DIGITAL MEDIA AS EXPERIMENTAL GOVERNANCE

SHIFTING THE ACCOUNTABILITY PARADIGM IN INTERNATIONAL HUMAN RIGHTS?

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My inspiration to develop this research project came following the long vacation of 2015, which I spent at King’s College, Cambridge as a part of a scholarship for research in sovereignty and human rights towards my final year dissertation. During my research I became involved with The Whistle; a digital human rights research project based at the Centre of Governance and Human Rights. Through the project I came to know of several digital initiatives for reporting human rights abuses, which purport to generate greater accountability in human rights governance.

As a student of politics immersed in this new and exciting world introduced to me by sociologists, I was interested in the political context under which these initiatives were expected to work, and whether they indeed could. This marked the point of departure for my inquiry into the political context of these digital initiatives, and to what extent they challenge conventional IGO-based mechanisms.
Abstract

New ways of reporting violations using mobile applications promises democratisation and empowerment for ordinary civilians, prompting a critical inquiry into the political implications of these tools on existing modes of governance. Our research answers the question: do experimental, digital technology forms of human rights governance present a more effective mechanism for accountability than inter-governmental organizations?

The first part of our project will demonstrate that the United Nations framework for human rights governance is flawed by design on three accounts: it is unable to bypass the monolith of sovereignty to discipline states; too under-resourced to establish National Human Rights Institutions; naming and shaming is impeded by geopolitical interests of strong states.

The rise of digital media platforms designed for reporting human rights violations has been scrutinised by predominantly sociologists and practitioners, in their potential to generate accountability. The second part of this project collates this research to develop a framework for understanding the stages and mechanisms of this form of “experimental” governance.

Finally, the political implications are examined, using the case studies, CameraV and eyeWitness to Atrocities. By testing these digital initiatives against the shortcomings of IGO-based governance, we can determine whether they transcend or perpetuate conventional problems.
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Introduction

New ways of reporting violations using mobile applications promises greater accountability through the process of democratisation and empowerment for ordinary civilians. With the alleged means to transcend national barriers, and appeal instead to the international community, these digital initiatives purport to increase ‘[…] the mechanisms that a citizen has to hold her government to account’ (McPherson 2015: 38). This research project sets out to provide a framework by which contemporary developments in these digital technologies can be understood politically. The project aims to answer the research question: do experimental forms of human rights governance present a more effective mechanism for accountability than inter-governmental organisations?

This research question arises out of two grievances: first, an understanding that the United Nations, and the Human Rights Committee in particular, fall short in their abilities to discipline states to respect the International Covenant on Civil and Political Rights (ICCPR), provide legal remedy (Goodman 2002: 531), and generate accountability beyond naming and shaming¹. Second, a healthy scepticism towards the potential of digital technologies to generate accountability, especially as it appears closer to the notion of ‘accountability through methodology’ (Orentlicher 2016: 510).

Supporting this inquiry, literature consulted on our first point includes; Cook, Goodman, and Baxi, and their critiques of failures in implementing General Recommendation at the U.N. Human Rights Committee, as well as Williams and Holsti on sovereignty and enforcement. More recent literature by McPherson, Land, Koetll and Hindman was furthermore consulted to extrapolate the mechanisms of digital technologies as experimental governance, and to hereafter discover its associated problems. The report by McPherson, ICTs and Human Rights Practices, a well as the

¹ Hereafter understood as ‘a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct and may face consequences for his or her actions’ (Pollak and Slominski 2009: 917)
paper on *Citizen Media Research and Verification* by Koetll, represent the cutting edge within the growing field of digital technologies as human rights governance, or as is popularly coined, ICT4HR (Information Communications Technology for Human Rights), and greatly informed our research. These nevertheless also serve as points of contestation herein, as we question the wider impact of digital initiatives, and test whether they transcend or perpetuate traditional problems, or indeed whether they create an entirely new set of problems altogether.

Our thesis holds that the effects of digital initiatives depend on the socio-political context, which must allow the linking of data to action, in order to generate accountability. Through this research project, the author hopes to make an original, albeit small, contribution to the development of a pragmatic political theory on the real impacts of digital technologies. We intend to explore the *accountability gap* that permeates the greater picture for ordinary civilians and conventional modes of governance.

Our methodological approach uses secondary sources on the U.N. human rights framework and sovereignty, to establish three categorical mechanisms: the *monitoring* and *recommendation* mechanism; the *reporting* mechanism; and the *naming* and *shaming* mechanism, with each of their associated problems. We will also utilise a primary source report by Christoph Koetll, to inform our research from a practitioner’s perspective.

We also conduct two case-study experiments of the digital initiatives, *eyeWitness to Atrocities* and *CameraV*, using interviews and primary source reports to extract qualitative data. Crucially, two interviews were conducted to account for the lack of extensive literature on these initiatives; for these, we consulted three informants in key positions at the proprietary organisations of the initiatives agreed to provide testimony, namely; Morgan Hargrave (Systems Change Coordinator, WITNESS) for CameraV, Wendy Betts (Project Director, International Bar Association) and their in-house analyst, Raquel Vazquez Llorente for eyeWitness to Atrocities.
Placing our research question within the context of the status quo, Chapter 1 identifies three fundamental shortcomings of conventional IGO-based human rights governance: it is unable to bypass the monolith of sovereignty to discipline states; too under-resourced to establish National Human Rights Institutions; and it is hindered by the geopolitical interests of strong states in its ability to provide a platform for *naming and shaming.*

Chapter 2 develops an original framework for how experimental human rights governance is meant to work through three stages: *information reporting, fact-finding,* and *peer review.*

We use these stages as “ideal-types”, and juxtapose our case-study findings against these to evaluate to what extent the premise of democratisation, empowerment and ultimately accountability hold in practice.
Chapter 1 | Reviewing sovereignty, the UN framework, and conventional human rights governance

1.1 Shortcomings of IGO-based HR governance

This chapter provides a snapshot of de facto IGO-based human rights governance, its underlying logic and associated problems. The United Nations framework is the *sine qua non* mechanism for accountability in international human rights, and with the introduction of the Paris Principles of 1993, a more ambitious and supranational trajectory was set in the hopes of greater accountability. Though ‘[…] a huge proportion of the UN’s time, work and resources are dedicated to this accountability function, […] decisions made at the UN are not legally binding’ (Hill and Peter 2007: 2), as this would effectively infringe on the nation-state’s sovereignty.

Though it is not our intention to launch into an already exhausted discourse on sovereignty and supranationalism, our aim is to critically examine the *underlying logic* of UN-based human rights governance. We extrapolate three key mechanisms in the governance process:

1) **The monitoring and recommendation mechanism**

   The UN Human Rights Committee, a body of experts, monitors implementation of the International Covenant on Civil and Political Rights (ICCPR). It is within the remit of the committee to request country reports and make recommendations to member-states. This assumes that states are subject to (scrutiny by) the United Nations.

2) **The reporting mechanism**

   National Human Rights Institutions (NHRIs), which are independent national bodies, monitor human rights treaty compliance, and feed their findings back into the the UN Human Rights Committee. The reporting mechanism takes it as a given that civil society can appeal to (an iteration of) the United Nations through the NHRIs, when human rights are violated. This
furthermore implies that NHRIs can transmit human rights norms from the United Nations, into the domestic system. According to Hill and Peter, ‘the most important accountability mechanism at the national level […] are the NGOs and CSOs […] that scrutinise their government’s actions in the UN’ (Hill and Peter 2007: 4).

3) *The “naming and shaming” mechanism*

NGOs and CSOs contribute to an institution of inter-governmental encouragement, or “naming and shaming”. This is done through either the Human Rights Committee, or more recently, the Human Rights Council’s Universal Periodic Review.

This mechanism assumes that human rights are a universal aspiration, which can be enforced through intergovernmental relations, prompting state *compliance*.

In the sections ensuing this, we will corroborate the following problems pertaining to each of the aforementioned mechanisms and institutions:

1) The U.N. Human Rights Committee is unable to bypass the monolith of sovereignty to discipline states

2) The U.N. is too under-resourced to establish National Human Rights Institutions

3) Geopolitical interests of strong states impedes accountability through *naming and shaming*.

In a nutshell, human rights governance is largely dependent on the socio-political context of the state in question. Throughout this chapter we will concern ourselves with three principal bodies of the UN Human Rights framework: The Human Rights Committee, the Human Rights Council (HRC), and the International Coordinating Committee. Though the General Assembly (UNGA) and
the Security Council (UNSC) are mentioned on occasion, the primary subject matter at hand remains the underlying logic of the above institutions, at each of the identified mechanisms.

1.2 The *monitoring and recommendation* mechanism

This section introduces the UN Human Rights Committee - the principal body concerned with the *monitoring* and *recommendation* mechanism - and sets out how it was intended to work. The Committee exists to monitor the implementation of the International Covenant on Civil and Political Rights (ICCPR), one of two covenants forming the International Bill of Human Rights. Once ratified by member-states, the ICCPR creates ‘[…] legally binding obligations’ (Moore and Pubantz 2006: 237). As such, the existence of the Committee is largely contingent on the premise that states are subject to (scrutiny by) the United Nations.

According to the UN High Commissioner for Human Rights, Navi Pillay, this means that states must ‘[…] remove any obstacles to prosecuting international crimes and gross human rights violations, in particular, legal obstacles such as amnesties or statues of limitations’ (Pillay 2012). This is a necessary precondition for the Committee’s ability to exercise power, via *requesting* obligatory reports from party states, and making *general comments* or *general recommendations*.

As an institutional expression of the ICCPR, the Human Rights Committee seeks to implement it across its member-states, by way of monitoring reports submitted by party states, considered by its constituent base of independent experts (OHCHR 2005: 2). The Committee holds all party states to the obligation of submitting these reports regularly, and […] reviews them in detail and makes recommendations to governments for improvement and additional legislation’ (Moore and Pubantz 2006: 237). These recommendations are then delivered to the state in the form of the ‘concluding observations’ (OHCHR 2005: 13).
We can now turn our attention to how this process works in practice. Slaughter refers to this design as “transjudicialism” (Slaughter 2004: 76), characterised as national courts and institutions who subject themselves to the persuasive authority of ‘[…] conclusions reached by other countries and by the international community’ (Ibid). She suggests, that the combination of international tribunals and national constitutional courts, eventuates in a ‘[…] genuinely global community of courts and law’ (Slaughter 2004: 80). She quotes former Chief Justice Smith, who, using the case of the Norwegian Court, notes the increasing difficulty in establishing either national or international rules, as superior (Slaughter 2004: 81). Though Slaughter acknowledges this vertical interaction between the national and the supranational, she does warn that this is ‘[…] only to a point’ (Slaughter 2004: 81). The line is drawn where international rules move ‘[…] too far out of line with prevailing domestic democratic consensus’ (Ibid).

Cook traces the entire process using the example of the implementation of women’s rights in the context of the Committee, and argues for the inadequacy of international law in achieving these (Cook 1994: 251). She equates the domestic level to the ‘first line of defence’ (Cook 1994: 28), at which point existing domestic remedies ‘[…] have to be exhausted’ (Ibid) before international mechanisms are considered. She notes that ‘the international machinery for the protection of human rights is subsidiary’ (Ibid) to their national counterparts. States are nevertheless required to report on the adequacy of their national machinery.

If a state neglects compiling a report for the Committee (for instance in the year following the concluding observations), the Committee will resort to compile its own report on behalf of the state, using existing observations and input from CSOs and NGOs. The Committee can only ensure that the recommendations are once again sent to the state in question (OHCHR 2005: 20). At best, it may resort to request that NGOs and CSOs make the Committee’s concluding observations public to exert pressure on the state and strengthen potential national campaigns (also known as naming and shaming, a process we shall return to later in this paper) (Cook 1994: 192), in addition to
including this in the annual report compiled for the General Assembly (OHCHR 2005: 11). Summarising the sentiments of Cook and Knop, An-Na‘im maintains that international law depends on ‘[…] voluntary compliance and cooperation of sovereign states’ (Cook 1994: 169).

More often than not however, states do respond, but do not adequately implement recommendations. Goodman suggests that states may have “invalid reservations” to human rights treaties (such as the ICCPR), which have little - if any - legal remedy (Goodman 2002: 531). According to Goodman, there are three dominant options, which could feasibly follow an invalid reservation. He describes the approach adopted by the Human Rights Committee as the anti-severability (AS) position, consisting of a positive and a normative component. The former consists of two options: ‘[either] the state remains party to the treaty but is still not bound by those terms that the reservation modified or excluded (option 1), or the state is no longer party to the treaty (option 2)’ (Goodman 2002: 532)

Goodman admits that the first option effectively resorts to nothing of actual consequence (Goodman 2002: 533), as it would neglect the interests of other states and defeat the “bargained-for” elements of the ICCPR (Ibid). He argues that proponents of AS prefer the second option (although it is still arguable to what extent even this option makes a real difference). This component nevertheless clashes with the notion of state-consent, and by extension the normative component, which contends that ‘[…] severing an invalid reservation and thus binding the state to the very provisions it rejected is thought to transgress foundational normative commitments’ (Goodman 2002: 533).

In other words, it remains that states are able to stay ‘[…] in technical compliance with the [ICCPR] while engaging in practices that the [ICCPR] condemns’ (Baylis 1999: 277). For instance, certain party states wishing to undercut the supposed “supremacy” of the UN as a supranational organization, could present reservations which would structurally enable them to ignore concluding observations. Some such examples include the United States, who submitted its first report to the
Committee in March 1995, and according to Baxi, contained within it several reservations to the implementation of the ICCPR (Baxi 1996: 283). On articles 6, 10, and 14, the United States expressed reservations to the rights of juvenile offenders on points, such as, prohibiting the death penalty from being exercised, as well as segregation of juvenile and adult offenders (Baxi 1996: 286). The US also reserved the right to reinforce capital punishment (in spite of article 6) (Ibid), and flagged a reservation against article 20 (which prohibits propaganda for war) on grounds of freedom of speech (Baxi 1996: 287). It also maintained the right to exercise of plenary power over Native Americans, including the right to extinguish aboriginal title (Baxi 1996: 287), clashing with article 1. Reality thus manifests itself in an acceptance of the de facto primacy of state-consent.

Of course this is even more worrying, given that the US is a steward of the ICCPR. Steward states ‘[deploy] their power and other resources to advance human rights in the settings where international law, on its own, won’t have much impact’ (Hafner-Burton 2013: 5). These states bring some degree of legitimacy to conceptions that, as Geuss perfectly describes, aren’t much more than ‘[…] a kind of puffery or white magic. Perhaps if we repeat [and] pass enough resolutions, people will stop doing various horrible things to each other […] but perhaps not’ (Geuss 2001: 144).

So far, we have established that the Committee is unable to discipline sovereign states, as a result to two obstacles: first, states are reluctant to ‘[…] design adequate corresponding implementation schemes’ (Cook 1994: 24), and; second, states are reluctant to share internal matters - a point we shall now turn to in the next section of this chapter.

The Committee’s inability to discipline states is also largely pertinent to the anarchic system within which state-relations are “inter-governmental”, effectively allowing governments to still fully exercise their sovereignty and ignore directives. The supranational IGO is thus more or less a paradox, incompatible with the notion of sovereignty. According to Holsti, sovereignty ‘[…] defines the essential characteristics of the relations between the actors, namely that no actor has a right to command others, and that none has the obligation to obey’ (Holsti 2004: 116). Herein
Holsti delineates the axiomatic nature within which states operate, and the manner in which IGO actors fall short, by design. This make it easy for us to extrapolate the *prima facie* predicament of the UN (amidst a world consisting of sovereign states): in such a setting there is ‘[…] anarchy (no government), [which] means that all agreements and rules between states have to be based on consent’, ergo the problem of reservations (Holsti 2004: 116).

We can thus see that the paradox in human rights governance arises out of two conditions: on the hand, relations between states are inter-governmental; on the other, the United Nations is no more than a project aspiring to supranationalism, amidst the choppy waters of a non-hierarchical and anarchic world system. As such, the perception that issues of accountability in human rights violations can be dealt with and avoided if the intervening agency is ‘some incarnation of the UN’ (Williams 2005: 151) is a fallacy. A consent-based UN could be ignored by any state, should they wish to do so. Interestingly, Williams even goes as far as to suggest that the UN only works ‘[…] to the extent that it is feeble. If it were were resourced […] it would be of even greater concern to nation-states’ (Williams 2005: 152). This presents a scenario where the UN appears to be tolerated and subject, as opposed to states. As we shall in the next section, this has far-stretching implications for the reporting mechanism, where it becomes apparent that the state cannot be circumvented vis-à-vis human rights appeals.

1.3 The reporting mechanism

The reporting mechanism involves civil society engaging with the United Nations with reports of human rights violations. For an individual who finds that domestic remedies fall short of addressing their concerns, she or he can utilise the *Individual Complaint Procedure* (ICP), provided that the country in question is one of seventy countries, party to the Optional Protocol to the Political Covenant (Cook 1994: 24). On first impression, this mechanism allows for individuals to circumvent the state and report violations to the UN Human Rights Committee. On second thought
we are left with the question, what is to prevent the state from ignoring the recommendations of the Committee, if they have already neglected addressing the issue at the national level? Similarly, what is to happen if the state is unresponsive to the given recommendation? We explored these questions in the previous section, and can thus already observe that the Committee’s lack of supranational power to discipline states, renders the ICP ineffective in practice.

Knop points out that the Individual Complaint Procedure falsely suggests that individuals ‘[…] can break down the monolith of the sovereign state to represent their interests directly in international law’ (Cook 1994: 157), when in practice, the Committee can only do so much to prompt state compliance.

Nevertheless, a second, and much more central element to the reporting mechanism, is the use of National Human Rights Institutions (NHRIs). Pillay called for the “setting up [of] new and specialised institutions that can handle international crimes and gross human rights violations’ (Pillay 2012) at a national level. According to Pegram, a NHRI is ‘a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights’ (Goodman and Pegram 2011: 54).

NHRIs are particularly interesting because they are representative of the UN’s overt lack of capacity to enforce human rights norms into the realm of the sovereign state. Nevertheless, as Hafner-Burton points out, ’[…] while human rights negotiators may not be able to ignore or bypass state sovereignty, they are not deterred from trying to circumscribe its prowess’ via institutions and agencies, especially at a regional and national level (Gearty and Douzinas 2012: 165).

Cardenas optimistically highlights that NHRIs have been ‘[…] the bridge between the ideal and its implementation’ (Ibid), predominantly as they are believed to ‘function as vehicles for promoting the diffusion of international human rights norms into domestic political systems’ (Goodman and Pegram 2011: 8).
Though we needn’t inflate the relationship between the UN and NHRI, it would be naïve not to recognise the significant role and interest of the UN in promoting the establishment of such institutions. According to Cardenas, the UN played a more significant role to this end than states (Cardenas 2003: 24). The International Coordinating Committee for National Human Rights Institutions (ICC) further encourages the establishment of NHRI (Goodman and Pegram 2011: 57), and in addition to this, serves to rate existing institutions via the Sub-Committee on Accreditations (Goodman and Pegram 2011: 55). Ratings of institutions are typically indicative of the level of independence of that particular NHRI from the state (Goodman and Pegram 2011: 7), and can thus serve as ‘flags’ in addition to state reports, to enable determination of the level of integrity of any given NHRI, and in extension, the specific state in question.

Williams, however, asserts that the UN is ‘[…] under-resourced to the point of incapacity’ (Williams 2005: 152) in its ability to discipline states. This means that the UN’s treaty bodies, including the Committee, rely heavily on the work of the independent NHRI, particularly in reviewing state-compliance through afore-mentioned reports (Goodman and Pegram 2011: 2). Quoting Carver, Pegram points out the centrality of the NHRI in dealing with individual complaints (Goodman and Pegram 2011: 5), despite doubt surrounding NHRI’s capacity to handle both individual complaints (acting as “ombudsmen”) and to address systemic human rights problems (Goodman and Pegram 2011: 19).

Ultimately, there seems to be a great deal of variance across NHRI, as to what any given institution considers to be within its remit, which in turn depends on the state and its commitment to human rights. Perceptively, Hafner-Burton notes that ‘the current system of international human rights law corresponds well with protecting human rights […] generally in the settings where the worst human rights abuses are least likely to happen’ (Hafner-Burton 2013: 4). This of course further emphasises the contextually driven nature of the possibility for accountability, which we shall address next.
The conception of NHRIs is based largely on the premise that they can transmit ‘[…] human rights norms from the international to the domestic level’ (Goodman and Pegram 2011: 2), via transnational networks which supposedly circumvent state sovereignty. They allegedly do this via trans-governmental relations; networks that facilitate ‘[…] direct interaction among subunits’ of governments (i.e. the NHRI), independent from policies of cabinets (Slaughter 2004: 10).

At the crux of this assumption however, is the misinformed logic that transnational networks through states, are becoming denser (and thus stronger than bonds between states, i.e. inter-governmental). Mann suggests that scholars are in the habit of equating transnational networks with global networks (Mann 1997: 475), conflating increased interaction between states, with “disaggregated sovereignty” (Slaughter 2004: 34). We ought to develop a healthy skepticism towards the notion that ‘[…] individual national government institutions could become bearers of the rights and responsibilities of sovereignty in the global arena’ (Slaughter 2004: 34).

Advancing Hafner-Burton’s position, the author has identified two objections to the idea that NHRIs are able to successfully transmit international human rights norms to the domestic sphere, which we shall explore next. The first objection attempts to substantiate that the effectiveness of NHRIs is contingent on the political context of the specific country in question, whilst the second objection points to the economic context. These will aid us in reasserting the centrality of the sovereign-state and its internal political-economic context as the primary determinant of successful compliance.

Rather than being contingent on transnational or global networks, Rodan and Hughes show us that effective accountability depends on intrastate networks between domestic civil society, human rights watchdogs, the particular NHRI, and the state (Rodan and Hughes 2014: 58). Rodan and Hughes lead an inquiry into why certain countries have more effective accountability regimes than others, ascribing outcomes to the domestic political contexts of countries. By using their
exploration of why Malaysia is better at fostering accountability than Singapore, we can shed light on the domestic challenges to international human rights governance (and in extension, compliance).

The Asian Crisis of 1997-1998 sparked extraordinary review of governance systems, particularly in Malaysia (Rodan and Hughes 2014: 60). Amidst a standoff between civil society and the police (in which the police suppressed public demonstrations via water cannons and mass arrests), demands for increased democratic accountability by domestic opponents of authoritarian rule, materialised (Rodan and Hughes 2014: 71). Groups with reform agendas took these violations as sufficient rationale to call for human rights accountability.

Rodan and Hughes show that it is domestic motivations, pressures and actors who create accountability reform, and that it is conflict within the elite in particular, arising ‘[…] from relationships between capitalist development and state power in Malaysia’ (Rodan and Hughes 2014: 57), which renders ‘the merger of state and party’ weaker and less cohesive, and therefore subject to opposition (Rodan and Hughes 2014: 57). This explains the existence of extensive independent civil society human rights watchdogs, and the establishment of a state-based human rights commission, Suhakam, in 1999. What is interesting to note however, is the fact that the emerging human rights rhetoric was not the result of establishing such an institution, but was, in itself, the common denominator for a multitude of social and political interests, in their pursuit to ‘[…] arrest the arbitrary and politically biased exercise of state power’ (Rodan and Hughes 2014: 86). It was thus not so much international pressure or IGO-based governance, but rather aforementioned groups’ varying opportunistic motivations, whether any one group’s agenda included demanding the facilitation of more competitive markets, or civil liberties (Rodan and Hughes 2014: 86). It is thus questionable to hold that NHRIs are able to bypass the barriers of sovereignty, and subsequently transmit international human rights norms to the domestic sphere.
Our second objection points to the economic context of NHRIs, as yet another obstacle to transmitting norms. What if a country has good faith but cannot afford to run a NHRI; does this warrant a poor rating by the ICC? Though Cardenas makes the claim that ‘there’s no widespread evidence’ to qualify the assumption that ‘poor countries cannot afford to establish domestic implementing institutions’ (Cardenas 2014: 66), we contend that this is merely a result of the shortage of literature on any given country’s allocated finance to NHRIs. A report ‘Assessing the Effectiveness of National Human Rights Institutions’ prepared by Carver and Korotaev on behalf of UNDP, conversely documents that NHRIs are receptive towards adopting new suggestions, which would eventuate in increased effectiveness, ‘[…] but there was the problem of money’ (Carver and Korotaev 2007: 13). Furthermore, the uncertainty of funding sets a question-mark as to the permanence of the institutions as accountability mechanisms:

‘National institutions have been kick-started into existence with external donor funds, only for budgetary responsibility to be handed over to the national authorities after a few years’ (Carver and Korotaev 2007: 13).

Carver and Korotaev conclude that this is a problem that parliaments are at uneven liberty to solve, though allotment of finance towards such institutions can be indicative of ‘[…] a government’s commitment to rights protection’ (Carver and Korotaev 2007: 13).

Using aforementioned objections, we have substantiated the observation that the UN is too under-resourced to be able to establish national bodies, and is thus dependent on the political-economic context of the state in question to favour their establishment.
1.4 The “naming and shaming” mechanism

The *naming and shaming* mechanism remains the sole means for compliance in international human rights governance, notwithstanding variable mechanisms such as NHRIs, unenforceable Committee recommendations, and an absence of domestic implementation schemes. As a product of relying the inherent flaws of the system, the UN resorts to the only other means of accountability; naming and shaming. Via the mobilisation of shame against a perpetrator state, the United Nations treaty and charter bodies ‘[…] pursue the promotion and protection of human right’ (Dominguez-Redondo 2012: 688). This is based on the premise that ‘[…] acknowledging the existence of wrongdoings may, in certain cases, serve as a form of punishment and therefore as a potential basis for reparation’ (Ibid).

Nevertheless, depending on the sociopolitical climate, this strategy is not without its problems, and is at time inadequate (Avni 2006: 205). According to Hafner-Burton, there are three dominant narratives associated with explaining the outcome of naming and shaming (Hafner-Burton 2008: 690):

1) Global publicity tactics are “cheap talk”, ignored by perpetrators;
2) Naming and shaming could further aggravate perpetrators, or;
3) It can help ‘sway perpetrators to reform’ the human rights situation.

In this section we’ll explore these statements vis-à-vis naming and shaming, to identify corroborate the problems associated with this mechanism.

The key question to ask, is whether the practice will ‘[…] have tangible consequences for the shamed country, or [whether] the gesture [is] merely symbolic’ (Esarey and DeMeritt 2013: 2).
Using the example of Israel, we can substantiate that the latter is often true: In 2000, the country was heavily shamed for ‘failing to protect the rights of foreign women smuggled into the country to work as prostitutes’ (BBC 2000) (Hafner-Burton 2008: 691). At the time, Amnesty reported that Israel did not have laws against slavery and trafficking, and that hundreds of women were trafficked into the Israeli sex industry (Ibid). Major outlets, such as The Economist and Newsweek, in addition to Amnesty International, shamed the government for its abuses (Hafner-Burton 2008: 691). The UN Commission on Human Rights (now known as the Human Rights Council) had no effect, in spite of passing several resolutions, urging Israel to at the very least, honour the Refugee Convention and not deport victims. Hafner-Burton mentions similar cases with ‘China, Columbia, Cuba, Indonesia, Iran, Nigeria, Palestine, Russia, and other countries where NGOs, news media and the UN together shine a spotlight on abuses to no apparent effect’ (Ibid). In other words, global publicity tactics are usually “cheap talk”.

The second narrative holds that naming and shaming can have wholly negative consequences and further aggravate perpetrators. While Hafner-Burton argues that global pressures to reform could eventuate in despots increasing the use of terror to “counteract the effectiveness of political reforms […] such as holding elections’ (Hafner-Burton 2008: 691), Esaray and DeMeritt present an explanatory political framework for understanding the ineffectiveness in calling out perpetrations. They emphasise the centrality of allied and non-allied donor-recipient relations between states, and how transformations in human rights is largely contingent on real political pressures, measurable primarily vis-à-vis continued versus discontinued financial aid from donor to recipient states. Accordingly, ‘[…] donors cut aid to condemned recipients in whom they have little direct political interest’ (i.e. non-allies) but nevertheless ‘support and reinforce those from whom they derive substantial political benefit’ (i.e. allies) (Esarey and DeMeritt 2013: 4) (political benefit herein refers to military, overflight, market, or any other strategic preference) (Esarey and DeMeritt 2013: 3). Returning to the case of Israel (though this holds for Egypt as well), the United States
‘[…] derives strategic, military and economic benefits from these relationships’ (Esarey and DeMeritt 2013: 5), which outweigh the negative publicity generated, leading the U.S. to continue the transfer of aid, ‘despite naming and shaming of these states’ (Ibid).

Esaray and DeMeritt observe that the allied donor-recipients can be determined as such by the virtue of the amount in foreign aid donations; ‘individual donors send less aid to politically unimportant recipients condemned for human rights violations, and as much or more aid to condemned states that are politically important to the donor’ (Esarey and DeMeritt 2013: 15). Nowhere does this stark contrast come to better expression, than in the US’ relationship with Tanzania, whom the US State Department publicly shames as containing ‘[…] “pervasive corruption” that had a “broad impact on human rights” [including] “arbitrary arrest and detention and a nation where “mob justice remains severe and widespread”’ (Drinan 2002: 85). In 2010, Tanzania received $464 million, only second to last in amount donated, in contrast to Israel’s $4,102 million (Bowles and McMahon 2014: 420).

Esaray and DeMeritt’s analysis appears to be spot-on, as it assesses the impact of naming and shaming as largely dependent on the political relationships of the state in question. Whilst certainly continued or increased donations could serve as a means to delegitimise naming and shaming towards any given perpetrator state, it is unclear to what extent it causes further aggravation. It does however warn us that allied donors can ignore shaming of their recipients, detraacting what little force the mechanism had in the first place.

The third and final narrative holds that naming and shaming can help perpetrators reform. This is based on the assumption that perpetrator states are faced with a rationalist cost-benefit analysis (similar to those faced by afore-mentioned donor states), with respect to the importance of their reputation. The maintenance of a state’s reputation is differential to its interest in ensuring ‘[…] that other states will cooperate and enter into agreements with them in future’ (Krommendijk 2015: 493).
This inter-governmental “attitude”, manifests itself in forums such as the Human Rights Committee, and is better understood as synonymous with information networks, as per defined by Anne Marie Slaughter: ‘[…] participants in a network, [who] exchange about each other - information concerning competence, quality, integrity, and professionalism’ (Slaughter 20014: 54).

In these networks, states apparently care about their reputation upon entry, even if they didn’t previously (Ibid): ‘[…] reputation among one’s peers [becomes] a very powerful tool of professional socialisation’ (Ibid). Intergovernmental bonds emerge between states in the network, as ‘[…] they face common challenges and responsibilities’ (Ibid). Slaughter prognosticates that established norms within this network are likely to become stronger as they are disseminated across the network, ‘[…] raising the cost of those violations’ (Ibid). She refers to this as reputational enforcement. In the absence of enforcement mechanisms within the UN, ‘Reputation is particularly important to the extent that specific government networks themselves embody a system of regulation by information, in which power flows not from coercive capacity, but from an ability to exercise influence through knowledge and persuasion’ (Slaughter 2004: 55). Though reputational enforcement hinges on the existence of an agency, whose “credibility and professional reputation” is universally recognised by its members (Ibid), this agency could take the form of a strong state, as we shall discuss next.

Whether or not mobilising shame has a real effect seems to depend on two factors: on the one hand, it is contingent on the political cost-benefit matrix for donor countries. On the other hand, it also seems to depend largely on to what extent the country cares about its reputation.

Interestingly, DeMeritt’s research seems to suggest that if ‘[…] the impact of naming and shaming depends on the political relationship between donor and recipient’ (Esarey and DeMeritt 2013: 18), then this is an effective strategy, predominantly for ‘punishing human rights abusers who are dependent on aid from the international community’ (Ibid). If true, this also explains why abuse by
western countries is not proliferating UN treaty body committee rooms, as much as abuse by
developing countries are.

To summarise in our own terms: the shame-based model is a political tool, using the
shortcomings of certain states, and existing power structures combined with cleavages of uneven
development, to call for compliance. Weak, aid-dependent and non-allied developing states are
subject to the most scrutiny, whilst developed donor states are the ones pointing their fingers.
Though these geopolitical interests impede effective accountability, naming and shaming still
remain the only quasi-viable mechanism within the architecture of international human rights, in
spite of its asymmetries.
2.1 Emergence of experimentalism in human rights governance

There is an emergence of experimentalist modes of governance in international human rights, particularly as actors become aware of the shortcomings of conventional “command and control” iterations of governance (Fossum 2012: 395), moving into a direction that fosters more deliberation and experiential learning. As an ‘[…] institutional process of participatory and multilevel collective problem-solving’ (De Bûrca et al. 2014: 1), experimental governance (or rather, global experimentalist governance) (De Bûrca et al. 2014: 2) can thus be summarised in terms of a departure from the normative methodologies based in sovereign expressions identified in Chapter 1, to one that transcends existing structures.

In his recent report on Citizen Media Research and Verification, Christoph Koetll emphasizes that emerging digital technologies and networks ‘most obviously affects states but also intergovernmental, humanitarian and human rights organizations’ (Koetll 2016: 1). Our research concerns itself with how unequivocal we can allow ourselves to be, in proclaiming the various outcomes and effects of aforementioned technologies. Although a host of scholars argue that digital technologies generate greater accountability, is it possible that they conflate greater participation with accountability? Apps have emerged specifically to aid this process, but are they really making a difference? Is it conceivable that apps run into the same problems as conventional HR governance?

In this section we will discuss the emergence of digital technologies as experimental governance and their potential in human rights governance. We initially address its promise of democratisation and empowerment, before diving into the specific underlying accountability-generating mechanisms.
Democratisation

The elation surrounding the emergence of the internet and digital technologies, hinges on the premise that with it came democratisation and an expansion of the political audience. The logic follows that it ‘[…] expand(s) the public sphere, broadening both the range of ideas discussed and the number of citizens allowed to participate’ (Hindman 2009: 7), by providing open platforms via which “ordinary citizens” (Hindman 2009: 107) can engage. These technologies are largely perceived as innovations in “activism and government”, and supposedly not only streamline the way in which citizens engage with these (Meier 2011: 1), but allegedly alter power relations particularly vis-à-vis political oppressors (Ziccardi 2012: 2). There’s a large consensus amongst those proponents who would elevate and equate digital technologies with innovation in democracy and human rights, to foster a narrative that further renders it synonymous with accountability. This is however problematic, as we shall return to later in this chapter.

Empowerment

The second premise takes its point of departure in the idea that in addition to expanding the political audience, digital technologies empower these audiences. Hindman refers to this as monitorial citizenship, and postulates its potential effects as such:

‘If citizens could write their own news, create their own political commentary, and post their views before a worldwide audience, this would surely have profound implications for political voice’ (Hindman 2009: 7)

This in turn has given birth to a new arena, the brain child of social media, and mobile technologies; namely app initiatives that allow for apparently new ways of governing human rights, i.e. by experimentalist modes. Experimentalist modes of governance accordingly emerge out of
governments’ inability to address certain topics with adequately enforceable policies or laws; topics in which a proactive civil society appears to have a larger stake and effect (De Búrca et al. 2012: 723). To name a few, these include:

- **Guachimàn Electoral**, a platform that collects and maps citizen reports of election fraud in Venezuela (Wood), much like *Ushahidi* does in Kenya;
- **Callisto**, which lets victims of sexual assault at universities report incidents to an online platform (Wood);
- **eyeWitness to Atrocities**, which literally ‘seeks to bring the perpetrators of atrocities to justice by providing a tool […] to capture verifiable footage relating to international atrocity crimes’ (eyeWitness);
- **CameraV**, echoing a similar purpose as *eyeWitness*.

The latter two initiatives will be explored further as case studies in the final chapter of this paper. A common question to pose in light of these initiatives however, is whether the internet and digital technologies *are* ‘[…] making politics less exclusive? Is it empowering ordinary citizens at the expense of elites?’ (Hindman 2009: 8). The idea that putting a smartphone in the hands of people transforms them from *subjects* to *agents* of change, through apps and other initiatives that allows them to report abuses affecting them (Land 2015: 1), seems on second thought naive at best, as it gives little space for political considerations and the de facto architecture of international human rights governance.

Through exploring the host of mechanisms, which constitute the *democratising* and *empowering* effects of digital initiatives, we set out to critically evaluate experimentalist human rights governance and whether it can generate greater accountability.
2.2 How is experimental human rights governance meant to work?

According to Baxi, ‘we know well by now the digitalised social media networks that today shape the future of human rights across the world’ (Gearty and Douzinas 2012: 152). Baxi is herein referring to various revolutions and mobilisation of peoples against oppressive regimes, but these isolated incidents do not themselves account for the alleged innovation in governance, which digital technology is believed to have brought about. It is important to make a distinction between proclaimed Twitter and Facebook initiated “revolutions”, and experimentalist governance. In the context of digital technologies and apps used for the reporting of human rights violations, we have extrapolated three underlying mechanisms from our research, characterising experimentalist governance: information reporting, fact-finding and peer review.

Information reporting

Information reporting is the prime mechanism of innovation in experimentalist human rights. Decentralised systems of information management and dissemination have dawned as a result of the spread and mass consumption of smartphones that can carry reporting apps and extend participation (McPherson 2015: 14). According to McPherson, this development, facilitating civilian-generated information, has escalated ‘[…] information produced and transmitted by civilian witnesses, whether spontaneous or solicited’ (McPherson 2015: 13). This development is at the forefront of how technology, via democratisation, is supposedly able to help notice the unnoticed. Specifically, users are able to launch an application on their given device, through which they may report a human rights violation either as they observe it, or post-observation. Koetll describes this scenario:
‘Whether police brutality in the United States, war crimes in Syria or a typhoon in the Philippines, it is likely that someone with a camera and access to the Internet will be present to reveal what would have otherwise gone unnoticed’ (Koettl 2016: 1).

Human Rights Watch Program Director, Iain Levine, echoes Koettl’s sentiment and further emphasises that technology enables NGOs to gather ‘new and different kinds of information […] from areas that are insecure and inaccessible’ (Levine 2014). There are two aspects to this mechanism: firstly it would seem that recording a violation acts as a deterrent to perpetrators (Wired); secondly and more importantly, it purports to erode a practice of reporting by professionals, to facilitate “amateurs” instead (McPherson 2015: 14).

Within the broader context of human rights governance however, the notion that victims of abuse can now hold perpetrators to account via reporting through digital technologies, is not necessarily qualified and can not be substantiated until we know who the reports are sent to, and indeed, what is done with the data. We will explore this in detail in the next section

**Fact-finding**

Fact finding is a process by which, traditionally, ‘[…] diplomats experts, and lawyers reviewed on-the-ground research to write reports for governments and intergovernmental groups’ (McPherson 2015: 12) (i.e. the very same process by which reports are delivered to the Human Rights Committee discussed in Chapter 1). Specifically, NGO workers use fact-finding to corroborate collected data and prepare reports on human rights violations in specific areas and topics.

Nevertheless, the mechanism is generally accepted as an elitist, esoteric top-down process (Land 2015: 2), carried out ‘[…] by a class of increasingly professionalized “experts”’ (Sharp 2014: 69). The danger of this of course is that some issues may be unjustifiably prioritised over others (Alston 2012: 2).
McPherson denotes this as the first generation of fact-finding. Whilst the second generation contained further civilian testimony and appealed more to the court of public opinion, it wasn’t till the dawn of the third generation, brought about by digital technologies and the internet, that the practice saw ‘[…] a growing number and diversity of players in the human rights fact-finding arena’ (McPherson 2015: 12).

At the core of fact-finding is an attempt to integrate digital civilian witness information, gathered through the information reporting mechanism, into traditional human rights practices (McPherson 2015: 17), potentiating the possibility for greater accountability. Nevertheless, to simply assume ‘[…] that technology and infrastructure changes will […] impact countries […] such as Mali or North Korea’ (Koetll 2016: 4), ignores existing challenges in human rights governance. These challenges are not so easily circumvented by the virtue of innovation in how NGOs gather information.

These challenges emerge from the fact that monitoring bodies (NGOs) are large in numbers, and consist of individual actors with a variety of goals (Alston and Gillespie 2012: 1091). Information is dispersed and is gathered and held by a multitude of different organisations, often relating to the same situation, though it is a rarity ‘for the disparate information to be brought together’ (Alston and Gillespie 2012: 1093). Even if they are brought together in various reports on a range of issues, what happens to these reports? Are they sent to UN Treaty Bodies or to the Universal Periodic Review at the Human Rights Council - and which reports are taken into account at which UN body? In layman’s terms: does it matter?

**Peer review**

Peer review is an important aspect of experimentalist governance, and must be understood as the forum within which accountability is established (Pollak and Slominski 2009: 917). It is furthermore the step following third generation fact-finding, as this is the raison d’être which sets it
apart ‘from the mechanism of traditional hierarchical […] accountability’ (De Búrca et al. 2014: 5),
to one centred around horizontal networks. De Burca delineates the process of experimentalist
governance in five steps (De Búrca et al. 2014: 1):

1) Initial reflections and discussions among stakeholders with shared perceptions of common
   problems
2) Developing a framework of understanding with open-ended goals
3) Implementation of goals by local actors at the local level
4) Continuous feedback from local contexts, *allowing for reporting and monitoring across a range*  
   of contexts *with outcomes subject to peer review*
5) Goals are *re-evaluated and revised via peer review*

The *fact-finding* mechanism herein relates to the fourth step along the governance process. Though
steps one through three mark initial deliberations, discussions, and scope-setting by NGOs in
cooperation with relevant UN bodies, it is unclear what tangible results the process generates, as
there is a lack of clear linkage between steps four and five. More specifically, though we are aware
that findings must be peer reviewed by relevant UN bodies and states (De Búrca et al. 2014: 5), we
do not yet know which ones, or how these findings, or reports, are intended to elicit action in said bodies.

There are furthermore grievances in experimentalist governance scholars that although
recognising the ‘[…] the broader and potentially democratising effects’ (Pollak and Slominski 2009:
917) of extending participation, also argue for the destabilising effect of this new form of peer
review on ‘entrenched forms of authority’ (Ibid). This, as well the shortfalls of *information*
*reporting and fact-finding*, will be discussed in the section below.
2.3 Widening the divide: digital technology as wishful thinking?

In the previous section we explored the promises of democratisation and empowerment as a resultant of digital technology forms of experimental governance. To explore the extent to which either of these two features have been (or can be) realized, we explored their vehicles, i.e. the mechanisms through which they occur. Our combined concerns with the shortcomings of the mechanisms overall, have come to amount to two reservations concerning the viability of experimentalist governance as generating greater accountability: first, we contend that it is contingent on the collected data being used, and second, that it is contingent on the domestic political context of the country from within which it is intended to work.

In this section we critically examine what the collected data is used for and by who; do NGOs in fact receive and use civilian witness information in fact-finding efforts? Furthermore, do NGOs use this data in reports, and does this in fact elicit action?

Second, situating experimentalist governance with the framework developed in Chapter 1, we evaluate whether it in fact evade the conventional shortcomings of international human rights governance, identified.

*Contingent on collected data being used*

If experimental governance is to be deemed as a viable generator of accountability, the data collected in the process must be put to use somehow. However, identifying who or what agency is supposed to use the data is not always clear. According to Land et al., human rights organisations should look to publicise abuses such as to apply pressure and mobilise shame to realise enforcement (Land et al. 2012: 16). Land et al. use a number of cases to show that the process of reporting is made more efficient, by speeding up the process and diversifying sources (Ibid).
This however, doesn’t explain where the collected information goes, nor whether it results in a real difference on the ground, in terms of accountability. The report by Land et al. instead uses the example of Human Rights Watch, to show that the organisation commissioned findings from a data collection and monitoring initiative by the American Association for the Advancement of Science, to engage in advocacy surrounding ‘[…] the destruction of structures near Busurungi of the DRC […] to protect civilians in the region’ (Ibid).

Needless to say that this far from presents a solid structure through which it can be observed whether such initiatives, even generally, generate greater accountability. The mere act of using digital initiatives does not in and of itself generate greater accountability. Land et al. do concede to this initially: ‘There is also no guarantee that increased participation or information will be translated into action or concrete outcomes for the community’ (Land et al. 2012: 1). Hence, one must be careful not to equate digital technologies with accountability, without tracing the governance “logic”.

Keeping in mind that our earlier definition of accountability necessitates linkages between actors and forums (Pollak and Slominski 2009: 917), digital initiative must connect to this process in one way or another. Tracing the “lifecycle” of reported data within ICT4HR, helps us identify where linkages do or do not exist (Agranoff 2008: 315). Thus far we have established that information from the information reporting mechanism (or app) may be gathered by an NGO, which may in turn use the information in fact-finding efforts - but is there any further indication to specify what happen with the data subsequently? The resulting deductive hypotheses that we can draw from this are the following: either NGOs directly publicise these findings, to publicly name and shame with the goal of enforcing human rights compliance (Land et al. 2012: 16), or; NGOs report their findings to a UN forum, but there is little evidence in our research to substantiate that information generated by digital technologies is used in this way, beyond speculation.
The former way of supposedly generating accountability is referred to as *social accountability*. Meernik’s theory on the catalysts to naming and shaming (using the example of Amnesty International’s Urgent Action calls) contends that the rate of ‘[… ] formation of local groups’ (Meernik et al. 2012: 252), which establish linkages with human rights organisations ‘[…] to provide redress for human rights abuse’ (Ibid.), is proportional to the level of openness in a country. Land et al. claim that digital initiatives can “foster accountability” by intensifying the transmission of information from such groups of civilians, to organisations who put pressure on governments to comply with international human rights norms (Land et al. 2012: 18).

Of course social accountability hinges on the provision that NGOs gather and use this data in the manner described. Alternatively, our second hypothesis suggests that NGOs can communicate gathered information with UN bodies.

Although Metzl suggests that there has been an increasing openness in the Human Rights Council and other treaty bodies to accept ‘[…] “reports from non-governmental organization[s] [and] from other bodies with firsthand knowledge of a particular situation, and from victims of alleged human rights violations’ (Metzl 1996: 734), there’s nothing to suggest that digital initiatives in any way affect this. Our earlier findings regarding the donor-recipient nature of IGO-based naming and shaming still stand. Of course neither of the aforementioned hypotheses can be corroborated until we successfully trace the gathered information empirically, using our case studies in Chapter 3.

In any case, one must be reminded that NGOs are most effective when they position themselves in such a way that they are able to ‘link information and action’ (Metzl 1996: 730). Digital initiatives cast doubt as to whether this is indeed being facilitated. Meier notes the lack of clarity in determining the impact of digital initiatives by suggesting that ‘[…] one would need to closely evaluate existing decision-making structures’ (Meier 1996: 1252) within the specific
organisation or body in question. In an ideal world, this information would nevertheless be used for naming and shaming, though this would seem impossible without a clear agency.

**Contingent on domestic sociopolitical context**

‘The real aversion to and source of complaints about fact-finding bodies is fundamentally political — an aversion by states and some nonstate actors to accountability itself’ (Ratner 2013: 70) (at least in non-democratic non liberal countries). Digital media or not, this cannot be avoided. Nevertheless, there exists favourable conditions under which accountability may transpire. The effectiveness of digital initiatives is contingent on the domestic sociopolitical context within which it is executed.

Determinants of the political context also include those identified in Chapter 1: intra-state networks between domestic civil society, human rights watchdogs, the relevant NHRI, and the State, and; to what degree the state in question is weak, aid-dependent and non-allied. Digital media is a vehicle of international human rights norms, and can thus be perceived as analogous with NHRIs in its potential to diffuse norms past the monolith of sovereignty. Though digital initiatives do not fall victim to the same (financial) capacity constraints as NHRIs (as their financing is typically contributed by proprietary NGOs as opposed to the state budget), they are contingent on the above factors.

With hindsight on Koetll’s statement, emphasising digital media’s supposed agnosticism to whether the perpetration is police brutality in the US or war crimes in Syria, we beg to differ; with respect to the potential for social accountability, it *does* matter. The political context of the country in question largely determines the impact of information, when used in naming and shaming. As per Metzl’s contention, information is only ‘[…] one component of a larger effort to set standards and respond to past, present or potential future violations’ (Metzl 1996: 730).
Hence, in order for effective and accountable naming and shaming to take place, one cannot simply rely on appealing to governments, politicians and their ‘[…] sense of moral outrage and indignation’ (Avni 2006: 205). We must maintain an ocean of pragmatism in terms of identifying where governance practices are flawed, particularly as significant ‘time, energy, and resources’ (Metzl 1996: 730) are invested in these. This is critical in human rights NGOs who use digital technologies, and who ‘[…] must therefore be conscious of what they hope to achieve’ (Ibid), as well as where they intend to achieve these goals.

Aside from being subject to the same shortcomings as conventional human rights governance, there is an element of techno-fetishism, where technology, by the virtue of appearing as having a “smart solution” for most problems, is fashioned as the solution to accountability in human rights, when this may not be so. This leaves proponents blinded to the cognitive dissonance that emerges from digital initiatives being assumed to lead to greater accountability as a result of greater participation, whilst in reality it may in fact act as an additional barrier to participation, by unintentionally transferring any net benefit “experts”, hence empowering the wrong group (Hornborg 2011: 491).

A determinant of this includes technical capacity; it is a given that the environment in which any given digital initiative is supposed to operate, must contain within its population, a large proportion with access to smartphones. Additionally (and perhaps more importantly), it must also feature a significant fraction who are well-versed in citizen journalism and are as such, technically literate (McPherson 2015: 16). Finally, the digital footprint (Ibid), with which a given reporter may establish him or herself as a credible character. These three features constitute technical capacity, which has social implication; it largely characterises the same elite which third generation fact-finding promises to move away from.
2.4 Digital technologies in practice: testing our hypothesis

In the next chapter we will empirically explore two digital initiatives against our findings thus far; CameraV and eyeWitness to Atrocities. The objective of our experiment is two-fold: firstly, having explored how experimental human rights governance is meant to work in this chapter, we use this as a framework for exploring how these initiatives work in practice in the next chapter. Secondly, we want to use these findings to evaluate to what extent these initiatives evade or perpetuate shortcomings of conventional human rights governance identified in Chapter 1, or whether they create other previously unexplored problems. Crucially, our focus is on discovering what an empirical study can tell us about digital initiatives and whether they generate greater accountability.
3.1 Introducing the experiment

Using interviews and primary source reports, we have constructed a methodology which traces the logic of the particular digital initiative in question, and demonstrates its use case.

For the interviews, two informants in key positions at the proprietary organisations of the initiatives agreed to provide testimony, namely;

- M. Hargrave (Systems Change Coordinator, WITNESS) for CameraV
- W. Betts (Project Director, International Bar Association) for eyeWitness
- R.V. Llorente (in-house analyst, eyeWitness)

The closeness of the informants to the projects was a deliberate measure taken to maximise information accuracy. The initiatives themselves were chosen due to their level of maturity, as two of the most seasoned digital initiatives in the field (although this field is still new and emerging).

Each case-study is explored with a point of departure in the mechanisms defined in Chapter 2, and its findings are juxtaposed against conventional human rights governance.

3.2 Case study: eyeWitness to Atrocities

In the wake of footage showing the Sri Lankan army executing Tamil fighters in November 2010 (Lowe 2016) (Betts and Llorente 2016), efforts at the International Bar Association began to develop a digital human rights reporting initiative, with the ability too verify reports made through it. The eyeWitness to Atrocities app allows individuals to report atrocity crimes using their smartphones, in a ‘secure and verifiable way’ (Rivkin 2015). According to W. Betts, the workflow of the app is designed in the following manner:
1) The app captures footage and collects important metadata (that is, location data, as well as date and time as displayed on the phone, and as projected by surrounding cell towers) and any annotated information by the user (International Bar Association 2015) (Betts and Llorente 2016);

2) Data is transferred to the International Bar Association (IBA), who has two primary methods of handling these (Betts and Llorente 2016):

   A. The data is aggregated with related information from other users. The IBA then reaches out to an authority ‘[…] who has the appropriate jurisdiction to investigate’ (Ibid) and who already have an ongoing investigation, and if not, may want to conduct one;

   B. Alternatively, they ‘[…] service a clearing house so ongoing investigations can’ connect with them (Ibid).

In their own words: ‘The eyeWitness App is aimed at human rights defenders, journalists, and citizens in conflict zones or other troubled regions around the world’ (eyeWitness 2015). W. Betts further emphasises the difficulties pertinent to dealing with ordinary citizens as users; on the one hand, eyeWitness ‘[…] don’t want to incentivise them to take risks that they wouldn’t otherwise be taking’ (Betts and Llorente 2016), whilst on other hand acknowledging the difficulty in disseminating the app to ordinary citizens. As ‘[…] they’re less positioned to think that they would be in that scenario [of witnessing a violation]’ (Ibid), they’re also less likely to download the app. Thus, eyeWitness inadvertently focuses on human rights advocates and journalists as they have a pre-disposition to collect such information, specifically national level groups in Syria, Libya and Kenya (Ibid).

These national level groups report information via the eyeWitness app, which the IBA stores as evidence, which ‘can then be provided to prosecutors to assist in bringing to account the perpetrators of atrocities’ (New Perimeter n.d.). This also helps explain why there is a greater
concern with verification, as opposed to connecting data with appropriate bodies. We attribute this to a degree of cognitive dissonance: on the one hand, evidence holds a lot weight in the legal and institutional mechanisms of liberal-democracies (Orentlicher 2016: 515), on the other hand, gross human rights violations are more likely to occur in states that do not have the same infrastructural capacities.

EyeWitness relies on the internationally growing logic of ‘accountability-through-methodology’ (Orentlicher 2016: 510). Though acutely befit a “western” liberal-democratic framework based on the rule of law, it does raise concerns vis-à-vis states where this is not in place. Anecdotally, Orentlicher questions whether ‘[…] the perils associated with standardised methodologies outweigh their potential benefits’ (Ibid), drawing attention to the historical fact that these ‘[…] have been shaped above all by Western NGOs’ (Orentlicher 2016: 515).

Though illustrious of the domestic particularism surrounding fact-finding, eyeWitness’s methodology is premised on the eventual diffusion of legal norms and practices:

‘[…] countries that are under conflict, they don’t have a rule of law system, but that doesn’t mean even eventually in 15 years time, that there’s not an interest in prosecuting these crimes domestically, and the […] app [keeps] all this material indefinitely’ (Betts and Llorente 2016)

Where eyeWitness deals extensively with linking information reporting to fact-finding, a potential grievance emerges in the short-term: the linking of fact-finding to peer review, or in other words; data to action. An over-reliance on the afore-mentioned diffusion of legal norms, particularly in conflict-ridden states, could lead to missed opportunities; especially to elicit action in one of the naming and shaming mechanisms mentioned in chapter 1.
Though eyeWitness emphasises its position of neutrality and does not itself "commission investigations" (Betts and Llorente 2016) in this manner, it does seek to appear as a modern repository for facts or verified reports, which may be approached by any of the afore-mentioned bodies or committees (who can request access). These committees must themselves actively seek to access the data, if true accountability is to materialise.

Nevertheless, by storing the reports, eyeWitness runs the risk of emanating the sentiment that something proactive will happen with the data. The informants clarify that there's an element of managing expectations: 'We do have some information that we put out with the app that states what happens next and specifies that these are long processes that they may not see anything coming from it' (Ibid). Our informants describe how ordinary civilians '[…] don't quite understand it […]. So again, it's easier to get that message across to human rights groups, to journalists’ (Ibid). On a similar tangent, McPherson warns that these verification methodologies ‘[…]

Crucially, any digital initiative for reporting human rights violations must avoid putting civilians off from reporting altogether, which, without a conceivable and realisable political outcome, might be a particularly adverse problem facing digital initiatives.

It thus becomes apparent that digital initiatives might find themselves limited in non-western, non-liberal-democratic contexts, where these initiatives are paradoxically conceived to be needed the most, so to speak.
3.3 Case study: *CameraV*

CameraV has its roots in the 1992 Rodney King incident, which took place in South Los Angeles, the United States. WITNESS, the proprietor of CameraV, was founded on the backbone of their discovery of the power of citizen video (Hargrave 2016), when a plumber named George Holiday filmed a black man being beat up by the LAPD. Though Holiday shot the footage with his small camcorder, the CameraV project (formerly “ObscureCam”) was initiated 4-5 years ago based on the notion that today, ‘everyone has one in their pocket’ (Ibid). ‘CameraV turns sensor inputs like compass, light, temperature, location and more into “metadata for good”’ (Guardian Project 2016). The app is designed to work in very similar ways to eyeWitness:

1) The app lets the user capture video or picture, and synchronises afore-mentioned meta-data to the footage ‘[…] for later use in verification, analysis, proof’ (Guardian Project 2016).

2) The verifiable photos or videos can then be shared privately or publicly.

A. In a similar fashion, reports can be used in a case, or archived for later purposes. The core difference on this front vis-à-vis eyeWitness, is the fact that WITNESS doesn’t store reports that come through CameraV themselves.

In a nutshell, it attempts to put ‘[…] the power of metadata back into the hands of the people by hacking the smartphone's key sensors, so that citizens can record events and hold those in power accountable’ (Al Jazeera 2015). CameraV works primarily with two groups; amateur documenters, and borderline-professional documenters. Some members of these groups ‘have been called into action of the circumstances around them’ (Hargrave 2016). M. Hargrave also emphasises that CameraV is working on ‘a stripped down version very soon’(Ibid), which can be used by “just a guy”, someone who might find themselves in a similar situation as George Holiday:
‘Because right now, it’s not super realistic that someone is just going to take it upon themselves to go to the PlayStore and just download it [...] and start shooting, and know exactly how to use it, and secondly what to do with after’ (Ibid)

This addresses the question of technical literacy (McPherson 2015: 16); CameraV recognises ease-of-use as an additional barrier, beyond simply disseminating the app. However, M. Hargrave emphasises that once the general population understands the power of meta-data ‘partly for archiving purposes, partly for verifying chain of custody purposes’ (Hargrave 2016), it will be widely adopted.

The ongoing predicament - quality of information (verifiability), versus connecting data to action - still persists, in the case of CameraV. In contrast to eyeWitness, CameraV operates with a complete hand-off of user-reported information. CameraV does not send reported information to be stored with a proprietary organization. M. Hargrave mentions that there are several problems associated with storing information: ‘Where does the data go? Who touches it? Who can have it? Who can access it? It’s the big sticking point’ (Ibid). CameraV is commissioned to be an open environment, which leaves it up to the user to do what they want with the information they’ve captured:

‘You can share just the metadata or you can send it where you want, you can store it where you want, it’s a lot more open and flexible [though] it adds complexity to the user’ (Ibid)

Users thus become party to both information reporting as well as the de facto fact-finders, with the primary goal of creating verified media.
Though the app allows users to add more value to a report, the ordinary civilian may not understand the purpose of using the app, if their reported data isn’t connected to some form of action, or able to directly ‘hold those in power accountable’ (Al Jazeera 2015). As it turns out however, CameraV is premised on a base of users who aren’t in fact ordinary civilians. They are instead a concentrated group of people in shared particular circumstances. They serve as the source of accountability itself. M. Hargrave identifies one of such communities in a Brazilian favela:

‘[…] there’s no traditional media, it’s sort of a black hole, the media doesn’t go in there, they don’t know what’s happening. So residences of these communities have taken it upon themselves to document the state of public services in their neighbourhoods’ (Hargrave 2016).

Accordingly these neighbourhoods host deplorable conditions with intense police violence and corruption. With 300 residents in these communities using WhatsApp to communicate what they’re witnessing with one another (Ibid), and deciding on whether to share it to various online media to publicly shame perpetrators, it is clear that there exists combined social capital that is of great value (and in all likelihood, a strong “digital footprint”) (McPherson 2015: 16). This community hence acts as if it were a social movement, and uses CameraV to portray its findings, credibly, through its own pertinent network for accountability. Rather than the digital initiative serving as a new and technical “generator” of accountability, accountability in fact comes from within the community itself, irrespective of CameraV, which is a value-added tool. Because the app has a clear value for this existing network, it is also problematic to conceive of those whom are independent of such networks, or do not have access to them, as being able to effectively utilise such initiatives. These observations seem to consistently demonstrate the contextually-driven nature of digital initiatives.
The question, which more research should seek to address, is whether the power of meta-data has been exaggerated altogether. Without the political and social contexts tied to the particular setting of certain human rights violations, as well as the would-be reporters of violations, can digital initiatives really be claimed to greater generate accountability?

3.4 Summarising, comparing & interpreting findings

Having explored each of the case studies, we will now use our findings to evaluate the mechanisms of digital technologies as experimental governance in practice, against the theoretical framework developed in chapter 2.

*Information reporting*

As explained for the *information reporting* mechanism earlier, digital initiatives purport to *empower* ordinary citizens, by process of *democratisation*, i.e. allowing ordinary citizen to report. It follows logically that this must translate to a commitment to disseminate the initiative in question to ordinary citizens. If these initiatives are built on the premise of civilian participation, but are instead disseminated to journalists and defenders - the de facto fact-finders/verifiers at the *fact-finding* stage - then how does this differ from the status quo? Without an extension of participation, although by no means sufficient in and of itself, there can be no empowerment, and by extension; no accountability.

*Fact-finding*

The *fact-finding* mechanism purports to integrate civilian witness information, collected through *information reporting*, into traditional human rights practices, such as preparing reports for national and international bodies. This allegedly impacts countries where atrocity crimes happen, via technological and infrastructural changes (Koetll 2016: 4).
If this is true, democratising information reporting practices are insufficient; information gathered through apps must also be used to prepare afore-mentioned reports. For both of our case-studies, it is too early to tell whether this will be a widely adopted practice.

There’s a lot of energy dedicated to preserving the legal chain of custody to render the evidence admissible in court in both initiatives (through fact-finding, organisations verify the information collected). This still leaves the question: how does this data get used to hold perpetrators to account where such evidence is disregarded, or the political framework not in place?

Peer review

A crucial element to realising accountability is the conduct of a form of peer review; a forum in which an actor can be held responsible for their actions (that can be either formally via a UN body, or informally by public shaming); a forum where data connects to action, and truly empowers citizens (Metzl 1996: 730). Information from fact-finding must be peer reviewed by relevant bodies, however, we do not yet know which; it must also elicit action in said bodies, but we do not yet know how.

Digital initiatives are ambiguous at best, in terms of clarifying whether any of the reported information get passed on to the peer review stage. NGOs seem more concerned with educating users on the quality of the data, as opposed to where to take the data; a notion that takes a point of departure in the largely western sentiment that more reliable data can somehow mobilise people. The question is whether digital initiatives should position themselves to be most concerned with educating users on the quality of data, or connecting their data to the appropriate bodies?
Of course our research is constrained and beyond the capability of settling the discourse, but we can nevertheless attempt to further inform the debate: on the one hand, digital initiatives appear to only superficially democratise and empower people, by the virtue of using digital media, which inherently contains such connotations. By targeting human rights defenders and journalists, good-willed digital initiatives appear to modernise NGO workers, the so-called “experts”, instead. This renders information reporting a process of simplification, instead of democratization. The myth that ‘ordinary citizens [can] have their views considered by […] political elites’ (Hindman 2009: 18), demonstrates this elusive character of so-called civilian empowerment.

On the other hand, if on-going cases in tribunals, courts and committees can connect to repositories such as that of eyeWitness to Atrocities, to further mobilise shame in an international forum, and; reporters become aware of their need to mobilise in strong communities and movements, and how footage could be invaluable in shaming through apps like CameraV, these developments would appear to be positive overall. The idea that anyone can simply download an app and report a violation, bypassing not only the shortcomings of conventional human rights governance, but also the pertinent shortcomings of digital initiatives as experimental governance, appears far away from being actualised.
Conclusion & Evaluation

Our research set out to investigate experimental, digital technology forms of human rights governance. Using interviews and primary source reports, we tested whether digital initiatives transcend or perpetuate shortcoming of conventional IGO-based human rights governance, and further explored whether they contributed to entirely new sets of problems altogether.

In summary, digital initiatives appear to involve a concerning lack of democratisation to extend participation, which emphasises the techno-fetishism and lack of technical capacity surrounding the use of digital technology for experimental governance. We have to question to what extent ‘the unevenness of distribution could be inherent in the very nature of the technology itself’ (Hornborg 2011: 491). Nevertheless, it can also have positive effects, such as building repositories of verified information, and encouraging the use of video-recording.

The lack of a clearly defined link between reported data and action, leaves what we might refer to as an accountability gap. Though digital initiatives are no doubt good-willed, the fact that they are designed according to the governing principles of western liberal-democracies, renders their ability to generate accountability highly contextual.

We maintain that digital initiatives take a point of departure in the “accountability-through-methodology” approach, which could have unintended and undesirable consequences. These could construe an intention to pollute ‘[…] national legal tradition’ and distort ‘[…] domestic political processes’ (Orentlicher 2016: 510) (Slaughter 2004: 28). This in turn perpetuates the challenges to international human rights norms, and their ability to break past the monolith of sovereignty (Orentlicher 2016: 514).

In Chapter 1 we provided a framework for understanding the challenges of generating accountability under conventional IGO-based human rights governance. These shortcomings are nevertheless yet to be exonerated by the emergence of digital initiatives.
First, the U.N. Human Rights Committee is unable to discipline states, and if the Individual Complaint Procedure provides little remedial contribution to the Committee’s ability to enforce compliance, then how can we feasibly expect that digital initiatives are able undercut sovereignty in such a manner?

Second, the U.N. is too under-resourced to established NHRIs, which depend on the state-budget to work. If a state does have a meaningful political infrastructure with an NHRI in place, a hypothetical scenario might unfold where these digital initiatives could connect their data to action via this route.

Third, the geopolitical interests of strong states impede accountability. If relations between states are inter-governmental, and naming and shaming depends on geopolitical interest, then apps can only make a difference in places where they are least needed (i.e. countries where violations at the scale of atrocity crimes are least likely to happen). The rationale underpinning this predicament, is the fact that these initiatives are built on the premise of a “Western” design.

It is conclusive that the effectiveness of digital initiatives is contingent on the domestic sociopolitical context within which it is executed. Our thesis holds that the effects of digital initiatives depend on this context, to allow the linking of data to action, which we emphasise is crucial for accountability. It remains that these initiatives must be ‘[…] conscious of what they hope to achieve’ (Metzl 1996: 730), as well as where they intend to achieve these goals.

This research project is nevertheless not to be thought of as an attempt to debunk inquiries in digital technologies, on the contrary; it is meant to merely warrant further research into the the political context within which these initiatives exist, and to thus include this in potential future frameworks that seek to deploy digital initiatives in human rights governance.


