1. Human rights research method

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INTRODUCTION

In the contemporary world, international human rights discourse has grown in prominence at international, national and local levels. At the same time, human rights are challenged and violated throughout the world every day, but nowhere can they be said to lack relevance for human life and interaction, or for social, cultural, institutional and economic change. Human rights inform political debates, social movements, rule-making and international relations in a variety of ways. Yet how robust is our knowledge of human rights, and of the role of human rights in the formation and transformation of societies? How do we construct human rights knowledge? What approaches and methods do researchers use to document the enjoyment of particular human rights, interpret human rights norms, identify the ‘real content’ of rights, ensure their effective realization across policy contexts or develop tools for reliable human rights measurement and research? How do different academic disciplines formulate and approach human rights issues within, but also increasingly across, disciplines? These are some of the questions addressed in this volume.

To some extent, the methods applied to human rights research reflect an understanding of the values and aims of the human rights discourse itself, and these methods are key to advancing an understanding of human rights in a variety of contexts and disciplines. The concern with methods is common to several disciplines engaged in human rights. Clarity on the methods advanced within each discipline is key to an understanding of the human rights discourse overall and to ensuring its normative promise. This volume departs from a premise that there is a lack of comprehensive, intelligible and accessible reference volumes on human rights methods. Consistent with the rapid growth of interdisciplinary academic research on human rights, this volume looks beyond disciplinary boundaries, drawing on research that moves across such boundaries.

The volume distinguishes between methodology and methods. Methodology is the generic term for choice of approach, sometimes connected to theoretical understandings and conceptual paradigms. For

instance, the choice between an objectivist and a phenomenological understanding would represent a methodological choice. Method, on the other hand, refers to the specific approach selected, such as quantitative or qualitative methods along with particular analytical tools, such as data generation and analysis. The conceptual hierarchy employed here is, therefore, (a) methodology, (b) methods and (c) tools, where methodology occupies the stage between the theoretical understanding and the specific research design. Thus, Mikkelsen's outline of the research cycle includes the stages that connect to theory, models and concepts.¹ These would represent a methodological paradigm, whereas the ensuing steps of operationalization of the research, the development of indicators and instruments for observation and data collection, relate to the method of research.

Human rights research has been accused of methodological sloppiness. Coomanns et al. (2009) drew on an informal survey to infer a low degree of methodological interest among a surveyed group of human rights law researchers.² Although the survey itself may not have been robust in terms of its own methodological rigour to allow the authors to draw such firm conclusions, it did highlight a laxness with respect to methodology and methods among human rights researchers. There has not in fact been any systematic research on the subject but the claim that 'anything goes' because of an assumption about the 'good and benevolent' nature of human rights research is widely acknowledged to merit serious scrutiny.

For some human rights researchers, the very purpose of their human rights research has been to advance the practical implementation of human rights norms, and not to undertake research to pursue a critical investigation of the constitution, functioning and role of human rights in societal and institutional contexts. The practical orientation of human rights research has, however, sometimes resulted in insufficient attention being devoted to its methodological shortcomings and challenges. The purpose of this volume is to advance methodological awareness, competence and rigour, and thereby contribute to a greater understanding of the role and impact of human rights in context.

¹ See Britha Mikkelsen, *Methods for Development Work and Research. A New Guide for Practitioners* (Sage 2005) 154. See also Bruce L. Berg, *Qualitative Research Methods for the Social Sciences* (Pearson International 2009) chapters 1 and 2. We have titled this book 'Research Methods' because the challenges in focus in the volume confronting human rights scholars are rather methodical than methodological.

² Eva Brems, 'Methods in Legal Human Rights Research' in Fons Coomanns, Fred Grünfeld and Menno T. Kamminga (eds), *Methods of Human Rights Research* (Intersentia 2009).

Human rights research has evolved through distinct phases, with new disciplines having gradually entered the field over time. In the 1970s and 1980s, human rights research was primarily a legal field with a predominantly normative-legal underpinning. It maintained a strong focus on the elaboration and interpretation of human rights standards, and on building new international human rights institutions to monitor and enforce those standards. The methods used were usually interpretative, driven by the normative ambition of constructing, expanding and deepening our understanding of human rights norms and standards. Human rights academics contributed to the development of new conventions and declarations, with some becoming members of international human rights monitoring bodies. Following the 1986 Declaration on the Right to Development and landmark events such as the 1993 Vienna Declaration and Program of Action, the links between human rights and development began to be forged. During the early 1990s, social scientists, in particular in the field of development research, began to take an interest in human rights as a normative foundation for development and societal change.

Within legal research fields, legal anthropology emerged as a new field of human rights inquiry. Linking development and human rights opened analytical space for social scientists and anthropologists and the role of human rights in local processes of societal change. The analytical focus was often comparative and anthropological; it was frequently connected with regime change analysis or local/contextual analysis, or with conflicts between local versus universal norms.

During this period development economists were also beginning to engage with human rights, offering models and practical guidance for development policies conducive to human rights requirements. While patently political in their initial orientation, human rights-based approaches to development later emphasized the need for operational methods for assessing causal analysis of the human rights performance of development actors (e.g. UNICEF's model for human rights programming).³

In the 2000s, historians entered the human rights research arena, undertaking critical enquiries into the historically contingent nature of the modern human rights doctrine.⁴ In the past decade the growing number of academic journals dedicated to human rights reflects the increasing engagement of new disciplines: human rights law journals have been

³ Urban Jonsson, 'A Human Rights-based Approach to Programming' in Paul Gready and Jonathan Ensor (eds), *Reinventing Development? Translating Rights-Based Approaches from Theory to Practice* (Zed Books 2005).

⁴ Samuel Moyn, *The Last Utopia. Human Rights in History* (Harvard University Press 2010); and see Jensen and Burke, Chapter 6 in this volume.

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complemented by interdisciplinary journals and by journals from the fields of sociology, anthropology, development studies and economics. This has been accompanied by a strong interest in critical empirical research and evidence-based methodologies. From the mid-2000s a growing body of work has emerged on human rights indicators, including work led by the UN, helping to deepen and enrich the understanding of particular human rights, and build indexes and databases that allow larger quantitative and empirical analyses of human rights performance. This empirical social science research seeks to understand and explain variations and differences in human rights respect, protection, promotion and fulfillment across social contexts, cultures and political regimes. Yet the turn towards evidence-based and empirically grounded research requires appropriate methodological skills and competence. A key purpose of this volume is to advance knowledge in this area within higher education and research institutions.

This volume presents a variety of methodological departures and analytical methods used in a range of disciplines. Methods vary within and certainly across disciplines. Moreover, disciplinary traditions are important in linking the choice of methods to a theoretical or ontological approach. For instance, discussions about methodology may be more explicit in the social sciences. Methods consist of rules, procedures and practices for addressing and solving analytical problems and puzzles. When a puzzle is identified and a research question asked or a hypothesis suggested, the researcher must make choices about the analytical approach (generally to decide if the purpose is to explain, understand or interpret, or a combination of these) and identify the most suitable techniques and tools to collect information, and process and organize the data according to rules and procedures. Among generally recognized methods, no single method is 'better' than others, although disagreement about the robustness of results arising from different methods certainly exists. The choice of methods depends on the research question posed. Training in methods is essentially about building skills to develop robust research questions and make good choices about which method or methods to use, and how to apply the methods effectively once chosen. It also entails training in understanding how those choices relate to particular paradigms, values or theoretical premises. In making methodological choices, the researcher also usually acknowledges and explores underlying premises, value commitments and theories.

Human rights research commonly takes the international human rights legal framework as a starting point and foundation. This potentially limits the scope of the research, but it needs not. Human rights research should not be constrained by overt or implicit requirements to 'promote' and not criticize human rights. That is not to say that human rights research should

not support or promote human rights, but rather that a critical approach to institutional or political solutions may ultimately be more effective. Indeed, that an unquestioning acceptance of the premises or assumptions underpinning human rights or human rights violations is both unhelpful and intellectually disingenuous. Human rights research should be assessed according to the methods applied, the reliability and validity of the data used, and if results can be controlled and tested by other research.

The interdisciplinary nature of human rights also calls for applying mixed methods in addressing and analysing research puzzles. Human rights are not only the subjects of legal obligations, they are also moral norms, with political content and social, cultural, anthropological and economic implications. Thus, for instance, political scientists can learn from and apply case law (judgments) in their analysis of human rights understanding and explanation, while anthropologists can use case law to criticize narrow or anachronistic interpretations of universal human rights norms and help interpret human rights standards in local and cultural contexts. The more recent ‘turn to metrics’ also calls for mixed methods, combining quantitative large-*N* studies with contextual analysis of ‘deviant cases’, which may have significant informational value.

So why is this volume necessary? The application of thorough analytical methods is indispensable for independent, high-quality and critical academic research. Human rights researchers sometimes cut short their research or approach it selectively because they seek a ‘constructive’ and positive approach to prevail in their research outputs. Consistent with this, human rights research often avoids a critical assessment of certain of its core normative assumptions and its practical uptake; instead it is frequently accompanied by a list of recommendations that may serve ‘promotional’ purposes, but do not advance methodologically reliable human rights research, and may ultimately do a disservice to the advancement of human rights implementation.

Methodology and Methods in this Volume

There exists only limited literature dedicated to human rights methods and methodology.⁵ The approaches introduced in this volume represent a broad spectrum of approaches to both methods and methodology on human rights from quantitative and qualitative works to hermeneutics and law. The

⁵ The most recent comprehensive relevant work is Fons Coomans, Fred Grünfeld and Menno T. Kamminga (eds), *Methods of Human Rights Research* (Intersentia 2009).

volume provides a comprehensive treatment of approaches and disciplines, providing theoretical and conceptual overviews emerging from disciplines of the social sciences and the humanities such as economics, history, law, political science and anthropology as well as case studies and local studies. The call for greater awareness about methodology and methods in the human rights field is not new. As early as 1992, Jabine and Claude published *Human Rights and Statistics. Getting the Record Straight*, which addressed two principal questions: how are human rights data developed and classified, and how can the data be analysed?⁶ The book represented a rare contribution to human rights research, focusing on quantitative research and data analysis. The application of such methods has advanced significantly in human rights research, as a number of the chapters in this book make clear, but the prevailing pattern in human rights academic literature is still characterized by the absence of a focus on methods and a lack of methodological proficiency.

Does human rights research have a common core of methodological premises? According to a 2012 study conducted by Kristin Reed and Ausra Padskocimaite from the School of Law, University of California, semi-structured interviews and case studies prevail when human rights researchers are asked to select one or more methods applicable to their human rights studies. The majority of respondents in a survey they conducted defined their disciplinary background in legal studies. It is therefore likely that, if the respondents had been asked about legal interpretation being part of the applied methodologies, many would respond in the affirmative.⁷ Sano and Thelle looked at the references of articles published in *Human Rights Quarterly* and *Netherlands Quarterly* between 2005 and 2007, and found that, on average, over the three years analysed, 45% of the references were in secondary literature, 17% related to legal documents and 16% referred to organizational literature. About 0.6% referred to primary qualitative data, while less than 0.1% made references to quantitative data. Based on this, the authors concluded that human rights research published by these two journals over a three-year period tended to draw on international conventions, and on UN organizational reports and administrative documents, while the evidence-based research in the articles was very modest.⁸

⁶ Thomas B. Jabine and Richard B. Claude, *Human Rights and Statistics. Getting the Record Straight* (University of Pennsylvania Press 1992).

⁷ Kristin Reed and Ausra Padskocimaite, *The Right Toolkit. Applying Research Methods in the Service of Human Rights* (Human Rights Center, UCLA 2012). The study was conducted with a limited number of respondents.

⁸ Hans-Otto Sano and Hatla Thelle, 'The Need for Evidence-based Human Rights Research' in Fons Coomans, Fred Grünfeld and Menno T. Kamminga (eds), *Methods of Human Rights Research* (Intersentia 2009).

How do the authors in this volume approach human rights research methodology and methods? First, consistent with trends in contemporary human rights research, a number of chapters emerge from economics, anthropology, ethics, history and institutional studies. In fact, more recent engagement on human rights in these disciplines has created a new momentum for methodological reflection and the use of more sophisticated methodical instruments like social network analysis. However, as this volume also reflects, it is clear that legal interpretation still constitutes a cornerstone of human rights research methodology given the legal anchoring of human rights in international and domestic law (although the limitations of existing legal approaches emerges also as an important subject). Several chapters examine and criticize legal approaches, and draw on other social sciences to address themes and issues that cannot be adequately addressed in legal approaches.

Table 1.1 illustrates some of the major concerns raised in the book. We distinguish between methodological and methodical angles addressed in the various chapters. Some chapters will incorporate both perspectives. In between these entry points we have included a column highlighting ‘blind spots’ in human rights research identified by the authors.

While the methodological aspects of the volume address challenges of analytical premises and concepts in need of clarification, including in current research practice, those aspects of the volume concerned with methods focus more on opportunities, whether in terms of identifying potential areas of application or providing ‘how to’ guidance. Thus, as reflected in Table 1.1, many of the book’s chapters contain ‘how to’ guidance, reflecting its instructive and practical purpose, and a number of the chapters consider opportunities for employing specific methods.

Part I of the book includes chapters emanating from specific disciplines. The focus is either on the particular challenges for methodology and methods in specific disciplines like law, or on the opportunities offered from disciplines like ethnographic research. Chapters on history and economics present perspectives and potential mutual gains in subject areas where human rights discourse have relatively recently been integrated in disciplinary discussions.

Martin Scheinin provides an in-depth analysis of the interpretation of human rights law, arguing that rigorous methodology is essential for the proper interpretation of international law, including human rights law, drawing on both treaties and custom. Scheinin reflects on the distinction between identification, interpretation and application of human rights norms, and on whether human rights treaties enjoy a special position among international treaties. He opines that human rights treaties do possess special characteristics that must be reconciled with interpretative

Table 1.1 Methodological and methodical issues raised in this volume

Methodological clarification		Blind spots	Methodical application	
Examination of challenges and valid normative designs	Examination of current practices	Issues not addressed in human rights research	Potentials of specific methods	How to research x?
Law as a scientific discipline. Challenges of legal interpretation of human rights treaties	Practices of interdisciplinary research	The issue of trade-offs in implementing human rights	The potential of ethnographic methods and of multi-sited research	How to research discrimination
The tendency of human rights lawyers to assume the validity of the norms underpinning human rights	Practices of human rights measurement and monitoring	Research on duty-bearer's motivation for integrating human rights in their policies	The potentials of comparative methods	How to conduct interdisciplinary and mixed methods research
Human rights legal research as a lawyer internal domain	Transnational human rights history as an emerging practice	The relative lack of reference to institutional theory	The potential of social network analysis	How to measure and monitor human rights
Ethical accountability and human rights research	The lack of dialogue between economists and human rights scholars	The relative ignorance of historical human rights research during the 1950s and 1960s	The potential of agency-oriented human rights historical research	How to research duty-bearers
Conceptual challenges of measurement	The tendency to conceptualize ethics as a negative proposition		Human rights and the social welfare approach in economics	How to address a plurality of legal orders
Human rights historiography			The relevance of human rights assessment in the health sector	How to address ethical accountability
				How to conduct social network analysis
				Methods available to address human rights in health
				Methods of monitoring the right to food

rules derived from the Vienna Convention on the Law of Treaties. Scheinin concludes that a proper legal methodology for the interpretation of human rights treaties does indeed exist and the interpretive activity of scholars, judges and practicing lawyers can be assessed for the rigour of its methodology and the correctness of the answers it yields.

Siobhán McInerney-Lankford examines the challenges and opportunities of human rights legal research. The chapter analyses ‘internal’ and ‘external’ methodological challenges: the first relates to the depth and critical quality of mainstream human rights legal research and the tendency of human rights lawyers to assume the validity of the norms underpinning human rights law and to be insufficiently aware and critical of the values or choices these embody. The second challenge relates to the breadth and orientation of human rights law, emphasizing the sources of law at the expense of the impact and policy uptake of human rights norms. The chapter concludes by exploring the implications of these critiques for human rights legal methodology as well as offering some cautionary notes from a legal positivist perspective highlighting the distinct features of human rights discourse.

Hilde Bondevik and Inga Bostad offer an introduction to the method of philosophical hermeneutics based on Gadamer’s concept of understanding and the process of dialogical interplay. The chapter introduces concepts of hermeneutics that may be employed in the interpretation of legal texts and in the interpretation of human rights principles and treaties, addressing those that may be used in applied research, as well as in theoretical analyses of human rights issues. The chapter posits that the hermeneutic tradition may serve as a basis for a critical and socially engaged approach to human rights.

The chapter by Edward Anderson contributes a much needed account of the dialogue between economists and human rights scholars. Anderson stresses that the mutual scepticism prevailing in both camps may be overstated. Within economics scholars may share the same concerns as human rights researchers; for instance, issues of resource constraints have become increasingly prominent in human rights research. Apart from addressing conceptual misunderstandings, Anderson also considers elements of causal analysis in economics and its relevance in the human rights domain.

Steven L. B. Jensen and Roland Burke explore how the discipline of history has entered the field of human rights research over the last decade. They argue that the most significant contribution history can make to the field is to facilitate a shift from the normative sphere to transnational dynamics. The chapter discusses the methods of history research on human rights from three complementary perspectives: (a) representation, periodization, and intent-based narratives; (b) sources and evidence; and

(c) key methodological approaches. The authors do not argue for an abandonment of the normative, but rather for a change in emphasis, implying a repositioning of the normative in human rights research, in order to provide more representative, agency- and time-sensitive accounts of the global human rights dynamics, and thereby facilitate a more constructive and accurate interaction between past and present.

Sally Engle Merry's chapter on the potential of ethnographic methods for human rights researchers introduces three sections drawing on qualitative methods. Merry discusses human rights documentation based on reports of individual cases and situations and the tendency to dismiss such narratives as 'anecdotal' and therefore not reliable. The author claims, however, that in order to understand the effect of human rights ideas and laws in local communities, it is essential to examine local ideas, experiences and practices. Merry therefore explores the potential of ethnography to inform such research since ethnography not only looks at individual behaviour but also at patterns of behaviour and their structural conditions. The chapter traces the understanding of gender-based violence as a human rights violation and compares the way non-governmental organizations in four sites appropriate global ideas about women's rights in collaboration with international scholars. The chapter underscores the significance of using ethnographic approaches to understand the human rights norms in practice.

From a focus on specific disciplines, Part II of the book brings together perspectives on human rights research methods which go across disciplines.

Malcolm Langford examines the growing body of interdisciplinary scholarship and reflects on how specific disciplinary approaches engage with human rights research. He offers a typology of human rights research considering how normative, empirical and evaluative approaches give rise to interdisciplinary approaches. The chapter discusses single-method approaches as well as multiple methods, whether these are mixed methods or what is defined as 'trans-methods'. He concludes that human rights constitutes a natural field for methodological heterogeneity, but that human rights researchers need to improve institutional collaboration and become better at linking research questions to solid methodological reflections.

George Ulrich also addresses an issue of cross-cutting relevance: research ethics for human rights researchers. Ethical issues may arise as human rights research will involve groups who are at imminent risk of being abused if exposed. Research ethics addresses scientific conduct, i.e. compliance with scientific and professional standards. Relevant for human rights research is the principle of 'do no harm', but relevant ethical concerns also comprise the quality of interaction with the groups researched and conflicts of interest; moreover, ethical accountability is exercised by

monitoring bodies, but is also an integral feature of real-life communicative interaction and research methodology.

A number of chapters cut across qualitative and quantitative perspectives, such as Andreassen's chapter on comparative analyses of human rights performance and Sano and Martin's chapter on research methods inside organizations.

Bård A. Andreassen discusses key features of the comparative method and their importance for, and application in, recent human rights research. In this chapter, the centrality of comparison in human rights research and reporting is addressed and the purposes of comparing discussed. The chapter explores key methods of comparative human rights research and argues that comparison is essential in explaining human rights situations and the effectiveness, or weakness, of human rights advocacy strategies and policies.

Hans-Otto Sano and Tomas Max Martin start from the fact that very little human rights research has been conducted inside state organizations on motivations of state duty-bearers to integrate human rights in their policies. Given the importance of state actor-led human rights change, this is a particularly important lacuna. The agency and role of state actors are largely a *terra incognita*. The authors suggest that applying institutional theory in human rights research may be a useful starting point for defining research agendas within public agencies. The methodical implications of such theoretical premises are discussed and the chapter concludes with a discussion of elite interviews as a tool for assessing institutional dynamics within state, and inter-state, organizations.

Several scholars in the volume contribute political and social science perspectives to human rights studies with a quantitative orientation. Margaret Satterthwaite and Daniel Kacinski provide reflections on quantitative methods in advocacy-oriented human rights research, reporting a turn towards quantitative methods. A range of methods have been used in this regard, including randomized sample surveys and events-based data collection as two tools of documenting human rights infringement and violations. They also provide useful insights into other analytical techniques, such as the use of 'big data'.

Simon Walker's chapter describes the challenges of human rights measurement starting with methodical tools necessary for human rights research. Walker outlines the contours of a sound methodological approach from norm identification and specification to operationalization to the provision of 'scores' for human rights indicators – the last step in effect constituting actual human rights measurement. Walker suggests four principal approaches to measuring human rights: (a) an events-based approach; (b) an expert-scoring approach; (c) an official data approach;

and (d) the opinions and perception survey approach. Walker points to a series of challenges to human rights measurement and concludes with a series of recommendations and proposals.

Kirsteen Shields considers methods related to the measurement and justiciability of human rights through the example of the right to food. Shields' chapter provides a thorough assessment of existing methods to monitor the right to food. The chapter explains the problems associated with monitoring rights, both in general and in relation to the right to food, and considers the use of indicators as well as the relationship between indicators, monitoring and the definition of the right to food itself. Shields analyses the Food and Agriculture Organization (FAO) Guidelines on the right to food, inquiring as to whether these address the identified challenges of monitoring, including the challenges related to methodology: she assesses who and what is monitored and what is *not* monitored using the FAO Guidelines. Shields concludes with practical recommendations to advance methodological approaches to monitoring the right to food.

Under quantitative methods, social network analysis is particularly useful in identifying underlying patterns of social phenomena. Anna-Luise Chané and Arjun Sharma elucidate how they have used social network analysis in an analysis of the engagement of the European Union with the UN Human Rights Council. The network analysis allowed Chané and Sharma to assess the ability of the EU to advance its human rights goals while taking into account how other countries or country groups influence the EU. While a conventional documentary study of resolutions would have shown the level of cohesiveness of the EU's agenda, the broader network approach instead revealed processes of contestation and relative isolation of the EU agenda, thus providing a more comprehensive and complex mapping of the norms and processes underlying Human Rights Council resolutions.

Dimitrina Petrova's chapter offers a thoroughgoing review of researching discrimination, beginning with fundamental questions about the nature of discrimination and the norms that protect equality and non-discrimination, and surveying the legal instruments that provide for the right to non-discrimination and affirmative action. The chapter describes research methodologies within the study of discrimination, such as researching individual discrimination cases, direct observation and review of records, face-to-face interviews, researching patterns of discrimination, researching perceptions of discrimination and normative research on protection frameworks and researching discrimination jurisprudence. Petrova concludes with a succinct discussion of methodological risks common to all methods in researching discrimination.

Laura Ferguson analyses human rights in public health laws, contrasting

human rights and public health approaches and highlighting the methodological challenges inherent in assessing the impact and effectiveness of interventions at the intersection of health and human rights. She underscores the importance of evidence-based methodology in public health, which goes beyond the legal imperatives, norms and obligations underpinning human rights-based approaches. Ferguson points to the need to translate international human rights commitments into public health action and to test the assumption that compliance with international human rights law also improves health outcomes, which itself relies on assessment based on both quantitative and qualitative data.

In the final chapter Anne Hellum explores how legal pluralities promote or constrain human rights and how this can be studied in local contexts. Case studies of three localities in Zimbabwe illustrate how an analytical approach which sees law as a multi-tiered and a semi-autonomous social field may be used to explore how legal pluralities impact on the realization of human rights. The chapter demonstrates the marginal role of the human right to water in the Zimbabwean Water Act compared with the influence of local customary norms. The chapter illustrates the importance of making human rights analysis contextually specific and sensitive to different layers of legal norms. Human rights analysis must also be cognizant of the interaction between these different types of legal norms and sensitive to the ways in which they may conflict.