
Global Human Rights Monitoring, New Technologies, and the Politics of Information

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Abstract

Antonio Cassese's vision for the future of the international human rights and criminal justice regimes relied critically upon the availability of reliable and systematic sources of information about alleged violations, to be provided primarily by the major international human rights NGOs. But the reality is that the existing system is problematically fragmented, hierarchical, non-collaborative, and excessively shaped by organizational self-interest. The politics of information suggests that, in the absence of significant pressure for change, the major INGOs will continue to adopt a proprietorial rather than a communal approach to reported data. We argue that while new information and communications technologies have already demonstrated their potential to transform the existing human rights regime, there is a compelling case to be made for establishing a comprehensive reporting website, open to local actors as well as the international community, and equipped with a collaborative online editing tool that would begin to resemble a human rights version of the Wikipedia. The article explores the many advantages of a human rights wiki, and notes the range of choices that would need to be made in order to shape the structure, and modes of organization and management of such an initiative.

1 Introduction

Antonio Cassese was a jurist of great vision and creative imagination. This was manifest in his work across a variety of areas of international law, whether examining the impact of President Pinochet's free-market economic policies on human rights in

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Chile in the 1970s,¹ crafting institutional arrangements to carry out the most intrusive and systematic national-level inspections that had ever been provided for under international human rights law in the 1980s,² rethinking the relationship between the law applicable to internal armed conflicts and that governing international armed conflicts in the 1990s,³ or setting up a new hybrid tribunal to do what none had ever done before in seeking to prosecute and punish those responsible for national-level assassinations in one country in the 2000s.⁴

In virtually all of these roles, he saw himself not as a technician making use of existing tools, but as an architect seeking to craft novel institutional structures, innovative procedural arrangements, or new ways of conceptualizing issues which would influence, if not determine, the way things were done in the future. In his final, posthumously published, work – *Realizing Utopia* – he took it upon himself in several chapters to spell out his vision for ‘a global community grounded in a core of human rights’. While some elements of his vision seem genuinely utopian (such as the role he would accord to the concept of *jus cogens* as the foundation stone of the emerging order), others are more prosaic and reflect his own struggles in different contexts to obtain access to accurate, detailed, and authoritative information as to violations of human rights and humanitarian law.

This tribute to his immense achievements focuses primarily on one key component of his human rights blueprint for the future. Although he endorsed Brierly’s highly perceptive observation, made in 1931, that the court of international public opinion will often provide the most effective sanction for state misconduct,⁵ he was largely disillusioned with the ability of the mass media to focus any sustained or in-depth attention on human rights issues, and he relied instead on international civil society to fulfil that role. He saw that group as consisting mainly of ‘the most independent, impartial, and proactive non- governmental organizations’ and emphasized their roles in: (i) ‘gathering and disseminating information’; (ii) ‘drawing publicity to issues’; and (iii) ‘acting as the moral voice of the international community’. His vision relied upon these groups to ‘play a significant role in prodding states and other international subjects as well as national courts increasingly to proclaim and comply with fundamental values upheld in *jus cogens* rules’.⁶

He returned to this theme at the end of the book by stressing the importance of developing methods of fact-finding that would enable international courts and other bodies to respond more effectively to serious violations of human rights. After

¹ A. Cassese, *Study of the Impact of Foreign Aid and Assistance on Respect for Human Rights in Chile* (written in his capacity as Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities), UN Doc. E/CN.4/Sub.2/412 (4 vols., 3 Aug. 1978).

² He was the first President of the European Committee for the Prevention of Torture. See A. Cassese, *Inhuman States: Imprisonment, Detention and Torture in Europe Today* (1996).

³ Acquaviva, ‘A Conversation with Antonio Cassese’, 25 *Leiden J Int’l L* (2012) 815.

⁴ He was appointed as the first President of the Special Tribunal for Lebanon.

⁵ J.L. Brierly, *The Basis of Obligation in International Law* (1931), at 203.

⁶ Cassese, ‘A Plea for a Global Community Grounded in a Core of Human Rights’, in A. Cassese (ed.), *Realizing Utopia: The Future of International Law* (2012), at 136, 143.

highlighting the limitations of official bodies, including the UN, to fulfil this role under present arrangements, and criticizing the International Committee of the Red Cross for its policy of confidentiality,⁷ he placed 'authoritative NGOs, [such] as Human Rights Watch and Amnesty International' at the forefront of the efforts to provide the factual basis upon which the international community can act.⁸

Thus systematic and reliable fact-finding lay at the heart of Cassese's vision in this area, and he saw the major international human rights NGOs as the key players. He characterized those groups as independent, impartial, proactive, and authoritative. He did not engage with the now very well-rehearsed debates about the 'legitimacy' of these NGOs, based primarily around the questions of their representativeness and accountability, and those issues can be left to one side for present purposes. But the central role that Cassese saw for a very small number of international NGOs – and he generally referred specifically only to Amnesty International and Human Rights Watch – raises a number of other important questions. In particular, is it appropriate in the 21st century to rely so heavily upon such a small group of actors? How effectively do these actors interact with the human rights movement as a whole, and even with one another? Are the methods of work on which they rely sufficiently collaborative, transparent, and self-correcting as to warrant such weight being placed upon them? And are they making effective use of new information and communications technologies to reach out to broader constituencies and take full advantage of the opportunities available?

These are big questions and the present article can do little more than to highlight some of the deficiencies that currently exist and seek to start a more vibrant debate within the human rights community as to the ideal vision of information gathering and sharing for a 21st century whose horizons and possibilities extend far beyond those that could have been imagined in the 1970s and 1980s when much of the current architecture of the regime was designed.

Our analysis begins with an effort to understand the strengths and weaknesses of the existing system in terms of how effectively it gathers information and how comprehensive is the resulting picture. Our analysis assumes that although the community of international human rights monitors consists of a large number of individual actors pursuing diverse goals and with widely varying mandates, it is also necessary to consider its results in overall or aggregate terms rather than just by focusing on its individual components. In other words, we want to know not only how comprehensive or systematic the monitoring undertaken by the leading NGOs is but also what the sum of the parts looks like, at least in relation to some of the core human rights concerns (defined not in terms of which rights are of the greatest importance, but of which are most widely monitored). Our focus is on fact-finding and reporting which, although only one of the techniques used by the international regime, is arguably the

⁷ He argues that by keeping its findings confidential and providing them only to the state concerned, the ICRC deprives 'the international society of knowledge of what has actually occurred in some specific circumstances': Cassese, 'Gathering Up the Main Threads', in *ibid.*, at 645, 675.

⁸ *Ibid.*

most important since it provides the foundation for most of the other activities undertaken by the various organizations and groups that make up the regime. It is also the dimension on which Cassese relied so heavily in his vision of the future.

The article is divided into two parts: a diagnosis and a prescription. The first part (sections 2–4) seeks to provide a snapshot of the *status quo* by examining extrajudicial executions and the extent to which major incidents of such killings over the past decade or so have been reported upon by the entities which would be most likely to monitor such events. In the second part (sections 5–10) we propose ways in which new information and communications technologies might be used to develop more collaborative, participatory, and innovative ways of monitoring and reporting on human rights violations. It might be expected that the emergence of such technologies over the past decade or so would have obviated many of the problems that we identify. As we note below, these developments have certainly changed the landscape in very important ways, but they have yet successfully to transcend the problem of the continuing dispersal of information. Indeed, it might be argued that, in some respects, they have exacerbated it. Our proposal thus centres on one particular dimension of the ways in which advantage might be taken of the opportunities made available for collective and communal information gathering, analysis, and presentation in the interests of building a better informed international human rights fact-finding database.

In some respects, the two parts are relatively separate from one another. But we argue that a better appreciation of the fragmented nature of existing reporting provides the necessary background as well as an added impetus to explore the new approaches suggested in the second part of the article.

In order to generate the data necessary to provide a picture of the current situation, we analysed the reporting results of four of the key entities that systematically monitor significant incidents of extrajudicial killings. They include the two largest international NGOs in the human rights field, which are also the ones consistently invoked by Cassese – Human Rights Watch (HRW) and Amnesty International (AI). In addition, for reasons explained below, we also include the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions (the SR) and the United States Department of State (the SD). Given that the definition of extrajudicial executions used by the UN and by human rights groups generally is very wide-ranging, it would be impossible to monitor all such killings that take place around the world and extremely difficult to identify the range of such killings which are subsequently taken up and reported on by the four entities. In order to make the research manageable, the focus of this article is on those incidents involving extrajudicial executions which reached a sufficient level of public concern or prominence within the relevant community as to warrant the creation of a Commission of Inquiry (CoI), which would most typically be under government auspices but entrusted to the judiciary or some other relatively independent body.

2 Assessing the Extent of Information Dispersal

There are two starting points for this part of our analysis. The first is to make the case that information dispersal in relation to an issue such as extrajudicial executions is, *per*

se, problematic. The second is to argue that our focus on extrajudicial executions, and more narrowly on CoIs inquiring into them, provides a convincing proxy for illustrating the extent to which the current system is characterized by what Cass Sunstein has called 'dispersed information'.⁹ This is a problem that occurs when groups (whether governments, corporations, or NGOs) fail to collect or incorporate directly relevant information possessed by other individuals or groups for use in their overall decision-making matrix. As a result, decisions are based on incomplete or partial information. In some situations, the resulting costs may be minimal, but in others they may well be significant.

In the human rights field, information can be considered dispersed when different organizations possess certain data relating to a given situation which they will generally, although certainly not always, make more widely available, but where it is not straightforward, let alone routine, for the disparate information to be brought together. The argument is not, of course, that an interested party needs to consult the websites of Human Rights Watch, Amnesty International, and the US State Department in order to get a balanced picture, although the fragmented or partial picture that each of them presents in relation to a given situation is a concern, as we will see later. Rather it is that there is a much broader array of actors relevant to any given human rights situation who possess highly relevant information which is not able to be made available in a meaningful way and injected into the broader information database on which decisions are based. We argue that such dispersal is problematic, and in what follows we seek to explain why.

There have, over the years, been various proposals to produce a single authoritative analysis of the human rights situation in any given country. When the SD reports were being honed and expanded in the early years of the Carter Administration, an idea was floated that those reports could become a single authoritative source by encouraging collaboration and taking account of other reports. But the human rights community gave the suggestion short shrift and the idea was promptly abandoned. Critics argued that there was no such thing as a single revealed truth, that the emphasis and even the information included would always reflect the values, interests, and perceptions of both the original fact-finder and the ultimate compiler. Others noted that there was value in diversity, in terms both of the information collected and of the interpretations placed upon it. In other words, despite the hallowed place accorded to what the human rights community called 'fact-finding', there can be no such thing as neutral, objective 'finding' of facts, as though they were items of debris which had been widely scattered by the elements but could be recovered and reconstructed by well-equipped and assiduous sleuths. In addition, of course, the notion that this single authoritative analysis would emanate from the work of one particular government was highly problematic, even leaving aside the additional element that the government concerned was widely implicated for better or worse in a great many of the situations which would be analysed.

⁹ C. Sunstein, *Infotopia: How Many Minds Produce Knowledge* (2006), at 7.

So the question then is whether the insights gained from these earlier explorations of information centralizing approaches should lead us immediately to dismiss any suggestion that acknowledged problems of information dispersal should be considered a matter of concern today. Our main response is to emphasize that our proposal does not envisage the production of a single authoritative report, and that present-day information and communication technologies have radically changed the equation. Rather, our concern is to ensure that the diverse perspectives and approaches that are already available in relation to a given issue are more readily accessible and that the key entities undertaking information generation in relation to a given issue are more consistently aware of relevant information already available elsewhere.

What exactly are the advantages of reducing information dispersal and encouraging better information sharing? The first is improved efficiency. Better information sharing can help to avoid replication of effort, and make it easier for each of the stakeholders to target their own inquiries and fact-finding efforts more effectively and efficiently. This is not to say that there should be no duplication, but it would help to ensure that such duplication is undertaken knowingly and for good reasons rather than simply for lack of awareness or coordination. The second is expanded participation. The involvement of a wider range of sources in the provision of information and making those diverse sources more accessible will help to increase the number and diversity of actors involved. The third is enhancing the reliability of the information by creating a more effective market place of ideas. The key actors would sometimes be challenged to reconcile their own fact-finding with different results emerging from other sources. The battle for accuracy would no longer rely essentially on the cut and thrust between governments and individual fact-finders, which is often so polarized and adversarial as to shed relatively little light on the disputed facts. Instead, the perspectives of the major entities would be contrasted and compared with the expected outcome of greater accuracy and fewer errors. In general, it seems that such aggregations of data are likely to produce a more accurate overall result. Based on a range of scientific studies, Sunstein has shown that, except in relation to issues on which there is such a thing as deep technical expertise, statistical averages (based on a plurality of expert inputs) will generally outperform individual experts in terms of accuracy.¹⁰ Rather than amounting to policy-making by opinion poll, as a critic might reasonably suggest, the explanation is that diverse approaches tend to correct one another's errors.¹¹ The fourth advantage is to provide greater reinforcement in terms of the persuasiveness of the information generated and the message that is being promoted, although this will also depend very much on the methods that are used for collecting and aggregating the information, as we discuss below.

We next argue that the sample of comparative results analysed here constitutes a convincing proxy for illustrating the extent to which the human rights monitoring system in general is characterized by extensive information dispersal. We thus need to

¹⁰ *Ibid.*, at 38–39.

¹¹ *Ibid.*, at 42–43.

justify the focus on: (i) extrajudicial executions; (ii) CoIs as a relevant and convincing benchmark; (iii) the specific entities selected as being representative of the international regime in this context.

A Extrajudicial Executions as a Proxy for Assessing Human Rights Monitoring

It is axiomatic in terms of international human rights law that there is no fixed, official hierarchy of rights. The UN has sought to underscore this notion with its repeated insistence that '[a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.'¹² While the defensibility of this proposition in its fullest form has been persuasively challenged, by both theorists¹³ and practitioners,¹⁴ the bottom line remains that we cannot simply assert that the right to life is more important than the rights to be free from torture or hunger. We can, however, point to the centrality of the right to life in the overall human rights framework, its listing at the top of virtually any charter of human rights, and the comparative emphasis that is accorded to it in the jurisprudence of human rights courts and other forums. In addition, human rights implementation is also heavily focused on the other principal dimension of extrajudicial executions which is upholding the obligation of the state to investigate, prosecute, and punish all infringements of the right to life, whether carried out by state agents or others.¹⁵ It is thus unsurprising that one of Amnesty International's major early campaigns, in the 1970s, focused specifically on this phenomenon, or that the first of the individual Special Rapporteurs appointed by the UN Commission on Human Rights to deal with a thematic mandate was mandated to examine 'summary or arbitrary executions'.¹⁶

The centrality of the phenomenon in terms of the overall human rights situation in a country is also reflected in the fact that the Annual Report prepared by the State Department's Bureau of Democracy, Human Rights and Labor emphasizes efforts to prevent unlawful killings. Thus, every entry in the annual country reports on human rights begins with the thematic issue of unlawful killings.

B Selecting the Monitors

In this section we briefly examine the reasons for selecting the four representative monitoring entities and examine the extent to which each purports to undertake

¹² Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, UN Doc. A/CONF.157/23 (12 July 1993), at para. 5.

¹³ Nickel, 'Rethinking Indivisibility: Towards A Theory of Supporting Relations between Human Rights', 30 *Human Rts Q* (2008) 984.

¹⁴ Cassese, *supra* note 6.

¹⁵ See Inter-American Court of Human Rights, *Velasquez Rodriguez Case*, Judgment of 29 July 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988).

¹⁶ See Summary or Arbitrary Executions, Report by the Special Rapporteur, UN doc. E/CN.4/1983/16 (31 Jan. 1983), at www.extrajudicialexecutions.org/reports/E_CN_4_1983_16.pdf.

comprehensive, as opposed to selective, monitoring on an issue such as extrajudicial executions.

1 NGOs: Amnesty International and Human Rights Watch

In any given country there may be individual civil society groups which provide more detailed and extensive information about specific incidents or rights, but in terms of global reporting two organizations stand out: Amnesty International (AI) and Human Rights Watch (HRW).¹⁷ While other groups such as Freedom House,¹⁸ the International Crisis Group,¹⁹ and the Fédération internationale des droits de l'homme (FIDH), provide important data on respect for human rights and often enough report on problems relating to extrajudicial executions, they firmly eschew any pretensions to be reporting systematically on the issue. AI and HRW are thus the most broad-ranging and systematic NGO sources for global reporting on executions. Nevertheless, both acknowledge that their reporting is not comprehensive, although this may not be obvious from the titles of their flagship annual publications, entitled respectively *Amnesty International Report [Year]: State of the World's Human Rights* and *Human Rights Watch World Report [Year]*. The AI report notes that it does not purport to be comprehensive and insists that silence on a given issue is not to be interpreted as implying that a state is respecting the right in question. The HRW report explicitly disavows any claim to be comprehensive, and adds that not all available information relating to the countries in which HRW is active is reflected in the report.²⁰ But these annual reports by AI and HRW are supplemented by a great many stand-alone country- or thematic-focused reports. In the case of both groups, the relationship between the annual global report and the *ad hoc* reports is not entirely clear. HRW has sought to explain its selectivity as a function of 'the number of people affected and the severity of abuse, access to the country and the availability of information about it, the susceptibility of abusive actors to influence, and the importance of addressing certain thematic concerns and of reinforcing the work of local rights organizations'.²¹

¹⁷ See Modirzadeh, 'Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds', 19 *Harvard Human Rts J* (2006) 191, at 197 n. 16 (making an argument regarding the size of the organizations based on their respective budgets); see also Bell and Carens, 'The Ethical Dilemmas of International Human Rights and Humanitarian NGOs: Reflections on a Dialogue Between Practitioners and Theorists', 26 *Human Rts Q* (2004) 300, at 309, 312 (asserting the size and importance of the two organizations in the context of a discussion about INGOs adopting their mandates).

¹⁸ While their work is defined as 'combining analysis, advocacy and action', they rely essentially on the judgement of their own experts and consultants rather than upon detailed published reports of events in specific countries. See Freedom House, 'About Us', available at: www.freedomhouse.org/template.cfm?page=2.

¹⁹ The ICG defines its mandate in terms of 'conflict analysis, prevention or resolution', rather than human rights: International Crisis Group, 'About Crisis Group', available at www.crisisgroup.org/home/index.cfm?id=208&l=1.

²⁰ Human Rights Watch, World Report 2009, 'Introduction', available at: www.hrw.org/en/world-report-2009/taking-back-initiative-human-rights-spoilers.

²¹ *Ibid.*

2 *The United Nations: the Special Rapporteur on Extrajudicial Executions*

Within the UN context, there are many potential sources of information about extrajudicial executions in a given country. The problem is that most of those sources do not publish reports on the matter, let alone compile statistics. It is clear that agencies and offices such as the Office of the High Commissioner for Human Rights (OHCHR), the Office of the UN High Commissioner for Refugees (UNHCR), the Office for the Coordination of Humanitarian Assistance (OCHA), and a range of others will be engaged in collecting information that will at least touch upon, even if only by way of background, major human rights violations, and that this would generally include significant instances of extrajudicial executions. But whether because they see human rights as extraneous to their specific mandates,²² they do not believe that they can adequately substantiate such reports, they fear the political fallout from exposing such information,²³ or for diverse other reasons, none of these agencies undertake systematic, publicly available, monitoring of extrajudicial executions.

There is, however, one actor who is charged with an explicit responsibility in this regard, and that is the Special Rapporteur on extrajudicial, summary, or arbitrary executions, appointed by the Human Rights Council. The first SR was appointed in 1982 and detailed annual reports have been submitted to the Council (or its predecessor, the Commission on Human Rights) every year since 1983. While these reports contain a wealth of information about allegations of extrajudicial executions on a global basis, the reports are nonetheless considerably less comprehensive than might be expected. Several restrictions account for this restricted coverage. First, there are severe resource constraints, which means that the SR can only act, and thus eventually report, upon a limited number of the cases actually drawn to his or her attention in any given year. Secondly, in theory the SR is supposed to react only to cases brought to his or her attention, rather than being pro-active. And, thirdly, because an unlawful killing constitutes a violation of human rights only in cases in which the government concerned has not taken the necessary action to investigate, prosecute, and punish, there is a presumption that the SR will only take up cases in which the government has demonstrably failed in its obligations, or seems likely to do so.

3 *Governments: The US State Department Reports*

While governments are important sources of human rights information, their contributions are all too often confined to defending their allies and criticizing those with whom they have generally poor relations. While various governments have sought to distance themselves from this stereotype, only one has opted to publish a comprehensive report on the state of human rights in all countries in the world. The US State Department's annual volumes of *Country Reports on Human Rights*

²² See Darrow and Arbour, 'The Pillar of Glass: Human Rights in the Development Operations of the United Nations', 103 *AJIL* (2009) 446.

²³ See, e.g., the controversy over the UN's role in reporting on casualty estimates during the final period of Sri Lanka's civil war: G. Weiss, *The Cage: The Fight for Sri Lanka and the Last Days of the Tigers* (2011).

are the result of a congressional mandate,²⁴ which began in the early 1970s as an effort to compel the executive to take greater account of human rights in both its foreign relations and its foreign aid policies.²⁵ While the original focus was only on those states receiving US aid, the number of countries dealt with has since grown to encompass all member states of the UN.²⁶ Although civil society groups have regularly criticized some aspects of the reports, especially in relation to highly controversial issues or to states with which the US has especially close or especially strained relations,²⁷ the reports are considered by many to be reasonably balanced and accurate and to constitute an important source of additional information. The latter element results from the involvement of officials in US embassies around the world who are required to gather information systematically ‘from a variety of sources across the political spectrum . . . [including] government officials, jurists, the armed forces, journalists, human rights monitors, academics, and labor activists’.²⁸ Those drafts are then reviewed by officials in the Bureau of Democracy, Human Rights and Labor, and other parts of the State Department. At that stage, other sources of information are added, including reports by ‘human rights groups, foreign government officials, representatives from the United Nations and other international and regional organizations and institutions, experts from academia, and the media’, and inputs from ‘experts on worker rights, refugee issues, military and police topics, women’s issues, and legal matters’.²⁹

At least in theory, the State Department reports are thus produced through a particularly labour- and time-intensive process and reflect the inputs of a great variety of specialist and informed sources. The closest equivalent to these reports, at the governmental level, would seem to be the Council of the European Union’s Annual Report on Human Rights. It, however, focuses on ‘the EU’s actions in the field of human rights vis-à-vis third countries, in multilateral bodies and on certain specific thematic issues’.

²⁴ See, generally, US Department of State, Bureau of Democracy, Human Rights and Labor, 2011 Country Reports on Human Rights, ‘Overview and Acknowledgements’, available at: www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper (explaining the history and statutory basis informing the production of the country reports).

²⁵ Poe, Carey, and Vazquez, ‘How are These Pictures Different: A Quantitative Comparison of the US State Department Reports and Amnesty International Human Rights Reports, 1976–1995’, 23 *Human Rts Q* (2001) 650, at 654 (looking for quantifiable bias in the SD reports compared with AI’s world report). (The analysis in this article, it should be noted, is different from that undertaken here. Poe *et al.* were interested in the ‘grade’ given to various countries on the state of their human rights. This article is not interested in the attitude assumed by an institution, but only in the information available to that institution.)

²⁶ US Department of State, *supra* note 24 (noting the above conditions and also going on to claim that reports also include other countries not required by the above Congressional mandate).

²⁷ See, e.g., Human Rights Watch, ‘U.S. State Department 2004 Human Rights Reports, Testimony to U.S. House of Representatives’, 17 Mar. 2005, available at: www.hrw.org/en/news/2005/03/17/us-state-department-2004-human-rights-reports (citing consistent problems with the reports, namely US participation in behaviours it criticizes, such as rendition and torture, and failure to take reports of human rights violations seriously as a basis for policy, in this case with Uzbekistan in particular).

²⁸ ‘How these reports are prepared’, in US State Department, *supra* note 24.

²⁹ *Ibid.*

Rather than being comprehensive it explicitly rejects any claim to be exhaustive and concentrates instead 'on issues where the EU's action has been most significant'.³⁰

Nonetheless, it might reasonably be questioned whether the State Department reports are sufficiently objective or accurate to warrant being included as a major reference point in our study. There are grounds upon which their objectivity could be challenged, such as a reluctance to be strongly critical of embattled allies. Their even-handedness could be questioned, in terms of the weight accorded to different issues, their thoroughness in relation to some countries and not others, and the diversity of sources used in practice.³¹ And, most importantly, their nature and scope have changed significantly over the years, making it dubious to rely upon them to undertake a close comparison between the situation in a given country in 2012 compared with some earlier period.

The principal response lies in the fact that these reports have consistently been relied upon by scholars undertaking empirical analyses in order to assess the impact of the human rights regimes. They are the principal source for Oona Hathaway, for example, in her study of the impact of treaty ratification.³² In her major book-length study of impact of human rights law, Beth Simmons also relies heavily, but by no means exclusively, on the State Department's reports. And in *The Justice Cascade* Kathryn Sikkink does the same, but provides a more nuanced justification for doing so. The book, based on a systematic review of the available data, puts forward the thesis that human rights prosecutions, not only at the international level but especially within national jurisdictions, are a very powerful tool in promoting respect for human rights. The challenge of identifying a meaningful database is central to her undertaking and she observes that it 'requires difficult decision-making, engagement with sophisticated data collection techniques, and intensive labor'. She justifies reliance on the State Department reports on the basis that they are 'generally considered a reliable source'. Although she concedes that they are neither perfect nor entirely objective, she concludes, with an air of resignation, that 'they are practically the only source in the world that covers human rights issues for such a wide range of countries' over such a span of years. But in dealing with specific issues she also includes reference to other sources. In measuring the repressiveness of a given regime, for example, she invokes the Political Terror Scale, although this is itself a compilation of State Department data combined with information from Amnesty International's annual reports. However, when seeking to assess the impact of foreign and international prosecutions on domestic arrangements the State Department data are clearly inadequate and Sikkink notes that she also made reference to data gathered from human rights groups, NGOs, and international organizations.³³

³⁰ *Human Rights and Democracy in the World: Report on EU Action in 2011* (June 2012), available at: http://eas.europa.eu/human_rights/docs/2011_hr_report_en.pdf.

³¹ For an early critique see de Neufville, 'Human Rights Reporting as a Policy Tool: An Examination of the State Department Country Reports', 8 *Human Rts Q* (1986) 681.

³² Hathaway, 'Do Human Rights Treaties Make a Difference?', 111 *Yale LJ* (2002) 1935.

³³ K. Sikkink, *The Justice Cascade* (2011).

C Commissions of Inquiry as a Proxy for Reporting

CoIs to investigate killings are set up in relation to only a relatively small number of the extrajudicial executions committed in the world. But it is their relatively uncommon occurrence that makes them attractive as a unit of analysis. In essence, they are generally set up only when the relevant domestic police and/or judicial processes have been shown to be inadequate to the task of conducting an effective and impartial investigation. In addition to the inability of the normal mechanisms to deal with the problem there would generally need to be significant domestic and/or international pressure upon the government to take steps to demonstrate that it is fighting against impunity. Although there may well be questions as to what exactly constitutes a CoI, the basic concept is well known to international human rights law and is dealt with at some length in important soft law instruments such as the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions.³⁴ They specify, for example, that:

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure.³⁵

Given both the legal and other pressures upon governments to establish a CoI in such circumstances, and the propensity of many governments to follow that path, this becomes a valid and practical yardstick by which to measure the coverage achieved by different monitoring groups in relation to extrajudicial executions.

3 Processing the Data

A Methodology

We surveyed the materials that are available online in relation to each of the four monitoring groups and conducted searches for CoIs. Because of the different availability and structures of the relevant websites, this process involved much more than a straightforward electronic search for that term. By way of example, we searched also for references to inquiries that were not listed as CoIs *per se*, because they had been named after the individuals who were heading them.³⁶ Wherever it seemed that a given monitoring group had omitted a reference to a CoI identified by one of the others we did an additional search using all likely alternative terminologies in order to confirm that the relevant CoI had not been acknowledged under a different nomenclature.

³⁴ Economic and Social Council Res. 1989/65 (24 May 1989), Annex; endorsed by General Assembly Res. 44/162 (15 Dec. 1989), at para. 3, UN Doc. E/1989/89 (1989).

³⁵ *Ibid.*, at para. 11.

³⁶ E.g., the 'Melo Commission' in the Philippines, and the 'Nanavati Commission' in India.

Although there are extensive searchable online records available from three of the four sources that date back prior to 1999, we took that year as our starting point because it marked the beginning of the SD reports being placed online. From that date onwards our search covered the following decade so that we included reports from all sources, including the SD, up to and including 2009.

B Quantitative Analysis

Based on this methodology, we recorded reports of 81 CoIs into unlawful killings during the 10-year period. Those inquiries were conducted by 42 states and one non-state entity (Hamas) and they related to killings in an array of different contexts such as post-election violence,³⁷ the unlawful use of police force,³⁸ or the activities of death squads.³⁹

The most interesting findings concern the extent of crossover reporting from one source to another.⁴⁰ Of the 81 reports of CoIs, only six are common to all four of the reporting sources; 16 are reported by three of the institutions, and 16 by two. Most surprisingly, however, fully 43 of the CoIs into unlawful killings, or more than half, are reported by only one of the institutions.

How might one account for the high number of 'orphan' CoIs? One explanation would be that the different institutions have different mandates and use different *modus operandi*. The SR, for example, functions in more of a reactive way, seeking to intervene in situations in which appropriate action has not been taken by the governments concerned. Thus, where a CoI has been set up and is conducting an effective

³⁷ See, e.g., 'Togo' in 2001 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, US Department of State, 4 Mar. 2002, available at: www.state.gov/g/drl/rls/hrrpt/2001/af/8408.htm; Amnesty International, 'Togo: Commission's findings must be made public', AI Index: AFR 57/001/2001 (10 Jan. 2001), available at: www.amnesty.org/en/library/info/AFR57/001/2001/en; Amnesty International, 'Togo: Will History Repeat Itself?', AI Index: AFR 57/012/2005 (19 July 2005), available at: www.amnesty.org/en/library/info/AFR57/012/2005/en (noting election violence in 2005 and calling for an additional international COI into voting problems and irregularities).

³⁸ See, e.g., Amnesty International, 'Senegal: Putting an end to impunity: A unique opportunity not to be missed', AI Index: AFR 49/001/2002 (29 Apr. 2002), available at: www.amnesty.org/en/library/info/AFR49/001/2002/en.

³⁹ See, e.g., Amnesty International, 'Guyana: Commission of Inquiry into death squad', AI Index: AMR 35/003/2004 (18 May 2004), available at: www.amnesty.org/en/library/info/AMR35/003/2004/en; see 'Guyana' in 2005 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, US Department of State, 8 Mar. 2006, available at: www.state.gov/g/drl/rls/hrrpt/2005/61730.htm.

⁴⁰ Because the focus of this report is only on analysing the possession of information on human rights violations, and not on the impact of publicizing such information, we do not analyse in depth the quality of the reporting on CoIs into unlawful killings. Thus, an in-depth report on CoIs in Algeria by one institution has the same value as the mention of CoIs in Sri Lanka by another institution in a press release, e.g. See Amnesty Int'l, 'Algeria: 10 years of state of emergency, 10 years of grave human rights abuses' (2002), AI Index: MDE 28/003/2002, available at: www.amnesty.org/en/library/info/MDE28/003/2002/en; Press Release, Human Rights Watch, Human Rights Watch Letter to Algerian President Abdelaziz Bouteflika (3 May 2001), available at: www.hrw.org/en/news/2001/05/03/letter-algerian-president-abdelaziz-bouteflika.

inquiry, there may be no compelling reason for the SR to become involved. This would help to explain why the SR's reports reflect, by a wide margin, the lowest count of CoIs – only 12 are mentioned during the period 1999–2009. Conversely, the SD's role is retrospective in the sense that it looks back after a year and takes note of all relevant developments. It is thus not surprising that it leads all the other institutions in reporting on 58 distinct CoIs during the decade. It is also in the best position to piggy-back on the work of the others. Although, of course, that raises the question why its reports do not track an even higher percentage of the total number of CoIs.

AI and HRW can be seen to be somewhere in the middle. Their responsiveness to relevant incidents will be significantly influenced by the severity of the violations alleged. Other occurrences might either go below their radar screens or be deemed not sufficiently significant to warrant being reported upon. This is also consistent with the high score achieved by the SD, since 15 of the 19 reports that were unique to its databases related to incidents in which the number of people alleged to have been unlawfully killed was small.⁴¹

These suggested explanations for the differences or discrepancies do not, however, provide a comprehensive explanation. Take, for example, the reporting on CoIs in Ethiopia. HRW documented targeted killings by the military against members of the Anuak, a local ethnic group, in 2005, and the subsequent setting up of a CoI to look into these killings.⁴² The SD followed HRW's lead on this, reporting on the killings and also on the CoI, and couching its criticisms of the CoI in language nearly identical to that of HRW.⁴³ In the same year, demonstrators were killed in post-election violence, and an additional CoI was set up to investigate these deaths.⁴⁴ HRW did not, however, note this development despite the fact that it concerned a state in which it was already doing work and involved a significant number of killings. In contrast, the SD did report on the CoI. AI, for its part, seems to have recorded neither of these CoIs.

What conclusions may be drawn from this example? The first is simply that the reporting of each institution is incomplete. One response might be that this is not a problem since anyone interested in Ethiopia will be following and aggregating the reports of all of the institutions. But if the institutions themselves are not taking account of relevant information publicly available elsewhere, it seems unlikely that most external and less well briefed observers are likely to do it, or even to know that such diligence would be needed. In this instance, the failure to share the information on the negative impact

⁴¹ The clearest exceptions were CoIs in Ghana, India (Tamil Nadu), and Mozambique. In addition, the CoI into structural problems in the Ugandan police department that led to unlawful killings could also be placed in this category.

⁴² Human Rights Watch, 'Targeting the Anuak', 23 Mar. 2005, available at: www.hrw.org/en/reports/2005/03/23/targeting-anuak.

⁴³ See 'Ethiopia' in 2005 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, US Department of State, 8 Mar. 2006, available at: www.state.gov/g/drl/rls/hrrpt/2005/61569.htm. The reason for the similarities in language can be hypothesized to be the fact that the SD relies at least in part on the reporting of HRW and AI in compiling its reports, as well as its own on the ground representatives and other outlets. See US Department of State, *supra* note 24.

⁴⁴ See 'Ethiopia' in 2005 Country Reports, *supra* note 43.

of one CoI – into killings of the Anuak – allows for an incomplete picture of CoIs in Ethiopia to emerge. As a result, international actors might continue to call for CoIs to be set up by this government, without the knowledge that two had failed in close proximity to one another. This is a good illustration of a situation in which an institution might make poor decisions based on what appears to be insufficient information.

An even more instructive example concerns CoIs in Nigeria. According to the databases, Nigeria established, at either the federal or state level, 13 CoIs into unlawful killings. Of these 13 CoIs, one was reported on by three organizations, three were reported on by two (though not the same two), and the remaining nine were orphans, with the SD picking up only one, HRW noting five, and AI reporting on three. The first report included in the data came from HRW in 2001, in a report about killings in Jos (in Plateau State).⁴⁵ In the next year the two NGOs and the SD reported on a CoI created in Benue,⁴⁶ AI reported on a CoI looking into violence between police and students,⁴⁷ and the SD reported on a CoI into an investigation linked to deaths for wandering onto an oilfield.⁴⁸ AI also reported on the CoI first noted by HRW into violence in Jos.⁴⁹ The following year, 2003, HRW noted in two separate reports that CoIs had been established in 2000 and 2002.⁵⁰

Two issues emerge from the reconstruction of this timeline. The first is the problem of dispersed information and the failure to bring together diverse data sources available to one or other of the reporting institutions. The second is linked to this. None of the CoIs resulted in a public report, which most human rights experts would consider to be a fatal flaw in terms of the likelihood of having an impact on governmental policy or conduct. But because of the dispersal of the data this information was never brought to light at the time. As a result, it was neither surprising nor inappropriate for the SR and the NGOs to continue to endorse the validity of this technique in the Nigerian context.⁵¹ Should the information possessed by the various institutions have

⁴⁵ Human Rights Watch, 'Jos', 18 Dec. 2001, available at: www.hrw.org/en/reports/2001/12/18/jos (noting that a CoI had been set up but that its results were not known. As it turned out, the results never would be known, as the report of the CoI, like many others, was not released).

⁴⁶ Human Rights Watch, 'Military Revenge in Benue: A Population Under Attack', 1 Apr. 2002, available at: www.hrw.org/en/reports/2002/04/01/military-revenge-benue; see also 'Nigeria' in 2001 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, US Department of State, 4 Mar. 2002, available at: www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm; Amnesty International, 'Nigeria: Security forces: Serving to protect and respect human rights?', AI Index: AFR 44/023/2002 (19 Dec. 2002), available at: www.amnesty.org/en/library/info/AFR44/023/2002/en.

⁴⁷ *Ibid.*

⁴⁸ See 'Nigeria' in 2002 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, US Department of State, 31 Mar. 2003, available at: www.state.gov/g/drl/rls/hrrpt/2002/18220.htm.

⁴⁹ Amnesty International, 'Security Forces', *supra* note 46.

⁵⁰ Human Rights Watch, 'The "Miss World Riots": Continued Impunity for Killings in Kaduna', 22 July 2003, available at: www.hrw.org/en/reports/2003/07/22/miss-world-riots (on CoI in 2000); Human Rights Watch, 'Testing Democracy: Political Violence in Nigeria', 10 Apr. 2003, available at: www.hrw.org/en/reports/2003/04/10/testing-democracy (on a CoI into killings in a church).

⁵¹ See, e.g., Amnesty International, 'The security situation in Rivers State: an open letter from Amnesty International to Peter Odili, State Governor of Rivers State', AI Index: AFR 44/027/2004 (15 Sept. 2004), available at: www.amnesty.org/en/library/info/AFR44/027/2004/en (welcoming a CoI and calling for one in addition in the eponymous state).

been brought together it seems probable that most actors would have raised questions about the value of such inquiries in Nigeria, and as a result have pursued a different, ideally more effective, strategy.⁵²

The preceding discussion only hopes to elucidate three main points that can be gleaned from a purely quantitative analysis of reports of CoIs into unlawful killings found in four sources of data. The first is that, though one might hope that the four institutions, given their shared goals and visions, have identical information, or publicize the information they do have in such a way that they act as one another's auditors, they do not. The second point is that the discrepancies in this information cannot be explained solely on the grounds of the mandates of the various institutions. We have attempted to demonstrate this by looking at reporting about specific CoIs, and showing that gaps in information of various institutions do not depend on their mandates necessarily. The point is that not only is the human rights monitoring of none of the organizations comprehensive, but that even in situations in which one of the institutions, such as an NGO, limits the focus of its monitoring to a particular country or issue, its monitoring is not comprehensive. The third point is that these information deficits have real impacts for all of the institutions. In the case of NGOs, it means suggesting potentially inefficient solutions to problems. In the case of the SR, it means perhaps endorsing solutions that have little possibility of success.⁵³

C *Qualitative Analysis of the Findings*

The preceding analysis dealt primarily with the problem of information being dispersed across the various data sources. But there are also additional dimensions concerning the quality of the reporting. The first of these concerns a lack of follow-up, and especially situations in which an actor calls for the setting up of a CoI into a killing but then fails to monitor or report on its effectiveness.⁵⁴ The second concerns situations in which the effectiveness of a CoI simply cannot be determined based on the information about the CoI made available by the institutions.

The first issue is not an uncommon one. For example, in 2001 Algeria set up a CoI to look into the deaths of demonstrators in the Kabilya region. HRW sent an open letter to the President commending him for his action and urging, in particular, that

⁵² Although it should be noted that human rights actors are sometimes loathe to draw such conclusions in relation to the use of time-honoured techniques. Take, e.g., a subsequent HRW report on Nigeria which was in the form of a submission to a CoI in Nigeria into violence in the Plateau State: see Human Rights Watch, 'Arbitrary Killings by Security Forces Submission to the Investigative Bodies on the November 28–29, 2008 Violence in Jos, Plateau State, Nigeria', 20 July 2009, available at: www.hrw.org/en/reports/2009/07/20/arbitrary-killings-security-forces. The report made no mention of previous, and failed, CoIs in Nigeria.

⁵³ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN Doc. A/HRC/8/3 (2 May 2008), at 15 (noting that the SR welcomed a CoI in Nigeria in 2006 into the deaths of the so-called 'Apo 6', only to be disappointed when the CoI never produced its report, in keeping with the custom of CoIs in Nigeria).

⁵⁴ *Ibid.*, at 11–12 (defining effectiveness as including, *inter alia*, establishing facts and guaranteeing non-repetition).

the commission work with the special prosecutor to bring to justice those responsible for unlawful killings.⁵⁵ Both AI and SD reported, at the conclusion of the CoI within the year, that no prosecutions had in fact taken place, although indemnities had been paid to the families of those killed.⁵⁶ For its part, however, HRW does not seem to have followed up specifically on this CoI. In 2003, in the context of a new Algerian CoI inquiring into disappearances during the civil war, it urged the CoI not to relinquish the goal of pursuing prosecutions.⁵⁷

A comparable case study concerns an AI letter to the Governor of Rivers State in Nigeria in 2004 urging him to set up a CoI similar to one undertaken in a neighbouring state.⁵⁸ However, AI did not follow up either in relation to this call for a new CoI or in relation to the existing CoI to which its statement had referred, despite the stated objective of seeking to combat impunity.⁵⁹

Failure of institutions to follow up is problematic in two principal respects. First, it plays into the hands of those governments which have set up CoIs precisely in order to placate those calling for action, although the government concerned has no intention of ensuring a proper accounting. Secondly, it undermines the effectiveness of the strategy of naming and shaming⁶⁰ by failing to ensure that the remedy that has been identified as appropriate is actually embraced in an authentic and meaningful manner.

The second issue in this context concerns the extent to which the data provided by the reporting institutions in relation to CoIs are often very incomplete. In some cases this might be understandable even if not optimal. For example, where the reference is essentially a historical recounting of what has or has not been done, one might not expect to see a very detailed account.⁶¹ But even in these situations there might be much to be said in favour of a more extended analysis.⁶² In other situations, providing

⁵⁵ Human Rights Watch, Letter to Algerian President Abdelaziz Bouteflika, 3 May 2001, available at: www.hrw.org/en/news/2001/05/03/letter-algerian-president-abdelaziz-bouteflika.

⁵⁶ See Amnesty International, 'Algeria: When Token Gestures Aren't Enough: Human Rights and the Algeria-EU Accord', AI Index: MDE 28/007/2002 (18 Apr. 2002), available at: www.amnesty.org/en/library/info/MDE28/007/2002/en; 'Algeria', in 2001 Country Reports on Human Rights Practices, US Department of State, Bureau of Democracy, Human Rights, and Labor, 4 Mar. 2002, available at: www.state.gov/g/drl/rls/hrrpt/2001/nea/8244.htm.

⁵⁷ Human Rights Watch, 'Truth and Justice on Hold', 8 Dec. 2003, available at: www.hrw.org/en/reports/2003/12/08/truth-and-justice-hold.

⁵⁸ Amnesty International, 'The security situation in Rivers State', *supra* note 51.

⁵⁹ Amnesty International, 'Nigeria: Oil, Poverty and Violence', AI Index: AFR 44/017/2006 (31 July 2006), available at: www.amnesty.org/en/library/info/AFR44/017/2006/en (noting an additional CoI formed to look in a competing incident, but not electing to follow up on the previous CoIs).

⁶⁰ Roth, 'Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization', 26 *Human Rts Q* (2004) 63.

⁶¹ See, e.g., Human Rights Watch, 'Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States', 25 May 2005, available at: www.hrw.org/en/reports/2005/05/24/revenge-name-religion (listing three CoIs in a four year period).

⁶² The rare examples of reporting that goes in-depth on the structural failure of CoIs include reports by Amnesty International on Togo and on Sri Lanka: see Amnesty International, 'Togo: Will History Repeat Itself?', *supra* note 37; Amnesty International, 'Sri Lanka: Twenty years of make-believe. Sri Lanka's

details would seem to be important both to enable an assessment to be made of the adequacy of the arrangements and to facilitate effective follow-up by those with a stake or an interest in the inquiry. But many of the references to CoIs identified by our survey are in fact very brief. Thus, for example, the SD reports mention the creation of a CoI into deaths during a protest outside a mosque in Thailand, and give a conclusory indication of the outcome before moving on to a separate and unrelated issue.⁶³ An HRW report on the 2006 war in Lebanon with Hezbollah refers in a footnote to a CoI established in Israel.⁶⁴ AI, after noting the existence of a CoI in Burundi and observing that it is unclear to what extent the inquiry was able to fulfill its mandate, makes no further mention of the CoI.⁶⁵ These examples could be multiplied. We are not suggesting that the judgement call made by the reporting institution was necessarily problematic, but ideally there would be more information easily accessible somewhere in relation to the details of these inquiries.

4 Information Politics

The results that emerge from an empirical review of the reporting of each of these entities in relation to such CoIs may be succinctly stated as follows. None of the entities, on its own, provides anything like a comprehensive survey of the inquiries that have been set up to examine significant incidents of extrajudicial execution. While there is some overlap in reporting, it is far less than might be expected, given the attention that is usually generated at the national level as a result of the creation of a CoI. Reporting by one source is often not picked up in the reports or analyses of the others. Indeed, in many cases, information on major incidents involving extrajudicial executions seems to be the preserve of just one of the relevant monitoring groups. In other words, the picture that emerges is one of ‘dispersed information’.⁶⁶ The available information remains in the hands of a wide range of actors who are not in effective communication with one another. This raises the question as to how feasible it is either for the dispersed actors to pool their resources or for external actors to take steps to bring together at least some of the disparate sources in order to create a more comprehensive

Commissions of Inquiry’, AI Index: ASA 37/005/2009 (11 June 2009), available at: www.amnesty.org/en/library/info/ASA37/005/2009/en. Depth is obviously a qualitative judgement, but the sparse discussion of CoIs in reporting compared to the discussions of CoIs in these two works makes for dramatic contrasts.

⁶³ ‘Thailand’, 2004 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, US Department of State, 28 Feb. 2005, available at: www.state.gov/g/drl/rls/hrrpt/2004/41661.htm.

⁶⁴ Human Rights Watch, ‘Why they died’, 5 Sept. 2007, available at: www.hrw.org/en/reports/2007/09/05/why-they-died (noting the report of the UN Human Rights Commissions independent commission in a footnote); Human Rights Watch, ‘Civilians under Assault: Hezbollah’s Rocket Attacks on Israel in the 2006 War’, 28 Aug. 2007, available at: www.hrw.org/en/reports/2007/08/28/civilians-under-assault (noting the Israeli Winograd commission in a footnote).

⁶⁵ Amnesty International, ‘Burundi: Amnesty International’s call for investigations in Burundi’, AI Index: AFR 16/08/99 (16 Aug. 1999), available at: www.amnesty.org/en/library/info/AFR16/08/1999/en.

⁶⁶ See *supra* note 9.

and integrated knowledge base. That question, in turn, is premised upon the assumption that this dispersal effect is in some respects problematic. In other words, there are costs that flow from the inability of the actors themselves, or of other interested parties, to obtain the broader, more detailed, and nuanced picture that would result from having access to the overall picture.

Formulating the issue in this way enables us to see that there are two quite separate analytical levels at which we need to operate. The first, the micro level, concerns the aspirations, claims, policies and methodologies of the individual entities. Are they happy with, or at least resigned to accepting, the situation that emerges from the survey? In other words, would they defend the rather selective and partial nature of the information that each of them accumulates and publicizes? Would they be content to proffer the simple defence that such selectivity and partialness are an inevitable and proper result of factors such as resource constraints, staffing limitations, the need to pick and choose by way of prioritizing certain situations and issues over others at any given time, and the limits imposed upon them by their mandates or missions?

While we would question the desirability of the *status quo* from the perspective of each of the individual entities, those are policy issues for the relevant actors to consider and not for us to resolve. Instead, our concern is with the macro level implications so that the question becomes whether the international human rights 'community' or 'movement', for want of better terms, is best served by contenting itself with an outcome that results in the relevant information remaining widely dispersed? In other words, are there alternatives to the existing system in which the key monitors do not seek to pool the information they collect, despite the fact that their respective staffs are in regular contact with one another? Are there reasons relating not to logistics or technical problems but rather to the politics of information that explain why the extremely valuable information that they generate remains dispersed and not effectively integrated into a larger, more coherent, and perhaps ultimately even more compelling pool of data? Can the problems of fragmentation and limited accessibility which seem to characterize the existing situation be overcome, at least in some measure?

Before proceeding, it needs to be acknowledged that each of the major reporting institutions surveyed in this article has strong and even compelling justifications for not taking on more than they have chosen to do with the inevitably limited resources available to them. But this is also where the politics of information management within the human rights regime comes into play. In other words, we need to focus on the broader questions of who collects what information, by what means, and from which sources, how is it shared and disseminated, and how these decisions are made. Detailed responses to such questions go well beyond the scope of the present analysis, but we have sought above to make the case for the need to have the debate, and in what follows we will explore one option among many others that seems worth pursuing. But, first, we need to clarify the addressees of our proposal.

The SD, for all its aspirations to be objective and impartial and whatever else, clearly has limitations on what it can and will do in terms of monitoring and reporting, if only because it is a government agency. There seems to be relatively little to be gained in the present context from examining where its interests lie in terms of the global

politics of information, although that is certainly a topic worth pursuing elsewhere. The SR, for his part, simply does not have the resources to expand the coverage provided, nor necessarily the agreement of governments and the UN to such a move. But the information his mandate generates is all, sometimes with some delay, in the public domain and can thus be readily incorporated into any larger database.

The focus for present purposes is thus on the leading international NGOs. While the data analysis above has been limited to an examination of the approach adopted by AI and HRW, there is no reason to confine the observations that follow to these two groups. The reality is that there is strong competition among the principal international human rights NGOs in a variety of ways that influence, among other things, the approaches they adopt, the coalitions and partnerships that they build, and the policies they adopt towards information-sharing. There is nothing wrong with this competition; it is in many ways crucial and healthy. Nor does competition mean that there is not extensive and sometimes intensive consultation and even collaboration at the staff level. But it is important to acknowledge that competitive concerns influence, and perhaps even dictate, the information policies with which we are concerned here. While their size, focus, constituencies, supporters, and funders vary dramatically across the spectrum, the reality is that they compete at a range of different levels.

Most importantly, perhaps, they compete for brand-name recognition, and thus have a strong interest in being able to claim 'credit' for their reporting. This is linked in turn to concerns about quality and reliability, thus imposing significant limits on collaborative undertakings. Reports come in various formats and serve a variety of functions, although there is a significant premium on what might be termed the HRW model, a style that originated with HRW but has been emulated or adapted by a range of other groups. The model looks something like this.⁶⁷ The report should be not much longer than, say, 50 pages. It should contain a section describing the methodology used, but the information provided there will be mainly defensive and designed to counter possible criticisms, rather than being especially informative as to the particular challenges faced. The report should be thoroughly, even exhaustively, edited and honed to eliminate not just rough edges but idiosyncrasies and major diversions from a reasonably standardized approach. Innovation is to be avoided, and tailoring the style to fit the situation in hand is both cautious and limited. The report is, in most instances, written for an intelligent lay audience with no deep familiarity with the country or the issues. It will employ a limited range of rhetorical strategies and techniques and avoid undue technicality and detail. There will be deliberately few references to reports by other groups, and the tone will seek to combine an element of objectivity and authoritativeness with materials designed to put a human face on the violations. And, finally, there will be an executive summary and a premium placed on 'actionable' recommendations directed to a range of specific entities ranging from

⁶⁷ Clearly the analysis that follows is of a stylized report, rather than of any particular report prepared by any particular organization. In addition to the type of model described here, the large NGOs produce an array of other types of documents ranging from one page letters addressed to government officials, through press releases and backgrounders, to book length studies.

the amorphous international community, through specific international agencies and donors, to the government concerned and perhaps also specific agencies or officials. While HRW did not 'invent' this model, it has honed it more thoroughly than any other NGO and it has, by dint of its professionalism and the sheer number of reports it has produced, set a benchmark against which other groups seem to feel they have little alternative but to seek to emulate as far as possible.

While our description of some of these characteristics would doubtless be contested by some of the organizations concerned, the point for present purposes is that this model does not lend itself to 'sharing' or being made a part of a broader enterprise. Indeed a huge amount is invested in distinguishing the 'final product' from other information sources. This is in the very nature of the branding process that seems to lie at the core of the politics of information in this field.

In addition, and closely linked to the branding dimension, groups compete for influence and perceived authoritativeness. Again this militates against sharing or collaborative approaches. And, finally, they compete for funding. AI is almost alone in relying essentially on membership contributions rather than foundations, large individual donors, or governments. These funding sources will generally need to be convinced that they are getting something identifiable and distinctive for their money; funding a more amorphous undertaking with multiple partners, and a 'final' product whose shape and orientation cannot readily be predicted, let alone assured, is more problematic and less attractive. Nevertheless, in the overall scheme of this analysis of the politics of human rights information, it is the funders who will need to be convinced that other models deserve to be explored. They will need both to have the vision to support alternative approaches and the strength to encourage or induce the mainstream groups they presently support to develop means by which to cooperate in more innovative and collaborative ways with a community of monitors and fact-finders.

5 Fostering Collaboration and Exploiting New Information and Communications Technologies

In 1940 Wallace Stevens expressed his amazement at the implications of radio technology: '[w]e lie in bed and listen to a broadcast from Cairo, and so on. There is no distance. We are intimate with people we have never seen, and, unhappily, they are intimate with us.'⁶⁸ The feeling of intimacy, of access in particular to great amounts of information and, for our purposes, to vast amounts of information about human rights violations in distant locations with relatively little expenditure of effort, is acutely more pronounced today than it was in 1940. But the description offered above of the dominant model of reporting on human rights fact-finding efforts obscures, or at least does not explore, the extent to which that model employs new information and communications technologies (ICTs). Before introducing our proposal for what might

⁶⁸ Stevens, 'The Noble Rider and the Sound of Words', in W. Stevens, *The Necessary Angel: Essays on Reality and the Imagination* (1960), at 18.

be termed a ‘human rights wiki’ it is important to assess the extent to which such technologies are already being used and to acknowledge some of the problems or risks that come with them.

International human rights fact-finding currently relies heavily on witness testimony, usually gathered through lengthy in-person interviews by experienced investigators and advocates. International fact-finders spend weeks at a time investigating incidents and searching for witnesses, sometimes relying on trusted local organizations, media accounts, or word of mouth for contacts. The number of individual incidents that can be recorded depends in large part on the size of the fact-finding team, the amount of time they can spend in-country, and the availability of funding. And fact-finding can be impeded or sometimes rendered impossible where investigators are unable to meet, whether for security reasons or because of other obstacles to access, with potential witnesses or examine the sites of alleged abuse. In such cases, serious abuses, including massacres, may be unknown to outsiders for months or longer, delaying potentially life-saving reporting and intervention.⁶⁹ In other cases, heavy reliance on witness testimony which is not supported by additional information of a more objective nature may leave findings open to challenge by Governments or alleged perpetrators. As suggested above, the model of a human rights fact-finding mission report may not make it easy fully to explain the complexities of a situation, or may fail to engage a broad audience.

New technologies offer a great many potential solutions to some of these problems, and offer significant improvements in existing fact-finding methodologies. As Keim and Noji have argued, social media have become ‘the new forum for collective intelligence, social convergence, and community activism’.⁷⁰ Some media accounts may create the impression that human rights groups are at the forefront of using new technologies. Thus *The Economist* reported enthusiastically in 2012 that while journalists have very limited access to Syria, daily protests could be watched live on Ustream, having been uploaded to the internet by local observers via mobile phones. Similarly, Muammar Gaddafi’s ban on foreign journalists in the Libyan uprising was partly circumvented by satellite-fed live streaming to a site called Livestream. And, another such site, Bambuser, ‘hosted more than 100,000 broadcasts from the Middle East and north Africa in 2011’.⁷¹

But notwithstanding these much-celebrated examples, the fact is that there still remains a substantial gap between the human rights and ICT fields. Only in the past couple of years has sustained work been undertaken by the human rights community to apply existing technologies or to study their potential uses and problems, and far too little attention has been given to the research and development of ICTs with specific human rights applications. As a result, the use of ICTs in human rights work remains

⁶⁹ See, e.g., A/HRC/14/24/Add.3, at paras 26–30 (describing massacres that took place in the Democratic Republic of the Congo in April and August 2009, but that were not reported until months later).

⁷⁰ Keim and Noji, ‘Emergent Use of Social Media: A New Age of Opportunity for Disaster Resilience’, *6 Am J Disaster Medicine* (2011) 47.

⁷¹ ‘Video and human rights: Visibility before all’, *The Economist*, 14 Jan. 2012.

at a relatively early stage and, for the reasons explained above, remains subject to the constraints that flow from the broader politics of information that have shaped the field to a considerable extent.

The fact that the human rights community has thus far been only relatively lightly touched by the ICT revolution is well illustrated by a comparison with the situation in relation to the humanitarian community. There has been extensive and innovative use of social media in the context of humanitarian disasters, both in terms of reporting the details of the disaster and in assisting affected communities to respond, build solidarity, influence external actors, and retain some sense of ownership over relief efforts, especially in the context of what has been termed the need to build 'disaster resilience'.⁷² These developments are well reflected in the burgeoning literature on the subject,⁷³ as well as in major initiatives such as the Digital Humanitarian Network, which brings humanitarian groups and local digital volunteer networks together online, and the Digital Operations Center set up by the American Red Cross and Dell.⁷⁴

But there have been many fewer such initiatives in relation to more standard forms of reporting on human rights violations. Developments that have taken place tend to focus primarily on the ways in which ICTs, and especially so-called 'peer-to-peer' (P2P) networks, have been used in major crisis situations such as the Arab Spring's uprisings and violent governmental responses thereto. The challenge is to move beyond those high-profile case studies and to think through the ways in which these networks can complement the traditional techniques of human rights reporting. As argued earlier, those techniques are often hierarchically directed by one or other of the major NGOs, are centralized in the sense of a process that starts with some local inputs but in most cases rapidly reverts to headquarters for careful filtering and editing, and are not interactive in a meaningful sense. It is a system that is sometimes characterized as being top-down or unidirectional because it involves the dissemination of information from the outside organization, through the media, to the public.

Nevertheless, as the examples discussed below illustrate, some efforts are already under way to exploit new technologies in order to increase public participation in the monitoring and reporting of abuses. Some may enable the reporting of abuses in real-time, thereby increasing awareness of incidents and speeding up responsiveness and, potentially, prevention; some give human rights investigators access to new types of

⁷² Folke *et al.*, 'Resilience and Sustainable Development: Building Adaptive Capacity in a World of Transformation', 31 *Ambio* (2002) 437.

⁷³ There is also a large gap between the humanitarian and ICT communities, but it is narrowing, particularly since the Haiti earthquake. See D. Coyle and P. Meier, 'New Technologies in Emergencies and Conflicts: The Role of Information and Social Networks' (UN Foundation-Vodafone Foundation Partnership, 2009), available at: http://www.mobileactive.org/files/file_uploads/Tech_EmergencyTechReport_full.pdf; Greenough *et al.*, 'Applied Technologies in Humanitarian Assistance: Report of the 2009 Applied Technology Working Group', 24 *Prehospital and Disaster Medicine*, Suppl. 2 (2009) 206; H.R. Clinton, US Secretary of State, 'Remarks on Internet Freedom' (21 Jan. 2010), available at: <http://www.state.gov/secretary/rm/2010/01/135519.htm>.

⁷⁴ Meier, 'New Information Technologies and Their Impact on the Humanitarian Sector', 93 *Int'l Rev Red Cross*, No. 884 (2012) 1239.

data which may provide important supporting evidence of human rights abuses; and others present new advocacy opportunities.

New social media, social networking sites, user-generated content sites or platforms, and a range of other ICTs enable any person with access to the necessary technology to share and report information relating to killings or other human rights violations in real-time – e.g. through Facebook, Twitter, or crowdsourcing technologies⁷⁵ such as Ushahidi. The Ushahidi platform, for example, originally developed largely by Kenyans during their country's 2007–2008 post-election violence, allows users to submit reports of human rights abuses by text message (SMS), smart phone application, Twitter, email, or the web. Information, such as the time, location, nature of a human rights abuse, and pictures and video footage, can then be geo-tagged and plotted on a map or timeline. The platform has since been used in over 140 countries⁷⁶ and has gained particular prominence in places such as the Democratic Republic of the Congo, South Africa, Gaza, India, Sudan, Afghanistan, Burundi, and Haiti.⁷⁷ The possibilities for increasing the speed, depth, and scope of human rights monitoring with crowdsourcing and SMS reporting platforms (such as Frontline SMS) are readily apparent. With hundreds or thousands of users, the platform can be used as an early warning system, or to track patterns of violence or the effects of a natural disaster, or to facilitate rapid response or service delivery. Crisis mapping can provide important visual representation of events, facilitating more effective strategic planning or advocacy.⁷⁸ Mobile-phone based reporting systems have also been harnessed to improve the provision of health and humanitarian assistance, and environmental conservation.⁷⁹ The technologies may also allow users to get round biases in mainstream media or Government censorship, as the use of Twitter in Iran famously demonstrated, enable

⁷⁵ In general terms, crowd-sourcing is an open invitation to a population to provide information and ideas. More specifically, the term is often used to refer to crowd-sourcing via web 2.0 technologies. See generally Sharma, 'Crowdsourcing Critical Success Factor Model', Working Paper (2010), available at: <http://irevolution.files.wordpress.com/2010/05/working-paper1.pdf>, and sources cited therein; Muthukumaraswamy, 'When the Media Meet Crowds of Wisdom', 4 *Journalism Practice* (24 July 2009); Howe, 'The Rise of Crowdsourcing', available at: www.wired.com (2006); and Giridharadas, 'Africa's Gift to Silicon Valley: How to Track a Crisis', *The New York Times*, 12 Mar. 2010.

⁷⁶ Meier, *supra* note 74, at 1259.

⁷⁷ For detailed case studies see J.G. Bock, *The Technology of Nonviolence: Social Media and Violence Prevention* (2012).

⁷⁸ The largest such network is Crisis Mappers which describes its role as being to 'leverage mobile & web-based applications, participatory maps & crowdsourced event data, aerial & satellite imagery, geospatial platforms, advanced visualization, live simulation, and computational & statistical models to power effective early warning for rapid response to complex humanitarian emergencies'. As of October 2012, it claimed 2,263 member organizations that include 'over 400 Universities, 50 UN Agencies, dozens of leading technology companies, several Volunteer & Technical Community Networks & Disaster Response NGOs': see <http://crisismappers.net/>.

⁷⁹ E.g., UNICEF has used mobile phone reporting systems in the provision of humanitarian aid. In Ethiopia, UNICEF used RapidSMS to distribute food supplies better. See 'Preventing Famine with a Mobile' (21 Dec. 2008), available at: www.mobileactive.org. See also S. Kinkade and K. Verclas, 'Wireless Technology for Social Change: Trends in Mobile Use by NGOs', UN Foundation-Vodafone Group Foundation Partnership (2008).

reporting from areas which fact-finders cannot themselves physically access, and generally increase public participation in human rights advocacy.⁸⁰ A range of wikis and user-generated content or collaborative websites, such as Wikileaks, OpenStreetMap (an editable street map of the world), YouTube,⁸¹ and the Hub,⁸² can serve similar functions.

Geospatial technologies also have enormous potential to aid in human rights work, and some organizations are beginning to use them in their investigations and advocacy.⁸³ Amnesty International, for example, as part of its 'Science for Human Rights' programme (together with the American Association for the Advancement of Science⁸⁴), is using mapping and satellite imagery to provide supporting evidence to witness accounts and to document abuses (such as the destruction of homes or villages), as well as to provide interactive visual information in its advocacy work.⁸⁵ Thus, for example, the AAAS was commissioned by AI and HRW to undertake a study of the final days of the civil war in Sri Lanka. The resulting report,⁸⁶ which made extensive use of satellite images available to the public through Google Earth, provoked a strong response from the Sri Lankan Government and has provided the backdrop for

⁸⁰ For an excellent overview see Joseph, 'Social Media, Political Change, and Human Rights', 35 *BC Int'l & Comp L Rev* (2012) 145; see also Ali, 'The Power of Social Media in Developing Nations: New Tools for Closing the Global Digital Divide and Beyond', 24 *Harvard Human Rts J* (2011) 185; and Beutz Land, 'Networked Activism', 22 *Harvard Human Rts J* (2009) 205.

⁸¹ See Diamond, 'Liberation Technology', 21 *Journal of Democracy* (2010) 76 (referring to a range of 'liberation' and 'accountability' technologies, and giving YouTube as an example of a tool 'for transparency and monitoring': '[e]nter "human rights abuses" into YouTube's search box and you will get roughly ten-thousand videos showing everything from cotton-growers' working conditions in Uzbekistan, to mining practices in the Philippines, to human-organ harvesting in China').

⁸² The Hub is a project of the international organization WITNESS. WITNESS provides training and equipment on using video technologies to record human rights abuses. The Hub is a website where human rights videos can be shared.

⁸³ See, e.g., International Crisis Group, 'War Crimes in Sri Lanka' (17 May 2010) (referring to satellite imagery providing evidence of abuses); Human Rights Watch, 'Georgia/Russia: Use of Cluster Munitions in August 2008' (9 Apr. 2009) (providing maps and satellite images of the location of cluster munitions use); Human Rights Watch, 'Israel/Gaza: Satellite Imagery of White Phosphorous Use' (25 Mar. 2009). See also the World Food Programme's use of satellite imagery at www.wfp.org/our-work/our-competences/being-ready/technology-helping-wfp. See also Talbot, 'Satellite Images Catch Human-Rights Violations in Burma', *Technology Review* (28 Sept. 2007). For uses of Google Earth see MapAction, 'Google Earth and its potential in the humanitarian sector: a briefing paper' (Apr. 2008).

⁸⁴ The AAAS has a dedicated 'Science and Human Rights Program', including a 'Geospatial Technologies and Human Rights Project'. See AAAS, 'What can geospatial technologies do for the human rights community?', available at: <http://shr.aas.org/geotech/whatcanGISdo.shtml>. See also Tactical Technology Collective, 'Maps for advocacy: An introduction to Geographical Mapping Techniques' (rev'd edn. 2010), available at: www.tacticaltech.org/sites/www.tacticaltech.org/files/MapsForAdvocacyTacticalTech-1.pdf.

⁸⁵ E.g., Amnesty's 'Eyes on Darfur' Project brings together satellite imagery, witness accounts, and ground photos to evidence and illustrate abuses in Darfur. The satellite images show villages before and after destruction: see www.eyesondarfur.org/about.html. Its 'Eyes on Pakistan' Project uses interactive maps to show the locations of attacks on civilians: see <http://www.eyesonpakistan.org/>

⁸⁶ AAAS Scientific Responsibility, Human Rights and Law Program, 'High-Resolution Satellite Imagery and the Conflict in Sri Lanka' (2009), available at: <http://shr.aas.org/geotech/srilanka/srilanka.shtml>.

extended discussions of the strengths and weaknesses of this type of approach.⁸⁷ The AAAS, at the behest of AI, has also been very active in using this technology to monitor developments in Syria in 2012.⁸⁸

Satellite imagery, however, can be very expensive to purchase, may need to be obtained from governments, and can be limited by factors such as time lag and cloud interference. In response, some have suggested or begun to develop unmanned aerial vehicles (UAVs) or other aerial photography mechanisms for humanitarian purposes (which could similarly be used in the human rights field), although the actual use of these is currently inhibited by problems of insurance and regulation issues for the civilian use of UAVs.⁸⁹

Other technologies, including artificial intelligence,⁹⁰ robotics,⁹¹ Photosynth,⁹² and hyperspectral imagery,⁹³ also have potential but largely unexplored human rights applications.

6 Towards a HR Wiki

Many of the social networks that we described above are peer-to-peer with minimal or no intermediation among the actors. They are characterized precisely by the extent to which they are decentralized and community driven. These features are captured in the definition of P2P as a ‘distributed network architecture composed of participants who make some of their resources directly available to other network participants

⁸⁷ ‘Sri Lanka’s forgotten mass graves: Google Earth and remembering the dead in Nandikadal’, *Groundviews*, 18 Sept. 2012, available at: <http://groundviews.org/2012/09/18/sri-lankas-forgotten-mass-graves-google-earth-and-remembering-the-dead-in-nandikadal/>.

⁸⁸ AAAS Scientific Responsibility, Human Rights and Law Program, ‘Satellite Imagery Analysis for Urban Conflict Documentation: Aleppo, Syria’ (2012), available at: <http://srhl.aaas.org/geotech/syria/aleppo.htm>.

⁸⁹ Sniderman and Hanis, ‘Drones for Human Rights’, *NY Times*, 30 Jan. 2012 (The authors argue that ‘[i]t’s time we used the revolution in military affairs to serve human rights advocacy’. Taking the example of Syria, they suggest that drones could record the repression ‘with unprecedented precision and scope. The better the evidence, the clearer the crimes, the higher the likelihood that the world would become as outraged as it should be’). For a review of the heated reactions that greeted this proposal see Meier, ‘Drones for Human Rights: Brilliant or Foolish?’ (Updated), 10 Feb. 2012, available at: <http://irevolution.net/2012/02/10/drones-for-human-rights/>.

⁹⁰ See, e.g., ‘Artificial Intelligence for Development’, available at: <http://ai-d.org/index.html>.

⁹¹ See Alston, ‘Lethal Robotic Technologies: The Implications for Human Rights and International Humanitarian Law’, 21 *J Law, Information and Science* (2012) 35; and IRIN, ‘Bots without borders’ (22 June 2009), available at: www.irinnews.org/Report.aspx?ReportId=84933 (discussing the potential for automated humanitarian relief).

⁹² Photosynth allows users to create a three dimensional model of a series of photographs uploaded to the site. If, e.g., a number of users took photos at the scene of an alleged human rights violation, the photos could all be ‘stitched’ together to create a compilation of many images taken from different perspectives; this could be an important evidence-gathering tool. See <http://photosynth.net/about.aspx>; Hattotuwa, ‘Information visualization through Microsoft Photosynth: Potential for human rights documentation?’ (31 July 2008), available at: <http://ict4peace.wordpress.com>.

⁹³ See Kalacska *et al.*, ‘The Application of Remote Sensing for Detecting Mass Graves: An Experimental Animal Case Study from Costa Rica’, 54 *J Forensic Sciences* (2008) 159.

without the need for central coordination'.⁹⁴ The attractions of such networks include their 'dynamic content, scalability, even openness, freedom, and collective intelligence.'⁹⁵ But while our proposal to establish a human rights wiki is designed to take advantage of many of the opportunities opened up by P2P type approaches, it is a significantly less decentralized undertaking. While there are many and varied examples of wikis, the starting point is to note that a wiki is actually nothing more than a collaborative online editing tool. It is thus, in itself, uncontroversial and everything depends on the structure of the wiki and the rules governing access to it by both contributors and users. And it is a technique that has certainly not been the exclusive preserve of community activists. To cite but a few examples, NASA has been using wiki technology in order to allow diverse sets of programmers to improve software.⁹⁶ The CIA, hardly a model of transparency or flat organizational structuring,⁹⁷ created its own Wikipedia clone, Intellipedia, in an effort to pull together the vast amounts of intelligence under its purview.⁹⁸ And the US Army has opened up certain of its manuals to be edited by any soldier given access.⁹⁹

In commenting on an early version of this proposal, one very knowledgeable reader suggested that the focus on a wiki-type approach was *passé* and perhaps even reflected a lack of awareness of the far more dynamic social media opportunities that are now in use in the human rights domain alone, let alone more broadly. But we believe that there is a distinction to be made between the heterogeneous array of new ICTs that indeed have the capacity to transform certain aspects of human rights monitoring, advocacy, and activism, and the more measured and centralized approach that is implied by the model that we are proposing. In some respects, our basic model picks up on the approach reflected in Wikipedia, the online encyclopedia.¹⁰⁰ By the same token, just as Wikipedia is constantly evolving in response to both hard experience and technological developments, there is no reason to assume that the human rights wiki would much resemble Wikipedia once it has been subject to the sort of intensive stakeholder consultations that would be required before it could be up and running.

In addition there are certainly reasons to question the extent to which the principles and norms underpinning an enterprise like Wikipedia, premised on the use of open source software to facilitate collaborative real-time reporting, are transferable to a human rights context. Is there, for example, a potential clash of cultures? The wiki culture draws very clearly on what would once have been seen as utopian visions of

⁹⁴ Keim and Noji, *supra* note 70, at 50.

⁹⁵ *Ibid.*, at 51.

⁹⁶ Sunstein, 'A Brave New Wikiworld', *Washington Post*, 24 Feb. 2007, available at: www.washingtonpost.com/wp-dyn/content/article/2007/02/23/AR2007022301596.html.

⁹⁷ See generally Alston, 'The CIA and Targeted Killings Beyond Borders', 2 *Harvard Nat'l Security J* (2011) 283.

⁹⁸ Sunstein, *supra* note 96.

⁹⁹ Department of the Army, Open-Source Intelligence, Army Techniques Publication No. 2–22.9 (FMI 2–22.9), 10 July 2012, available at: www.fas.org/irp/doddir/army/atp2-22-9.pdf; and Cohen, 'Care to Write Army Doctrine? With ID, Log On', *NY Times*, 14 Aug. 2009.

¹⁰⁰ See A. Lih, *The Wikipedia Revolution: How a Bunch of Nobodies Created the World's Greatest Encyclopedia* (2009).

universal sharing and collaboration designed to improve the human condition. Many precedents are cited by ICT historians, one of which is H.G. Wells' vision of a 'world brain' or global encyclopedia gathering all available information into a single knowledge database.¹⁰¹ One of the more interesting functions he envisaged for the project was as a 'clearinghouse of misunderstandings'.¹⁰² This early conception was inspired by the new technologies of index cards and microfilm. But Wells' brainchild and other comparable visions were inspired by notions of internationalist solidarity and sharing that might be thought to sit uneasily with the much more closely-held assumptions of the major human rights groups. Their assumptions tend to be grounded in an inherent distrust of many sources, and a deep-seated belief in the centrality of their own expertise in the process of 'authenticating' information. But this incompatibility can be taken either as a reason for explaining why it might be impossible to persuade such groups to participate in a human rights wiki, or as a rationale for encouraging them to embrace an evolving approach that technology will make ever more attractive.

Another caveat as to the transferability of the Wikipedia model concerns the applicability in the human rights arena of Wikipedia's three key information policies.¹⁰³ They are: (i) contributors should have or seek to achieve a 'neutral point of view'; (ii) information must be 'verifiable'; and (iii) 'original research' does not belong, since by definition it has not gone through the filter of peer or other review in other contexts. The first principle would not seem to be problematic, since neutrality can be interpreted to mean that there is no inherent bias towards one side or the other in a dispute, and this is not undermined by a strong commitment to human rights principles. Nor is there a problem with the second principle which in fact underpins most of the assumptions of the mainstream human rights groups. But, it is the third principle – which excludes original research in the sense of information that has not previously been reviewed and published elsewhere – which is, at first glance, potentially problematic. If it were to be transposed in this form to the human rights wiki it would present major and perhaps even insurmountable problems for efforts designed to be inclusive of information provided by groups on the ground and others who have not published polished and peer-reviewed analyses in advance. The questions raised by this principle actually take us to the heart of one of the challenges that will confront a human rights wiki, which is how to ensure the (relative) reliability of the data provided by different sources.

7 Quality Control and Reliability

In the case of Wikipedia, the reality would seem to be that the third principle is interpreted relatively loosely, in the sense that much information is not in fact substantiated

¹⁰¹ See J.M. Reagle Jr., *Good Faith Collaboration: The Culture of Wikipedia* (2010), ch. 2 for an interesting overview of Wells' vision and a series of related projects.

¹⁰² *Ibid.*, at 25.

¹⁰³ The best analysis of how Wikipedia functions is Reagle, *supra* note 101.

by reference to externally published sources,¹⁰⁴ and relatively modest efforts are made to ensure that an external citation actually supports the proposition expressed in the Wikipedia entry. But Wikipedia does have a range of other measures in place that are designed to provide some assurances as to the quality and accuracy of the data. For example, the editing history and the identity of editors are recorded and accessible (although pseudonyms are common and not strongly discouraged). The ‘talk’ or ‘discussion’ pages enable challenges and concerns to be aired. The footnotes place an onus on contributors to substantiate their claims and to provide a ready cross-reference or hyperlink to source materials. Pages can be categorized to facilitate a range of different types of comparisons and complex indexing.

Other devices designed to promote reliability include the system for registering users who undertake significant editing roles. In addition, editors and readers at large are able to ‘edit’ almost any entry, to ‘flag’ general concerns or especially contested issues, to call for greater substantiation of claims, and to indicate that more contributions are required before a page can be considered to have reached a certain threshold of adequacy. Other measures are designed to respond to alleged bad faith and include the ability to ‘protect’ pages from ‘vandalism’, and to block a particular contributor’s access to the site.

But while Wikipedia has a strong interest in ensuring reliability, the main currency for most human rights groups is the credibility of their information and analysis, and they stand to rise or fall on the strength of it. Thus, participation in collective enterprises of any sort is potentially problematic, at least for the larger groups. It is not so long ago that AI and HRW would not contemplate signing on to joint statements out of concern that they could not ensure that every single nuance therein comported with their individual take on things. Thus, the time-consuming and cumbersome procedures followed by major human rights groups are generally sought to be justified precisely on the grounds that reliability is crucial. This raises empirical questions as to the actual degree of reliability achieved in mainstream traditional reporting compared with the reliability of Wikipedia entries. While all too little work has been done on the former question, it is generally assumed that any egregious errors will be exposed by either the government concerned or its supporters, thus putting a certain element of pressure on the NGOs to be careful. More sustained and ‘scientific’ analyses have been undertaken in relation to Wikipedia pages, both internally and by external evaluators.¹⁰⁵ Summarizing the evidence, Reagle concludes that ‘[e]xternal assessments of Wikipedia quality indicate it is at parity with general-purpose print reference

¹⁰⁴ Thus Wikipedia describes its peer review process in these terms: ‘Wikipedia’s peer review process exposes articles to closer scrutiny from a broader group of editors, and is intended for high-quality articles that have already undergone extensive work, often as a way of preparing a featured article candidate. It is not academic peer review by a group of experts in a particular subject, and articles that undergo this process should not be assumed to have greater authority than any other’: available at: http://en.wikipedia.org/wiki/Wikipedia:Peer_review.

¹⁰⁵ For an overview of internal procedures see http://en.wikipedia.org/wiki/Wikipedia:100,000_feature-quality_articles.

works'.¹⁰⁶ Another study, in addressing concerns as to accuracy, concluded that open-source approaches are, in fact, 'remarkably well-organized, self-correcting, accurate, and concentrated'.¹⁰⁷

But the fact remains that because of the high stakes that are often involved for governments, corporations, and other actors, human rights reporting is subject to an especially high quality threshold. Major consequences follow if reported facts can be readily impugned as having been gathered through unreliable methodologies or by inexperienced, or biased fact-finders. Crowdsourcing, for example, potentially creates a tsunami of unverified reporting.¹⁰⁸ Because of the very real concern that crowd-sourced information could contain erroneous or falsified data,¹⁰⁹ at this stage, it would be difficult to conceive of a human rights report based solely on crowd-sourced information. But crowd-sourcing could certainly be used by organizations (e.g., national human rights institutions, ombudsmen, NGOs) to receive notifications of alleged abuses which could then be tracked and investigated, or crowd-sourced platforms could be bounded so that only certain trusted sources (e.g., UN or other designated local field investigators) could provide information to them.¹¹⁰ Some programs are also being developed to address reliability and accuracy concerns – SwiftRiver, for example, uses natural language computation, machine learning, and veracity algorithms to aggregate, filter, and triangulate information from online news, blogs, Twitter, SMS, and other sources.¹¹¹

The bottom line in relation to this issue of reliability is that there are a great many approaches and techniques that can be used in order to provide appropriate assurances, and the options available are expanding by the day. Moreover, it has to be kept in mind that existing human rights reporting is far from being watertight in terms of accuracy, and the proposal to make reporting subject to peer amendment and revision is precisely designed to ensure a high standard.

8 Principal Attractions of a Wiki

The most important attraction is the creation of a more comprehensive and integrated human rights database, especially in relation to non-crisis contexts which currently

¹⁰⁶ Reagle, *supra* note 101, at 7.

¹⁰⁷ Keim and Noji, *supra* note 70, at 49.

¹⁰⁸ See US Department of State, 'Haiti Earthquake: Breaking New Ground in the Humanitarian Information Landscape' (July 2010), at 4, available at: https://hiu.state.gov/Products/Haiti_EarthquakeHumanitarianInformation_2010Jul_HIU.pdf.

¹⁰⁹ See Iacucci, 'Ushahidi-Chile: an example of crowd sourcing verification of information', available at: <http://crisismapper.wordpress.com/2010/06/28/ushahidi-chile-an-example-of-crowd-sourcing-verification-of-information/> (discussing false reports made following the Chile Earthquake); Smith, 'Cellphone and Internet access helps – and hinders – accurate reporting in Kenya' (31 Jan. 2008), available at: www.csmonitor.com (discussing false information and rumours).

¹¹⁰ See, e.g., P. van der Windt, 'Voix des Kivus (Ushahidi in DRC)', talk given at the International Conference on Crisis Mapping (2009) (discussing a pilot project on the eastern Democratic Republic of the Congo, providing mobile phones to village leaders to report abuses via SMS).

¹¹¹ See <http://swift.ushahidi.com>.

tend to be subject to a huge degree of variation in terms of attention. The advantages have been canvassed earlier and need not be repeated here.

The second attraction of a human rights wiki is the ability to diversify, if not quite democratize, the process of human rights monitoring and reporting. Ours is a vision of a network that can aspire to a degree of universality, comprehensiveness, democratization, and transparency. It would be far removed from the existing system which, at least in some respects, could be characterized as fragmented, hierarchical, largely non-collaborative, and excessively influenced by organizational self-interest rather than a shared vision of the common good. In this sense, our proposal is, as already noted, merely one step in a long line of idealistic visions for information sharing, of which wikis are but one recent manifestation.

What are the consequences of 'democratizing' control over some of the data that are the stock in trade of the major human rights NGOs? In positive terms, recent literature has concluded that there are important psychological benefits that flow from the ability of actors on the ground to participate as stakeholders. In the context of humanitarian disaster relief, these therapeutic consequences are said to have had a very positive overall impact,¹¹² and there is no reason to believe that local human rights groups would not also be empowered and incentivized. In terms of the concerns that might legitimately be expressed, the answer will depend to a large extent on how much democratization is contemplated. There is a big difference between opening up access under strictly limited conditions on the one hand and on the other moving to the full Wikipedia model. But even at the latter end of the spectrum, we are in a zone of what might be termed controlled democracy. Contributors are still self-selected by their access to the knowledge required to use the new ICTs, their access to the resources required, and their ability to devote the necessary time and energy to reacting, updating, and cross-checking.

The third major attraction of a wiki is the prospect of facilitating much greater linguistic inclusiveness. Language is an important and often overlooked question. At the international level, the dominance of English is perhaps even more marked in the human rights arena than elsewhere. Both HRW and AI can be said to operate and report overwhelmingly in English despite some efforts towards translation. It is true that Google Translate and similar programs are increasingly useful in enabling instant translations of more or less usable quality to be made, but this is no substitute for a genuinely multilingual framework. And such translation is usually going to be more reliable and feasible in relation to formal reports than in translating information of a less formal character that is submitted by local sources, even if they have access to the translation software. While it is true that there are important human rights groups operating in a range of languages other than English, few of them achieve translation of their reports into other major, let alone local, languages. Language barriers thus remain surprisingly high within the human rights community. Wikipedia, by contrast, carries articles in more than 260 languages and now appears in 285 different

¹¹² Keim and Noji, *supra* note 70, at 50.

language editions.¹¹³ A human rights wiki would need to be carefully designed so as to achieve a language policy specifically designed to enable the contribution and cross-referencing of information in a variety of languages.

The potential for greater linguistic and thus cultural diversity and pluralism stands as a strong incentive to move towards such a model. Pluralism has obvious advantages in terms of enabling a far wider array of contributors to participate, reducing cultural and other barriers, giving a greater sense of ownership in the project to local actors, and overcoming some of the problems involved in the cycle of interpretation and translation that is often involved in rendering reports into English and then sometimes back again into a local language. Of course, diversity also introduces important variables into the equation, some of which might be seen as a threat by those who aspire for uniformity or homogeneity in approaches to reporting. But, just as has been shown to be the case with the different language versions of Wikipedia, a more linguistically diverse system will inevitably reflect different conceptions of power, collectivism, and anonymity.¹¹⁴

A fourth major attraction of a wiki is the element of timeliness. Interactive approaches to data gathering and dissemination have the advantage of being more timely and responsive to developments. An important dimension of traditional reporting is the time delay that is often involved in reporting. Timelines for traditional reports differ according to whether the situation is, at one end of the spectrum, considered to constitute an emergency or, at the other, more of a longstanding structural problem. But a great many reports involve months, and sometimes many months, of detailed revision, editing, approval, formatting, and tailoring, thus rendering the information much less timely. Of course, these various processes are designed to make the 'final product' more refined, more immune to easy criticism and rebuttal, more compelling and more analytically sophisticated. Leaving aside the issue of how important and valuable these endless refinements really are in at least some contexts, there will be others in which more timely reporting will offset the other advantages offered by greater refinement.

9 Challenges to Address

Our goal in this article is to identify some of the issues or challenges that will need to be addressed by any group of individuals that seeks to explore the options for a human rights wiki. In essence, our proposal is limited to putting a challenging idea on the table. It would be presumptuous as well as counter-productive for us to seek to be prescriptive of the many ways in which a human rights wiki might be structured, organized, or managed.

Thus, for example, in determining the scope or coverage of the wiki, at least at the outset, endless possible permutations might be considered. The wiki could seek to

¹¹³ 'List of Wikipedias', available at: http://meta.wikimedia.org/wiki/List_of_Wikipedias.

¹¹⁴ Reagle, *supra* note 101, at ch. 3.

cover all rights, in all regions of the world, in extensive detail, and to combine a significant degree of analysis along with data provision. Or it could start by covering a more limited range of rights, in a selected number of countries, according to a template that restricts the type and form of information used. In between these two approaches lie many intermediate options.

Similarly, the range of contributors could start off being quite limited, in the sense that only 'accredited' NGOs would be able to upload information or undertake editing. Or a more expansive and inclusive approach might be contemplated. These issues, in turn, would be closely linked to the question of management. In the aftermath of the Haiti earthquake it was observed that 'each system was an island of information, leading to unnecessary duplication, fragmentation and significant frustration'.¹¹⁵ An unmodulated free-for-all is not the optimal model. One could envisage a relatively closed structure or a more open and 'democratic' one. There will always be a level of resentment at perceived managerial intrusions designed to enhance quality and ensure civility, but some sort of structure is essential.¹¹⁶ Allegations that contributors or managers are pursuing a nefarious political or other agenda would be expected to surface on a regular basis. But the management response will be much more persuasive to the extent that the culture relies upon the strength of numbers, the transparency and exposure provided by the openness of the system, and a degree of faith that goodwill can prevail even in such a contested domain.

Wikipedia explicitly confronted the assumptions that contributors would act in bad faith. While setting up an elaborate, but somewhat consultative if not democratic, management system to monitor content and respond to complaints, the organizers also developed a norm that they called Wikiquette, which included guidelines such as 'assume good faith' and 'please do not bite the newcomers'.¹¹⁷

Another major challenge is to manage security and privacy concerns. Crowdsourcing, for example, almost always raises privacy and security concerns for those reporting abuses. Such concerns demand careful consideration before the technology is deployed in sensitive environments. For example, a repressive government might monitor text messages sent to a platform, or require the registration of personal information by those involved.¹¹⁸ New technologies make it harder to protect the identity

¹¹⁵ ICT for Peace Foundation, 'Haiti and beyond: Getting it right in Crisis Information Management' (Mar. 2010), available at: <http://ict4peace.org/updates/haiti-and-beyond-getting-it-right-in-crisis-information-management>.

¹¹⁶ Those recounting the history of Wikipedia have noted the applicability of Godwin's Law of Nazi Analogies which provides that 'as an online discussion grows longer, the probability of a comparison involving Nazis or Hitler approaches one': Godwin, 'Meme, Counter-Meme, Wired 2, No. 10' (Oct. 1994), cited by Reagle, *supra* note 101, at 2. The easiest example is the tendency of one whose evaluation of something is disputed or even suppressed to resort to calling the known or anonymous other party a Nazi.

¹¹⁷ Reagle, *supra* note 101, at 3.

¹¹⁸ See Meier, 'How to Communicate Securely in Repressive Environments' (15 July 2009), available at: <http://irevolution.wordpress.com/2009/06/15/digital-security/>; for the response of the US Government see B. Obama, 'International Strategy for Cyberspace: Prosperity, Security, and Openness in a Networked World' (2011), available at: www.whitehouse.gov/sites/default/files/rss_viewer/international_strategy_for_cyberspace.pdf.

of information sources in order to avoid the harassment of witnesses or the persecution of sources. Face-recognition technology, the authorities' ability to mine metadata for clues as to the source of the data, and other such techniques all pose important challenges that a wiki would need to confront. But again, technology is part of the solution as well. Witness has developed a SecureSmartCam app (SSC) that can 'protect the identity of those filming and those being filmed, protect relevant metadata, and integrate human rights standards of consent and intent into mobile video'. It is also able to embed relevant metadata during filming or uploading, thereby increasing the video's evidentiary potential. Another software program, Obscuracam, enables the metadata to be stripped out of video-phone uploads and for facial identities to be obscured by pixels.¹¹⁹

Many other challenges will also arise, but are equally susceptible to creative solutions, which will also often be driven by emerging ICTs. The existing unevenness of access to some of the technologies required raises issues with which Witness and other groups have long grappled.¹²⁰ The sustainability of the effort and investment of time and resources needed may be hard to ensure, especially where small under-resourced groups are operating in non-crisis situations. Various expenses will be incurred and forms of financing and contributions would need to be devised. Finally, training will be necessary for many of those involved if the wiki is to run effectively and achieve the desired levels of reliability and consistency.

10 Conclusion

The proposal to create a collaborative online editing tool – a human rights wiki – to bring together much of the human rights data that are currently dispersed and inadequately accessible has great potential to transform the existing politics of information in this field. The existing system is, in at least some respects, fragmented, hierarchical, largely non-collaborative, and excessively influenced by organizational self-interest. The wiki has the potential to bring deep change, but it is far from a revolutionary proposal. There is often a tendency to overstate the magnitude or the significance of changes to be wrought through technological innovation, and we wish to avoid doing that in this context while at the same time emphasizing the importance of a more enthusiastic and innovative embrace of emerging information and communications technologies by the human rights community.

At least some of the elements of the approach we are proposing have long been reflected in proposals to create more synergy between local and international groups, to democratize the process of reporting, to build in correction mechanisms to increase

¹¹⁹ See www.witness.org/cameras-everywhere/witness-labs.

¹²⁰ See Witness, *Cameras Everywhere* 2011, 'Current Challenges and Opportunities at the Intersection of Human Rights, Video and Technology' (2011), available at: www.witness.org/cameras-everywhere/report-2011/table-of-contents; and Gregory, 'Cameras Everywhere: Ubiquitous Video Documentation of Human Rights, New Forms of Video Advocacy, and Considerations of Safety, Security, Dignity and Consent', 2 *J Human Rts Practice* (2010) 191.

accuracy, to reduce distortions in reporting, and to improve the timeliness and responsiveness of reporting. If the international NGOs were more susceptible to the impact of competition they would be impelled to innovate at a much faster rate than has been the case to date. The relative paucity of competition, and a certain complacent satisfaction with models of reporting that have changed all too little since the 1980s, means that the major NGOs have been rather reluctant to innovate by exploring the full potential of new ICTs.

Some observers might fear that the advent of a human rights wiki would pose a major threat to the prominence of established monitoring organizations.¹²¹ They would point to the experience in humanitarian situations in which it has been said that ‘Crisis Mapping is not simply a technological shift, it is also a process of rapid decentralization of power. With extremely low barriers to entry [new groups on the ground] are ignoring the traditional hierarchies.’¹²² But it is also very easy to overstate the risks involved for the mainstream international groups. The rapid provision of small-scale factual information in a humanitarian crisis is very far from the complex functions performed by human rights monitors. Thus, our proposal is premised on the assumption that the way forward must lie in a collaborative enterprise in which the role of the major NGOs will continue to be crucial. Ours is not a proposal to marginalize or sideline these groups, but rather one designed to provoke greater self-reflection on their part and to encourage external pressures and impetuses for far-reaching change.

To end where this article began, the development of a human rights wiki would go a long way towards realizing Antonio Cassese’s vision of a broad-based community of civil society groups generating the reliable, timely, and systematic data required to enable international justice mechanisms to function in the most effective possible ways.

¹²¹ As Shirky noted several years ago in relation to the impact of the social media revolution: ‘[C]hange will not be limited to any particular set of institutions or functions. For any given organization, the important questions are “When will the change happen” and “What will change?”. The only two answers we can rule out are never, and nothing. ... [N]ewly capable groups ... are working without the managerial imperative and outside the previous strictures that bounded their effectiveness.’ C. Shirky, *Here Comes Everybody: The Power of Organizing Without Organizations* (2008), at 22.

¹²² ‘Message from the Crisis Mappers’, Google Groups Forum, 12 Feb. 2012, quoted by Meier, *supra* note 74, at 1259.