New Technologies, and the Politics of Information*, 24 *EUR J. INT'L L.* 1089 (2012).

* Professor of Clinical Law, New York University School of Law.

¹ While the concept of “naming and shaming” is certainly under-inclusive of what human rights advocates do, it is widely used to describe the documentation and publication strategies of major NGOs. See, e.g., Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming and the Human Rights Enforcement Problem*, 62 *INT'L ORG.* 689 (2008).

national and regional nongovernmental organizations (NGOs) have made their names through reporting of rights-relevant facts in a mode that is intensely direct, studiously impartial, and framed by human rights—and increasingly, humanitarian—law. The human rights fact-finding report emerged as a distinct form in the 1980s and has become so established that it is now possible to talk of the “genre” of human rights reporting, complete with specific stylistic, formal, and content elements. Paul Gready has gone so far as to say that the branch of human rights concerned with transitional justice has constructed “truth as a genre.”² Anthropologist Richard Wilson has critiqued the legalistic, stripped-down nature of this genre for constructing a de-politicized space that leaches meaning from events.³ Whatever the unintended impacts, this genre, bare of adjectives and heavy on physical detail, remains the core method human rights organizations have to establish facts credibly.

Fact-finding has also been central to UN human rights work. International commissions of inquiry, special procedures of the Human Rights Council, human rights treaty bodies, and DPKO-affiliated bodies all undertake fact-finding of various types into human rights issues and produce reports that establish facts in the face of government denials, analyze those facts under human rights and humanitarian law, and make recommendations that range from timid to brazen. At the heart of all of this has been a commitment to a specific core methodology that is built upon the testimony of victims and survivors of abuse. Staying true to the victims has been both an ethical promise⁴ and a methodological given. This commitment has, over time, led to certain disciplinary, moral, and practical dilemmas as human rights fact-finding has expanded.

In the face of these dilemmas, it is important to recall the context for human rights fact-finding. UN High Commissioner for Human Rights Navi Pillay has recently catalogued an astonishingly broad range of aims for human rights fact-finding, from identifying perpetrators and protecting victims to influencing positive change in laws and practice.⁵

With such broad aims, it is not surprising that there has recently been a proliferation of fact-finding bodies, as well as a broadening set of techniques. These changes have been associated with an increasing professionalization among practitioners who find themselves with “careers” in human rights, where once there was only volunteerism and social justice activism.⁶ This professionalization has included both a search for better methods and a renewed focus on systematizing the approaches that the human rights field developed during its first few decades. This focus has included more systematic attention to the training of human rights researchers, the inclusion of information about research methods in human rights reports, and the use of some additional methods for fact-finding and documentation of abuses.

As human rights has become closely intertwined with the mechanics of governing, both nationally and internationally, including through criminal investigations and prosecutions by national and international courts, and with the hard edge of governance, through doctrines

² Paul Gready, *Telling Truth? The Methodological Challenges of Truth Commissions*, in *METHODS OF HUMAN RIGHTS RESEARCH* 159–85, 160 (Fons Coomans, Fred Grunfeld & Menno T. Kamminga eds., 2009).

³ Richard Wilson, *Representing Human Rights Violations: Social Contexts and Subjectivities*, in *HUMAN RIGHTS, CULTURE & CONTEXT: ANTHROPOLOGICAL PERSPECTIVES* 134–60 (1997).

⁴ See Paul Gready, *Introduction: ‘Responsibility to the Story,’* 2 *J. HUM. RTS. PRAC.* 177 (2010).

⁵ Navanethem Pillay, United Nations High Commissioner for Human Rights, *Human Rights Investigations and Their Methodology* (Feb. 24, 2010), at <http://unispal.un.org/UNISPAL.NSF/0/C9222F058467E6F6852576D500574710>.

⁶ For a discussion of the dangers of professionalization for the human rights field, see David Kennedy, *The International Human Rights Regime: Still Part of the Problem?*, in *EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS* 19–34 (Rob Dickinson, Elena Katselli, Colin Murray & Ole W. Pedersen eds., 2012).

such as the responsibility to protect and the realities of humanitarian intervention, methods of fact-finding have become a focus for improvement, standardization, and even, some have suggested, regulation.⁷ Indeed, there have been a variety of efforts to set out guidelines and best practices for fact-finding, but none has garnered sufficient buy-in to really guide the practice.⁸ Instead, NGOs develop and use their own internal guidelines; UN treaty bodies create their own rules of procedure; thematic and country mandate holders follow separate practices; and UN Commissions of Inquiry adopt ad hoc procedures specific to their terms of reference. Even when they have established methods, however, the reports published by fact-finding organizations do not always make their choice of methods clear. Human rights fact-finding reports still do not uniformly include a discussion of the methods used in investigating the facts presented.

Different readers and users of reports will have different reactions to this observation. Some, especially those in the social sciences, might argue that human rights reports should include a description of their methods to ensure transparency and accountability, and perhaps to advance the goal of standardization in the human rights field. Others, including key informants within large human rights organizations, argue that while some description of methods is a good idea, a detailed methodological discussion will actually be misleading as it will suggest to the reader that human rights fact-finding is scientific, which it resolutely is not.

Even with increasingly systematic methods and better preparation and training of human rights practitioners, however, there has been a concern that the core human rights methods—interviewing survivors, witnesses, and perpetrators of violations—are not sufficiently robust or are not conducted with sufficient professional rigor to reveal evidence as opposed to anecdote.⁹ To be fair, for decades such methods have been supplemented, where possible, by access to and use of documentary and physical evidence. Indeed, in the late 1980s, human rights fact-finders worked with forensic scientists to create the Minnesota Protocol for Legal Investigation of Extra-Legal, Arbitrary and Summary Executions, released in 1989.¹⁰ Since then, additional protocols have been added that address autopsy, disinterment, and the handling of skeletal remains.¹¹ Similarly, documentary evidence has always been integrated into human rights fact-finding—sometimes explicitly through overt reference and citation, and sometimes less overtly through internal standards of proof or guidelines on report writing. Access to such evidence is not always possible, however, and the centrality of testimonial evidence in human rights fact-finding remains, since the point is to ensure that victims are not silenced and forgotten in the face of indifference, persecution, and extermination. Governments often destroy, control access to, or falsify evidence. Human rights fact-finding has evolved in direct relationship to these realities.

Indeed, the targets of human rights reports have always attacked rights advocates on the grounds that their methods are shoddy. While such defensive critiques from governments and other opponents are not surprising, more trenchant analyses have recently issued from

⁷ For example, see Gerald M. Steinberg, Anne Herzberg & Jordan Berman, *The Need for Standardized Fact-Finding Methodology*, in GERALD M. STEINBERG, ANNE HERZBERG & JORDAN BERMAN, BEST PRACTICES FOR HUMAN RIGHTS AND HUMANITARIAN NGO FACT-FINDING 3–19 (2012).

⁸ For example, see Guidelines on International Human Rights Fact-Finding Visits and Reports: The Lund-London Guidelines (June 1, 2009), <http://www.factfindingguidelines.org/>.

⁹ Malcolm Langford & Sakiko Fukuda-Parr, *The Turn to Metrics*, 30 NORDIC J. HUM. RTS. 222, 223 (2012).

¹⁰ See UNITED NATIONS, MANUAL ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS, U.N. Doc. E/ST/CSDHA/12 (1991).

¹¹ *Id.*

more objective analysts. For example, in her 2010 book-length study of international criminal fact-finding, *Fact-Finding Without Facts*, Nancy Combs finds that “international criminal proceedings cloak themselves in a garb of fact-finding competence, but it is only a cloak,”¹² since “the vast bulk of the evidence” before the courts is witness testimony that has not been carefully vetted.¹³ At the ICTR, for example, Combs finds that while forensic evidence has been used to establish the existence of the genocide, “for the key determinations upon which the defendants’ guilt or innocence is based, the international tribunals have had to rely almost exclusively on eyewitness testimony.”¹⁴ Similar critiques could be applied to the work of human rights NGOs, which also rely heavily on testimonial evidence as the form of primary evidence in their fact-finding reports.

Despite the continuities in the traditional genre of the human rights fact-finding report, human rights organizations, UN mandate holders, and Commissions of Inquiry are increasingly using new methods, some of which are explored by the speakers on this panel. Sometimes the fruits of these methods are integrated into traditional fact-finding reports, but often these methods are generating new forms of reporting, disseminating knowledge, and displaying information. These new methods and techniques are transforming the role of the human rights fact-finder.

Human rights researchers are no longer expected only to “find” and report on facts; now, they are also expected to create facts through quantitative and statistical analysis; to verify facts established through crowd-sourcing, social media, and citizen journalism; and to curate facts through new forms of visual display, including through web-based photojournalism or documentaries and the use of visual analytical tools such as sophisticated—and often interactive—data visualization. As these roles proliferate, attention to the transformations at work is in order.

STATISTICS AND DATA IN HUMAN RIGHTS RESEARCH

*By Brian Root**

I will begin my discussion by describing statistics and human rights research from a global perspective. I will then highlight specific quantitative analyses in Human Rights Watch (HRW) research.

The example of the early 2013 Office of the High Commissioner for Human Rights’ estimate of mortality in the Syria conflict was used to demonstrate how a certain level of statistical and methodological literacy is needed to interpret human rights-related statistics. One must understand the limitations and strengths of the methods used to gather data, in addition to the analytical methods employed, in order to interpret a statistic’s quality and reliability. In the case of the Syria statistic, developed by the Human Rights Data Analysis Group, the statistic represents an estimate of the baseline number of unique deaths documented in seven distinct databases. Its accuracy is entirely dependent on the accuracy of the original databases the data originated from. This number does not represent the reality of death in Syria because it is impossible to know the true number. Yet, because it has been published, it has now become the de facto number used and cited as the true count of death within the

¹² NANCY COMBS, *FACT-FINDING WITHOUT FACTS: THE UNCERTAIN EVIDENTIARY FOUNDATIONS OF INTERNATIONAL CRIMINAL CONVICTIONS* 7 (2010).

¹³ *Id.* at 12.

¹⁴ *Id.* at 13–14.

* Quantitative Analyst, Human Rights Watch.