



Maastricht Centre for Human Rights



# Annual Report 2015

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## About the Centre

The Maastricht Centre for Human Rights facilitates and supports research in the field of human rights at Maastricht University's Faculty of Law. Funding is provided by Maastricht University's Faculty of Law. The Centre was established in 1993 by professors Theo van Boven and Cees Flinterman.

## Board

### Director

Prof. Fons Coomans

### Board Members

Prof. Hans Nelen

Dr. Ria Wolleswinkel

Dr. Roland Moerland

Dr. Ingrid Westendorp

Dr. Dorris de Vocht

Benedicta Deogratias, PhD candidate



### Administrator

Chantal Kuypers



## Mission

### *Ambition*

The Centre aims to be at the **cutting edge** of global human rights research and to be **forward looking** into its choice of research themes

### *Priorities*

The Centre favours research themes that **contribute to a better society** within the context of the process of globalisation and that raise **fundamental questions** about human rights (as opposed to mere technicalities)

### *Approach*

Research conducted within the Centre takes a **normative approach**, reflecting an **integrated view** of economic, social and cultural rights on the one hand and civil and political rights on the other, with close attention being given to **gender issues**

### *Focus*

The research carried out within the Centre is **interdisciplinary**, with a particular focus on public international law, criminal law and social sciences

## Membership and Partnerships

The Centre is a member of several research networks and partnerships:

Member of the Association of Human Rights Institutes (AHRI).



Member of the Netherlands School of Human Rights Research together with Erasmus University Rotterdam, Leiden University, Tilburg University, Utrecht University, University of Amsterdam, Groningen University and the T.M.C. Asser Institute in The Hague.



Partner of the European Inter-University Centre for Human Rights and Democratisation (EIUC) in Venice.



### **AHRI conference on 21 & 22 September 2015 in Belgrade**

On 21 and 22 September, the Association of Human Rights Institutes (AHRI) held its annual conference in Belgrade. The Belgrade Centre for Human Rights, which was celebrating its 20th anniversary on 20th September, organized the meeting this year. Participation was limited to scholars from human rights centres and institutes that are AHRI members. In total, 88 experts attended the conference that was focused on the topic 'Human Rights and Universality'.

The Maastricht Centre for Human Rights was represented by Julie Castrec, Benedicta Deogratias, Cees Flinterman, and Ingrid Westendorp, all of whom held a presentation.

In 2016, AHRI will organize an open conference accessible to all interested human rights scholars. The venue will be Utrecht University. The dates for this conference will be Friday 2nd, and Saturday, 3rd September 2016 and the topic will be the 50th anniversary of the two UN Human Rights Covenants.

## Research Programmes

The Centre focuses on two areas:

- Globalisation and Human Rights
- Criminal Law in a Multinational Interplay of Forces

The Centre organises conferences, seminars and lectures, sponsors publications and assists in grant applications. Among its best-known achievements are the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986), the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) and the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011).

The results of research conducted at the Centre are generally **published** by:

- **Intersentia Publishers** in the *Maastricht Series in Human Rights* and the
- *Dissertation Series* of the **Netherlands School of Human Rights Research**.

Specific research activities have been supported by ad hoc grants from the Netherlands Organisation for Scientific Research (NWO) and the Royal Academy of Sciences (KNAW), by intergovernmental organisations such as the European Union and UNESCO and by Netherlands Government Ministries such as the Ministry of Justice and the Ministry of Foreign Affairs.

## Lunch Lectures

- **Rethinking obstacles to extradition**” held by Miguel Joao Costa, 21 January 2015
- **“State of Human Rights in Papua and the Peacebuilding Efforts of the Melanesian Spearhead Group”** held by Dr. Budi Hernawan, 11 May 2015
- **“When Does the United States Intervene Militarily for Humanitarian Reasons?”** held by Dr. Roberta Haar, 26 May 2015
- **“The Psychology of Violence - A Tour d' Horizon”** held by Phil Brüll, 27 November 2015



## Conferences

- **16 January 2015:** *‘Protecting Young Suspects in Interrogations: a study on safeguards and best practices’.*
- **22 & 23 January 2015:** Conference on *‘Denialism and Human Rights’.*
- **23 & 24 February 2015:** *‘Regional European meeting on Extraterritorial Human Rights obligations in Brussels’.*

## Sneak Preview of the Documentary 'The Subversives: Theo Van Boven at the UN', 29 September 2015

The 'sneak preview' of the new documentary took place on 29<sup>th</sup> of September at the Aula of Maastricht University. The film, produced by Miles Roston, is about Theo van Boven's work as Director of the United Nations Division for Human Rights in Geneva from 1977-1982. It mostly addressed human rights issues which occurred in Latin America during the 1970s and 1980s, in the course of which period, hundreds of thousands were tortured, killed and disappeared. Theo Van Boven, during his position as Director of the United Nations Division for Human Rights, strongly spoke out against these human-rights violations. According to him: *'It is inexplicable and indefensible for the United Nations not to react urgently to situations of gross violations of human rights'*. The documentary details the dramatic journey of Theo van Boven and his team, and their struggle to bring justice and change to the UN.



## Theo Van Boven Lecture 2015

On Wednesday 25<sup>th</sup> of November the **Annual Theo van Boven Lecture** took place at the Faculty of Law, Maastricht University. The purpose of this lecture is to honour one of the founders of the Maastricht Centre for Human Rights. The main topic that was addressed this year was '**Contemporary Forms of Slavery**'. Professor Fons Coomans (Director of the Maastricht Centre for Human Rights) made some introductory remarks and operated as a moderator during the Lecture. Furthermore,



the meeting had two distinguished speakers namely: **Professor Jean Allain** (Queen's University, Belfast) and **Dr. Aidan Mc Quade** (Director of the Anti-Slavery Society International, London).

The first speaker, Prof. Allain, addressed the issue of the Contemporary Forms of Slavery and the Role of Human Rights Scholars. Prof. Allain provided the audience with a historical overview of the evaluation of what constitutes contemporary forms of slavery in a legal and academic context. Additionally, he highlighted that international laws especially over the issue of slave trade have never been perfectly applied and attempted to analyze the current legal regime through the concept of the 'state of control' that essentially materializes the notion of slavery. Lastly, Professor Allain forwarded a plea to capture and perceive slavery not only into a historical context but to analyse and assess what different forms it takes nowadays.

The second speaker, Dr. Aidan McQuade, addressed mostly the issue of powerful stakeholders/actors that expand their state of control (meaning slavery-like practices) upon less-privileged vulnerable people, excluding them from development. He also pinpointed the fact that denialism of slavery/torture/poverty actually confirms the exact opposite. Thus, this denialism constitutes an apparent sign of political weakness or even unwillingness to effectively address these issues (emphasizing that to the extent that slavery and poverty continue to persist, the struggle for human rights is not going to end). The last part of the meeting comprised a brief reaction of Prof. Theo van Boven to the statements of the speakers and an interaction session with the audience took place.



## Human Rights Defender from Somaliland in Maastricht



Mr. Guleid Jama, a human rights defender from Somaliland, stayed in Maastricht from October to December 2015. His stay has been facilitated by the Shelter City Project of Justice & Peace, a Dutch human rights NGO. The Municipality of Maastricht and Maastricht University host human rights defenders who are at risk in their home country for three months to find a temporary shelter.

On 15 December Guleid Jama gave a presentation for members of the Maastricht Centre for Human Rights.

In 1991 Somaliland declared independence from Somalia, but it remains an unrecognized entity in international relations. The territory is governed by an authoritarian regime which commits wide spread violations of human rights to silence any oppositional voices and keep the peace in society.

Mr. Jama, chairperson of the Human Rights Centre, an NGO, was arrested himself in 2015 and kept in prison for twenty days. The regime is characterized by clan politics, corrupt politicians and unfair elections. In addition, the police force is a major power, however unchecked and unaccountable. Some key human rights problems as explained by Mr. Jama are the following: arbitrary arrest of journalists (19 in 2015); the death penalty has been carried out on seven people in 2015; women are marginalized and victimized as a result of clan-based patriarchy. Through reporting and advocacy work the Human Rights Centre aims at denouncing these violations.

Another development complicating the situation in Somaliland is the spread of radical and extreme Islamic ideas (Salafism) supported by forces in Saudi-Arabia. The key question for Mr. Jama is whether keeping the peace should prevail over seeking justice and protecting human rights as the regime has said repeatedly. The talk was

informative and gave a good impression of the human rights situation in a country which is little known.

## **Project: Shelter City Maastricht**



Recently Maastricht's City Council decided to participate in the Shelter City programme, which is run by the human rights organisation Justice and Peace. The international city of Maastricht wants to facilitate the debate on both local and international human rights. Part of this is Maastricht Shelter City, a programme in which the Municipality, in cooperation with Maastricht University and the human rights organisation Justice and Peace, will offer shelter to four defenders of human rights over the next two years.

Human rights defenders are people who, within an organisation or as individuals, stand up for fundamental rights and freedoms. They shed light on abuses by authorities, or are committed to the fight against impunity and human rights violations. Their activities are suppressed or restricted in their own countries and they are being harassed, threatened or even physically attacked in their daily lives. The Shelter City programme offers them hospitality and a safe place in a city where they can enjoy working on their international networks, provide information about the human rights situation in their countries and discuss these situations with citizens. After a three-month stay, they can return to their home countries and continue their work with new energy and knowledge, and a broader network.

The four human rights defenders will each be given shelter for three months in Maastricht. The municipality of Maastricht, in cooperation with Maastricht University (Faculty of Law and the University College Maastricht) and Justice and Peace, will house these people. Justice and Peace is responsible for the selection of the human rights defenders who will stay here, by order of the Ministry of Foreign Affairs. The other cities that have welcomed human rights defenders through this programme are The Hague, Utrecht, Middelburg and Nijmegen.

More information at <http://en.justiceandpeace.nl/>

## Bed, Bath and Bread Project



### ***Bed, Bath and Bread: a Human Right***

by Theo van Boven, Fons Coomans, Kees Flinterman and Menno Kamminga

The Committee of Independent Experts of the European Social Charter (ESC) has interpreted the obligations that the Netherlands has incurred under the ESC in a correct and legally justified way. It would be to its credits if the Netherlands were to execute the decision of the Committee without creating any further legal impediments. The Netherlands is known as a country that is highly committed to the protection of human rights in its foreign policy. This credibility is under pressure if the Netherlands does not also within its own borders take the human dignity of all people seriously, also of asylum seekers who have exhausted all legal remedies.

We would like to make three comments in the field of international law and human rights on the question whether the government should provide 'bed, bath and bread' to asylum seekers who have exhausted all legal remedies, and on the agreement that was signed between PvdA (Dutch Labour Party) and VVD (Dutch People's Party for Freedom and Democracy) on this issue:

#### ***1. What is the role of the Committee of Independent Experts of the European Social Charter and of the Committee of Ministers of the Council of Europe?***

On 15th April 2015, the Committee of Ministers of the Council of Europe accepted a resolution on complaint 90/2013 of the Conference of European Churches versus the Netherlands. The decision of the Committee of Independent Experts of the ESC had already been

known for a long time. It was unanimous and unambiguous. The recently renewed discussion in the Netherlands, with an almost unbridgeable gap between coalition partners PvdA and VVD, concerned the resolution that was adopted by the Committee of Ministers on 15th April, which takes account of the report by the Committee of Independent Experts and awaits further information on the part of the Dutch government. The resolution of the Committee of Ministers, however, moreover includes some considerations that content- and purpose-wise provide food for raising the *raison d'état* above the core values of human rights.

The system of collective complaints of the ESC works as follows. If the Committee of Independent Experts holds that the ESC 'has not been adequately implemented', the Committee of Ministers shall address a recommendation to the State concerned (Article 9, Additional Protocol to the ESC concerning a system of collective complaints). The Committee of Ministers cannot change the legal judgment of the Committee of Independent Experts. This is also confirmed in the explanatory memorandum to the Protocol, which adds that the Committee of Ministers may base its decision (resolution or recommendation) on considerations of social and economic policy. It seems that the Committee of Ministers has exceeded its powers by taking it upon themselves to pass a legal judgment on complaint 90/2013.

How could this happen? The report attached to the resolution of 15th April 2015 shows that the Netherlands was anxious strongly to influence the decision-making of the Committee of Ministers. According to the Netherlands, the decision of the Committee of Independent Experts was unfounded and *contra legem*. It might even undermine the confidence in this Committee. This action by the Dutch government has led to the introduction of some unusual considerations in the resolution of the Committee of Ministers (a political body) that seem to oblige the Dutch government. With this approach, the Committee of Ministers deviates in the case at stake from its position in 2010 concerning an earlier complaint against the Netherlands related to unlawfully residing children in the Netherlands. In that case, the Committee of Ministers also referred to the limited personal scope of the ESC, but added significantly and explicitly that it does not relieve states from their responsibility to prevent homelessness of persons who are present in their jurisdictions, more particularly when minors are involved.

## **2. What exactly is the Netherlands convicted of?**

On the basis of an extensive analysis, the Committee of Independent Experts has concluded that the Netherlands has violated Article 13(4) and Article 31(2) ESC by excluding adult migrants without a residence permit ('adult migrants in an irregular situation') from basic amenities such as food, clothing and shelter. Such amenities are directly related to the human dignity of all people, irrespective of his or her residence permit. The Dutch defence was that this category of persons is not entitled to the protection of the ESC. They would fall outside the scope of the Charter.

It is regrettable that the Netherlands, almost fifty years after the establishment of the UN Human Rights Treaties (1966), is still inclined to exclusively have the European human rights treaties as its frame of reference, even if UN treaties include further obligations. Article H of the ESC, which the Committee also refers to, stresses that the provisions of the Charter do not affect provisions of treaties that are more favourable for the persons protected.

The right of access to sufficient food, clothing and shelter arises from the right to an adequate standard of living, as laid down in Article 11(1) International Covenant on Economic, Social and Cultural Rights (ICESCR) and in Article 25 Universal Declaration of Human Rights. Everybody has this right, hence also persons who refuse to cooperate in their expulsion.

In a General Comment, the UN Committee responsible for monitoring the implementation of the ICESCR expressly provided that every State Party has a 'minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights'. Already in 2010, the UN Committee appealed to the Netherlands to guarantee the minimum required level of the right to housing, health and education with regard to aliens without residence permit.

The interpretation of the UN Committee can already be found in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights that were adopted in Maastricht in 1986.

Principle 28 stipulates that states are obliged to ensure that everyone can survive and has access to basic services. In later years, the Limburg

Principles, as soft law, have had a significant influence on the substantive provisions of the social human rights that are included in the ICESCR. The Netherlands has been a party to the ICESCR since 1976.

### ***3. Can municipalities be penalised financially for offering 'bed, bath and bread' to aliens without a valid residence permit?***

The agreement between PvdA and VVD provides for the possibility to financially penalise municipalities that offer 'bed, bath and bread' to aliens who have exhausted all legal remedies. This is remarkable for also decentralized state bodies are subject to international law. This was stipulated by, among others, the International Court of Justice in the LaGrand case. In the present case, the municipalities hence have the obligation to act in accordance with the interpretation that the Committee of Independent Experts of the ESC has given to the obligations that the Netherlands has incurred under this Treaty. If the central government would put pressure on municipalities to act contrary to these international obligations, it would be acting unlawfully at the international level.

In conclusion, we argue that the right to 'bed, bath and bread' is a human right that arises from international human rights treaties. The Committee of Independent Experts has interpreted the obligations that the Netherlands has incurred under the ESC in a correct and legally justified way. It would be to its credits if the Netherlands were to execute the decision of the Committee without creating any further legal impediments. The Netherlands is known as a country that is highly committed to the protection of human rights in its foreign policy. This credibility is under pressure if the Netherlands does not also within its own borders take the human dignity of all people seriously, also of asylum seekers who have exhausted all legal remedies.



\*\* **Disclaimer:** The original Dutch version of this article was published in the NEDERLANDS JURISTENBLAD, 12 June 2015, p. 1535-1536. The text has been translated into English by Vertaalslag.

## News

- ✓ MCHR member, Professor Lisa Waddington, briefed the UN Committee on the Rights of Persons with Disabilities in Geneva on 20 August 2015. The Committee was preparing its Concluding Observations on the report of the EU, which is a party to the Convention on the Rights of Persons with Disabilities. Professor Waddington was asked to brief the Committee on the competences which the EU has to implement the Convention.

- ✓ **Memorandum of Understanding with University of Fort Hare**

In December 2015 Maastricht University has concluded a Memorandum of Understanding with the University of Fort Hare in East-London South Africa. The initiative for this agreement was taken by Prof. Fons Coomans (Maastricht) and Prof. Nasila Rembe (Fort Hare). Both are UNESCO Human Rights Chair holders. Fort Hare University will be celebrating its centennial in 2016. It is well-known in South Africa for its role in the fight against Apartheid. Famous leaders of the African National Congress studied at this university, among them Nelson Mandela and Oliver Tambo. The collaboration between Maastricht and Fort Hare will begin in the field of legal education and research. It will focus in particular on capacity-building of teaching staff, including the possible introduction of Problem Based Learning Method at the Nelson Mandela School of Law, strengthening research methodology, research output and capacity, and exchange of postgraduate students and academic staff between the two institutes. The area of human rights will serve as a pilot for setting up the collaboration. See for more information on the University of Fort Hare: [www.ufh.ac.za](http://www.ufh.ac.za)





✓ **Maastricht Human Rights Prize**

Vera Kegel, law student at Maastricht University, together with her fellow students of AIMS (Amnesty International Maastricht Students) has won the first Maastricht Human Rights Prize. The Prize is an initiative taken by former Mayor Mr. Onno Hoes, the Municipality of Maastricht and institutes for secondary and higher education in the Maastricht region. The ceremony took place in the town hall of Maastricht on the International Human Rights Day (10th December), where the winning team could present its project, together with 4 other finalists. The winning project consisted of a presentation and a video which addressed the topic of this first theme of the Prize (Everyone has the right to education): <http://ow.ly/VKXDb>.



## PhD Defences

- **PhD defense Roland Moerland on 19 March 2015**

Title of the thesis: The Killing of Death – Denying the Genocide against the Tutsi.

Supervisors: Prof. H. Nelen and Prof. A. Klip.

- **PhD defense Andrea Broderick on 20 November 2015**

Title of the thesis: The Long and Winding Road to Equality and Inclusion for Persons with Disabilities – The United Nations Convention on the Rights of Persons with Disabilities.

Supervisors: Prof. L. Waddington and Prof. F. Coomans



## Publications

- Publication in the Maastricht Series in Human Rights presents the results of the first part of the research project 'Protecting Young Suspects in Interrogations': a legal comparative study into existing legal procedural safeguards for juvenile suspects during interrogation in the five selected Member States. Published in May 2015 by Intersentia, ISBN 9781780682990. Authors: Michele Panzavolta, Dorris de Vocht, Marc Van Oosterhout, Miet Vanderhallen.

- The Library of Essays on International Human Rights (2015):
  - I. Westendorp, Using culture to achieve equality in "Equality and Non-Discrimination under International Law" (Volume II)

- M. Kamminga (ed.), *Challenges in International Human Rights Law* (Volume III)
- Th. van Boven, *The United Nations High Commissioner for Human Rights: the history of a contested project in "The United Nations System for Protecting Human Rights"* (Volume IV)
- Broderick, Andrea: *The Long and Winding Road to Disability Equality: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia Publishers, October 2015).
- Broderick, Andrea: 'Article 7 UN CRPD: Children With Disabilities' in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (edited by Palmisano G., Della Fina V. and Cera R.) (Springer Publications, 2015).
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- Coomans, Fons: *Bed, brood en bad: een mensenrecht*, in: *Nederlands Juristenblad* 2015, p. 1535-1536 (samen met Th. Van Boven, K. Flinterman en M. Kamminga).
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- Yabasun, Dersim: '(T)here and back again: The EU approach towards asylum seekers', Maastricht Law News & Views (September 2015).
- Yabasu, Dersim: '(op-ed) Naar een solidair Europees asielbeleid? De redactie.be, VRT België, Yabasun, Schneider, Vink (September 2015).

- Waddington, Lisa: European Yearbook of Disability Law, Volume 5, Intersentia, 2015, joint editor with Gerard Quinn and Eilionoir Flynn.
- Waddington, Lisa: International Journal of Discrimination and the Law, March-June 2015, Vol. 15 (1-2), Special Issue on (Il)legitimate Differential Treatment, Guest Editor.
  
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