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Joel R. Pruce

Human Rights Quarterly, Volume 45, Number 1, February 2023, pp. 88-108 (Article)

Published by Johns Hopkins University Press

DOI: <https://doi.org/10.1353/hrq.2023.0003>



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# The Ferguson Uprising, Shadow Reporting, and Human Rights Experimentalism

Joel R. Pruce

## ABSTRACT

In Fall 2014, frontline activists from Ferguson, Missouri traveled to Geneva, Switzerland to testify in front of the UN Committee Against Torture while the US government appeared before the body. The Ferguson to Geneva delegation participated in “shadow reporting,” which describes opportunities for impacted people to confront the state in a multilateral forum and challenge the state’s official account. Through this practice, ordinary people have an opportunity to shape international law based on their experience to suit their interests. Shadow reporting is a key platform for a critical form of transnational politics and contributes to an evolving view on the political nature of international law.

## I. INTRODUCTION

Thenjiwe McHarris first heard about the shooting of Michael Brown, Jr. while in Geneva, Switzerland.<sup>1</sup> She was there as part of a delegation testifying to the monitoring body attached to the Convention on the Elimination of all forms of Racial Discrimination (CERD) wrapping up its work surrounding the appearance of the United States government before the treaty body in

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*Joel R. Pruce* is Associate Professor in the Department of Political Science at the University of Dayton and Director of Applied Research and Learning at the University of Dayton Human Rights Center. Joel is the author of *The Mass Appeal of Human Rights* (2018) and the editor of *The Social Practice of Human Rights* (2015). Through his work with the UD Human Rights Center, Joel leads the Moral Courage Project: a storytelling initiative that foregrounds the voices of individuals who shaped major human rights events and produce traveling exhibitions, interactive websites, and a podcast series, Moral Courage Radio.

1. Interview with Thenjiwe McHarris, Founder, Blackbird, by phone (Nov. 6, 2017).

August of 2014. McHarris sat in the austere halls of the United Nations High Commission for Human Rights next to Sybrina Fulton, the mother of Trayvon Martin, and Ron Davis, the father of Jordan Davis. Both parents lost their sons to racist violence and traveled to Geneva in order to plead their cases for justice to the international community. As the news from Ferguson, Missouri spread across the Atlantic, Davis, whom McHarris knows as “Uncle Ron,” saw in Michael Brown’s body his own son laying on the ground for four hours: “He was the same. He was about the same age as Jordan.”<sup>2</sup>

McHarris traveled to Ferguson after her return from Geneva and initiated discussions about transnational advocacy with Justin Hansford, a Ferguson activist, scholar of critical race theory, and law professor. Through these conversations, as well as in interactions with other people on the ground, a delegation took shape to capitalize on the momentum of the movement. McHarris remarked:

[K]nowing that this moment was really important to Black resistance, it was really important to making sure the country faced white supremacy and mass incarceration and hyper-criminalization. It was really important in knowing that this was not just going to be important for the United States, there’s some global significance to what was happening.<sup>3</sup>

Four months later, also in the chambers of the Palais Wilson, Michael Brown’s parents, Lezley McSpadden and Michael Brown, Sr., brought their personal claims to the world.<sup>4</sup>

The Ferguson to Geneva (F2G) delegation included the parents, human rights lawyers, and activists deeply engaged in the 100-day uprising that stretched on late into the fall. These individuals prepared a written report composed of stories from the site of protest that documented the use of excessive force by police against unarmed civilians, as well as made the case that the fatal shooting of Michael Brown by police officer Darren Wilson was itself a human rights violation. With the report in hand, the delegation crowdfunded support for their travel and flew to Geneva; for several members, they were issued their first passports and left US territory for the first time in their lives.<sup>5</sup>

Their appearance before the United Nations Committee Against Torture (the Committee) in November 2014 contributed to the reporting cycle for the US as part of its obligations as a state party to the Convention Against

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2. *Id.*

3. *Id.*

4. Christina Coleman, *Michael Brown’s Parents to Speak to UN Committee.*, USA TODAY (Nov. 10, 2014), <https://www.usatoday.com/story/news/nation/2014/11/10/michael-brown-parents-testimony-switzerland/18799049/> [https://perma.cc/J4RH-7XK3].

5. Interview with Justin Hansford, St. Louis University School of Law, in St. Louis, MO (May 26, 2016).

Torture (CAT).<sup>6</sup> Each cycle, the government assembles a self-report of its record of practice relative to the articles of CAT. In addition, the Committee conducts its own inquiry and seeks external perspectives from civil society stakeholders based in the country under review. F2G participated by testifying in person before the Committee and US government, and by submitting a written document; in this particular cycle, eighty-two total US civil society reports were also submitted.<sup>7</sup> The US Human Rights Network (USHRN) organized a delegation to CAT—just as it had to CERD in August—as part of the organization's broader effort around "shadow reporting."<sup>8</sup>

"Shadow reporting" describes instances when civil society actors submit documentation of human rights abuse in multilateral forums, framed as violations of international law, to complement and contradict the state's official account of its own record. Shadow reporting transforms international legalism into participatory politics. In these spaces, on the page and in person, ordinary people interpret and shape international law based on their experiences. The insistence of a place for impacted people to challenge the elite and inaccessible nature of global politics by foregrounding first-person accounts, particularly those from marginalized communities, forces nation-states and international agencies to listen. Shadow reporting provides a crucial tool for grassroots activists and impacted people to assert themselves as global citizens endowed with international human rights.

This article will establish shadow reporting as a key venue for a critical form of transnational politics and contribute to an evolving view on the inherently political nature of international law. Shadow reporting reveals that bureaucratic measures, such as treaty body monitoring, can become charged venues for making claims and demanding accountability. By strategically considering how these spaces can be utilized and exploited, human rights activists affect the meaning and purpose of international law.

To explore this topic, a majority of members of the F2G delegation, as well as organizers of broader efforts to mobilize US civil society around global human rights mechanisms were interviewed. Additionally, a range of texts that contain the origins, goals, and outcomes of this initiative were examined. These include internal papers on UN communications, news coverage, contents from the delegation's website—[www.Ferguson2Geneva.org](http://www.Ferguson2Geneva.org), no longer online—as well as other digital materials. By examining a wide array of documentation, a narrative of events emerges that stitch together a

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6. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, U.N. Doc. CAT/C/USA/CO/3-5 (19 Dec. 2014).

7. Committee against Torture, Consideration of State Reports (3 Nov. 2014–28 Nov. 2014) [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=930&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=930&Lang=en) [<https://perma.cc/D9C4-UKNT>] (this figure was determined by author's calculation of reports posted on the UN Treaty Body Website).

8. Interview with McHarris, *supra* note 1.

coherent sense of the actors' motivations that speak to the creative ways in which they sought to operationalize international law and how this episode fit into a dynamic strategy of racial justice activism.

To advance the argument, this article offers human rights treaty bodies as the institutional origins of key legal and political processes. The conventional view holds law as merely regulative and coercive but ignores an important range of activity in which social movements and non-governmental organizations (NGOs) creatively participate in and transform legal processes. Further, this article narrates the story of the F2G delegation from the streets to its appearance before the UN body, and back to US soil to continue its advocacy. The historical legacy of Black radical internationalism in the US provides an important context for understanding the F2G initiative. Throughout, this article situates shadow reporting as a particular tool for human rights advocates and inquires as to why a movement—in this case, the frontline struggle in Ferguson—would select this option from among (and in tandem with) others. Finally, this article draws conclusions and points to future directions to pursue in this new research program.

The story of the F2G delegation provides a fertile case for examining contemporary debates surrounding human rights and international law, particularly recognizing the stakes and pressure members of the delegation were under at the time. With people still facing down police snipers, this group elected to plead its case before the international community. A picture emerges here of international law as providing discursive and even physical space for transnational politics that, while not entirely unintended, can rightfully be described as underutilized and underappreciated. Importantly, this political space is open to be shaped from below for purposes that serve impacted individuals and communities directly. Perhaps most profoundly, shadow reporting can also produce new agents seeking personal reconciliation and emotional healing. Justin Hansford, who prepared Lezley McSpadden to deliver her testimony, remarks how “she had to go all the way to Geneva before she could find a place where she could tell her story before a group of officials and they respected her and they recognized her dignity.”<sup>9</sup> If a fundamental aim of international human rights law is to recognize and protect human beings endowed with dignity—even, and especially, when dignity is being denied on a human being's home soil—then shadow reporting provides an opportunity for that dignity to be asserted and affirmed in public, vindicating a bedrock principle of the human rights project.

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9. Interview with Hansford, *supra* note 5.

## II. HUMAN RIGHTS EXPERIMENTALISM THROUGH UN TREATY BODIES

State parties to international human rights treaties enter binding obligations to engage in processes of monitoring and reporting. Article 19 of the Convention Against Torture reads, for example, “[t]he States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention.”<sup>10</sup> The Office of the High Commission on Human Rights (OHCHR) considers the reporting process the centerpiece of a “constructive dialogue”<sup>11</sup> between international human rights mechanisms and nation-states, one that “offers an opportunity for States parties to receive expert advice on compliance with their international human rights commitments, which assists them in their implementation of the treaties at the national level.”<sup>12</sup> Upon ratifying a treaty, a state must submit its first report within a year, beginning a series of four-year cycles interspersed with midpoint check-ins.<sup>13</sup> At each node, correspondence is exchanged, establishing a relationship based upon an evaluation of the human rights record of the state.

Out of the skeletal guidelines in the treaties themselves, a series of practices have developed to bolster and streamline monitoring and reporting. “List of issues” requests are circulated in advance of the sessions to solicit suggestions from civil society as to the topics they believe should be raised with the state. States are invited to put forward high-level delegations to appear before the committees, to deliver remarks and hear from independent experts that compose the treaty body, as well as fellow nation-states. “Concluding observations” is the label affixed to the committee reports written upon consideration of all the information gathered through consultation with the state, other UN agencies, and civil society. This report contains the final assessment and a set of prescriptions that inaugurates the new cycle. “Treaty bodies have exercised their functions in a manner that ostensibly went considerably beyond what many States had envisaged during the drafting stage of the governing treaties and have, some misgivings notwithstanding, developed their legitimacy in so doing.”<sup>14</sup> Fundamentally, the process is designed to be, as the description so far suggests, dialogical and consultative across multiple levels of politics. In order for governments to fulfill their obligation under international law, officials must conduct an

10. G.A. Res. 39/46, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (Dec. 10, 1984).

11. U.N. Secretary-General, Implementation of Human Rights Instruments, U.N. Doc. A/69/285 (11 Aug. 2014).

12. *Id.* at 23.

13. CAT, *supra* note 6, at 9.

14. Lutz Oette, *The UN Human Rights Treaty Bodies: Impact and Future*, in INTERNATIONAL HUMAN RIGHTS INSTITUTIONS, TRIBUNALS AND COURTS 95, 100 (Gerd Oberleitner ed., 2018).

assessment of their own human rights record by engaging with impacted communities under the supervision of international instruments.

The OHCHR's *Handbook for Civil Society* articulates in the passive voice that "human rights treaty bodies may receive information on the implementation of treaty provisions . . . from civil society, particularly NGOs (both national and international), professional associations and academic institutions."<sup>15</sup> Subtly gesturing to the openness and political potential of the reporting process, the receipt of information by the treaty body positions civil society for impact, and this is the entry point for "shadow reporting." Known also as "parallel reports" or "alternative reports," shadow reports are documents assembled by civil society actors that evidence human rights abuse and critically augment the self-report submitted by the state under review. While the report must be germane to the issue area covered by the treaty, the topics taken up vary, subject only to the expertise and concern of the submitting party. Shadow reports function as fascinating snapshots of human rights in action. Submitters may be victims' families, academic law clinics, indigenous nations, or major transnational NGOs, and often they are prepared by coalitions of actors like these. The reports can be wide-ranging surveys of an issue area or narrowly focused on a case or incident. The format for submitting shadow reports is not uniform, and only the Universal Periodic Review enforces a maximum word limit. They may be Microsoft Word documents or PDFs. The text may be typed in any font. One report consists of scanned, handwritten letters by mothers of torture victims brutalized by the Chicago Police Department, accompanied by photographs of their family members.<sup>16</sup> Far from the formalism and polite decorum associated with UN institutions, shadow reports demonstrate a unique outgrowth of law that compels us to rethink our assumptions.

Drawing inspiration from Seyla Benhabib, Geoff Dancy, and Christopher J. Fariss lay out a "constitutive model" of international law as a response to the heavy-handed legalism that, as they see it, has culminated in a dead-end view of human rights.<sup>17</sup> The conventional view holds that the goal of international human rights law is to constrain the behavior of states by shaping the external environment in which states act with normative guidelines. Closely tied to assumptions about compliance and enforcement,<sup>18</sup> the con-

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15. U.N. Office of the High Commissioner for Human Rights, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* 1-206, 40 (2008).
  16. BERTHA ESCAMILLA, JEANETTE PLUMMER, ARMANDA SHACKELFORD, SHIRLEY BURGESS, ANABEL PEREZ & JOYCE EIVSON BROWN, *MOTHERS OF CHICAGO POLICE TORTURE VICTIMS SPEAK: SECONDARY VICTIMS* 71 (2006).
  17. Seyla Benhabib, *Claiming Rights Across Borders: International Human Rights and Democratic Sovereignty*, 103 AM. POL. SCI. REV. 691 (2009); Geoff Dancy & Christopher J. Fariss, *Rescuing Human Rights Law from International Legalism and Its Critics*, 39 HUM. RTS. Q. 1, 12 (2017).
  18. Robert Howse & Ruti Teitel, *Beyond Compliance: Rethinking Why International Law Really Matters*, 1 GLOB. POLICY 127 (2010); IAN HURD, *HOW TO DO THINGS WITH INTERNATIONAL LAW* (2017).

ventional view proposes clear but facile arguments about what it looks like when international law “works” with corresponding conclusions about the weakness of international law when it fails to work this way, offering only a singular, narrow criterion (“compliance”) for assessing the effectiveness of international law. Instead, Dancy and Fariss point to the ways in which human rights law informs and constitutes political relationships between rights-claimants and states. “If human rights laws resonate and frame social movements, it is because people care about, and are empowered by, ideas that have been legalized at the international levels.”<sup>19</sup> Cossette D. Creamer and Beth A. Simmons in a recent analysis of the impact of shadow reporting on human rights protection advance a similar argument:

We find positive, systematic evidence that repeat engagement in the report-and-review process has produced modest human rights improvements on the ground. Evidence of civil society activation, media attention, and legislative activity suggests that domestic constituencies do in fact become aware of and are mobilized by the self-reporting process, setting the stage to demand, debate, and implement improvements over time.<sup>20</sup>

Civil society participation in treaty body reporting processes exemplifies the ways in which law opens innovative space for politics.

Benhabib’s writings on “democratic iteration” introduce the concept of the “jurisgenerativity of law,” which itself draws from US constitutional legal theory,<sup>21</sup> understood as “the law’s capacity to create a normative universe of meaning.”<sup>22</sup> She writes:

Law can . . . structure an extralegal normative universe by developing new vocabularies for public claim making, by encouraging new forms of subjectivity to engage with the public sphere, and by interjecting existing relations of power with anticipations of justice to come. Law anticipates forms of justice in the future.<sup>23</sup>

This articulation does at least several things of use here: by focusing on social movements as interlocutors of international law, she removes its elite imprimatur, denies lawyers and diplomats exclusive proprietary roles, and emphasizes how, through political practice, impacted communities insist on their own interpretation of what the law means, what it does, and how it works.

Shadow reporting encourages groups to articulate grievances in terms that suit the treaty body. For instance, the Ferguson delegation argues that both the killing of Michael Brown and the excessive force deployed against

19. Dancy & Fariss, *supra* note 17 at 14.

20. Cosette D. Creamer & Beth A. Simmons, *The Proof Is in the Process: Self-Reporting Under International Human Rights Treaties*, 114 Am. J. Int’l. L. 1-50, 1052 (2020).

21. Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

22. Benhabib, *supra* note 17, at 692, 696.

23. *Id.* at 696.

non-violent protestors constitute violations of CAT. They referred to the previous Concluding Observations report adopted by the Committee in 2006, which condemned excessive force by the Chicago Police Department.<sup>24</sup> The F2G shadow report identifies a litany of examples, noted with names, ages, and details, of individuals terrorized by the police response through the use of Long Range Acoustic Device (LRAD) sound cannons, tear gas, and rubber bullets.<sup>25</sup> The drafters of the report admit that their use of CAT was purely opportunistic: the uprising was in full swing throughout Fall 2014 and the US was set to come before the Committee later that year.<sup>26</sup> If CERD or another review process had been upcoming, the report would have ostensibly included many of the same stories but framed in different legal terms. Opportunism in this sense is not a dismissive label, but rather a nod to the strategy at work and an appreciation of meaning-making in motion and meaning-making as politics, which has always been the case for international law. Despite its veneer of objectivity or universalism, international law has always served some purposes for the certain actors that have been responsible for drafting it from the outset.<sup>27</sup> Contesting the meaning of law in this way is a radical act.

The definition of torture in Article 1 of CAT is as follows:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>28</sup>

There are many, many acts that fit this definition of torture. It is not a narrow definition. The political act, or the act of deploying legal meaning to apply political pressure, is to make the argument, before the country and the world, that it applies in *this* case—that it accurately and powerfully frames the experience of a community in terms accepted and understood by international society. “Even human rights norms require interpretation, saturation, and vernacularization; they cannot just be imposed by legal elites

24. Committee Against Torture, Consideration of Reports Submitted by State Parties Under Article 19 of the Convention, U.N. Doc. CAT/C/USA/CO/2 (25 Jul. 2006).

25. United States’ Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Written Statement on the Police Shooting of Michael Brown and Ensuing Police Violence Against Protesters in Ferguson, Missouri of the Fifty-Third Session of the U.N. CAT (3 Nov. 2014).

26. Interview with Hansford, *supra* note 5.

27. Makau Mutua & Antony Anghie, *What Is TWAIL?*, 94 PROC. ANN. MEET. AM. SOC’Y. INT’L. LAW 31 (2000).

28. CAT, *supra* note 6.

and judges on recalcitrant peoples. Rather, they must become elements in the public culture of democratic peoples through their own processes of interpretation, articulation, and iteration."<sup>29</sup> The fact that the definition of torture is so broad, and the Committee offers itself as a susceptible venue before which to advance a particularly expansive understanding of the definition, illustrates how treaty body processes support the political application of human rights law. "In this formulation, human rights law has an impact because of its generative qualities."<sup>30</sup> Law gives space for politics to take shape in creative, dynamic, and unexpected ways.

Gráinne de Búrca introduces a lovely phrase to describe efforts like these: "human rights experimentalism," which "posits that open-ended but important global norms only take shape through their implementation in different local contexts by a varied array of actors."<sup>31</sup> Treaty bodies, upon deeper inspection, operate in a range of figurative ways that are not necessarily a product of their design and emerge because of how they are used by impacted people and their advocates.

This path of 'stumbling into experimentalism' is one to which transnational human rights systems with a mechanism such as a court or a treaty body, in the presence of an active and engaged civil society with a clear interest in the effective implementation of the system, may be inclined to follow.<sup>32</sup>

The attention here is directed to the unconventional interjection of lived experience, articulated through legal argumentation, fed into multilateral human rights mechanisms. Shadow reporting constitutes a crucial and clear example of this phenomenon in which actors exploit the openness of legalistic processes for their own purposes, thereby stretching and redefining international law and its capacities for governance.

Human rights experimentalism is one manifestation of what de Búrca, Robert O. Keohane, and Charles Sabel term "global experimentalist governance."<sup>33</sup> Also referred to by the hip acronym, "GXG," this practice broadens our typical understanding of power and order in international lawmaking by recognizing the role that civil society can play. The authors "believe GXG has the potential to be a constructive development, establishing relationships of legitimate authority by keeping the circle of decision making open to new participants and generating possibilities for responsive and effective problem solving in an iterative and non-hierarchical fashion."<sup>34</sup> There are important questions to answer as to whether GXG is a new trend now

29. Benhabib, *supra* note 17, at 696.

30. Dancy & Fariss, *supra* note 17, at 12.

31. Gráinne De Búrca, *Human Rights Experimentalism*, 111 AM. J. INT'L. L. 277, 310 (2017).

32. *Id.* at 283.

33. Gráinne De Búrca, Robert O. Keohane & Charles Sabel, *Global Experimentalist Governance*, 44 BR. J. POL. SCI. 477 (2014).

34. *Id.* at 480.

and what explains its materialization. In other words, what is the history of these sorts of innovations? Fundamentally, this framing of international law as an innovative space for political action contributes to ongoing debates about the utility of human rights law, in particular, how we know whether or not it “works” and what if anything we can know about its impact. As de Búrca illustrates clearly:

[w]hat the experimentalist interpretation of the human rights treaty system aims specifically to do is to offer a more detailed theoretical account of the likely mechanism by which human rights treaties have effect, in suggesting how they can contribute to bringing about domestic change through the interaction of local NGOs with international treaty bodies and state actors in an ongoing iterative cycle of reporting and review.<sup>35</sup>

Once the prevailing notions of “compliance” are supplemented (or sidelined) as the singular variable for assessing the usefulness of international law, human rights experimentalism maps a dynamic path for more robust analysis of impact that can also foreground the contributions of impacted people and grassroots activists. In the case of racial justice activism in the US, experimentalism dates to the middle of the twentieth century, to the dawn of the UN itself.

### III. US CIVIL SOCIETY ENGAGEMENT WITH INTERNATIONAL HUMAN RIGHTS: EXCEPTIONS TO US EXCEPTIONALISM

The foundational assumption covered extensively in the literature and evidenced in practice asserts that US engagement with international human rights mechanisms reflects a position of exceptionalism. This relationship is expressed in multiple ways. Despite being regularly hailed as the global vocabulary of the marginalized and oppressed, human rights have never been a dominant framework in the US. There are reasons for this. Even in the presence of the robust institutional and cultural penetration of human rights in world affairs—in law, through organizations, and in the rallying cries of social movements—the US has immunized itself. The US positions itself outside of, above, and beyond global norms, as an exceptional country with exceptional power that exempts it from the bounds of law. The US plays by its own rules, both at home and in its operations abroad. Human rights occupy a role as something that happens “over there,” an externalized problem absent in the land of economic opportunity and beacon of liberal democracy. The US resists ratification of most of the major human rights treaties, as well as the Rome Statute, and refuses to accept international law as creating binding obligations or measures of accountability.

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35. De Búrca, *supra* note 31, at 303.

There are exceptions to US exceptionalism carved out by challenges to state violence by those who are primarily subjected to it. Notably, and of particular relevance for the Ferguson case study in the next section, a 1951 initiative solicited the UN for recognition of atrocities committed against people of African descent from chattel slavery through the Jim Crow era. An extensive document entitled, “We Charge Genocide: The Historic Petition to the United Nations for Relief From a Crime of The United States Government Against the Negro People,” authored by William Patterson and the Civil Rights Congress, and endorsed by a long list of individuals that included W.E.B. DuBois and Paul Robeson, interpreted clauses of the Genocide Convention to address upwards of 152 cases of violence detailed in the report.<sup>36</sup> Following years of advocacy by the NAACP and others with the new UN machinery,<sup>37</sup> “We Charge Genocide” documents a creative and experimentalist approach to utilizing international law in the immediate period following the creation of the UN.

The history of “We Charge Genocide”—and the Black radical internationalist tradition more broadly—matters here because the Ferguson delegation saw themselves as the heirs to this legacy and they are not alone. During the CAT 2014 reporting cycle at which F2G testified, a crew of young people from Chicago also appeared to raise the case of their friend Dominique “Damo” Franklin who was tased to death by Chicago police after stealing a bottle of alcohol.<sup>38</sup> This delegation called themselves We Charge Genocide signifying the self-awareness of this generation of racial justice activists and their connection to this history.<sup>39</sup>

Over the next fifty years the struggle for racial justice in the US expressed itself in many forms. The most obvious example was the Civil Rights Movement, which was avowedly oriented toward equal recognition of the rights of African Americans as citizens of the US. However, contemporaneous with the Civil Rights Movement, radical flanks associated with Black Power and Pan-Africanism took shape. In the lineage of earlier leaders like Marcus Garvey, committed cosmopolitans saw the fight for racial justice and its resolution as global in nature because white supremacy and structural racism are not confined to any one state.<sup>40</sup> Freedom fighters with this perspective articulated the need to pursue alternate routes because the US

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36. CIVIL RIGHTS CONGRESS, *WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE* 39 (1951).

37. CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944-1955* (2003).

38. Adam Sege, *Man dies after Chicago police use taser in arrest*, CHICAGO TRIBUNE (May 21, 2014), <https://www.chicagotribune.com/news/breaking/chi-man-tased-by-police-while-resisting-arrest-dies-20140521-story.html> [<https://perma.cc/62PS-5FFL>].

39. We Charge Genocide, *About*, <http://wechargegenocide.org/about/> [<https://perma.cc/7S4Z-6BPS>].

40. Nico Slate, *From Colored Cosmopolitanism to Human Rights: A Historical Overview of the Transnational Black Freedom Struggle*, 1 J. CIV. HUM. RTS. 3 (2015).

could not be trusted to fix its own problems. As Malcolm X famously wrote in “The Ballot or the Bullet”:

Civil rights keeps you under his restrictions, under his jurisdiction. Civil rights keeps you in his pocket. Civil rights means you’re asking Uncle Sam to treat you right. Human rights are something you were born with. Human rights are your God-given rights. Human rights are the rights that are recognized by all nations of this earth.<sup>41</sup>

Interviews with Ferguson delegation members reveal similar sentiments, that the domestic civil rights frame confines the scope and diminishes the gravity of the claims, while also reflexively confines and diminishes the experiences of those individuals making the claims.

#### IV. FERGUSON TO GENEVA: FROM AN UPRISING TO THE UNITED NATIONS

##### A. The Killing of Michael Brown, Jr.

On February 5, 2012, Trayvon Martin was shot to death in Sanford, Florida by George Zimmerman, a self-deputized protector of the community; Martin was visiting with his father that night.<sup>42</sup> Outrage gripped the public. Over a year later, in July 2013, Zimmerman was acquitted of the killing.<sup>43</sup> The morning after, Alicia Garza coined the phrase “Black Lives Matter” and used the hashtag for the first time.<sup>44</sup> One year after that, as July 2014 transitioned into August 2014, Thenjiwe McHarris accompanied Martin’s family to Geneva to testify before the committee that monitors CERD.

On August 9, 2014, Michael Brown Jr. walked down the middle of the street on the block where his grandmother lived in the Canfield Green apartment complex in Ferguson, Missouri, a small suburb north of St. Louis.<sup>45</sup> Officer Darren Wilson approached Brown in a police cruiser from behind and demanded that Brown clear the street, along with Dorian Johnson, Brown’s friend. A physical altercation ensued between Brown, an eighteen-year-old Black man, and Wilson, a twenty-eight-year-old white male, which

41. Malcolm X, *The Ballot or the Bullet* (1964), <http://americanradioworks.publicradio.org/features/blackspeech/mx.html> [<https://perma.cc/FF46-B3HW>].

42. Deepti Hajela, *Trayvon Martin, 10 Years Later: Teen’s Death Changes Nation*, ASSOCIATED PRESS (Feb. 24, 2022) <https://apnews.com/article/Trayvon-Martin-death-10-years-later-c68f12130b2992d9c1ba31ec1a398cdd> [<https://perma.cc/D3TX-GSAM>].

43. *Id.*

44. *Id.*

45. *Timeline of events in shooting of Michael Brown in Ferguson*, ASSOCIATED PRESS (Aug. 8, 2019) <https://apnews.com/article/shootings-police-us-news-st-louis-michael-brown-9aa32033692547699a3b61da8fd1fc62> [<https://perma.cc/7USE-57JZ>].

ended with Wilson shooting Brown six times. Brown allegedly turned toward Wilson after initially fleeing and raising his arms in the air, indicating that he was unarmed. Brown's dead body was left in the street for four hours on this hot summer Midwest afternoon; for a period of that time, his body remained uncovered. His mother was prohibited from approaching the body. Witnesses report seeing a police dog urinate on the site of the shooting, as agitated crowds grew over the course of the day. Images of Brown's dead body in the street circulated on social media, inviting communal outrage across digital space as people from the community showed up at the scene, which grew increasingly tense as night fell.

Thus, the Ferguson Uprising began. For 100 days and nights, thousands of people marched, chanted, and beat drums across Ferguson's main drags. In the dark hours, after protestors broke mandated curfews, militarized police rolled around town in armored tanks, positioned themselves atop buildings with sniper rifles, and chased people off streets with LRADs and caustic chemical agents. Violent arrests became nightly events. National and international audiences watched livestreams lit with night-vision. In the morning, a crew of protestors swept through the area, cleaned up, reset tables with water bottles and snacks, and prepared for another day of non-violent actions. Over this time, buses of supporters arrived in the region to bolster and swell the frontline. Organizers led actions that blocked highways and disrupted professional baseball and football games in the city. Nothing operated as business-as-usual across St. Louis County during these months.

## B. Drafting a Shadow Report During an Uprising

Shortly after returning from Geneva, Thenjiwe McHarris slept on Justin Hansford's couch in St. Louis and went out to West Florissant, the primary site of protest, day and night. Right away, the two fell into sync on a strategy. Hansford remarked:

[T]he idea of using the human rights process was first raised by her and for me it made perfect sense because I teach human rights law and I've been a fan of Malcolm X's since I've been a teenager and his last push before he passed away was to take the case of the Black Americans and put it before the United Nations and say this isn't a Civil Rights issue, this is a human rights issue and I knew that very well.<sup>46</sup>

Assembling a shadow report for the upcoming CAT session was an unmistakable opportunity because it was just months away.

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46. Interview with Hansford, *supra* note 5.

Hansford and Meena Jagganath, a community and movement lawyer from Miami, began to collect stories from protestors on the streets as well as those released from detention. Personal testimonies of individuals who experienced excessive force by police or abuse while in jail constituted the bulk of the report, but it was also framed and dressed in international human rights law, in particular, the broad area covered by the legal definition of torture.<sup>47</sup> “We ended up using some stories of people who were not just victims but people who actually could tell their story in a way that would be powerful in the human rights context and also that, that intersected with the legal issues.”<sup>48</sup> CAT posits a broad definition that the drafters of the F2G shadow report exploited to subsume a wide range of state action: kettling protestors, roadblocks, racial profiling, excessive force, sound cannons, intimidation, militarization, and the use of rubber bullets and tear gas in residential neighborhoods that besieged even non-protestors in their own homes and exposed residents, including children, to chemical agents. As the report concludes, “[t]hese abuses and others amount to cruel, inhuman and degrading treatment directed towards protesters primarily representing racial minorities.”<sup>49</sup> International law created opportunities for political claim-making.

In addition to framing the violence in Ferguson in the terms of CAT, the report did what treaty body processes intend to do: facilitate an ongoing dialogue with the state that bridges cycles of reporting, engages multiple sources of normative authority at the international level, and encourages the development of legal understanding and application across issue-areas. The report ties the current circumstances back to the 2006 CAT cycle in which the US was also chastised for abuses and shortcomings among its police, especially with respect to racial minorities, and a 2011 report submitted by the US government to the Human Rights Committee that documented a police training initiative the Committee found inadequate.<sup>50</sup> Further, F2G referenced statements by the then-Special Rapporteurs on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Theo van Boven and Juan E. Méndez. Both of whom argued that misuse of weapons and excessive force against protestors can constitute violations of the Convention, in particular Article 16 which expansively includes, “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1.”<sup>51</sup> Despite the fact that the US Department of

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47. Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States after Ferguson*, 12 HASTINGS RACE POVERTY L. J. 121 (2015).

48. Interview with Hansford, *supra* note 5.

49. United Nations Committee Against Torture, *supra* note 25, at 4.

50. Hansford & Jagganath, *supra* note 47, at 137.

51. *Id.* at 7.

Justice by this point had opened an investigation into the Ferguson police department, the report raises concern that the government—from federal to local authorities—is incapable of performing “a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction,” as stipulated by Article 12.<sup>52</sup>

But the report was not deployed in a purely instrumental sense, the methods utilized for collecting stories also possessed intrinsic value. It is critical to witness the ways in which the report’s composition carried and communicated voices from the frontlines while still targeting the US government with their assertions and aiming to impress the severity of the situation upon UN experts. Jagganath clearly identifies the imperative to actually connect with the community members to ensure that their voices were also lifted up into the report. “I wanted to make sure that it was something that the community actually had some ownership over. The demands [in the report] too flowed directly from documents and conversations that folks were having on the ground.”<sup>53</sup>

The grassroots or “from below” nature of the report was not just window dressing, nor did it represent grassroots capture; it was intentionally baked into the report itself from the start. The drafters of the report insisted on the bold assertion that impacted people and street-level activists make core contributions toward the execution of a transnational advocacy strategy.

### C. From Ferguson to Geneva and Back Again

With the report complete and submitted, the group from Ferguson traveled to Geneva, Switzerland to testify before the Committee Against Torture, along with the other delegations organized in the orbit of the US Human Rights Network (USHRN). The USHRN arranged itself into thematic working groups: national security, prison conditions, immigration, children’s rights, policing, right to rehabilitation for torture survivors, death penalty, political prisoners, and women, gender, and LGBTQ rights. US civil society as a whole was allotted a finite period of time to appear before the Committee and, among themselves, divided up their collective time into increments of one to three minutes per speaker. USHRN brought the largest group to Geneva, but worked alongside major NGOs, such as Human Rights Watch, the American Civil Liberties Union, Human Rights First, and the Center for Constitutional Rights.<sup>54</sup> The speakers’ lineup intentionally balanced the

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52. *Id.*

53. Interview with Meena Jagganath, Community Justice Project, by phone (July 7, 2017).

54. *Id.* (referencing network planning documents on file with author).

highly visible status of the big NGOs with impacted individuals traveling with USHRN. A lesson learned from the previous treaty body cycles in 2005 to 2006 suggested that first-hand stories carry well in these spaces and were essential to complement the conventionally dry legalism of transnational advocacy NGOs;<sup>55</sup> there are audiences for both modes.<sup>56</sup>

Both in advance of the trip and while in Europe, the Network prepared delegates and coordinated activities around the hearings to maximize their time and their chances of meeting articulated goals: to secure Concluding Observations that, among other things, “expand the understanding of what constitutes torture and cruel, inhuman and degrading treatment and punishment.”<sup>57</sup> In the pursuit of this agenda, the delegates lobbied Committee members before, during, and after the hearing sessions, in informal and formal gatherings. The Network hosted a “side event” featuring its speakers as an additional opportunity to obtain media coverage and shape the discussions taking place over the course of these four days. Delegates met with staff supporting Special Rapporteurs whose mandates addressed themes USHRN wanted to highlight and even spoke directly with members of the US government’s delegation, including Keith Harper, the then-US Ambassador to the UN Human Rights Council.<sup>58</sup>

All this work, time, money, and strategizing revolved around a series of two-minute presentations to the Committee. After the major NGOs each took their turn, We Charge Genocide began the string of remarks given by impacted people followed by the parents of Michael Brown. Hansford prepared Lezley McSpadden for her testimony, and he reported:

When she actually gave her testimony it was amazing. And anyone who was there, they can tell you, people from around the world were there, they had their headsets on, it’s being translated into different languages and she said what she felt. She didn’t even get the chance to finish because she was so overcome with emotion because she wasn’t just trying to tell her side of the story but trying to explain what her son meant to her. When she finished there wasn’t a dry eye in the house. People were silent.<sup>59</sup>

Then the session continued until it became time for the US government response. When the government’s representatives began speaking, the We Charge Genocide group stood up, threw their fists in the air, and held them there for thirty minutes to commemorate the thirty minutes when Rekia

55. Interview with Eric Tars, National Homelessness Law Center, by video call (Sept. 23, 2021).

56. Alexandra C. Budabin & Joel R. Puce, *Beyond Naming and Shaming: New Modalities of Information Politics in Human Rights*, 15 J. HUM. RTS. 408 (2016).

57. Interview with Jagganath, *supra* note 53 (“Our Goals for Geneva” network planning documents on file with author).

58. *Id.*

59. Interview with Hansford, *supra* note 5.

Boyd's dead body laid out after she was killed by an off-duty Chicago police officer in 2012. After five minutes, they joined their lifted hands together. Without prior notice or planning, the Ferguson delegation joined them with their fists up as UN security lurched toward the young people, not knowing what was coming next. USHRN staff brokered a deal that, if they were allowed to continue their protest, they could promise the activists would stay silent while standing. The US representatives signaled to security to fall back and permit these individuals their free exercise of speech and peaceful assembly. After the session, security personnel cornered them and took down their badge identification, passport numbers, and names "in case anything gets violent."<sup>60</sup>

Bringing a poignant symbol of Black Power into the austere halls of the Palais Wilson sought to contest the meaning of that space, how to utilize it, and whose voice matters there. Yes, for Hansford and Jagganath, there were legal and policy goals at stake, and those would be pursued downstream upon their return from Geneva in hearing rooms of state house assemblies and in oral testimony before US Congress. But it was clear to them, as well as the rest of the delegation, that something larger was in play here too.

Tara Thompson, a community organizer and F2G delegate, expressed extreme doubt that traditional assumptions about transnational advocacy applied in this case: "[s]o, if we're really being honest about what I thought we would get, I thought we would get nothing—the same thing we've always gotten from the system that is built to murder us."<sup>61</sup> The US was not about to bow to pressure from activists or committee members in this forum. As Jagganath echoes, "that's the limitation of the process, and we knew that . . . The goal here can't be that it's going to be a space where the government is going to concede something because they come in there with their statement already written."<sup>62</sup> Absent this form of acknowledgement or even the hope that this form of acknowledgement was forthcoming, the delegates considered their impact from another perspective.

Thompson articulates the value of the exchange and the whole experience in personal terms:

[P]eople that attend these councils all the time say that they've never heard them talk to the United States government in that manner. To hear some of the delegates read almost verbatim some of the things that we shared to them, to hear them finally say like, yo, yeah, we hear you all and we see it and that shit is fucked up and they should absolutely have to answer for it. Just to hear the tone in which they talked to them . . . was refreshing and is just like, OK, somebody heard us.<sup>63</sup>

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60. We Charge Genocide, *Statement on Day 5: "In case anything gets violent": We Charge Genocide's final day at the UN* (Nov. 14, 2014), <http://wechargegenocide.org/statement-on-day-5-in-case-anything-gets-violent-we-charge-genocides-final-day-at-the-un/> [https://perma.cc/93VC-6RHE].

61. Interview with Tara Thompson, Hands Up United, by phone (Sept. 20, 2017).

62. Jagganath, *supra* note 56.

63. Interview with Thompson, *supra* note 61.

Jagganath arrived at a similar conclusion and identified a broad set of implications:

Some of the folks in our delegation actually started crying when they heard the words come out of the committee member's mouth . . . It really showed, first of all, how disenfranchised folks have felt in the US system, but it also signaled the power that a forum like that has in uplifting what the most disenfranchised people generally feel. They considered it to be an indictment of the American system [that] failed to even acknowledge that there are human beings on the other side of this. They were able to reclaim that humanity in a public forum.<sup>64</sup>

Hansford grounds his own takeaways about the process's power and the delegation's impact on the experience of Michael Brown's mother:

She had been denied her dignity, her chance to tell her side of the story and she had to go all the way to Geneva before she could find a place where she could tell her story before a group of officials and they respected her and they recognized her dignity. She said it was meaningful for her and that meant the most to me, that it was an experience that she was able to use to have some sort of effect on her spirit.<sup>65</sup>

The delegation's advocacy did not remain in Geneva. In the following weeks, they sent letters to Special Rapporteurs to continue to raise these issues, ahead of the impending grand jury decision on whether to indict Darren Wilson. After the decision *not* to indict was announced, a press release quoting multiple Special Rapporteurs expressed "legitimate concern" over the result of the cases (to include Eric Garner's). Individuals quoted included Special Rapporteurs on minority issues, contemporary forms of racism, peaceful assembly and association, and extrajudicial, summary, or arbitrary executions, as well as the chair of the UN Working Group of Experts on People of African Descent.<sup>66</sup> Days later, on International Human Rights Day 2014, F2G again provided an update to these officials. In early 2015, ahead of the US government's appearance before the Human Rights Council for the Universal Periodic Review, the USHRN organized groups and NGOs from across civil society, and a subset from F2G traveled back to Europe to maintain relationships and further advance the cause. These efforts continued in domestic venues too, such as the Missouri legislature, the US Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, and President Obama's Task Force on 21st Century Policing.<sup>67</sup> In each set of remarks geared for US audiences, Hansford invoked the UN visit and the international framework, bringing human rights home.

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64. Jagganath, *supra* note 56.

65. Interview with Hansford, *supra* note 5.

66. Press Release, Office of the High Commissioner for Human Rights, "Legitimate Concerns" Over Outcome of Michael Brown and Eric Garner Cases-UN rights experts (2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15384&LangID=E> [<https://perma.cc/T3XR-7KS4>].

67. Hansford & Jagannath, *supra* note 50.

## V. CONCLUSION

So what? What can we learn from this case study? Where do we go from here? This case study provides at least three critical conclusions with implications for our understanding of international law and human rights.

### A. The inputs and outputs of the shadow reporting process ripple with political activity.

The account above details the journey of a community's experiences with state violence from the local point of encounter, through the phases of documentation, reporting, submission, and testimony in global venues. Upon their return home, advocates continued efforts to frame, pressure, and pursue change utilizing their international appearance as a source of leverage. This article chronicles the hand-to-hand nature of the collection of stories from the frontlines to establish how information traveled, how and why narratives bend to and shape the contours of international norms, and what efforts are necessary to courier the experiences of impacted people from the streets to the austere halls of Geneva. However interesting any of these features may be, a central takeaway revolves around the depth, extent, and volume of political activity spawned by shadow reporting—all of which derives from engagement with the pure permissiveness of international human rights law. The fact that the treaty body processes served as the centerpiece for this broader torrent of advocacy—lead up and follow up—speaks to a function of international law typically overlooked or ignored.

But, in a sense, this is how the system is designed: above ground, international human rights law is intended to be codified in national systems of protection, accountability, and remedy and each treaty has its own particular expectations for internalization and implementation. The compliance model stems from this arrangement. How well each state internalizes and implements the law in the domestic sphere becomes the metric for evaluating the worthiness of the law itself. But maybe that is beside the point, or at least asks such a narrow question so as to miss much more exciting and instructive material that speaks to the life, purpose, and possibility of international human rights law. Overall, shadow reporting provides strong evidence of what Seyla Benhabib called the “jurisgenerativity of law.”

**B. Shadow reporting creates unique and crucial opportunities for new actors—especially directly impacted people—to utilize international law through innovative strategic approaches to local and national political struggle.**

Voices and grievances from directly impacted people are captured through shadow reporting, submitted for the official record, and provided platforms for amplification. During the hearings, these individuals verbally share their experiences and claims before a panel of international experts. Shadow reporting can be executed solely by lawyers and NGOs but, at least US civil society delegations, elect to prioritize the voices of impacted people as useful methods for persuading the Committee and humanizing the issues under consideration. Delegation organizers also remain aware that their audiences include global media outlets more likely to gravitate to personalized stories than arguments about law and policy. These dynamics open space for new actors to see international legal mechanisms as useful tools in struggle and design ways to integrate human rights law into broader campaign strategies.

The array of movement tactics deployed during the Ferguson Uprising, from nonviolent direct action to transnational advocacy, evidences the fluidity and urgency of the moment. Crafting medium or long-term strategy in such an environment is difficult or impossible, but a sequence of events can deepen cultural awareness of human rights, set in motion a series of relationships and communications binding actors across levels of politics, and build power at the local level. One clearly articulated example can be found in an article by Eric Tars, et al. that details the work of the National Homelessness Law Center as it strategically strung together popular education events at sites across the US, visits by the UN Special Rapporteur on the Right to Adequate Housing to those places, and engagement with shadow reporting processes in Geneva.<sup>68</sup> Seeing how these multiple components can be intentionally linked, sequenced, and operationalized evidences “experimentalist” possibilities.

**C. Shadow reporting provides space for directly impacted people to have their grief and trauma heard, affirmed, and respected by an official authority.**

Profoundly, this dimension sits apart from the political calculations associated with a strategic advocacy campaign. As interviewees remarked, if members of the F2G delegation began with little or no hope that any accountability

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68. Eric Tars et al., *Challenging Domestic Injustice through International Human Rights Advocacy: Addressing Homelessness in the United States*, 42 CARDOZO L. REV. 913 (2020).

or policy reform would be forthcoming in Ferguson or elsewhere on policing, testifying before the expert committee offered an end unto itself. This was explicitly so for Lezley McSpadden, whose son was killed by the state, but also true for the other delegates, each of whom had their own personal experiences of profiling, harassment, and violence. Having a platform where their voices mattered was worth all the effort and cost of traveling to Geneva, and an appreciation of this purpose sheds new light on the utility of international law.

The oral testimony portion of shadow reporting begins to overlap into the field of transitional justice by promoting truth-telling; this may also apply to textual documentation, perhaps in a different, unexplored manner. In the US, formal transitional justice efforts have been sporadic and iterative, rather than nationally authorized, and this feature may explain why survivors of state violence seek alternative venues for testimony and storytelling. Treaty bodies provide such a venue, though not by design but due to opportunity. Heidi Nichols Haddad and Isaac Cui, following Felice D. Gaer, describe treaty bodies' initial reluctance to include civil society at all, skeptical that documentation or testimony from NGOs may be viewed as non-objective.<sup>69</sup> Over time, because of their needs in the area of information gathering, committees relented, and, since then, the space for civil society has grown. With a foot in the door, civil society actors pushed their way past the threshold to shape sessions to suit their own needs and bring about an impact that is both central to the declared goals of international human rights, while also not typically associated with the functioning of law: the restoration of human dignity.

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69. Felice D. Gaer, *Implementing International Human Rights Norms: UN Human Rights Treaty Bodies and NGOs*, 2 J. HUM. RTS. (2003); Heidi N. Haddad & Isaac Cui, *Localizing Rights Compliance: The Case for Cities as "Shadow Reporters" at International Human Rights Treaty Bodies*, 43 HUM. RTS Q. (2021).