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# Having the Last Word: Human Rights Reporting (Re)Imagined through Critical Qualitative Methodology

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*Abstract:* Human rights monitoring and reporting have emerged as major practices of human rights lawyers and advocates in both non-governmental organizations (NGOs) and inter-governmental organizations (IGOs). This reporting is a form of knowledge production, often geared towards advocacy on behalf of human rights protection but also seeking to provide an ‘objective’ report of some kind. NGOs and IGOs employ a range of methodologies, but these are rarely formalized and tend to rely more on general institutional reputation and credibility, as well as the professionalism of individual practitioners. Some scholars have recommended more formal, standardized methods and have raised the possibility of borrowing models from other contexts. This paper considers contributions that critical methodologists from the social sciences and related disciplines might offer to human rights practice, particularly human rights monitoring and reporting. Traditional methodological approaches in the social sciences and in law have been criticized, interrogated, and (re)developed in recent years from numerous perspectives, but it does not appear that these critical approaches have penetrated international legal work, especially human rights lawyering. This paper suggests that critical qualitative methodologies offer great opportunity to reconceptualize traditional approaches to method and practice in human rights work.

*Keywords:* human rights; critical methodology; legal practice; socio-legal studies; non-governmental organizations; international organizations.

Abbreviations: IGO: inter-governmental organization; OSCE: Organization for Security and Cooperation in Europe; NGO: non-governmental organization; UN: United Nations; UNAMI: United Nations Assistance Mission in Iraq; UNMIK: United Nations Mission in Kosovo.

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## Introduction

In a globalizing world, the idea of human rights, and some of the practices of human rights work, have become familiar in popular discourse, across disciplines and among policymakers. As a result, the idea of human rights monitoring and reporting (also known as ‘fact-finding’) has also become fairly commonplace. It is a large part of human rights work, whether conducted by NGOs (non-governmental organizations) or IGOs (inter-governmental organizations) (Hannum 2004; O’Flaherty and Ulrich 2010). When monitoring and reporting first emerged as significant human rights practices, they generated controversy, particularly when done by NGOs (Orentlicher 1990). At both the institutional and the textual level, there is typically little transparency about the methodology used and little formal accountability for the work produced. Some of this controversy has now receded as human rights advocacy has become increasingly accepted in the context of ‘global civil society.’ However, that familiarity also serves to obscure power relations embedded in human rights reporting practices.

Human rights work, both by NGOs and IGOs, is increasingly critiqued for the global inequities it often reflects and reinforces (Mohanty 2003; Orford 2003). Human rights reporting risks reinscribing perspectives of ‘the West and the Rest’ (Hall 1992) when ‘expert’ monitors and reporters so frequently come from the West or Global North and rights violations are so frequently investigated in and reported regarding ‘the Rest’ of the world (Orford 2003). Texts do not exist outside of social relations, but are created within, manifest and reproduce those relations (Smith 2005). In the case of human rights reporting, both the practices and the texts produced illuminate relations of power along axes of global inequalities. Because of the continuing dominance of law in international human

rights, however, when questions about practice or method arise regarding human rights reporting, the tendency among scholars and practitioners has been to look to traditional legal method for guidance on tasks of interviewing and drafting (Bassiouni 2001; Franck and Fairley 1980; Orentlicher 1990). This has frequently yielded either an adversarial approach or a turn to quasi-judicial processes. Both of these may be appropriate models in some situations, but neither of these is an exact fit for human rights reporting. There remains a sense that human rights monitors and reporters lack a standard approach, which risks undermining credibility and professionalism (Bassiouni 2001; O’Flaherty and Ulrich 2010; United Nations 2001/2011). More importantly, legal approaches typically leave important issues of power ignored or under-explored.

Human rights reporting, then, is a lawyering practice in search of a methodology that can address these larger concerns. And this is where the social sciences can contribute: With its focus on interviewing and observation, human rights reporting often shares as much with qualitative research practices as with traditional lawyering. There are also parallels in the professional relationship established, which is more comparable to researcher-researched than lawyer-client, and the outcome of the practice, which focuses on generating facts and producing texts rather than addressing individual claims. Critical methodologists have explored issues of professional relationships and knowledge production at length in the context of the social sciences, and these explorations could contribute to the development of human rights monitoring and reporting practices.

This paper grows out of and draws upon empirical research I conducted regarding human rights field work in IGO projects of humanitarian intervention, as well as my previous work as a human rights lawyer in both IGO and NGO

settings.<sup>1</sup> It first describes human rights professionals and existing human rights monitoring and reporting practices. It next discusses theoretical contributions of critical methodologists regarding issues of power in the context of research relationships and knowledge production. It considers the potential ways in which these ideas could inform and (re)imagine existing human rights practice. It concludes with a call for increased cross-disciplinary discussion on human rights practice.

## **Human Rights Reporting Practice: The Objective Advocate**

Much human rights lawyering, including monitoring and reporting, takes place in the context of work with either a non-governmental organization (NGO) or an inter-governmental organization (IGO). Research and reporting work by NGOs is typically intended to result in reports for use by the general public or governmental policy makers (Hannum 1992; Human Rights Watch 2012). Investigation and reporting is also done by IGOs, and it often looks similar to the work of NGO researchers and delegations. It is a principle task of ‘human rights officers’ in IGO post-conflict field missions (the international administrations that accompany peace-keeping operations), but it may also take place in conjunction with the more structured work of human rights tribunals or similar bodies (Bassiouni 2001; Hannum 2004; O’Flaherty and Ulrich 2010).

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<sup>1</sup> My research used an approach of institutional ethnography to understand the dynamics of human rights work in IGO field missions. I conducted in-depth interviews with current and former human rights field officers, as well as analysis of three categories of central texts – international treaties, UN Security Council resolutions, and human rights field reports. In my previous professional work as a human rights lawyer, I also conducted human rights fact-finding and wrote human rights reports.

Written by human rights ‘expert’ professionals in both NGO and IGO contexts, these reports from the ‘field’ reflect and reinscribe relations of power. Human rights reporting is a form of knowledge production, usually geared towards advocacy on behalf of human rights but also seeking to provide an ‘objective’ report of some kind (Hannum 1992; O’Flaherty and Ulrich 2010). Although the reports purport to present the ‘facts’ of the situation in the field and to evaluate that situation under the law, the ‘subjects’ of such reports appear only as represented by the expert author and may not even have access to the final documents produced. These reports may circulate primarily, or even exclusively, to other international actors and often have little of concrete value to offer to those who are their subjects (O’Neill, 2010). Nonetheless, reporting has emerged as a central practice of human rights work and a feature of human rights expertise. This section examines the rise of professional expertise in human rights, the centrality of monitoring and reporting to that expertise, and the attention to methodology that currently exists in legal and professional discussions.

### **Human Rights Field work as Professional Expertise**

Human rights practitioners – lawyers, field officers, or advocates – conduct fact-finding and write human rights reports based upon a professional expertise, presumed or actual, in international human rights law. Although the professional field of human rights work is relatively new, it aspires to the (expert) identity of other professional fields (O’Flaherty and Ulrich 2010; United Nations 2011). For example, beginning in 2004, former IGO human rights field officers undertook a consultation project on human right field work, with an eye towards the professionalization of the field.<sup>2</sup> The move towards professionalization has also

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<sup>2</sup> The consultation project is a multi-year initiative launched by former and current IGO human rights field officers. It is described in detail in the annexes of *The*

occurred in the NGO realm.<sup>3</sup> Adopting traditional definitions of ‘profession,’ – a set of shared values, a body of knowledge, and systems to apply that knowledge – the consultation project traces a “professional identity” for human rights field officers (O’Flaherty and Ulrich 2010). This professionalism includes the objectivity of the expert – “a peculiar quality of impersonal commitment and obligation that involves acting on the basis of expert knowledge, in accordance with set principles, and in compliance with established methods and procedures” (2010, 15). Outcomes of the professionalization project include two consensus texts – Guiding Principles for Human Rights Field Officers Working in Conflict and Post-conflict Environments, and a Statement of Ethical Commitments of Human Rights Professionals – that elaborate the contemporary contours of human rights professional expertise.

The Statement of Ethical Commitments traces an ‘objectivity’ in advancing the cause of human rights. It provides that:

Human rights professionals are committed to be impartial in the promotion and protection of human rights irrespective of the identity or status of perpetrators and victims. They shall endeavor to ensure that their impartiality is evident to all relevant actors (2010, 438).

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*Professional Identity of the Human Rights Officer*, edited by Michael O’Flaherty and George Ulrich (2010). I rely on it as the most systematic and comprehensive endeavor to date to elaborate a ‘professional identity’ for human rights field officers outside the confines of any particular institution. It parallels less formal institutional efforts in the IGO and NGO contexts. For example, the Manual on Human Rights Monitoring developed by the UN Office of the High Commissioner for Human Rights in 2001 and currently being revised, makes essentially similar points regarding the practices of human rights monitoring and reporting (United Nations 2001/2011).

<sup>3</sup> There also appears to be significant overlap in the personnel of the two realms. In my research (and professional experience), it was evident that some IGO human rights officers began their work through more easily accessible jobs with NGOs before transitioning to work directly for an IGO field mission; similarly, upon return from the ‘field,’ some human rights officers return to work in the NGO sector.

Impartiality is linked to the end of goal of promoting and protecting human rights, and it must be on display for others in the field. The Guiding Principles use similar language to frame the professional role: human rights officers provide “independent” analysis and appraisal, of the “highest quality and without errors,” “‘impartial’, using objective criteria” (2010, 425-428). Under the Principles, the law is foundational to this impartial expertise (2010). Advocacy on behalf of human rights and the law appears to peacefully co-exist with professional impartiality and objectivity in ways reminiscent of positivist approaches to social science research, where the neutral observer is free to analyze and assess based on objective disciplinary criteria.

In my research with current and former human rights officers, this traditional sense of expertise appeared in the field officers’ descriptions of their everyday work as well. As a starting point, many grounded their expertise in being ‘outside’ the environment of conflict that necessitated the international intervention. For example, ‘Paul,’<sup>4</sup> a former field officer, explained:

*Paul:* When you end up in a [post-conflict] situation like that basically ... everybody on both sides sees themselves as a victim. ... I don't mean this critically, but I really think that they're not capable at an emotional level of protecting the rights of the other, any more than I'm capable of protecting the rights of some criminal who would assault me.

*[Author]:* And that's why you need sort of someone else, an outsider to come in?

*Paul:* And in the environments like that, the outsiders really have to be outsiders.

This exchange invokes the expertise of the human rights field officer in two dimensions – as outsiders to the conflict environment rather than victims (real or

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<sup>4</sup> All interview participant names used in this article are pseudonyms to protect confidentiality. Ellipses within the quotations indicate that intervening text has



self-perceived), and as professionals capable of protecting the rights of actual victims. Other field officers characterized their work along this duality as well. One commented that field officers “should be perceived as impartial or, if anything, partial towards the weakest, towards the most vulnerable.” And ‘Gwen,’ another former field officer, expanded on a similar point:

*Gwen:* I think it’s in post conflict situations, it’s very difficult to disentangle emotions and to be impartial in the distribution of assistance or in deciding who’s guilty, who’s not guilty. It’s much easier from the outside, emotionally neutral, usually, hopefully, to decide who is deserving of assistance, for instance.

Like the Statement of Ethical Commitments and the Guiding Principles, these human rights officers use the language of impartiality, but also qualify it with their understanding that such impartiality is always in service of a broader professional obligation to the shared values and normative commitments of human rights. Thus, professional neutrality and impartiality is always unstable and selective, embedded within relations of power and exercised in the decisions on behalf of law and human rights. To some extent, this may be true of all forms of expertise, not just in law and human rights, but across a range of professional fields. In the context of human rights, however, that instability and unevenness is magnified by the particular context of ‘field’ work.

Human rights professionals work in the field in another sense beyond the notion of a professional field as work out of and away from the confines of ‘home,’ in terms of home country and community. Human rights professionals, like anthropologists and other ethnographers, must grapple with the idea of doing work in the ‘field’ in this sense, as “the spatialization of difference” (Gupta and

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been removed for clarity and conciseness; brackets reflect editorial clarifications, where language in the quote may not be clear without the surrounding context.

Ferguson 1996, 32). Hyndman elaborates the significance of the ‘field’ in various forms of transnational work:

“The field” is a diffuse and problematic term for geographers, anthropologists, and other researchers who travel in a privileged way across cultures. For some, “the field” is a place impossibly outside the power relations that organize “home” (2000, 88-89).

The asymmetrical relationships that develop or are constructed across those boundaries of home and field in transnational work parallel the broader hierarchy and status distinctions in international work, where ‘international’ experts engage with ‘local’ non-experts in the field (Orford 2003, 119-120). These distinctions permeate activities and structure relationships in the field and otherwise affect the everyday work of human rights monitoring and reporting.

### **Reporting Practices and Methodology**

Monitoring and reporting activities figure prominently in the work of human rights professionals. In a typical NGO case, the NGO sends a delegation of researchers to investigate a particular situation involving human rights violations or allegations of such violations. The delegation usually does some factual and legal research in advance and then travels to the site(s) at issue, conducts interviews with a range of sources, and otherwise investigates. The goal is to produce a report, which can then be used for advocacy or to influence policy. NGOs employ a range of methodologies in reporting, but these are rarely formalized and rely more on the organization’s reputation and institutional credibility, as well as the professional expertise and judgment of the researchers (Hannum 1992; Human Rights Watch 2012).

For example, Human Rights Watch, one of the largest and most prominent international human rights NGOs, describes its work as “regular, systematic investigations of human rights abuses around the world” (Human Rights Watch

2012). The organization selects its issues and locations of focus based on an institutional assessment of “where we think our attention is needed, and where we think we can make a difference” (2012). Human Rights Watch notes “there is no uniform interview methodology that is universally used by the organization” (2012). It then describes its methodological principles as follows:

[T]he principles by which Human Rights Watch researchers conduct interviews with victims and witnesses are standard; though interview techniques may be varied or adapted for each situation, the guiding principles, such as the need to ascertain the truth, to corroborate the veracity of statements, to protect the security and dignity of witnesses, and to remain impartial, are consistent throughout the organization (2012).

The organization appears mindful of the risks of reporting without a standard methodology, and it specifically notes instances where it has relied on empirical data or other research in selecting research locations (2012). However, its methodological framework remains reliant on its own general professional standards – “Human Rights Watch’s goal with any research mission is to gain enough information about an incident, or about repeated rights violations, to create an accurate picture of what happened” (2012). Grounded in their “powerful commitment to human rights” and “existing expertise in their countries or issues of focus,” these impartial researchers investigate, observe, report and advocate (2012). Amnesty International, another prominent NGO, similarly describes its method in very general terms as “systematically and impartially research[ing] the facts of individual cases and patterns of human rights abuses” (Amnesty International 2012).

The practice is similar in IGO human rights field work. Reporting and monitoring are considered ‘principal’ and ‘core’ work areas, functions and tools of human rights field operations and officers (O’Flaherty and Ulrich 2010; United Nations 2001/2011). In some cases, these functions are specifically mentioned in

the official mandate of the mission or implementing agency, and in others, it is an implied part of the work of human rights protection and capacity building. These monitoring and reporting practices and the texts they generate – from the questions of topic and language, to issues of distribution and use – fundamentally reflect relations of power, grounded in notions of professional expertise.

The commentary on the Guiding Principles for Human Rights Field Officers outlines the contours of a human rights officer's expertise with the description of these two key functions of monitoring and reporting (O'Flaherty and Ulrich 2010). Within the broad framework of monitoring, human rights officers may be expected to meet with a wide range of people, develop relationships, visit and assess specific places and events, communicate findings, follow up, and generally provide a "reassuring presence" (Guiding Principles, 2010, 424). Monitoring almost necessarily leads to reporting on the results of all that observation and investigation.<sup>5</sup> As elaborated in the Guiding Principles, both monitoring and reporting are characterized as "diagnostic," positioning the human rights officer as expert in the field (2010, 424, 427). The goal of each practice is to identify violations and advance human rights protection, but the methodology varies with the context, the issue, and the reporter. In fact, the specifics of methodology are left unexamined, entrusted to the professional discretion of the officers.

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<sup>5</sup> The professionalization project identifies five principal functions of reporting: "recording a current human rights situation and its evolution over time, both negative and positive; informing State authorities and other relevant actors of their responsibilities and obligations regarding human rights problems and identifying solutions; providing an independent appraisal of the human rights situation that can inform the decisions of the international community and mobilise action; supporting the rights of victims and their families to know about the details of violations and their rights to justice, restitution, compensation or reparations; and use in criminal prosecutions and other accountability mechanisms" (O'Flaherty and Ulrich, 2010, 24).

The human rights officers I interviewed also discussed the central role of monitoring and reporting in their everyday work in the field. ‘Andreas’ describes them as “part of our basic work” and links them to other facets of expertise in field work:

*Andreas:* It is not only a matter of knowing the human rights conventions but also how to translate that to a report, or how to write a report.

Another field officer echoes this point on the centrality of the report: “every time I went to the field I tried to make sure I produced a report.” These basic monitoring reports establish an ‘authoritative’ account of what has happened in the field and an expert recommendation of possible responses by the international community and by domestic officials. The field report serves as an official record of an event, but it is also combined with other basic field reports to identify (“diagnose”) categories of violations. The report itself becomes the objective, and reporting is the activity of the expert.

Field reports are used within the institutional hierarchy – reporting up the chain – but also in work with domestic or local counterparts. In the IGO context, this does not mean that the reports are necessarily made public, but rather that they coordinate work in the field context. ‘Rafael’ discusses how field reports are used as a means of evaluating and ensuring (local) compliance with international human rights law:

*Rafael:* So [we] would be tasked every two weeks to draft a substantial report for our region ... and we would have to make sort of research, fact-finding in order to be able to draft a report and possible trends and improvements from the previous time the issue was reported ... Then my colleagues and then my supervisor would consider it and ... it would be brought to the attention of either [the field mission] or the local authorities, provisional government. ... whether certain issues would have to be changed in order to respect particular international standards.

These are reports with a purpose – or purposes – assessing compliance by local actors with international standards. Such reporting is more strategic than neutral as it seeks authoritative status.

Monitoring and reporting both rely upon and reinforce expertise in the field. As in social science research, power relations are reflected in how investigations are framed, in assumptions concerning the locus of a problem, and in how the dominant concepts and terminology shapes the accounts developed through observation, monitoring, investigation and interviewing (DeVault 1999; McCorkel and Myers 2003; Smith 1999). Human rights reports exist in chains of texts and actions that coordinate and reflect relations within and beyond the field. A report may begin as an official record of an event or a summary legal analysis, which is used by the human rights professional, and his or her NGO or IGO; these reports are combined with other basic field reports to identify (diagnose) categories of violations; in turn, the ‘authoritative’ reports are used as a foundation for political or advocacy action within and outside the NGO or IGO. Despite the exercise of power inherent in human rights monitoring and reporting, there has been limited discussion of this dimension. With their long-standing and wide-ranging attention to questions of power, the work of critical methodologists suggests important areas for attention in the reconceptualization of human rights reporting practices.

## **Contributions from Critical Methodologies: Expertise as a Relation of Power**

Traditional methodological approaches in the social sciences (and in law) have been criticized, interrogated, and developed in recent years from numerous perspectives – globalization studies, critical race, feminist, post-colonial,

indigenous, interdisciplinary, and so forth. These critical methodologies typically share a general rejection of positivist approaches to sociology and sociological (and other) research. They question traditional notions of ‘objectivity’ and ‘neutrality’ in the researcher and the research process (Banaker and Travers 2005; Smith 1989). Some question humanist assumptions in social science research and related practices (Grewal 1999; L. Smith 1999; Spivak 2005); others are critical of oppositional views of global/local, theory/method and other familiar dualisms (Burawoy 1991; Mohanty 2003).

There is much to discuss in this literature, but this paper focuses on two fundamental areas that have been examined in the work of critical methodologists: the research relationship and research as knowledge production. In the context of the research relationship, critical methodologists have generally called for greater attention to issues of researcher location and reflexivity (Kirsch 1999; McCorkel and Meyers 2003). In addition, critical methodologists have identified the need to address hierarchies in researcher-participant relationships, suggesting the importance of increased dialogue and collaboration in those relationships (Alcoff 1991; Smith 1989, 2005). In the context of knowledge production, the methodological critique has attended to issues of representation, and the role of language and text. These are all significant issues that merit fuller discussion in the particular contexts of the myriad practices and environments of human rights work;<sup>6</sup> however, even a summary review illustrates their transformative potential for human rights monitoring and reporting. This section identifies key components of the critical methodological approach in regard to the research

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<sup>6</sup> For example, Richard Wilson’s analysis of the work of South Africa’s Truth and Reconciliation Commission persuasively critiques the use of both traditional legal and positivist sociological method (Wilson 2001).

relationship and research as knowledge production, and then it examines and reimagines human rights work in light of that critique.

### **Research Relationships: Location and Relationships in Human Rights Work**

The research relationship has emerged as a central issue for critical methodologists; some methodologists, particularly feminist and transnational feminist scholars, have been explicit in critiquing the power relations embedded in research and calling for new approaches (e.g., Collins 1999; Kirsch 1999; Pillow 2003; D. Smith 1999, 2005; L. Smith 1999). There are two related sets of issues to survey in this area – issues regarding researcher location and reflexivity, and issues of power within the research relationship. Both are significant for human rights reporting but seldom discussed in light of the emphasis on human rights professionals as impartial outside observers.

As a starting point, critical methodologists have extensively problematized the researcher's professional distance, objectivity and 'outsider' status in ways that are relevant for human rights reporting and related practices (McCorkel and Myers 2003; Smith 2005). Critical methodologists offer an alternative view of the expert as embedded within a research relationship, as well as within a larger professional and personal context. Distance and detachment are socially constructed, as is knowledge itself (Smith 1989). It is the detachment, the distance, the 'objectivity' of the researcher that sets up a "one-sided relationship of observing and telling" (1989, 114). The power asymmetries in the research relationship are apparent: The participant "does not tell the sociologist what questions to ask. She is not a participant in the textually mediated discourse to which the sociologist will return from the field" (1989, 116). It would be easy to substitute 'lawyer' or 'human rights reporter' for sociologist in that point.



For critical methodologists, the goal of reflexivity and locating oneself in the work is to “reveal to readers how our research agenda, political commitments, and personal motivations shape our observations in the field, the conclusions we draw, and the research reports we write” (Kirsch 1999, 14). Reflexivity and awareness of location should not serve as ends in themselves, but must lead to changes in practice – making research “more reciprocal, non-hierarchical, and beneficial for participants” (1999, 83). Researchers must examine how aspects of identity shape their research – their theories, relationships with those they study, the interpretations of data and presentations and publication of findings – and the choices researchers make should be transparent to readers, as well as to participants. In addition, greater dialogue on a range of issues and collaboration between researcher and participant can play an important role in ameliorating inequalities in the research relationship (Alcoff 1991; Kirsch 1999; Reinharz 1993). Ultimately, however, changes in the research relationship alone, although important, do not resolve larger issues. The researcher must also recognize “that she is indeed located, that her seeing is mediated ... that her work is located in definite social relations, that she is always and ineluctably an insider” (Smith 1989, 142). Such recognition, if drawn into all aspects of research practice, would inevitably serve to restructure research relationships. Critical methodologists have begun that process in the social sciences, but critical approaches to research also have transformative potential for law and lawyering practices, including human rights monitoring and reporting.

The issues of location and power relations in research manifest in similar ways in human rights reporting and related practices. In the broader legal context, critical methodologists have interrogated relationships of hierarchy in legal practice. However, for lawyers and legal academics this has focused attention

primarily on lawyer-client relationships, relationships that can take on additional significance in cross-cultural or transnational work. For example, Ellmann discusses the rise of “client-centered” lawyering in the United States and the related interest in “alternative lawyering” in other national contexts (1998). These alternative lawyering practices emphasize work with community groups, diminishing lawyer authority and increasing client autonomy, and working towards change of the legal system and broader social institutions. At times this may result in a “two-way” exchange between North American lawyers and ‘Third World’ lawyers and practitioners (1998, 361). However, Mohanty cautions that “dialogue across differences is ... fraught with tension, competitiveness, and pain” (2003,125). Especially in the context of cross-cultural or transnational work, it is problematic to assume an equitable dialogue “without specifying a just and ethical basis for such dialogue” (2003, 125).

In fact, transnational feminists have written persuasively on the persistence of the “hegemonic victim subject” in scholarship and advocacy by feminists from the West/Global North, often on issues of human rights (Mohanty 2003; Razack 2000). This view of women (and men) from the Third World/Global South as victims fosters repressive strategies and reinforces an imperial perspective (Razack 2000). Attention to context and self-reflexivity can help trouble this hegemonic view. Razack argues for a “place-based feminism” by transnational feminists that pays attention to both “specificity” and complicity, a method that focuses on how women are embedded in multiple, interlocking hegemonic systems, including relations of hierarchy among women (2000, 50, 52).

It is not clear, however, that these critical or alternative approaches have substantially infiltrated into or influenced transnational and international legal work, especially human rights reporting. Human rights monitor or reporter

'location' is seldom problematized; in fact, human rights professionals typically identify themselves as 'outsider' expert observers, disconnected from the situations they investigate, but working on behalf of human rights victims and the general protection of human rights. In some sense, the whole idea of human rights reporting rests on the supposed objectivity of outside observers. The human rights expert is supposed to observe – and diagnose – impartially using general and objective (in fact, universal) standards. Moreover, the hierarchies present in the relationships between reporter and subject (victim, witness or other source) are purportedly grounded in that idea of the reporter as expert and authority, while other power imbalances are obscured or ignored. The human rights officer professionalization project makes only oblique reference to “power and privilege” and cautions officers to refrain from abusing their status (Ulrich 2010, 77). The UN Manual generally advises officers on “sensitivity,” “integrity,” “respect” and “patience” (2001). Is it possible to reimagine human rights reporting as reflexive and collaborative?

Of course, human rights reporters, like other researchers, are embedded in the relations they investigate. They bring their own perspectives, experiences, theories and commitments to the work and that 'location' influences their research practices, interpretations, and conclusions. However, the connection and the embeddedness of the human rights reporter are rarely acknowledged, much less critically engaged as a part of the monitoring and reporting processes. To some extent, this may grow out of organizational concerns for the safety of staff (both long-term and short-term) as well as an interest in speaking with an institutional, rather than individual, voice. It may also reflect the relatively new and uncertain professional status of human rights work, as well as the overarching desire both to

be impartial and to be viewed as being impartial for reasons of institutional credibility.

As a further impediment to the sort of reflexivity critical methodology suggests, human rights professionals are often referred to as ‘international’ experts in the field. This distinction between international and national (or, more commonly, ‘local’) is pervasive in international work, and it is seldom seriously questioned. Of course, for individuals, such status is situational rather than immutable. A Bosnian in Bosnia is national, but a Bosnian in East Timor is international. Although it is common in human rights field work to bemoan political influences and conflicts of interests by national authorities or personnel, little or no formal attention is given to the same possibilities among international personnel. The international becomes stripped of personal and national affiliations, neutralized as expert, while the national is overly personalized and localized. This oversimplification is also writ large whenever the international community is absolved (implicitly or otherwise) from any complicity or misconduct in the complex situations of violence investigated, and the locus for responsibility for human rights violations remains solely with the national.

Even with such concerns and impediments to reflexivity, it is possible to imagine human rights reporting that identifies the researchers and reporters both by name and by meaningful professional description. These practices are common for other types of reporters, such as journalists and academic researchers; in many cases, such identification increases credibility, and in cases where it might undermine credibility, there is arguably even greater need for transparency. In addition, reflexive practice by human rights experts would also improve the information generated in reports. Such a practice calls for attention to both the methods of the project and the use of the data collected during the reporting and

advocacy stages of the project. It requires close and on-going attention to both micropolitical and macropolitical contexts and relationships in and among nations that are institutional home to the NGO or IGO as well as in the country that is the site of the field work. It requires consideration of issues of hierarchy and power, particularly relating to conceptions of the ‘field.’

The seeds for this reflexivity are already present in some contexts. In its description of methodology, Human Rights Watch engages with questions of location in very general terms, noting that some researchers are “permanently out in the field” while others work in various institutional headquarters, and that some researchers bring country expertise in addition to other professional expertise (2012). Similarly, Amnesty International emphasizes its member-led approach and attention to “impact assessment and stakeholder analysis” (2012). In my interviews with field officers, some also discussed the issues of power that seem inherent in human rights field work, but most remained invested in a professional expertise that is impartial and ‘outside’ the local context. Moreover, human rights reports themselves still largely leave their authors invisible behind the institutional authority.

Collaboration is also increasingly evident in human rights field work, and it is more common to see reference to collaboration than reflexivity in NGO and IGO contexts. Although IGO field work remains largely a project of ‘international’ experts assisting ‘local’ beneficiaries, there are formal partnerships in place with national counterparts for capacity building and other assistance, and other informal relationships also emerge in the field (O’Flaherty 2007; O’Flaherty and Ulrich 2010). Human rights fact-finding projects by NGOs are now more frequently conceived as collaborative endeavors between international and local organizations (Human Rights Watch 2012). For example, Human Rights Watch

states that it “partners with organizations around the world” in its work (2012). Still, some aspects of collaboration continue to raise concern from a critical point of view. Most obviously, human rights reporting often remains a project of professionals traveling from the West/North/One-Third World to countries of the East/South/Two-Thirds World (Mohanty 2003, 226-227). It is fair to ask why so much human rights work remains focused in one direction along those axes of power; this is almost exclusively the case for IGO work although NGOs have given additional attention to human rights violations in their home countries in recent years.

Despite the challenges and complications of a more unstable expertise and a more critically informed and reflexive methodology, human rights practices reimagined in such ways should lead to greater transparency and, ultimately, produce more credible work. Moreover, careful attention to these issues might – as in other research – encourage more dialogue and collaboration between reporters and other participants, changing the balance of power in the research relationship and reshaping human rights reporting practices.

### **Human Rights Reports as Knowledge Production: Violators, Victims and Advocates**

Broader, but related, questions regarding the nature of research and the production of knowledge have also drawn the interest of critical methodologists and have similar relevance in the context of human rights reporting. Some theorists have considered whether particular research topics should be ‘off limits,’ and others have called for reconceptualizing the subjects and scales of social science research (Appadurai 1996; Burawoy et al. 2000; L. Smith 1999). Other writers have engaged with the representational issues that arise in most research that attempts to ‘speak for others’ (Alcoff 1991; Collins 1999). In addition, there has been

increasing attention to issues of language and the text in the authoritative accounts produced by researchers (DeVault 1999; D. Smith 2005).

Because of the importance of ‘reporting’ in human rights practice, issues of language and text, the instruments and products of knowledge used and created in the research process, merit particular attention. Traditional investigative practices, which are intended to be objective, distant and neutral, in turn lead to texts that reflect the same characteristics. The resulting texts allow, or perhaps even lead, the reporter to conceal his or her standpoint as embedded within the everyday world (Smith 1989). The expert creates “the authoritative version” account of the empirical world that is both independent of the “partial and subjective perspectives” of those involved in the action and also transcends the accounts of others, particularly of those without expertise (1989, 118). The expert reporter, thus, not only describes the realities of the social world but also constructs and shapes it through text. The same could, of course, be said of lawyering and human rights reporting, which purport to speak about and advocate for others.

Alcoff, among others, suggests various “interrogatory practices” that researchers should use in critiquing their own representations of others (1991). Researchers should carefully analyze and often resist the urge to speak for others; they should consider their own location and the context for the representation. The practice of speaking for or on behalf of others risks reinforcing the speaker’s privilege “as the one who more correctly understands the truth about another’s situation or as one who can champion a just cause” (1991, 29). Alcoff offers an example of problematic representation that would be familiar to many in the human rights field, particularly in the context of reporting: “in a situation where a well-meaning First World person is speaking for a person or a group in the Third

World, the very discursive arrangement may reinscribe the ‘hierarchy of civilizations’ view” (1991, 26).

Representation may be particularly problematic in institutional texts, such as human rights reports. Through the standardizing mechanism of institutional discourse, institutional texts “impose an accountability to the terms they establish” (Smith 2005, 118). Institutional discourse objectifies and depersonalizes the actualities of individual experience. This displacement and accountability are deliberate; institutional texts are designed, and it is by tracing these processes that relations of power are uncovered. Moreover, reports live on beyond the moment of creation; they are read, cited and archived. For experts, the texts also serve a function of reflecting and reinforcing their expertise. They become an independent source of ‘knowledge’ and provide a renewed foundation for expertise. The legal expert, the human rights professional, is engaged in an asymmetrical relationship with the subjects of monitoring and reporting, where the human rights officer has the privilege of speaking and writing.

The dynamics of text and representation critiqued in research, then, are also at work in human rights monitoring and reporting. The reports that are made public by IGO or NGO field missions present issues of the authoritative and ‘neutral’ text camouflaging the strategic practices embedded in the text. In practice, the reporter (or institution) decides the topic, selects the sources, frames the questions and determines the rights violations. The problem and the potential solutions are all filtered through (or even filtered out by) the language of international human rights law. The reporter then prepares an ‘objective’ and authoritative account of the situation that is also shaped by the dominant discourse of international human rights law and in turn contributes to that discourse. Because of their public dissemination, reports also raise issues of representation –



the reports purport to authoritatively present the ‘others’ of human rights victims and violators – always speaking about them, if not also for them.

For example, the Organization for Security and Cooperation in Europe (OSCE), a regional inter-governmental organization, has posted on-line a 2000 Background Report on “The treatment of minorities by the judicial system” in Kosovo. This report is typical of IGO human rights ‘issue’ reports from the field. It is a seven-page report with an additional five pages of endnotes. It is organized into the following sections: Introduction, Background, Equality Before the Law, Pre-trial Custody and the Right to Liberty and Security, The Right to Legal Assistance, Trial Observation, Conclusions, and Recommendations. There is no author listed other than the institutional author although the first endnote provides the following information:

This is the fifth in a series of thematic reports released by the Legal System Monitoring Section of the OSCE Mission in Kosovo. The OSCE Mission in Kosovo’s Department of Human Rights and Rule of Law has the lead role in monitoring, protecting, and promoting human rights in Kosovo. (2000, n. 1)

The endnote goes on to first describe and then characterize the work of the Section and its monitors and the goal of the report:

The Department’s Legal System Monitoring Section has observed court proceedings; met regularly with judges, prosecutors and defence counsel; and has otherwise been in close contact with those involved in the legal system to monitor its functioning. Legal system monitors serve as independent, unbiased monitors. They do not represent the civil administration, any defendant, or any other group or individual. Thematic reports released by the Legal System Monitoring Section have the goal of protecting and promoting human rights, encouraging improvements in the administration of justice, and suggesting systemic changes to the legal and judicial systems as necessary and appropriate. (2000, n. 1)

This is the language of institutional discourse that is crucial to the coordinating practices of texts, where nominalizations and passive voice obscure individual

actions and ruling relations. It is also the language of impartial expertise. This ‘objective’ tone and institutional voice continue throughout the report, which refers to staff members by title (“Rule of Law Officers”) and other individuals by ethnicity (“Kosovo Albanian,” “Kosovo Serb”).

The substantive sections of the report are organized around human rights issues, as legally defined, primarily in international human rights treaties. The first section begins by noting the applicability of “international human rights standards,” and each section specifically references treaty law (primarily the European Convention on Human Rights). The analysis follows a general format of quoting the relevant treaty provision, providing a brief overview of the ‘facts’ and reaching a conclusion on the issue. At times, the language is cautious and diplomatic: “Preliminary evidence in other cases indicates there may be a systematic problem within the legal system ... The handling of some cases relating to property issues may reinforce the feeling of discrimination amongst the members of minorities” (2000, 4). In other sections, the language is emotional and disparaging: “This case exhibits either gross incompetence by the judicial authorities or utter dishonesty due solely to the victim’s ethnicity. ... This case sets a dangerous precedent for future trials” (2000, 6).

The report concludes with a series of recommendations that are expansive and scope but rarely directed towards a particular actor. For example, the first and main recommendation states “it is necessary to support in a systematic way the presence and effective participation of minority representative in the judicial system.” The recommendation is apparently directed at an undefined “international community:”

... This highlights the need for the international community to take concrete steps to compensate for the lack of communication and

for the isolation of minorities, in order to enlarge on their participation in the judicial system. ... (2000, 7).

Other recommendations are equally general: “The above cannot be performed without guarantees of security ... A comprehensive policy to implement such measures should be set up without delay” (2000, 7).

Reports from UN and other field missions, to the extent that they are publicly available for review, typically are similar in tone, language and content. The UN Assistance Mission for Iraq (UNAMI) has also made some of its reports on human rights available on-line. Despite the different nature of the international interventions in Iraq (which was a unilateral US-led intervention connected to the ‘war on terror’ with subsequent UN involvement) and Kosovo (an internal conflict, a NATO-led bombing campaign, and a UN-led mission), a UNAMI Human Rights Report for the period of January to June 2008 follows a familiar style of describing human rights violations, analyzing those violations under international law, and providing recommendations. It describes the purposes of the mission and its Human Rights Office as “the promotion and protection of human rights and the rule of law in close collaboration with Iraqi governmental and non-governmental sections” (2008, 3). The monitors, reporters and authors are never identified, except institutionally as UNAMI or by role as monitor or observer. The reporters are authorized by law in a mission of assistance:

UNAMI’s regular human rights reports are intended to assist the Government of Iraq and the Kurdistan Regional Government in ensuring protection of basic human rights and respect for the rule of law. Iraq remains bound by both its international treaty obligations and its domestic legislation in taking measures to curb violence and uphold human rights norms. The International Covenant on Civil and Political Rights (ICCPR), is in particular, clear on the basic protections that must be afforded to persons (2008, 3).

The report concludes with several paragraphs on the mission's role in capacity building and support, again neatly juxtaposing local violations with international assistance (2008, 28-30).

NGO reporting practice is similar although the advocacy focus of these reports generates a more activist style of language and more frequent quotation to witness statements. For example, a recent Amnesty International Report on the violence in Aleppo, Syria, summarizes its process and purpose in the introduction:

This report, based largely on Amnesty International's field research in and around Aleppo in late May 2012, concludes that the Syrian government is responsible for systematic violations amounting to crimes against humanity in Aleppo, which it has no intention of ending, let alone investigating. The international community - despite ample evidence of the scale and gravity of the human rights and humanitarian law violations being committed in Syria - has so far failed to bring any meaningful pressure to bear on the Syrian government to end them (2012, 7).

The thirty-five-page report identifies no authors or contributors other than Amnesty International or an Amnesty International "delegate." Witnesses are frequently quoted but only identified as "witness" or "demonstrator" or similar general description; it is only deceased victims that are identified by name. There is often good cause for this discretion to protect the individuals involved from potential repercussions, especially in a situation of on-going conflict. However, the report strategically personalizes and particularizes the victims. It speaks for and about them from an impersonal expert position. At the end of each section highlighting a particular type of rights violation, the report notes the relevant international standards or legal provisions in summary form. In a final section, it purports to summarize Syria's obligations under international human rights law, international criminal law, and Syrian law (2012, 27-30). Although it is an advocacy document, it presents the arguments about responsibility as expert

conclusions, and it ends with a series of recommendations to the UN Security Council, to “all governments,” and to the Syrian government (2012, 31-33).

There are, of course, no simple solutions for the real difficulties that arise when participants are represented in research or when human rights victims (or violators) are represented in human rights reports. However, inequities in text and representation are not inevitable. In the context of human rights reporting, as in social science research, retreat is not necessarily the solution. The ‘authoritative’ text need not supersede other versions of understanding the world, and it is possible to conceive of an approach of “speaking to” rather than speaking for and about (Alcoff 1991, 23, citing Spivak 1988; Smith 1989). In this framework, the status and work of both the researcher and the text then shift to the “ongoing active recreation of a world in common” (Smith 1989, 122). The task of the researcher becomes a project of mapping or diagramming the relations of everyday life (Smith 2005). As a result, the texts produced not only become more accurate in reflecting the everyday world, but also more useful for those who read and rely on them.

Greater awareness of and attention to relations of power offers an important beginning step, and real (if often, uncomfortable) engagement between reporters and participants must become part of the reporting and reporting process. Human rights monitors and reporters, like researchers, must examine “who benefits from the research we conduct, whose interests are at stake, and what the potential consequences are for participants involved in our studies” (Kirsch 1999, 46). Because of the real risks of violence to many human rights victims and witnesses, human rights professionals are generally very attuned to the question of consequences for participants, but the larger questions of interests and benefits are seldom given the same attention. The disparities in resources,

mobility, and ability to influence public debate are substantial between human rights professionals and those who are ‘subjects’ of human rights reports. These issues are relevant to knowledge production and should be subject to more consideration and discussion.

The critique of advocacy and of the authoritative text presents a challenge for human rights reports, but it also offers opportunity. Lawyers and human rights reporters (like researchers) are interested in speaking on behalf of others and providing an expert, authoritative account – some might say that this defines the work. Human rights reports deploy the language of international human rights law, and the reporters offer expert analysis and conclusions: These are the rights violations, these are the victims, these are the recommendations on how to remedy the situation. But critical methodologists suggest the possibility of imagining a different sort of report where a reflexive reporter considers the larger social context and the reporter’s role within that context, as well as the consequences for the reporting and the underlying human rights violations. Human rights reporting reimagined through critical methodology suggests collaboration not just in investigation but also in identifying priorities, designing projects, and drafting reports. The human rights reports generated then might reflect not just the authoritative voice of human rights experts but also the authoritative voices of those whose experience is addressed.

## **Conclusion**

Human rights reporting has become institutionalized as a key practice in NGO work and in the work of many IGOs, particularly in post-conflict field missions. It remains a primary task of many human rights lawyers, and yet, its methodology is seldom examined or critiqued. A few legal scholars and practitioners have

called for greater attention to methodology. However, this attention has largely been limited to other models of legal practice. These have useful strategies to offer, and yet they do not fully engage with important issues in reporting, particularly issues of power and hierarchy, such as the nature of the relationship between the reporter and the subjects of the report and the content and character of the report that results. These are areas where critical qualitative methodologies have more to offer.

Critical methodologists in the social sciences have raised important questions about research relationships, as well as research and knowledge production; and they have also begun to suggest some potential answers and solutions to these questions. They have called for greater attention to researcher location and for reflexive practice. They have interrogated power and hierarchy in researcher-participant relationships and recommended increased dialogue and collaboration in those relationships. And they have reminded us of the significance of language and text in perpetuating (or upending) these traditional hierarchies. These have been transformative ideas in many disciplines, and they have much to offer to contemporary practices of human rights monitoring and reporting. In turn, thoughtful engagement with these issues and greater attention to issues of power in everyday human rights practice will contribute to on-going efforts to reconceptualize and reorder research and knowledge production in a wide range of fields.

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