



UGent  
Human Rights  
Research Network

# Abstracts

## International Inter- and Transdisciplinary Conference

The Universal Declaration of Human Right at 75:  
Rethinking and constructing its future together

6-8 December 2023 - Ghent University, Belgium

# Climate Justice (TS1)

**THURSDAY 7 DECEMBER**

**Film screening: Duty of Care**

**discussion with Nic Balthazar, Director**

'Duty of Care' tells the exclusive inside story of Roger Cox, the Dutch lawyer who initiated the groundbreaking climate trials against the (Dutch) government, and against the oil and gas giant Shell, two landmark rulings, that sent shockwaves through political and corporate boardrooms around the world and led to an international wave of successful climate cases. With echoes of the lawsuits against Big Tobacco this is an energizing court room drama about the pioneers of climate litigation, as one of the final resorts to break through the stalemate in global climate action. But also a personal journey of an ambitious real-estate lawyer with a wife from a Shell family who goes from climate-apathy to activism after he stumbles upon Al Gore's 'Inconvenient truth'. Or how a documentary eventually gives birth to a new kind of unexpected climate champion, listed as one of the 100 most influential people of 2021, by Time Magazine and...Al Gore. Running time is 56 min. There is an English and a Dutch version.

**Panel - Literature, Art and Climate Justice**

**The 'Wind Whispers' Project: The Interface of Law and Art in Representing Children's Voices for Climate Justice**

paper presentation by Kata Dozsa, University of Antwerp & Eszter Sziksz, Ringling University

Climate justice entails democratic decision-making processes where the most affected groups by climate change, including those with the least power to act or speak up, have equal opportunities to express their views. For children in particular, this has been one of the most challenging (and omitted) obligation of States, especially at the international level (e.g. at the UNFCCC COPs) . Children are often excluded from participatory activities where youth groups (young adults) replace them. Although youth seem particularly well-fitted to speak for intergenerational aspects, appointing young adults to represent children's voices and interests holds the risk of losing the focus from children's rights, needs and their authentic views. Nevertheless, alternative means and forms of child-participation are rare in governance processes. The Wind Whispers project aims to fill this gap: joining a sociolegal research on children's indirect participation by adult mediators and 'proxy' youth representatives, this

project takes on an innovative, experimental and interdisciplinary mission to represent, support and strengthen children's messages through the powerful language of art – in order to advance climate justice. This co-contribution will present the Wind Whispers interdisciplinary research project (in progress) that combines law with art and explores the means of employing human rights of children linked to climate change, as represented in practice and through expressions of art. The research project builds on a collaboration between Dr. Kata Dozsa (University of Antwerp), Eszter Sziksz, DLA (Ringling University) and UNICEF Belgium. This contribution will be in the format of a 15 minutes paper presentation which will guide through the different stages of the Wind Whispers project that explores the journey of children's voices to policy-makers along two major paths: 1) First, from the classrooms through a children's climate justice consultation organised by UNICEF Belgium (early November 2023), to the international governance processes at COP28, where Belgian Youth Delegates are to represent the voices of children. Kata Dozsa will present the human rights aspects of the Wind Whispers project. She will draw attention to a critical legal approach to representation of children (by youth) in international governance in climate change matters. 2) Secondly, through an artistic transformation: Eszter Sziksz will explain how she translates messages of children (collected by Kata Dozsa and UNICEF Belgium) into powerful pieces of art. In October 2023, Eszter Sziksz will deliver children's messages to the 'Arctic Circle Residency' expedition where climate change is witnessed first-hand. There she transforms children's 'whispers' into voices of the wind and ice. These natural elements serve to draw attention to the climate crisis, as well as how the 'whispers' of the most vulnerable and powerless (in this case, children) can be amplified and empowered. Finally, the presentation will conclude on intermediate and some final findings of the project on how children's views through these distinct forms of representation can achieve social impact and promote climate justice.

### **Environmental Justice Narratives: Writing Human Rights Violations in the Hidden Experiences of Environmentally Dispossessed Communities**

paper presentation by Teresa Botelho, Nova University of Lisbon

If some modes of thinking about the pending environmental crisis tend to generalize both its temporal and spatial dimensions, imagining distant timelines and ignoring the unevenness of its effects in terms of both geographical vulnerability and mitigation capacities, attributing a collective blame to a flattened "we" that disregards the unbalanced distribution of responsibilities, vulnerabilities and impacts, environmental justice literature has, in recent years, contributed to the problematization of that construct. This is particularly evident in narratives that expose what Rob Nixon identified, in *Slow Violence: The Environmentalism of the Poor* (2011), as the regimes of nondisclosure and legal impunity that characterize transnational extractivism and other regimes of risk outsourcing that, offload onto the world's poorest countries a heavy environmental burden from which they rarely profit. The paper, intersecting

environmental justice approaches and post-colonial literature, discusses the narrative strategies used in two twenty-first century novels that give visibility to the legal impunity that protects these hidden-in-plain view predatory practices: Indra Sinha's *Animal's People* (2007), which reimagines the repercussions of the 1984 Bhopal pesticide factory leak that killed thousands in India, and *How Beautiful We Were* (2021) by the Cameroonian writer Imbolo Mbue, which explores scenarios of toxic landscapes and embodied degradation caused by oil spills in a nameless African country. It will specifically concentrate on how the novels render intimate and knowable an environmental destruction that developed slowly across time, and on how they represent the denial of legal rights that shape the landscapes of resistance of the affected communities, leaving them ultimately powerless against the aggressive negligence of corporation-government alliances.

### **Decolonizing the Imagination and Redistributing Justice in Solarpunk Representations of an Equitable Future**

paper presentation by Katarzyna Więckowski, Nicolaus Copernicus University

In the foreword to a collection of solarpunk short stories *Afterglow: Climate Fiction for Future Ancestors* (2023), adrienne maree brown highlights the need to decolonize the future by “decolonizing our imaginations” and presenting climate solutions that run counter to the dominant dystopian narratives and that come from those “whose stories are least often told” (x: 2023). As a tool of decolonization, solarpunk fiction depicts cooperative cultures of accountability and justice in which all systems of supremacy are eradicated (brown 2023); while it presents climate change as a universal humanitarian threat, it does not portray people as universal victims or a homogenous mass, but stresses social differences and various conflicts of interest while imagining ways of overcoming them. Importantly, solarpunk fictions provide a blueprint for a future in which the burdens of climate change are equally shared and responsibility is distributed, and where empathy and respecting the rights of human and non-human others form the basis of the society. In this paper, I analyze selected solarpunk stories from the collections *Afterglow* (2023), *Glass and Gardens: Solarpunk Winters* (2020) and *Multispecies Cities: Solarpunk Urban Futures* (2021) to explore the ways in which solarpunk fictions link climate justice with human rights and to examine the scenarios they propose for imagining just and equitable futures that go beyond the “human” in the redistribution of rights. The main aim of the essay is to argue that by presenting community-based climate solutions that reinforce democratic processes of reciprocal freedom (Skillington 2017) and that stress accountability and ethical responsibility, solarpunk fictions “create real possibilities for constructing different socio-environmental futures” (Swyngedouw 228: 2010). Selected bibliography Alaimo, Stacy. *Bodily Natures: Science, Environment, and the Material Self*. Bloomington, Indianapolis: Indiana University Press, 2010. Grist. *Afterglow: Climate Fiction for Future Ancestors*. New York and London: The New Press, 2023. Malm, Andreas. *How to Blow Up a*

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## Panel - Climate Litigation

### **We Are All Victims: Challenges in Human Rights-Based Climate Change Litigation**

paper presentation by Ling Ling Li, Nuhanovic Foundation

I explore the substantive difficulties in strategic climate litigation, with a particular focus on the challenge of proving victim status in international courts. I use a comparative methodology that centers upon landmark case law as evidence to examine these challenges and use a sociological-juridical framework to critically examine the effects of climate change judgments on our collective social reality. To qualify for an individual complaint procedure or lawsuit, many jurisdictions require a victim status: to prove that climate change has directly caused an injury or damage to them. The key cases that illustrate this criteria in international human rights law are in front of the European Court of Justice (ECJ), the European Court of Human Rights (ECHR), and the UN Human Rights Commission. I review how the criteria of victimhood is applied with regards to the devastating effects of climate change. The ECJ's Plaumann Test is used to evaluate whether a complainant qualifies for the locus standi requirement for individual complainants is to demonstrate 'individual concern', meaning that the complainant's rights are uniquely violated or injured by their situation under article 263 of the Treaty of the Functioning of the EU (TFEU). In the *Carvalho and Others v. European Parliament* case, the claimant states that age plays a discriminatory role. While the ECJ has acknowledged that climate change differently affects multiple groups of individuals, it ruled that this consequence means that no individual satisfies the Plaumann test, effectively blocking this route of calling for more climate action. The ECHR is likely to be a more accessible court, due to the principle of direct effect. According to articles 34 and 35 of the ECHR, all EU citizens are entitled to apply to have their case tried at the ECHR if 1) domestic remedies are exhausted and 2) the applicant has "suffered a significant disadvantage." The fact that the ECHR declared the *Seniorinnen v Swiss Federal Council and Others* case admissible is a signal of acknowledgement of their suffering: an elderly (75+ years) women's association is suing the Swiss government for their inaction, resulting in damages to their right to life and right to a private family life under ECHR articles 2 and 8 respectively. In front of the Human Rights Commission, *Teitiota v New Zealand*, is a case where the claimant sought refugee status in New Zealand (NZ) as their home in Kiribati was destroyed by floods caused by rising

sea levels. After being denied, Teitiota went to the HRC to lodge the claim that NZ violated the non-refoulement principle under article 6 of the ICCPR. Although the HRC went on to conclude that, indeed, the Kiribati population is in grave danger due to their inhospitable climate, the non-refoulement principle was not violated. In their judgment, the HRC states that 1) the Kiribati government is doing its best to cope with climate change and 2) the Teitiota family does not face “serious harm” upon return. Despite numerous international conventions, treaties, and the vast bodies of scientific research that demonstrate the current and future harms of climate change, as well as positive obligations for States to prevent it and protect vulnerable groups, the examined case law paints a pessimistic picture of tangible remedies. While numerous human rights are threatened by climate change, obtaining victim status is exceptionally challenging. In the evolution of human rights protection, its violation often stemmed from favoring community interests over individual wellbeing, which is why victim status comes from this unique kind of systematic discrimination. In climate change litigation, this originally protective criteria has become a hurdle in holding governments maximally accountable for their positive and treaty obligations.

### **‘Convincing’ Scientific Evidence: How Do Judges Distinguish between ‘Good’ and ‘Bad’ Climate Science?**

paper presentation by Nele Schuldt, Ghent University

Courts often describe evidence as either convincing or unconvincing. How do they reach this conclusion when being presented with evidence that is particularly complex and scientific in nature? Judges of various international courts, including the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) are faced with novel requests for contentious adjudications and advisory opinions concerning state obligations in the light of the climate crisis. A plethora of challenges arises in this context, ranging from determining victim status for distinct individuals, establishing causal links between the alleged harm induced and the government’s (inadequate) action or outright inaction to protect their citizens from human-induced climate-related harms, as well as the potential remedies that a decision-making body can or should order in an area that is distinctly policy-centred. In all of the aforementioned areas, climate science may produce pivotal evidence helping to clarify the (projected or actual) negative impact on individuals’ livelihoods and well-being. Judges, thus, must rely on scientific claims that necessarily lie outside their own area of (legal) expertise. Yet, understanding which scientific evidence is weighty and authoritative is of utmost importance in the climate context, where different stakeholders have produced climate science with various interests in mind. This contribution describes and assesses the various legal tools commonly available to the IACtHR and the ECtHR. It seeks to determine whether these tools need to be refined so that Judges are adequately equipped to take into account climate science as evidence. The legal tools for the assessment of evidence that are discussed range from the concept of free evaluation of

evidence, conviction intime (intimate conviction), and sana critica (sound criticism). Some of these tools are explicitly, and some of them are implicitly employed by the two respective Courts. The paper analyses which of these principles is most suitable for determining the scientific and legal importance of certain pieces of evidence. The analysis finds that the approaches of free evaluation of evidence and sana critica appear to be suitable in most human rights contexts. They may, however, be insufficient when dealing with systemic issues such as climate change, where complex and controversial scientific evidence is presented. It is argued that Judges' evaluation of scientific evidence in the climate context requires specific attention when applying the general rules of evidence. Whilst sana critica, conviction intime and the principle of free evaluation of evidence can provide useful starting points, they may prove to be too ambiguous for testing scientific evidence in a legitimate manner. A two-fold solution is proposed: first, since judges may lack the technical expertise to evaluate scientific evidence, they may need to increasingly rely on scientific experts to better understand the validity and persuasiveness of scientific evidence, including being able to better distinguish between 'good' and 'bad' science. Secondly, judges may make greater use of the precautionary approach when trying to evaluate risk in the context of climate change litigation.

### **Liability and Climate Litigation**

paper presentation by Maria Luisa Scognamiglio, Università di Siena

The present work aims to analyse the connection between climate change and the protection of human rights, and to compare the legal systems of relevant States on the matter. Climate change may be considered as a political and social problem as, interacting with other factors, it can give rise to extreme weather events that would inevitably harm the ordinary functioning of society. For this reason, the international community has committed itself to facing climate change and preventing and responding to disasters, leading to the emergence of a new branch of studies: international climate law. More recently, climate litigation is increasing, shifting its attention in particular to the implications of climate disasters on the enjoyment of human rights such as the rights to life, health, water and food. The starting point of this study is the comparative analysis of a number of judgements: *Urgenda v. Netherlands*, *Last Judgement* and *Klimaseniorinnen v. Switzerland*. *Urgenda v. Netherlands* is the first international case in which citizens maintained that the government has a legal duty to prevent damage caused by climate change. In this occasion the Dutch Supreme Court confirmed that States are bound under international human rights law to commit to reducing gas emissions. The conclusions reached by the Dutch Supreme Court in that judgement were made possible by the more flexible liability system in the Netherlands. By contrast, in the Italian *Last Judgement* case several liability issues arose. In the wake of the Dutch case, there was an attempt to make the Italian State climate-responsible for the infringement of fundamental rights due to inefficient mitigation actions, since the targets and strategies set by the government between present and 2030 did not seem adequate. A

relevant issue is certainly the identification of a standard on which liability actions against the State should be based and of the parameter needed to assess the efficiency of the measures adopted. At the moment, the issue is still open as the next hearing before the Italian Court is scheduled for September 2023. Finally, the very recent *Klimaseniorinnen v. Switzerland* case, whose first hearing before the Grand Chamber took place on 29th March 2023 must be considered as well. This is the first case in which a climate-related dispute is brought before the ECtHR. As well known, in order to appear before the ECtHR all internal remedies must be exhausted. In this case, the plaintiffs brought the action to obtain a court order compelling the Swiss State to intervene to protect the human rights of its citizens and to take the necessary measures to prevent the rise in the global average temperature. Pending further pronouncements by the courts seized, it is the intention of this paper to review the different systems of imputation of liability in the Netherlands, Italy and Switzerland, focusing on similarities and differences. The result of this analysis will allow for the identification of a model best suited for bringing lawsuits before national courts for the damages caused by a State in inadequately tackling climate change.

### **The Rights of Future Generations in Climate Litigation: A View from Finland**

paper presentation by Anu Mutanen, Tampere University

The rights of future generations are increasingly topical in the legal discourse and practices. This is especially due to the so-called climate litigation, where the legality and adequacy of states' measures in environmental protection has been challenged against the rights of future generations. Legal foundation for these rights can be found at many levels, ranging from international human rights documents and EU law to national legal orders, including a host of national Constitutions. For example, the references of the preamble of the Universal Declaration of Human Rights to the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family, in addition to article 28, have been interpreted as bringing all human generations within the scope of human rights. Concepts such as sustainable development that appear in many human rights documents contain significant future-oriented legal dimensions, as well. Moreover, the growing future orientation of law has been highlighted by the crises witnessed in recent years, such as the Covid-19 pandemic and the war in Ukraine. The topic at hand is of its legal nature very complicated. It is juridically difficult to define what 'future generations' actually are and what we can mean with their rights. Considering the above-mentioned topicality and complexity, this paper examines what the concept of future generations signifies or can signify in the context of human rights, and what legal grounds and effects the rights of future generations have been given, especially in connection to national climate trials. A special feature of the proposed paper is the contextualization of the study of future generations into a specific national legal order, that is, Finland: Finland is a member of the EU as well as of all the key human rights organizations. Finland has implemented the major



human rights treaties into its legal order and works actively to protect human rights. However, the Finnish Constitution does not separately protect the rights of future generations, and the topic of future generations has not been given significant legal attention nationally. However, the rights of future generations are becoming increasingly topical also in Finland, as the country's first climate trial is pending and expected to be resolved during the spring of 2023. The paper includes a case analysis of the mentioned climate trial from the perspective of human rights and rights of future generations. All in all, the purpose of the paper is to, first, form an in-depth legal doctrinal study of the human rights status of future generations. Second, the aim is to analyze the significance that the rights of future human beings have gained in the context of climate litigation. Third, the paper pinpoints possible needs for transformation of the legal foundations of the rights of future generations. The paper is based on an ongoing study, the preliminary findings of which at this stage are the multiplicity of the concept of future generations in the human rights context and the difficulty of concretizing the rights of future generations at the national level. In addition, the paper brings the Finnish climate litigation to international debate as an example of the difficulties of combining national and international law in securing the rights of future generations.

## **FRIDAY 8 DECEMBER**

### **Panel - Perspectives on Climate Justice from the Global South**

#### **The Rights of Future Generations from the Perspective of Sustainable Wellbeing**

paper presentation by Jhoner Luis Perdomo Vielma, Central University of Venezuela

The presentation is an approach from the philosophy of law of the essential elements to be able to frame, with a view to sustainability, rights that are more than necessary today: the rights of future generations. This, due to the various risks that societies are going through, whether due to coming climate change, the latent nuclear war, or the decline of democracy, which forces us not only to rethink the conceptions of well-being and sustainability, but also to rethink the aspects associated with human rights, to achieve sustainability. After a review of some national and international regulations, the importance of being able to concretize not only the recognition of the right as a mechanism of action and justice for the future, of the right to development and the right to a future, it is also to concretize the effectiveness of said right, guaranteeing some fundamental conditions, among them the most relevant: democracy. A contrast is also made that allows specifying a right that is not only associated with the environment, but the right of future generations is also a right per se of a multidimensional nature. It is stated that intergenerational rights must be raised from a perspective of Sustainable Wellbeing and from the capabilities approach so that individuals in the future can be and do what they value. There is a debate, based on the risks of global ecological unsustainability that

we face, on the need to form a cosmopolitan citizenship, an expansion of democratic representation, responsibility, and the creation of national norms and international cosmopolitan interconnected multiculturally. To achieve this, the need to promote emotional values and an essentialist perspective is exposed, based on non-relative virtues -culturally- that allow linking points in common between societies regardless of their culture. Thus, forming the normative bases to achieve a better global wellbeing. Aspects that are finally highlighted with some ancient worldviews: Sumak kawsay, Tri Hita Karana and Tangata Whenua, which despite their cultural differences -or their cultural relativism-, have universal and normative points in common; and that Martha Nussbaum's proposal turns in this line to try to consolidate norms - among them a new constitutionality- based on the 10 central capacities that serve as a guide for the concretion of a comparative law between different cultures and generations.

### **'Home-Tree': Rethinking the Right to Housing under an Ecocentric Perspective**

paper presentation by Ludovica Bargellini & Giorgia Pane, University of Palermo

Article 25 UDHR recognises the right to housing as part of the more general right to an adequate standard of living. According to the Special Rapporteur on adequate housing, «what constitutes 'adequate' housing is determined in part by social, economic, cultural, climatic, ecological and other factors». The recent Report on the right to housing, published in December 2022, stresses the link existing between the climate emergency and the deterioration of the right to housing, calling upon the concept of 'sustainability' and re-affirming the interdependence of human rights. While recognising the climate and ecological components of 'adequacy', Art. 25 does not mention 'sustainability'. In this sense, the Report refers to a double dimension of 'sustainability': first, as a minimum standard to be assured; and secondly, as a requirement for housing itself. We argue for a re-interpretation of Art. 25. In defining the content of 'sustainability', we focus on its subjective dimension, with particular attention to vulnerable groups such as Indigenous Peoples. One cannot talk about 'sustainability' without recognising its multiple interpretations, in the light of the right to non-discrimination. Earth is our home, but it's not the same kind of home for all of us. Indigenous Peoples represent a vulnerable group who is disproportionately affected by climate change and therefore also disadvantaged in terms of enjoying adequate housing. The latter should not be intended as merely having a roof over one's head, rather as a place where to live in peace, security and dignity, in an adequate environment. Adequacy is at the core of the right to housing. Our intent is to challenge the notion of adequacy and to question the 'anthropocentric' standards upon which its concept has been outlined. In light of the current climate crisis, 'adequacy' should be interpreted as relating to a broader concept of housing, intended not only as the private space but also as the environment. Indigenous Peoples' knowledge plays a major role in rethinking Art. 25 under an 'ecocentric' perspective. As holders of unique knowledge and inheritors of ancestral territories, Indigenous Peoples should be involved in all decisions pertaining to their lands and housing. The UN Declaration on the Rights

of Indigenous Peoples recognises their right to participation in the principle of FPIC (free, prior and informed consent). In other words, Indigenous Peoples have the right to give or withhold their consent for any action that would affect their lands, territories or rights, and must be consulted on the matter. Many 'green projects' adopted under programmes like REDD+, while claiming the need for participation and respect, have been directly responsible for forcibly displacing forest communities and placing severe restrictions on their livelihoods. Apart from being particularly vulnerable to the climate emergency, Indigenous Peoples can be considered as agents of change. Their role in combating environmental degradation is invaluable. In the words of the Special Rapporteur, «despite the marginalization they experience, Indigenous Peoples have been at the forefront of struggles for climate justice, and Indigenous traditional knowledge systems are a crucial resource for climate mitigation and adaptation, including for developing more climate-resilient and carbon-neutral housing». This paper aims at highlighting the shortcomings of Art. 25 UDHR by offering an ecocentric reflection on the link between housing and environment. This analysis finds its roots in the afore-mentioned double dimension of 'sustainability', as a declination of 'adequacy'. First, Indigenous Peoples are a vulnerable group, whose specific needs must be taken into account when we define what 'sustainable' means. Secondly, Indigenous Peoples are agents of change, guardians of nature and holders of ancestral, anti-capitalistic knowledge, which could very much provide the answer to the climate emergency.

### **Boosting Resilience in the Fight against Climate Change? A Post-Development Deconstruction of the EU's Approach to Climate Resilience in the South Caucasus and Central Asia**

paper presentation by Fabienne Bossuyt, Ghent University

The South Caucasus and Central Asia are among the most vulnerable regions in the world to the effects of climate change. These are set to become more pervasive during the next few decades, with more frequent and intense heat extremes, uncertain precipitation patterns and further glacial melting. Across these two regions, the European Union (EU) has initiated programmes and projects aimed at boosting climate resilience of local societies and communities by increasing their adaptation to climate change and mitigation of its consequences. Drawing on post-development thinking, this paper critically deconstructs the EU's approach to climate resilience in the South Caucasus and Central Asia. Based on a critical discourse analysis of EU policy documents and EU-funded initiatives for climate resilience in the South Caucasus and Central Asia, the paper finds that, by promoting localised solutions that shift responsibility onto the local communities, EU resilience-building depoliticizes climate change adaptation by disregarding the multi-scalar power relations and constraints that local vulnerable communities face in grappling with climate change. While acknowledging that climate adaptation initiatives are a necessary and urgent matter for vulnerable communities in the region, the paper argues that the EU's neo-liberal, depoliticised approach to climate resilience as a set of techno-

economic measures merely facilitates the creation of resilient subjects who try to accommodate to the status quo rather than contesting it and imagining an alternative. By engaging with alternative vocabularies and local struggles for environmental, social and climate justice emerging from these regions, the paper calls for the need for a more transformational approach to climate resilience that integrates adaptation into a broader climate justice framework based on ideas of equity and fairness.

## **Climate Change and the Modern Slavery Conundrum in Africa: Reimagining the Relevance of Human Rights Law**

paper presentation by Daniel Ogunniyi, University of Hull

Although climate change is among the main ecological crisis the world is grappling with today, relevant discourses on the subject often focus exclusively on the existential threats it presents ignoring other associated risks, including how it exacerbates modern slavery vulnerabilities. Despite already constituting a major human rights challenge, climate change promises to further exacerbate the modern slavery conundrum in Africa. Thus, within the broader context of climate justice, two interconnected questions are engaged with in this paper. Firstly, the climate crisis is interrogated vis-à-vis the way it induces modern slavery vulnerabilities in Africa and undermines human rights. The second aspect assesses the utility of the human rights framework in climate change action and its potential to protect modern slavery victims. Despite their marginal contributions to climate change, African countries bear a significant burden for the impact of the climate crisis. Increasing droughts and flooding experienced in the region due to climate change have rendered many homeless and triggered huge migration flows within and across the continent. Within this migration and displacement complex lies increasing vulnerability and exposure to modern slavery, in addition to widespread poverty and the significant debt profiles of many African countries. Climate change, undoubtedly, adds another layer of challenge to an already fragile system. African countries are, inter alia, confronted with the challenge of mitigating and adapting to the effects of climate change while negotiating the prioritisation of its scarce economic resources. Although climate change is heavily induced by human activities traceable to developed countries, there is evidence of causality in Africa as well. Accordingly, the Paris Agreement of 2015 obliges member states to 'prepare, communicate and maintain successive nationally determined contributions that it intends to achieve,' and to 'pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.' However, measures for achieving this longer-term carbon target do not take modern slavery vulnerabilities into account nor do they contain any explicit framework for addressing it. Thus, developing human rights-based solutions to the climate crisis might be appropriate for achieving climate justice and addressing the challenge of modern slavery in Africa. This study addresses the problem of climate-induced slavery by interrogating the utility of human rights law both as a framework for protecting modern slavery victims and as a mechanism for

mitigating and adapting to the changing climate. It demonstrates the links between climate change and modern slavery and analyses the human rights framework in relation to climate change as a basis for gauging states' obligations to protect modern slavery victims. The human rights-based approach of UN treaty bodies as well as African regional mechanisms are engaged with to highlight how human rights principles are framed and deployed to address the climate crisis. Underpinned by these rights-based responses, the utility of climate change litigation and the extraterritorial human rights obligations of carbon emitting states are examined. The study proposes the adoption of debt-for-nature swap as a strategic tool for offsetting the debt obligation of poorer African nations to provide resources for dealing with the human rights and modern slavery challenge in the continent. Although the idea of debt-for-nature swap is traditionally not grounded in human rights law, this study highlights the utility of integrating human rights law to the concept and how it can have a direct effect in protecting potential victims of modern slavery.

### **Climate Justice and Human Rights in Extractive Industries: Exploring the Initiatives of Non-State Actors in Averting Climate Injustices and Human Rights Violations in the Albertine Graben**

paper presentation by Estellina Namutebi, Ghent University

In Uganda's Albertine Graben, communities that practice mixed farming, combining crop and livestock production, are impacted by a combination of climate change and oil and gas exploitation. The impact of climate change is visible in the occurrence of an unprecedented irregularity in rainfall patterns, which decreases crop yields and results in food insecurity, a rise in food prices, and thus reduced household incomes. In the wake of ongoing oil and gas exploration activities, these rural communities are also facing numerous often human-induced unjust situations. Amongst these are evictions of people from their ancestral homes and lands leading to a loss of cultural identity and social status, even though a few were compensated, it was without land valuation. In addition to that, those still living on their land are experiencing environmental burdens, caused by oil and gas exploitation, such as air and water pollution, and soil infertility due to oil and gas decommissioning activities that are haphazardly done. This context leads to tensions and social unrest, including for instance the unauthorized camping of evicted people in the compound of the Residential District Commissioner (RDC), demanding compensation for their evictions. Therefore, this paper aims at exploring the initiatives of Non-State Actors in averting climate injustices that culminated in Human Rights violations in the Albertine Graben with the main question: How do non-state actors collaborate with the government to avert the climate injustices experienced by the rural communities in the Hoima district, Albertine Graben? And the sub-question is: What are the coping mechanisms that rural communities developed during climate injustices that result in human rights violations in the Hoima district, Albertine Graben? In the methodology, a case study design was adopted with a qualitative research approach and purposive and stratified sampling techniques. In the findings,

non-state actors such as civil society organizations and Non-government organizations have started negotiations, advocacy, and lobbying with government agencies and private companies to empower communities, so that they are re-established to counteract climate injustices and human rights violations that are still evident within the region.

## **Panel - Climate Change and Security**

### **Advancing Sexual Reproductive Rights in the Context of Climate Change: Mitigating the HIV/AIDS Crisis through Effective Interventions**

paper presentation by Christabel Eboso, University of Embu – Kenya

In recent years, there has been a noticeable trend in both academic discourse and media coverage of the pervasive phenomenon of women and girls induced sex, often in exchange for sustenance such as fish and water, as a result of environmental degradation and scarcity exacerbated by climate change. This has blurred an appreciation of the lack of self-determination of the participating women as their vulnerability is directly tied to climate change. Worse, the flexibility created by the Constitution which provides that socio-economic rights be realized progressively has removed the immediacy in empowering women. As a result, their susceptibility to harm is heightened, undermining their capacity for self-determination and subverting their ability to strengthen the resilience of communities impacted by the culture of coerced sexual exchanges caused by climate change-induced scarcity of resources, such as fish. The foundation of this research is women's lack of self-determination and compromised autonomy in matters pertaining to their sexual and/or reproductive rights (SRR). The study uses a case study of Homa Bay and Busia, Kenya's lakeside counties with the highest rate of HIV/AIDS infections, to investigate the hypothesis that climate-induced fish shortages are responsible for violations of women's SRR by promoting a "fish-for-sex" culture, which contributes significantly to the high prevalence of HIV/AIDS infections in these two counties. This research plays a crucial role in understanding the lived realities and outcomes of women and girls in these two counties by integrating environmental justice and socio-economic justice in the fight for Sexual Reproductive Health Rights in Kenya.

### **Framing Women's rights to Water Using the Rights-Based Approach**

paper presentation by Bonita Sharma, Rachel Fisher Ingraham and Eusebius Small, University of Texas at San Antonio & Eusebius Small, University of Texas at Arlington

Recent decades of anthropogenic emissions of greenhouse gases are the highest ever in history (Intergovernmental Panel on Climate Change's (IPCC) Fifth Assessment Report). Climate change profoundly impacts various human rights, including the right to water. Human rights framework must be at the center of mitigation efforts for those who are and will be at the forefront of bearing the brunt of the climate change burden. The human rights framework requires that

global efforts to mitigate and adapt to climate change should consider relevant gendered rights norms and principles, including the rights to transparency, accountability, equity, and non-discrimination, mainly in the Global South countries, where many people who are socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially vulnerable to factors such as fundamental rights to water. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses (UNCESCR, 2002). More than 785 million people do not have access to water (Guzman et al., 2023). Reduced access to water creates added burdens for women and girls in many Global South countries. Women are often responsible for fetching water for their families. Women and girls often have to travel to distant sources to secure water; this can have many health implications, such as uterine prolapse and other reproductive health issues (Sharma et al., 2023). Many women have distinct needs for water, sanitation, and hygiene (WASH) (Ingraham et al., 2019). Women and girls are likelier to experience gender-based violence while fetching water (Nunbogu & Elliott, 2022). Nevertheless, few countries consider women's perspectives in their policy or development frameworks. For example, fewer than fifty countries have laws or policies that mention women's participation in rural sanitation or water resources management (UN Water, 2021). Women's specific challenges to securing water should be integrated into any climate change adaptation or mitigation measures from the rights-based perspective. In this paper, we propose a human rights framework that uses the tenets of gender mainstreaming and transdisciplinary perspective to integrate gender-specific rights to water. Integrating gender considerations and development within the rights-based approach will center the needs of water for women and place their voices and leadership at the forefront of water management and policy framing at all ecological levels.

### **Repairing Climate Loss and Damage and the Duty to Cooperate in International Law**

paper presentation by Gamze Erdem Türkelli & Deborah Casalin, University of Antwerp

Protection of the environment from widespread damage has been identified as a general obligation in international law. This general obligation has been translated into a number of international instruments which identify climate change as a global common concern. These instruments contain corresponding state commitments regarding international cooperation on mitigation and adaptation, as well as addressing loss and damage, with the latter having been the least comprehensively articulated. However, as climate change-related loss and damage continues to manifest more visibly around the world, the issue has taken on a new urgency. Civil society campaigns and the positions of some climate-vulnerable and disaster-affected states ahead of UNFCCC COP27 in 2022 resulted in loss and damage being placed high on the agenda. On the other hand, there has been reluctance by wealthy states to frame climate loss and damage in a logic of reparation. At the same time, the prevailing logic of charity has manifest shortcomings: it is not only likely to be inadequate to the task given its voluntaristic nature and



potential overlap with other forms of financing and assistance, but also fails to redress global injustices surrounding loss and damage. These injustices effectively mean that marginalized communities and Global South countries bear the most devastating impacts of greenhouse gas emissions to which they have contributed the least, and from which they have derived the least benefit in terms of economic development and/or improved living standards. The duty to cooperate – grounded in the UN Charter and a number of core human rights treaties, and increasingly infused by the environmental law principles such as the common concern of humankind and common but differentiated responsibility – has been identified as relevant to the issue of climate change, especially since the adoption of the Paris Agreement. The content, scope and nature of this duty have been contested regarding several issues, while becoming more established in other areas. As a concept which is neither voluntaristic nor dependent on determinations of wrongdoing, but nevertheless based on solidarity and a recognition of differentiation among states, the duty to cooperate may be capable of offering a legally principled middle ground to set an initial baseline for the level and nature of expectations on states to act in concert to address climate change-related loss and damage. Such a starting point could be crucial given the urgency of stepping up inter-state cooperation on this issue; at the same time, its grounding in international legal principles would ensure that claims outside of and beyond this framework are not undercut. The main aim of this paper is therefore to apply, interpret and elaborate the duty to cooperate in the context of climate loss and damage, based on a legal doctrinal approach cutting across various areas of public international law, in order to propose an initial outline of what could be expected from states in this framework.



## Decolonial and Racial Justice (TS2)

**THURSDAY 7 DECEMBER**

### **Panel - Colonial Legacies in Human Rights**

#### **New Dogs, Old Tricks: The Echoes of Colonialism in State Resistance to Minority Rights Protection**

paper presentation by Liliya Alijeva, University of London & Isilay Taban, University of Brighton

Whilst the push for universal human rights was an effort to counter the exclusion of the rights of colonised people from protection under international human rights norms with an effort to achieve equality and dignity for all, the United Nations General Assembly paradoxically decided to omit a provision devoted to the protection of minorities from the Universal Declaration of Human Rights (UDHR). The arguments raised in the drafting process revealed that colonial states were hesitant to include such a provision as they regarded it as having the potential to not only fuel claims of self-determination by marginalised communities such as Indigenous peoples but also hinder policies of assimilation adopted within these states. This paper argues that the historical concerns of states that influenced their failure to provide minority rights continue to drive their contemporary resistance to minority rights protection. Furthermore, the present-day practices of former colonising states endure in their assimilationist intentions and are redolent of resistance to the protection of marginalised people under international human rights law. Since the adoption of the UDHR, there has been some progress in the preservation of minority cultures within the United Nations normative framework. For example, the inclusion of a minority rights provision within the International Covenant on the Civil and Political Rights of 1966 and the adoption of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992. Nevertheless, the progress made has still not delivered substantial changes to the situation of minority groups across the globe and the racial injustice that many groups endure remains. As pointed out by the Special Rapporteur on Minority Issues, Fernand de Varennes, in 2023 'there had been little or no significant development institutionally at the United Nations to advance the protection of minorities when compared to other marginalised groups'. In fact, concerns have been expressed within many avenues at the UN with respect to the growing hostility against minorities and the frequent denial of their rights. This paper will look at the complex negotiations on minority rights during the drafting of the UDHR to demonstrate the highly politicised nature of the 'progress' made in minority rights protection since the adoption of the declaration. The paper reflects on these negotiations and

developments since that point, offering recommendations for the future of minority rights as part of the agenda for decolonisation.

## **(Il)legal Peoples: “French” Guiana’s Indigenous Peoples in Pursuit of Legal Recognition in Egalitarian France**

paper presentation by Pierre Auzerau, University of Helsinki

My work represents an effort to document the quest for legal recognition of “French” Guiana’s indigenous peoples, namely the Kali’na, Wayana, Apalai, Teko, Wayampi, Pahikweneh and Lokono. Their ancestors were already living in Guiana long before the first Europeans settled in this South American territory in the 16th century. But Guiana, located between present-day Suriname and Brazil, is one of the former French colonies that has never been decolonised. Instead, it was departmentalised. That is, after World War II, Guiana became a French overseas department-region (département-région d’outre-mer, DROM), now fully part of the European Union, just like any other place in France. The 10,000 indigenous people who inhabit this department-region, where are located their ancestral lands, are all entitled to French nationality and to all the individual rights that this entails. However, recognition of their indigenous rights — and their existence to a greater extent — is deemed unconstitutional by the state. Based on the French Constitution (1958), France is an “indivisible” Republic which ensures “equality of all citizens before the law, without distinction of origin, race or religion” (Article 1). In other words, indigenous peoples are one with the French people, hence the use of “indigenous populations”, rather than “indigenous peoples”, when the government refers to them. What does this mean in practice? Since indigenous people are equal in rights to other French people, they cannot benefit from their collective rights and other rights specific to indigenous peoples: among others, indigenous children have to go to public school (compulsory, and often located far from their villages) to follow the same curriculum (in French) as all other children. Indigenous communities, lacking their collective rights to lands, have no say in what happens on their territories. These struggles have been extensively documented. However, what has been less studied is indigenous peoples’ quest for recognition through the use of the language of jurisprudence and human rights. As early as 1984, the Kali’na leader Félix Tiouka delivered a public speech in which he formulated nine demands to the French state, the first being the recognition of indigenous peoples’ right to self-determination. Tiouka’s discourse vividly exemplifies what anthropologists have called the “juridification” of indigenous peoples’ politics. This concept, which is said to represent, among other topics, the “future of legal anthropology” (Merry, 2018), refers to “the process by which people increasingly tend to think of themselves and others as legal persons” (Blichner & Molander, 2008, p. 47) — a process that has been facilitated by the proliferation of legal norms, both regional and international, especially human rights law. From August 2023, I will conduct an ethnographic study of juridification in Guiana’s indigenous peoples’ struggle for self-determination. More specifically, I will adopt a deterritorialised ethnographic perspective to

the juridification of indigenous peoples' politics, so as not to confine their battles to the borders of Guiana. Admittedly, indigenous peoples' juridified battles are embodied by Guiana-based indigenous activists and NGOs. But they also work with (or against) other actors, both in France and abroad, i.e. the French state, lawyers, politicians, foundations, United Nations (UN) organs and agencies, as well as other indigenous, international or transnational organisations. The HRRN conference would be a good opportunity to present the initial data.

### **Addressing Decolonialism in the European Court of Human Rights**

paper presentation by Charlotte Skeet, University of Sussex

Addressing De-colonialism in the European Court of Human Rights UN Human Rights Committee views published in the latter half of 2018, *Yaker v France* and *Hebbadj v France* and *F v France* have drawn into sharper relief the divergence between the UN Human Rights Committee and the European Court of Human Rights (ECt.HR) on the interpretation of the right to religion. The UN Human Rights Committee found that these restrictions on religious dress created an impermissible infringement of these women's right to religion and that they also constituted intersectional gender discrimination. This was in stark contrast to the ECt.HR decision in *SAS v France*, which accepted that a restrictive approach to freedom of religion was necessary in the interests of "living together." This paper argues that this divergence highlights a serious problem; that adjudication in the European Court of Human Rights is failing to properly address the rights claims of ethnic and religious minorities in Council of Europe member states. The Council of Europe and some academics have suggested that divergence is due to the operation of the margin of appreciation applied in European Court of Human Rights cases, but this in itself seems insufficient explanation. First because the Human Rights Committee, which also recognises a margin of appreciation, points to an absence of reasoning in the ECt.HR rather than a different weighting of factors. Second because the strong dissenting judgements from ECt.HR judges in these divergent cases do not reject the margin of appreciation as applicable. Third because it does not explain why the application of the margin of appreciation in these cases deviates from its more usual usage in other ECt.HR cases. In contrast this paper adopts a decolonial critique and argues that this divergence is due to implicit bias operating as an epistemic limit on the adjudication processes of the European Court of Human Rights and leading to implicit bias in these divergent judgements. This paper is significant in directly addressing the cause of divergence and by utilising theories on epistemic limitation and implicit bias to address the processes of international human rights adjudication.

### **'Protection' and international refugee law in a postcolonial world**

Paper presented by Ruben Wissing, Ghent University

In the postcolonial age of globalisation people's relation with the nation state is shifting. This paper focusses on the protective function of the state and international law. The idea of

'protection' is central to our understanding of the law in general, including in transnational contexts, such as migration or climate change, or when it has universal claims, such as human rights. The basic assumption of the paper is that the law does not provide protection in the manner and to the degree it claims. While the state is still considered to be the ultimate bearer of sovereignty, the proliferation of transnational issues has attributed to states' responsibility for protection no longer being unequivocal. It is rarely enquired, however, what this concept of 'protection' and its functions fundamentally entail: What does it mean that the law protects?

The existing refugee regime in international law offers a perfect instance to examine how the concept of 'protection' might be understood in a socio-legal analysis and what postcolonial criticism might be formulated on its existing constitution. Critical and postcolonial perspectives on law question the objectivity of the functioning and the study of international law and primarily identify law as a product of (historical) political power. (Critical legal studies (CLS) highlight the structural bias of institutional contexts and political interests behind law and policies and their discourses (Koskenniemi, 2016). The Third World Approaches on International Law (TWAIL) school points to the historical origins of (certain aspects of) international law in colonialism and to its epistemological consequences (Mayblin, 2017; Fiddian-Qasmiyeh & Daley, 2018).) The 1951 Refugee Convention recognises forced migrants' protection needs in the country of origin, their original aspiration to leave, but no other aspects of their agency. It also only takes into account those protection needs that are caused by (feared) violations of classic liberal individual rights, but not the more structural and global economic or political causes for forced migration, nor group dynamics (mass displacement). The protection provided in the 1951 Convention consists of a legal status with individual rights, as an expression of the asylum state's sovereignty replacing that of the deficient state of origin. As such, The 'Geneva regime' has been used as a political instrument in the Cold War and reluctantly applied to forced migration from the Third World, excluding those the Global North considers undeserving (Chimni, 1998; Landau, 2018; Achiume, 2019).

This critical approach of the paper also looks for a broader historical scope. It examines the understanding of 'protection' at the origin of the Geneva regime as well as other refugee regimes such as the one established by the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, which is a response to certain aspirations related to the continent's decolonization struggle (Tadesse, Abebe & Sharpe, 2019). It also looks further into other protective claims made under the historical colonial project, as well as postcolonial international policy. (The former used legal concepts such as 'Protectorates' or the Mandate system to express such self-proclaimed intentions of protection (Pedersen, 2015).) The proposed contribution will present the first preliminary findings of the intended research.

## **Panel - Imagining Conciliation: Pathways to Truth and Accountability in the American Context**

### **Global to Local and Back: Building a Truth Telling, Reparations, and Restorative Justice Movement in the United States**

paper presentation by Thalia González, University of California

This presentation will interrogate the global-local tension of situating restorative justice and truth telling processes within the larger reparations movement in the United States. Beginning with an analysis of the challenges and limitation of past formal truth, accountability and reconciliation processes implemented in the United States, the presentation will then turn its attention to asking how local movements, including system actor-led, can situate restorative justice's formal and informal normative expectations internationally into domestic contexts. The presentation will use examples of emerging discourse and practice exemplifying this aim.

### **Building a Thriving America for All Through Transitional, Restorative and Transformative Justice**

paper presentation by Inga N. Laurent, Gonzaga University

What might a thriving America for all look like? This presentation examines failures and promising practices of past reconciliation efforts. Additionally, the author broadens the context for conciliation by considering grassroots and community-based attempts at rectifying injustice. The presentation will investigate creative and sustainable transformative practices of states, institutions, communities and individuals that are genuinely responsive to entrenched conflict.

### **Disability Justice and Reparations**

paper presentation by Jamelia Natasha Morgan, Northwestern Pritzker School of Law

My presentation will situate U.S.-based movements seeking reparations for survivors of forcible sterilization within larger movements for disability justice and abolition within the United States. It will analyze how disability justice principles offer promising principles and procedures for obtaining non-punitive, non-carceral pathways to truth and reconciliation for multiply-marginalized disabled people. It will also situate abolition alongside ongoing discussions for disability-based reparative justice campaigns to examine how abolition as a method seeks to overcome common barriers to truth and conciliation processes.

### **Why Tense Matters – Historicized Injustice in America**

paper presentation by Kelsey Kamitomo

Where collective trauma is conceptualized as a latent effect of past violence, states often rely on reparative approaches to national healing and reconciliation. In America, public apologies, reparations and memorials are used to rectify historical narratives and 'do justice' to the past.

While important, these approaches can become politicised and risk reducing legacies of injustice to isolated, “shameful chapters” in a nation’s history – transforming calls for structural reform into memory projects. This presentation explores how dominant discourses on time, history, justice and law have shaped American perceptions of racial equity and the impact this has on human rights in America.

## **Panel - Postcolonial Human Rights through Cultural Expressions**

### **Reading Homegoing, Thinking About Rights, Race, and Kinship**

paper presentation by Esra Demir Gürsel, Hertie School & Kelli Moore, New York University

Yaa Gyasi’s first novel, *Homegoing*, is a powerfully crafted attempt to connect the histories of the slave trade to the subsequent experiences of blacks in America. In a series of interconnected stories of the descendants of two sisters, she traces the impact of slavery across generations by visiting the slave dungeons under Cape Coast Castle in West Africa, southern plantations, the Fugitive Slave Act, Great Migration, convict leasing and the racially targeted policies of the present day. Through the stories of fourteen protagonists, she tells how and in what ways the present is contingent upon the history. While Gyasi goes back and forth between the past and the present, in 1948, the Universal Declaration of Human Rights was adopted by the United Nations General Assembly. The drafting states agreed on including “race and color” among the prohibited grounds of discrimination in Article 2 of the Declaration, while its preamble proclaimed “the inherent dignity and (...) the equal and inalienable rights of all members of the human family” as “the foundation of freedom, justice and peace in the world.” Yet, when the Declaration was adopted, racial segregation was still in place as an official policy in the United States. Likewise, some European states were still holding colonies. These grave contradictions were thus at the very foundation of the human rights law that was developed after World War II. In this paper, following *Homegoing*, we will revisit both the past and the present of human rights and its relation to race and kinship with an effort to unearth the links between what belongs to the history of human rights and present-day racism. The paper will pursue two lines of inquiry: (1) the relationship between race, kinship, and the Universal Declaration’s rights-bearing subject; (2) the current limits of human rights to respond to racism and to the dependence of freedom and aliveness upon forms of kinship and association.

### **Wearing the gákti Inside Out: Indigenous Protest as a Manifestation of the Right to Culture**

paper presentation by Carola Lingaas, VID Specialized University

The Sámi indigenous people of Norway recently received significant domestic, regional, and even international media attention by chaining themselves to the Ministry of Petroleum and Energy. Assisted by Greta Thunberg and other members of the environmental movement, they protested against the inaction of the Norwegian government following a Grand Chamber judgment of the

Supreme Court of Norway in October 2021. More than 500 days had passed since the Fosen judgment ruled the concessions for a wind turbine park invalid. The Fosen judgment recognized that the Sámi's right to culture in the form of reindeer husbandry was violated. Ever since the turbines had been erected, the reindeer avoided the area of Scandinavia's largest onshore windpark; the traditional area of winter grazing area was therefore considered lost. The Sámi protesters demanded the immediate demolition of all 277 turbines. Rather than focusing on the judgment of 2021 and its legal analysis of Art. 27 International Covenant on Civil and Political Rights (ICCPR), this paper directs its attention to the protest reactions in early 2023. Most female protesters decided to wear their traditional clothing, the gákti, inside out. The gákti is worn both in ceremonial contexts and while working, especially when reindeer herding. The Sámi outfit, which varies from different geographical areas of the traditional Sámi homeland of Sápmi, is characterized by a dominant color adorned with bands of contrasting colors, plaits, pewter embroidery, and tin art. After a painful and enduring century of colonialism and assimilation policies that ended as late as in the 1960s, where everything indigenous was banned, ridiculed, or hidden, the gákti is today worn with ever more pride. Wearing the traditional clothing inside out is, in Sámi tradition, a strong sign of protest. By turning it inside out, the somewhat ugly seams are seen, and the beautiful embroideries and sewing become invisible. Rather than using words or violence, the Sámi peacefully protest by way of offering a provocative sight of a piece of clothing. The threshold to turn inside out a piece of clothing that is so valuable and important to the cultural identity of a people, is considerable. This paper takes an explorative approach to the right of culture under international and regional human rights law and how it is manifested through the turning inside out of traditional clothing. In doing so, the paper combines theoretical legal discussions of the human right to culture with anthropological and historical research and examines the use of clothing as an important element of the right and of peaceful protest movements.

### **'What will set yuh free is money': Sex Work, Debt and Postcolonial Human Rights in Here Comes the Sun**

paper presentation by Charlotte Spear, University of Warwick

During the early 1990s, several feminist Caribbean scholars reported the growth of a new form of prostitution known as "sex tourism" within Caribbean societies, noting that this new form of sex trade was embedded within "international racialized and gendered divisions of labor and power and a globalizing capitalist economy" (Kempadoo 1999). In particular, multiple critics have linked this form of racialised economic transaction to the region's history of enslavement and the battle over a specifically gendered racial bodily autonomy which enslaved women experienced (Sheller 2003; Kempadoo 2004). Furthermore, many critics have similarly linked Jamaica's current economic position to the impacts of historical and ongoing (neo)colonial economic policy across the world (Black 2001; Bender 2015), since the emerging and intensifying



global economy of the neoliberal (post 70s) period has, for Jamaica, been characterised by rapidly increasing foreign debt through loans and trade controls (Harrison 1991; Obregón 2018). This comes after attempts to rebuild national services following decolonisation left the economy in tatters and effectively forced the government to open Jamaican markets to international liberalisation (Mittelman and Will 1987). This paper proposes an exploration of the impact of a globalised economic system of exploitation and indebtedness on the bodily experience of human rights across both gendered and racialised lines in Nicole Dennis-Benn's 2016 novel, 'Here Comes the Sun'. Viewing the text as a form of activist response to this history of abuse in Jamaica, I will situate Dennis-Benn's work with other forms of activism including film (Black 2001), and examine these cultural products in the context of reports on debt and exploitation in Jamaica from international governmental organisations, including the IMF and the UNCTAD. In particular, this paper aims to draw parallels between the colonial structuring of systems of global indebtedness through IMF loans in Jamaica (Bender 2015), and ethnic and cultural othering in the region's sex tourism industry, which, as Kempadoo has shown, result in a rise of incidences of rape and abuse of sex workers in the region (1995; 1999). By examining this vast and ongoing abuse of women's rights in Jamaica through the lens of a (neo)colonial system of indebtedness and ongoing colonial hierarchies, this paper calls for a reading of Dennis-Benn's 'Here Comes the Sun' as reconstituting the experience of human rights in contemporary Jamaica as distinctly tied up in a history of rights abuse through systems of slavery and colonial exploitation. In reading 'Here Comes the Sun' through the work of the WReC, as registering the "single but radically uneven [capitalist] world-system" (2015) in both its form and content, we can therefore view the novel as working to link the tensions between colonial dependency and consequent abuse at the private level of the body, with those at the public level of global debt. In doing so, we can use this literary methodology to reconstitute our thinking around postcolonial human rights from that which happens exclusively at the level of the individual body, to that which happens as part of a global system of historic and ongoing exploitation.

## **The Connection Between Decolonization and Human Rights Through the Lens of Colonial-Era Heritage**

paper presentation by Vanessa Tümsmeyer, University of Groningen

"This contribution picks up the on the complex relationship between decolonization and human rights with human rights being able to both foster decolonization and at the same time showcasing the limits of contemporary international law (including human rights) in the decolonization effort.

The case of colonial-era indigenous cultural heritage that is housed in museums far removed from the source community reveals both the ways in which human rights have contributed to the decolonization of museums and the limits of human rights in this process. While human rights can aid in building up momentum, a focused decolonization efforts requires the efforts of



other disciplines and sectors of society to become effective. By focusing on the return of indigenous cultural heritage taken during the colonial period the potential and limits of human rights in the decolonization effort become crystal clear: As a galvanizing force for the return of Native American sacred cultural heritage and human remains within the United States in the 1990s through NAGPRA; as a way of recognizing the importance of heritage for indigenous communities, their right to control their own heritage and their need to access said heritage and for states to find means to provide for redress and repatriation of human remains and certain categories of cultural heritage in the United Nations Declaration on the Rights of Indigenous Peoples (Art. 11(2) and Art.12 UNDRIP). At the same time, states are quick to point out that the UNDRIP is not a binding instrument and that it does not provide for an internationally binding right of indigenous peoples to repatriation and a corresponding of state to deaccession objects from public collections.

Using this example, the question raised by in the theme decolonization & racial justice as to how and when to use human rights in decolonization processes is answered for the case of colonial-era heritage. The author argues that human rights can be used as a stimulus to advance the decolonization of different areas of society (in this example the museum sector) but cannot at the same time be understood as the final destination of this process. This is due to the limitations that do not originate in human rights law but rather in the broader field international law as it exists today (for example its focus on states with limited recognition of the individual through human rights law and non-state actors). Using a human rights-based approach to decolonization can however also bring additional advantages. It can be a way in which competing claims in the decolonization effort can be articulated while remaining centered in the value of human dignity of every individual."

### **Concrete Utopia, Human Rights and Postcolonial Literature**

paper presentation by Justine Feyereisen, Ghent University

This paper will bring Ernst Bloch into dialogue with Edouard Glissant to examine how the concepts of human rights and concrete utopia challenge the legacies of colonialism. The methodology lies on a philosophy of history which seeks in literature pragmatics alternatives for human rights in response to (neo)capitalist and (neo)colonial oppression. Ernst Bloch (1885-1977) developed a conception of utopia in a plural relationship to time, which is re-emerging in the 21st century. According to the German philosopher, utopia is neither projection nor idealization, but the resurgence of the past, that of dispossession, suffering and alienation, into a different narrative that transforms experience into experimentation. It is a question of knowing how to inherit so that unfinished futures can burst into the present where they take place pragmatically. In his vibrant plea, *Natural Law and Human Dignity* [Naturanrecht und menschliche Würde, 1961], Bloch reveals the legal dimension of utopian practical philosophy with a special focus on individual freedom, dignity, and rights of a citizen – in contrast to the pursuit of happiness characteristic for social utopias – as something to be fought for and defended. Within Marxism, he reinstates the importance of human rights for the left political cause as the

end of exploitation. Bloch's utopian ideal is thus natural law, but not positive law, that would necessarily be misused by the ruling class; and it is a utopian humanistic community of dignity, existing beyond the state. However, Bloch's humanism is not built on the idea of an immutable and immediately and intuitively given human nature. On the contrary, he emphasizes that the true meaning of the human can only be anticipated and posited as an aim of history. Liberty, equality, and fraternity are the utopian ideals of human individual and communitarian praxis that is in the process of seeking its most adequate realization. Works of art and literature, in Bloch's interpretation, are perfect examples of utopian objects, in that they always transcend their immediate meanings and contexts and serve as non-contemporaneous indications of unrealized possibilities. "See how we graft Utopia onto all these plants of the Creole vegetation," said the Martinican poet, writer, and philosopher Edouard Glissant (1928-2011) in his novel *Tout-monde* (1993). Glissant's pragmatic utopianism draws on the Caribbean archipelago as a space for Relation and difference to challenge the model of the nation-state and enable struggles against racism and for minority rights. I will therefore discuss the Blochian concept of utopia in light of Glissant's poetic work (in the etymological sense of *poiësis*, the action of doing, creation) which draws both from the traces of enslaved ancestors (their practices, their conceptions, their experiences) and from the possibilities of the archipelago's pluriverse the power to act for non-hegemonic human rights.

## **FRIDAY 8 DECEMBER**

### **Roundtable discussion**

with Navanita Bhattacharya, Director of the Inclusion, Justice and Transformation Practice at Tetra Tech International Development (moderator); Amy Gildea, Managing Director of Tetra Tech International Development Grant and Sarra, Managing Director, Grant Sarra Consultancy Service

### **Trauma-informed truth telling and reflexive conversations for decolonisation and racial justice to take roots**

Our round table has three experts, with diverse identities and lived experiences of the intersections of colonisation, indigeneity, gender and racial injustices. We will talk about the imperative for trauma-informed truth telling and reflexive conversations, across sectors and systems, as critical for decolonising human rights. We will discuss the challenges we continue to see and experience in doing so and provide a frame for a critical and inclusive approach to the universality of human rights, based on the values of 'reconciliation' – which when expanded, means 'bringing back into unity, harmony or agreement what has been alienated.' Drawing from our work in Asia and the Pacific, we will draw the parallels to decolonising "development" and "aid"; the imperative to understand how structural racism is so deeply embedded in the everyday culture and working practice of international aid organisations, and in their systems and structures; and the criticality in embedding racial justice and decolonial systems, structures,

policies and processes for people and the planet to thrive. Our roundtable discussion will draw from the oldest living cultures of the world in Australia, and from Tetra Tech's work with First Nations people in the Pacific and South-East Asia and will highlight key issues that have derived from and continue to be exacerbated by colonisation and experienced by the world's First Nations people. This includes issues such as: in Australia, First Nations people are the highest incarcerated people in the world; that there has been in excess of 500+ deaths in custody since the Royal Commission into Deaths in Custody commission handed down its report in 1991, with zero convictions to date; 53% of children in care are First Nations; and where even though sovereignty was never ceded, yet First Nations people are forced by the system, and mainstream society, to go to a Voice referendum - which is not exclusively understood by all First Nations people from an international Human Rights cultural, spiritual and economic perspective. These everyday effects of colonisation and the manifestation in systemic and structural racism are evidenced in First Nations peoples' lack of access to basic rights, including meaningful work, under-employment, culturally and psychologically safe health care (including mental health linked to intergenerational trauma from the impacts of colonisation), decent housing, clean water, sewerage infrastructure in many communities. Australia still does not have a national human rights protection act. Hence, the applicability of the rule of law remains fragmented. We will explore why First Nations people in Australia are the most incarcerated and oppressed people in their own country; and the criticality in recognising First Nations human rights in the context of their humanity, Lore, cultural, spiritual and economic rights as central for our planet to thrive and humanity to be sustained. Drawing parallels from our work, we will explore the role of diverse civil society organisations in decolonisation of international development. We will discuss, how, while human rights have often been instrumentally used to justify (neo)colonial agendas, they have also inspired those who continue to experience oppression and injustices, to resist against the abuses of power. For instance, the mobilisation through digital inclusion, and otherwise, of young people against the climate crisis in the Pacific Island nations, the activism by First Nations people in Australia against injustices perpetrated by neo-colonial systems and mainstream society; the role of grassroots women's rights organisations, those led by people with disabilities, and indigenous people in decolonising narratives through their powerful mobilisation and activism; and how by purposefully decolonising the way we work with under-served, and oppressed people, we are constructing human rights norms and practice that is emancipatory.

## Roundtable discussion

With Jan Orbie (HRRN Ghent University), Yasmine Kaied (HRRN Ghent University), Arno Van Overberghe (student Ghent University), Enya Scherrens (student Ghent University), Saïla Ouald-Chaib (Postdoctoral Fellow at the Human Rights Centre of Ghent University), Saïla Ouald-Chaib (Postdoctoral Fellow at the Human Rights Centre of Ghent University)

Moderators: Cira Pallí-Asperó & Elke Evrard, Human Rights Centre, Ghent University

### **Decolonizing our Universities? Pluralizing Knowledge Approaches in Research and Teaching (also included in TS12)**

This roundtable discussion proposes a conversation between the decolonial and methodological conference streams (TS2-TS12), on pluralizing modes of knowledge production and sharing in the university setting. Students, junior and senior academics will debate opportunities to decentre, disrupt and decolonise Eurocentric epistemologies in researching and teaching human rights. We aim to foreground alternative (1) methodological approaches to research, and (2) curricular and pedagogic strategies in educational practice within our higher education institutions. With the participation of students, junior and senior researchers and staff members, this roundtable engages with urgent calls for centring the perspectives and power of marginalized communities and knowledge approaches in and beyond human rights debates.

## Poster presentations

### **“Thinking Beyond Borders in the Kinocene: Reconceptualising the Climate ‘Refugee’ using a Decolonial Approach”**

by Irene Sacchetti, Nottingham Law School

While human society, the Earth and the climate system have always been mobile and migrant, as the concept of Kinocene suggests (Nail, 2019), the dominant Eurocentric approach conceives the Earth and humans as static. However, the profound interrelation between humans and Earth mobility is even more visible now, with an average of 22.5 million people cross-border forcibly displaced due to changes in the climatic system (GRID 2018; UNHCR 2020), the so-called climate ‘refugees’ or forgotten victims of climate change (WEF, 2021). Continued ecological degradation and consequent climate change impacts are the result of Western centuries-long practices of colonialism-capitalism extractivism and commodification operated by developed countries at the expense of the Global South (Harris, 2014). Deepening inequalities, vulnerability and risk of climate harm force people to leave their homelands due to climate change effects, and cross international borders (IPCC, AR6 2022). While extensive literature acknowledges the urgency of finding legal responses (Atapattu, 2015; McAdam, 2012; Gemenne 2018), the current international legal framework – and specifically human rights, refugee law and climate change law- remains

ill-equipped to provide protection for climate 'refugees', and flaws from the lack of a standardized and internationally accepted definition of those involved. International human rights institutions have failed to provide a satisfactory response to date (UNHRC, *Teitiota v. New Zealand*, 2020) and national migration policies continue to overlook climate change as a migration driver (McLeman, 2020). Therefore, the main overarching question of my contribution revolves around the obstacles in international law – with a focus on human rights law- leaving climate 'refugees' in a legal impasse. I argue that the heart of the problem is embedded in the way the climate-mobility nexus is understood, conceptualised and addressed under current international law. This reflects a 'coloniality of knowledge' (Mignolo, 2000), as the epistemological foundations of human rights legal studies, as well as migration and climate change law, universalize a Eurocentric vision (Woldemariam, 2019; Collins; 2022, Sultana, 2022), and generate an epistemic hierarchy (Adelman, 2015). Additionally, as the discourse remains split into disciplinary silos, existing legal scholarship has been unable to generate a holistic response to the multidimensionality of climate displacement. My approach builds on the need for 'new normative narratives based on more expansive sources of knowledge'(McLeman, 2014), as concepts such as sovereignty, borders, post-facto orientation, individual protection over collective, binary thinking dividing migrant/refugees, human/nature, vulnerability/adaptation, embedded in international human rights law, above all, perpetuate a Western paradigm that hinders responses to climate displacement. Thus, my research responds to the necessity to reconceptualize the climate change-human mobility nexus by adopting decolonial perspectives (Sultana, 2022), and drawing on ecofeminist theories (Fineman, 2014; Harris, 2015; Shiva 2014) to provide an alternative legal paradigm, suitable to resolve future climate displacement. This means to think beyond physical and mental borders and allow for a counter-hegemonic discussion based on pluralization of knowledge production at the basis of international human rights law. I will explore how non-Western conceptions can inform human rights law in overcoming epistemological obstacles to protect climate displacement. Throughout the presentation, I aim at stimulating the audience to critically reflect on how we study, research and perceive climate change, migration and how we can rethink human rights law to better confront present legal challenges.

### **The Burden of Being a Muslim Woman in India – The Instrumentalisation of Muslim Women at the Intersection of Gender, Religion, Colonialism, And Secularism**

by Shilpi Pandey, Vrije Universiteit Brussel

Gayatri Spivak's "Can the Subaltern Speak?" presents the idea that British colonial policies in India reflected the justification of "white men saving brown women from brown men." The British colonial policies in India were supported by the British feminist movement and used the condition of Hindu women to justify colonial rule as a modernising and civilising mission. While the British Raj defined Hindu women as subalterns, lacking agency and voice due to their culture

and religion, in doing so, they also disregarded the real concerns of Hindu women, making the discourse on women's rights less about improving their conditions and more about how the colonial powers perceived the practices they sought to abolish. According to Vrinda Narain, in a post-colonial context, the Indian personal law system (laws based on religion) continues to perpetuate the subalternity of Muslim women, who have been denied the ability to speak or define their needs, let alone claim gender equality. By examining both colonial and postcolonial constructions, this paper argues that the post-colonial trajectory of Muslim women's rights discourse in India still reproduces the colonial portrayal of women as subalterns and victims. Consequently, the political discourse on women's rights in India has led to the creation of a new category of subalterns – Muslim women – which perpetuates Islamophobia. In doing so the political and legal discourse in India instrumentalizes Muslim women as either indicator of victimhood or gender emancipation while denying them the right to equal citizenship. The analysis involves a post-colonial perspective, which highlights how colonial constructions of subalternity continue to inform contemporary discourses on women's rights. The paper employs a qualitative research approach, drawing on secondary sources.

# Realizing the Right to Food (TS3)

## **FRIDAY 8 DECEMBER**

### **Panel - Food for All: Bridging Gaps in Inclusive Food Systems**

#### **Towards Inclusive Food Systems; A Comprehensive Review**

paper presentation by Siyane Deressa, Joost Dessein and Carl Lachat, Ghent University

The need for the transformation of food systems to more healthy, sustainable, resilient, and inclusive has been widely acknowledged. Nevertheless, in contrast to other aspects of food system transformation, the inclusivity dimension garners limited attention both in research and policy. Inclusive food system presents a pivotal framework aiming to address a multifaceted array of challenges in the food system, ranging from food security and equity to environmental sustainability and social justice. Yet, the concept lacks clarity as to what it is and how it can be realized. The aim of this review is, based on existing literature, to expound on and elaborate on an inclusive food system. We carried out a literature search through Web of Science and Google Scholar that allowed retrieval of 1063 records; after a selection process, 31 were included. Relevant information was extracted: year of publication, geographical location, objectives, and knowledge contribution to inclusive food system. From the review, it emerged that inclusive food systems focus on five major principles: the right to adequate of food, addressing exclusion and injustice in agri-food systems, engaging all food system actors and activities, prioritizing the needs of vulnerable and marginalized groups, and participation in food system governance. The review highlights the challenges and barriers to enhancing inclusive food systems and proposes directions for future research. Furthermore, it presents the instruments, mechanisms, and policies required to advance an inclusive food system.

#### **Power, Participation, and Inequality: A Study of Inclusive Governance within Arusha's Food Policy Council**

paper presentation by Amber Steyaert, Ghent University

In academia, policy development and popular discourse, urban food policy platforms are often hailed as effective tools for advancing the transition towards more ecologically sustainable and socially just food systems. However, limited knowledge exists regarding the governance processes and power dynamics within these multi-stakeholder platforms, particularly in the context of East Africa. Key questions arise, such as the roles of public, private, and civic actors in platforms' decision-making processes, as well as their capacity to create spaces that allow for

public encounters and discussion between these actors. By building upon the analytical foundation of the critical governance framework, this study aims to deepen our understanding and critically assess urban multi-stakeholder governance platforms as politicized spaces.

To achieve these objectives, a qualitative methodology was employed. A diverse range of methods were utilized, including in-depth interviews, focus groups involving market vendors, questionnaires targeting both consumers and market vendors, and participative observations of platform meetings and events.

In this presentation, I will focus on the development and evolution of the Arusha Sustainable Food Systems Platform, an urban food policy council initiated by NGOs in North Tanzania. The analysis sheds light on the platform's transition from a food safety-oriented platform to a sustainable food system platform. Findings indicate that although the formal transition has occurred, both the platform's actions and the narratives employed by its members still predominantly reflect a food safety discourse. While improving food safety is undeniably important, an excessive emphasis on this aspect inadvertently disadvantages certain stakeholders, particularly (informal) market vendors and small food stall holders. These stakeholders are often burdened with implementing food safety measures without reaping direct benefits from them. Furthermore, within the platform, there is a prevailing assumption among some members that these vendors lack sufficient knowledge about food safety, which undermines their meaningful participation in the conversations. Consequently, there is a tendency to view these vendors as recipients of education rather than as equal partners deserving of respect and inclusion.

To establish a truly politicized space, it is imperative to adopt a holistic perspective. Moving forward, it is crucial to reimagine the narratives, power dynamics, and decision-making processes within urban food policy platforms, aligning them more closely with the pursuit of social justice in the food system. By critically addressing these aspects, urban food policy platforms can emerge as catalysts for positive change, not only in East Africa but also in other regions facing similar challenges.

### **Cultural/Consumer Acceptability: An opportunity for the Inclusion of Marginalised Voices in the Realisation of the Right to Food**

paper presentation by Katie Morris, Durham University

The right to food has emerged as a global concern within recent years, particularly in light of the threats posed to the physical and economic accessibility of food by the COVID-19 pandemic, climate change and the ongoing conflict between Russia and Ukraine. Whilst food security is certainly a sizeable component of the right, as protected within the International Covenant on Economic, Social and Cultural Rights, a lesser known element is the requirement of cultural/consumer acceptability of food. This paper will explore this often overlooked aspect of the right to adequate food as enshrined under international law, with the aim of forming a



clearer picture of its rather minimal normative content. In doing so, it shall utilise a handful of country case studies, beginning with the author's home state of the United Kingdom to examples from further afield to gauge an idea of what cultural/consumer acceptability means to individuals across the globe and to assess the extent to which this aspect of the right is currently being realised on the national and international level. This analysis will give rise to important discussions regarding autonomy and dignity, specifically for populations who have less choice over the food they consume by virtue of their socioeconomic status. Lastly, it shall offer proposals as to how realisation could be improved on both planes to ensure food is not only available, but in a way that respects the individual as a rights-holder with their own distinctive values and preferences.

### **Politicization and Depoliticization in the Food Support Macro-sphere in Ghent and Perspectives for Realizing the Right to Food**

paper presentation by Joost Dessen, Ghent University

The increasing presence of food banks in the charity landscape has been a familiar pattern across the developed world. As food banking is growing in importance, it is more and more integrated into existing welfare arrangements to supplement states' efforts to challenge food insecurity, causing widespread fear of a depoliticization of the issue of food poverty. However, using a multimethod approach, this study set out to investigate whether food banks could contribute to politicizing the issue of food poverty and to the shift towards a right-to-food approach in the context of Ghent (Flanders), where over a dozen organizations are specialized in food assistance. The data revealed that although a politicized protest stance is slowly taken shape and the need to engage in activist actions better understood in the studied context, depoliticized messages rooted in neoliberal values are still put forward within the sector. Moreover, the right to food is resisted as a mobilizing concept by organizations, keeping them from developing actions targeted at the roots of the unjust food system. We argue that for a successful shift to a right-based approach, food support organizations need to address power dynamics within their groups and commit to consistently look at the structural roots of poverty, not only in the realms of housing, health and income but at the level of the food system itself.

### **The comeback of food support as an anti-poverty strategy: a perspective from the framework of human rights**

paper presentation by Didier Reynaert, HoGent – Ghent University

The corona crisis has led to an excessive increase of people relying on food support. Every year records are broken in terms of visitor numbers to organizations offering food support, but the crisis has led to 15 to 20 percent more demand for free food. This need was captured by numerous volunteer organizations and citizens who took action to prepare and distribute meals to citizens in vulnerable situations. Situations of emergency require exceptional

interventions and this “warm solidarity” could apparently be mobilized more flexible and efficient than the inert public apparatus.

However, it seems that the corona crisis is strengthening a tendency that is going on for some time now. We already noticed a shift from food support as a dusty phenomenon operating in the margins to an institutionalization of the charity economy as a poverty reduction strategy in pre-corona times. The slogan “emergency aid under protest” is never far away, although the echo seems to reverberate more softly. Moreover, the trend of food support is further driven by ecological and health logics presented as innovative.

In our presentation we will argue that it is a complex issue in which charity and human rights-oriented approaches interact and unfold in sometimes surprising ways within social work practices and welfare arrangements. We collected a rich empirical basis in everyday charity economy and social work practices in Ghent – a city in the Flanders, the Dutch-speaking part of Belgium. We conducted semi-structured interviews with diverse policy makers (n=6), explored 25 food initiatives through visits and semi-structured interviews with volunteers (n=25) and set up ethnographic research and semi-structured interviews in one specific organization working with homeless people (n=15).

We discovered that food support is a question with many angels. First, it touches on the historically complex interplay between government, civil society and the market and the current concern about the erosion of the active role of the welfare state as a provider or at least guarantor of well-being. Secondly, it concerns the relationship between the sustainable anchoring of human rights and social justice on the basis of structural measures on the one hand and the much-needed remedial interventions to mitigate the effects of poverty on the other hand. Third, it concerns a balancing act between instrumental/conditional logics and democratic logics in social work practices.

## **Panel - Nourishing Communities: Upholding the Right to Food**

### **How do Knowledge Politics influence Inclusive Innovations in Agriculture? A Case Study in Forikrom, a Community in the Transition Zone of Ghana**

paper presentation by Branwen Peddi, Ghent University

In a move for more decolonial approaches to research and development, the importance of a pluriversal approach, one that is inclusive of vastly differing ontologies, epistemologies and knowledges, cannot be overstated. What this looks like in practice, is a debate that is also held within the field of agriculture and food, where there is a need to align existing food systems with the needs and knowledges of local communities (i.e. food justice and epistemic justice). For example, more and more work is being done on preserving certain local crops and varieties, as diversity is key to ensuring resilience in food systems and as communities have the right to access local and Indigenous foods. Nevertheless, Indigenous and local knowledges, adapted to

local socio-environmental contexts and deeply rooted in cultural traditions, have often been sidelined by researchers and development workers. These knowledges have often been deemed “unscientific”, and only valuable insofar as it can be validated within a Western academic perspective of knowledge and science. It shows that the knowledge politics that come into play in these processes, have a significant impact on how these processes and its outcomes are shaped, and why democratic and just involvement of Indigenous and local actors is key. It is therefore important to gain a better understanding of how these knowledge politics work within the field of agriculture and food. An empirical case within the transition zone of Ghana, where different ecologies and social groups meet, is described: the community of Forikrom. In this predominantly yam-farming community, migrant farmers and local farmers come into contact with each other and other stakeholders (NGOs, extension workers, researchers and so forth). Migrant farmers travel within the borders of Ghana, often from the more Northern regions, towards Forikrom and further South in the country. It is during this migration journey that an exchange of agricultural knowledge takes place (as studied in previous fieldwork of 2022). In this qualitative research based on fieldwork of 2023, we attempt to use a co-creative approach in bringing these different farmers together and stimulating processes of knowledge exchange between them. This goes further than detailing farmer-to-farmer learning, in that we pay specific attention to Indigenous agricultural practices, how the participants negotiate Indigenous knowledge alongside other types of knowledge (academic knowledge, experiential knowledge, ...) and how this process might (not) lead to inclusive agricultural innovations. With this, we hope to gain insight into perceptions of expertise, local knowledge politics and ways of designing innovation processes that are inclusive of minority voices. Fieldwork and analysis is currently ongoing. A total of 8 co-creative workshops with roughly 20 farmers in the community and about 10 semi-structured interviews with key informants are being conducted. Finally, we will provide recommendations into creating more inclusive and just environments for agricultural knowledge exchanges and innovations, with a specific focus on including Indigenous knowledges.

### **Cultural Dimensions of the Right to Adequate Food: Indigenous Peoples' Approach to Food Sovereignty in the Time of Climate Change**

paper presentation by Karolina Prażmowska-Marcinowska, University of Silesia

Indigenous Peoples maintained food security for tens of thousands of years through their traditional knowledge and food systems. Nowadays, however, Indigenous Peoples face hunger. In Nunavut, predominantly inhabited by Inuit, food insecurity is the highest in Canada (fifty-seven percent) and many households spend half of their monthly income on food. Other research suggests that nearly half of American Indians and Alaskan Natives are estimated to be food insecure in the United States. Therefore, the first research question to be addressed on the poster, is: why, previously food-independent, Indigenous Peoples find themselves in a position

of food insecurity? According to the United Nations Food and Agriculture Organization food security exists “when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life”. Food security itself is not a legal concept – it is rather a precondition for the full enjoyment of the right to adequate food, which in turn is a human right that provides entitlements to individuals to access adequate food and the resources that are necessary for the sustainable enjoyment of food security. The right to food has been recognized in the context of the right to an adequate standard of living in numerous international law instruments, both on a universal and regional level. First and foremost the right to adequate food is enshrined in Article 25 of the Universal Declaration of Human Rights. For its realization, the food should fulfil three criteria: it should be available, accessible, and adequate. Therefore, the poster will address the meaning of adequacy and the States' obligations toward fulfilling the right to adequate food. The component of cultural adequacy or acceptability of the right to food becomes of particular importance in the Arctic Indigenous Peoples' context, as food is indispensable to shaping their identities, which can be noticed at every stage of the process of obtaining the food, from hunting and gathering, through conservation, to consumption. Hunting is central to Arctic culture because it provides a basis for the elders to educate the younger generations in traditional ways of life, kinship, and bonding. The current rate of climate change, however, diminishes the possibility of a successful hunt. This results in Indigenous Peoples switching from a traditional diet to less healthy ones, which are associated with an increased prevalence of chronic diseases such as diabetes, heart disease, and cancer. While food security entails reliable and affordable access to healthy food, food sovereignty is the means by which Indigenous Peoples achieve that state, through self-determined and sustainable systems of production. As the States' aid programs are relatively short-term solutions, because they create dependency and allow the governments to postpone addressing the underlying environmental problems, the third question addressed by the poster is how to accommodate the cultural values of Indigenous Peoples and foster their food sovereignty. The poster in a graphical way presents the relationship between the concepts of food security, the right to adequate food, and food sovereignty, as well as States' obligations, examples of the impact of climate change on cultural aspects of the right to adequate food and proposes ways to foster Indigenous Peoples food sovereignty.

### **Food Security and Diet Diversity among the Somali Community in Ghent**

paper presentation by Najma Shirwa, Ghent University

This study adopts a mixed-methods approach to comprehensively explore the dietary patterns of the Somali community residing in Ghent, Belgium, and the socioeconomic factors that shape their dietary choices. The research employed structured interviews, food security questionnaires, and food diaries to provide qualitative insights into the community's perceptions, cultural

dimensions, and economic influences that impact their food choices. The study revealed that the Somali community in Ghent faces several challenges, including economic constraints, cultural preferences, and limited access to diverse food sources, which collectively shape their dietary patterns. However, the research also highlighted the community's resilience and emphasized communal support networks and cultural preservation as strategies that contribute to food security. By triangulating the data gathered from the interviews, food security questionnaires, and food diaries, the study provides a comprehensive understanding of the multifaceted factors influencing the Somali community's food choices in Ghent. This research offers valuable insights for policymakers, the community, and researchers working on food security issues among migrant populations. These findings can be used to develop tailored interventions that better address the unique needs of the community and promote sustainable access to diverse and nutritious diets.

## Visual Creative Student Contribution

### **Biodilemma: Small Talks, Big Questions**

by Emma Collijs, Tina Kasse B'nicco, Eva Cornelus, Lela Van Osselaer, Amirsalar Kavooosi, Students of the Think & Talk Honours Programme, Ghent University

This visually-creative contribution aims to stimulate the conversation about access to/the right to food, using an adapted version of the poster on biodiversity made for the Think & Talk honours programme. Placed close to the conference's catering area, the aim is for passers-by to critically reflect and form an opinion about the relationship between the importance of biodiversity, the right to food and the right to a safe, healthy and sustainable environment. How can we restore biodiversity while ensuring the right to food and a good environment for living?

# Digital Technologies and Human Rights (TS4)

**THURSDAY 7 DECEMBER**

## **Panel - Freedom of Expression and Thought**

### **Freedom of Thought in the Digital Age: Online Manipulation and Article 9 ECHR**

paper presentation by Mark Leiser, VU Amsterdam

From advertising targeting users based on analysis of their data to taking advantage of identifiable vulnerabilities to disinformation and manipulative design techniques embedded in user interfaces, attempts to manipulate users for the benefit of commercial or political actors are rife in cyberspace. Responses under human rights law focus on the impact of manipulation on different rights, including privacy and data protection, but fail to provide a holistic framework. Regulators emphasise the need to comply with business obligations in the General Data Protection Regulation (GDPR) or the EU's consumer law acquis. Because online manipulation can interfere with our mental autonomy, manipulative techniques like computational propaganda or micro-targeted advertising can compromise the right to freedom of thought under Article 9 ECHR. Accordingly, this article sets out how courts can apply the right to freedom of thought to constrain online techniques designed to manipulate users, adding a new tool to the arsenal which regulators can use in the fight against online manipulation.

### **Freedom of Expression at the Crossroads between Public and Private Powers in the Digital World**

paper presentation by Sabrina Praduroux, University of Torino

Freedom of expression was first declared by Article 11 of the French Declaration of the Rights of Man and the Citizen of 1789 as one of the most precious rights of man. Today, it enjoys legal protection at both international and national level, and constitutes one of the essential foundations of any democratic society. Over the past 30 years, the development of information and communication technologies has given rise to a broad new space of opportunities and challenges for freedom of expression. Indeed, the Internet brought about, on the one hand, new forms and fora of expression, and, on the other, new fundamental rights, with which the right to freedom of expression must be reconciled by an increasingly demanding balancing exercise. Social media platforms, in particular, have acquired a crucial role in disseminating information and driving the public debate. Some of them have set up a complete governance system. This is especially the case with Facebook, which sets its law through its Terms of Use and Community Standards; takes an active role in ensuring that users comply with 'Facebook law' and, in the event of non-compliance, enforces the sanctions provided for this purpose. Furthermore, the Oversight Board, established in 2018, is entrusted with the task to ensure freedom of expression

“by making principled, independent decisions regarding content on Facebook and Instagram”. As a sort of ‘Facebook’s Supreme Court’, the Oversight Board has the power to interpret Facebook’s Community Standards and other relevant policies; to allow or remove content; to review content removal decisions; and, finally, to issue policy advisory opinions. However, the Oversight Board is not a court, and its nature is that of a private decision maker, to find out whether and to what extent, it is bound by national and / or international standards on the protection of freedom of expression is thus a matter of paramount importance. This and many other questions on the protection of freedom of expression on the Internet have still to be fully answered. Given the fundamental rights nature of freedom of expression, and the fact that social media platforms are private actors, it is first and foremost necessary to question the scope of the right to freedom of expression in private law relationships. More specifically: To what extent do social media platforms have an obligation to respect the right to freedom of expression? To what extent should States guarantee the protection of freedom of expression on social media platforms? Under which circumstances do national and international courts recognize the direct applicability of freedom of expression in the relationship between a social media platform and its users? And furthermore, are platforms’ decisions to remove content deemed contrary to its terms of use be subject to judicial review? In my paper I discuss these issues from a comparative law perspective, taking into consideration both national and supranational European law. Pointing out the shortcomings of current fundamental rights instruments and principles in ensuring the effectiveness of freedom of expression in the ‘Internet (private) legal system’, I argue the need to overcome the paradigm of the rule of law declined as a system of limits imposed exclusively on public powers, and the urgency of reflecting on a system of limits to private powers based on a general obligation to respect fundamental rights and freedoms.

### **Deepfakes and Fake News as a Threat to Free Democratic Election - the Obligation of Political Actors to Counterstatement**

paper presentation by Toni Fickentscher, University of Regensburg

Recently, pictures went around the world showing the former President of the United States of America allegedly being arrested. However, these were deceptively real-looking deepfakes created by computer programs. Just like fake news, deep fakes pose a considerable threat to democracy by deliberately trying to interfere with the free political will of the voter by presenting false facts. It is precisely the power of images that can exert considerable influence on the formation of opinion. In the digital age, public opinion debates can no longer take on a balancing, defusing function: In contrast to the analogue world, for example, the possibilities of spreading false information have increased exponentially, so that social debate can no longer counteract every piece of false news. Even in the case of their exposure, the balancing public exchange in society remains vulnerable: before social media can mark deepfakes and fake news as untrue or even remove them, they are often shared via messenger services in private chats. Even if social media operators act quickly, the fake news may have already been accessed millions of times. Moreover, the possible use of algorithms in social media contributes significantly to the fact that the user is not presented with a broad, balanced range of news that



could have a balancing effect. It is all the more dangerous when parties and people standing for election nowadays consciously make use of these tools. For instance, in the UK, the Tories used such methods - such as faking another party's election manifesto - to negatively influence voters' views of their rivals, the Labour Party. This threat exists because the political representatives are precisely the intermediaries or mediators between the state organs and the people. They play a decisive role in the democratic formation of the will of the people; in this respect, the people form their opinion in interaction with the parties. In order to prevent this dangerous intersection - the failure to recognise fake news while at the same time being used by a party - it is therefore necessary to strengthen the recognisability of deep fakes and fake news, above all in the sphere of the party or party member. It will not be possible to demand that they distance themselves from every untruth. However, if they themselves deliberately use false news on social networks - which is where the potential for danger exists - they should be positively obliged to correct it. The starting point for better protection of the free formation of political will should therefore not be seen in the general regulation of the formation and distribution of opinion, but rather the parties in particular should be held more accountable, namely in the form of an obligation to make a counterstatement.

### **The Right to Construct Yourself and Your Identity: The Current Human Rights Law Framework Falls Short in Practice in the Face of Illegitimate Interference to the Mind**

paper presentation by Emine Ozge Yildirim Vranckaert, KU Leuven

Propaganda and manipulation have long been employed to influence and shape individuals' thoughts and identities. In the advent of the digital era, these techniques have become more sophisticated and invasive, and are utilized to further various causes. This article investigates the extent to which international human rights law affords protection against manipulation techniques such as microtargeting and behavioral reading, which can negatively impact individuals' mental health and autonomy by threatening their right to construct their own identity. The right to freedom of thought in the Universal Declaration of Human Rights (Article 18), the International Covenant on Civil and Political Rights (Article 18), and the European Convention on Human Rights (Article 9) offers absolute protection to individuals' inner selves and covers the protection against manipulation on paper. However, in practice, the right has not received much attention and has not reached its full potential due to its abstract and ambiguous nature. This Article analyzes the preparatory works of these human rights law instruments, with a particular focus on the right to freedom of thought, to clarify its origins and the intention behind its creation. The Article contends that the historical origins of the right do not provide sufficient answers to the current issue and contribute to the ineffective application of the right against emerging manipulative practices. The Article also proposes potential ways to clarify and strengthen the legal framework related to the right to freedom of thought.



## Panel - Artificial Intelligence

### **Ensuring Trustworthiness and Fundamental Rights Compliance of Law Enforcement AI systems: The Methodology of the ALIGNER Fundamental Rights Impact Assessment**

paper presentation by Donatella Casaburo, KU Leuven

The implementation of artificial intelligence (AI) systems in the civil security and law enforcement domains can significantly enhance the abilities of law enforcement agencies (LEAs) to prevent, investigate, detect, and prosecute crimes, as well as to predict and preempt them. In the European Union (EU), LEAs are substantially investing their resources in the development and procurement of AI systems, with the aim to further increase the automation of their daily operations and acquire innovative and advanced capacities. Notwithstanding the actual and anticipated positive impact on LEAs' capabilities, the use of AI systems in the security and law enforcement domains raises numerous ethical and legal concerns that are commonly underlined by policy-makers, scholars, practitioners, and civil society organizations. The deployment of AI systems by LEAs may not respect the four ethical imperatives – rooted in fundamental rights – AI practitioners should always strive for, namely: respect for human autonomy; prevention of harm; fairness; and explicability. Furthermore, the deployment of AI systems by LEAs may infringe the fundamental rights of individuals. Particularly, AI systems may significantly interfere with the exercise of several protected rights, including: presumption of innocence and right to an effective remedy and to a fair trial; right to equality and non-discrimination; freedom of expression and information; and right to respect for private and family life and right to protection of personal data. To ensure both trustworthiness and full fundamental rights compliance of utilized AI systems, LEAs need to adequately assess and address these two sets of concerns. Although the idea of evaluating and mitigating the impact of emerging technologies on ethical principles and fundamental rights is not novel, EU LEAs do not yet have the means in their governance systems to do so in an efficient and effective manner. LEAs need an operational impact assessment methodology that incorporates the requirements of both AI ethics and the relevant fundamental rights legislation. The research conducted in the framework of the H2020 project ALIGNER [Artificial Intelligence Roadmap for Policing and Law Enforcement] aims to fill this gap, by producing a Fundamental Rights Impact Assessment (FRIA) template, ready to be implemented by LEAs who (are planning to) deploy AI systems for law enforcement purposes. The ALIGNER FRIA consists of two connected and complementary templates: 1. The Fundamental Rights Impact Assessment template, which helps LEAs identify and assess the impact of their AI systems on those fundamental rights most likely to be infringed; and 2. The AI System Governance template, which helps LEAs identify the relevant ethical standards for trustworthy AI and mitigate the impact on fundamental rights. The ALIGNER FRIA templates pose LEAs sets of precise questions, stimulating and facilitating a self-reflective exercise. The templates are designed to be filled in relation to a single AI system used for (a single or a set of connected) law enforcement purposes, before its deployment and by an interdisciplinary team of experts. This contribution illustrates the methodology behind the ALIGNER FRIA template, highlights its main strengths and paves the way forward in ensuring the trustworthiness and fundamental

rights compliance of AI systems implemented in the civil security and law enforcement domains. Corresponding author: Donatella Casaburo, KU Leuven Centre for IT and IP Law (CiTiP) – imec Other author: Irina Marsh, CBRNE Ltd.

## **Beyond Identification of Potential Risks: A reflection on Effective Remedy for AI-related Human Rights Harms**

paper presentation by Bruna De Castro e Silva, Tampere University

Artificial Intelligence (AI) offers opportunities to promote and fulfil human rights, but it also has the potential to undermine them. AI-related human rights harms have been increasingly researched and documented, and applications of AI which had infringed upon the rights of individuals and groups have been brought to the attention of the judiciary in different jurisdictions. As a response, a diverse multitude of initiatives on Responsible AI policy and governance aimed at identifying, measuring, and preventing AI risks have emerged in the past years, from key stakeholders in the AI ecosystem such as governments, industry, standardization and certification bodies, international organizations, academia, and civil society. These initiatives put forward responsible AI frameworks, guidelines, and best practices, as well as methods to operationalize them. Nonetheless, most of these strategies fall short in taking a step forward beyond the identification of risks and prevention of harms to deal with the problem of what happens when AI-related human rights harms do occur. Therefore, the question of how to remediate those harms and provide adequate redress to affected individuals and groups remains unanswered. We need to better understand what kind of remedies could and should be provided, by whom, under what circumstances, and through what kinds of mechanisms when AI use harms human rights. International human rights law imposes the obligation to protect, respect and fulfill human rights to States. However, the role and responsibilities of corporations and their duty to respect human rights in their activities and operations have been defined by the key international standard of the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs' significance for the business and human rights field and their impact at the global level make them a crucial standard for delineating the responsibilities of private AI actors. Their tailored application to the technology sector, including the AI industry, is urgent. Building on the corporate responsibility to respect human rights, especially on UNGPs' third pillar "Access to Remedy," this paper aims to tackle the problem of how to remediate human rights harms and provide adequate redress to affected individuals and groups. To do that, I address the following research questions: What are the responsibilities of AI providers to remedy human rights harms? What should effective remedies for AI-related human rights harms look like? This work applies a sociolegal research approach to explore the sociotechnical challenges of AI-related human rights harms. This lens is suitable to answer the research questions as I analyze UNGPs' Effective Remedy in the light of the harms posed by AI. I look at Principles 28 to 31 of the UNGPs to shed light on possible remedies and grievance mechanisms specifically designed for the novel societal challenges of AI. Moreover, I explore how to tailor UNGPs' Effectiveness Criteria for operational-level grievance mechanisms to the AI industry and develop them into requirements for AI providers. This analysis aims to contribute to the multidisciplinary Business and Human

Rights research at the intersection with the nascent Technology and Human Rights discipline. As such, it leverages a socio-techno-legal approach to better understand the phenomena of AI-related harms to human rights. The research findings support the claim that a tailored remedy ecosystem that leverages both State and non-State remedies is better equipped to respond to AI-related human rights harms and provide adequate redress to affected individuals and groups. Finally, it recommends the application of the UNGPs to determine the responsibilities of AI providers and foster human-rights compliant development and use of AI systems in our society, where individuals and groups have sufficient mechanisms and avenues to pursue effective remedy when harms occur.

## **Chatbots for Child Victims: a Careful Balance between Access to Justice and Data Protection**

paper presentation by Victoria Hendrickx, KU Leuven

Chatbots are the latest buzzword. They are increasingly being used in different contexts for different purposes. Think of chatbots providing therapy sessions or simply holding conversations on various topics. These new digital technologies can also be deployed to empower children, i.e. vulnerable individuals, in the specific context of access to justice. The 2021-2024 EU Strategy on the Rights of the Child has indeed shown that children are in need of child-friendly justice. Too often, child victims today face challenges in the justice system, and in particular access to adequate and simple information - even though the right to information guarantees more agency and reel empowerment throughout the criminal proceedings. To address the demands of a child-friendly justice in which every child victim has a right to information, chatbots could potentially create the opportunity to protect and uphold the right of adequate information and support of child victims in an evolving artificial intelligence (AI) world. At European level, the i-ACCESS MyRights project is currently exploring how to develop a chatbot based on natural language processing that could help promote and protect children's human rights by helping them to easily find information and exercise their rights in criminal proceedings. However, while promoting human rights for vulnerable individuals, chatbots may also threaten other human rights at the same time. One of the most apparent risks concerns privacy and data protection, as protected in the General Data Protection Regulation (GDPR). The design, piloting and actual use of the AI-driven chatbot may at various times conflict with the requirements in the GDPR. For example, consider the principle of data minimisation specifying that data collection and data processing should be limited to what is necessary to achieve the specified purposes, and that the period to store data must be limited to the minimum (Art. 5(1)(c)). In practice, this may raise questions as to whether data should be actively logged in a server memory or data base layer. Additionally, the principle of transparency requires that data subjects, i.e. the children, receive information that is easily accessible and understandable in a clear and plain language (Art. 5(1)(a)); recitals 38-39, 58). Moreover specifically when children are involved, the GDPR expects additional safeguards (see, for example, Art. 8), since children are expected to be less aware of the risks, consequences and safeguards in relation to the processing of their personal data. Consequently, all information regarding the processing of their personal data must be communicated in a child-friendly manner, e.g. through visual or auditory elements such as

cartoons or videos. To this end, the potential of “by design” approaches embedded into the design of the chatbot technology should be considered. For example, the research on “transparency by design” (Felzmann, 2020) explores how transparency can be built directly into the design phase of technologies. Framed within the rise of interdisciplinarity, cooperation between legal experts, technical experts, social experts and the tech users will thus be key to support human rights. By means of a poster, I will present this research, discussing the situation regarding the uptake of chatbots - including in the context of child victims, its potential for access to justice, and at the same time the potential risks for privacy and data protection. The poster aims to outline the difficult balance between the promotion of access to justice and the right to information through chatbots on the one hand, and the risks to privacy and data protection on the other hand. The poster is based on the research conducted in the i-ACCESS MyRights project, of which CiTiP is the legal partner. <https://tdh.ro/en/i-access-myrights-artificial-intelligence-driven-support-smart-justice-children-europe>.

## Panel - Vulnerabilities and Technology

### **Digital Inequalities in the Era of AI: Assessing the Impact of Biased Hate Speech Detection Methods on Minorities' Freedom of Speech in the Light of the EU Legal Context**

paper presentation by Giulia Vasino, University of Urbino Carlo Bo

At present, reducing and tackling the spread of illegal contents online has become one of the main goals of the EU. In the virtual scenario, digital platforms constitute powerful actors, which are entitled to decide over the elimination of a certain piece of content. For this very reason, they also represent reliable enforcers of legality in the cyberspace, whose action is crucial to implement decisions coming from public authorities. Nevertheless, from the very beginning, the European strategy on this matter has been dealing with critical issues arising from the utilization of AI. Such technologies are typically grounded on algorithms which make predictions to support or even to fully perform automate decision-making with increasing efficiency. However, while algorithms can be indispensable tools, their utilization can also lead to discriminatory outcomes. Particularly, due to the broad magnitude of online contents, digital platforms have considerably enhanced their efforts to automatically detect online hatred, by relying on sophisticated solutions. However, hate speech detection systems, which are based on advanced machine learning methodologies and natural language processing (NLP), can produce biased results for several reasons. For example, distortive outcomes clearly point to language differences in predictions of ‘offensiveness’ for different groups by ethnic origin. Indeed, the level of hatred associated with different cultural terms such as definitions marking group identities varies considerably across models. In particular, in the English-language data, the analysis finds a correlation between offensiveness predictions of an algorithm and African American English. Furthermore, several analyses show that available language models can also be gender-biased and that users belonging to the LGBTQ+ community are more likely to have their contents struck down. Hence, such flagging and blocking practices can lead to differences in access to communication services based on ethnicity, gender or sexual orientation. In other

words, the concrete operational tools deployed to transpose legality in the online context can result not only in determining collateral censorship but also causing new significant inequalities concerning the users' fundamental right to freedom of expression. Paradoxically, the positive scope to protect individuals against harmful contents by fostering the creation of a "safe, predictable and trusted online environment" (art. 1 § 1 DSA) may turn into "a boomerang effect", by negatively affecting vulnerable groups and minorities. By using online hate speech detection as a case study, the paper aspires to explore to what extent AI tools utilized by digital platforms to regulate online public speech can represent a "new threat" to the principle of equality in EU, whereby the principle of non-discrimination constitutes one of the founding pillars of the legal system. Having regard to these issues, firstly the analysis intends to critically examine the status quo through the lens of AI studies and European non-discriminatory law. In fact, corrective interventions on algorithms based on fairness metrics, if not expertly designed, may often result in preserving only formal equality. Secondly, while the EU legislator currently strives to ensure consistent and high levels of protection against discrimination on all grounds, such more guaranteeing legal basis may prove to be inadequate. Therefore, in addition to non-discrimination legislation, also the European Digital normative strategy in the process of being developed will be addressed. The innovative provisions aiming at creating a more democratic and accountable utilization of AI will be investigated to assess if they could effectively implement an "equal" safeguard of fundamental rights. In particular, the risk-based approach – as adopted in the proposed AIA after the DSA and the GDPR – along with the algorithmic transparency standards will be questioned.

### **Hijacking Standardisation? Crafting Space for Tech Users' Meaningful Engagement in the Design of Human Rights-compliant Technology**

paper presentation by Mando Rachovitsa, University of Nottingham

Standardisation is the "beating heart" of creating and implementing technology and, more specifically, Information and Communication Technologies (ICT). Standardisation describes and uniformises a set of criteria, often of a technical and assumed value-free nature, the associated practices and methods enabling the interoperability of networks and datasets. In this sense, standards shape the end-user's choices and our ability to enact our citizenship and enjoy human rights in the digital age. And yet the process of standards-making remains a "blind spot" for human rights law and human rights lawyers. This paper addresses the question of how standardisation and standardisation bodies are to assess and account for the societal and human rights impacts of a standard as an integral part of its development, adoption and implementation. The first part of the paper provides a brief overview of how standards, such as 5G and Internet standards, shape, constraint and affect human rights of the technology users. Specific examples are discussed as to the human rights and public values affected when creating, adopting and implementing ICT-related standards. The second part of the paper presents the findings of a comparative research conducted with regard to the working procedures and practice of certain formal standardisation bodies, including the International Telecommunication Union (ITU), the International Standardisation Organisation (ISO), the

European Telecommunications Standards Institute (ETSI) and the Institute of Electrical and Electronics Engineers (IEEE) as well as global informal/private bodies, with a specific emphasis on 3GPP which designed the standard for 5G. The discussion fleshes out whether the institutional frameworks and working procedures of these bodies explicitly provide for ways for incorporating modes of meaningful participation of end-users into the standards-setting procedure or whether, in the alternative, there is any space to claim such space anyhow. The analysis tackles down the question of what effective/meaningful engagement/participation of tech users may embody. It is argued that the concepts of “relevant parties/stakeholders” frequently encountered in the working procedures of the aforementioned bodies should include end-users as (potential or actual) affected parties. It is also submitted that such engagement of tech users should encompass concrete ways for direct or at least indirect participation in all stages of standardisation with a view to embed early on already in the design phase of standards rights-respecting approaches and mitigate risks to human rights. If direct participation is not possible, the discussion explores other alternatives for meaningful engagement, including the appropriate representation of tech users or the incorporation in the working procedures of standards-setting bodies of a duty to identify and mitigate possible human rights harms. EU law requirements and best practices from other global governance bodies are used to enrich the analysis, including the UN Guiding Principles for Business and Human Rights, as they have been implemented following the Internet Engineering Task Force (IETF)'s RFC 8280 and Internet Corporation for Assigned Names and Numbers (ICANN)'s recently updated human rights by law. The third part of the paper concludes by setting forward a set of policy-relevant recommendations.

### **Obligation to Collect Data - A Vulnerability Theory Approach to Data Collection in the Light of the UN CRPD**

paper presentation by Eveliina Ignatius, University of Helsinki

The impacts of digital technologies vary across different groups, rendering some groups more vulnerable than others. For example, increased data collection presents both risks and possibilities: data can be utilized, on the one hand, to monitor human rights such as the right to equality and non-discrimination. On the other hand, data collection and use of data may also have negative impacts on certain vulnerable groups, as it can potentially undermine the realization of rights, including privacy, security, and equality. As digital technologies continue to transform the human rights landscape, scholars need tools to approach current issues to operate with changes in the traditional human rights framework and to ensure the effectiveness of human rights protection, also for vulnerable groups that require special protection. This paper analyses the relationship between vulnerability theory and the legal demands for data collection in the light of the UN Convention on the Rights of Persons with Disabilities (CRPD). Building on vulnerability theory, the paper examines the obligation to collect data as provided in the CRPD, and whether vulnerability theory can serve as a framework for developing data collection regulation and practices that more comprehensively address the potential risks and opportunities associated with human rights. The CRPD is a relatively new human rights treaty



aimed at protecting and promoting the rights of persons with disabilities. The Convention does not specifically address digital technologies, but it includes some provisions with modern approach to technology. The Convention also includes an article on statistics and data collection (Article 31) that obligates State Parties to collect appropriate information to enable them to formulate and implement policies to give effect to the Convention. Data collection plays a crucial role in monitoring and implementing the rights provided in the CRPD, especially considering structural inequalities and social justice. Data collection and statistical data, in addition to their role in monitoring human rights, can also have impact on individual cases, for example by providing evidence on discrimination (see eg. ECtHR, *DH and Others v. Czech Republic*, 57325/00, 2007). However, the legal framework for data collection is complex, and the regulation is linked to several human rights. Moreover, data collection practices and the use of data may also have, for example, discriminatory effects or negative impacts on other human rights such as the right to privacy. For example, data collection may pose risks to the safety and privacy of certain groups, and the collected data may exhibit significant bias. The paper begins with an overview of vulnerability theory. Bringing together earlier research from different fields of science and scholarly discussion on vulnerability theory, I aim to highlight the legal relevance and potential of vulnerability theory for data collection. In particular, the paper analyses group vulnerability in light of vulnerability theory, especially in relation to the rights of persons with disabilities in digital environment. The international human rights system has been built on the awareness of the need to protect vulnerable groups as human rights violations may impact on entire groups instead of just individuals. Then, the paper aims to define and clarify State obligations concerning data collection in the light of the CRPD. The paper concludes with analysis on the possibilities of this approach in relation to Article 31 and 33 of the CRPD, assessing vulnerability theory as a tool for developing the legal framework for data collection that promote more robust human rights safeguards and the protection of vulnerable groups.

## **Panel - Deepfake & Cyberviolence**

### **The EU Proposal on the Regulation and Prevention of the Dissemination of CSAM: An Exercise in Competing and Complementary Rights**

paper presentation by Mark Leiser, VU Amsterdam

The presentation offers a critical analysis of the EU's Proposed Regulation on Preventing and Combating Child Sexual Abuse, assessing its potential effectiveness in addressing the complex issue of child sexual abuse, particularly online. Two expert workshops at Leiden University and VU-Amsterdam informed this analysis, where I co-hosted and co-authored the resulting outcome reports. These reports were subsequently presented to the Lanzarote Committee and the European Parliament. The proposed regulation aims to confront the escalating problem of online child sexual abuse by establishing a comprehensive framework for collaboration between EU member states. This cooperation encompasses the investigation and prosecution of offenders, as well as providing support for victims. Moreover, the regulation seeks to enhance the detection and removal of illegal content. In this presentation, I will delve into the proposal's scope,



definitions, enforcement mechanisms, and potential challenges while exploring possible ways to reconcile the need for effective countermeasures concerning fundamental rights such as privacy and freedom of expression. A significant issue under consideration is striking a balance between privacy and data protection concerns and the urgent need to prevent and combat child sexual abuse online. While it is crucial to protect the right to privacy, it is also recognized that offenders may exploit this right to elude detection or prosecution. As such, the presentation will examine measures enabling law enforcement agencies to access relevant data while respecting privacy rights. Furthermore, the presentation will provide a professional and in-depth exploration of the fundamental rights of adults and children, the rights of children as victims of child sexual abuse, and the empowerment of children through the lens of fundamental rights. This analysis will be conducted within the context of the EU's proposed regulation, critically examining its potential implications on the rights and protections of all affected parties. By doing so, the presentation aims to contribute to a more profound understanding of the challenges and complexities surrounding preventing and combatting child sexual abuse in the digital age.

### **Gendered Cyberviolence: Global Harms, Global Answers?**

paper presentation by Catherine Van de Heyning, University of Antwerp

Gendered online violence, including image-based sexual abuse, has become a mainstreamed global problem during the last decennium. New technologies are abused to attack the physical, sexual and psychological integrity of others online, and to control victims via online surveillance, extortion and harassment. Research has shown that this form of cyberviolence in particular impacts on women, children, racial minorities and indigenous people. Their intrinsic vulnerability is further amplified online. Due to the ever changing nature of this form of cyberviolence, its intrinsic transborder nature and lack of knowledge with policy makers, resulted in nation states struggling to address gendered online violence and victims often left without remedy. This evolution has not gone unnoticed at the international level. At the international level, CEDAW already took account of the occurrence of “gender-based violence against women” on social media services and platforms in its recommendation 35. Further, the Council of Europe Expert Group on Action against Violence against Women and Domestic Violence issued a recommendation on cyberviolence and several forms of cyberviolence are included in the EU draft directive on gendered violence. The European Court of Human Rights recognised gendered cyberviolence as a violation of articles 3 and 8 of the Convention. While these recommendations and the EU draft directive highlight an increased awareness of the impact of gendered cyberviolence, international norms from a human rights perspective are still lacking. In my paper, I argue that such norms are necessary because of its intrinsic cross border nature. In the paper I will explain based on two examples of scripted human rights abuses due to gendered cyberviolence that addressing the tech architecture and policies is vital to address this issue. This warrants a globalised approach from a human rights perspective that takes into account the particularities of the victims of this form of gendered violence.

## Privacy of Women in the Age of Artificial Intelligence

paper presentation by Sinem Özyiğit, Yeditepe University

The regulation of artificial intelligence is topical at this point in time. Although its special applications relate essentially to the same main legal principles, Deepfake has its own characteristics and challenges on so many different levels that drafting a single regulatory response does not suffice to transcend the Deepfake-related harsh effects. A study conducted in 2019 indicates that non-consensual pornographic contents constitute 96% of all Deepfakes, and all pornographic Deepfakes target women without any exception (Ajder et al., 2019, p. 1-2). Although researchers have found in part of a recent study that men are rarely depicted in non-consensual pornographic Deepfakes (Kugler & Pace, 2021, p. 613, fn. 4), the fact is still that women are more vulnerable in practice, and that Deepfake technologies have become a new tool of violence against women (Öhman, 2020, p. 133-134; Harwell, 2018). Also, child sexual abuse materials may be produced in case the algorithms are trained by the images of minors or the childhood images of adults (Cole, 2018). Considering that the vast majority of Deepfakes constitutes severe interference with privacy and personality rights of women and children, who are unable to cope with this level of harm especially in countries where victim blaming is common (Collins, 2019), the focus of policymakers must be on non-consensual pornographic Deepfakes. We observe that various regulatory strategies have already been developed across different jurisdictions from several states in the US and Australia to China in order to combat non-consensual pornographic Deepfakes. We will analyze these strategies from a critical perspective, and reach the conclusion that deepfakes may be partially prohibited in the sense that they may only be employed in the specific sectors, such as medical and entertainment sectors; however, it is better to put the lid on their extensive use on the individual level (van der Sloot & Wagenveld, 2022, p. 13). In this sense, the conference paper primarily aims (i) to reflect on the key discussions in the legal literature and the approaches of the foregoing countries; (ii) to discuss whether it is necessary or possible for countries to act shoulder-to-shoulder in order to create a single regulatory response rather than offering piecemeal solutions across different jurisdictions; (iii) and to determine from our point of view the ideal content of the potential regulation dedicated to non-consensual pornographic Deepfakes. We will try to promote the ethical use of Deepfakes while striking a delicate balance that will not undermine fundamental rights and freedoms.

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### **Polluting the Pornosphere": Regulating Deepnude Ads on Adult Content Sites**

paper presentation by Lien Stolle, Valerie Verdoodt and Argyro Chatzinikolaou, Ghent University

From time to time, the impact of pornography on its users surfaces in public debate and is discussed at length in academia. Moving beyond the traditional debate on how (mainstream) pornography influences society, attention is steered towards new technological advancements that expand users' possibilities within the so-called pornosphere. 'Deepnudes' constitute a contemporary type of content that emerged in 2017 on Reddit and can be described as intimate audiovisual content that either already exists and is manipulated or is wholly/partially fabricated with the use of artificial intelligence (AI) (deep learning) algorithms. Essentially, AI technology enables users to place one person's face on another person's body and create a fake video in which a person is pictured doing something they never actually did. Research shows that a vast majority of deepfakes found online are pornographic in nature, but – most importantly – the persons depicted in manipulated intimate material are almost exclusively female (Deeptrace Report, 2019; Maddocks, 2020). Interestingly, the use of deepfake technology to manipulate intimate imagery is now advertised on mainstream dedicated porn(ographic) (web)sites. Ads for deepnudes attract the viewer's attention by demonstrating how AI technology can be used to replace the female porn actor's face by someone else's, and directs the user to a (paying) service for deepfaking. This while from the outside (outside of the ' pornosphere') the service itself may not appear to involve pornographic content, nor does it present itself as having such. The use of deepfake technology itself is not harmful or illegal; from a socio-legal point of view, it rather lays within a gray zone and sparks discussions regarding the opportunities/benefits and dangers/risks it brings along (for an overview of the benefits, risk and impact of deepfakes, see EPRS Study, 2021). In this paper, we take the standpoint (similar to Burkell and Gosse, 2019) that although deepfake technology is not bad in itself, the ads on porn sites situate it in a highly problematic context. We chose to analyze a specific type of ads on porn sites because they directly attempt to influence porn users to act in a certain way - i.e. commercials for deepnude technology. Face-swapping ads on porn sites can be seen as instructions for harm-doing: they offer technology to produce deepnudes, which potentially constitutes a form of image-based sexual abuse. To understand and analyze the issue and the related concerns, we use a socio-legal analysis on deepnude ads on porn sites. First we discuss the (potentially harmful) impact of the advertisement of deepfake apps on dedicated pornographic websites – oftentimes without the person depicted's consent. Second, we attempt to piece the regulatory puzzle and discuss to what extent existing, recently adopted or proposed regulatory instruments at the EU level cater to the problem of deepnude ads on pornographic

websites. Several questions arise: which key actors are involved in the placement of deepfake ads on porn sites (incl. pornographic platforms, ad intermediaries, app developers, etc.), what is their level of involvement and to what extent can they be held liable for their involvement in the case of harmdoing? Will instruments such as the proposed Directive on combating violence against women and domestic violence – which introduces the criminalisation of the non-consensual production and sharing of manipulated intimate material – or the recently adopted Digital Services Act only ban the produced images or also the apps themselves? In sum, we argue that while the face swapping services are legal in themselves - as are the porn sites - the ads placed on dedicated porn sites that promote how face swapping can be used to produce deepnudes "pollute the pornosphere" and, hence, should be banned.

## **FRIDAY 8 DECEMBER**

### **Panel - Children's Rights**

#### **Digital Empowerment as a Human Rights Imperative: A Case Study of Using Technology to Empower Afghan Girls' Education under Taliban Rule**

paper presentation by Murtaza Mohiqi, University of South Eastern Norway (USN) and Mohammad Anvar Moheggy, KU Leuven, Belgium

Introduction: Afghanistan has a history of gender inequality, with women and girls facing significant challenges in accessing education, employment, and healthcare. Under Taliban rule, these challenges have been magnified, with girls' education being explicitly prohibited in many areas. However, digital technologies have emerged as a powerful tool for empowering Afghan girls and promoting human rights. This paper presents a case study of how digital technologies have been used to empower Afghan girls' education under Taliban rule.

Background: The Taliban's control of Afghanistan from 1996 to 2001 saw the implementation of strict Sharia law that restricted women's rights and freedoms. Girls' education was explicitly prohibited in many areas, and those who dared to attend school risked severe punishment. Following their recapture of Kabul in 2021, the Taliban reinstated their strict approach to governance. This has resulted in the expulsion of girls and women from schools, universities, and workplaces. Additionally, they are prohibited from accessing public spaces such as parks and sports clubs.

Methodology: This study uses a qualitative case study approach to examine the use of digital technologies in empowering Afghan girls' education. The study is based on interviews with girls and their families, teachers, and community leaders. Additionally, data was collected through field observations and the review of relevant literature.

Results: The results of this study indicate that digital technologies can be a powerful tool for empowering Afghan girls' education. The use of smartphones and the internet has enabled girls to access educational content, connect with teachers and peers, and continue their education from the safety of their homes. Furthermore, digital technologies have provided a platform for

advocacy and activism, with girls and their supporters using social media to raise awareness of their situation and demand change.

Discussion: The findings of this study have significant implications for promoting human rights and empowering vulnerable communities, particularly in the context of Taliban rule. Digital technologies can provide a lifeline for girls who are denied access to education, enabling them to continue their studies despite the oppressive regime. However, the use of digital technologies is not without its challenges. There is a risk of surveillance and retaliation, and the digital divide can limit access to technology for some girls. Therefore, it is essential to adopt a rights-based approach to the use of digital technologies, which prioritizes the safety and privacy of users.

Conclusion: In conclusion, this study provides compelling evidence for the power of digital technologies in empowering Afghan girls' education under Taliban rule. By using technology to circumvent restrictions and connect with the wider world, girls can continue their education and advocate for their rights. However, it is essential to recognize that the use of digital technologies is not a panacea and must be accompanied by broader efforts to promote human rights and gender equality. The international community must continue to support the efforts of Afghan girls and their allies in their struggle for education and empowerment.

### **Putting Children First: A Critical Analysis of the European Data Strategy for Educational Data**

paper presentation by Elora Fernandes, KU Leuven - Imec & Martin Sas, KU Leuven

The European data strategy aims to create a single market for data, where data would flow freely within and across different sectors. Its main driver is the idea of transforming the EU into a leading role model, where data sharing benefits could be spread throughout society. One of the main actions to put the data strategy in practice is the funding of sectoral data spaces in strategic areas and domains of public interest, one of them being skills. According to the data strategy, the common European data space for skills would reduce skills mismatches between the education and training system and the labour market needs. It would surpass silos and build innovative applications and uses of high-quality data on qualifications, learning opportunities, jobs and skill sets. While some of the policy goals behind the European data strategy are extremely important, we cannot ignore the broader consequences that a model focused on data commodification has for the protection of children's data, especially educational data. When data is treated as a commodity, its value is often measured solely or mostly in economic terms, leading to a narrow focus on maximizing profits rather than protecting individuals' rights and interests. This can certainly harm society in general, but children in particular, considering the need for protection under the best interest of the child principle and their specificities as a developing being. Children spend most of their daily life in schools. The combination of data on school performance, as well as on their levels of attention, disciplinary records, behaviour, etc., has the ability to create a unique and extremely detailed profile of individuals, something never experienced before by older generations. This data can be used to make decisions that can significantly affect a child's future, such as admissions to higher education, scholarships, and job

opportunities. It should also be considered that the virtual environment is often not designed for use by children; that their personality is still developing, which requires an environment that allows for mistakes to be made; and that their rights are often exercised by their parents, which limits their autonomy. Fostering the development of data spaces will not only facilitate data sharing among the educational sector, but also between different sectors. This greatly undermines the contextual analysis of the use of personal data and the expectations that children and their guardians may have regarding the further use of their educational data. Therefore, the paper will argue that the actions taken by the European Commission need to consider a child-centred approach to children's data, ensuring that their rights and interests are at the forefront of any decision-making process. The paper will also argue that providing more safeguards to children's data may not be enough and changing the model altogether should be considered, moving beyond the commodification of data towards a rights-based data governance. The research will be based on an analysis of the policy documents related to the data strategy and Europe's Digital Decade, in particular the construction of a data space for skills and education, as well as the literature related to the children's rights to privacy and to the protection of personal data. It will also consider alternative data governance models that could be fostered in order to guarantee children's human rights.

### **Digital Lives of the Youth Along the Silk Road, Photography Exhibition and Presentation Session**

paper presentation by Amadej Petan, Tara Sergeja Kadunc and Tadej Uršič. Co-authors: Tara Sergeja Kadunc and Tadej Uršič

In 2022 and 2023, Tara and Amadej embarked on a one-year study trip along the Silk Road. To gain first-hand insights into the societies that are shaping the future world order, they visited Turkey, Iraq, Saudi Arabia, Bahrain, Sri Lanka, Malaysia, Singapore, Vietnam, Taiwan, Japan, South Korea and Mainland China. Throughout their journey, they used various modes of transportation and stayed in different accommodations, from luxury hotels to the couches of locals. They also met with locals, students, diplomats, politicians, journalists, activists, businessmen, academics, and artists to gain a multi-layered and interdisciplinary overview of each country. During their travels, they were intrigued by the impact of apps on everyday life and how people use them in different countries. They also noticed the increasing influence of online expression and social media on the development of human rights. Tadej's valuable contributions went beyond initial research and organizational support, as he provided critical academic insights to contextualize their findings. His expertise and understanding of human rights policies around the globe provided a crucial perspective on their observations. We are excited to present our research findings at the upcoming conference in an interactive session and photography exhibition. Our presentation will delve into the use of apps in the countries we visited, providing detailed insights into the types of apps used, how they are used, and their impact on human rights. Through academic research and personal observations, we will explore the influence of online expression on the development of human rights. We will showcase our own experiences and



engagements on TikTok, highlighting the unique ways in which young people express themselves online. Our presentation will not only focus on individual countries but also provide a comparative analysis of app culture in different countries. For example, we will discuss the all-encompassing app culture in Mainland China and its impact on human rights. We will also highlight the contrasting app usage between Hong Kong and Mainland China, as well as the polarisation and army-like following of online celebrities in South Korea and its impact on freedom of speech. Additionally, we will share our observations on the use of Airdropping for flirting in Saudi Arabia. The exhibition will feature a combination of photos, texts, and personal TikTok experiences, which will provide a unique and engaging experience for participants. The texts will contextualize our observations and relate them to the perspective of human rights in the countries we visited. Furthermore, we will provide a moderated human library, where experts and colleagues we met along our journey will make virtual appearances. This will allow participants to engage with them, learn more about their experiences, and broaden their understanding of the topics discussed in our presentation. Overall, our presentation and exhibition will offer an interdisciplinary look at the impact of apps and online expression on human rights. By integrating personal experiences, academic research, and virtual engagement with experts, we will provide a unique and interactive experience for participants.

### **The Duty of Live Streaming Platforms to Protect the Personal Information of children: A Gatekeeper Responsibility Approach from a Chinese Perspective**

paper presentation by Zhang Huiyun, Zhongnan University of Economics and Law & Georg-August-Universität Göttingen

The rapid growth of the internet has brought about many benefits, including increased access to information and greater connectivity. However, it has also introduced new risks to personal information. This is particularly true for child internet users, who may not have the same level of awareness and understanding of personal information protection as adults. As a result, they are more vulnerable to risks such as identity theft and online exploitation. In China, the issue of protecting children's personal information is complicated by the fact that the gatekeeper provisions in the country's Personal Information Protection Law are overly broad. This can make it difficult to determine who is responsible for protecting children's personal information and how they should do so. Additionally, enforcement capacity is limited, which means that even when violations occur, it can be challenging to hold those responsible accountable. This study aims to address these challenges by examining the protection of children's personal information in China. Specifically, we analyze the privacy clauses in well-known apps and their implementation in practice. This allows us to identify areas where improvements can be made and to propose suggestions for enhancing legislative protection and the gatekeeper responsibility system. To inform our analysis, we draw on legislation and practices from other countries. This provides us with a broader perspective on how different jurisdictions approach the issue of protecting children's personal information. By comparing and contrasting these approaches with those used in China, we are able to identify best practices and potential areas



for improvement. Our goal is to explore how to better define the obligations of “gatekeepers” at the legal level to protect children’s personal information. By doing so, we hope to provide a clearer framework for those responsible for protecting children’s personal information and to ensure that they are held accountable for their actions. Overall, this study contributes to the ongoing conversation about how to protect children’s personal information in the digital age. By providing a detailed analysis of the current situation in China and proposing suggestions for improvement, we hope to help policymakers and other stakeholders develop more effective strategies for safeguarding children’s personal information.

## Panel - Technology in the Courtroom

### **Judicial Biases and The Right to a Fair Trial: A Possible Role for Artificial Intelligence?**

paper presentation by Giovana Lopes, KU Leuven

As arbiters of law and fact, judges are supposed to decide cases impartially. We expect them to reach and justify their decisions with resource to the authoritative legal sources, and to not be influenced by external factors that are irrelevant to the case. Judicial impartiality is one of the essential elements of the Rule of Law: it is not only foreseen by the European Convention on Human Rights, which establishes, in Article 6, the right to a fair trial by “an independent and impartial tribunal established by law”, but it is also a keystone of Member States’ judicial systems. However, a large body of empirical evidence points to the fact that judges – like the human beings they are - frequently rely on autonomous thinking, which can lead to biases. While cognitive biases (e.g., anchoring, hindsight) entail some broadly erroneous form of reasoning, social biases (e.g., racial bias, ingroup favoring) entail reasoning based on implicit attitudes and stereotypes. Both kinds of biases have the potential to reduce the accuracy of a judgment and are closely related to the use of heuristics, given constraints such as limited time and information, fatigue, and cognitive overload. It seems undeniable that the implicit biases that affect the judicial decision-making process constitute a threat to the right to a fair trial, but they are not addressed by the current normative framework on judicial impartiality. Courts, such as the European Court of Human Rights, have preferred to address only the concrete manifestations of biases or prejudices, through the lens of objective impartiality. They demand, for example, that any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw, and that there is a responsibility of the individual judge to identify any impediments to his or her participation and to withdraw from the case. Implicit biases are generally latent, however, meaning that subjects tend to be unaware of them, which makes its approach from an objective perspective insufficient. In recent years, artificial intelligence (AI) has been increasingly adopted in the legal field for a variety of applications, such as document search and review, automated dispute resolution or the prediction of litigation outcomes. It has also been adopted by some courts to assist or even automate decision-making processes, and to facilitate tasks and activities during the lifecycle of the proceedings (i.e., triaging, allocation). These have raised some legal and ethical concerns, such as the possibility of AI systems reproducing or even worsening bias. In 2018, the Council of Europe’s European Commission for the Efficiency of

Justice (CEPEJ) adopted its European Ethical Charter on the use of AI in judicial systems and their environment, and in 2021, it further adopted a Revised roadmap for ensuring an appropriate follow-up of the Ethical Charter. In light of these advances, the goal of this paper is to analyze what is the role for artificial intelligence when it comes to debiasing judicial decision-makers, by detecting patterns of bias in previous decisions (i.e., auditing), helping target necessary interventions (individual or group debiasing strategies); or by assisting judges in time-consuming yet mostly automatic tasks, thus reducing their workload and consequentially the mental depletion that often results in biased decisions. The research is theoretical and bibliographic, drawing on direct and indirect sources to comprehensively review the theme. It will be developed from an interdisciplinary perspective, through the analysis of the normative constraints to the use of AI for debiasing purposes, in light of the relevant EU provisions, and the technical limitations of doing so (e.g., data gathering and training).

### **“Code is Law” and Net-HaMishpat - Case Management System of the Israeli courts**

paper presentation by Joseph Zernik, Human Rights Alert

Instant study is based long term research into Net-HaMishpat – case management system of the Israeli courts in an attempt to discover the rules, which are embedded in the system, and are in fact “rules of courts”. The Israeli Rules of Court were originally promulgated in 1936 under the the British Mandate for Palestine, but were voided in 2004, concomitantly with development of Net-HaMishpat and the transition to administration of the court through electronic court files. The rules, which are embedded in Net-HaMishpat have never been lawfully promulgated and have never been published. Valid, public rules of courts are essential for the safeguard of court integrity against “Fraud Upon the Court” (Lockwood v. Bowles, 46 F.R.D. 625, 631 (D.D.C. 1969)) - where the judicial machinery itself is tainted, otherwise known as “simulating legal process” (e.g., Texas Penal Code § 32.48 ), where a person “issues or delivers any document which he or she knows falsely purports to be or simulates any civil or criminal process”. Electronic court files in Net-HaMishpat have been routinely inspected in order to discover suspect simulated court records. In parallel, efforts have been made to investigate the manner in which valid judicial electronic records are generated, signed and entered. Freedom of Information requests have been filed with the Administration of Courts, and Freedom of Information petitions have been filed with the courts, including appeals to the Israeli Supreme Court. In one extreme case, alleged simulated judgment was discovered in a case of a 2010 murder conviction and life imprisonment sentence. In another case, the Israeli Supreme Court denied an appeal, which sought information regarding the lawful manner in which valid electronic criminal judgments must be signed and entered. The court ruled that the issue of “information” pursuant to the Freedom of Information Act, where the information is embedded in e-government systems “is not ripe for review and decision.” Already the 2012 Human Rights Alert NGO submission for the Universal Periodic Review (UPR) of Human Rights in Israel by the UN Human Rights Council (HRC) documented such aberrations. That submission was incorporated into the final HRC UPR report and summarized in a note referring to “lack of integrity in the electronic record systems of the Supreme Court, the district courts and detainees’ courts in Israel.” The 2018 Human Rights Alert NGO submission

further documented such aberrations, and was incorporated into the final HRC UPR report and summarized in a note referring to “serious deterioration in integrity of law and justice agencies as a consequence of implementing e-government systems. It affirms that validity and integrity of any legal and judicial records of Israel should be deemed dubious at best.” “Code is Law”, a theory formulated by Prof L. Lessig, asserts that cyber platforms effectively establish new laws, which are not enacted through any democratic process, but by “private actors,” and such laws may threaten constitutional principles and should be recognized and regulated. E-government platforms, and e-Government platform of the courts, in particular, may established new laws, which were not democratically enacted, and are critical for the safeguard of Human Rights and integrity of the justice system. Special measures should be implemented in order to safeguard the integrity of case management systems of the courts. The rules of courts, embedded in such systems should be explicitly and publicly stated, subject to the principles of separation of the powers of the branches of government and publicity of the law.

### **AI in Courts: Challenges or Opportunities for Justice?**

paper presentation by Viltte Kristina Dessers, KU Leuven

The paper addresses the challenges posed by the (potential) use of artificial intelligence in courts, specifically, on the challenges for ensuring the right to a fair trial (Article 6 of the European Convention of Human Rights), with a particular focus on ensuring the key requirements of adversarial proceedings and independence and impartiality of a tribunal. Objectives Specifically, the paper focuses on the use of legal analytics that may be used to inform about the existing case law, draft and ‘guide’ court decisions (see, e.g. the most recent examples of judges using artificial intelligence chatbot ChatGPT in a case of an autistic child’s insurance in Colombia or in a case of an attempted murder in India, both in 2023). The paper aims to identify and discuss the challenges for ensuring a fair trial in those cases where the referred tools are deployed in courts. The paper aims to address the key problems that arise particularly with regard to ensuring the right to adversarial proceedings, taking into account, on the one hand, the requirement for the parties to have knowledge of and comment on all of the observations or evidence in the case, and, on the other hand, difficulties in accessing and understanding the output of legal analytics which is often referred to as a ‘black box’ problem. Besides, the paper aims to outline the key challenges that may arise with regard to ensuring independence and impartiality of a tribunal, taking into account various biases potentially involved in the process, including biased training data and the so-called automation bias. Lastly, the paper aims to address the sufficiency of the safeguards offered by the existing and the developing legal frameworks. Methods The research integrates insights from social, computer and data sciences and relies on doctrinal legal research as a key method. The paper portrays an overview of the characteristics of the tools in question and their limitations, provides a granular analysis of the components of the right to adversarial proceedings and the right to an independent and impartial tribunal, with a particular focus on the case law of the European Court of Human Rights, and consequently outlines the legal challenges posed by the (potential) deployment of the referred tools. Expected findings of the paper Overall, the paper should portray the key

challenges for ensuring the right to adversarial proceedings and the right to an independent and impartial tribunal in those cases where the referred tools are deployed, and advance the scholarly discussion on the potential safeguards, including actions to be taken by governing bodies and responsibilities for technology providers.

## Roundtable discussion

### Revisiting the (Artificial) Right to Effective Remedy in a Digitized World

with Pierre Dewitte, KUL, IAB Europe CJEU, companion chatbot case BE; Simona De Heer, Assistant MEP; Kim Van Sparrentak; Francesca Fanucci, Senior Legal Advisor at European Centre for not for profit Law (ECNL); Christiaan Duijst, College Rechten van de Mens, toeslagenaffaire and Moderator: Nele Roekens (UNIA)

Citizens often have no idea when AI is being used that might affect them, and when citizens are aware, they do not know how and to what institution or court they could complain about the individual, collective or societal harm that arises or might arise. It is widely accepted that the right to effective remedy is negatively affected by AI legal issues such as the lack of algorithmic transparency, the lack of contestability, liability issues related to damage caused and lack of accountability for harms. Whilst recognizing the work carried out in the AI law space, a lot remains to be done. This roundtable discussion will revisit the right to effective remedy in the digitized world with a focus on AI systems. An interdisciplinary panel will be asked to examine concrete use-cases. A debate will ensue on the pros and cons of existing and future (legal)tools to ensure meaningful effective redress. Participants will be invited to share their view on what is needed. This discussion aims to advance the discussion, which is important given the gravity of the impacts of AI technologies, particularly on vulnerable individuals and groups. The following questions will be addressed: 1. What is the right to effective remedy and how is it affected in a digitized world? For the second part of the Q: we would ask the panelist to demonstrate this by walking us through a concrete example e.g. how could a citizen seek redress for harm caused by manipulation by a chatbot, a discriminatory hiring decision,... Sub question: How can citizens invoke their right to effective remedy to address collective or societal harm that arises from the use of AI? (AI applications may cause societal-level harms, even when they cause only negligible harms to individuals. For example, a political marketing application may reduce a person's desire to vote by a small amount. At an individual level, the impact of this application may not be considered an infringement of fundamental rights, but collectively, the effect may be large enough to change an election result. Societal-level harms such as widespread disinformation or manipulation by recommender systems in social media should be taken more seriously in addition to direct harms to individuals). 2. Is the right to effective remedy currently foreseen in the upcoming legislative frameworks such as the EU AI Act and CoE Convention on AI, Human Rights, Rule of Law and Democracy that aim to guarantee the right to an effective remedy? 3. What are existing best practices on a national level to ensure the right to effective remedy? mandatory AI registry's + HRIA (NLD), safeguards for independency of enforcement authority (CNIL FRANCE) 4. How can the right be enforced on a national level? What

institution is best suited to address complaints: judiciary, market surveillance authorities/national supervisory authorities? Participants would be: - representative from CINGO (the body representing civil society in the Council of Europe and active at EU AIA ): TBC Francesca Fanucci (lead negotiator in CoE Convention on AI) - representative from an NHRI/equality body with interesting national best practices to present (e.g. Netherlands) TBC Quirine Eijkman - representative from DPA other supervisory authority (CNIL or PEReN: Nicolas Deffieux TBC) - representative from judiciary

## Walking session

### **Children's rights in the digital world**

by Rozelien Van Erdeghem, KEKI

As a children's rights knowledge centre we believe we could be a valuable voice on the event, specifically regarding the conference theme 'digital technologies and human rights'. We are currently working on a project commissioned by the Flemish Government on children's rights in a digital world. In cooperation with Mediaraven we are making an animation video informing children between 9 and 13 years old about their children's rights in the digital world. The aim of the video is to promote knowledge building and critical citizenship by focussing on raising awareness of children's rights and opportunities in the digital world. The content of the animation video is based on General Comment 25 of the UN Committee on the Rights of the Child and Recommendation CM/Rec(2018)7 of the Council of Europe. The process of the making of the animation video is based on a children's rights approach and is participative. We gained knowledge on the process of working with a children's rights perspective on the theme of the digital world. By visiting classrooms, talking with children, and making the visuals and language of the video together with children, we gained insights into their daily lives and how they perceive the digital world: the dangers, threats, and opportunities. We believe the insights could be of value for the theme of digital technologies. We believe the format of a walking session or poster presentation or other forms with interaction, like a workshop or brainstorm, would be the best.

## Poster presentation

### **AI Usage and Legal Issues in Japanese Municipalities Related to the Welfare of Children**

by Sato Naito, Waseda University

Japanese companies are providing numerous technologies to European Union member countries' administrations. However, due to the infrequency of English-language publications by Japanese legal scholars, there is a lack of information on how AI is used in Japan. This paper aims to provide information on how various AI systems are being used for municipal decisions involving children. Naturally, the potential for human rights violations related to AI has been an issue in Japan. Additionally, Japanese regulations on AI are guidelines and not legally binding, as they are intended to be effective rules. In other words, the actual method of respecting human

rights depends on the voluntary efforts of AI development companies. This poster examines the case of municipal decisions involving Japanese children to clarify how engineers attempt to prevent human rights violations, how the voluntary efforts of AI development companies function, and whether the use of AI has any impact on children's human rights.

## Migration and Human Rights (TS5)

**THURSDAY 7 DECEMBER**

### **Panel - Migration Laws and Policies in and beyond Europe**

#### **Judicial Protection of Human Rights in EU Migration and Asylum Law**

paper presentation by Martin Westlund, University of Gothenburg

Human rights protection has direct bearing on the boundaries of judicial powers and hence separation of powers. This research examines whether and how the European Court of Justice relies on human rights as a basis for judicial control. The right to seek asylum and the principle of non-refoulement, the right to family unity, and the right to be free from discrimination are central to many migration issues, which need to be protected. Enshrined in international treaties and primary law, these rights in principle constitute powerful tools for judicial scrutiny of executive action, and their prominent position in the field ought to strengthen the role of the judiciary. Yet, there is a tension in EU migration law between security and border controls, on the one hand, and human rights protection on the other. Reconciling the abolition of borders within the Schengen area with the need to combat irregular migration, whilst also upholding the principle of non-refoulements, is no easy task. These conflicting aims have stalled harmonisation in this field as actors disagree on which way to go forward. The Court of Justice could help clarify the meaning of vague legislative instruments governing this area and use human rights as a basis for scrutiny. Nevertheless, in some cases, the Court opts for conclusions upholding and strengthening the powers of the executive actors involved in developing this field of law: mainly Member State governments, national authorities, and EU agencies. The Court's legal reasoning is examined by various cases on the EU asylum system. The Court has ruled on a wide variety of legal issues that involve possible human rights violations. These rulings range from the issuance of humanitarian visas by Member States, the use of international soft law tools for asylum cooperation purposes, keeping asylum seekers in detention centres, and the concept of a safe third country. In some of these cases, in particular, in its rulings on the Return Directive, the Court has taken a rights-protective approach. Despite these instances of ensuring human rights protection, problems remain regarding how human rights are treated in migration case law. This research demonstrates not only how the Court's judicial approach strengthens the executive branch at the expense of rights of asylum-seekers, but also that even prominent human rights protection in a legal field is insufficient to guard against executive competence creeps, thus raising questions about the strength of judicial control in the EU.



## **Populism, Migration and (Il)legitimate Restrictions on Human Rights**

paper presentation by Joseph Finnerty, Hertie School

Article 30 of the Universal Declaration of Human Rights ('UDHR') prohibits states from engaging in activities aimed at the destruction of any rights and freedoms outlined in the UDHR. This general rule was extended in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights to further prohibit any 'limitation [on Covenant rights] to a greater extent than is provided for' in the Covenants. Similar prohibitions are reflected in Articles 17 and 18 of the European Convention on Human Rights ('ECHR'), Article 52 of the Charter of Fundamental Rights of the European Union and Article 30 of the American Convention on Human Rights. These provisions allow courts and quasi-judicial bodies to, inter alia, scrutinise the true purpose motivating state restrictions on human rights and identify 'ulterior purposes'. Some of these provisions have been applied with increasing frequency to right-wing populist practices aimed at, inter alia, attacking the political opposition or judicial independence. This paper considers the 'contextual expansion' of such ulterior purpose analysis to the context of migrant human rights. Notwithstanding a strong nexus between right-wing populism and anti-migrant policies, these provisions have not yet been applied in the context of migrant human rights. The paper elects to focus on the case law of the European Court of Human Rights ('ECtHR') on account that its response to other right-wing populist practices, in particular the use of ulterior purpose analysis under Article 18 ECHR, is the most developed when compared to the case law concerning the aforementioned provisions. First, the paper surveys the ECtHR case law on Article 18 to demonstrate the limited scope of the provision's application to certain categories of applicants, which excludes migrants. Second, the paper critiques the Grand Chamber judgments of the ECtHR addressing qualified migrant human rights. This critique shows, in particular, that the ECtHR employs a high level of deference in its examination of the 'legitimate aims' argued to justify restrictions on migrant human rights. Third, the paper advances a doctrinal and normative basis for the contextual expansion of Article 18 to the context of migrant human rights: Arguing that Article 18 provides an innovative method capable of leveraging more effective scrutiny of nefarious state motivations driving anti-migrant policies.

## **Border Struggles, Human Rights, and the Politics of showing and seeing in the European Border Regime**

paper presentation by Laura Holderied, Justus Liebig University Giessen

This paper addresses a recent shift in the politics of showing and seeing in the European border regime and analyzes how this affects border struggles and migration discourses in Europe. It starts from the observation that in the past decade, non-official actors and activists have become increasingly present in spaces of the European border regime that were dominated by official actors before. Whereas previously, state actors had the monopoly of showing and seeing and were in control of how Europe's borders became visible to a larger European public, this changed with the increasing presence of (migrant and non-migrant) activists and journalists on

the Mediterranean or the 'Balkan Route'. Recent social and technological developments have intensified this trend, such as a global increase in smartphone ownership or the growing role of social media for public opinion. This led to civil search and rescue (SAR) activists or migrant citizen journalists being able to make human rights violations public to growing audiences on social media. However, although human rights violations at Europe's borders have been highly documented since then, this has not led to a change in European migration and border policies. In recent years, border policies and practices have not become more inclusionary, but instead more restricted and exclusionary towards non-European 'Others'. Against this background, this paper unpacks the discourses that follow when i.e. civil SAR activists or (citizen) journalists make human violations at Europe's borders visible and public. How do different actors in the European border regime react to the visualization of human rights violations, how do they mobilize and counter them? Which narratives become established and how does this create conditions of possibility for policies? In so doing, the paper sheds light on the politicization of human rights in the context of migration and border politics in Europe. It attempts to contribute to a more thorough understanding of how human rights function as discourse in the context of migration, and how this intersects with other functions of human rights as law and practice in the European border regime.

### **Beyond the 'Hybrid Threat' Paradigm: EU-Belarus Border Crisis and the Erosion of Asylum-Seeker Rights in a Comparative Perspective**

paper presentation by Aleksandra Jolkina, VU Amsterdam

Since the beginning of the crisis in the second half of 2021, the situation at the EU's external border with Belarus has remained largely unchanged. In response to the rising numbers of asylum-seekers – predominantly from the Middle East – trying to cross into the EU from Belarus, three EU Member States – Latvia, Lithuania and Poland – declared a state of emergency on the Belarus border and introduced changes to domestic asylum legislation. In the local discourses, the issue has been widely portrayed as the 'hybrid attack' and 'instrumentalisation of migration' by the Belarusian regime that 'artificially' creates migratory flows to destabilise the EU. The legislation adopted in Poland, Latvia and Lithuania comes into considerable tension with the EU asylum acquis and international human rights law, particularly where it concerns access to the asylum procedure and the compliance with the non-refoulement principle. Although the three Member States have reacted to the perceived crisis in a similar manner, their responses have not been identical. This paper aims to examine the relevant legislative measures and their practical implications for the non-EU nationals involved from a comparative perspective. It also touches upon the EU-level response to the events at the border and its wider implications for the rule of law in the EU.

## **The Consequences of EU Migration Policies on Freedom of Movement in the ECOWAS Region: what is left of the Right to leave any Country?**

paper presentation by Francesca Rondine, University of Naples l'Orientale

Since 2015, as a consequence of the so-called “migration crisis”, the EU agenda on migration increased its focus on border externalisation, with the aim of curbing irregular migration from third countries. This objective has been pursued through multiple means, such as policies development, bilateral agreements or multilateral initiatives with third countries. The increasing attention towards irregular migration has affected the political relations between European and African states. Some scholars have argued that, as of 2015, the Euro-African relations have been increasingly characterised by a so-called “negative integration”, based on a consensus resting on the racialization, criminalization and securitization of border management, while its policy translation relies on Mobility Partnerships to ensure border security (Loschi, Russo, 2021). Such negative integration is to be read as opposed to the “positive integration” reserved to eastern European countries, built upon visa liberalisation and negotiation of freedom of movement within the EU for citizens of eastern European states. In this context, such a differential integration might be read as a reaffirmation of a colonial and racial divide, affecting the interests the EU relies upon when negotiating issues with these two geographical areas (eastern Europe and Africa) (Zardo, Tasnim, 2018; Brambilla, 2018). This “negative integration” has translated in a growing prioritisation of the securitisation of border control and the need to address the “root causes” of migration within the context of development and aid programs. The impact that such border externalisation has on freedom of movement in Africa, namely on the regional free movement area within the ECOWAS, has so far been overlooked by the European academia and scholars. This is all the more important as the region has been characterised by a high internal migratory movement and circulation of people, being the latter an undeniable feature of the relationship among the ECOWAS countries (Mukhtar, 2022). In this light, this paper aims at investigating the relationship between EU border externalisation and the free movement area in the ECOWAS region. The paper will take into account a peculiar phenomenon, which is the introduction of new peaces of legislation within the internal legal framework of a number of African countries, namely Niger. The latter has become particularly important in the wake of the Libyan crisis, as Niger became a fundamental transit country for people willing to reach Europe through Libya. Niger is to date also the country receiving the largest amount of funding of the European Trust Found (EUTF). In 2015, Niger adopted a law (“la Valletta” law, n. 36 of 2015) formally tackling the illicit traffic of migrants. However, its implementation negatively impacted the right to freedom of movement within the ECOWAS. Moreover, such a negative impact has further and more structural consequences on the right to leave any country, including his own, and to return to his country under art. 13 of the Universal declaration of human rights. The paper will first describe the Euro-African relations in the aftermath of the 2015 refugee crisis, with a particular attention towards the issue of migration. Secondly, it will frame the legal development of the freedom of movement within the ECOWAS region. Thirdly, it will take into account the case of Niger and how its legislation impacted negatively the freedom of

movement. Finally, the paper will discuss how the entanglement between the issues discussed stand in contrast with art. 13 of the Universal declaration of human rights.

## **Panel - Linguistic Human Rights: how Language shapes the Social Realities of Migrants**

### **Uncovering Injustice and ensuring Rights: how Linguistic Scholarship can improve Asylum Procedures**

paper presentation by Laura Smith Khan, University of Technology, Sydney

For those seeking asylum in countries of the global north, being granted refugee protection involves passing through demanding procedures, and often ultimately depends on whether decision-makers believe applicants and their stories. The credibility assessments used in refugee status determination processes often centre around evaluating what is communicated during these procedures, making language a foundational consideration (Maryns 2006; Smith-Khan 2019, Sorgoni 2019). While every asylum system claims to provide fair processes that respect asylum seekers' rights, such institutional discourse can obscure systemic injustices that may undermine access to protection as a refugee. Interdisciplinary research can play a valuable role in uncovering and challenging such injustices (Johannesson 2022). This presentation presents one example, showing how adopting sociolinguistic understandings of how language works can help to identify and debunk widespread, problematic assumptions relied upon to disbelieve asylum seekers. It does this by sharing a critical examination of a recent Australian court appeal decision involving an asylum application that had been rejected for credibility reasons. Comparing and contrasting the lower-level and court appeal decisions, it identifies and problematizes flawed assumptions about language, demonstrating how these undermine fair credibility assessment. The court decision demonstrates that when officials view institutional communication and testimony production in ways that align with sociolinguistic scholarship, applicants are more likely to be given the benefit of the doubt. However, the presentation also acknowledges significant limitations within current legal and policy frameworks that restrict the use this of approach to run a successful appeal. The presentation thus presents new evidence that asylum credibility assessments rely on evaluating asylum seekers' language practices in unfair ways. Therefore, while acknowledging structural challenges, it provides an example of how linguistic research can contribute to recognizing, denaturalizing, and addressing problematic language-related assumptions that undermine procedural fairness and access to asylum. References Johannesson, L (2022, AOP) 'The Symbolic Life of Courts: How Judicial Language, Actions and Objects Legitimize Credibility Assessments of Asylum Appeals', *Journal of International Migration and Integration*. Maryns, K (2006) *The Asylum Speaker: Language in the Belgian Asylum Procedure* (Manchester: St. Jerome) Smith-Khan, L (2019) 'Why refugee visa credibility assessments lack credibility: a critical discourse analysis', *Griffith Law Review*, 28 (4), 406-30. Sorgoni, Barbara (2019), 'The Location of Truth: Bodies and Voices in the Italian Asylum Procedure', *Political and Legal Anthropology Review*, 42 (1), 161-76.

## **Poor Public Communication Strategy creates Ineffective Service Delivery to Refugees in Uganda: The Case of Kyrandongo Refugee Settlement**

paper presentation by James Onono Ojok, Guly University

Effective public communication can play a role in improving governance and the delivery of services to the vulnerable including; improving efficiency, accountability, and transparency, and reducing bribery, for instance, Mtange, M. (2022), contends that in Africa, investing in an internal communication strategy is important in assisting the government institutions to accomplish each objective smoothly and effectively. But the role of communication in organizations has been undervalued in many entities and the government fares worst as regards this vice despite the massive scope of benefits associated with good communication practices and strategies (Cornelissen, J. P. (2020). Unless communication is managed strategically and professionally, there will be a serious disconnect between the refugee community and the public servants working in public refugee institutions like the office of the Prime Minister and this may affect the delivery of public services and goods which is a right to them. (Mbogo, C. M, 2011). In this context, the Uganda Refugee Act (2006) under section,8,29,32, empowers the government of Uganda to provide services like Public Education, Health, Security, and Identity among others to the refugee community as a right to them but over the years Government of Uganda has not created deliberate effective public communication strategy to be able to audit its service delivery to the refugees despite the benefits attached to effective public relations (Kauzya J.M.2007). There is a relevant administration to deal with the Refugees, but there are no deliberate efforts to get honest, transparent feedback from the refugee community on services being delivered to them by the government. In 2018 United Nations High Commissioner for Refugees (UNHCR) and the government of Uganda launched a communication system for refugees and asylum seekers in Uganda that was first piloted in Kiryandongo and Nakivale settlements known as the inter-agency toll-free lines which allow individual refugees to call the Office of the Prime Minister or development agency for a specific challenge they are facing. This model is not inclusive and would not benefit a large refugee community for wider service delivery coverage audit. The Telephone toll free line model does not comprehensively handle the issues of language barrier on the side of the receivers of the call and very ineffective in case of health emergencies. With a descriptive qualitative approach, this study investigated how effective public communication can enhance government service delivery, especially on health and education at Kiryandongo Refugee Settlement, and recommended a better communication strategy to support service delivery as a right to the refugee community in the country.

## **'Beyond Invisibility': Literature's Role in Reclaiming the Rights of Queer Children of Color**

paper presentation by Corpus Navalón, University of Murcia

The ratification of the United Nations Convention on the Rights of the Child has been pivotal in ensuring the protection and realization of children's rights. Yet, the CRC has failed to guarantee justice for immigrant LGBTQIA+ children. The intersection of these two identities shows how racism and queerphobia threaten the well-being of migrant queer children, since, at structural

and institutional levels, they are seen as marginal, invisible, and unworthy right-holders. Literature as a medium that conveys and advocates for human rights has been responsive to this controversy, as “it represents and renders intelligible the philosophies, laws, and practices of human rights.” (Goldberg and Moore 2012) Therefore, in this paper, I aim to demonstrate how literature can be employed to amplify the voices of queer migrant children regarding their human rights, while also challenging biases and exclusions that persist within current human rights frameworks. Expanding on this perspective, this study addresses Samira Habib's *We Have Always Been Here: A Queer Muslim Memoir* and Staceyann Chin's *The Other Paradise* as memoirs that witness the traumatic hardships of the intersection of ethnic background and sexual identity at early ages. The two authors poignantly narrate how their status as both migrant and queer has partly contributed to their exclusion and invisibility from society. However, in this paper, I argue that their vulnerable condition enables them to transform their realities, emphasizing collective strength and creative agency in light of non-recognized rights. Drawing on a theoretical framework that combines literary and queer studies with human rights, I seek to demonstrate how literary sources can critically capture queer migrants' perspectives. To accomplish this goal, I will begin by examining the limitations of existing frameworks for protecting children's rights, particularly concerning marginalized perspectives. This will be complemented by an exploration of the memoirs' complex interplay between human rights and intersectional identity (queer and migrant). These memoirs combine first-person critiques of structural inequality with the authors' development of a 'vulnerability in resistance' model (Butler et al. 2016) which enables them to actively redefine the spaces of confinement in which they are situated.

### **Language Testing, Migration and Human Rights. Updating the Code of Ethics for Language Test Developers to meet Current Challenges**

paper presentation by Bart Deygers, Ghent University

Before the 21st century, high stakes use of language tests for any other reason than academic admission was a rarity. Then, in the first and especially the second decade of the 21st century, host countries in the geopolitical West started introducing or tightening language requirements in their migration and integration policies, using language tests as the instrument of choice for checking whether these requirements are met. This positions language test developers as actors in a migration policy – a role for which the field is not prepared. The primary instrument language testers have to navigate decision-making regarding contentious language test use is the Code of Ethics (COE) by the International Language Testing Association. This code was ratified in 2001, when language testing was a cottage industry rather than the multibillion enterprise it is today. Since then, tests have become digital and increasingly rely on artificial intelligence. They have become repositories of big data and of sensitive information. They have become gatekeeping tools in international migration. As a field, we understand that this changed reality brings about new responsibilities and challenges. As such, in 2023 the Code of Ethics will be revised with a focus on human rights and ethics. In this presentation we will first look back on the decisions that shaped the original COE and on how its original authors look back on its



impact. Next, we examine the changes that lie ahead. To tackle the first goal of this paper we conducted a document analysis and a series of interviews with first-hand witnesses. We interviewed six people who played a central role in the development of the ILTA Code of Ethics. We also analyzed a corpus of fifteen contemporary publications related to the development of the ILTA Code of Ethics in order to understand the rationale behind certain choices. All interviews were transcribed verbatim and analyzed using Nvivo software. The analysis of the papers was focused on understanding the ethical/philosophical framework behind the Code of Ethics and understanding how this framework impacted the Code of Ethics. The results show how the original intention of the Code of Ethics was to unite a young research discipline – not to guide or control it. The use of language tests for contentious issues or potential human rights violations was not foreseen and more than one original author deplores its toothlessness. In the second part of the talk we will show how the code will be revised to better protect test takers' rights and assign responsibility, and how we are relying on a global network of language testers to do so. Starting in September 2023 we will be organizing workshops and focus groups with language test developers around the world to identify common concerns and outline potential solutions that could find their way into the revised Code of Ethics. During the presentation we will provide preliminary outcomes of the second data collection based on a thematic analysis of the focus groups. Additionally, we will outline a path forward and discuss the proposed changes. We are open to any suggestions from conference delegates and are looking forward to a fruitful discussion.

### **Linguistic barriers in Belgian criminal justice: An analysis of the implementation of the EU Directives on the right to translation**

paper presentation by Sara Delva, Ghent University

This contribution reports on the results of an ethnographic research project that investigates how Belgian courts implement the right to translation in criminal proceedings, which acts as a safeguard of the fundamental right of defence and the fairness of the proceedings (Morgan, 2011; Weiss, 2021). The study analyzed a 3% sample of all criminal files in which the Ghent correctional court passed judgment between 2018 and 2021, and included an interview and focus group with magistrates and court staff.

According to Directive 2010/64/EU and Directive 2012/29/EU, accused persons and victims have the right to receive a free translation of essential documents. However, the fieldwork conducted reveals that the right to receive a written translation remains largely unused, with translations of essential documents provided in less than 5% of cases involving foreign-language speaking parties. This can be attributed to the fact that neither EU Directives nor national legislation require translations of essential documents to be offered spontaneously to involved parties, meaning they must request translations themselves, which occurs less often than allowed.

This lack of translation may affect access to the criminal file and jeopardize the fairness of the proceedings, raising issues about equal access of foreign-language speaking parties to the legal system. The study suggests that even though Belgium formally complies with the EU Directives and provisions concerning the right to a written translation (Vanden Bosch 2017), this does not



necessarily guarantee access to criminal proceedings for those who do not speak the language of the court, due to a lack of stringency in EU regulations.

## **Panel - Migrant Rights' at the European Court of Human Rights**

### **Reverse Strategic Litigation by Governments? Legitimising Migration Control Policies by countering Human Rights from within in Migration-related Cases**

paper presentation by Janna Wessels, VU Amsterdam

Migration is sometimes referred to as the 'last bastion of sovereignty'—an area in which states enjoy 'unfettered discretion.' However, the 'discovery' of migrants' human rights, i.e., the growing recognition that human rights protection extends to migrants, challenges this presumed right to exclude by imposing limits on how governments can design their migration policies. Crucially, States do not, in principle, contest this notion. On the contrary, they have an interest in upholding human rights law. This creates a dilemma as they seek both a functioning system of human rights protection and the ability to maintain discretion to exclude unwanted migrants. This paper proposes that States respond to this tension by engaging in a form of "reverse strategic litigation." They attempt—and often succeed—in countering human rights within migration-related human rights jurisprudence to legitimize their migration control policies under human rights law. This is because human rights are not static but are constantly renegotiated, reinterpreted, and reshaped. Just like the applicants, responding States strategically act in human rights litigation. They activate and leverage exclusionary elements within the law to shape doctrine in line with their interests. This is a very powerful approach: If States succeed in molding the very meaning of human rights law to accommodate their interests in excluding migrants, they can mitigate and limit the potential of human rights law to impose restrictions on their migration policies—while upholding the human rights system rather than withdrawing from it.

### **Carving out a Right to expel under Article 1 of Protocol 7: the Litigation of Governments at the European Court of Human Rights**

paper presentation by Jessica Klüger, VU Amsterdam

Article 1 of Protocol 7 establishes the right of lawful residents to procedural safeguards relating to their expulsion. It is one of the two sole provisions of the entire European Convention on Human Rights designed directly and expressly to protect migrants. However, while cases have been brought under this provision, the Court very rarely finds a violation. On the one hand, this could indicate that European states have not engaged in arbitrary expulsions during the past three decades. On the other hand, it could be a reflection of successful litigation by governments who have succeeded in negotiating the scope and meaning of Art 1 Protocol 7 in a way that allows for their expulsion practices. My paper is interested in understanding the latter, focusing on how the law is shaped during the litigation process. Scholars seeking to comprehend judicial outcomes often concentrate their analysis of judicial behaviour on the judge's reasoning alone

in order to offer a normative evaluation of their legal interpretation. In this context, the parties' perspectives, particularly those of the respondent government, are given relatively less prominence. My paper deviates from this conventional approach. Instead of situating the Court's assessment as a focal point, it seeks to understand the strategies employed by governments during the litigation process and how their arguments influence, or not, the interpretation and the final result of the case. This approach allows for an in-depth and detailed analysis of governments' negotiation techniques without depending solely on the judges' summary of their observations, which might not always correspond to the original statements. In this early phase of the research project, my paper will present preliminary findings from a systematic content analysis of governments' submissions concerning all Article 1 of Protocol 7 cases available at HUDOC, aiming to unveil their primary arguments and strategies.

### **Who supports whom? Third-party Interventions from European States before the ECtHR in Migration Cases**

paper presentation by Mónica Ávila Currás, VU Amsterdam

European States intervening before the ECtHR in cases against other States was not a common practice some years ago, but it is slowly becoming less unusual, particularly in the fields of national security and migration. Baumgärtel (2018) identified the “peer coordination” between European States as one of the strategies used in the context of their interactions with the Court to achieve their purposes, referring specifically to third-party interventions as a way of doing so. In recent years, we have observed third-party interventions from European States in some landmark migration cases. These interventions have shaped the definition of certain rights and concepts within the judgments, thereby endorsing certain migration policies employed across Europe. Could the involvement of other European States in the judicial process through this practice be linked to some of the most unpredictable changes in case law that practitioners could not foresee and were not prepared for? If so, which countries are using this instrument? As it is a relatively new practice, it has not yet been thoroughly analyzed. Based on a systematic content analysis of all judgments in migration cases, this paper identifies general trends of this practice: since when is this happening in migration cases? How has this practice evolved in the past years? Are there any breaking points in its use? And analyzing each State individually, which State is intervening more often in migration cases? Do they always support the respondent state? Who is the most supported State? I'll share the preliminary results of this analysis at the Conference.

### **Migrants' Political Participation and Human Rights Theory: Current Challenges through the Lens of the European Court of Human Rights' Jurisprudence**

paper presentation by Giulia Santomauro, Westfälische Wilhelms-Universität (WWU) Münster

Typically, migrants' perspectives are scarcely voiced in the democratic process of receiving States, given that they almost entirely lack political participation. Although previous scholarship has long been discussing that issue, the margins of the political demands of foreigners remain an open question in several respects. Specifically, these problematic aspects have been rarely

discussed in the literature with reference to the role of international courts specialized in the protection of human rights. Still, regional human rights courts, most notably the European Court of Human Rights (ECtHR), among multiple actors, may impact systemic deficiencies by using certain interpretive criteria. In this vein, the paper addresses the political inclusion of migrants in the European public spheres according to these two interrelated perspectives: the human rights theory and the case-law of the ECtHR. As a starting point, the investigation displays the divisive academic debate on the matter. In more detail, on the one hand, there are theorists who substantially justify the claims for granting political rights to migrants building upon the concept of cosmopolitanism, the idea of equal freedom and the basic assumption that in democratic societies people should be involved in shaping rules and policies that affect them. On the other hand, severe criticisms are related to the understanding under which political participation is inextricably linked to the full membership to the demos and thus the acquisition of national citizenship. Between these poles, also intermediate positions will be scrutinized, by questioning whether at least certain categories of immigrants, i.e. refugees or foreign residents, can be politically included to some extent in partly innovative formats such as national or international forums and consultative bodies ad hoc. Having regard to this theoretical puzzle, the analysis then highlights that in recent years the ECtHR, among others hermeneutic methods, has been applying a procedural approach. Specifically, the Court tends to extrapolate positive obligations from the Convention's provisions which do not expressly provides for them, as well as to conduct a procedural review *stricto sensu* of the domestic policies under scrutiny. While the former seems to enlarge the substantive protection of individuals, the latter is more disputable since it may risk to outweigh procedural aspects at the expenses of the merits of the case and the proportionality and reasonability tests. From a human rights perspective, this kind of reasoning is especially controversial in the migration field, given that it entails the risk of eroding the protection of (often non-voting) aliens, also under the pressure of populist movements. In fact, when the Court mainly adjudicates on the quality of national procedures, it emphasizes the principles of equal representation, transparency and predictability. Moreover, in migration-related judgments, this model of scrutiny encompasses further elements, namely fact-finding, credibility and age assessment of third-country nationals or border and reception procedures in the States Parties. Nevertheless, foreigners, especially third-country nationals in Europe, can have little influence on the domestic decision-making processes concerning the regulation of migration. Therefore, in consideration of the above, firstly this article aspires to shed some light on the most recent developments in the human rights theory as regard to the current challenges of aliens' access to political voice in Europe. Secondly, it aims to provide original insights in the doctrine by paying special attention to the aforementioned judicial activism's arguments developed by the ECtHR. To this end, the case-law of the Court of Strasbourg will be explored primarily relying on its so-called "procedural turn" to understand whether such an approach may play a part in securing human rights of migrants or not.

## Panel - Health and Psychosocial Well-being of Migrants

### **Medicolegal Reports (Istanbul Protocol): using Medical Evidence in the Asylum Procedure for tortured or Mistreated Asylum Seekers**

paper presentation by Fabian Colle, SMES (Housing First, Support), ALIAS

Political asylum seekers often have only their story as evidence when confronted to the asylum instances. After extreme adversities or when traumatized incoherencies and inconsistencies in the story are common and often have a negative asylum decision as a consequence. We describe how a medicolegal report using the Istanbul Protocol as manual can be used as supporting evidence in the asylum procedure. These reports make the relation between medical consequences of torture or mistreatment (scars, physical and PTSD-symptoms) and the asylum story. In this paper we retain the important elements of both physical and psychological evaluation of these reports. We describe the situation in Belgium: how and by whom these reports are produced and used and the relation with the asylum authorities. We analyze the impact on decision on the asylum procedure (statistics Stichting Immo in the Netherlands and Constats in Belgium show that a qualitative medicolegal report using the Istanbul Protocol has a decisive impact in the asylum procedure with a positive decision as outcome in 70 to 80% of the cases). We describe how PTSD-symptoms should be considered and the existence of certain taboos among certain subpopulations or minorities.

### **Assessing the Right to Health of Migrants at Borders: a Proposal for an Analytical Framework**

paper presentation by Andrea Jaramillo Contreras, Justus Liebig University Giessen

Human rights and health both intend to protect people's dignity and equal respect before other interests. The universality of the right to "the highest attainable standard of health", legally codified in Art. 12 of the International Covenant on Social, Economic and Cultural Rights (ICESCR), has been complemented later by the General Comment 14 of the UN Committee on Economic, Social and Cultural Rights (CESCR). Going beyond the medical dimension of access of health services, it also draws attention to all "underlying determinants of health", such as housing, safe drinking water, nutrition, healthy working and environmental conditions, and access to health-related education and information. Moreover, General Comment 14 makes explicit mention of the duty of states to respect the right to health of migrants and asylum seekers. Since close to a decade, the Andean countries are affected by one of the largest but globally rather unattended dynamics of forced migration of all times, with more than 7 million people fleeing Venezuela as consequence of the sever political, economic, and social crisis of this country. Colombia alone hosts more than 2.4 million migrants from Venezuela, followed by Perú with about 1,5 million. In Colombia, this adds to a large number of extracontinental migrants, who try to cross the northern border to Panama through the Darién Gap hoping for one day reaching the North of America. In response to the Venezuela crisis, international organizations, governments and NGOs have implemented a response, including the provision of health services. Yet the persisting dire reality of many people on the move may suggest that the right to health is simply absent, or a

utopia impossible to achieve - in Latin America just as in Europe. For assessing the realization of the right to health of migrants and refugees in border regions of Colombia, Ecuador, Perú and Chile, we developed an analytical framework to systematically tackle five complementary dimensions of the right to health. 1. Human Rights Principles: To what extent are principles like (inter alia) “universality”, “non-discrimination” and “participation” represented in health policies, structures and practices? 2. The “essential elements” of the Right to Health: To what extent are Availability, Accessibility, Acceptability, and Quality (AAAQ) of care guaranteed for all (migrants of all kind and host communities)? 3. The “underlying determinants”: To what extent are living conditions like (inter alia) decent housing, safety, nutrition, safe water, sewage disposal realized for all? 4. Public policies and legal instruments, on national and international level: To what extent do domestic and international policies protect or do harm on migrants in border regions? And to what extent are legal instruments, like strategic litigation in use for protecting the health of migrants? 5. Equity and Intersectionality: These domains, that are not rooted in international law but add an important additional layer as they draw attention to the intersections of different types of discrimination (gender, race, nationality, age, etc.) as well as on policies, practices, and structures prone to systematically undermine the right to health without discrimination. In the paper, we will present the theoretical background and the rationale of this framework, that is rooted in legal, medical and public health sources, as well as an historical understanding of the right to health as an emerging set of practical tools that need to be developed through deployment and constructive critique for advancing our assessment of human rights issues in the fields of policies, structures and individual practice. We will then present details to the framework and its application on the research project during the fieldwork of our team in 2022, as well as first results.

### **The Right to Health for Voluntary and Forced Migrants in the Arab region**

paper presentation by Sawsan Abdulrahim, American University of Beirut

Migration, both voluntary and forced, has clear implications on migrant populations' enjoyment of the right to health. This right is enshrined in Article 25 of the Universal Declaration of Human Rights (UDHR) in that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family.” The Arab region is one of seven world migration systems. Most of the resident population in some Arab countries, like Qatar and the United Arab Emirates, are non-citizen migrant workers who are recruited and hired through the notorious sponsorship (Kafala) system. Other countries that are not signatory to the 1951 Refugee Convention, like Lebanon and Jordan, host large numbers of protracted refugee populations. In this paper, we present a critical review of the glaring gaps in realizing the right to health for voluntary migrants and forcibly displaced populations in the Arab region. We first survey common themes in the policy context that governs the lives of non-citizens in Arab states and describe how migration policies shape the right to health, including healthcare access, for labor migrants. Specifically, we focus on the Kafala policy context and its impact on the health and wellbeing of construction (men) and care (women) workers. We also examine how the outsourcing of refugee protection and entrenchment of anti-integration policies have

contributed to the proliferation of humanitarian actors and the creation of parallel systems. The question of whether healthcare services provided or paid for by the humanitarian system realize, or stymie the achievement of, the right to health will be examined. Following, we review models from low- and middle-income countries where state policies have come close to realizing the right to health for migrants (documented and undocumented) and refugees. This review will be carried out to propose future strategies to address glaring gaps in the right to health in the Arab region. The paper takes the position that Arab states should take steps to realize the right to health for all residents within their national borders, whether they are citizens or non-citizen migrants or refugees. Because health is a global public good, it is in the best interest of nation states to protect the right to health for all within their borders. The progressive realization of this right is not only in the best interest of host states but is also a moral obligation and a “pay-back” for the economic benefits that host states accrue from migration.

### **A Community-based Psychosocial Intervention for Refugees and Immigrants: Support Groups for Ukrainian and Iranian Refugees and Migrants in Belgium**

paper presentation by Sofie de Smet, Ghent University and KU Leuven and Lies Missotten, PraxisP KU Leuven (co-author)

Up until today, collective violence has continued to force people across the world to flee their countries and leave their families and communities behind in search of a safe haven. Given the strong impact of the long-term cumulation and interaction of social trauma, human rights violations and stressors in both home and host societies on mental health in resettlement, there is a need to develop contextually appropriate psychosocial care in these hosting countries, not in the least as a means to fulfill the legal obligation to respect and protect the rights of refugees, based on the Refugee Convention of 1957 and the Protocol relating to the status of refugees of 1967 (UNCHR, 2010). Responding to this need, scholars have increasingly called for the development of transcultural care modalities that restore safety and connectedness in coping with collective violence and exile within those same community ties that are explicitly targeted in violations of human rights, resulting in community-based approaches. Although there is an increasing interest in community-based psychosocial care for refugee and diasporic communities in general, process-studies on non-specialized community-based psychosocial care interventions in supporting refugees are very scarce. In this presentation, we outline the practice of non-specialized community-based psychosocial support groups developed in 2022 and 2023 for Ukrainian and Iranian refugees and migrants affiliated to the university of Louvain (KU Leuven, Belgium) by the Transcultural Trauma Care Team of the Clinical Centre PraxisP (KU Leuven). This project was initiated by the university as a response to recent (re-)outbursts of violence in participants' home countries as a way to offer support for its students and staff members. The support program was led by licensed psychotherapists (experienced in working with survivors of collective violence) and consisted of seven sessions. The program aimed to foster supportive community relationships and social connections, explore and strengthen coping skills and provide a safe space for sharing stories within a context of current violence



and social trauma in home countries. In this presentation, we reflect upon the observed restorative dynamics at play in these community-based psychosocial interventions for refugees and migrants in the context of human rights violations by using a collaborative research methodology. Qualitative analysis of session notes, feedback questionnaires and semi-structured interviews with participants before, during and after the intervention provide deeper insights in how the participants experience the group interventions and what they describe as supportive and challenging.

### **Support Services for Victims of Intersectional Hate Incidents: the Case of LGBTQI International Protection Applicants and Refugees in Ireland**

paper presentation by Milos Burzan, University of Limerick

The paper discusses the support services of victims of intersectional hate incidents from the human rights perspective by using LGBTQI international protection applicants (IPAs) and refugees in Ireland as a case study. Both IPAs and refugees may be subject to hate incidents on the basis of nationality, racialised identity, and anti-migrant sentiment for example. The LGBTQI people are subject to homophobic, biphobic, transphobic, interphobic hate incidents. LGBTQI applicants for international protection are arguably particularly vulnerable to hate incidents given the communal living settings and lack of privacy associated with the reception and accommodation for applicants of international protection in Ireland called Direct Provision. Internationally, we still know very little about how intersectionality manifests in victims' experiences of hate crime, and therefore how it impacts on their support needs. The first aim of the paper is to identify the civil society support services available to victims of intersectional hate incidents. In particular, the focus is on the forms, adequacy, training, resources, and needs of service providers across Ireland. The second aim is to contextualise the available services within the relevant hate crime legislation and the policies surrounding Direct Provision. The country adopted the Victim of Crime Act in 2017, giving effect to provisions of the EU Victims' Rights Directive which established minimum standards on the rights, support, and protection of victims of crime. Although the introduction of hate crime legislation in Ireland is expected to be adopted 2023, this legislative gap has made IPAs and refugees susceptible to repeated victimisation for decades. Similarly, the Irish international protection system has been strongly criticised for selective adoption and implementation of EU Acquis and international standards under the UNHCR Convention. Several reports from Ireland and international organisations underline that LGBTQI IPAs will generally have different needs arising from specific vulnerabilities attached to conditions in reception and accommodations centres. The criticism also refers to excessive duration of refugee status determination procedures. The paper will be based on preliminary results on an online survey that will be sent out in May-June 2023 to circa 140 organisations from three cohorts. These are: 1) civil society organisations providing support services to LGBTQI people; 2) civil society organisations providing support services to migrants/international protection applicants/refugees; and 3) organisations listed as support service providers in the Victim Charter Directory. The last cohort are civil society organisations which are signposted by the State to victims of crime who require support services. Another



source of information for selection of organisations are umbrella organisations or networks with their own links of support service providers. The survey is of the exploratory type and with an estimated 40% response rate, the survey findings are expected to be analysed based on responses from 60 organisations. The survey is expected to show to the ongoing challenge to provide a synchronized and comprehensive support service to victims of intersectional hate incidents. There is a gap between organisations that support minority groups and organisations that support victims of crime in terms of competences, resources, and remit. The former usually have no specific remit in respect to victims of crime, while the latter have no specific remit in respect to minority groups. The survey is also expected to point to difficulties relating to the provision of support in cases when victims decide not to report hate incidents to the authorities, which is common for IPAs, and especially LGBTQI IPAs. The current legislative and policy framework in Ireland is limited in terms of recognising needs of LGBTQI IPAs experience hate incidents.

## **Panel - Pushing the Interpretation of Legal Concepts towards more Inclusive Migrant Right**

### **Rape Myths in the European Court of Human Rights' Non-refoulement Case Law on Sexual and Gender-based Violence**

paper presentation by Lore Roels, Ghent University

“As an adult single male, healthy and capable of work, the applicant cannot be considered particularly vulnerable [to further sexual exploitation]”. With these words, the European Court of Human Rights (ECtHR) judged an Afghan applicant's fear of sexual or gender-based violence (SGBV) as non-credible and his application as inadmissible. The ECtHR seems to suggest here that adult, healthy and able-bodied men are unlikely to be subjected to sexual violence. This type of reasoning shows strong characteristics of what is termed a 'rape myth' in the criminal justice system (CJS). More specifically, it can be categorised as a 'victim precipitation myth' (e.g. 'only certain types of persons become the survivor/victim of SGBV'). In the case above, the ECtHR assessed a violation of the non-refoulement principle under article 3 of the European Convention on Human Rights (ECHR). Other relevant international instruments, such as the Council of Europe (CoE) Istanbul Convention, specify that this non-refoulement assessment ought to be 'gender-sensitive'. However, how this gender sensitivity should be understood and implemented appears to be less clear. Against this background, the UN Refugee Agency (UNHCR) has already expressed the fear that decision-makers base their credibility assessments on “stereotypical, superficial, erroneous, or inappropriate perceptions of gender”. Knowing the key reason for the refusal of SGBV-related asylum and non-refoulement applications is their non-credibility, the question arises as to what extent parallels can be drawn between rape mythology in the criminal justice system and credibility assessments in the asylum/human rights systems. These systems operate in different substantial and procedural contexts. However, the ECtHR case law analysis in this paper suggests a strong similarity between the two, which lies in the role of rape myth

acceptance in decision-makers' credibility assessments. Rape myths are stereotyped and false beliefs about rape (victims and perpetrators). This paper focuses on asylum-specific sexual and gender-based violence (SGBV) more broadly. In the first part, I will set out the place of SGBV in the international refugee/human rights framework, the concepts of rape myth (acceptance), and how 'rape myths' in the criminal justice context can translate as 'SGBV myths' in the asylum/human rights context. In the second part, I will identify four such SGBV myths in the ECtHR's recent case law. Concretely, the paper reveals the Court's acceptance of the myths that: 'non-reporting of SGBV in the country of origin indicates non-exhaustion of local remedies and protection' (institutional scope); 'the existence of a private (male) support network can protect an applicant from SGBV' (interpersonal scope); 'resourceful applicants do not need protection against SGBV' (personal scope); and 'any vagueness, incompleteness, or inconsistency in SGBV disclosures indicates a false or exaggerated story' (narrative scope). I will argue that these types of reasoning not only miss an imperative basis, they also reveal a remarkable lack of insight into the reality of SGBV survivors/victims' need for protection. I will conclude that the de jure recognition of SGBV as 'worthy of protection from refoulement' has been established. However, de facto access to this protection is hindered by a tendency to use SGBV myths in credibility assessments of applicants with a fear of sexual and gender-based ill-treatment. While the exact meaning of 'gender-sensitive non-refoulement assessments' remains undefined, it surely does not entail the practices of 'SGBV myth acceptance' uncovered in this paper.

## **Refuge from Poverty. The Evolution of Humanitarian Protection through Domestic and International Courts**

paper presentation by Valentin Feneberg and Paul Petterson, Humboldt University Berlin

People who cannot return to their country for economic reasons such as extreme poverty are often not believed to merit humanitarian protection. However, the European Court of Human Rights' (ECtHR's) interpretation of Art. 3 ECHR (prohibition of inhuman or degrading treatment) and its application by national asylum courts show that protection is not only granted to people who are threatened by persecution or war, but that the law has a potential to protect against deprivation not directly caused by human actors, such as life threatening economic hardship. This results in complementary protection statuses beyond refugee and subsidiary protection, although leading to a similar residence permit. This paper conducts an interdisciplinary analysis of ECtHR case law (especially the nuances of the 'real risk' standard) and selected domestic decisions concerning Afghan, Iraqi and Nigerian claimants, and shows how the progressive interpretation of asylum law by courts leads to its gradual evolution. Refugee and migration law is a living instrument, constantly adapted to the evolving understanding of (in this case: second generation) human rights. Our study focusses on German administrative courts, complemented by a comparison with French and UK case law. It shows that there is already protection against poverty beyond refugee status and that, when it comes to claimants from Afghanistan, this now even accounts for the majority of protection statuses granted. Coinciding with a shift from asylum law's individual case focus to a consideration of poverty as a collective phenomenon, this is how an individual-based asylum system develops new ways to do justice to the foreseeable

increase of collective reasons for flight due to deprivation (e.g. caused by the climate crisis). The paper builds on legal scholarship on complementary protection and refuge from deprivation (most prominently by Foster and McAdam) and complements it with an empirical analysis of how national courts change the law 'bottom-up', ensuring that new reasons for forced migration can be legally governed.

### **Solution hidden in a Glass of Water. Providing International Protection to forced Climate Migrants via an Emerging Human Right to Water and Non-refoulement Principle**

paper presentation by Szymon Kucharski, Jagiellonian University

In the words of David Attenborough, anthropogenic climate change remains 'the biggest threat to security that modern humans have ever faced.' Global warming is, and will continue to, already manifest itself in a variety of effects, many of which have certain implications to human mobility. The phenomenon of climate migrations has been a subject of an extensive research by social sciences. Accordingly, it is safe to admit that, from ethical and political perspective, the principle of fairness calls for providing aid to persons suffering the most from climate migrations. Simultaneously, international legal doctrine steadily maintains that international protection to those persons remains inaccessible. As the case of *Ioane Teitiota v. New Zealand* proved, this statement holds true in the understanding of national and international bodies. Numerous propositions to fill that void were presented, but none of them fully grasped the subtleties of international refugee law, philosophical perspectives of fairness in the era of Anthropocene, and the needs of climate migrants. The legal construct suggested by this research links together the emerging human right to water and the non-refoulement principle. According to several studies, lowered water security is a common experience for persons affected by the majority of various different effects of global warming. Followingly, access to this substance could be used as a litmus test to assess the foreseeable conditions in the regions of origins of climate migrants. This could be conducted by interpreting the traditional non-refoulement principle in relation with emerging human right to water, which has a position of a customary norm *in statu nascendi*, and may be interpreted from other elementary human rights, such as right to life and prohibition of torture. Choosing this construction could allow to provide international protection to forced climate migrants living in most climate-vulnerable communities without new major legal instruments – especially considering the common understanding that water is prerequisite for human survival, making this approach easily communicable to decision-makers. This paper is a part of doctoral dissertation, prepared in the Jagiellonian University's Doctoral School for Social Sciences.

### **Can Migrant Deaths' and Disappearances be considered enforced Disappearances?**

paper presentation by Grażyna Baranowska, Hertie School

According to the IOM, over 55.000 migrants went missing since 2014. Currently, death or disappearance on a life-threatening migration route are predominantly assumed to have been caused by natural circumstances – for example drowning, dehydration or freezing – and no state

responsibility is attributed. However, states are not mere observers of such events: their actions and omissions cause and contribute to the deaths and disappearances. Scholars and litigators employ diverse areas of international law to alleviate the issue, including human rights law, humanitarian law, the law of the sea, and international criminal law. Lately, enforced disappearances have been increasingly invoked in addressing migrant deaths and disappearances. Enforced disappearances are the deprivation of liberty conducted with at least acquiescence of a state, followed by a refusal to acknowledge the act or concealing the fate or whereabouts of the person. The crime has been invoked in the context of migration by UN bodies that deal with enforced disappearances, academics from different disciplines, and litigators. Undoubtedly, enforced disappearances occur in migration. However, whether migratory deaths and disappearances on life-threatening routes can be categorized as enforced disappearances remains an open question. This paper builds on that discussion. In this paper 'life-threatening migration routes' relate to particular dangerous part of paths taken by migrants, for example while crossing a sea, desert, jungle or thick woods. Being in such places without access to help is potentially fatal, increasingly so during bad weather. Examples of such areas include the Mediterranean, which according to available data include the deadliest migratory routes in the world. Another life-threatening route is the US/Mexico border, where migrants die of dehydration, or in the woods on the EU/Belarus border, where migrants die of freezing. On all those places also many migrants disappear, without their death being confirmed. I argue that in its current interpretation, death and disappearances on life-threatening migratory routes do not fulfill all the elements of the definition of enforced disappearances. However, this could change. It would require an expansion in the interpretation of the deprivation of liberty requirement in the definition. In this article I propose a two-step test to assess whether a death and disappearances on life-threatening migratory routes can be considered an enforced disappearance. In the first step, it would be analyzed whether a person died or disappeared on a life-threatening migration route. In the second step, the test would assess whether the state can be considered – at the time of the disappearance – to have been in control of the relevant migratory route to an extent which would allow the circumstances to be considered a deprivation of liberty. The two main elements considered in this step would be: first, whether the migrants had the possibility to leave the life-threatening migration route they have accessed, and second, whether the state(s) controlled the entry of actors to the area. The rationale behind the proposed test is to acknowledge the fact that the migrants find themselves in a situation of complete dependency from state authorities, which reaches the threshold of deprivation of liberty. The paper starts with a section on enforced disappearances in migration, describing migration practices that clearly meet the definition of enforced disappearances. As the paper argues for an expansion of one of the three inherent elements of the definition, the second section demonstrates the development of another of the elements: the state actor. The next section proposes how deaths and disappearances on life threatening migratory routes can be considered enforced disappearances. The last section analyzes the possible application of the test depending on territory and involved states, analyzing relevant state jurisdiction.

## Panel - Identity, Nationality and Statelessness

### **Refugees' Right to be recognised as Persons before the Law: an Analysis of the Travaux Préparatoires of Art. 6 of the UDHR**

paper presentation by Sara Palacio Arapiles, University of Nottingham

Noting the paucity of case law on the subject matter, in this contribution, I will look into the drafting history of Art. 6 of the Universal Declaration of Human Rights (UDHR), which provides that '[e]veryone has the right to recognition everywhere as a person before the law'. This right was later codified in Art. 16 of the International Covenant on Civil and Political Rights (ICCPR) and Art. 3 of the American Convention on Human Rights (ACHR) as an absolute and non-derogable right, which points to its high status in the international legal order and thus relevance. Archival files show that the negotiations leading to the text of Art. 16 of the ICCPR run parallel to and were greatly influenced by the drafting of its counterpart in Art. 6 of the UDHR, while Art. 3 of the ACHR was modelled on the ICCPR. By obliging states to recognise 'everyone' as a person before the law, the drafters of these texts sought to solve the discrimination against refugees and slaves, who, under the pretext that they did not have all the necessary papers and documents, could not enjoy other rights that required of specific documentation for their realisation. Throughout the meetings, the delegate of France maintained that Art. 6 of the UDHR was one of the most important texts of the Declaration, on a national as well as an international level. On the national level it meant that every citizen had the right of access to justice, including access to independent and impartial tribunals for the determination of their rights, while on the international level it meant improving the position of refugees and slaves in this respect. Having analysed the content and scope of this right, at least that meant by its drafters, I will turn to analyse the extent to which current practices, policies and legislative trends towards refugees, impact on their right to juridical personality. To my knowledge, notwithstanding its relevance, the right to be recognised as a person before the law has not received enough attention by international law and human rights scholarship, and therefore, in this contribution, I will fill crucial gaps in knowledge.

### **Refugees in Identity Crisis: the Voice of Practitioners in the Migration-family-law Field**

paper presentation by Geertrui Daem, Ghent University

The right to a legal identity, as enshrined in Article 6 of the Universal Declaration on Human Rights and Article 16 of the International Covenant on Civil and Political Rights, is a prerequisite for exercising all other rights. However, this right to be recognised as a person before the law remains meaningless, when the person concerned has no documentary evidence to prove his or her legal identity, or when this proof is questioned or doubted by public authorities. In a migration context, a huge tension exists between the right to a legal identity and the proof/registration of this legal identity. The Global Compact for Migration (Objective 4) commits to ensure that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, as a means to empower migrants to effectively exercise

their human rights. The Global Compact on Refugees (§58 and §82) considers civil and birth registration as a major tool for protection. This paper will focus on the objective of guaranteeing cross-border continuity of refugees' legal identity which can be considered as a human rights imperative in itself. Cross-border mobility in general, and migration in particular, must not lead to a loss of migrants' legal identity (or in private international law terms, personal or family status). Picture an Afghan couple, claiming for asylum, whose Iranian marriage certificate proves a religious marriage concluded in Iran when the girl was 16. Imagine a boy from Somalia, seeking international protection, who cannot prove his minority because he has no birth certificate. Such legal issues – married in Iran, but not in the country of asylum; child in Somalia, but questioned in the country of asylum – relate to the cross-border recognition of personal and family status in a migration context. Refugees need to overcome different hurdles in order to be recognized as a person before the law. Refugees and their families not only suffer from difficult living conditions but also from a true identity crises as they are often trapped in serious legal limbo. In a four-year research (2021-2025) at the Private International Law Institute (Ghent University), we empirically investigate these pressing legal issues with the aim of enhancing cross-border continuity of refugees' legal identity or personal/family status. We take Belgium as a case study. In February 2023, a broad online survey was launched in order to examine the role and the importance of personal status documents of applicants and beneficiaries of international protection. The questionnaire investigates how asylum authorities, judges, lawyers, guardians, civil registry and other administrative authorities engage with personal/family status documents before, in and beyond the asylum procedure. This paper will present some findings of this large-scale survey, which could be of relevance for and impact the lives of refugees and their families, not only in Belgium but also in many other receiving States.

### **The Forgotten Human Right? Article 15 UDHR and the Limits of State Sovereignty in Nationality Matters**

paper presentation by Barbara von Rütte, University of Basel

Article 15 of the Universal Declaration of Human Rights enshrines the right to nationality. This right has not directly been transposed to the subsequent binding human rights instruments that codified the guarantees of the UDHR. States opposed the adoption of concrete and enforceable rights in the domain of nationality, arguing that membership in the nation state falls within a states' *domaine réservé* and is not a question of human rights or entitlements. Looking at the UDHR at 75, has the right to nationality been forgotten? On the basis of an analysis of the current international legal framework, the paper argues that the right to nationality has not entirely been forgotten. All major international human rights treaties protect the right to nationality to some extent. However, the protection offered for individuals based on the existing international legal framework is relatively weak. States have been successful in rejecting concrete obligations in nationality matters. In particular, with the exception of Article 20 of the American Convention on Human Rights, no international instrument guarantees a right to nationality of a specific state. The argument that the right to nationality lacks an addressee which would be obliged to respect, protect or fulfil it, is used to fend off any concrete claims to access citizenship in a



particular state. The paper aims to challenge this sovereignty-centered interpretation of nationality matters and argues that the right to nationality should be re-interpreted to realize its full potential. The argument of the lacking addressee can be countered by introducing the principle of *jus nexi* and linking the right to nationality to a person's actual connections and their social identity. Such a rights-based interpretation of the right to nationality would impose important limitations to state discretion when deciding on membership in the context of naturalization applications or deprivation of citizenship in the context of national security. It would allow to recognize the right to nationality as a human right that is inherently tied to migration and migrant human rights. Finally, it would have the potential to mitigate some of the exclusionary effects of a nation state-based world order by guaranteeing an actual right to access membership.

### **Debating Institutions of Identity, Human Rights and Fractured Identities: Reading the Liberal Paradox through the Works of Hannah Arendt**

paper presentation by Sana Shah, University of Oxford

In the early decades of the 21st century, statelessness and immigration have emerged not only as universal experiences of humanity but also subject of immense challenge. This challenge is potent of triggering massive crisis specifically in liberal democracies, as has largely been observed in the recent years. The number of international migrants, so enumerated, stands at 244 million worldwide, approximately which is an increase by 41%. There are diverse reasons for migration, ranging from conflict, violence to economic and ecological crisis, etc (Benhabib 2018) . In this regard therefore, three major fault lines have surfaced as a challenge for liberal democracy and the framework of human rights within which it operates and the cause that it seeks to champion. One, is the disjunction between the rights of a 'citizen' and rights of an 'individual' as human rights. The tension therefore emerges from what Hannah Arendt would refer to as the right to have rights (Arendt 1973) . Secondly, on one hand there are institutions of identity in Liberal nations that define who is a citizen and it is these institutions of identity that come under immense stress on account of immigrations (Goodman 2019) . Third, on the other hand, the 'individual' centres at the core of Liberalism and therefore the struggle of Liberal democracy to accommodate an individual in the capacity of the human rights discourse by extending citizenship irrespective of other socio-cultural identities of the individual. It is this struggle, which is intrinsic to the Liberal paradigm, which paves way for fractured identity for the individual, specifically for the immigrants. In other words, it exposes the 'Janus face of modern nation' where in the Liberal state acts in the name of universal principles but within the boundaries of particularistic national communities. On the one hand the Liberal states affirm the universality of human rights and on the other hand accords nations the sovereign privilege to define the borders and devise the institutions of identity. Against this backdrop, the present paper therefore seeks to interrogate the answers to the important question of what does it require for an individual to be an equal citizen while retaining the right to religious or cultural difference. One way to address this dilemma was to create supranational organisations articulating the discourse of human rights. However, as the world experienced growing refugee



crisis, the asylum-seeker, the refugee and the stateless have become prisms through which not only one can understand the limitations of these supranational organisations but also explore the intrinsic paradox of Liberal democracy. In order to understand this dilemma further, the present paper attempts to delve into the nuances of these questions by bringing to fore selected works of Hannah Arendt. Through a reading of Hannah Arendt's selected works, the paper attempts to specifically situate the paradox in the light of contemporary happenings, especially the immigrants' issue and to finally provide a general overview of the relevance of Arendt's understanding of statelessness, thus interrogating the philosophical justification of the 'right to have rights'.

## **FRIDAY 8 DECEMBER**

### **Panel - Categorisation of Migrants and Differential access to Rights**

#### **About Time: Comparing the Access of Beneficiaries of Temporary and International Protection to Education, Employment and Housing in Belgium**

paper presentation by Roos-Marie van den Bogaard, Ghent University

The arrival of persons fleeing the war in Ukraine has triggered, for the first time in history, the application of the Temporary Protection Directive (Directive 2001/55/EC). Discussions regarding the differential treatment between beneficiaries of temporary and of international protection in the EU have largely related to elements such as the procedure and subsequent residence rights. This paper looks beyond these initial differences and instead focusses on access to education, employment and housing. In the Belgian context, various policy measures were taken following the implementation of the Temporary Protection scheme, to facilitate the access of persons fleeing the war in Ukraine to the abovementioned human rights. While these policy measures may be well intended, they do imply at times a difference in treatment between beneficiaries of temporary and international protection in Belgium regarding their access to housing, employment and education. The element of 'time' will be taken as the lens through which differences in policies on housing, education and employment will be analyzed. Drawing on academic literature on the notion of time in migration law and policy, this paper will address the idea of obtaining rights incrementally over time as well as the use of time as a tool in migration control and migration governance (see for example Griffiths, 2021; Shachar, 2019; Stronks, 2022;). In this way, this paper aims to address the role of 'time' in policies that are applicable to beneficiaries of international protection and temporary protection regarding their right to housing, education and employment in Belgium. Qualitative data obtained through interviews (conducted throughout 2023) with beneficiaries of temporary protection are combined with an analysis of policies, parliamentary debates and reports to map the policy measures facilitating or obstructing access to education, employment and housing. These- data are then compared to similar data concerning beneficiaries of international protection in Belgium, which was collected as part of the interuniversity project "REFUFAM", of which this PhD project forms a part.

## **Restrictions on the Exercise of Certain Occupations by Foreign Workers: An Overview of OECD Countries**

paper presentation by Aichell Alvarado, Panamanian Ombudsman

No matter the context, States and businesses retain distinct but complementary responsibilities. Everyone, by virtue of her or his humanity, is entitled to basic human rights. These include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, inter alia. Everyone is entitled to these rights, without discrimination, regardless of our background. This is what makes human rights 'universal' and businesses are key players in that respect. MSMEs account for 90% of businesses, 60 to 70% of employment and 50% of GDP worldwide thus, as the backbone of societies everywhere they contribute to local and national economies and to sustaining livelihoods. In that context, enterprises can deeply influence the human rights and ordinary life of employees. These effects may be positive, such as increasing access to employability or negative, such as discrimination in the workplace due to workers ethnicity or nationality or exploitation. In many OECD countries, foreign residents do not enjoy of the same rights as nationals, however, a fundamental question when it comes to the establishment of qualified human rights breaches is whether states' acts or omissions pursue a legitimate aim when restricting rights. One of such right is the exercise of certain professions. States having such restrictions may cause an imbalance in terms of opportunity and access for all. This situation may encourage the illegal exercise of professions without noting that in the majority of OECD jurisdictions, the numbers of foreigners or immigrants and their proportions of the total population have risen over the past ten years, therefore, domestic laws may have to evolve in order to adjust to this reality. Restrictions in the exercise of professions – often regulated – is not new and sometimes necessary for the protection of certain occupations, nonetheless, the participation of immigrants in one country's employment context should not be a menace. By taking away the rights of migrants, in this case, that they enjoy being able to freely exercise their profession, States could be alienating them from integrating into society in a homogeneous way and hence, promote the illegal exercise of professions and labour exploitation. When a business abuses human rights, States must ensure that the people affected can access an effective remedy through the court system or other appropriate process. This paper will discuss the employment immigration policy in OECD countries and outlines the ulterior purposes, if any, of restricting migrants' right of exercising certain professions. It will also address the impact of said violations and the importance of the employment of foreigners in the labour market.

## **Prohibiting Caste Discrimination under International Law**

paper presentation by Ashok Kumar Pindiga, Democracy Institute

This paper argues that caste must be made a protected ground similar to race, religion, ethnicity, gender etc., in International Human Rights Law. Caste is an important feature of the Indian subcontinent (South Asia). Caste is primarily associated with Hinduism and has been an integral part of the religion for centuries. However, the caste system has also impacted other religions,

i.e. Islam, Sikh, Jains and Christianity in South Asia. The growing migration from South Asian countries to other parts of the world has brought fresh challenges to legal systems that enforce equal laws. According to the World Bank's data for 2021, India has the highest number of emigrants in the world, with an estimated 18 million Indians living abroad. In the USA alone, there are about 2.7 million people of Indian origin out of 5.4 million South Asians, and it is the fastest-growing immigrant group in the U.S. (Hoffman and Batalova,2022). Dr Ambedkar, the author of the Indian constitution, predicted in the 1930s, if the Hindus migrated to other regions of the world, caste would be a world problem. There are press reports and surveys that reveal caste discrimination among the South Asian diaspora in Western countries. Caste discrimination is in various forms: discrimination of lower caste at business establishments supervised or owned by upper-caste; prohibition of inter-caste marriages; use of caste slurs against Dalits(ex-untouchables)( Zwick-Maitreyi et al.,2018).In Europe, on May 24, 2009, a group of six upper-caste Sikh gunmen attacked the Dalits in a Sikh temple in Vienna, Austria killing one person and injuring 16 others(Oleksyn,2009) In India, there are several laws and policies to protect Dalits from discrimination and violence. Some of the key laws and policies include the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: This law is specifically aimed at preventing and punishing atrocities against Scheduled Castes and Scheduled Tribes. Article 17 in the Indian Constitution sought to not only outlaw the practice of untouchability but also to ensure that those who continued to practice it would be held accountable and punished under the law. Article 15 prohibits caste discrimination in public and private spaces. Similarly, Bangladesh and Nepal also have provisions to prohibit caste discrimination. This paper highlights that if the Dalits cross Indian borders, they appear to be out of protection even though the International Convention on the Elimination of All Forms of Racial Discrimination, promulgated in 1965, bans discrimination based on descent and in 2007, the Committee on the Elimination of Racial Discrimination (CERD) issued a general recommendation on descent-based discrimination, explicitly recognising caste as a form of descent-based discrimination prohibited under the convention. But not many countries that signed the treaty have promulgated domestic laws prohibiting caste discrimination. Outside South Asian countries, there are very few countries— Britain, Gibraltar, Mauritius, Micronesia, and Burkina Faso that have exclusive legislation to prohibit caste discrimination. (Meena et al.,2014:31) While India proposed caste to be included while formulating the Universal Declaration of Human Rights (UDHR) in 1948, but it dropped the proposal(Id at 27). This paper argues that given the huge migration from India and other South Asian countries, it is necessary to recognize caste as an exclusive category for effective justice under the International Conventions that protect human rights.

### **Age-based discrimination of children in the context of international migration**

paper presentation by Rebecca Thorburn Stern, Uppsala University

The principles of equality and non-discrimination are fundamental moral principles and parts of the foundation of the rule of law. The non-discrimination principle is part of practically every international or regional human rights treaty, obliging state parties to ensure that the rights enshrined in the treaty are recognised and exercised without discrimination of any kind. For

children, the non-discrimination principle has particular significance: as Besson and Kleber point out, "the struggle against child discrimination has been a central driving force in the development of the rights of the child" (Besson & Kleber 2019). The significance of the principle in the context of children's rights is further confirmed by it being one of the key principles of the Convention on the Rights of the Child, explicitly stated in its Article 2.

Recognising the importance of the principle of non-discrimination for children generally, however, does not mean it is widely recognised that differential treatment of children compared to adults on the basis of age may, under certain circumstances, constitute direct or indirect discrimination. Rather, in most societies, treating children and adults differently is largely considered justified and unproblematic. The CRC is mainly silent on the issue: Article 2 specifically mentions discrimination grounds such as ethnic or social origin or gender, but not age. While it has been held that age falls within the scope of Article 2 through the reference to 'other status', discrimination against children on the basis of age or childhood has not been thoroughly discussed by the CRC Committee nor, with some exceptions, in legal scholarship (cf. Daly et al 2022, Breen 2019, Archard 2019, Breen 2006).

Against this background, this paper, drawing on two examples, explores whether children can be discriminated against on the basis of age in relation to adults in the context of migration. The first example concerns the assessment of asylum claims and the fact that while the refugee definition as such is age-neutral, it, in practice, draws heavily on male adult-centered understandings of what may constitute persecution or serious harm. As a result, child asylum claims are at risk of not being found to reach the threshold for refugee status, whereas a similar situation for an adult might. The second example concerns the use of time as a tool to control migration (Reneman & Stronks 2021). Temporal devices such as waiting periods, qualification periods, accelerated or prolonged procedures are key elements of the migration process and apply regardless of the age of the individual in question. In doing so, the state fails to take into account that adults and children experience time differently; for example, a year may be a relatively short time in the life of an adult but a very long time in the life of a child. In both examples, children are at risk of being subjected to indirect age-related discrimination in relation to adults in the same situation. The aim is to highlight how migrant children may be at risk of being treated less favourably than migrant adults due to their age, despite various safeguards and special protections aimed at children. The aim is also to discuss the applicability of Article 2 in this context.

## **Children and Young People in Appellate Asylum Procedures**

paper presentation by Sara Lembrechts, Ghent University

When unaccompanied minors or families with minor children obtain a negative decision on their asylum application in Belgium, they can appeal at the Council for Alien Law Litigation (CALL). This leads to an administrative procedure of full judicial review in which asylum judges can either confirm, reform or annul the first instance decision. An appeal at the CALL is first and foremost a written procedure. However, unpublished statistics show that several hundreds of children and young people visit the CALL premises in Brussels yearly for an oral hearing with a judge. Some

children merely join their parents without taking up an active role in the procedure, while others are also heard in person. This presentation aims to inspire the CALL and legal institutions worldwide to install a system of age-sensitive justice in appellate asylum cases involving minors. The contribution builds on empirical data from about 400 hours of legal ethnography at the CALL that are critically analysed through the lens of children's rights, child-friendly justice and images of childhood. It focuses in particular on how to reconcile children and young people's own experience with their human rights in legal procedures.

## **Panel - Empowering voices: the Struggle of Migrant Women and Undocumented Migrants**

### **Building our Own Space: Women's Struggle in the Refugee Movement**

paper presentation by Jennifer Kamau, International Women Space

In an era defined by technological progress, climate crises, and geopolitical shifts, this paper directs its focus towards the voice and agency of refugee women in Germany. Acknowledging their resilience and potential, the paper delves into the intersectional challenges faced by these women as they navigate the intricate web of displacement, resettlement, and integration in the country. Their dual identity as both refugees and women renders them particularly susceptible to racial discrimination, marginalization, and gender-specific hardships.

Despite the challenges encountered, refugee women in Germany display resilience and agency. The paper explores how these women reshape narratives surrounding their journey and identity through self-organization, challenging hegemonic, male-dominated perspectives on migration and society.

Grassroots initiatives become pivotal in fostering community, empowerment, and advocating for the unique needs of refugee women.

The paper delves into how refugee women from the Global South amplify their voices and agency through collective storytelling that bears witness to their shared struggles, challenging stereotypes and misconceptions. It emphasizes their demand for recognition of differences in class, education, experience, politics, and perspective—rejecting imposed categories that further exploitation.

Refugee women in Germany, disillusioned with the illusion of freedom and democracy, engage in self-organizing efforts that extend globally. Collaborations with similar groups create an international network for mutual support and advocacy.

Examining the active engagement of women in the refugee movement, the paper explores their role in constructing spaces within the struggle for rights and recognition. From advocating for gender-specific concerns to participating in grassroots initiatives, these women reshape the narrative of the refugee experience. The contribution aims to amplify their voices, offering insights into the dynamic and resilient nature of their activism.

Delving into the intersectionality of gender, displacement, and cultural integration, the paper sheds light on the unique struggles experienced by refugee women. It scrutinizes current support structures, identifying gaps in addressing their specific needs.

Proposing forward-thinking strategies, the paper envisions empowering refugee women through policy reevaluation, community engagement, and enhanced support networks. The goal is a future where these women overcome obstacles, actively contribute to, and benefit from their new societal context, inspiring a paradigm shift towards a more equitable and inclusive reality. This paper seeks to contribute to a broader discourse on the empowerment of refugee women, fostering a deeper understanding of their roles, aspirations, and the necessity for inclusive policies that recognize and support their agency. It also aims to enrich discussions on refugee rights and gender equality while exploring the relevance and meaning of the Universal Declaration of Human Rights for refugee women.

### **Building Bridges to break Borders. Women in Exile**

paper presentation by Elizabeth Ngari, Women in Exile

Is the past and present history of Women in Exile, on how we came together as a group and about our fights based on surviving the situation in refugee camps and organizing for more than 20 years as a refugee women's group. It is about our continuous daily fights for sufficient medical care and against the constant fear of being deported. Fights on the abolition of all laws discriminatory to asylum seekers and migrants and on the interconnections of racism and sexism.

On how we have built bridges of solidarity and intersectionality within ourselves and beyond, despite of our diversities.

About 20 years of our activism and celebrating it with an international conference "Breaking Borders to Build Bridges" and launching of our diverse written book with the same title.

Women in Exile is an initiative of refugee women\* founded in Brandenburg in 2002 by refugee women\* to fight for their rights. We decided to organize as a refugee women's group because we have made the experience that refugee women are doubly discriminated against not only by racist laws and discriminative refugee laws in general but also as women\*.

### **Human-rights-ization between Negation and Experience**

paper presentation by Encarnación Gutiérrez Rodríguez, Goethe University Frankfurt am Main

This presentation is based on ongoing research that focuses on political struggles of self-organized political groups of migrantized persons within the context of precarious and undocumented migration. We provide a few insights into our current analysis on two levels: (1) dehumanization through negation of rights and (2) experiences of rightlessness (the ontological level). These insights are based on the analysis of the use of the human rights language in the digital archives, of the vernacular meanings related to human rights, as well as of the theorization of the (im)possibility of human rights. Regarding the first level, we look at negation

of human rights and notions of (dis-)respect (disrespecting human rights as a way of negating humanity). As for the second level, we discuss three elements linked to experiences of rightlessness: (a) the inseparability of rights in experience; (b) the connection between experience and political organizing; (c) struggles for rights as collective experience.

**No Home, no Rights: The Tragic Plight of Undocumented Migrants fighting for Basic Human Dignity**  
paper presentation by Gayathry Jayadevan, SRAM 17, INDEEVARAM

Undocumented migrants, or those without legal authorization to reside in a country, face a multitude of challenges in accessing basic human rights. They are often marginalized, discriminated against, and excluded from the formal structures that protect and uphold these rights. This study seeks to explore the tragic plight of undocumented migrants and the ways in which they fight for basic human dignity. The research methodology employed in this study was a mixed-methods approach, utilizing a case study analysis of undocumented migrants' experiences and a policy analysis of the UK's latest migration policies. Ten case studies of undocumented migrants from different regions were analysed to understand the challenges they face in accessing basic human rights such as housing, education, and healthcare. The policy analysis focused on the Illegal Migration Bill 2022-23, which seeks to prevent and deter unlawful migration by requiring the removal of certain persons who enter or arrive in the UK in breach of immigration control. The policy analysis of the Illegal Migration Bill 2022-23 reveals that the UK government's approach to migration is focused on deterrence and punishment, rather than addressing the root causes of migration and providing adequate support to those who are already in the country. The Bill's provisions for the removal of certain persons, including asylum seekers and those without leave to remain, could lead to human rights violations and further marginalization of already vulnerable populations. Overall, this study highlights the urgent need for a more compassionate and humane approach to migration policy in the UK. Undocumented migrants deserve access to basic human rights and dignified living conditions, regardless of their legal status. Policies that prioritize deterrence and punishment over support and protection not only fail to address the root causes of migration, but also perpetuate the marginalization and exploitation of vulnerable populations. In conclusion, the tragic plight of undocumented migrants fighting for basic human dignity is a pressing issue that demands immediate attention and action from policymakers and society as a whole. The mixed-methods approach employed in this study sheds light on both the experiences of undocumented migrants and the policies that shape their lives. It is our hope that this study will contribute to a greater understanding of the challenges faced by undocumented migrants and serve as a call to action for a more just and equitable migration policy in the UK and beyond.



## **The Political Rights of Migrants: Respecting Undocumented Migrant Politics as Human Rights-making Practice**

paper presentation by Jordan Dez, VU Amsterdam

The de jure and de facto exclusions of undocumented migrants from the full scope of human rights protection is an enduring challenge to the effectiveness and universality of human rights law. This research project approaches this problem of incomplete rights protection not just as a question of legal interpretation, but also a question of political voice. This paper will present the conclusions of a dissertation research project that theorizes migrant activism as a practice of 'rights-making', or in other words, a process of legal and political contestation that makes rights a lived reality in the lives of migrants, and influences the normative development of human rights law. The central claim of this thesis is that the rights-making practices of undocumented migrants are protected by human rights law as speech, assembly, and association, referred to in this dissertation as 'adjunct political rights' and that effective protection of migrant rights-making requires clearer definitions of the scope of adjunct political rights for the undocumented. This research utilizes both legal analysis of the political rights of migrants under international law and ethnographic fieldwork with undocumented migrant organizers, to gain insights into the relationship between undocumented migrant rights-making and the scope and content of human rights law. Inspired by, but departing from, Hannah Arendt, this research engages with both the political voice of migrants and the institutional safeguards for migrant rights that have developed since she penned the concept of 'the right to have rights'. The conclusions of this empirical legal inquiry suggest interpreting the scope of adjunct political rights in a manner that is contextualized to the vulnerability of undocumented migrants to the state.

## **Poster presentations**

### **Talking to a brick wall, On sexual and gender-based violence in the asylum procedure**

poster series by Lore Roels, Ghent University

"Since the applicant, [claiming to have been a victim of sexual violence], is now an adult woman who has become much more independent as a result of her foreign experience, it can be assumed that she will no longer be the victim of [sexual violence by] men [on the streets of Nigeria]." With these words, the Belgian Council for Alien Law Litigation (CALL, no. 118.538, 2014) judged an asylum seeker's fear of persecution as not credible. The CALL seems to suggest here that only 'dependent persons without foreign experience' are likely to become the victim of sexual or gender-based violence (SGBV). This type of reasoning shows strong characteristics of what is termed a 'rape myth' in the criminal justice system (CJS). More specifically, it can be categorized as a 'victim precipitation myth' (e.g. 'only certain types of persons become the victim of SGBV'). The complexity of SGBV in asylum contexts often results in survivors/victims feeling like 'talking to a brick wall'. This poster project aims to bring this feeling from within the walls of the asylum procedure to the walls of public spaces. As such, the posters hope to reach passers-by who do not usually come into contact with persons fleeing SGBV. This project constitutes a valorisation

of the PhD research (2021-2025) of Lore Roels, led by Prof. Dr Ellen Desmet (UGent) and Prof. Dr Ines Keygnaert (UGent). By representing legal reasoning in tangible ways, it seeks to (re)centralise the human dimension in the refugee debate. The posters contrast legal reasoning with scientific literature. This demonstrates how these types of reasoning are not always grounded in the current state of expertise around sexual and gender-based violence. More information about the project: <https://talkingtoabrickwallproject.wordpress.com/> & [https://www.instagram.com/talking\\_to\\_a\\_brick\\_wall/](https://www.instagram.com/talking_to_a_brick_wall/).

### **The Media Representations of Immigrant Criminality on Turkish Print Media**

by Seda Mohul, Middle East Technical University

Turkey is at the forefront of the migration routes of Syrian people who had to leave their country by the civil war in Syria. One of the important issues according to the migration-human rights nexus that can be addressed in this context is the representations of crime in the print media that deal with Syrian asylum-seekers in Turkey. In recently, Syrian asylum-seekers have been shown in the source of some conflicts as subject. Emphasizing national identity in this way in the criminal news about the events in question causes refugees to be transformed into an object associated with crime and to create a perception of social prejudice and threat. In this study, it is investigated how Syrian asylum-seekers are represented in criminal news on the printed media and how media coverage may influence public perceptions of refugees' rights. It is important that the study deals with the criminal events in Turkey to examines national newspapers belonging to different political views in order to examine the common discourse and how media coverage may influence public perceptions of refugees' rights. It scanned articles published between 2018 and 2021 in four online daily newspapers with varying political perspectives, sourced from the national press, with the aim of examining news items related to criminal activity, particularly focusing on Syrian asylum-seekers as perpetrators or victims. This study has a qualitative design and Teun Van Dijk's thematic analysis adopted for collection and analysis of data. At the end of the study, the results showed in some part of news texts how created some discriminative and prejudiced categories and presented as a threat to public security. Another result of the study is to determine that different discourses towards Syrian refugees are used, depending the position of the selected newspapers as radical right, left, conservative and nationalist. In addition, it is expected to contribute to the literature in terms of investigating the attitude of the media, since there is no enough study on the discourse of crime on the print media in Turkey and the news covering the lynching attempts against Syrian refugees. In addition, it is expected to address the question of how human rights function as discourse in the context of migration, by analyzing how the media portrays refugees and the ways in which this representation may contribute to criminalizing them.

## **Compatibility of the EU-Turkey Statement to EU Law and International Human Rights Law**

by Havva Yesil, Dublin City University

The EU-Turkey Statement was released on March 18, via the Council of the European Union's webpage. Immediate and intensive negotiations began in October 2015, leading to the Statement delivered on the grounds of the European Council meeting on 17-18 March 2016. This problematic and controversial statement has been consistently proclaimed by the European Council. This paper focuses on the legal flaws and implementation challenges of the EU-Turkey deal. Regarding the procedure, EU norms for negotiating with third parties are laid forth in Article 218 of the Treaty on the Functioning of the European Union. It refers to collaboration between the EU and a non-EU country. I analyse the General Court orders which are the first rulings on the EU-Turkey Statement and evaluate these decisions in light of EU legal regulations and literature in law. Also, the EU-Turkey Statement violates the principle of non-refoulement, as the EU has committed to taking back one Syrian from Turkey for every Syrian that Turkey accepts from the Greek islands. The EU-Turkey deal violates the ban on collective expulsion under Article 19 of the EU Charter of Fundamental Rights, Article 13 of the ECHR, and Article 4 of Protocol no. 4 to the ECHR since it can result in the deportation of asylum seekers without examination of their asylum claims. This paper also assess the statement's compatibility with the EU Law and International human rights law. Keywords: EU-Turkey Statement, EU law, Non-refoulement, refugee law.

# The Politics of Sexual and Reproductive Health Rights (TS6)

**THURSDAY 7 DECEMBER**

## **Panel - Inclusive SRHR Policies**

### **Advancing Sexual Reproductive Rights in the Context of Climate Change: Mitigating the HIV/AIDS Crisis through Effective Interventions**

paper presentation by Christabel Mideva Eboso, University of Embu, Kenya

In recent years, there has been a noticeable trend in both academic discourse and media coverage of the pervasive phenomenon of women and girls induced sex, often in exchange for sustenance such as fish and water, as a result of environmental degradation and scarcity exacerbated by climate change. This has blurred an appreciation of the lack of self-determination of the participating women as their vulnerability is directly tied to climate change. Worse, the flexibility created by the Constitution which provides that socio-economic rights be realized progressively has removed the immediacy in empowering women. As a result, their susceptibility to harm is heightened, undermining their capacity for self-determination and subverting their ability to strengthen the resilience of communities impacted by the culture of coerced sexual exchanges caused by climate change-induced scarcity of resources, such as fish. The foundation of this research is women's lack of self-determination and compromised autonomy in matters pertaining to their sexual and/or reproductive rights (SRR). The study uses a case study of Homa Bay and Busia, Kenya's lakeside counties with the highest rate of HIV/AIDS infections, to investigate the hypothesis that climate-induced fish shortages are responsible for violations of women's SRR by promoting a "fish-for-sex" culture, which contributes significantly to the high prevalence of HIV/AIDS infections in these two counties. This research plays a crucial role in understanding the lived realities and outcomes of women and girls in these two counties by integrating environmental justice and socio-economic justice in the fight for Sexual Reproductive Health Rights in Kenya.

### **'Stories Without an Ending': Participatory Tools for overcoming Resistance to Human Rights-Based Approaches (HRBAs) in Global Health and Development**

paper presentation by Anneke Newman, Ghent University

From the 2000s, the Human Rights-Based Approach (HRBA) – which aims to empower marginalized groups to recognize and demand respect of their rights from institutions and governments - became one of the main frameworks informing policy-making and intervention

strategies in global health and development. Despite being widespread, HRBAs have been criticized for decades by anthropologists, postcolonial scholars, and practitioners close to local realities, for imposing a top-down, aggressive approach to social change, and a universalizing Western paradigm at odds with local cultural values. For instance, this approach is the main policy framework applied to eradicating Female Genital Mutilation/Cutting (FGM/C), as international organizations and donors argue that these practices constitute a violation of women's and children's rights, and rights to health. These organisations press for domestic laws that criminalize FGM/C, and education programmes on its harms. However, states usually agree to anti-FGM/C laws to appease the international community, which are then not implemented due to lack of local endorsement and political will. Efforts at implementation have generated anxiety, accusations of cultural imperialism, resistance, and social and intergenerational conflict within communities, and have pushed the practice underground. Few policymakers and practitioners appreciate the nuances of backlash to HRBAs, stereotyping it as resistance to equality, conservatism, or false consciousness. They lack alternative tools for addressing issues which can have negative medical or social consequences, but also confer social benefits and are deeply embedded in cultural values. While academics have argued for bottom-up, culturally-grounded, community-led approaches to social inequalities, in reality there are few practical models which present viable alternatives to top-down HRBAs. To address this gap, we propose two activities: 1) a presentation in the stream "Politics of Sexual and Reproductive Rights" or "Decolonisation and Racial Justice". The presentation will outline the flaws of top-down HRBAs, and an alternative approach based on the work of NGO The Grandmother Project (GMP) which has been used to successfully catalyze dialogue on sensitive practices - like FGM/C and child marriage in Senegal - as a foundation for community-led social norms change. GMP's approach is called 'cultural renewal', which frames 'culture' not as a static source of obstacles to well-being as HRBAs tend to do, but a dynamic set of values and norms which, through participatory involvement of local peoples in the process, can be reformulated and renewed. To catalyze cultural renewal, they facilitate participatory dialogue with communities to diagnose problems, identify solutions, and achieve consensus in favour of community-led change. 2) a 2-hour interactive participatory workshop on one of GMP's cultural renewal tools: 'Stories Without An Ending' (SWEs). HRBAs usually involve education which tells people, in directive and top-down ways, that their behaviour is harmful - often contradicting local values and experiences. Instead, SWEs are based on theories of transformative education/learning inspired by Brazilian activist Paulo Freire. They do not judge or dictate, but present two sides of an issue and encourage people to reflect and think critically to come to their own conclusions. Unlike HRBAs, SWEs valorise local cultural values and treat custodians of cultural knowledge as capable of reflection and self-critique, who can transform their culture from within, on their own terms. We are applying for funds from UGent's Social Value Creation Fund to convert GMP's SWEs on FGM/C into comic format, which would be launched during the conference. Workshop participants will be introduced to critiques of HRBAs; shown how SWEs been used to facilitate community dialogue on sensitive issues without causing resistance; and provided with guidelines on how to develop SWEs.

## **Obstetric Violence (Non) Recognition in Italy - the Struggle of speaking Truth to Power**

paper presentation by Francesca Basso, Universidade de Lisboa – ISCSP

Context: Italy is one of the European countries where childbirth activism has risen, over the last fifteen years, against human rights violations and abuse & mistreatment in childbirth – also known as obstetric violence (OV). The term originated from Latin American grassroots and institutional contexts (Brazil; Venezuela; Chile; Mexico; Argentina); in the EU, it has been received controversially. Prompted by grassroots activism and civil society organizations, the term has been widely acknowledged and embraced in international academic research – a wide array of disciplines have analysed this human rights violation and gender-based violence, and feminist perspectives have allowed to make sense of it; thanks to the work of activists, it has also made its way into the international and regional human rights framework, being acknowledged by the United Nations Special Rapporteur on Violence Against Women, by the CEDAW Committee and regionally, by the Council of Europe (CoE). However, the Italian scenario has proven to be a striking example of the reluctance by public institutions and the medical establishment to 1) recognize the presence of such phenomena on the national territory on a structural level, and consequently the failures of the State to protect birther's human rights – despite the clear indications of the UN and the CoE; 2) call such violations by their name, thus recognizing their gendered, systemic nature, and the urgent need to act against them. The tireless work of anti-OV grassroots activists has encountered enormous hurdles, including a warning notice about their work: a clear manifestation of how complex the interaction between the stakeholders involved has proven to be – and at the same time, how political and potentially revolutionary the fight for human rights in childbirth can be. Objectives: This paper is part of a doctoral research in Gender Studies on the strategies of childbirth movements (CMs) in Southern Europe. It aims at answering the question: "To what extent has Italian childbirth activism managed to influence the public debate and laws and policies over the last decade?" In the framework of a wider comparative analysis between Italy, Spain, and Portugal, this paper allows for a detailed view of the strategies adopted by activists; their struggles; and any successes they may have achieved. Methods: This paper is based on a documental analysis of both academic production on the topic of childbirth activism, human rights in childbirth, and OV in the selected area, and grey literature, the latter including documents by local, regional, and national institutions, as well as by human rights bodies and mechanisms; material produced by childbirth movements, including websites and social media; and press articles issued over the last seven years, since a first bill of law against OV (then dropped) was discussed in Parliament, prompted by grassroots advocacy efforts. Discourse analysis is the chosen framework of analysis for grey literature – consequently, however overused this theoretical framework may seem, it is paramount to resort to Foucauldian concepts, which also allow for a deeper understanding of the power dynamics at play, especially via the concept of biopower. Expected findings include a significant presence of power-knowledge elements – mainly linked to gender and to symbols and meanings attached to the birthing body – in the struggles encountered by feminist activists. Findings may show the need for the medical and institutional apparatus to shift their paradigm towards 1) the inclusion

of evidence-based activism 2) the recognition of different levels of discrimination and violence – in short, human rights violations – that do happen in their national territory, and 3) the need for urgent action, inspired by the indications of the WHO, the UN, and the CoE, to protect birthers and newborns and their rights.

### **Relocating the Dominant Lens of Intersex Rights: Narratives from Greece and Serbia**

paper presentation by Nikoletta Pikramenou, University of Warsaw & Jelena Simić, Union University School of Law

Intersex people are born with sex characteristics that do not fit typical binary notions of female and male bodies. To fit them in the female/male binary, doctors often perform non-consensual and coercive surgeries and treatments with harmful and irreversible effects. Such surgeries are called Intersex Genital Mutilations (IGM) and they have been characterised as a torture by the United Nations (UN), the Council of Europe (CoE) and the European Union (EU). On July 19th 2022, Greece became the fifth country in the world to ban IGM with the Law 4958/2022. Prior to Greece, Malta, Portugal, Germany and Iceland had also legally banned IGM. A crucial difference between Greece and the rest of the aforementioned countries is linked to its geography and religion as it is an orthodox country located in the South Eastern part of Europe while belonging to the group of Balkan countries and therefore it could be assumed that such development could directly and significantly impact other countries with the same characteristics. Nonetheless, even though intersex rights discourse has significantly advanced during the last years, most of it keeps on reflecting intersex rights violations as depicted in Western and Northern European countries rendering intersex issues in Eastern Europe and the Balkans invisible and embedding the recognition of intersex rights. This is due to a combination of multiple reasons that may include language barriers, lack of funding, political and cultural factors. Based on the above, the objectives of this panel are two. First, it will bring together scholars, legal experts and activists from Greece, Serbia, Russia and Ukraine who will use the case study of Greece as a key starting point for a broader discussion when it comes to the current situation of intersex rights in their countries and how this recent development could positively affect future developments regarding the protection of the human rights of intersex people. Second, the panel will relocate the dominant lens of intersex rights from Western and Northern Europe with the aim to boost awareness on intersex in Eastern Europe and the Balkans and contribute to the advancement of existing discourse. Speakers: Nikoletta Pikramenou (Greece), Daria Alexandrova (Russia), Irene Kuzemko (Ukraine), Jelena Simić (Serbia).



## Roundtable discussions - Abortion as a Human Right

Moderated by Pieter Cannoot, Ghent University

### Questioning narratives of progress: abortion rights as human rights in constant contestation

introduction by Sibediverl Savas, Justus Liebig University Giessen

Sexual and reproductive health and rights (SRHR) in general - and abortion laws especially - are being challenged in a constant struggle on the local, regional, national and international level. In this abstract, we - a group of human rights scholars, activists and (future) physicians - want to spotlight this struggle of the human right to sexual and reproductive health and emphasize the fault lines in the narrative of continuous progress in this field, regarding human rights legislation and implementation. Progress on SRHR has evidently been made: in general, with the Universal Declaration of Human Rights and the WHO's complex and bio-social definition of health. In 1968, the human right to family planning was established in Teheran and, in 1979, concerning women's rights, the "Convention on the Elimination of All Forms of Discrimination against Women". Pivotal, the Program of Action of the International Conference on Population and Development in Cairo in 1994 stands out, with specific actions formulated, addressing sexual and reproductive health, equality of genders and multiple determinants of population composition. In medical history, the evolution of SRHR as an international human right, one of the core issues of the historical development of the right to health, is widely perceived as a story of overall progress. Medical knowledge and advances are translated into policy, and this policy then is implemented into practice(s). Contestation on either the translation or implementation does usually not lead to not having any policies or practices at all, but rather a differing policy or practice than initially envisioned or intended. So, even in a document such as adopted in Cairo, abortion is relegated to be addressed at the national level and while prevention of unsafe abortion is named, further actions on legalizing abortions and therefore improving safety, are not specified. In fact, that abortion has never been explicitly spelled out as a human right shows that it is not only the insufficient implementation by nation-states and, at the UN-level, today's conservative disruptive efforts that lead to the erosion of women's rights and the right to health. Therefore, particularly in relation to abortion, the question comes up: Is the critique of the lack of implementation by Member States and the ambiguous SRHR language in the Sustainable Development Goals sufficient to understand the status-quo of the human rights enshrinement of SRHR on which the realization of a right to abortion depends today? Germany's abortion law is codified in the penal code, but allowed under certain circumstances, which generally gives pregnant people access to a voluntary termination of pregnancy before the 12th week after mandatory counseling and a mandatory waiting period. The UK or France approach abortion less restrictively, while Poland issued a de-facto ban on any abortions since October of 2020. We suggest to discuss the cases above not merely as examples for a global backlash in women's rights, but as a consequence of an always contested and therefore segmented history of the human right to health: to use the words of legal scholar Dorota Gozdecka, as a consequence of a historically unresolved position of women's reproductive freedom and rights in liberal

democracies as well as in an international context. What can we learn from past struggles and successes? Why are the infringements of SRHR generally and abortion especially many times not acknowledged as the human rights violations that they are? What other human right contestations do reproductive rights and especially abortion stand (in) for? How, on the 75th anniversary of the Human Rights Declaration, can commitments to SRHR by States and regions be fully implemented or enforced?

### **Belgian abortion policy: evolutions and human rights perspective**

introduction by Stéphanie Wattier, University of Namur

The objective of the paper is to show that abortion has always been a complex issue for Belgian public policy, from the partial decriminalisation of abortion in 1990 to the recent turmoil caused by the reversal of the *Roe v. Wade* jurisprudence in the US. Based on this analysis, the paper will then focus on the question of whether the right to abortion should be enshrined in the Constitution rather than solely be regulated by law. Abortion is a subject that has always shaken Belgian public policy. A lot of us obviously remember King Baudoin's "case of conscience" when he had to sanction the law decriminalising abortion in 1990. This "incident" forced the government to mobilise in an unprecedented way Article 93 of the Constitution, which deals with the impossibility of reigning (although it was initially adopted to avoid cases of insanity of the King, as had been the case in England). More recently, abortion has again become an issue in public policy, and particularly in parliamentary debate. This time, during the spring and summer of 2020, a bill tabled by the Socialist Party a few months before, aiming to modify the law on voluntary interruption of pregnancy, gave rise to heated debates. Two main elements of the bill were questioned: on the one hand, the extension of the period within which abortion is permitted (the proposal suggested an increase from 12 to 18 weeks), and on the other hand, the shortening of the mandatory reflection period (the proposal suggested an increase from six days to 48 hours). After four referrals to the legislation section of the Council of State, the bill was finally shelved because the CD&V made it a condition for its participation in the so-called "Vivaldi" government. Even more recently – last year –, it seems that the debate has shifted. In addition to the concern about the extension of the deadline, the issue of abortion as a "right" – and thus not the freedom to abort but the question of whether there is a fundamental right to abortion – has become part of the public debate and the debates in the House of Representatives. This issue is the result of the reversal of the US Supreme Court's *Roe v. Wade* decision, which established the possibility for women to have an abortion up to the stage of viability of the fetus, and which now, since the *Dobbs* decision of 24 June 2022, provides that only the US states can decide in their legislation whether abortion is allowed (with many countries having already banned it since then). A proposal has been submitted by the Ecolos to include the right to abortion in Article 22 of the Constitution, which enshrines the right to privacy and is currently on the list of articles open for revision ("declaration of revision of the constitution").

## Panel - The Politics and the Semantics of Human Rights through the Lens of Abortion Debates

### **Mold and Malleability of Human Rights and Reproductive Equality: Scapegoating Universalism in the Name of (De)colonization Practices in Ireland and Poland**

paper presentation by Karina S. de Vries, University of Warsaw

In both post-colonial Ireland and post-socialist Poland, political arguments have surfaced based on anti-universalism, anti-colonialism and Euroscepticism, underpinning and enforcing anti-foundational suspicion against human rights—while most often using the non-male body as a canvas on which the ‘true’ or traditional nation is to be expressed (Connelly 2019; Gwiazda 2020; Kantola and Lombardo 2021; Korolczuk and Graff 2018). The human rights field is known for its two-sided area: there are those defending notions of universalism (e.g., Golder 2018), contesting their relativist opposition known for preserving cultural diversity and plurality (e.g., Dahre 2010; Mutua 2003). Both groups are often positioned in strong opposition, though this simplistic framing does not seem to hold in our current dependencies. Not only is it important to distinguish between ‘modern’ and ‘contemporary’ universal human rights (Baxi 2008), the paradigm of relativism – established to mediate pluralism of values and rearticulate understandings of historical imperialism – is worryingly being instrumentalized and inversed by conservative and populist forces for political undermining of, if not rebellion against, pluralism itself. In both Ireland and Poland, political claims have circulated scapegoating the international order as a Eurocentric and imperial project, allegedly responsible for the spread of destructive ideas while undermining the principles of national sovereignty and democracy. Precisely this dualist dilemma marks the premise of a two-fold explorative review. Looking into a process we might call inversion of meaning-making, we will see (1) how the once intended progressive and difference-sensitive concepts – now cloaked in stereotypes on universalism – are being instrumentalized for conservative political ends. By doing so, this review will (2) trouble the popular construction and distinction between the universal and the particular, recharging wearied concepts with contemporary relevance, and pointing toward the limitations of applying context-specific concepts to distinct particularities.

### **The Global Conservative Backlash: a New Grand Narrative in Socio-legal Studies of Reproductive Rights**

paper presentation by Marta Bucholc, University of Warsaw

Reproductive rights, a relatively recent arrival in international human rights law and legal philosophy, have over the last decades become one of the most debated topics in socio-legal studies, in proportion to the controversiality of the subject of reproduction in political and social debates all over the world. To make sense of rampant growth of socio-legal studies of reproductive rights, I suggest to look at the main lines of its development through the lens of the succession of grand narratives about reproductive rights. I propose to distinguish three such grand narratives: the narrative of universal progress (largely exhausted by now), the narrative

of the clash of civilisations (en vogue in the 1990s and early 2000s, also out of grace today), and, finally, the narrative of the global conservative backlash, that has been gaining momentum since the beginning of 2010s. Having introduced this chronological scheme in the first part of the paper, I will use it as my starting point to trace the main themes of socio-legal thinking about reproductive rights. My particular focus will be the conceptual tensions within the field of reproductive rights scholarship, resulting largely from its mixed genealogy, combining human rights law and human rights philosophy, sociological theory, feminist philosophy, critical legal studies, and, more recently, dependency and post-colonial studies as well as intersectional approaches to exclusion and inequality. The succession of three grand narratives will frame my reconstruction of the gradual fragmentation of sociology of reproductive rights, following the realization of their embedding in the plethora of local and regional contexts. The tensions within the field result in a diversity of conceptual and explanatory strategies; I will demonstrate it using the example of socio-legal studies of abortion law in Europe, Africa and Latin America. Equally, the ability of sociology of reproductive rights to come up with meaningful comparisons has been severely hampered by the reactive nature of most of the studies in this field. By responding to the threats to and the violations of reproductive rights, sociology of reproductive rights inevitably reflected the variety of local settings in which reproductive rights played out one way or another. However, the narrative of conservative backlash strives to overcome the fragmentation and reactivity of sociology of reproductive rights by focusing on the effect of the rise of conservative and illiberal politics. The understanding of the global nature of conservative backlash seems gradually to take the upper hand in reproductive rights debates, fostering more comprehensive explanatory efforts aimed at critique and deconstruction of the old-new nexus of state sovereignty, national identity and gender produced by conservative political forces worldwide, be it in Hungary, Israel, Poland, or the United States. However, and this is the final part of my talk, some caution is also indicated to avoid oversimplification implicit in the conflation of various types of conservatism.

### **From Legal to Embodied Struggle: the Evolution of Feminist Mobilization for Sexual and Reproductive Rights in Colombia**

paper presentation by Carolina Mosquera Vera, University of Warsaw

In this presentation, I will be discussing the ongoing battle for sexual and reproductive rights in Colombia, with a particular focus on two key milestones: the 2006 C-355 ruling that decriminalized abortion in three circumstances, and the recent 2022 C-055 decriminalization of abortion up to 24 weeks in Colombia. My aim is to analyze the evolution of mobilization strategies used by feminist activists and how they have progressed to incorporate a broader range of society. In 2006, the discourse on abortion was limited to the medical and legal frameworks (Jaramillo and Alfonso, 2008). However, in 2020, the discourse on abortion in Colombia shifted towards women's freedom and reproductive autonomy. This represented a significant evolution in the mobilization strategies deployed by Colombian feminists over time, resulting in increased participation from social organizations at the territorial level. I want to emphasize the significance of citizen interventions before the Constitutional Court in both

instances. The feminist movement in Colombia was not strong enough in 2006 and could not engage in a more extensive conversation in Colombian society. However, in 2020-2022, the mobilization strategies deployed by Colombian feminists were able to expand the conversation in social media, newspapers, and other spaces. This allows us to talk about the fight for sexual and reproductive rights as an embodied struggle that goes beyond the legal and medical arenas. This connection can be made with other Latin American cases, such as Argentina and Chile, where activists are working towards the "social decriminalization of abortion" (Sutton and Vacarezza, 2021). I will analyze this topic through interviews with feminist activists who have been involved in the movement at different points, a review of the social media of feminist organizations, as well as an analysis of citizen interventions before the Constitutional Court in 2005 and 2020. References Jaramillo Sierra, Isabel Cristina , and Tatiana Alfonso Sierra. 2008. *Mujeres, cortes y medios: La reforma judicial del aborto*. Bogotá: Siglo del Hombre Editores. Sutton, Barbara, and Nayla Luz Vacarezza. 2021. *Abortion and Democracy: Contentious Body Politics in Argentina, Chile, and Uruguay*. 1st ed. London: Routledge. <https://doi.org/10.4324/9781003079903>.

## Visual Creative Student Contribution

### **Truth Unveiled: Debating the Need for a Truth Commission on Sexual and Gender-Based Violence in Belgium**

by Zahra El Morabit Sghire, Evelien Lootens-Stael, Anouk Vanden Broucke, Fleur Soete, Students of the Think & Talk Honours Programme, Ghent University

This project, conducted as a part of the Honours Programme "Think & Talk", delves into the pressing issue of Sexual and Gender-Based Violence (SGBV). A poster and interactive website were used to stimulate debate on the necessity and feasibility of establishing a Truth Commission on SGBV in Belgium. By showcasing the poster near the restroom facilities, conference participants are now also invited to use the website's voting feature, to indicate their ideas and interest for such a commission. The project aims to amplify the third action point of the #bloomforchance initiative, focusing on enhanced legal support for people having experienced SGBV.

# Current Themes in the Analysis of Human Rights (TS7)

## THURSDAY 7 DECEMBER

### Roundtable discussion

#### **Ten Years of Clinical Legal Education in Human Rights and Migration Law: Reflecting on the Experiences of the Ghent University Legal Clinic**

with Yasmina El Kaddouri, former student and current partner of the Clinic; Imane El Morabet, clinic coach, Human Rights Law Clinic; Piet Heyvaert, former student, Legal Clinic; Roel Van Landuyt, partner of the Migration Law Clinic, Minor-Ndako vzw; Hanne Van Walle, clinic coach, Migration Law clinic; Raoul Rombouts, Ghent University

Moderators: Saïla Ouald Chaib / Ellen Desmet, Ghent University

The Human Rights and Migration Law Clinic at Ghent University aims to provide students with hands-on practical education as well as to fulfill a social justice role by contributing to the effective protection of human rights. This round table discussion will reflect on the approaches and projects developed within the human rights branch of the clinic.

Since the establishment of the clinic in 2014/2015, many projects introduced by partners in the field of human rights have taken shape and been successfully completed by students under the supervision of a legal coach. The Human Rights Clinic collaborates with a diversity of partners from different sectors: law firms, the Belgian Equality Body, national en international NGO's, etc.

The roundtable will consist of representatives of the various 'actors' involved in the clinic, namely students, coaches and partner organisations/clients. They will reflect on challenges and opportunities in legal clinical work, including the question what is the added value for students and partner organizations, what are the challenges and pitfalls and what is the impact on the development of specific human rights such as nondiscrimination, and on victims of human rights violations, etc.

## **FRIDAY 8 DECEMBER**

### **Panel - Addressing Global Challenges through Economic, Social and Cultural Rights: Peace, Justice and Development**

#### **Addressing Poverty and Realising Economic, Social and Cultural Rights to Build Resilience to Global Challenges**

paper presentation by Luke Graham, University of Manchester

This paper is submitted as part of the proposed panel convened by Dr Amanda Cahill-Ripley (University of Liverpool). The panel title is 'Addressing Global Challenges through Economic, Social and Cultural Rights: Peace, Justice and Development'. Milestone anniversaries of International Human Rights Law instruments are a time for celebration, reflection, and new understanding (McNeilly 2023). This paper reflects on the UDHR at 75 through focusing on poverty. Poverty not only represents the non-realisation of economic, social and cultural rights but also underpins, creates vulnerability to, and exacerbates many global challenges. Conversely, addressing poverty can respond to an array of global challenges and contribute, inter alia, to achieving peace, justice, and development. This paper will argue that whilst global challenges may well be inevitable, the severity of their impact on those made vulnerable due to impoverishment is not. Addressing poverty therefore serves to make societies more resilient to global challenges. Despite this, poverty has long been neglected and systemically downplayed 'by many governments, economists, and human rights advocates' (Alston 2020). It has been seen as inevitable. This paper challenges this inevitability. This, in itself is not new. However, this paper offers new understanding in two ways. Firstly, by exploring alternative pathways to accountability which may be brought about through framing the harms of government policies as structurally violent violations of economic, social and cultural rights. Secondly by exploring the role of tackling poverty in building resilience to global challenges. The objectives are firstly, to allow for broader categories of harm to be regarded as requiring accountability; secondly, to allow alternative (and radical) pathways to securing such accountability to be employed; and thirdly, to allow new mechanisms to be brought to bear against the global challenge of poverty.

#### **Can the Application of Economic, Social, and Cultural Rights be a Tool for Sustainable Development to ensure the Human Rights of Future Generations?**

paper presentation by Sigrun Skogly, Lancaster University

At the event of the 75th anniversary of the Universal Declaration of Human Rights, it is tempting to look back and assess achievements and failures in the human rights project over the past quarter of a century. However, in this paper, I will take a different approach and consider how the UDHR and in particular the economic, social and cultural rights (ESC rights) the Declaration and subsequent treaties contain can be tools for ensuring sustainable development that may enhance the opportunities for future generations to enjoy their human rights. The object of the paper is to consider current implementation of ESC Rights, and how such implementation may



foster or impede a sustainable development that will ensure that future generations will be able to enjoy their rights. The paper will take as its starting point the recently adopted Maastricht Principles of human Rights of Future Generations, and through a critical analysis of these Principles, it will elaborate on how sustainable development within the framework of ESC rights may be advanced. The paper aims at a theoretical analysis, and will through desk-based analysis elaborate how ESC rights may be used as a tool to advance sustainable development. It will be necessary to employ a socio-legal approach to situate the analysis in a societal context, which will include ESC rights' effect on current environmental limitations within which such rights need to be implemented to safeguard the rights of future generations. Based on previous research, and initial research for this paper, I will expect to find that our approach to the implementation of ESC rights will need rethinking in terms of use of resources in a world that is rapidly depleting natural resources, and destroying the environment and climate. For future generations to be able to enjoy their human rights, we will need to find ways in which current populations can enjoy their ESC rights, while at the same time leave the future sustainable. This may involve significant redistribution of the way in which resources (financial and natural) are being employed.

### **Economic and Social Rights in Post-conflict Settings: Re-envisaging the Role of Regional Human Rights Bodies**

paper presentation by Felix Torres Penagos, University of Birmingham

Addressing violations of economic and social rights (ESR) in post-conflict societies has become a hot topic in transitional justice scholarship at least since Louise Arbor's influential 2006 speech at the University of New York. However, the field appears to be stuck at an impasse regarding how to deal with the legacy of ESR violations and related post-conflict concerns. The indisputable recognition of the importance of ESR in these contexts clashes with sceptical voices warning against broadening the field given the poor compliance record of transitional justice when delivering on less ambitious goals, such as addressing a handful of civil and political rights violations. This paper will argue that the approach taken by transitional justice advocates towards regional human rights bodies has contributed to this dead end. This stream of scholarship tends to overstate the protection of civil and political rights after widespread violence through the award of reparations, welcoming the adoption of far-reaching remedies with direct impact on the ESR of beneficiaries by some of these bodies. However, it has ignored the contribution of these bodies in developing frameworks to directly enforce victims' ESR in a workable way after widespread violence. The paper will show that the current approach is deeply flawed and will advocate for the direct enforceability of ESR by the judicial and semi-judicial bodies of the European, African and Inter-American human rights systems. This approach, however, may come into direct collision with some of transitional justice's most entrenched lines of reasoning and most cherished concepts

## **'The Elephant in The Room' - Human Rights and The Triple Nexus Policy Triangle**

paper presentation by Amanda Cahill-Ripley, University of Liverpool

Recent years has seen the introduction of a new approach to global challenges: The Triple Nexus policy approach. The triple nexus aims to bring together the fields of humanitarian assistance, development and peacebuilding into a coherent and coordinated framework in which the outcomes are 'more than the sum is of its parts'. It has been hailed as an important new approach to tackling some of the previous limitations in responses to crises including for example tackling silos and sequencing. However, a fundamental problem with the triple nexus is the omission of human rights from the approach, both theoretically and operationally. The United Nations has focused on humanitarian, development, and peace elements of the nexus, arguing that human rights should be 'deeply integrated across all three concepts.' Notwithstanding such rhetoric, human rights appear marginalised within the approach, in both policy and practice (despite their previous recognition as essential to sustainable peace and development). This paper will examine the omission and marginalisation of human rights from the triple nexus approach. It will explore the value-added by the inclusion of the human rights pillar and will consider the benefits and challenges of adopting such an ambitious framework. The paper asks the central question, should human rights be included as a fourth element of the nexus – a quadruple nexus, or is it sufficient to incorporate human rights as a cross-cutting element across the nexus. The research draws upon mixed methods, including analysis of primary empirical data as well as use of primary and secondary literature and policy documents. The overall contention is that for the triple nexus to be successful as a policy approach, human rights must be included as an element of the nexus on equal terms to the other pillars of the UN. Including human rights within the nexus, will provide a value-added and essential foundation for sustainable peace and development without which 'transforming our world' and achieving sustainable, inclusive and peaceful societies is improbable.

## **Panel - Addressing Global Challenges to Human Rights**

### **On "Povertyism" without Socialism: Discrimination, Human Rights and Distributive Justice**

paper presentation by Frédéric Mégret, McGill University

In this paper (which could also be a panel, I am open) I want to engage in a conversation about Olivier de Schutter's conception of "povertyism" in his latest report as Special rapporteur. I think that discrimination against the poor is a helpful concept but I want to suggest that it can be taken further. It is not just that the poor are the victims of discrimination for being poor, although that is clearly a significant dimension. It is, rather more radically, that poverty is itself a form of discrimination against a particular category of population preventing them from accessing certain economic goods and in the process producing the poor as a group. Reframing "povertyism" in this way brings attention to the "constitutive" role of discrimination against the poor and avoids a merely "culturalist" take. It thus aligns with conceptions of discrimination that see it both as emerging from "existing" categories and actually constituting these categories

(e.g.: racism). It opens the way to an intersectional analysis that sees poverty as the result of overlapping forms of discrimination: poverty is both the effect of such discrimination and a marker for further discrimination. Reconceptualizing poverty as, fundamentally, a form of economic discrimination against those "marked to be poor" also puts at the heart of the human rights project questions of distributive justice it has not traditionally foregrounded. Indeed, it provides a way of critiquing the "right to be free from poverty" approach to the extent that that approach focuses on poverty in isolation from inequality, where liberal human rights approaches are arguably deeply implicated in the perpetuation of poverty. Drawing on the "civil and political" power of discrimination to address on an "economic and social" issue, it highlights the potential of discrimination to bridge the gap between both. Specifically, I would like to explore whether it can help connect Marxist, socialist and social-democratic legacies and a reformed liberal rights project.

### **The Duty to Eradicate Poverty (and its Prospects) as a Peremptory Norm of General International Law (Jus Cogens): a Human Rights Perspective**

paper presentation by Simon Mateus, University of Pretoria

The topic of poverty eradication alongside peremptory norms of general international law has received somewhat limited to no attention in scholarly literature. A general survey of the existing literature on this subject suggests that although a great deal has been written on jus cogens and poverty as separate topics, there is a paucity of literature that comprehensively and effectively addresses the role of jus cogens relating to the fight against poverty. While the eradication of poverty has been recognised as an international community interest, very little attention has been paid to the idea of jus cogens in combating poverty, including the question of whether the fight against poverty, or any aspects of it, has acquired the status of jus cogens and the implication that this would have on States if it were so. This article seeks to assess whether we have reached that point in the development of international law to examine the normative status of the duty to eradicate poverty vis-à-vis peremptory norms of general international law (jus cogens). While the article does not in and of itself make the assessment whether the duty to eradicate poverty has reached jus cogens, inferences on the prospective jus cogens status of the duty to eradicate poverty may be made.

### **National Human Rights Institutions and Human Rights Defenders in a Shrinking Democratic Space**

paper presentation by Roxani Fragkou, University of Groningen

The international community has recognised the role of Human Rights Defenders (HRDs) in the promotion and protection of human rights. HRDs are individuals or groups that promote and protect human rights for all, including civil, political, economic, social and cultural rights. HRDs work across the world in different social and political climates. They can be individuals (such as journalists, lawyers, activists or members of the public) or organisations, either public or private, working at the national, regional or international level (such as NGOs, trade unions). HRDs are considered, within a democratic society, natural allies to governments and/or any organisation

or individual aiming to improve the human rights situation. However, in many regions around the world, when democratic space is at risk, HRDs increasingly face challenges and threats, including funding cuts and physical and verbal attacks, due to their action in favor of human rights. These violations reflect the state of human rights and fall within the scope of competence of international human rights organisations as well as National Human Rights Institutions (NHRIs). NHRIs are independent institutions, established by States to promote a culture of rights and ensure that 'no one is left behind', including those lacking a voice or facing pressure. They contribute to the achievement of SDG 16 on promoting peaceful and inclusive societies and building effective, accountable and inclusive institutions (UN Agenda 2030). NHRIs also act as 'bridge-builders' between international human rights standards and national realities by engaging with rights-holders and cooperating with government authorities, civil society and international organisations. It is unique to NHRIs that their independence, pluralism and effectiveness are periodically assessed. They receive international accreditation, ensuring their accountability and positioning them as interlocutors on the ground speaking up in defence of human rights in a variety of national contexts. When democratic space is shrinking, NHRIs can help place human rights at the heart of the public debate. Considering that NHRIs in compliance with the Paris Principles are also recognised as HRDs, it is also of particular interest to examine the cases in which NHRIs themselves are targeted. NHRIs and their staff, like other HRDs, often face important challenges and are exposed to attacks, threats, intimidation and harassment in connection to their human rights activities. Often, in fact, these challenges are directly linked to the action of NHRIs while defending other HRDs at national level. Europe is witnessing a rising trend of shrinking democratic space which is harmful to the enjoyment of human rights as States implement laws and policies restricting the right to privacy or freedom of assembly. In such a context, the work of HRDs in Europe is critical. The present intervention will discuss the nature and role of NHRIs in the promotion and protection of the rights of HRDs, especially when the democratic space is shrinking, while at the same time stressing the need for NHRIs to be acknowledged as HRDs, with the aim of contributing to the fulfillment of human rights and consolidation of democracy and rule of law in Europe.

### **Crisis Politics of Militarism: Human Rights Consequences of the Global War on Drugs**

paper presentation by Salvador Santino Regilme, Leiden University

In 2017, at least 585,348 individuals worldwide died prematurely due to illicit drug use (Ritchie and Roser 2019). Based on the International Drug Policy Consortium (2018, 7), the illicit demand for narcotic drugs at the global level is astounding: nearly 275 million people aged 15–64 have used illegal drugs at least once in 2016, a statistic that marks a 31 percent increase since 2009. If the narcotic drugs proliferation is construed as a crisis to be defeated through war, how is victory in such a war defined and constructed? What are the mechanisms that enable the implementation of widespread state violence entrenched in narcotic drug governance? How do we theorize post-Cold War global drug wars as the primary modality of narcotic drug regulation? To date, the scholarly literature concerning the global politics of narcotic drug regulation is empirically rich, but it does not offer a comprehensive explanatory theory on how and why

widespread state violence persists the way it is. Consequently, the proliferation of human rights abuses are abundant as states try to restrict illicit drug trade activities. In redress of that neglect, this paper presents the principal propositions of my theory of militarism in global drug wars. My theory explains how and why widespread state violence and abuses in narcotic drug regulation persist, with a focus on the normative justifications and patterns of violent practices perpetrated by state leaders as well as the human rights consequences of militaristic policy approaches to narcotic governance.

### **Decoding The Social Imaginaries Of State-Sponsored Killings In India**

paper presentation by Badrinath Rao, Kettering University

Though India is one of 55 countries with the death penalty, one is often reminded of how rarely courts mete out capital punishment. While ostensibly true, the limited instances of death sentences masquerade the scourge of state-sponsored killings. Various described as 'encounter deaths,' 'custodial deaths,' and 'extra-judicial killings,' law enforcement and security agencies routinely resort to killings with impunity. The victims are overwhelmingly poor and marginalized. They include members of the lower castes, minority groups, dissenters, agitators, and militant groups. The Supreme Court of India has passed strictures against state agencies for taking innocent lives and laid down elaborate protocols for investigating such killings. These rulings have little impact on the ground. Another form of state-orchestrated killings targets specific religious minority groups. For instance, anti-Sikh riots erupted in New Delhi and other parts of north India in November 1984 in the wake of the assassination of Prime Minister Indira Gandhi. In the state-condoned killings that followed, around 3000 people, mostly Sikhs, died. The second egregious instance of planned violence took place in 2002 in Gujarat. The Gujarat riots, directed against Muslims, resulted in over 2000 deaths and injuries to thousands more. This paper posits that state-sponsored killings and the legal immunity afforded to such acts are the offshoots of a social imaginary that views them as legitimate and appropriate. Given India's long history of socio-economic and cultural inequality, caste-based discrimination, and normalized violence against subaltern groups, its ruling elites and privileged castes view state-sponsored killings as a justified response to popular unrest. Besides, since independence in 1947, India has always been obsessed with 'masculinized security' and a Hobbesian paranoia about 'anarchy.' The rhetoric of security is used to target rebels, insurgents, communists, and anyone who dares to question the government. Demanding rights, human development, and dissenting against predatory policies are all 'threats to national security.' Violence and killings are preferred tools for 'accumulation through dispossession.' Security has become the handmaiden of xenophobic nationalism and neoliberalism. The upshot is the eclipse of civil liberties and the emergence of a police state, which augurs ill for Indian democracy and human security. 'Encounter' in police parlance in India is code for extra-judicial killing. A police 'encounter' refers to a purported exchange of fire between police and alleged criminals in which the latter die. Media reports about 'police encounters' routinely involve what the police claim was an unprovoked attack by 'criminals' during a pursuit which forced them to retaliate in self-defense. It is well-known, however, that police in India eliminate 'criminals' and 'terrorists' through

staged 'encounters.' The National Human Rights Commission has extensively probed 'encounter deaths' and described them as 'illegal.' In 2014, the Supreme Court of India issued a detailed 16-point procedure for investigating police encounters and taking legal action.

## **Panel - Critical Approaches to Human Rights and their Foundations**

### **The Future of Human Rights: Examining the Foundations of International Normative Change**

paper presentation by Eduard Jordaan, Rhodes University

There has been a steady output of scholarly forecasts about the future of human rights. These range from predicting the 'endtimes' of human rights on the one hand to their steady extension, on the other. One difficulty in making sense of these divergent predictions is that human rights scholars are not equally explicit and elaborate in identifying the drivers of change in international human rights norms and law. These human rights scholars also do not engage to a similar extent with literature from International Relations, a field that has long been concerned with the foundations of international norms and the reasons for international normative change. This paper aims to do three things. The first is to foreground what scholars who write about the future of human rights say about the foundation of international human rights. The second is to convert human rights scholars' understandings of the drivers of international human rights change to the language and categories of International Relations. The third aim is to use these categorisations to make predictions about the future of human rights based on what can be gleaned from the wider International Relations scholarship on international normative change.

### **The Concept of Human Dignity within the UDHR after 75 years: Is it Time to Define the Universally Ambiguous?**

paper presentation by Kate Karklina, Central European University

The UDHR is a landmark instrument that set in motion the development of the international legal framework of human rights protection at a truly global scale. The concept of human dignity is what inspired much of this post-WWII commitment to the culture of human rights protection and, importantly, it played a pivotal role in the drafting process of the UDHR itself. The memoirs of some of the key drafters of the Declaration confirm that during its long and gruesome drafting process, it was the reference to the concept of human dignity in the draft of the text that helped to pave the way to an agreement between the otherwise highly diverse ideological backgrounds of those present. The concept of human dignity served as the consensus point in formulating the justification of the international commitment to the protection of human rights at the time, although there was no clear understanding as to what the substantive contents of this concept, which appeared to be universally accepted, were. Notoriously, the UDHR does not define human dignity – it has been left to interpretation to this day – serving as the common ground between different conceptions of human rights while at the same time allowing for diverse interpretations regarding its meaning. This somewhat paradoxical situation created by the

absence of a definition of the concept was clearly a necessity 75 years ago, but is it imperative still? Perhaps today's challenges to the global protection of human rights would only benefit from a further delineation of what human dignity means when referred to at the level of international human rights law. This paper seeks to answer both these questions in the light of the current paradigm within international human rights law, whereby the concept of human dignity is posited as inherent to the human being and no less than the very source of human rights. Essentially, the paper inquires whether the lack of a clear definition of the concept of human dignity is not counter-productive to the broader aspirations of the international human rights project, which is grounded in the idea of the universality of basic human rights. Should not a truly universal notion of human rights grounded in the commitment to human dignity be clear as to what the concept of human dignity means? And conversely, is the alternative (current) dignity picture, where vagueness still predominates, a viable option at all? To address these questions, the paper surveys dignity jurisprudence at the level of international law: it looks at jus cogens norms and finds the protection of human dignity at the very core of that what peremptory norms protect; it then surveys regional human rights jurisprudence of the three regional human rights systems and finds that some core elements of the concept of human dignity can be delineated therein, namely, human dignity as the physical and mental integrity of a person and human dignity as equality between persons. Lastly, the paper turns back to the seemingly messy and vague dignity picture and concludes that the lack of a definition appears to be the very strength of the concept of human dignity as used in international human rights law, for, after all, it is conducive to a progressive delineation of the contents of the concept that is shared between its multitude of conceptions worldwide.

### **Minority Rights and the Legacy Problem**

paper presentation by Elizabeth Craig, University of Sussex

The UN Special Rapporteur on Minorities Issues has recently proposed a new minority rights treaty to the UN Human Rights Council, arguing that minorities have been neglected whilst advances have been made in relation to other groups (as demonstrated by Lennox, 2021). This paper considers the question of whether minority rights can be redeemed from their colonial and western origins and the dominant hold of former colonising and imperialist States. It focuses in particular on kin-majorities (Knott, 2023) and kin-minorities, and their respective kin-states, in minority protection debates, demonstrating their dominance in the League of Nations system and arguing that current minority rights norms and procedures are also designed to protect the status quo and the power of dominant groups and ethnicities. The paper will start by providing an overview of the League of Nations system, focusing on cases relating to the former Yugoslavia, which bordered Italy, Austria, Hungary, Romania, Bulgaria, Greece and Albania at the time. Meanwhile Western States and the USSR were excluded altogether. It then proceeds to illustrate how this dominance has continued as the application of minority protection norms has expanded (slowly but surely) following the adoption of the Universal Declaration of Human Rights 1948. Here the focus will primarily be on the UN system of rights protection, including consideration of the (former) Un Working Group on Minorities and the UN Forum on Minority



Issues. The paper will conclude by articulating the 'legacy problem' and will ask whether the adoption of a new treaty without an honest reflection of the historical legacy is the right approach.

### **Responsibilities: A Critical Defense of Rights**

paper presentation by Ian Turner, The University of Central Lancashire

Historically, the language of rights has been grounded in individualism and the possession of private property in particular. Do rights still emphasise individualism and private property, to the exclusion of other rights and/or rights of the group and/or rights of the environment? The Covid-19 virus took hold in Europe, in January 2020, spreading to several countries in a matter of days and weeks and significantly affected e.g. Italy, Spain and the United Kingdom. Like a number of other states, the United Kingdom went into a – its first – major lockdown in March 2020; schools closed and non-essential workers were encouraged to work from home. Individuals were permitted to leave their homes for non-essential activities, such as exercise, for no more than an hour a day and were compelled to stay close to home if they did so. The association with others outside of a person's household was forbidden. The wearing of surgical masks became routine in essential public activities such as grocery shopping. However, the protection of the individual from contracting the virus, with a surgical mask, was limited. But people were still encouraged to wear a mask – even compelled to do so in some instances. Why was this? It was not for the person's own safety – say, a right to be free from infection – but to provide security to others, in reducing the transmission of the disease from a carrier to a previously unaffected host. There was opposition to the wearing of masks but the hostility was small and largely muted; the vast majority of individuals, having already accepted the collective rules on self-isolation, recognised the same communal responsibility in the wearing of a mask. Recent events, therefore, such as significant restrictions on individual liberty following the covid pandemic, have naturally brought the corresponding duties arising from the exercise of freedoms back into the legal – and human rights – debate. Critical legal theory, drawing on scholars from the Left, such as Karl Marx in *On the Jewish Question*, 1843, and the Right, such as Carl Schmitt in *The Concept of Political*, 1932, is famously critical of liberal legalism and its associated, so-called neutral ideas of 'natural rights', the 'rule of law' etc. However, critical legal theory is often accused of being too critical of the apparent liberal legalist status quo but too slow to offer solutions. Can correlative duties owed to, say, the family, the community, the state, as per Article 27 of the African Charter on Human and Peoples' Rights and to the environment, such as the United Nations Framework Convention on Climate Change, 1992, the Convention on Biological Diversity, 1992, the Declaration on the Responsibilities of the Present Generations Towards Future Generations, 1997, etc, provide such a response from traditional critical legal attacks, in grounding responsibilities within a defence of rights?

### **The Human Right to Time: A Temporal Analysis of the Right to Human Dignity**

paper presentation by Martijn Stronks, Vrije Universiteit Amsterdam

Human rights are supposed to protect against (arbitrary) forms of power. Power and human rights can both be understood in temporal terms. Temporal governance is a form of the exercise of power that uses time and temporality as its most important instruments (Griffiths 2017). The possibilities of governments to use different conceptions of time (e.g. calendar, clock and human time) to distribute access to justice, legal entitlements and effective human right protection are seemingly endless (Stronks 2022). Legal procedures take time, procedures can be accelerated or slowed down, legal subjects can be made to wait before procedures start, or before they can apply for certain entitlements. Habeas corpus procedures for those in detention should be swift, whilst legal review of life long detention must have a recurrent character. Procedural deadline might restrict the search for truth in a human rights claim. Degrading treatment that lasts long, for example, might amount to inhuman treatment or torture. Human dignity, which is often conceived as the corner stone of human rights, has a temporal character. After all, human beings are spatio-temporal creatures, their lives extend in space and time. The temporality of human beings is reflected in the finite, irrevocable and unstoppable character of their time.

Yet, what is the precise role and meaning of legal time in human rights protection? Even though there is growing scholarship on relationship between time and law, and the study of time and temporality in philosophy, political science and political theory is thriving, there is little research on the role of legal time in human rights protection (notable exception for McNeilly & Warwick 2022). Moreover, the study of temporality in law often focuses on how different conception of time relate to certain legal doctrines, yet a thorough and comprehensive analysis of the ways in which time is used as legal technique, is still lacking.

This paper aims to provide a new perspective to the research of human rights, by scrutinizing human rights protection from the perspective of temporality by focusing on time as legal technique. The paper is part of a larger research project that, firstly, aims to map the diverse manifestation of time in the access to and distribution of human rights, and, secondly, scrutinizing the concept of human dignity as a temporal phenomenon. The working hypothesis of the research is that the concept of human dignity, which is often regarded the corner stone of the human rights catalogue, also protects the human right to time. This paper will provide a legal-philosophical account of the temporality of human dignity on the basis of the work of Emmanuel Levinas, Martin Heidegger and Hannah Arendt. It therewith aims to offer a first sketch of a temporal theory of human rights.

## Poster presentations

**Less is More: A philosophical evaluation of the ECtHR's (increased) protection of commercial speech**

by Roxan Degeyter, KU Leuven

Freedom of speech is the cornerstone of both individual liberty and the development of a democratic society. Therefore, references to those values have been invoked regularly by the European Court of Human Rights to justify its strong protection of freedom of speech. While the Court's rhetoric shows great adherence to the rationales of liberty and democracy in developing its case law – without doubt more than the US Supreme Court –, I argue that its position on commercial advertising is nevertheless insufficient to protect those values. Specifically, by protecting commercial advertising, the Court sustains a climate that negatively impacts individual autonomy as self-fulfillment, which is indispensable for the development of both robust liberty and democracy. Moreover, recent developments toward stronger evaluation of Member States' restrictions on commercial advertising will only exacerbate this issue. Following these considerations, I propose a new direction for the interpretation of the right to freedom of commercial speech, employing the legal tools already available. Both liberal and democratic theories would benefit greatly from a stronger focus on democratic, rather than liberal concerns in the definition of the scope of protection under Article 10. This would allow for more constraints on commercial advertising, for example by relaxing Strasbourg's scrutiny of Member States' restrictions on commercial speech. The article shows that rather than violating freedom of speech, those constraints are required by the rationales underlying the right. At the same time as allowing stronger restrictions, such an approach would strengthen the positive obligations under Article 10, which would provide an additional benefit to individual self-fulfillment and the alignment of freedom of speech jurisprudence with its theoretical justifications. The aim of this research is threefold. First, to show the way in which freedom of speech jurisprudence reflects both liberal and democratic concerns. Second, to demonstrate how the current protection of commercial advertising hampers autonomy, which is central to both liberal and democratic theories. Third, to suggest an alternative for future free speech jurisprudence.

## Artistic expression

### **Exhibition of illustrations “I choose to be... a defender of historical memory”**

by Sofía Moreno Aliste & Marit de Haan

These hand painted illustrations were created by Chilean illustrator Sofía Moreno Aliste in the context of a booklet with testimonies of human rights defenders and survivors of the Chilean military dictatorship. The message they wish to convey to future generations reflects in these illustrations. Each illustration highlights a different “element” of the struggle for human rights and historical memory.

The booklet “Yo elijo ser... un defensor de la memoria histórica” was published by Editorial Cuarto Propio in September 2023 and edited by Marit de Haan. It is based on interviews carried out in Chile in 2021 as part of her doctoral research project. The creation of the booklet and the illustration has been made possible by the Societal Value Creation Fund of Ghent University.



## Human Rights, Truth and Power (TS8)

### THURSDAY 7 DECEMBER

#### Panel - Getting to which Truth?

##### **'The idea ... is not to get to the objective truth': Views on Evidence, Truth and Justice from inside the European Court of Human Rights**

paper presentation by Anne-Katrin Speck, Ghent University

Since delivering its first judgment in 1960, the European Court of Human Rights (ECtHR, the Court) in Strasbourg, through the entirety of its substantial jurisprudence, has made a considerable contribution to establishing the human rights record of our era. Some of the Court's landmark rulings contain the most detailed and authoritative pronouncements on the circumstances of large-scale human rights violations occurring on the continent. In several judgments concerning the CIA's programme of 'extraordinary rendition', for example, the Court exposed to the world the sheer scale of some states' complicity in the operation of secret U.S. detention (and torture) sites on European soil. Can the Court, against this backdrop, be described as a truth-finding tribunal? And does the regime governing the Court's approach to proof and evidence facilitate or impede the seeking of the truth? These are the questions that this paper will explore, based on insights gained through ethnographically informed research involving a four-month study visit within the Court's Registry as well as some three dozen semi-structured research interviews with Strasbourg Court Judges, Registry officials and litigators. These research methods allow for inductively interrogating the concepts and categories that tie Strasbourg Court 'insiders' together in the way they talk about truth and evidence, both normatively and implicitly. This, in turn, generates valuable and novel insights into the evidentiary regime's main underpinnings, exposes different actors' perceptions of the Court's approach to evidence and truth, and helps ascertain whether the evidentiary regime is in need of reform. The data thus generated reveals that most Judges and Registry lawyers in Strasbourg—unlike their counterparts in the Inter-American human rights system—reject the suggestion that their task is to establish the truth of what happened to an individual applicant. In doing so, they invoke resource and epistemological constraints, conscious that the Court, as an international tribunal examining human rights claims through a predominantly adversarial process, almost invariably lacks the totality of the evidence or the proximity to the events in question. There appears to be a widespread perception that what interlocutors refer to as the 'real' or 'objective truth' is undetectable for Judges, and that Strasbourg's role is limited to delivering justice on the basis of the best available evidence—thus establishing, at most, the 'judicial truth' of a human rights complaint. Based on these observations, this paper

contextualises and critically examines the Court's generally passive approach to fact- and truth-finding, which stands in stark contrast to many victims' normative expectation that bringing their case to Strasbourg may help create a historic record of the truth of the violations they suffered. It is argued that there is a disconnect—mirrored in the views expressed by Judges and Registry lawyers—between the overarching goal of the Strasbourg system to create an espace juridique where human rights are upheld and violations exposed, and the more narrowly conceived evidentiary rules and practices, which are designed mainly to enable the Court to decide on the cases before it. The paper concludes with a call for greater conceptual precision around key evidentiary concepts, to help clarify the respective roles of the Strasbourg Court on the one hand, and the parties to the proceedings before it on the other, in elucidating the truth of human rights violations.

### **The Historical Recitals of the Universal Declaration of Human Rights**

paper presentation by Antoon de Baets, University of Groningen

It is not logical to expect the Universal Declaration of Human Rights (UDHR) to have an elaborate view of history. After all, it is a text of barely 1800 words mainly containing aspirations about the rights that all human beings should share. And yet this is a fallacy. The travaux préparatoires leading to the UDHR show that its drafters were thinking about history all the time when writing successive versions – seven in all – of what was to become the flagship of human rights. In addition, their vocabulary was colored by historical references. But above all, two historical recitals ended up in the UDHR preamble, one about barbarism in history, the other about the right to rebellion. These two recitals, 102 words altogether, reveal the UDHR's view of history. During the final vote in the United Nations General Assembly, on 10 December 1948, they were unanimously adopted by 56 votes to none. The purpose of this paper is to reconstruct the breathtaking history of these recitals. The UDHR drafters opposed barbarism in history to Roosevelt's Four Freedoms rather than to an explicit notion of political democracy (although they introduced that notion later in the document). And in some fierce debates, they weighed a right to rebellion against alternatives such as a right to petition and a right to a remedy, and finally decided to see rebellion not as a right but as a last resort against tyranny and oppression. Whereas the Four Freedoms still figure in the preambles of the two International Covenants derived from the UDHR, the idea of rebellion was silently dropped in favor of its less radical alternatives.

### **Truth and Reconciliation in the Age of New Social Media: The Tunisian Truth Commission's Facebook-Mediated Public Hearings**

paper presentation by Douaa Sheet, American University

Within much optimism hailing new social media's potential as the engine of information, dissemination, and participation on one hand, and truth commissions' unwavering commitment to exposing the truth, granting victims voice, and safeguarding people's right to information on the other, truth, information, and freedom of speech are exalted and equated with the public good. This paper questions this presumed relation between speaking and the public good,

between publicizing testimonies of violence and its assumed positive effect for the unity of a political collective. Through a study of the Facebook-mediated Tunisian Truth and Dignity Commission's public hearings, I analyze how the circulation of testimonies of violence on social media platforms alters their role in reconciliation efforts. While truth commissions attribute a very broad list of accomplishments to truth telling, perhaps least clear is its role in national reconciliation. I ask: How have these platforms' modes of circulation of content altered the established value of "speaking up" in democratic politics and of giving victims "voice" in national reconciliation efforts? I propose that through their systematic "war on silence," social media platforms have altered the role of the truth—of voice, of speaking, of knowing, of being informed, of listening—and of public testimonies in national reconciliation efforts. While "voice" has been celebrated and silence decried in human rights discourse, I suggest that social media's algorithm driven "war on silence" has potentially detrimental effects on the role of these testimonies in fostering empathetic publics and mitigating national reconciliation.

## Panel - Empowering (the) Truth

### **Dis-appearing Narrativity: Basma Abdel Aziz's Subversion of the Documentary Practices of Authoritarian Repression**

paper presentation by Rita Sakr, Maynooth University

The Egyptian writer Basma Abdel Aziz's fiction distills resources pertaining to creative writing, visual art, human rights advocacy and scholarly activism especially in the context of psychiatry, exemplified in her treatise *Dhākirat al qahr* [Memory of Repression] that expands her engagement with the narrativity of torture in the Egyptian and more generally Arab contexts into global directions. This paper approaches her two novels *The Queue* (2016, translation from the Arabic of *Al-Ṭābūr*, 2013) and *Here is a Body* (2021, translation from the Arabic of *Huna Badan*, 2017). I propose an interdisciplinary analysis of these works' narrative modes as a form of what I define as a 'documentary more-than-realism' expanding the experimental horizons of the twenty-first-century Egyptian dystopian genre that both anticipated and has accompanied the country's paradoxically convulsive and static relationship with neoliberal police state practices of systematic harm to bodily safety, affective integrity and experiential truth. The two novels communicate the interconnections of assaults on criminalised vulnerable bodies (whether protestors or street children) and documentary erasure in an unnamed Middle Eastern city that is however identifiable as Cairo. I argue that Abdel Aziz's experimental narration disrupts the workings of official 'paper knowledge' (Lisa Gitelman 2014) that monitors and contains its rebellious subjects by disappearing both slowly eroded lives and the evidence of harm done to them. These novels especially exemplify her engagement with Arab authoritarian (im)mobilities produced through a systematic containment and distortion of the record of human rights violations and a forced disjuncture between body, affect and truth. They are exemplary of her creative contributions to decolonising the hauntological implications of neoliberal authoritarian repression by means of both multimodal representational methods (including visual) on the page and radical more-than-realist narrative techniques that reconfigure their Orwellian



antecedents with respect to the tensions between narrativity, truth and power. These techniques render the necropolitical and necro-resistant scope of the (im)mobilising document as a manifestation of paradoxically realist politics whereby subjects operate within an alternative, exhausted, and perpetually confused epistemological framework that can only be disrupted through hauntological documentary methods. The paper engages documentary-more-than-realism at the intersection of literary-critical analysis, political philosophy and affect theory, human rights, document theory, the medical humanities and critical urban geography.

### **Applications for International Protection and the Notion of “truth”: a Sociolinguistic Perspective**

paper presentation by Marie Jacobs and Lotte Remue, Ghent University

Human rights violations are voiced, reported and assessed through spoken and written forms of discourse. In practice, however, the constitutive and powerful role of language in the efforts of states to protect individuals against human rights abuses, is systematically underestimated. Existing power inequalities, linguistic diversity and language ideologies about truthfulness and credibility impact the “hearability” of people’s human rights stories (Blommaert et. al. 2007). In this presentation, we will investigate the power of language and the construction/evaluation of truthfulness through looking at the human rights context of the procedure for international protection in Belgium. In doing so, we will draw on ethnographic observations, fieldwork interviews and document analysis in different asylum contexts: hearings between protection officers and asylum applicants; legal consultations between immigration lawyers and asylum applicants and communication between guardians and unaccompanied refugee minors. Each of these fieldwork settings is linguistically very diverse as the speakers are usually not proficient in each other’s language. European law foresees that the right to an interpreter must be guaranteed: applicants have the right to an interpreter in the procedure for international protection (2013/32/EU), reception (2013/33/EU) and legal counsel (ECtHR 2011). While several EU laws and directives refer to the right to interpretation as a standard to ascertain linguistic rights for AIPs, there is an overall lack of a clear framework for the implementation of these provisions between and within Member States. In consequence, the implementation of the right to translation and interpretation may depend on local policies and organisational routines, which often include non-professional forms of language support. The arbitrary nature of applicants’ access to quality language support constitutes a linguistic injustice and undermines their ability to express their needs for protection and support and to have their voice heard. Sociolinguistic analysis of the interactional data reveals the notion of “Truth” as a recurring theme across the multilingual encounters we observed. Government authorities aim to establish credibility by discovering the truth and assessing whether an applicant is speaking the truth (Doyle 2021). Procedural requirements obligate asylum applicants to produce (Barsky 1994), disclose and perform (Maryns 2013) truth. There is, however, a mismatch between the institutional expectations of what kind of narrative indexes a true refugee identity and the experiential truth which asylum seekers are prone to voice through personal narratives. Lawyers as well as guardians try to support asylum applicants in this process of bridging the gap between these two conceptions of truth (Jacobs & Maryns 2021). Without falling into the trap of complete

relativism (Doyle 2021), or in other words, without denying that asylum applicants truly suffered human rights violations, this mismatch does raise questions about whether a black-and-white distinction between truths and lies is productive in the context of asylum determination. Discourse analysis of asylum decisions foregrounds a pragmatist theory of truth, namely the idea that “truth is the end of the inquiry” (James 1907). “Where it can be difficult to access the ultimate truth of what really happened to the asylum seekers, or of how honest their recollection has been (...) we do have access to what officers and judges think is true” (Fassin 2013: 24). On a discursive level, asylum decisions are characterised by strategic mechanisms aimed at legitimising the legal argumentation. These strategies attribute subjective positioning to the applicant’s story, while at the same time constructing a staunchly objective stance taken by the authorities (Verhaeghe et al. 2023) – thus constructing their rejection decision as the truth.

### **Academic Freedom as the Human Right to the Pursuit of Truth**

paper presentation by Tamara Levitz, UCLA

As scholars have come under threat in recent years, critical theorists have been thinking about how to protect academic freedom beyond the nation state—a subject that has led them to brush up against the idea of human rights. Homa Hoodfar has called for a “borderless and global” transnational right to academic freedom and critical thinking that would be established from the ground up, taking into account local conditions and histories. Judith Butler, while evading the “human,” has called for the right to “belong to, and live within, a livable world, and one that depends on public and institutional support for open inquiry and critical thought.” Many current theories assume that academic freedom can be justified based on Article 26 of the Universal Declaration of Human Rights of 1948. There, education is defined as a human right because of its ethical goals, which include developing the human personality, strengthening respect for “human rights and fundamental freedom,” and promoting “understanding, tolerance, and friendship among all nations racial or religious groups.” Most charters and recommendations issued since then have likewise built on this article without questioning it: Article 13 of the International Covenant on Economic, Social, and Cultural Rights (1966-76), for example, recognizes the “liberty of individuals and bodies to establish and direct educational institutions” within the context of the right to education. Largely missing from these historic statements and the current discussion is an independent epistemological justification for academic freedom that can serve as a basis for considering it as a human right. Michael P. Lynch recently suggested that such a justification has been lacking because of growing skepticism in the poststructuralist 1980s and 90s about the pursuit of knowledge as a disinterested, nonpartisan, apolitical endeavor aimed at seeking truth—an idea once at the foundation of academic freedom. Many began justifying academic freedom socio-politically at that time. Critical of these developments, Lynch advocates for a return to John Dewey’s commentary from 1902 on academic freedom as the practice of investigating the truth, critically verifying facts, and reaching conclusions by the best methods at our command. He thinks we have to inquire into the social value of academic freedom, which he then defines as the pursuit of truth via the justificatory practices of rational inquiry in democracy as a space of reasons and respect for persons. This inspiring suggestion

fails to consider, however, the labor conditions, issue of discrimination, and power imbalance that led scholars in the 1980s to abandon epistemological justifications of academic freedom based on the pursuit of truth in the first place. In honor of the 75th anniversary of the Universal Declaration of Human Rights, I propose in this lecture to build on current debates about academic freedom and my own longstanding research on disciplinary history to establish a convincing epistemological justification for academic freedom that is based on the pursuit of truth yet takes into account material conditions and difference. My goal is to present a justification convincing enough to allow us to consider academic freedom as a human right and to establish a global commons of critical thought.

### **Poetry and Human Rights: The Practice of Critical Hope**

paper presentation by Cornelia Grabner, Lancaster University

The Practice of Critical Hope Poetry has been present in the struggle for Human Rights in a variety of ways: poets have used their standing as a platform to speak out in favour of Human Rights, or on behalf of those who were silenced; participants in struggles for social and political transformation have created poetry as testimony or denunciation; those suffering repression created poetry as a means of survival and testimony, often under terrible conditions; poetry was created within solidarity movements as a way of creating awareness and reaching out to the public. In this paper I will compare three examples of poetic practices linked to the struggle for Human Rights: poetry of witness, poetry of solidarity, poetry of memory. Poetry of witness is a term introduced by U.S. American poet Carolyn Forché, following on from her experiences of witnessing different variations of extreme violence in El Salvador, South Africa, Lebanon, and in Northern Ireland. In her work as a poet and anthologist, she built a strong case to show that the condition of the 'witness' has shaped poetries across cultures, including her own. Poetry of solidarity was often practiced in solidarity and Human Rights movements in Europe. The example I will introduce in this paper is that of the German-Chilean duo Urs M. Fiechtner & Sergio Vesely, who started to work together during the 1970s. Fiechtner's work in particular is also linked to his practice as an editor, translator, and Human Rights activist; I will here look specifically at the Autorenkollektiv 79 and the Edition Kettenbruch, initiatives that Fiechtner has been involved with and which have developed a poetics of Human Rights promotion over the past 50 decades, always responding to wider political changes. Poetry of memory works with transgenerational practices of memory. I will introduce two currently ongoing projects based on documents held by the archives of the Centro Académico para la Memoria de Nuestra América (CAMENA) in Mexico City: the re-publication in a bilingual edition of poems from political prisoners in Argentina, originally published in the early 1980s; and the musicalization of mostly anonymous poems written during the civil war in El Salvador, copies of which were kept in Mexico by activists affiliated with one of the guerrilla organisations that formed part of the Salvadorean umbrella organisation FMLN. I will show how poetry and practices surrounding poetry have always had a strong, sustaining and nurturing presence in struggles for Human Rights, bringing together the denunciation of atrocities, the nurturing of practices of survival, and the building of what Paulo Freire termed 'critical hope'.

## **Panel - Victims as Drivers of truth – as well as of Reparation**

### **Visions of Justice and Change from Below: Victim Mobilisation around Transitional Justice in Morocco**

paper presentation by Pia Falschebner, Phillips University Marburg

Drawing on empirical evidence from research with survivors of the so-called 'Years of Lead' in Morocco, the role of transitional justice as tool for resisting, challenging and shaping state policies will be explored. In a context characterised by a dominant narrative of the past, 'red lines' defining what can be voiced publicly, and a silencing of dissent – then as now, albeit to different degrees – 'truth' itself emerged as a battleground. It is against this backdrop, that claims to and activism around truth and memory have been and continue to be at the heart of survivors' mobilisation in Morocco. The presentation will therefore investigate how Moroccan victim organisations draw on truth and memory as repertoires in their struggle for transitional justice and change, both discursively and by 'enacting' truth; and assess the specific meaning of truth for survivors as well as its entanglement with other dimensions of transitional justice in the context of an 'aparadigmatic' case of transitional justice (Destrooper et al. 2023), where the elite showed limited interest in dealing with the past and the transitional justice process was not accompanied by regime change. This not only foregrounds the capacity of victim groups to act as collective political actors, but also highlights to the distinct role of 'truth' in struggles for and around transitional justice.

### **Presencing the Disappeared: Truth-seeking in the Syrian Context**

paper presentation by Brigitte Herremans, Ghent University

Arbitrary detention, torture and enforced disappearance hold a central position in the Syrian polity and are defining features of the Syrian conflict. Since the start of the uprising in 2011, the number of individuals subjected to enforced disappearance has exceeded 130,000. Both Syrian and international NGOs, alongside UN institutions, have extensively documented how Syrian government forces employ enforced disappearance as a tool of intimidation. Additionally, they have reported on instances of enforced disappearance by the Islamic State and armed opposition groups. Even though it impacts millions of people, the issue of enforced disappearance did not receive significant attention internationally. Challenging international inaction, victims and their families have continuously raised this issue, insisting on their right to the truth and spearheading initiatives aimed at determining the fate and whereabouts of their loved ones.

In this presentation, I explore how the proactive engagement of Syrian victim groups has elevated the issue of enforced disappearance to the forefront of the international justice agenda. First, I explore how Syrian victim groups have tested more grounded ways to promote justice and accountability, foregrounding issues that risk being erased or invisibilised. A first milestone in this respect was the launch of the Truth and Justice Charter in 2021, promoting collective mobilisation and cooperation among victims and their families. Then I demonstrate how the Charter's associations campaign to create an international mechanism, resulted in the decision of UN General Assembly in June 2023 to establish an Independent Institution on Missing Persons

in Syria. In conclusion, I argue that victim mobilization in the Syrian context has reinvigorated ongoing justice efforts, remedying the lack of involvement of victims in formal avenues and centralising victims' experiences and justice needs.

### **Juxtaposing Reparations Initiatives from below: Survivors' Understandings of Reparative Measures after Mass Atrocities in Guatemala**

paper presentation by Kim Baudewijns, Phillips University Marburg

In post-conflict Guatemala, victims' and survivors' organisations, civil society and human rights associations actively mobilise the right to truth and reparation for victims in pursuing justice and accountability for the mass atrocities committed during the internal armed conflict (1960-1996). Organisations have been at the forefront of pronouncing their rights and actively exercising them, such as the right to truth, particularly in the search of the disappeared. Additionally, victims' organisations and civil society have advocated strongly for the right to reparations for victims of the armed conflict, which was eventually recognised through a National Reparations Program.

However, in the current socio-political context, official transitional justice mechanisms seem to have come to a standstill. Nonetheless, victims organisations and civil society continue to mobilise around the right to truth and reparation. Not only do they focus on formal transitional justice measures, but they also strategically utilize informal mechanisms as a means to complement and diversify the efforts.

Focusing specifically on the case of Guatemala, in this presentation I will further explore juxtaposing understandings of the right to truth and reparations of survivors through formal and informal transitional justice approaches.

### **Transitional Justice Narratives and Practices mobilized by Indigenous Peoples in Peru to unearth a Legacy of Extractivism**

paper presentation by Sarah Kerremans, Ghent University

The article, which forms the base for my presentation and is co-authored with Dr. Tine Destrooper, explores the nexus between ecoterritorial conflict resolution and transformative transitional justice, against the background of (neo)extractivism and the Peruvian case of half a century of oil violence. It centerstages Indigenous transitional justice discourses and practices, particularly in relation to truth, in the realm of cycles of open conflict, dialogue and agreements in Peru's historical oil circuit in the midst of the Amazon. On the one hand, it is argued that transitional justice can act as a conceptual and analytical lens to better understand and further (claims for) change while also countering the invisibilization of ecoterritorial struggles of Indigenous and local communities who resist the framing of their lives and ecosystems as sacrificable or disposable. On the other hand, it is argued that reading ecoterritorial struggles through the lens of transitional justice also has implications for the paradigm itself. I build for this presentation on my prior long-term engagement between 2009-2018 with Indigenous communities in Peru's oil circuit and on two recent research field trips to the same area.

## **FRIDAY 8 DECEMBER**

### **Panel - Multiperspectivism in Truth-seeking**

#### **Seeking Truth and Justice for the Bereaved: the Inquest Process in England and Wales and Article 2 ECHR**

paper presentation by Kate Stone, Garden Court North Chambers, UK

The inquest is a specialist inquiry into what appear to be non-natural deaths, conducted by a coroner: see Jervis on Coroners (14th Edition), 2019 (Sweet & Maxwell), London at §1-03. The office of coroner has evolved over the centuries and is now governed by statutory provisions which set out her duties of investigation. Where an investigative duty arises, the coroner must determine the scope of her inquest, which may take place with or without a jury. She must, however, ensure that the relevant facts are fully, fairly and fearlessly investigated: *R v North Humberside Coroner ex p Jamieson* [1995] QB 1, 24. The inquest is also now the primary means by which the investigative obligation under Article 2 of the European Convention on Human Rights is discharged in England and Wales: *R (Middleton) v West Somerset Coroner* [2004] 2 AC 184, 20. This paper will focus on coronial investigations to which the enhanced Article 2 investigative obligation applies, and address how this prior question of applicability is determined. It will consider the process of the “Article 2 inquest” within the wider thematic stream of human rights, truth and power, to examine the role of such inquests in establishing the truth of human rights violations. It will pay particular attention to the role of the bereaved within the process, having regard to the requirement under Article 2 ECHR to ensure that the bereaved are afforded an appropriate level of participation in the investigative process: see for example *Jordan v United Kingdom* 37 EHRR 52, 109.

#### **Truth, a Multidimensional Concept: Reflections on the Use of Digital Open Source Evidence in Justice and Accountability Processes**

paper presentation by Ruwadzano Patience Makumbe, Ghent University

This paper’s focus is to dissect how truth is conceptualised within the dimensions of evidence in human rights justice and accountability. The premise of examining the correlation between evidence and truth is drawn from the realisation that digital open source evidence, though distinct from other types of evidence remains subject to the underpinning characteristics, challenges and limitations influencing the realisation of truth. Truth has been observed to be a core feature of justice and accountability, however there is no definition of truth. This creates normative ambiguities and this paper argues that recognising the multidimensionality of truth in human rights processes furthers their varied purposes of achieving justice and accountability, whilst also demonstrating the limitations of evidence and evidentiary approaches in ascertaining or uncovering the truth. What is truth in judicial and quasi-judicial adjudication? Is truth a useful concept in human rights justice and accountability? How is truth conceptualised where digital open source evidence is used in human rights justice and accountability processes?



These are some of the questions that this paper confronts. To understand the complexities of addressing these questions, I look at the European Court of Human Rights and quasi-judicial processes such as UN Fact-finding Missions and how they view the notion of truth as demonstrated in their case law, evidence rules and practices. I also provide real-life examples that demonstrate the nuances of using digital open source evidence as a tool for truthfulness. A key feature of digital open source evidence is its audio-visual character which can at face-value be deemed to present an 'objective truth.' However, this view does not necessarily withstand criticism due to the vulnerability and volatility of digital open source evidence. Images, videos and audio materials may be manipulated or smeared with disinformation campaigns to undermine the evidence. An example of targeted disinformation campaign based on digital open source evidence is the images and videos on the ongoing conflict in Ukraine shared on social media and other media platforms showing civilians killed on the streets and destruction of property as the Russian forces retreated from Bucha, a town outside of Kyiv in Ukraine. The Russian Ministry of Foreign Affairs published a statement challenging the authenticity of the images and videos that were being circulated. In the statement they stated that, "the photos and video footage from Bucha are another hoax, a staged production and provocation by the Kiev regime for the Western media." To disprove Russian allegations, Human Rights Watch corroborated the information from the images and videos with interviews conducted with local residents who have confirmed the gross violations carried out by Russian military including summary executions. Bellingcat, has gone further to disprove the claims by the Russian government that the images and videos were fake. To do this, they analysed the times of publishing of the images and videos and the location and positions of the corpses in the different pieces of the digital open source evidence. This depicts how the truth can have many faces and this paper therefore demonstrates that truth can be understood in many different ways and nuanced approaches are required to ascertain truthfulness.

### **Remedy under Mandatory Human Rights Due Diligence Regimes: A pathway through Truth, Reconciliation and Sports**

paper presentation by Shubham Jain, University of Cambridge

Several domestic (Business & Human Rights Resource Centre, 2023), regional (European Council, 2022) and international (UN OHCHR, no date) efforts are currently underway to adopt mandatory Human Rights Due Diligence (mHRDD) legislations which would require businesses to identify risks and impact of their operations, mitigate harms, evaluate and report on mitigation and ensure remedy. Access to remedy rests on the discovery and establishment of truth about the violation of the rights. The right of an affected person to know the truth about violations that affected them is becoming a part of international human rights law (IHRL) due to acknowledgment in case law and soft-law instruments (van Noorloos, 2021). I wish to explore a pathway towards comprehensive remedy under mHRDD regimes through a critical theorization of the links between the right to truth, the Truth and Reconciliation Commission or process (TRC), and sports. TRCs engage directly with the experiences of affected persons. They bring forth their voices to seek reconciliation, and justice, preserve memory, guide reforms, and provide remedies



(Hayner, 2011). Thus, TRCs assume significance as a remedy in themselves and as a means to remedy. A recent example illustrates the power of TRCs in sporting contexts. Cricket South Africa's (CSA) Social Justice and Nation Building (SJN) process is perhaps the first instance of a truth-seeking and healing process within sport. The SJN report highlighted the institutionally racist nature of the game in South Africa and suggested remedial measures (CSA, 2021). Sport provides a unique platform to evaluate and promote the role of TRCs in facilitating remedy as sport allows a study of complex social, political, and economic issues in controlled settings rarely found in other aspects of social life (Frey and Eitzen, 1991). Through deliberation and experimentation, sport resolves questions of gender inclusion, ethics, safety, mental health, diversity, representation, governance, and disruptive businesses (Kamath, 2023 forthcoming). There is a general movement towards a more responsible and human rights-compliant sporting ecosystem. For instance, several sports governing bodies (SGBs) have adopted human rights policies and introduced mHRDD requirements for event organisers (Rook et al, 2022). European Union (EU) law and institutions have a particular role to play in this discussion as most SGBs are based in Europe and enjoy considerable autonomy in their functioning under EU and Swiss law. Moreover, the EU is taking a lead in the adoption and discussion of mHRDD regimes. My principal research question is whether and how TRCs can promote human rights and provide remedies under mHRDD regimes with sport as the site of evaluation. I begin by examining the meaning and scope of the right to truth under IHRL, how the truth of violations is established, and the legal and policy instruments that facilitate TRCs in international law. Subsequently, I evaluate the nature of TRCs and argue that they can play a vital role in ensuring remedy under mHRDD regimes. I also argue that SGBs would effectively have obligations under mHRDD regimes. I then look at instances of rights violations and abuse in the world of sports and assess the role of TRCs in providing remedies in these cases. I conclude with the implications of this study on the thinking about the right to truth, the utility of TRCs, and the transposition of sporting lessons to the wider society.

## Artistic expression

### **Presentation and discussion of the exhibition 'Intangible proof: Indigenous Peoples in Voluntary Isolation at the Inter-American Court of Human Rights'**

by Nina Valerie Kolowratnik, Ghent University

The Tagaeri Taromenane are the last uncontacted Indigenous peoples in Ecuador. They inhabit one of the world's most biodiverse areas in the Amazonian rainforest, an area not only rich in flora and fauna, but also rich in crude oil and hardwood. The traditional area used by the nomadic Tagaeri Taromenane tribe by far exceeds the protected area called "zona intangible" that the Ecuadorian state created. Legal and illegal oil extraction and logging activities in that area have provoked a series of violent encounters between the Tagaeri Taromenane, resource extraction companies, as well as neighboring tribes that already surrendered to external pressures and now work for the latter companies. The Tagaeri Taromenane's fierce defense of their territory, however, represents an unequal fight of wooden spears against firearms and has already cost

at least 40 Tagaeri Taromenane lives. The failure of the Ecuadorian state to protect the Tagaeri Taromenane in voluntary isolation is currently the object of a case before the Inter-American Court of Human Rights (IACtHR) and it will be the first time the Court will issue a judgement where the victim group are indigenous peoples that have chosen not to be in contact with the outside world.

# Human Rights Knowledge through Experience (TS9)

**THURSDAY 7 DECEMBER**

## **Panel - Affirming Difference in Inclusive Education**

### **Creative Behaviour in Inclusive Education**

paper presentation by Hanne Hellin & Elisabeth De Schauwer, Ghent University

Increasingly teachers experience challenging behaviour in regular education (Ledoux & Waslander, 2020). Furthermore, teachers indicate that it is often difficult for them to deal with this behaviour (Onderwijsraad, 2010). However, behaviour always arises in interaction with the environment (Roorda, Koomen, Split & Oort, 2011). We gain insight into how challenging behaviour is approached in education today and what teachers need to feel strengthened in this regard through the expertise of parents and children (Goei & Kleijnen, 2009). This study explores how this expertise can be used to strengthen teachers in dealing with challenging behaviour.

### **Giving Voice to Parents of Disabled Children who chose for an Inclusive Life**

paper presentation by Inge Van de Putte & Silke Daelman, Ghent University

When we work with parents of disabled children choosing for inclusion, we always remain most affected by their stories. Three groups of six to eight parents are coached by 'story-coaches' during workshops where they knead their story and prepare themselves for recording, which happens on an intimate evening with a small audience. Here, the stories continue to bind with other stories. Throughout this process of research-creation, we explore the choice for inclusion as more than a story about 'rights' – a pedagogic choice related to what parents want for their children in the future. We search for how the never-ending belief in change and growth of disabled children colors these stories as much as the other way around. We explore how inclusive journeys are journeys of connection and collective response-ability (Barad, 2007).

### **Decolonizing in Curriculum and Pedagogy in Higher Education**

paper presentation by Yasmine Kaied, Ghent University

This paper aims at reconfiguring decolonization in higher education by means of re-imagining how to organize higher education with regard to accessibility and knowledge production. Flanders is characterized by growing diversity. Not only the number of persons with migration background is increasing, but the internal diversity of these groups is too. This 'superdiversity' of the population in Flanders is an important challenge for policymakers and the service-

providing society (Noppe et al., 2018). We aim to understand what decolonization can mean within the context of the University of Ghent, whilst staying close to the perspectives and experiences of students with a migration background and mapping barriers to participation in higher education.

### **The Transition at the End of Secondary School for Young Adults with a Disability**

paper presentation by Hanne Vandenbussche, Ghent University

The fourth paper discusses the end of secondary school. The spirit of the UNCRPD entails an inclusive society in all societal domains. In this paper we walk-with (Manning and Massumi, 2014) Wout, a young adult with Down syndrome. At the time of writing Wout was thinking about postsecondary school life. We met several times to discuss his future dream book – a portfolio of his history with eye for his desires and dreams, his strengths and needs. We analyze moments of wonder in which some events keep returning and illustrate Wout's giftedness in building concrete utopia (Bloch, 1986).

### **Panel - Human Rights and Experiential Knowledge in Care and Support**

#### **Human Rights Knowledge through Experience: Opportunities, Risks and Limitations**

paper presentation by Didier Reynaert & Jessica De Maeyer, HOGENT

In the field of human rights, both scientific knowledge (knowledge coming from scientific research on human rights) and practical knowledge (knowledge coming from 'doing' human rights) are well established and recognized sources of 'human rights knowledge'. Still in the shadow is knowledge through experience. This is knowledge on human rights, based on the experiences of those people who face violations of their human rights on daily basis, such as people living in poverty, people with disabilities, people with mental vulnerabilities, young people with experiences of growing up in youth care institutions, etc. Although the relationship between human rights and knowledge by experience has received little attention in research, policy and practice, the movement for human rights and the movement for the recognition of knowledge through experience share a number of foundations. First, they have a shared history. The development of human rights and knowledge through experience are closely connected in their shared historical pursuit of emancipation with participation, self-determination and democratic decision-making as normative foundations. This lives on in the slogan 'Nothing about us without us is for us', that can be considered as a sharp critique on dominant professional regimes of paternalism, bureaucracy or managerialism that still have a strong grip on people in vulnerable life conditions. Second, experts by experience are increasingly being deployed in the field of care and support for people living in vulnerable life conditions in order to make these life conditions accessible and comprehensible for professionals and policymakers. In this way, experts by experience often take up a bridging role as the 'missing link' between the world of people living in vulnerable life conditions and the system world of care provisions. As such, experts by experience can be considered as a crucial 'instrument' in challenging the non-

realization of human rights. Third, knowledge through experience and human rights relate in their shared politicized character. A human rights-based approach in care and support for people living in vulnerable life conditions not only aims to question the power relationship at the individual level, between service-users and professionals. It is at least as important to question this power relation on a structural level, in the public debate on what constitutes good and high-quality care and support for people living in vulnerable life conditions. Practices of advocacy and collective action are therefore essential in order to contribute to the realization of human rights and full participation of people living in vulnerable life conditions in society. In this presentation, we elaborate on the shared foundations of human rights and knowledge through experience. We do this, based on the work of the EQUALITY//ResearchCollective of HOGENT University of Applied Sciences and Arts. In its work, EQUALITY//ResearchCollective starts from the assumption that scientific knowledge, practical knowledge and experiential knowledge are 3 equal pillars of knowledge and that knowledge construction needs to be understood as a shared process of co-creation between these 3 forms of knowledge. That is why EQUALITY//ResearchCollective deploys experts by experience in its research projects. During our presentation, we discuss the possibilities and opportunities this offers, but we address risks and limitations of involving experts by experience in research.

### **Strengthening Experiential Knowledge through the Individualized Care and Concern of Cura Personalis**

paper presentation by Jarrod Stadnyk, St Paul's High School

Knowledge through experience, the third source of knowledge in relation to human rights, has helped raise the awareness of the perspectives and experiences of people challenged with human rights violations. Helping the voices of people whose rights have been violated be heard is important in order for the authentic realization of basic rights. Organisations that help prevent human rights violations and provide support for those whose rights have been violated can become disconnected from the individualized voice and personal perspective of the people whose rights are violated on a daily and structural basis. Ensuring the voices are heard from the individual people whose rights are violated helps fight the feeling of a lack of representation and care for people's interests in society and a feeling of being less than a full citizen. The knowledge through experience stream has helped to bring attention to the relationship between human rights and the individual voice of the people whose rights are being violated. Cura personalis can help to animate experiential knowledge and bring attention to the individual voice of the people whose rights are being violated. Cura personalis is a guiding principle for Jesuit education, which is an education based on the traditions of Saint Ignatius of Loyola and the Jesuits, also known as the Society of Jesus. Cura personalis is individualized care and concern for the whole student, including body, mind, and soul. The Core Cura Personalis Characteristics that help ensure an individualized care and concern include relationships, programs, feedback, and policies. Cura personalis helps to provide a lens for understanding the impact an education has on the well-being of students. Based on the case study of the Jesuit Refugee Service in Lebanon, cura personalis was deconstructed into a concept in order to gauge its impact on

students and the education they receive. The case study from Stadnyk's (2021) dissertation is titled Individualized care and concern for the distant neighbour: A case-study on the organizational hierarchy that fosters a culture of *cura personalis* in Jesuit Refugee Service schools in Lebanon. From the case study a greater understanding of *cura personalis* was created and it provides a pathway to more universally apply the theory of individualized care and concern. Of particular note is the paradigm of using *cura personalis* as a lens to help understand how a human rights organization is developing the mechanisms of relationships, programs, feedback, and policies in order to ensure they are proxies of *cura personalis* that ensure well-being. Understanding and using a *cura personalis* lens for human rights will help ensure the voices of those whose human rights are being violated are in fact heard. Within knowledge through experience the slogan of 'nothing about us without us if for us' is more attainable when the individualized care and concern of the "us" is built within the culture of the care and protection for whichever group is the "us". *Cura personalis* is an active way for an organization to commit itself to fighting the disenfranchised feelings of a lack of representation and care for people's interests in society and the feeling of being less than a full citizen. Using *cura personalis* at least as a lens to view human rights can begin the process of embedding experiential knowledge in human rights practice and policy since there will be attention to the individual's care and concern rather than just the pre-determined idea of what the individual is experiencing with human rights. This understanding can help animate experiential knowledge in order for it to contribute to the understanding of how human rights are realised.

### **From Human Rights to Transformative Change: Social Work in Médecins du Monde**

paper presentation by Didier Boost, University of Antwerp and Ellen Verryt, Doctors of the World

The persisting health inequalities between and within societies put pressure on the highest attainable standard of health as a fundamental human right. Across low-, middle- and high-income countries a clear social gradient can be observed: the lower an individual's socioeconomic position, in general, the worse their health (Mackenbach et al., 2008; Victora et al., 2003). Today, the scientific evidence for this connection is unambiguous, and non-medical factors – such as income, employment, education, housing and social inclusion – have proven to play a substantially larger role in determining health outcomes compared to genetic predispositions and personal health choices (Andermann, 2016; Braveman & Gottlieb, 2014; Craig et al., 2013; Taylor et al., 2016; Wilkinson & Marmot, 2003). Acknowledging these issues as infringements of human rights obliges states to prioritize health equity and social justice by ensuring universal access to timely, acceptable, and affordable care (Allen et al., 2020; Andermann, 2016). For groups on the margins of society – such as undocumented migrants, refugees, and people experiencing homelessness – the aforementioned disparities are significantly amplified. Despite their legal entitlement to preventive, curative, and palliative health services, access to publicly subsidized care in Europe is not (entirely) guaranteed for these groups (Bicocchi & LeVoy, 2007; Lebano et al., 2020; Wright & Tompkins, 2005). In light of these crises, Médecins Du Monde – an international humanitarian medical NGO – has expanded its place of practice from distant sites of suffering to also include well-resourced welfare states

with developed healthcare systems. This reterritorialization is led by a principle of non-substitution; meaning that the state is not released from its responsibility to uphold human rights, but that providing immediate care to people without access to the healthcare system is part of a wider strategy of political diagnosis and advocacy. Within this 'domestic humanitarianism' approach, there is an active investment in the non-medical skills and expertise of social workers (Hanrieder & Galesne, 2021). This echoes a global trend of integrating the social work profession in (primary) healthcare settings (Fraser et al., 2018; McGregor et al., 2018). The biomedical model, on which modern medicine and healthcare systems are built, however, does not align with the value of social justice, disregards the impact of societal structures, (re)produces inequalities, and has been shown to depoliticize the practice of social work (Ashcroft & Van Katwyk, 2016). This possibly explains why social work in healthcare settings has insufficiently been included in contemporary debates and developments on 'rights-based practice' (Androff, 2016; Healy, 2008; Mapp et al., 2019). In our contribution, we aim to redress this imbalance by presenting the findings from ongoing qualitative and ethnographic research – highlighting the experiential knowledge of patients and professionals - within Médecins Du Monde in Antwerp, Belgium. We argue that the organization's ethical framework and approach to health(care) provide an 'enabling niche' for social work to flourish as a rights-based profession. In answer to previous calls to open the 'black box' of rights-based practice and improve our understanding of how social workers discursively act upon the framework of human rights (Reynaert et al., 2022), we discuss the strategies of social workers to protect and realize the right to health(care). These range from individual care to advocacy and suing infringements of human rights in court. In doing so, we illuminate issues and tensions revolving around translating human rights to practice, including barriers to regular care, administrative thresholds, discretionary power, and interprofessional collaboration.

### **De-institutionalization and Human Rights: a Participatory Research Commitment**

paper presentation by Dries Cautreels & Tim Claerhout, Ghent University

De-institutionalization is internationally framed and recognized as a lever for the realization of inclusion for citizens with a disability. In international research, policy and practice, De-institutionalization is predominantly understood and translated as the dismantling of institutional care and favoring inclusion through personalized disability service provision, (accessible) housing, the provision of disability friendly and responsive general public services as well as remunerated work in the community. Although De-institutionalization is widely promoted, there is no consensus as to how to conceptualize and address De-institutionalization. Research shows that persons with disabilities who are physically integrated in the community do not necessarily have the experience of belonging in society; that repressive institutional cultures continue to exist when people with disabilities live in the community; that there is a risk of not having access to (disability-specific) care and support; and that they risk lacking social and financial resources or meaningful interactions and relationships within society. This phenomenon is referred to in international research as 'institutionalisation at home', 'community institutions', 'extitutions' or 'asylums without walls'. In our presentation, we discuss the results



of a participatory research commitment, in which we focus on the Convention on the rights of persons with disabilities and – more specifically – on article 19, General Comment n° 5, and the recently established Guidelines on Deinstitutionalization. Since there continues to be ambiguities and complexities about how the principles and rights outlined in the Convention on the rights of persons with disabilities can be understood in particular national contexts as well as how the implementation process of the Convention needs to be addressed, a participatory research commitment was established to discuss how De-Institutionalization and human rights are connected in Flanders and Belgium. Different self-advocates, actors in policy and members of representative self-advocacy organizations were involved to discuss and tackle the ambiguities, complexities and challenges at stake with the aim of constructing a framework that is doing justice to the challenges and translation of De-institutionalization in the Belgian context. One of those challenges concerns the expectation in disability policy and practice of rational autonomy and independency, and our attempt to radically reconsider interdependency as the basis to all human interaction, and as a universal feature of the human subject. During this joint paper we thus focus on human rights frameworks related to De-institutionalization, reflect on this study and the experiences of this joint search, and state that human rights should provide a strong lever in the realization of De-institutionalization.

### **Roundtable discussion**

with Conar Clory, Alice Evans, Justin McGarragh, David Simmonds, Simon Snyder and Sheila Wildeman (also included in TS12)

### **Inclusive Arts-Based Action Research: Imagining Disability Justice**

Persons labeled/with intellectual disabilities have long been vulnerable to human rights abuses including segregation and institutionalization. They have also been marginalized in human rights research and advocacy, treated as objects of others' knowledge and action. One way of changing this ableist narrative -- and inspiring a cultural shift toward disability justice -- is to ensure that persons labeled/with intellectual disabilities are centred in knowledge creation and advocacy on human rights. My Home, My Rights is an inclusive action research collective from Nova Scotia, Canada. Nova Scotia continues to rely on large-scale institutionalization of persons with intellectual disabilities, a practice our highest court has declared to be systemic discrimination. Our collective brings together community and academic partners to imagine and advocate for disability justice. We are dedicated to promoting the rights of persons labeled/with intellectual disabilities and other disabilities to live in the community as equals. Members bring a diversity of experiences and backgrounds – including different disabilities, different communication and learning styles, differences in wealth including experiences of deep poverty and homelessness, differences in gender, race, rural versus urban living, formal and informal support experiences, and in the case of one member, the childhood experience of large-scale institutionalization. For over two years, six action researchers labeled/with intellectual disabilities worked with community-engaged academics, artists and other allies, using arts-based methods to reflect on human rights at home and in our communities. This culminated in

disability advocacy centred on deinstitutionalization and responsive disability supports. Our advocacy included creation of an interactive, multi-space art exhibit, to be featured at the Halifax Central Public Library in May 2023. The exhibit includes co-designed photo portraits paired with reflections expressive of participants' sense of disability justice and injustice at home and in the community. It also includes a home-like set, featuring a seating area, our art (relating to disability justice) on the walls, and a TV showing (with captions and headphones) three short videos created by the collective on topics of disability and human rights. On the outer walls of the 'house' are photos and text focused on two key themes - ending institutionalization and reimagining disability supports. Also featured is information about our processes of knowledge co-creation and artistic production. Our three videos, "The Right to Decide" (on the right to choose where, with whom and how you live), "House Rules" (on distinguishing respectful disability support from institutional control), and "Social Assistance" (on the many ways persons with disabilities are denied their right to support for community inclusion) bring out the unique personalities and humour of "My Home, My Rights" members while driving home fundamental human rights principles. The videos have been received enthusiastically by diverse audiences. They are good conversation-starters, inviting further reflections on disability rights and disability justice. Action researcher Conor Clory shared, following our video launch in December, 2022: "I liked how our videos were educating people about their human rights. I was nervous at first, but then it felt good. I would like to do this again so I can educate more people in the community."

Members of the action research collective 'My Home, My Rights': Conar Clory • Isai Estey • Chantel Meister • Simon Snyder • Melly Thompson • Jenn Walters • Sarah Cooper • Sarah Frame • Paula Hutchinson • Justin McGarragh • Patricia Neves • Sheila Wildeman • David Simmonds • Bruce Bottomley - Support for Inclusive Design of Exhibition: Alice Evans.

## Poster presentation

**An empirical interpretation of the combination from human rights theory of human rights practice through the lens of gender governance: A case study on UN Women's multi-dimensional assistance project (EVA Project) for women in Moldova**

by Zhongsheng Shu, JiLin University of Finance and Economics

The Universal Declaration of Human Rights, the first international document on human rights, laid the foundation for international practice in the field of human rights. On 18 December 1979, the United Nations established the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to eliminate discrimination against women and to promote gender equality, which provides a comprehensive standard for the protection of women's rights and comprehensively requires that the political, economic, social, cultural and family spheres. These specific provisions provide a legal basis for the elimination of discrimination against women, requiring States parties to take legal measures to prohibit discrimination against women, to enshrine the principle of equality between women and men in national constitutions or to enact

laws on gender equality; States parties may not enter reservations that are incompatible with the purpose of the Convention. However, in the nearly half-century-long process of human rights governance and gender governance, there has been a major fragmentation between human rights theory and practice, and international organizations have faced more than "discrimination and prejudice" in implementing the concept of the "human rights movement and gender governance". Women in many developing countries are affected by domestic and gender-based violence, as well as by the job market and old social attitudes. In response, the EU and international organizations in Europe have developed and implemented a number of human rights and gender governance projects in a number of countries and regions, ranging from local policing ecologies to women's participation in government, which have objectively improved local human rights and gender indicators. In this paper, I will further understand how human rights theory and human rights practice have carried out the process of international organizations advancing their projects from the dimension of experience sharing, and I will use empirical analysis and case studies to distill methodologies from EVA projects in human rights practice. Thus, this paper chooses the EVA project, a joint project between UN Women in Moldova and the European Union. Since women in Moldova are subjected to discrimination in the workplace, have a restricted role in policymaking, and continue to face high rates of sexual assault and domestic violence, gender inequality is a pervasive problem in many aspects of Moldovan society. These challenges posed by gender inequality highlight the pervasiveness of gender stereotypes and outdated views in today's culture. The subject of how to integrate gender equality, women's rights, and women's well-being into community government while protecting women's fundamental rights against sexual violence is an important one for my research. The EVA project, which is being funded by UN Women, has begun providing Cahul and Ungheni with help in a number of different areas in order to advance gender equality in the government of these two districts. With a full understanding of the details and efficacy of the project, we refer to EVA as a multi-dimensional assistance project because it has achieved considerable replicable results in mainstreaming gender governance into local policies at multiple levels. These levels include community corrections, administrative deployment, corporate interventions, refugee relief, and the prevention of sexual violence. This paper will use interdisciplinary theoretical perspectives from political science, economics, and law to explain the effective outcomes and relevant experiences of international organizations/governments in practicing human rights actions, specifically exploring how projects have fully integrated human rights concepts into practice and policy. In this study, the author actively explains concrete ways and practical methodologies for the translation of human rights theory into human rights practice.

# Multilayered Human Rights Protection in Europe (TS10)

**THURSDAY 7 DECEMBER**

## **Panel - Multi-layered Human Rights Protection in Europe**

**The CJEU, the ECtHR and the EFTA Court: Multidirectional Fundamental Rights Exchanges or a One Way Street?**

paper presentation by Jarne De Geyter, Ghent University

The Agreement on the European Economic Area (EEA) extends the EU's internal market to the fullest extent possible to the EFTA States Norway, Iceland and Liechtenstein. In the EFTA pillar, the EFTA Court exercises a role similar to the Court of Justice (CJEU) in the EU. The EFTA Court has recognised fundamental rights as constituting general principles of EEA law. For the interpretation of these fundamental rights, the EFTA Court explicitly draws inspiration from various levels: the European Convention on Human Rights (ECHR) on the one hand, the democratic traditions of the EFTA States on the other hand. Despite the EFTA Court's avoidance of explicitly recognising the EU's Charter of Fundamental Rights as another source of inspiration, the question arises whether the Charter and the CJEU's case law in this regard nevertheless constitute a (indirect) source of inspiration for the EFTA Court. Moreover, one may wonder whether this practice works in both ways, namely whether the CJEU and the European Court of Human Rights (ECtHR) also take into account the EFTA Court's fundamental rights case law. After all, with regard to the CJEU in particular, both the CJEU and the EFTA Court generally aim to interpret the provisions of EU and EEA law uniformly in order to contribute to the objective of creating a homogeneous EEA. Objectives Firstly, this contribution aims to determine to what extent the EU Charter and the CJEU's case law (indirectly) play a role in the interpretation of fundamental rights by the EFTA Court, in addition to the ECHR and the democratic traditions of the EFTA States. Secondly, it will be examined whether the CJEU and the ECtHR on their part draw inspiration from the EFTA Court's fundamental rights case law, or whether this dynamic is merely a one way street. A positive outcome would namely add yet another layer to the already intertwined and multi-layered human rights protection in Europe. Methods With regard to the first objective, the EFTA Court's post-Lisbon fundamental rights case law will be analysed. This delimitation is justified in light of the increased role of fundamental rights in the EU and in the CJEU's case law since the Lisbon Treaty declared the Charter to be legally binding. After having selected the relevant judgments, the EFTA Court's reference to judgments of the CJEU for the interpretation of fundamental rights will be used as a benchmark to determine the influence of the CJEU's case law in the EFTA Court's fundamental rights case law. With regard to the second

objective, the judgments of the CJEU and the ECtHR referring to the case law of the EFTA Court will first be filtered out. Subsequently, they will be analysed to determine to what extent the CJEU and the ECtHR refer to the EFTA Court's case law for the interpretation of fundamental rights. Expected findings Although the EFTA Court does not explicitly recognise the Charter and the CJEU's case law as sources for the interpretation of fundamental rights, it appears at first sight that the EFTA Court in practice nonetheless draws inspiration from the CJEU's case law. The CJEU, on the other hand, appears to refer to the EFTA Court's fundamental rights case law only in a limited manner, despite the CJEU's recurrent statement that it should interpret EU and EEA law uniformly, including by having due regard to the EFTA Court's case law. Lastly, the ECtHR appears to have been inspired by the EFTA Court's case law at least once, which is remarkable since no functional links exist between both courts.

**Fundamental Rights as Limits to Mutual Trust between EU Member States in the Framework of the Execution of European Arrest Warrants: Offering a Perspective from National Judicial Authorities**  
paper presentation by Febe Inghelbrecht, Ghent University

The principle of mutual trust between the Member States of the EU plays an important role in the framework of the execution of European Arrest Warrants (EAW). The principle of mutual trust requires that Member States may consider all other Member States to be compliant with EU law and particularly with the fundamental rights recognised by EU law, save in exceptional circumstances. In the framework of the EAW, mutual trust implies that the judicial authorities of the Member States are in principle obliged to execute the EAWs issued by the judicial authorities of another Member State, and thus to surrender the person subject to the EAW. However, the principle of mutual trust does not entail blind or unlimited trust. The protection of fundamental rights serves not only as a source of mutual trust between Member States (Art. 2 of the Treaty on European Union), but ultimately also as a limit to this trust. Adopted in the pre-Charter and post-9/11 context, the Framework Decision on the EAW provides only in a limited number of grounds for non-execution that may be invoked by the executing judicial authority. Yet, there have been significant developments in the case law of the CJEU providing for an emerging room for exceptional limits to the principle of mutual trust. This case law-based exception allows for the non-execution of EAWs on the basis of considerations with respect to the fundamental rights as protected by the EU Charter on Fundamental Rights. Moreover, the European Court of Human Rights (ECtHR) has also played an important role in limiting the automatic nature of EU instruments in the area of criminal law. However, for national judicial authorities the determination of the limits to the principle of mutual trust determined by both courts remains insufficiently clear, in particular against the backdrop of systemic deficiencies in terms of judicial independence in some Member States, resulting into potential risks post-surrender in light of the right to a fair trial (Art. 47 Charter/Art. 6 ECHR). In light of the different interacting legal orders, this lack of clarity for national judicial authorities may represent a challenge for judicial cooperation in criminal matters, thus increase the risk of impunity and ultimately challenge the effective protection of fundamental rights of persons subject to an EAW. The proposed paper will offer a practice-based national perspective on these challenges by presenting research on the

diverging approaches adopted by different national judicial authorities in applying limits to mutual trust by not executing EAWs on the basis of fundamental rights considerations. In particular, the paper will present the first research results of the analysis of the practice of judicial authorities in Belgium, the Netherlands and Germany in light of the requirements to ensure the effective protection of the right to a fair trial (Art. 47 Charter/Art. 6 ECHR) on the basis of the recently developed case law-based exception provided by the CJEU and the evolving interpretation offered by the ECtHR. Thus, the paper aims to contribute to understanding how the standard of protection of fundamental rights is co-created between national decision-makers, the CJEU and the ECtHR. The (expected) findings inter alia illustrate the importance of constructive horizontal judicial dialogue and urge for a careful re-examination of both the standard and burden of proof in determining risks post-surrender. In doing so, the findings identify grey zones surrounding the balance between the free movement of EAWs and the fundamental rights obligations of the Member States in light of the multi-layered approach to fundamental rights protection as reflected in Art. 6 TEU.

### **Cities' International Law-shaping or Making in the Field of Human Rights**

paper presentation by Agnieszka Szpak, Nicolaus Copernicus University

The aim of this paper is to answer the question of whether cities are emerging as international law makers or shapers in the field of human rights law. After a short introduction an example of international agreement between cities, the European Charter for the Safeguarding of Human Rights in the City will be examined and compared to the European Convention on Human Rights and the European Social Charter (both inter-state treaties). The former is part of a process of the emergence of cities as international law makers/shapers and part of the global and multi-level governance architecture. Then the author will present the case study of Barcelona, focused primarily on Barcelona's implementation of the European Charter for the Safeguarding of Human Rights in the City. Finally, some concluding remarks will be provided.

### **Poster presentation**

#### **Problems of Protecting Rights of Violent Crimes Victims: Aspects of the Harmonization Porcess of Ukrainian Law with EU Law**

by Hanna Kuzmenko, University of Antwerp

Nowadays, a process of harmonization of Ukrainian law with EU law is taking place. In general, legal scientists and politicians pay a lot of attention to issues of economic cooperation within the framework of the Association Agreement with the EU. However, there is a need to implement norms not only regarding competition in business sphere, but also EU *acquis* norms, which also require respect for fundamental human rights (at the legislative level, this is enshrined in Article 2 of the Treaty of Lisbon). Solving the problems of protecting the rights of victims of violent crimes is inextricably linked to the observance of the principle of respect for fundamental human rights, which belongs to the EU *acquis*. Today, the topic of protecting rights of victims in Ukraine

is gaining particular relevance. However, it could be stated that this topic is insufficiently developed by now, both at the legislative level and in the national scientific discourse. After the analysis of the criminal procedural norms of Ukrainian law, it is possible to come to conclusion that currently in Ukraine criminals could be even more protected than victims of crime. So, in view of the positive trends regarding the basic guarantees of the rights of victims in the EU, it can be stated that there is a need to introduce similar progressive instruments into Ukrainian legislation. Thus, the work is devoted to research of the problems of protecting rights of violent crimes victims in the European Union and comparing EU approaches in this area with Ukrainian legislation, as well as finding ways to solve the existing problems. For this aim fulfilment, qualitative, analytical and comparative legal approaches were used. The paper analyzed the historical and theoretical aspects of studying the rights of victims of violent crimes in the EU, found out the prerequisites for the legislative consolidation of the rights of victims in the EU ; outlined the organizational and legal aspects of ensuring the rights of victims in the EU; analyzed the normative and legal protection of the rights of victims in the EU; traced the relevant judicial practice of protecting the rights of victims in the EU. This paper also identified the problems of harmonizing Ukrainian legislation with EU law in the field of protecting the rights of victims of violent crimes; revealed the level of protection of victims' rights in Ukraine and outlined the prospects for solving the problems of protection of victims' rights in the light of the process of harmonization of Ukrainian legislation with EU law. As a result of the research on the rights of victims, it is proposed, in view of the positive trends regarding the main guarantees of the rights of victims in the EU, to introduce similar progressive instruments into the Ukrainian legislation, taking into account the Ukrainian legal context. Ensure the positive obligation of state authorities to take preventive measures to protect a person or persons whose life is threatened by the criminal actions of other persons; in case the state failed to protect the victim from the crime, to offer a way of protection from the consequences of the crime.



# Human Rights and Accountability (TS11)

## **THURSDAY 7 DECEMBER**

### **Panel - Accountability and Cultural Production**

#### **Eliciting Accountability Through Perpetrator Fictions**

paper presentation by Ivana Ancic, State University of New York at Cortland

In this paper, I discuss accountability through the lens of literary and visual materials that explore human rights violations through the perspectives of the perpetrators. One of the things that makes such materials interesting is that they provide insight into the different rationales that historical actors provide about their involvement in atrocity. The difficulty with these materials, however, is that due to their sources, they present entirely unreliable claims on the past. I tackle this problem by juxtaposing the perpetrators' narrative claims about the past with their embodied staging of the memory of their crimes, which exceeds their narrative control. I contend that the analysis of this staging provides insight into what I call genocidal imaginaries, as culturally specific imaginaries that prepare the conditions for atrocity. I then suggest that these materials contribute to our understanding of historical and political accountability by allowing us to track not only how individual perpetrators become involved in atrocity, but also how such atrocities are sanctioned by larger sections of the societies in which they occur, as well as by the global audiences that observe them. The key question I ask is who contributes to and participates in these imaginaries besides the perpetrators themselves? I use Joshua Oppenheimer's documentary film *The Act of Killing* and Ari Folman's animated film *Waltz with Bashir* to consider such questions in two different contexts.

#### **Witnessing Poetry and Prose in Participatory Theatre with Refugees**

paper presentation by Sofie de Smet, Ghent University & KU Leuven

In this contribution, we aim to critically reflect upon the ephemeral nature of theatre in the field of participatory refugee theatre. We argue that such a reflection becomes particularly important in participatory refugee theatre as the process of refugee participants' bearing witness to personal experiences of trauma, loss, and violence in the ephemeral context of theatre is emphasized as its core impetus. To do so, we shed light on the creative process of the participatory theatre project *Temporary* in collaboration with nine Syrian young adults who resettled in Belgium. The lived experiences of refugees participating in this project, and therefore, their voices in delineating the role of witnessing, take central stage. With means of a qualitative meaning-centred approach, we aim to understand how refugee participants experience processes of bearing witness in written prose and poetry in relationship to the

ephemeral character of theatre. Based on our findings, we argue that the ephemeral nature of theatre enables an important potential to initiate reparative pathways of bearing witness by creating a space that may hold both remembrance and forgetfulness, and both distance and interconnectedness simultaneously. In a final part, we discuss the possible implications of our reflections for practitioners, raising questions about the value of participatory theatre as both an ephemeral and a remaining, reconstructive space of bearing witness in times of protracted wars and polarization.

### **Behrouz Boochani's Literary Activism**

paper presentation by Tom Toremans, KU Leuven

This paper pursues a close reading of the reconceptualization of accountability in *No Friend but the Mountains* (2018) by Kurdish-Iranian writer and activist Behrouz Boochani. Drawing from recent work by human rights scholars such as Lyndsey Stonebridge and Itamar Mann, it situates Boochani's literary work within his broader journalistic and artistic practices and focuses on the ways in which *No Friend* deploys literary language to create a kind of writing able to articulate an embodied knowledge of the systemic violation of human rights in Australian offshore refugee detention and its reliance on a strategic dissolution of legal and moral accountability. As it combines the genres of memoir, prison writing, autofiction, journalism, testimony, political critique, poetry and novelistic prose, Boochani's book deploys a broad range of literary techniques to expose the systemic accountability gaps in the Australia's offshore refugee detention system and the accompanying structural creation of complicity between all actors within this system. On the one hand, Boochani's writing performs a radical critique of the projection of accountability on the refugee subject by means of a literary renegotiation of refugee subjectivity, while, on the other, it uses literary language to evoke the dissolution of accountability driving the Australian border military complex. Essential to both strategies is the fact that Boochani's writing was simultaneous to his lived experience of the detention camp, thus presenting a critical knowledge that is not only testimonial but also embodied, and thus acquires not only moral but also legal relevance in the pursuit of international justice and accountability.

### **Reader responses to *Death is Hard Work* by Khaled Khalifa and *Planet of Clay* by Samar Yazbek**

paper presentation by Brigitte Herremans, Ghent University

Literature can encourage readers to jump into the life of others and engage with experiences of harm and rightlessness. A key element of the world-making power of literature, is its capacity to 'presence' what was neglected or erased, thus articulating absences and drawing attention to suffering caused by invisibility (de Greiff, 2014; Stonebridge, 2018). Moreover, the engagement with literary narratives stimulates readers to welcome ambiguity and try on perspectives that are not attractive, possibly generating cognitive dissonance (Caracciolo 2013). Literature can also stimulate disengagement rather than generating feelings of responsibility. Thus, it is worthwhile to study how literary texts can allow readers to shape transnational solidarity. In this paper, I

examine whether and how literary writing can generate new perspectives on injustices in the Syrian context. This paper builds on the data emerging from five focus group discussions on the novels *Death is Hard Work* by Khaled Khalifa and *Planet of Clay* by Samar Yazbek. Based on reader-response theory, I start from the assumption that the exposure to literary accounts evokes a response, albeit not necessarily an ethical or emphatic one. Firstly, I unpack how these novels gave readers an insight into victimization and trauma. Secondly, looking into reader responses, I study if these accounts have generated an engagement with justice-related questions in the Syrian context.

## Walking session

### **Gender-Transformative Remediation to End Corporate Violence against Women**

by Aleydis Nissen, Université Libre de Bruxelles

While feminists have drawn attention to gender-based violence against women at home, such violence has remained under the radar for too long when it has been inflicted by businesses (Simons 2017: 431). Luckily, the 'business and human rights' literature is increasingly paying attention nowadays (e.g. Deonandan and Bell 2019). In its 2019 Gender Guidance, the United Nations (UN) Working Group on Business and Human Rights (WG) stressed that states should ensure that businesses 'that cause, contribute to or are directly linked to ... gender-based violence are held accountable swiftly' (A/HRC/41/43 Annex: 14(e)). The WG added that gender-transformative remediation which brings, amongst others, change to patriarchal norms and unequal power relations that underpin gender-based violence by corporations is required. The question of how this can be achieved has, however, been left largely unanswered by the WG. I use a mixed-method design to tackle this research gap, which combines critical feminist discourse analyses of communications that were co-written by UN Special Procedures with gender expertise and further discussions with other experts. This design is based on the following two considerations. First, Eva Brems argued convincingly that remediation mechanisms with gender expertise (or the willingness to develop such authority) in the UN can offer an important source of learning to all remediation mechanisms (2018). While there is a discussion to which extent the Special Procedures can address root causes of rights violations due to the nature of their mandates (Marks 2011: 71), they have the benefit of experimenting frequently. Second, the WG noted that states should engage with 'gender-sensitive' experts to identify appropriate gender-transformative remedies in the report accompanying the Gender Guidance (A/HRC/41/43: 39). Both lines of research are a 'work in progress'. First, for a conditionally accepted article that will be published in the *Business and Human Rights Journal*, I conducted a critical feminist discourse analysis of the 28 communications in the field of 'business and human rights' that were co-written by the UN Special Rapporteur on Human Rights Defenders (who has stressed the willingness to develop gender authority) between 2011 and 2020. This analysis pointed out that gender-transformative remediation tries to redress, prevent and deter corporations of inflicting a wide range of forms of gender-based violence, including online violence and stereotypes about women's psychology and biology. I am currently

expanding this work by conducting an in-depth analysis of communications in the field of 'business and human rights' that were cowritten by the Special Rapporteur on Violence against Women and Girls, its Causes and Consequences between 2011 and 2020. Second, in a round table on gender-transformative remediation at Leiden University last year, four gender experts in business and human rights remediation stressed that legal obligations and the collection of data are relevant when it comes to remedying gender-based violence. During the walking tour, I propose to discuss these and other elements that might be relevant for gender-transformative remediation when corporations inflict violence upon women.\* I propose to walk through the serres of the Ghent University Botanical Garden (open until 16h30). If possible, I would like to voice-record the tour (with the participants' consent) for further confidential analysis. \* At this moment, I do not know whether all the participants in this proposed 'human rights and accountability' walking tour have gender expertise. However, I consider that there will be some participants with expertise in gender, which might contribute to cross-innovations. Notably, both convenors of this conference theme, Marie-Benedicte Dembour and Tine Destrooper, have specific and highly-regarded gender expertise. References: [https://aleydisnissen.com/Ghent Accountability Proposal/](https://aleydisnissen.com/Ghent_Accountability_Proposal/).

## Special issue launch

### Postcolonial Justice in the Intertemporal Space

paper presentation by Sarah Imani, European Center for Constitutional and Human Rights e.V. (ECCHR)

Tackling colonial wrongs as a matter of the law comes with its own set of challenges. First and foremost, former colonizing powers are reluctant to frame their responsibility for the colonial past in terms of legal responsibilities and obligations towards those who suffered and are still suffering from its impact on their life worlds. These States rather defer to notions, if at all, of moral or political responsibility, as the recent example of the negotiations and the agreement between Namibia and Germany shows. The reasons for that are manifold, and all of them problematic from a transitional justice or restorative justice perspective. The colonial legacy of the law made by the colonizer and the ongoing denial of human rights of the formerly colonized impact fundamentally the way truth and justice mechanism are framed, narrated and proceed with today.

This contribution maps out how the law and legal activism to critically explore and ultimately reconstruct categories of truth, accountability, social change and transitional justice for the colonial context. Thereby it lays out the field for critically dismantling the law as instrument for the legitimation of the colonial rule and postcolonial Western domination on the one hand. On the other hand, it explores how it may still contribute to transforming and disrupting social structures and relations that inform actual and structural injustices in the "First world/ Third world relationship" and offer insights to empowering approaches and formats to address and

redress colonialism and coloniality alike. Finally, it presents forms of respective legal interventions between decolonial theory and decolonial legal praxis drawing inter alia on the European Center for Constitutional and Human Rights (ECCHR)'s project work. All of this is done with the aim to retell the story of colonialism as the one that it really is: that of ongoing human rights' violations.

### **Emerging Understandings of Accountability for Past Assimilation Policies in Sweden**

paper presentation by Malin Arvidsson, Linköping University

The aim of this paper is to explore how the concept of accountability is used in ongoing efforts to make amends for past assimilation policies in Sweden. The Swedish Truth and Reconciliation Commission for Tornedalians, Kvens and Lantalaïset, mandated in 2020 and due to submit its final report in November 2023, was promoted by National Association of Swedish Tornedalians as a tool to produce historical truth about the so-called Swedification process that has resulted in language loss and invisibilization. When the transitional justice toolbox is used in an established democracy undergoing a "protracted transition" (Winter, 2014), several conceptual challenges arise. The commission is expected to inquire into relevant actors' accountability, a complex task since the policies were implemented at national, regional, and local level, by actors representing both the state, the Church of Sweden, and private foundations. Drawing on the emerging literature about how to theorize paradigmatic cases of truth commissions (Skaar, 2023), I discuss how the issue of accountability has been articulated in the commission's own reports as well as in the public debate.

### **(Post-)colonial historical commissions and the pursuit of structural justice**

paper presentation by Cira Pallí-Asperó, Ghent University

The legacies of the colonial past have a big impact on our societies, not only in terms of ongoing – direct or indirect – harm or injustice, but also raise important questions about historical responsibility, recognition, and redress. Civil society organizations, diaspora groups and political actors have been long insisting on the implementation of robust strategies and concrete measures to tackle the enduring consequences of the colonial injustice. In response to this, several governments are taking a range of initiatives to address the legacies of their colonial past. As part of this evolution, state-sanctioned historical commissions are increasingly set up to examine and address colonial pasts and their contemporary legacies. In this paper, I explore in which way these commissions can potentially contribute to a process of redressing historical and ongoing injustice. To do so, I frame the analysis within the structural injustice approach focusing on the notion of responsibility, the identification of structural injustice, the process of reframing of the past, and the concept of disruption and change. Although the paper is mainly a conceptual piece, I use the examples from several (post-)colonial historical commissions to illustrate my argument.

## Roundtable discussion

### **Accountability and Human Rights: The Many Definitions and Dimensions**

with Tine Destrooper, Lander Govaerts, Cristina Cocito, Wouter Vandenhole, Sarah Kerremans and Paul de Hert

Moderator: Elif Durmuş

This roundtable discussion will centre on the concept of “accountability” – both legal and extra-legal – in the context of human rights. Scholarship in law, economics, administration, governance, management, sociology, political science and many other social sciences have engaged with the concept of accountability. At this point, scholarship has recognised that there are many different types and forms of accountability, with legal accountability (for example through the human rights regime) being but a small element in the grand map of possibilities. Some scholars then speak of a complex, multifaceted, or “thick” accountability, in which multiple different forms and types of accountability overlap and complement each other through different pathways. In mapping the types, definitions and meanings of accountability in scholarship, as well as the (inter)relationality of these different accountabilities, several core questions are resorted to for guidance: The purpose question “Accountability for what?”; the forum question “Accountability to whom?”; the duty bearers question “Accountability of whom?”; the norms question “Accountability for what?” and finally, the complexity questions “Accountability how?” and “How can different accountabilities complement and reinforce each other?” In this roundtable consisting of two sessions, members of the research team of the inter-university project “Future Proofing Human Rights: Developing Thicker Accountability” along with other participants will be tackling the challenge of a) mapping the different types, forms, definitions and meanings of accountability in literature and practice, b) creatively answering the core questions set out above according to different types, forms, definitions and meanings of accountability, and c) exploring how these different accountabilities interrelate, overlap, and interact and synergise. The participants of this roundtable will touch upon their individual research background on the relationship between accountability and impunity, accountability and evidence regimes, accountability and (social) harm, accountability and (the essence of) duty, accountability and procedural review, accountability and substantive equality, accountability and legal consciousness, preventive accountability and accountability and transformation. The conceptual essence of the roundtable discussion will be visually co-constructed during the sessions.

### **Panel - Human Rights and Accountability: an Institutional Perspective**

#### **Independent Experts Within a Political System: How Can the UN Special Procedures Advance and Protect Economic, Social and Cultural Rights?**

paper presentation by Inga Winkler, Central European University

Critiquing the UN human rights system is easy. The UN never does enough, it is too slow to respond, it issues many statements and recommendations, but cannot enforce these. It is indeed a flawed system. Yet, it is the only global human rights system. The Special Procedures form part of it as independent experts mandated by the Human Rights Council. They monitor human rights violations and promote progress in realizing human rights by undertaking country missions, communicating with States, and providing reports. They are often described as the “crown jewel” of the UN human rights system; yet, to date, they have received limited scholarly attention. The paper draws on interviews with former mandate-holders and other stakeholders at the local, national and global level and roundtable discussions with a total of around 70 participants combined with in-depth document analysis. The project focuses on mandates on economic, social and cultural rights (ESCRs) as an area of human rights that continues to be characterized by misconceptions, yet holds significant potential. At a time where many ESCR mandates have reached a certain level of maturity and have moved from standard-setting and normative development to focusing on the implementation of ESCRs, their strategies and approaches warrant closer examination. Many of the human rights system's shortcomings stem from the fact that it is a system created by States meant to monitor these very States in their human rights compliance. The paper explores how to capitalize on these inherent tensions and understand the Special Procedures' unique role in ensuring accountability within the ecosystem of human rights actors. In particular, the paper explores the role of Special Procedures in relation to States and civil society actors. It explores four lines of inquiry: 1) As part of a system that has no power to enforce human rights obligations, mandate-holders ultimately rely on their voice. How do they turn this into cajoling, persuading, incentivizing, and scolding? How do they capitalize on their access to decision-makers, their convening power, and their capacity to amplify the voices of human rights defenders and civil society actors? 2) Mandate-holders closely interact with civil society. How do questions of accessibility of the UN system influence this relationship? How do mandate-holders set priorities? Who determines their agenda? Are the Special Procedures truly the human rights system's “eyes and ears” on the ground, or is there a risk of elite capture? 3) Mandate-holders are experts who operate within a political system. They are mandated by an intergovernmental body to be an independent voice. How can they capitalize on that independence in combination with the imprimatur of the United Nations? 4) Mandate-holders, in particular on ESCRs, adopt a range of strategies from confrontational (e.g., naming & shaming) to cooperative (e.g., technical assistance). How do mandate-holders navigate these approaches and their combination to advance human rights? Overall, the paper seeks to discern what innovative strategies and approaches ESCR mandate-holders adopt to ensure human rights accountability.

### **Process-based Review by the ECtHR in Racist Police Violence Cases: A just Approach?**

paper presentation by Emma Várnagy, Ghent University and Harriet Ní Chinnéide, Hasselt University (co-author)

Since the turn of the century, the European Court of Human Rights (ECtHR) has faced significant backlash from countries who feel the ECtHR is overstepping its remit and encroaching on the



proper role of democratically appointed lawmakers through its interventionist judgments. Cognisant of this criticism and overwhelmed by repetitive cases, the ECtHR has made a so-called 'procedural turn'. When this approach is adopted, the ECtHR places greater emphasis on the quality of domestic decision-making processes in determining whether a violation of the European Convention on Human Rights (ECHR) has occurred. This can either lead to greater deference to domestic authorities or stricter scrutiny. Prominent voices in the field have welcomed this development, arguing that the Court is maturing and entering into an 'age of subsidiarity.' Although much of the academic debate surrounding the procedural turn focuses on cases where a balance may be struck between competing rights or interests, the Court's reliance on procedural review is also relevant when it comes to the absolute rights enshrined in Article 2 and 3 of the ECHR. Notably, in cases of ill-treatment or death the Court has established a procedural obligation for the states to effectively investigate the circumstances of such allegations. Hereby, the Court has enabled itself to find a partial, procedural, violation even in cases where a substantive violation cannot be found. This approach is undeniably beneficial to the individual applicant who suffered abuse by the state. But the same approach can prove more problematic when applied to cases of discriminatory violence under Article 14. Here there is a question to be asked about the prudence of separating the substantive from the procedural. Arguably, such an approach creates a false dichotomy between two integrated elements of the same crime, blinding the Court to systemic issues such as institutional racism, the substantive elements of which cannot be easily disentangled from the State's procedural failings. This presentation builds on the analysis of the Court's racist police violence case law, consisting of approximately 50 cases, to illustrate what the separation of substantive and procedural review of the application can, and cannot, achieve. As human rights practitioners responding to instances of anti-Roma police violence point out, there are systemic issues when it comes to reporting, recording, and combating racist police abuse, so much so that only a fraction of the details ever reaches the level of judicial review. First this presentation introduces the body of case law relating to racist police violence. Then by focusing on the Court's procedural approach under both Article 3 which prohibits ill-treatment and Article 14 which prohibits discrimination, the presentation highlights the advantages and disadvantages of procedural review of racist violence cases. The presentation argues that rather than divorcing substantive and procedural elements under Article 14 the Court could (and should) take a holistic approach. The presentation concludes with a set of guiding questions that may aid the Court in this direction.

### **Accountability for Gender Persecution as a Crime against Humanity: The Case of Afghanistan**

paper presentation by Huma Saeed, KU Leuven

Accountability for gender-based crimes amounting to persecution as a crime against humanity has hardly been practiced in international and domestic courts. Yet, it is a widespread crime in situations of armed conflict and/or under despotic regimes, from Iraq to Afghanistan to Syria and Colombia. Although adjudication of gender-based crimes date as far back as the International Military Tribunals of World War II, it was not until the adoption of the 1998 Rome Statute when the crime against humanity of persecution on the grounds of gender, or gender persecution, was

recognized. Due to this, and a lack of documentation of gender-based crimes, some experts argue that crimes of persecution on gender grounds have practically been left out of history. A prominent example of this argument is the crime of gender persecution committed against women and girls in Afghanistan under the control of the Taliban de facto authorities. Since returning to power in August 2021, Taliban, replicating their rule in the 1990s, have issued over 30 decrees and regulations banning women's access to fundamental rights, including the right to education, employment, equality, dignity, bodily integrity, family, privacy, political or cultural participation, access to justice and so on. Article 7.2 (g) of the Rome Statute defines persecution as the intentional and severe deprivation of fundamental rights by reason of the identity of the group. A clear pattern of statements, regulations and actions by Afghanistan's de facto authorities demonstrate that half of the country's population have intentionally and severely been deprived of their basic human rights primarily on the grounds of gender. Furthermore, human rights activists, a majority of them women, defying these rules and demanding the restoration of women and girls' basic rights have been attacked, imprisoned, tortured and killed. Per Article 7.1 (h) of Rome Statute, gender persecution can amount to crime against humanity when committed as part of a widespread and systematic attack against civilian population. This discussion paper will present two arguments. Relying on the international tools such as the Rome Statute and the newly published policy paper on gender persecution by the International Criminal Court, the paper will argue that the commutative effect of the Taliban's policies and actions could amount to crime against humanity of gender persecution, and that the International Criminal Court, which has opened its Afghanistan investigation, should address it as such. The paper will also argue that gender persecution as a crime against humanity should become a serious concern of transitional justice and any accountability mechanism for human rights violations. The objective of the paper is to raise further awareness, among academics as well as practitioners, on the importance of addressing gender-based crimes through the lens of gender persecution, which is a recognized crime in international law, yet hardly employed. The paper is developed primarily based on desk-based research, including thorough analysis of the Taliban's decrees and policies (in local languages) as well as their impact on the lives of Afghan women and girls. In addition to academic sources and reports, the paper utilizes substantially the reports, which are produced by Afghan human rights organizations as well as local media and websites (currently in exile).

### **Magnitsky Sanctions: a New Mechanism of providing Accountability to Human Rights Violations**

paper presentation by Yifan Jia, King's College London

Global human rights sanctions regimes, also known as the Magnitsky sanctions, which was first established by the US in 2016 in response to the death of Magnitsky. Now, it is adopted by 35 countries in the world, including the UK and the EU; and is discussed by more countries, including Japan. The sanctions regime empowers the government to impose travel bans, asset freezes, and transaction restrictions on foreign individuals and entities that are responsible for gross human rights violations, such as torture and crimes against humanity. Magnitsky sanctions are the first unilateral thematic targeted sanctions regime on human rights and are also the first

mechanism that allows victims of massive atrocities to ask for help from a foreign state. The weakness of the enforcement mechanisms of international human rights law is a long-standing issue. Although there is certain progress, inter alia, UN human rights treaty bodies, ICC and the European Court of Human Rights, there are still large numbers of the world's population under no effective human rights protection mechanism, and many perpetrators enjoy impunity under the shield of their state boundaries. As a transnational regime, Magnitsky sanctions do not require state consent and are backed by physical force, thus making it possible to enforce international human rights law regardless of state boundaries. This paper will discuss how Magnitsky sanctions contribute to human rights accountability. In order to answer this question, it is important to address the target of the Magnitsky sanctions: state or individual. Some scholars consider Magnitsky sanctions target states, arguing that they are countermeasures imposed by third states on the wrongdoing state to bring to an end to the serious breach of peremptory norms. Some scholars believe that Magnitsky sanctions only target individuals, since there is no requirement for the attribution of individuals' acts to states, and no requirement to prove the link between the individual and the political regime of the wrongdoing state. This paper argues that Magnitsky sanctions target both states and individuals, and the theoretical basis for this understanding is that state responsibility includes holding individuals accountable for human rights violations and thus holding individual responsibility is a way to invoke state responsibility. This paper will elaborate on this argument drawing on the principles of R2P and the anti-impunity movement. This paper will also examine how these sanctions contribute to the trend of individualization in accountability mechanisms. Prior to the establishment of the Magnitsky sanctions, the trend of individualization of accountability can already be seen from the establishment of individual criminal responsibility international criminal courts and tribunals, and the increasing naming of names in the report issued by UN inquiry commissions. There are different opinions on this trend. There is an argument that human rights are best protected when individuals are held to account for their acts, such as the statement from the Nuremberg Tribunal that 'only by punishing individuals who commit such crimes can the provisions of international law be enforced'. However, there are also criticisms of the individualisation of the responsibility, as Stahn and Harwood point out that 'The turn to individualisation stands in a certain tension to the collective nature of violence that characterizes many types of abuses ... An over-emphasis on individual accountability responses could detract from broader accountability efforts by not responding to structural dimensions of mass atrocity.' This paper will be drawing on different views on this trend in the current literature and discuss the potential impact Magnitsky sanctions may have on human rights accountability.

## **FRIDAY 8 DECEMBER**

### **Panel - Harm, Human Rights and Accountability**

**The Concept of Human Rights Harm in the Context of Technology's Implications: Problems and Limitations**

paper presentation by Christina Cocito, Vrije Universiteit Brussel

This presentation discusses human rights-based methodologies for Artificial Intelligence problem assessment. In the context of research on problems caused by AI, the concept of human rights (harm) has been used as a burgeoning 'methodology' to identify or conceptualize AI's negative implications. However, little critical research has been made on the limits of the formal human rights framework in giving proper account of AI's problems. Because of AI's multi-sector application involving diverse interests, scholars have assessed the problems raised by AI through the concept of human rights harm differently. The prominent methodology has been to focus on potential privacy harm, but there is growing awareness about privacy's narrow role ahead of AI's ubiquitous and large-scale application. Two other methodologies have been used, a holistic and a selective human rights methodology, which respectively consider AI's harm to many human rights and only to relevant human rights based on context. We pursue a literature review to see promises and flaws of these methodologies by using pragmatic problem identification theories (Dewey) as a starting point. We note that, among the three methodologies, the selective human rights methodology aligns more with pragmatic problem identification. However, the human rights framework presents inherent limits as a problem assessment methodology ahead of (new) AI realities and problems. The human rights framework, and therefore the concept of human rights harm, is too 'closed' and finite to be able to give account to all AI's implications in a realistic manner. We suggest that AI problem-finding should not remain confined to 'closed' frameworks in order to consider issues that broad and finite human rights may fail to grasp.

### **From Social Harms to Rhizomatic Harms: Exploring the Impact of Algorithmic Policing in the Pre-crime Society**

paper presentation by Lander Govaerts, Vrije Universiteit Brussel

The police are increasingly investing in socio-technical systems that deploy algorithms to try and predict crimes before they happen. However, there is an increasing amount of international evidence that these technologies do not work to prevent crime. The data and algorithms used are riddled with manipulation, error and bias, they are implemented without necessary legal and ethical safeguards, and they are having a negative impact on vulnerable communities and social justice. Regardless of this evidence, enthusiasm of police and policy makers for implementing algorithmic surveillance is not fading. Discussions about the deployment of such technologies in the criminal justice system and the wide range of potential harms as a result have, up till now, not received sufficient attention in criminology. Discussions about harms of algorithms, outside of criminology, have tended to focus on technological and legal harms. We argue that zemiology offers an interesting starting point for moving beyond these debates by focusing on social harms. We propose to expand zemiologist insights with a technological and relational component, and to broaden the concept of "social harms" to "rhizomatic harms". Rhizomatic harms are to be understood in all their complexity, as they emerge from multiple entry points with the creation of complex layers of harms as a result. By building on assemblage theory, originally developed by Deleuze and Guattari, rhizomatic harms can be used as an analytical tool

to shine a new light on underexposed or under-studied aspects of algorithmic harms. We will discuss the recent case of the Top400 list and the use of the ProKid Plus algorithm in Amsterdam to exemplify our new harm conceptualisation.

### **Harm as a Conceptual Justification of Human Rights Duties and the Identification of Duty-Bearers**

paper presentation by Elif Durmuş, University of Antwerp

Scholarship of international human rights law has been exploring the human rights obligations of non-State duty-bearers such as armed opposition groups, transnational corporations and international organisations in the past decades. While there seems to be an agreement that the category of duty-bearers is expanding beyond states, the theoretical and conceptual principles of the expansion that would apply to different or all possible actors – both those already considered and not considered as new human rights duty-bearers – are not yet fully established. This presentation will explore one possible theoretical grounding upon which to determine human rights duty-bearership: the concept of harm. Looking, through an exploratory approach, at scholarship on the human rights obligations of armed groups, transnational corporations, sports governing bodies and international organisations, I will be mapping the role of “harm” in earlier theorisations on the grounds of human rights obligations of non-state actors. Consequently, I will be comparing “harm” as a possible theoretical justification of human rights duties to the theoretical underpinnings of tort law. Finally, I will make a preliminary assessment on whether “harm” is a worthwhile concept to underpin human rights duty-bearership in a cross-cutting manner.

### **Social Media Companies as Duty Bearers: Accountable to Whom and for What: Human Rights as a Framework for Accountability of Social Media Companies**

paper presentation by Anne Oloo, University of Antwerp

The rise and growth of social media companies over the last decade have brought both opportunities and challenges (Atchoua, Bogui, and Diallo, 2020). Social media have affirmed their dual role acting as a double-edged sword, with their potential to afford freedom of expression, giving voice to the voiceless on the one hand while facilitating the dissemination of harmful and false content on the other hand (Shirazi 2013). Significant work has been done to address these challenges. These have been addressed through self-regulation, co-regulation and legislative regulation, involving various stakeholders, including governments, industry, civil society and popularisers (Anne Oloo 2021). Regarding the law, multiple proposals and approaches have been considered in different public, private and commercial law domains, including competition law, intellectual property law and human rights law (Mangan and Gillies 2017). For instance, in competition law, antitrust regulations have been used to scrutinise the dominant market positions of social media platforms and prevent them from engaging in anti-competitive practices. In intellectual property law, debates have arisen over the ownership and control of user-generated content on social media platforms. Meanwhile, human rights law has been invoked to safeguard privacy rights and prevent disseminating of harmful or illegal content on

these platforms. As social media companies continue to play an increasingly significant role in shaping public discourse (Gillespie 2010), the growing need to address the challenges posed by these platforms through a human rights framework persists. Thus, this paper will contribute to the literature by examining how the United Nations Guiding Principles on Business and Human Rights (UNGPR) (UN Office of the High Commissioner for Human Rights 2011) could be used to achieve this goal. By exploring the intersection of human rights law and the activities of social media companies, the paper will shed light on ways to promote accountability in this crucial area. As such, the paper will argue that social media platforms have a duty to respect, protect, and fulfil human rights, guided by the UNGPR. This includes their duty to respect, conduct due diligence to prevent abuse, mitigate and prevent harm, and provide access to remedies. The paper will explore different legal and technological approaches to regulating social media content and how these can be repressive, even when designed to protect human rights. The current developments and prospects of social media platforms as duty bearers will be examined, taking into account the potential of AI to shift power dynamics and shape geopolitics, which can exacerbate structural inequities (Png 2022). Finally, it will be concluded that social media platforms need to balance their responsibilities with users' rights and the state's obligation to safeguard human rights to establish a stable and equitable legal system that allows for disruptions while promoting human rights. Conference themes: Digital technologies and Human Rights or Human Rights and Accountability.

## **Panel - Human Rights and Accountability in Action**

### **Accountability, Emotion and Ukraine**

paper presentation by Heidi Gilchrist, Brooklyn Law School

I will be looking at the role of emotion and accountability in the invasion of Ukraine. Specifically, I will examine harnessing the incredible, almost universal, moral outrage at the unprovoked invasion of Ukraine to hold Russia accountable and its challenges. The international community is working on various avenues to hold Russia accountable. One initial step the United States has made to turn its moral outrage into action was amending the War Crimes Act of 1996 to expand the United States' jurisdiction to prosecute perpetrators of war crimes to include non-nationals found on U.S. soil. This step is getting the United States closer to universal jurisdiction which will be a powerful tool in prosecuting war crimes. Of course, universal jurisdiction needs to be truly universal in order to be an effective tool in accountability. President Biden has expressed his own moral outrage telling reporters that Putin "cannot remain in power." President Macron of France criticized Biden's expressions of moral outrage saying "I am prudent with terms today." I will examine whether political actors, journalists, academics should express moral outrage. Of course, no court can currently hold Putin or the highest commanders accountable – so moral outrage meets entrenched power structures and, of course, oil and nuclear weapons. But Putin from the beginning, I posit, has underestimated the power of emotion. Russia and most military experts thought that Ukraine would fall in a matter of days, but galvanized Ukrainian forces and civilians have fought on. Ukraine has also galvanized and sustained the moral outrage of the



world using open source and social media to keep their cause in the forefront. Traditionally neutral countries are rethinking what neutrality means, NATO is revitalized and Sweden and Finland may join. Individuals and groups are using open source to document war crimes. The international community is using the moral outrage of the world to come up with new and creative ways to hold Russia accountable for a blatant violation of international law and also broaden or introduce new laws that give greater access to justice for victims of serious international crimes.

### **From Legal Mobilization to Accountability**

paper presentation by Alina Ripplinger, GIGA

A current “wave of autocratization” (Lührmann and Lindberg 2019; Waldner and Lust 2017) can be considered both from a political and legal perspective. Incumbents with autocratic aspirations (mis)appropriate law to perpetuate political power (Scheppelle 2018; Varol 2015). The concept of abusive constitutional borrowing (Dixon et al. 2021) categorizes constitutional, sub-constitutional, and more procedural forms of abusive borrowing which lead to the capture of courts and other central accountability institutions such as human rights commissions, anti-corruption bodies, and electoral tribunals. A common path of political-legal autocratization accordingly rests on the manipulation of the judicial system in favor of an abusive intervention in the electoral process (Pérez-Liñán 2021). The institutional capture facilitates a framework for imposing domestic lawfare, repressing opposition by legal means, and further consolidating political power (Pinos and Hau 2022). The more autocratic the regime, the more civil society actors and any voices considered as opposition face legal repression and restrictions (Toepler et al. 2020); they are tamed, criminalized, and persecuted (Doran 2017; Lewis 2013; Pinos and Hau 2022; Yabancı 2019). Civil society organizations may also be captured by political elites, offering “feedback mechanisms” (Giersdorf and Croissant 2011) for the regime, bringing civil society’s “undemocratic potential to the fore” (Lorch 2021). Anyhow, it has also been recognized that civil society’s role is not monolithic. Structural constraints and highly repressive contexts don’t necessarily shrink activism and may even trigger mobilization efforts or new forms of resistance (Adams, Forrat, and Medow 2022; Jiménez Morales, Trujillo Ariza, and Verónico Osorio 2022; Lorch and Sombatpoonsiri 2022; van der Vet 2018; Yabancı 2022). This research project aims to analyze configurations of civil resistance and to differentiate how law is used strategically by Civil Society Organizations (CSOs) to counter lawfare and abusive constitutional borrowing in contexts of autocratic consolidation. CSOs are hypothesized to draw on law, just as their political opponents do, and to strive for accountability under International Human Rights Law given domestic remedies have been exhausted or are unavailable. Such research echoes what has been studied through the lenses of legal mobilization which includes litigation before international courts (Çali 2010; Cichowski 2007; Ozgul 2017; Sundstrom 2014; van der Vet 2018; Zuloaga 2020) as well as a diversity of further formal or informal tactics of mobilization through law (Búrca 2022; Chua 2019; Franklin 2008, 2020). The “strategic” or “impact-orientated” mobilization is considered a form of politically and legally legitimate counterpower outside of the state, with the specific incorporation of human rights law (Handmaker and Taekema 2023; Satterthwaite



2022). Such forms of legal mobilization imply the targeted political use of law by civilians to address deficits in the Rule of Law and democratic governance, but, with few exceptions, have not been studied in depth (Handmaker and Taekema 2023) and lack a coherent approach at the intersection of legalization and autocratization (Carey and Mitchell 2023). An in-depth case study of Nicaragua, combined with exploratory expert interviews, systematizes and traces legal mobilization from 2018 to 2022. The focus lies on local actors' expert-founded strategic engagement with law and its political implications. The study aims at a conceptual and empirical contribution to CSOs' role in accountability mechanisms under IHRL. The research proposes that Civil Society Organizations (CSOs) with legal expertise demand accountability for human rights violations and engage in (a) the documentation of violations; (b) international complaint procedures; and (c), transnational monitoring.

### **Legal Consciousness and the Implementation of Human Rights**

paper presentation by David Barrett, University of Exeter

Virtually all public bodies in England and Wales are subject to human rights duties. This includes regulators, inspectorates and ombuds, who have regulatory oversight for a wide range of bodies, such as medical facilities, schools, and social care providers. The realisation of human rights within these settings is particularly important to ensure the highest quality of service possible. It has been argued that through their oversight powers regulators, inspectorates and ombuds have significant potential to establish real 'sustainable behavioural change' in the bodies that they oversee, and achieve real accountability through ensuring compliance and supporting mainstreaming. Yet, so far, their performance in this area has been found to be severely lacking. In an attempt to improve accountability by regulators, inspectorates and ombuds, this paper explores the implementation gap between the potential of these bodies to cultivate the realisation of human rights within their sectors and their poor performance in practice. The paper does this by examining the legal consciousness of the individuals responsible for human rights implementation within regulators, inspectorates and ombuds and how this subsequently influences implementation. Legal consciousness concerns the way people understand and perceive of law. It has been largely explored from the perspective of citizens and, to a lesser extent, public servants on the frontline. There has been little exploration of the legal consciousness of people working in mid-layer governance, which this study focuses on. The paper has two aims: (1) to outline how an individual's legal consciousness influences their implementation of law; and (2) to outline factors that contribute to the development of an individual's legal consciousness. It begins by discussing the concept of legal consciousness, before briefly discussing the methodology of the study. It then explores the legal consciousness of implementers. How legal consciousness influences implementation is then explored. The paper then discusses factors that influence legal consciousness. Finally, it concludes by discussing ways that the factors that influence legal consciousness can be enhanced to strengthen implementation by regulators, inspectorates and ombuds and thus increase the accountability of human rights.

## **Human Rights at/on the Cliff Edge: Reflexive Positionalities**

paper presentation by Agathe Mora, Université de Lausanne and University of Sussex

Two sets of reflections frame this presentation, in which I discuss the role of academics in human rights research and the possible futures of research on human rights and within human rights institutions. The first reflection is concerned with the effects of the proclamation by some in social science that human rights have reached their end-times. From a performative standpoint, is this the best way to engage in critique -- or, put differently, what are the moral implications of framing critique this way? Is it possible to remain true to our informants' complex and plural lived realities while upholding this view? What may such a framing produce outside the walls of academia? And what alternatives do we have? The second reflection is informed by the growing difficulties faced by ethnographers in gaining and maintaining access to international human rights institutions. What does increasing institutional closing down mean for human rights as a field of research, but also of practice? Brought together, these ethical and methodological dynamics in many ways reflect the delicate balancing act between pragmatism and utopianism we witness in our interlocutors' experiences. These, I argue, can serve as a yardstick for our own reflexive practice, beyond the pitfalls of cynicism and relativism.

## **Poster presentations**

### **Lost in Translation: Exploring Accountability as a Non-Translatable Concept**

by Natalia Zakharchenko, Ruhr-University Bochum/VU Amsterdam

An éminence grise of human rights – the principle of accountability - has been continuously advancing its normative presence in international law and rights discourses in the last couple of decades. Its transformative promises, however, are hindered by the conceptual dubiety rooted, inter alia, in the non-translatability of the concept to many world languages. The meaning of the concept has gone through a significant evolution – from being an instrument of subjugation between monarchs and lieges to a power constraining toolbox of modern governance. This evolution has correspondingly taken place predominantly within English-speaking realms, in which, according to Harlow (2014:130), “it is sometimes hard to remember that in several European languages no exact equivalent or translation [of accountability] is available”. This non-translatability is not limited to European languages only; researchers of accountability from various countries, often inexplicitly, come across semantic differences of the concept once it's translated, and consequent challenges such translations bring to the legal analysis. While the scholarship engaging with the issue of translation constitute an exception among accountability research, even these explorations rarely center translation within the conceptual paradox of the term, but rather confine it to 'clarification of terminology' sections. Dubnick (2014) even argues that the scholarship elucidating the meaning of accountability can be mostly attributed to critical studies, and considering the growing attractiveness of the term and its porousness to political agenda, such research is often politicized, and, thus, overlooked or belittled. Reflecting the underrepresentation of various communities, countries, and regions in English-speaking

academia, it might be possible to presume the lack of knowledge on the status of accountability both as a word and as a concept in many different parts of the world, and the way it is appropriated by local interlocutors. The proposed poster presentation attempts to examine how universal aspirations about the principle are appropriated in local translations around the world. It will demonstrate how the conceptual advantage of accountability can be compromised when the word is translated as 'responsibility' or 'reporting' in some of the major language families. The presentation will engage with the heterogeneity of approaches to accountability, and the reiterative relations between the word and the concept, informed by the regions' historical past, political regimes, one's language and education. It will also attempt to explore the potential of non-translatables for various communities and actors which fosters the exercising the agency over the knowledge production of selves. The presentation will include various visuals and aesthetics for an immediate impression with the research puzzle. The idea is to make the poster live and interactive and provoke engagement with various audiences, when deliberating how the realisation of international legal configurations can fall short of nuances when it's assigned to a single, semantically complex, although normatively promising, concept.

### **Multidimensional nature of reparations for conflict-related sexual violence and their relevance in Ukrainian context**

by Iuliia Anosova, Ghent University

Since the full-scale invasion of Russia in Ukraine in February 2022 the issue of reparations came at the fore with a new force, as it is a common sense of justice that such huge transgressions against law and humanity should receive a proper response. Nevertheless, there is still a little understanding of what reparations might mean in this particular context. Especially when we are talking about such gender sensitive violation as conflict-related-sexual violence (CRSV). Do we regard reparations to victims in such a situation as a form of accountability of individual perpetrators or the state-perpetrator? Can they be manifestation of one of the basic human rights - effective remedy - enshrined in Article 8 of the Universal Declaration of Human Rights? Are reparations to be regarded simply as a secondary measure after establishing the guilt of perpetrators within the international criminal justice process (as, for instance, enshrined in the Article 75 of the Rome Statute)? Should reparations be limited only to the framework of the transitional justice concept? And in such case, is it possible to talk about transitional justice before the end of the armed conflict, when it is impossible to foresee how already escalated situation will develop in the future? And the most important question, what do all these considerations mean for the victims themselves, most of whom need reparations to restore basic structures of their lives which were destroyed by the acts of CRSV? All these questions do not have a simple answer. Rather they indicate the need for further exploration of the issue and hint that this area of law is still developing. At the same time, the situation in Ukraine has a potential to significantly contribute to this development as in the following years we will see how many of these issues are addressed in the state. Thus, the proposed paper will focus on three components. First, it will explore the legal nature of reparations for CRSV in current international law, including international humanitarian, criminal and human rights law. The difference

between interim reparative measures and permanent reparations will be considered as well. Secondly, the author will examine who in this particular context can be regarded as the duty-bearers, that is whether these are individual perpetrators, aggressor state, own state of the victims or the world community in whole. Thirdly, the implications of particular Ukrainian context will be addressed, such as the international nature of the armed conflict, its ongoing character, the social, legal and gender aspects of the violation itself etc. As the result of this exploration the conclusion will be drawn on to what the current concept of reparations for gross human rights violation is, what are the particularities of reparations for victims of CRSV and what such reparations might mean in particular context of ongoing war in Ukraine. To achieve this goal the author will rely on sociolegal analysis of the current international and national Ukrainian law and practice, as well as will draw from her practical experience of work with Ukrainian civil society, state authorities and other relevant stakeholders on the issue of countering conflict-related sexual violence in Ukraine.

# Data, Methods and Methodology in Human Rights Research (TS12)

## THURSDAY 7 DECEMBER

### Roundtable discussion

with Conar Clory, Alice Evans, Justin McGarragh, David Simmonds, Simon Snyder and Sheila Wildeman (also included in TS9)

### **Inclusive Arts-Based Action Research: Imagining Disability Justice**

Persons labeled/with intellectual disabilities have long been vulnerable to human rights abuses including segregation and institutionalization. They have also been marginalized in human rights research and advocacy, treated as objects of others' knowledge and action. One way of changing this ableist narrative -- and inspiring a cultural shift toward disability justice -- is to ensure that persons labeled/with intellectual disabilities are centred in knowledge creation and advocacy on human rights. My Home, My Rights is an inclusive action research collective from Nova Scotia, Canada. Nova Scotia continues to rely on large-scale institutionalization of persons with intellectual disabilities, a practice our highest court has declared to be systemic discrimination. Our collective brings together community and academic partners to imagine and advocate for disability justice. We are dedicated to promoting the rights of persons labeled/with intellectual disabilities and other disabilities to live in the community as equals. Members bring a diversity of experiences and backgrounds – including different disabilities, different communication and learning styles, differences in wealth including experiences of deep poverty and homelessness, differences in gender, race, rural versus urban living, formal and informal support experiences, and in the case of one member, the childhood experience of large-scale institutionalization. For over two years, six action researchers labeled/with intellectual disabilities worked with community-engaged academics, artists and other allies, using arts-based methods to reflect on human rights at home and in our communities. This culminated in disability advocacy centred on deinstitutionalization and responsive disability supports. Our advocacy included creation of an interactive, multi-space art exhibit, to be featured at the Halifax Central Public Library in May 2023. The exhibit includes co-designed photo portraits paired with reflections expressive of participants' sense of disability justice and injustice at home and in the community. It also includes a home-like set, featuring a seating area, our art (relating to disability justice) on the walls, and a TV showing (with captions and headphones) three short videos created by the collective on topics of disability and human rights. On the outer walls of the 'house' are photos and text focused on two key themes - ending institutionalization and reimagining disability supports. Also featured is information about our processes of knowledge

co-creation and artistic production. Our three videos, “The Right to Decide” (on the right to choose where, with whom and how you live), “House Rules” (on distinguishing respectful disability support from institutional control), and “Social Assistance” (on the many ways persons with disabilities are denied their right to support for community inclusion) bring out the unique personalities and humour of “My Home, My Rights” members while driving home fundamental human rights principles. The videos have been received enthusiastically by diverse audiences. They are good conversation-starters, inviting further reflections on disability rights and disability justice. Action researcher Conor Clory shared, following our video launch in December, 2022: “I liked how our videos were educating people about their human rights. I was nervous at first, but then it felt good. I would like to do this again so I can educate more people in the community.”

Members of the action research collective ‘My Home, My Rights’: Conar Clory • Isai Estey • Chantel Meister • Simon Snyder • Melly Thompson • Jenn Walters • Sarah Cooper • Sarah Frame • Paula Hutchinson • Justin McGarragh • Patricia Neves • Sheila Wildeman • David Simmonds • Bruce Bottomley - Support for Inclusive Design of Exhibition: Alice Evans.

## **Panel - Fostering Creative Engagement: Methodological Innovation in Research with Vulnerable Groups**

### **Head in the Game. Arts-Based Games Promoting the Right to Play for Psychologically and Socially Vulnerable Children in Argentina**

paper presentation by Marileen La Haije, University of Cologne

“He-Man wakes up on a beach, and his head and body ache. The last thing he remembers is that his ship had sunk the night before in a storm while he was escaping from his kingdom and the dragons” (qtd. in Barugel). This is the opening scene of the narrative role-playing game, inspired by Dungeons & Dragons, performed in groups at the Dr. C. Tobar García Children’s Hospital for Mental Health in Buenos Aires, Argentina. Through this game, psychologically and socially vulnerable children learn concrete narrative tools (e.g., collaborative storytelling, narrative plotting, developing a fictional character) to exercise their right to play, which they can later use at home, at school or in the neighborhood. The Tobar García Hospital is the first psychiatric institution in Argentina to appoint an interdisciplinary team of recreation specialists as part of the in-patient care facilities. This team proposes a diverse repertoire of arts-based games in which collaborative storytelling and other narrative practices are central. By doing so, they foster children’s right to “engage in play and recreational activities” and to “participate freely in cultural life and the arts” (Convention on the Rights of the Child, art. 31), responding as well to the 2010 National Mental Health Law which aims to ensure the full enjoyment of human rights for those who experience mental suffering (art. 1). In this paper presentation, I will present an analysis of selected episodes from the narrative role-playing games performed in the Tobar García Hospital. Concretely, I study how collaborative storytelling and other narrative practices can contribute to promoting the right to play for psychologically and socially vulnerable children. This analysis is informed by the personal interview I conducted with Santiago Barugel (4

December 2022), psychologist and children's rights activist who is part of the recreation team at the Tobar García Hospital, as well as the workshop on narrative role-playing games in mental health care settings for children we are developing together as part of the Master course 'Literatuur en Zorg' ('Literature and Care', by Dr. Ghyselinck and Prof. Pieters) at Ghent University (26 April 2023).

### **On the Concept of Vulnerability of Climate Migrants: Measuring the Variations and the Implications of the being "at Risk" in Times of Transit**

paper presentation by Sarah Lajeunesse, Laval University

What does it mean to be "at risk"? For some groups already considered vulnerable, such as climate migrants, does a new regional/global crisis generate increased risks to life or dignity? The concept of contextual vulnerability, as opposed to outcome vulnerability, is of growing interest to scholars, particularly in sociology, politics, and human rights law. Contextual vulnerability involves a focus on the subject, the surrounding context, and the period, through tangible and/or intangible elements. In this paper, we look at the mechanisms surrounding vulnerability of migrants during the transit period, and question if a new element, such as a global crisis, multiplies the risks related to these mechanisms. Thus, with an interdisciplinary approach to raise the key indicators associated with the inherent life-threatening or dignity risks of migrants, this paper aims to build a conceptual framework based on the existing literature to quantify and analyze the variations in time and space of vulnerability during a prolonged crisis. We put forward that vulnerability does not easily lend itself to a purely quantitative (or even qualitative) study, but that a mixed design would allow for a clearer specification of the mechanisms and their variations. Hence, this conceptualization of vulnerability, specific to migrants in transit, establishes a solid basis for the elaboration of specific protection instruments and norm reforms more adapted to the reality of displacement.

### **The Child Protagonist: reading Child Subjecthood and Adult Power through Children's Rights Law and Fiction**

paper presentation by Kate Mackenzie, University of St Andrews/University of Strathclyde

The adult/child dichotomy is at the centre of discourses of childhood and children's rights. Both the United Nations Convention on the Rights of the Child (1989) and the African Charter on the Rights and Welfare of the Child (1990) position children as the subject of rights within a framework of adult care. The (adult) state duty bearer stands in relation to the child rights holder; for every child, there is presumed to be a parent, guardian or other adult 'with responsibility' for them. Through the notion of the child's 'best interests', adult power is directed both to serve and to determine children's needs. At the same time, a further dichotomy is implied - between the child rights holder in the present and their future adult self, with independent adult membership of society understood as the natural destination of childhood. In this paper I suggest that reading children's rights law alongside fictional depictions of children's lives can shed light on the dynamic and shifting interactions of child subjecthood and adult power. I focus



on two novels which depict adolescent child protagonists growing up in a material and social environment disrupted by conflict: *The Oldest Orphan* by Tierno Monénembo and *Johnny Mad Dog* by Emmanuel Dongala. In both novels, the normal structure of parental care and authority is disrupted by conflict, as is the wider framework of adult-governed society. Through the child protagonists' narratives, the multiple forms of adult power are illuminated in various ways: in the children's direct encounters with adults in authority, including humanitarian workers, soldiers, politicians and the judiciary; in their attempts to manoeuvre around or compensate for failures of adult authority; and in the makeshift, alternative networks and mechanisms of care which the children construct. In both stories, the urban environment functions as a metaphor for the enduring edifice of adult power, whose breakdown risks leaving children out of place, no longer cared for as children, but still excluded from recognition as independent members of society. Drawing on the two narratives, I consider how the child protagonists' encounters with adult power in various forms are shaped by and shape the child's relationship with society and their capacity to imagine their own adult future within society. I suggest that the adult authority and duty of care envisaged by children's rights law is underpinned by and directed to the child's own progression towards adulthood. Where the child's capacity to imagine their own future adulthood is disrupted or blocked, the relationship of child rights holder and adult duty bearer is undermined. On this basis, it may be argued that the dominant adult power in the children's rights framework is the child's adult self, the destination of childhood, formed in interaction with the individual adult figures and the adult-led forms of the child's present. In this way, I show how the fictional texts bring out the complexity and inter-related nature of the relationship between the child rights holder and duty bearing adults and society. Rather than a simple dichotomy, this is shown to be a complex, reciprocal, and inter-locking relationship functioning across individual and generational time as well as space.

## Roundtable discussion

### **Decolonizing our Universities? Pluralizing Knowledge Approaches in Research and Teaching**

With Jan Orbie (HRRN Ghent University), Yasmine Kaied (HRRN Ghent University), Arno Van Overberghe (student Ghent University), Enya Scherrens (student Ghent University)

Moderators: Cira Pallí-Asperó & Elke Evrard, HRRN Ghent University

This roundtable discussion proposes a conversation between the decolonial and methodological conference streams (TS2-TS12), on pluralizing modes of knowledge production and sharing in the university setting. Students, junior and senior academics will debate opportunities to decentre, disrupt and decolonise Eurocentric epistemologies in researching and teaching human rights. We aim to foreground alternative (1) methodological approaches to research, and (2) curricular and pedagogic strategies in educational practice within our higher education institutions. With the participation of students, junior and senior researchers and staff members, this roundtable

engages with urgent calls for centring the perspectives and power of marginalized communities and knowledge approaches in and beyond human rights debates.

## Poster presentation

### **An International Approach to Align UNCRPD Articles with Quality Of Life Indicators and Support Strategies**

by Marco Lombardi, HOGENT

Since the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) was created, the translation of the Convention into practice has been difficult. To support the implementation of the UNCRPD the project referenced above aligned UNCRPD articles to core quality of life indicators and specific support strategies to promote Quality of Life (QoL). Methodology Two international Delphi studies and a literature review were conducted. The aim of first study was to find consensus among a group of experts on the relation among UN Convention articles, QOL domains, and measurable indicators. The findings have been integrated by a literature review. In a second study support strategies were generated and evaluated. The process implied a structured research plan where several Delphi rounds were run until consensus was reached. Findings 85 indicators and related support strategies have received a good level of cross-cultural agreement. This study represents a first step to obtain measurable indicators of the UNCRPD Articles within a QOL framework. By using a Delphi methodology, multiple indicators for each Article/QOL domain pairing were identified by a group of international respondents, and then linked to specific support strategies to implement the application of the UCRPD in the practices of support providers and as Quality of life outcomes.

### **An interdisciplinary and multi-method exploration of transitional justice as 'expressive project'**

by Elke Evrard, Ghent University

Transitional justice has emerged as the globally dominant paradigm for dealing with the violent legacies of armed conflict, authoritarian rule or historical injustice. A focus on transitional justice as 'expressive project' unpacks how the establishment of these mechanisms and measures opens up heterogeneous and dynamic processes of normative and didactic communication, dialogue and deliberation about harm, rights, justice, inclusion and citizenship, and the effects thereof on socio-legal relations, narratives and beliefs. This poster uses concept mapping to visualize an interdisciplinary and multi-method research approach to study this topic – linking the expressive justice model to relevant theoretical and conceptual frameworks in discourse study, victimology, human rights education and social psychology, while integrating innovative qualitative and quantitative research methods, including computational corpus-based text

analysis, qualitative meta-synthesis, visual narrative analysis and survey-based experimental design.

## **Migrating Heritage**

by Sofie Verclyte, Ghent University

Profound changes often call for expression. However, they cannot always be expressed in verbal language. Moreover, speaking freely about traumatising experiences or telling a coherent story about them is often difficult and painful. In Shatila, the language of embroidery has been present since the establishing of the camp among Palestinian residents. It is a gender-specific activity, rooted in the region's rich textile tradition. Since the outbreak of war in neighboring Syria, and the influx of new refugees, there has been a resurgence of embroidery practices in the camp. This cultural heritage has various (often new) functions such as coping with trauma, generating an income, and/or telling a story. Through a visual presentation that focuses on that narrative function of embroidery, I will showcase how a performative methodology of collaborative making can provide insights in lived experiences of conflict and displacement, which often relate to human rights.

## Poster presentation

### Exploring human rights and interdisciplinarity with the Quetelet Colleges' students

The Quetelet Colleges are an honours program at Ghent University that brings together motivated and creative students from all faculties. During weekly lectures, the students delve into a wide range of themes regarding science, society and challenges for the future. In light of the conference, several Quetelet students have interviewed conference conveners – exploring three central themes: (1) the connection between the stream's topic and human rights; (2) opportunities and barriers for realising these rights; and (3) the unique contributions of an interdisciplinary lens. Follow the QR code to discover the results. You can find out more about these interviews and part of the interview transcripts by clicking in the QR codes in this poster.

Interviews by Sien Deroo, August Vermeire, Ruben Defoort, Wout Serras, Elisa Rommens, Ella De Backer & Robin Mattheeuws