

**Interuniversity Attraction Poles – phase VII**

**ANNUAL SCIENTIFIC REPORT P7/27**

**The Global Challenge of  
Human Rights Integration:  
Towards a Users' Perspective (HRI)**

**Promotor: prof. dr. Eva Brems**

1 October 2014 – 30 September 2015

December 2015



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## List of abbreviations

ACHPR	African Commission on Human and Peoples' Rights
CAH	Crimes Against Humanity
CIRC	Centre interdisciplinaire de recherches en droit constitutionnel et administratif
CJEU	Court of Justice of the European Union
CHR	Centre for Human Rights (University of Pretoria)
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EJHR	European Journal of Human Rights
ELC	Equality Law Clinic
EU	European Union
EUI	European University Institute
FRC	Research Group Fundamental Rights & Constitutionalism (VUB)
FWO	Flanders Research Foundation
HRC	Human Rights Council
HRI	Human Rights Integration
HR&ILD	Human Rights & International Legal Discourse
IAP	Interuniversity Attraction Pole
IES	Institute for European Studies (Université Libre de Bruxelles)
ICC	International Criminal Court
NLUD	National Law University, Delhi
OAS	Organisation of American States
UAntwerpen	Universiteit Antwerpen
UCL	Université catholique de Louvain
UGent	Universiteit Gent
UK	Université Kongo
ULB	Université libre de Bruxelles
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNICEF	United Nations International Children's Emergency Fund
USL-B	Université Saint-Louis – Bruxelles (before FUSL, Facultés Universitaires Saint-Louis)
UU	Universiteit Utrecht
VUB	Vrije Universiteit Brussel
WP	Work Package

## 1 General information

### BELGIAN PARTNERS

<p><u>Coordinator: Partner 1 (P1)</u>  Name: Eva Brems  Institution: Universiteit Gent  Institution's abbreviation: UGent  Research Unit: Human Rights Centre</p>
<p><u>Partner 2 (P2)</u>  Name: Emmanuelle Bribosia  Institution: Université Libre de Bruxelles  Institution's abbreviation: ULB  Research Unit: Institute for European Studies (IES)</p>
<p><u>Partner 3 (P3)</u>  Name: Paul De Hert  Institution: Vrije Universiteit Brussel  Institution's abbreviation: VUB  Research Unit: Research Group Fundamental Rights &amp; Constitutionalism (FRC)</p>
<p><u>Partner 4 (P4)</u>  Name: Koen De Feyter  Institution: Universiteit Antwerpen  Institution's abbreviation: UAntwerpen  Research Unit: Law and Development Research Group</p>
<p><u>Partner 5 (P5)</u>  Name: Sébastien Van Drooghenbroeck  Institution: Université Saint-Louis – Bruxelles (before Facultés Universitaires Saint Louis)  Institution's abbreviation: USL-B (before FUSL)  Research Unit: Centre interdisciplinaire de recherches en droit constitutionnel et administratif (CIRC)</p>

### INTERNATIONAL PARTNER

<p><u>International Partner 1 (INT 1)</u>  Name: Barbara Oomen  Institution: University College Roosevelt, Universiteit Utrecht  Institution's abbreviation: UU  Research Unit: University College Roosevelt  Country: The Netherlands</p>
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## 2 Introduction

In its third working year, the Human Rights Integration (HRI) network continued to function vibrantly, through the successful organisation of various international (expert) seminars, on the one hand, and cooperation and exchanges within the network, on the other. Moreover, much energy was devoted to the preparation of its flagship international conference “The Global Challenge of Human Rights Integration: Towards a User’s Perspective”, which will take place from 9 until 11 December 2015 in Ghent. Finally, the visibility of the research network substantially increased, as evident from the exponential growth of website visitors.

The HRI project studies human rights law as an integrated whole from a user’s perspective. Regarding network-wide **scientific results**, an international closed expert seminar “Rewriting decisions from a human rights integration perspective” was hosted by the international partner, University College Roosevelt (UU) in May 2015 in Middelburg. This seminar was exclusively dedicated to the presentation and extensive discussion of draft papers of the ‘rewriting book project’. This book aims to introduce concrete and innovative proposals for a holistic (‘integrated’) approach to supranational human rights justice through a hands-on legal exercise: the rewriting of decisions of supranational human rights monitoring bodies. Moreover, the research projects within the various work packages are well on track; the PhD researchers have advanced significantly in the theoretical and methodological framing of their research, as well as in the actual writing of chapters.

As the **network activities** are concerned, the third working year witnessed **again an increase in the organisation of international (expert) seminars, debates and other activities** related to the research objectives of the network. Activities included the Equality Law Clinic (ULB), an international expert seminar on children’s rights and human rights (UGent, UAntwerpen); an interdisciplinary research day on human rights as the ‘last utopia’ (USL-B); an international seminar on the right to education in China (UAntwerpen); a roundtable on transnational abortion rights (ULB); an international conference entitled “Getting Closure: Human Rights after Human Rights” (ULB); an international conference on indigenous peoples (UGent, VUB, UAntwerpen); conference-debates on human rights in the Maghreb countries and the refugee crisis (USL-B); a research afternoon on the European Social Charter (USL-B); and lectures by renowned international experts such as Álvaro Gil Robles; Jacco Bomhoff and David Thor Björgvinsson (ULB). The network members also participated actively in various international conferences.

In addition, **four PhD seminars** were organised for the researchers of the HRI network and other interested researchers of the partner universities and beyond. Two of these had a thematic focus, dealing with children’s rights law in the global human rights landscape (UGent, UAntwerpen) and methodological approaches to case-law research (UGent). In two other seminars, the PhD researchers benefited from the feedback provided by high-level international experts, namely prof. John R. Spencer (Ganshof Van der Meersch Chair) (ULB) and David Thor Björgvinsson (ULB).

The **second annual meeting** of the HRI network was hosted by the Université Saint-Louis – Bruxelles and took place on 12 February 2015 (after having been postponed due to a railway strike). The annual meeting focused on a **mid-term review** of the progress made in the research

projects of the different work packages, through presentations by the PhD researchers and discussion afterwards. A second part of the meeting was reserved for the preparation of the 2015 international HRI Conference, with – among others – discussion of the concept note and the call for papers.

On 8 October 2015, the **third annual meeting** was organised in Ghent. In this meeting, the floor was given to the researchers affiliated to the IAP project, who presented their research and how it related to the overall objectives of the Human Rights Integration network. In the afternoon session, further preparations were made and decisions taken regarding the December conference.

The collaboration between the various IAP partners was further enhanced through an increase in the number of **“mixed” doctoral guidance committees and doctoral examination boards**, composed of members of more than one network partner.

As external **communication** is concerned, the website remains the main carrier of information. Between 1 October 2014 and 30 September 2015, the site was visited by 10,833 persons, of which 7,422 unique visitors, an **increase with 260% of unique visitors** compared to the previous year. Within the network, a continuous communication is guaranteed through a mailing list including all project members. Key documents, work in progress and relevant literature are shared through Dropbox.

In sum, during the third working year, the HRI network **consolidated its functioning both from a scientific and a network point of view**. Significant advances were made in the various PhD projects as well as in the overarching book project on rewriting human rights decisions from an integrated perspective. Moreover, the organisation of various international seminars and the launch of the call for papers for the international HRI conference in December 2015 **increased the visibility** of the network at the national and international level. The network partners are looking forward to continue the collaboration during the next year, in which the December conference will play a major role.

### 3 Description of the research completed

*Introductory note: in the subsections on “presentations” and “guest lectures”, the relevant partner is only mentioned in brackets (i) when it concerns another partner than the partner mainly involved in the WP or research project concerned, or (ii) when more than one partner is involved in that WP or project.*

#### 3.1 Network-wide publication projects

##### 3.1.1 ‘Rewriting’ book project on human rights integration

The book project intends to show that even within the current fragmented landscape of international human rights law, it is possible to ‘integrate’ human rights to a significantly higher degree than is generally the case. To that end, the book aims to introduce concrete and innovative proposals for a holistic (‘integrated’) approach to supranational human rights justice through a hands-on legal exercise: the rewriting of decisions of supranational human rights monitoring bodies. The scholars who participated in this project have thus redrafted crucial passages of landmark human rights judgments and decisions. In addition to the rewriting exercise, authors have outlined the methodology and/or theoretical framework that guided their approaches and explained how human rights monitoring bodies may adopt an integrated approach to human rights law.

As a human rights integration project, its purpose is to rewrite decisions and judgments of specific supranational human rights monitoring bodies in such a way that they look beyond the confines of the specific instrument(s) with which that body works as well as beyond the limits of the level of jurisdiction at which it is established. Scholars have been invited to rewrite these decisions ‘as if human rights law were really one’, borrowing or taking inspiration from developments and interpretations throughout the whole multi-layered human rights protection system. Changing the legal reasoning lies at the heart of the exercise. Hence, while some authors have changed both the outcome and the reasoning in the case, others have kept the outcome, but changed the decision’s motivations so as to take full advantage of the resources of international human rights law. As a rewriting project, its purpose is to show how theoretical and conceptual approaches from scholarship can be translated into judicial practice.

In May 2015, Utrecht University hosted an **international expert seminar in Middelburg**, where the draft chapters of the book were discussed in a closed setting (see programme in Appendices). The authors include members of the various partners of the Human Rights Integration network, as well as some key international experts in this domain. The authors are currently revising their chapters on the basis of the input received during the seminar. In addition, a public event will be organized when the book is published.



The table of contents of the book project looks as follows:

<b>Integrated human rights in practice</b> <i>Rewriting human rights decisions</i>
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Editors: Eva Brems and Ellen Desmet

**I. Introduction**

- Rewriting judgments from an integrated perspective, *E. Brems & E. Desmet*

**II. Civil and Political Rights**

- Questions of Method: the Use of “External Sources” in *National Union of Rail, Maritime and Transport Workers v. the United Kingdom* (ECtHR), *S. Van Drooghenbroeck, F. Krenc and O. Van der Noot*
- Rewriting and updating *A.P. v. Russian Federation* (HRC), *G. Neuman*
- Rewriting *Zongo v. Burkina Faso* (ACtHPR), *M. Killander*

**III. Human Rights and Poverty**

- Caring, rescuing or punishing? Rewriting *R.M.S v Spain* from an integrated approach to the rights of women and children in poverty (ECtHR), *V. David*
- Re-imagining human rights responsibility: shared responsibility for austerity measures in *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece* (ECtHR), *W. Vandenhole*

**IV. Human Rights and Gender Equality**

- Forum shopping? – *Yilmaz-Dogan v. the Netherlands* (CERD Committee), *R. Smith*
- More than ‘only’ women’s rights. Rewriting *AS v. Hungary* (CEDAW Committee), *E. Brems*
- Objection ladies! Taking *IPPF-EN v. Italy* (ECSR) one step further, *E. Bribosia, I. Isailovic & I. Rorive*
- The Politics of Legal Reason: Rewriting *Joslin v New Zealand* (HRC) in Polarised Times, *M. Langford*

**V. Disability Rights**

- Rewriting CLR on behalf of *Valentin Campeanu v. Romania*: (ECtHR), *H. De Vylder*
- Mainstreaming Access to Justice for People with Disabilities. Integrating disability rights into the ECHR: re-writing *McDonald v. the United Kingdom* (ECtHR), *M. De Pauw & P. De Hert*
- Another look at *Glatzel* (European CoJ). Of principles and discriminations, *A. Bailleux & I. Hachez*

**VI. Rights of Indigenous Peoples**

- Rewriting *Paadar et al. v. Finland* (HRC), *M. Scheinin*
- Rewriting *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria* (AFCmHR): Pushing Indigenous Peoples’ Rights in Africa Forward, *S. Smis & D. Inman*
- Moving Human Rights Jurisprudence to a Higher Gear: Rewriting the case of the Kichwa Indigenous People of *Sarayaku v. Ecuador* (IACtHR), *L. Verdonck & E. Desmet*

## 3.2 WP 1: Theorizing the multilayered nature of human rights law (UU, ULB, USL-B)

The objective of work package 1 is to theorize and conceptualize the multilayered nature of human rights law. The bottom-up approach of legal anthropology, expressing the empirical reality of multiple human rights norms and forums in terms of legal pluralism, is compared to other approaches such as ‘law as a network’ as well as with approaches borrowed from legal philosophy that may serve to grasp the same reality. While the empirical approaches are mostly geared to explaining and analyzing the facts on the ground, these other approaches are normative in nature, aimed at changing those same facts. Thus, both types of approaches are complementary. The concepts and theories of legal pluralism and of ‘law as a network’ help unravel the complex architecture of human rights law, and the normative models work towards streamlining that picture towards integrated human rights.

### 3.2.1 Legal pluralism applied to human rights law (UU)

- Research: Germain Koukolo, Niels Rijke
- Promoter: Prof. Barbara Oomen

#### Objectives of the project

The aim is to develop a theoretical position paper connecting insights from the socio-scientific field of legal pluralism to research on the implementation of human rights. The cases to be discussed in the context of this research are the rise of human rights cities throughout Europe, and perspectives ‘from below’ on the European Court of Human Rights.

#### Research performed and results obtained

After the development of the position paper in 2014, 2015 was dedicated towards research on the two case studies in the context of this project, and to the supervision of PhD research on legal pluralism and human rights law.

The first case study concerns *human rights cities* and the way in which local authorities function, on the one hand, as sites of human rights integration whilst, on the other, as semi-autonomous social fields in which certain rights are invoked and strengthened, whilst others are neglected. The large workshop on the topic in Minneapolis in 2014 led to an edited volume, titled ‘*Global urban justice: the rise of human rights cities*’, that was sent to Cambridge University Press in August 2015. The book is the first academic study of human rights cities, and brings together contributions by academics and practitioners at the forefront of the human rights cities movement all over the world. It is organized around three aspects of the promise held in by global urban justice - connecting international human rights to local politics and policies. First, there is that of forging new alliances. This takes place ‘horizontally’, when local authorities and other stakeholders, like civil society, cooperate to realize human rights and combine forces in city networks. There is also the ‘vertical’ development in which cities by-pass sluggish nation

states in joining forces with international organizations, strengthening them and gaining strength from them. In these relationships, local, national and international actors often shift capacities, with, for instance, mayors aligning with international organizations to make human rights happen. Second, while many urban actors see the potential of ‘translating’ universal and abstract norms into values and indicators that hold relevance at the local level, there are also losses involved. These struggles over how urban justice should be understood, and what role rights talk should play in it, are at the heart of the second part of this book dedicated to renegotiating rights in the urban space. A third promise held by human rights cities is that of truly new practices in bringing social justice at the local level – global urban justice. The many ways in which human rights cities are implemented are illustrated in the third section of this book, which contains 15 contributions and is expected to come out halfway 2016. The promotor and E. van den Berg (who was part of the Human Rights Integration network up to 2014) also published a number of other articles on the topic, in Dutch as well as in English.

A second case study within the context of the wider empirical investigation on human rights and legal pluralism concerns empirical approaches to the legitimacy of international human rights, in particular those codified in the European Convention on Human Rights and adjudicated by the European Court of Human Rights. The promotor conducted research on this topic, which resulted in an article in the *International Journal of Human Rights*. She also held a keynote speech on the topic, the annual human rights lecture in the Netherlands.

This work package also involves the research of two PhD students who work on human rights and legal pluralism, and thus partake in and contribute to the HRI-network. Germain Koukolo conducts research on the implementation of international human rights law in Cameroon, in particular concerning vulnerable people, and the way in which cultural and institutional obstacles impede this process. He attended the international HRI conference and is expected to defend his dissertation in 2017. Niels Rijke conducts empirical research on the labour policies of orthodox reformed schools in the Netherlands, aiming to understand the way in which the freedom of education and of religion clash with the prohibition of discrimination, for instance of homosexual teachers. He presented his research to the HRI network at the third annual meeting in October 2015, attended the international HRI conference, and will continue to work on this topic for the years to come.

#### Presentations at conferences / workshops

- Oomen, B., Annual Peter Baehr lecture, “Human rights between law and politics – looking through the lens of legitimacy”, SIM, Utrecht, 25 September 2015.
- Oomen, B., “UN obligations of member states for migrant children, Seminar “The migrant child in Curacao”, Uniting for Children & UoC, Curacao, keynote lecture, 20 November 2015.
- Oomen, B., “Theorizing the multilayered nature of human rights integration, HRI Second Annual Meeting”, Brussels, 12 February 2015.
- Oomen, B., “Human rights in an urban context”, Humanity in Action international conference, the Hague, 27 June 2015.
- Rijke, N., “Personnel appointment policy of orthodox-protestant schools in The Netherlands from a human rights perspective”, Third HRI Annual Meeting, Ghent, 8 October 2015.

### Active participation as panel member or chair

Oomen, B., Introduction and workshop moderation (together with L. Verbeek), “Forum: focusing on human rights. International Forum for Local and Regional Authorities”, Graz, 28-29 May 2015.

### **3.2.2 Network theory applied to human rights law (USL-B)**

- Research: Prof. Antoine Bailleux
- Promoter: Prof. Sébastien Van Drooghenbroeck

### Objectives of the project

The object of the research is the application of the concept of ‘law as a network’ to human rights law. The paradigm of the ‘network’ is rooted in a pluralistic vision of the law and connected to the notions of regulation and governance. It notably aims at describing recent phenomena, which in the normative relations taking place within a specific legal order or between different legal systems, do not fit with the ‘pyramidal’ model traditionally used to describe such relations.

### Presentations at conferences / workshops

The research has resulted in the following communications by Antoine Bailleux:

Bailleux, A., “Le génie juridique en action (2): le réseau global des droits de l’homme », Laboratoire Forces du droit, Université de Paris 8, 25 November 2014.

Bailleux, A., “L’union cosmopolitique en danger ? Regards inquiets sur les dernières évolutions jurisprudentielles en matière de libre circulation et de droits fondamentaux », Quatorzièmes Journées Jean Monnet, Le statut d’Etat membre de l’Union européenne – Jean Monnet Conference « Le statut des Etats membres de l’Union », University of Caen , 27 November 2014.

Bailleux, A., « European fundamental social rights and their (problematic) relationship with the economic freedoms », Academy for European Law (ERA)/Trier/Germany, 7 July 2015.

### **3.2.3 Toward an integrated view on multi-layered human rights (UGent)**

- Research: Prof. Eva Brems

### Research performed and results obtained

In 2015, the ‘rewriting’ book project on the theme of human rights integration, inspired by the book *Diversity and European Human Rights* (Eva Brems, ed., Cambridge University Press), was further developed. More information was provided in section 3.1.1.

### Presentations at conferences / workshops

Brems, E., “*Evans v UK*: Three grounds for ruling differently” (paper), Expert seminar “(How) Should the European Court of Human Rights Resolve Conflicts between Human Rights?”, Ghent University, 16 October 2014 (incorporation of integration approach).

Brems, E., “Religious objections to same-sex marriage registration; An approach through the lens of conflicting human rights”, conference The Conscience Wars: Rethinking the Balance between Religion, Identity, and Equality, New York, Cardozo Law School, 20-21 September 2015.

### 3.2.4 Other contributions related to WP 1 (ULB)

#### Presentations at conferences / workshops

Bribosia, E., “Discrimination on grounds of race, religion and sexual orientation main features and recent case law”, ERA Workshop ‘Applying EU Antidiscrimination Law’, Trier, 8 December 2014.

Rorive, I., “Le contentieux stratégique dans la protection des droits de l’homme et l’usage du droit comparé”, in *L’Ecole de Nice meets l’Ecole de Bruxelles, Journées de droit économique, Gredeg et Centre Perelman de philosophie du droit*, Université de Nice Sophia Antipolis, 24-25 November 2014.

Rorive, I., “Combattre les discriminations”, 2nd lecture of the conference cycle ‘Les grands défis de la justice et du droit global’, Perelman Centre of Legal Philosophy, ULB, 10 February 2015.

### 3.3 WP 2: Users' trajectories in human rights law (UAntwerpen, ULB)

Work Package 2 concerns mostly empirical research on how rights holders navigate through the complex architecture of human rights law. It includes the development of an adequate methodology, as well as five case studies. The UAntwerpen partner contributes three case studies on how urban and rural poor communities in the Global South (China, India, DRC) are using human rights in order to protect themselves from perceived threats to their human dignity, and one case study on the Human Rights Council (the *Localising Human Rights* research programme). The ULB partner examines the human rights trajectories of foreigners in Europe in a migratory context.

#### 3.3.1 Methodological framework and general Localising Human Rights activities (UAntwerpen)

- Coordination and research: Dr. Ellen Desmet and Dr. Tine Destrooper
- Promoter: Prof. Koen De Feyter

##### Objectives of the project

From 2007 onwards, the UAntwerpen partner has run an international research project on Localising Human Rights. The main purpose is to study whether human rights as globally defined offer real protection when disadvantaged groups invoke them at the local level in an attempt to improve their living conditions. Preliminary results on the theory of the project were published in the book "The Local Relevance of Human Rights" (De Feyter, Parmentier, Timmerman and Ulrich 2011).

##### Research performed and results obtained

The concept paper "Analysing Users' Trajectories in Human Rights: a Conceptual Exploration and Research Agenda" was published in the special issue of *Human Rights & International Legal Discourse* (2014). During the third work year, continued methodological guidance was provided to the research projects in the Global South, including a visit to the DRC (see 3.3.4).

Moreover, in 2015, the *Localising Human Rights Working Paper Series*, edited by Koen De Feyter and Ellen Desmet, was launched. The series contains the research reports of the different localizing human rights projects. It is printed in a limited number, and available in open access on the website of the Law and Development Research Group of UAntwerpen.

Finally, preparations were undertaken by Tine Destrooper to hold a seminar in November 2015 on "Why human rights are localized" at the Center for Human Rights and Global Justice of New York University, with a team of UAntwerpen and researchers from the US, among which Prof. Sally Engle Merry. The seminar will be co-funded by UAntwerpen and NYU.

### Presentations at conferences / workshops

- Desmet, E., “Methodological approaches to law and development research”, Research Day of the Interuniversity Network on Law & Development, Leuven, 10 December 2014.
- Desmet, E., “La localisation des droits de l’homme”, Localising Human Rights Day, Université Kongo, Mbanza-Ngungu (DRC), 14 January 2015.
- Desmet, E., “Legal Ethnography”, Pontificia Universidad Católica del Perú, 11 April 2015.
- Desmet, E., “Natural Resources and Actor-oriented Approaches to Human Rights”, International course Human Rights for Development (HR4DEV), Leuven, 24 August 2015.
- Desmet, E., Panel “Working on natural resources and human rights: towards another development”, international course Human Rights for Development, Leuven, 27 August 2015 (moderator).

### **3.3.2 Right to education of children of rural-urban migrant households in Chongqing, China (UAntwerpen)**

- Research assistants: Darren (Shisong) Jiang (UAntwerpen/Chongqing University), Dongmei Liu, Hanbing Ai, Chen Xi (Chongqing University)
- Research and coordination: Dr. Jingrong Chen (UAntwerpen/ Chongqing University) and Dr. Ellen Desmet (UAntwerpen/UGent)
- Promoter: Prof. Koen De Feyter

### Objectives of the project

The specific research objective of the Chongqing project is to test and refine the localising human rights approach with respect to the educational situation of the children of rural-urban migrant households in Chongqing city. Particular attention was paid to the issue of transition from primary school to junior middle school. The research unravels the intricacies at play in accessing and enjoying compulsory education in Chongqing and investigates whether and how human rights are invoked in that context.

The research is performed in collaboration with Chongqing University, within the framework of a Memorandum of Understanding between the law faculties of Chongqing University and the University of Antwerp. Within the HRI project, this research project constituted a pilot study.

### Research performed and results obtained

Children and parents from migrant and urban backgrounds were interviewed regarding, among others, how they perceive their (children’s) educational situation, whether they are familiar with human rights, whether they formulate human rights claims and whether they undertake action to change an unsatisfactory situation. To contextualize the research findings, other stakeholders were interviewed as well, mainly from government and the educational sector.

A draft report was written and the research findings were presented at the international seminar “The right to education of rural-urban migrant households in Chongqing, China” in Antwerp on 23 February 2015. The final report will be published in January 2016 as part of the

*Localising Human Rights Working Paper Series*. Three international peer-reviewed publications are currently in preparation.

#### Presentations at conferences / workshops

Chen, J., Desmet, E, “Substantive findings on the right to education of rural-urban migrant households in Chongqing”, international seminar “The right to education of rural-urban migrant households in Chongqing”, Antwerp University, Belgium, 23 February 2015.

De Feyter, K., “General introduction: localizing human rights and research questions”, international seminar “The right to education of rural-urban migrant households in Chongqing”, Antwerp University, Belgium, 23 February 2015.

De Feyter, K., “Looking at the research from an international human rights perspective and recent developments “, international seminar “The right to education of rural-urban migrant households in Chongqing”, Antwerp University, Belgium, 23 February 2015.

Desmet, E., Chen, J., “Methodological framework and challenges”, international seminar “The right to education of rural-urban migrant households in Chongqing”, Antwerp University, Belgium, 23 February 2015.

### **3.3.3 Right to safe water and sanitation of New Delhi’s urban poor in the context of privatization (UAntwerpen)**

- Research: research team of the National Law University Delhi (coordinated by Devanshi Saxena and Arushi Goel) and Noémi Desguin (UAntwerpen)
- Coordination: Dr. Maheshwar Singh (NLUD) and Dominique Kiekens (UAntwerpen)
- Promoter: Prof. Koen De Feyter

#### Objectives of the project

For many poor communities in New Delhi, the access to safe drinking water is under threat, or not guaranteed. This water crisis is reinforced by the impact of climate change and the privatization plans of the Delhi Jal Board – the agency responsible for supplying potable drinking water in Delhi.

The India project consists of two parts: a socio-legal research and a legal analysis. The socio-legal research primarily documents the use of the human right to water, if at all, by the urban poor in formulating claims in face of the lack of access to water both in terms of quantity and quality. In addition, the research identifies which human rights strategies were used, whether the urban poor’s understanding of human rights coincides with the Indian constitution and international law and whether some of the claims were accommodated by the governmental authorities. The legal part contains an analysis of the normative framework relating to the right to water, and its application in the context of privatization.

The socio-legal study is carried out under the responsibility of National Law University New Delhi (NLUD), in cooperation with the Law and Development Research Group at the University of Antwerp, as well as with local non-governmental organizations working on water and sanitation issues in the slums of Delhi.



### Research performed and results obtained

During the third work year, the research team coded and analysed the interviews in NVIVO, and wrote the chapters on the four slums, to be included in the final research report. One of the field work coordinators, Devanshi Saxena, participated in the international course “Human Rights for Development” (HR4DEV) in August 2015 in Leuven. During her stay in Belgium, some additional coordination meetings and an NVIVO session were organized.

The PhD research of Nawneet Vibhaw, entitled “Right to Water and Sanitation for the Urban Poor in NCR Delhi. International and Indian Legal Perspectives”, was not continued, as he moved out of academia to be a lawyer. Instead, Noémi Desguin (UAntwerpen) will be involved to complement some parts of the research report, based on her research thesis carried out in the course of the European Master in Human Rights and Democratisation (Venice) during the academic year 2014-2015, and further follow-up research, to be done with UAntwerpen in 2016. To that end, a new work plan on India will be developed in the autumn of 2015.

#### **3.3.4 UNICEF’s sanitised villages project in the Bas-Congo (UAntwerpen)**

- Research: Dr. Tine Destrooper (UAntwerpen, 1 January 2014 – 31 December 2015); Pascal Sundi Mbambi (PhD researcher at UAntwerpen/UK as from March 2014)
- Coordination: Prof. Richard Lumbika (UAntwerpen/UK) and Dr. Ellen Desmet (UAntwerpen/UGent)
- Promoter: Prof. Koen De Feyter

### Objectives of the project

The Democratic Republic of the Congo is implementing a 'sanitised villages' programme, which is supported by UNICEF. The programme aims at improving the living conditions in the targeted villages, thus ameliorating hygiene and the environment as well as access to drinking water and suitable toilets. UNICEF’s interventions are explicitly rights-based. The process of identifying villages selected for the project is a tricky one, and so is ensuring sustainability. The research focuses on the rural communities in the area (some of which have received UNICEF funding, and others not): what is the level of human rights awareness of these communities; is their perception of human rights similar to that of UNICEF; have they taken action to secure better human rights services from the donor and the international community as whole, and also from the Congolese state; and has the experience of using the strategy in the Bas-Congo made any difference to UNICEF’s own understanding of the right to water, health and education.

The research is carried out in cooperation with the Centre des droits de l’homme of the Université Kongo (UK) in Mbanza Ngungu, in the framework of a Memorandum of Understanding with the Law and Development Research Group of UAntwerpen.

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## Research performed and results obtained

### Tine Destrooper

The starting point of this research project is that human rights need to be locally relevant in order to be useful in addressing the negative effects of globalization at the local level. A 'local infusion' into human rights can occur in two ways, by *interpreting* existing human rights norms in a locally relevant manner, or by *developing* human rights norms in ways that will improve their local relevance. For either of these to happen, there needs to be a link between global human rights norms and the daily realities of local rights-holders. One of the ways in which global human rights norms can reach local rights-holders is through the interventions of international organizations which adopt a human rights-based approach to development (HRBAD). To gain a better understanding of how these organizations use human rights norms to shape their interventions, and of whether and how these human rights-based approaches are then implemented, this report analyzes the evolution of the HRBAD in the United Nations system in general and in UNICEF in particular. It also evaluates how the HRBAD is implemented in the Bas-Congo's *Villages Assainis* program which is supported by UNICEF.

In this part of the project, we examined the extent to which international human rights standards inspire the strategies of UNICEF, as well as the extent to which these strategies are then implemented by UNICEF's country offices. To accomplish this goal, the research had the following objectives:

- Trace the evolution of the HRBAD at the level of the UN in general and UNICEF in particular;
- Investigate the importance of the HRBAD as a guiding principle for UNICEF today;
- Examine whether and how country offices of UNICEF bring the principles of a HRBAD into practice, and which elements of the approach are prioritized on the ground. This is assessed on the basis of a case study of the *Villages Assainis* program in the DRC.
- Probe whether this policy and implementation study can teach us something about the localization of HRBAD in particular and of human rights norms more generally;
- Propose, if relevant, recommendations which facilitate a more effective and more locally relevant conceptualization and operationalization of the HRBAD.

Tine Destrooper has finished the fieldwork in the DRC and finalized the report. This report has been presented at Antwerp University and New York University, and was published in the *Localising Human Rights Working Paper Series*. Various articles for international peer-reviewed journals have been drafted based on the report. Finally, Tine also gave guest lectures at New York University in the framework of this research project.

### Pascal Sundi

In December 2013, a Congolese PhD researcher, Pascal Sundi, with sound knowledge of Kikongo language, was recruited from South Africa, and started work in March 2014. His research focus includes gaining an insight into the rights understanding of local communities in the district of Bas-Fleuve (DRC), i.e. how do they interpret the right to water and sanitation, and how this interpretation shapes their actions with regard to human rights.

Since October 2014, fieldwork has been carried out so far in four villages. These villages, all located in the Bas-Fleuve district of the Kongo Central Province (formerly known as Bas-Congo),

include Tsowa (in the territory of Lukula), Kiyalala (in the territory of Seke Banza), Mbanza Kai (in territory of Tshela), and Kimbenza Muanda (in the territory of Lukula).

The PhD research proposal of Pascal Sundi Mbambi was approved by the Faculty of Social Sciences of the University of Antwerp, in October 2015, and his registration process as PhD student at the University of Antwerp is underway. The PhD, entitled “Capacity development as strategy for HRBAD: the need for a reconceptualization. A case study of the ‘DRC-UNICEF sanitized village’ Programme in Kongo Central”, will be prepared under the supervision of both Prof. Christiane Timmerman (Promotor, Faculty of Social Sciences) and Prof. Koen De Feyter (Co-Promotor, Faculty of Law). The research proposes to revisit the concept of capacity development within the broad framework of community development in focusing on the rights-based approach to development, which is meant to inform the whole philosophy of the ‘DRC-UNICEF sanitized village’ programme. In addition to the fieldwork, below is a list of activities undertaken by Pascal Sundi, from January to October 2015:

- Three days of intensive training sessions on the use of NVIVO and on data management with Dr. Ellen Desmet, at the Université Kongo, Mbanza Ngungu, DRC, January 2015.
- IOB PhD Workshop: Doing Fieldwork, Methodological Challenges, University of Antwerp, 20 October 2015.
- Information Management and Endnote (a PhD workshop by the ICT, University of Antwerp), 29 October 2015.
- PhD Research Seminar with presentations by ACIM (Antwerp Centre for Institutions and Multi-level Politics), University of Antwerp Research Group on Public Administration and Management, and on the Actor-based approach to institutions, 3 November 2015.

#### Presentations at conferences / workshops

Destrooper, T., & Fukuda-Parr, S., “Inequality, Human Rights, and Progressive Realization: Translating State Resources into Social and Economic Rights”, Center for Human Rights and Global Justice, New York University, 18 March 2015.

Destrooper, T., “The Human Rights-Based Approach in Practice: Water & Sanitation in the Bas-Congo” paper presentation during lunch event “Human Rights in Practice”, Center for Human Rights and Global Justice, New York University, 2 April 2015.

Destrooper, T., “Implementation of the human rights based approach to development by UNICEF” lunch talk “International Research Forum”, School of Law, New York University, 16 April 2015.

Destrooper, T., “The Power of Place-Based Transitional Justice: Women’s Activism in Post-conflict Guatemala”, paper presentation during lunch event “Human Rights in Practice”, Center for Human Rights and Global Justice, New York University, 13 August 2015.

Destrooper, T., “The Localization of Transitional justice processes in Guatemala – perspectives for change”, paper presentation during ECPR conference, panel “Human Rights and Development, the Localization of Transnational Concepts”, 28 August 2015.

Destrooper, T., “Localizing human rights in the context of transitional justice”, Seminar “Human Rights for Development Summer School”, Leuven, 2 September 2015

Destrooper, T., “The empirical value of localization perspectives on human rights”, Scholars in Residence Research Forum, Center for Human Rights and Global Justice, New York University, 2 November 2015.

Sundi, P., ‘Comprendre les droits de l’homme à partir d’en-bas: le cas du droit à l’eau dans le Bas-Fleuve’, conference at Law Faculty of the Université Kongo, Mbanza Ngungu, 14 January 2015.

Sundi, P., “Développement et appropriation des droits humains”, conférence-débat organisée par l’Association ‘Sima Kivu, à l’occasion de la commémoration de l’assassinat de Mgr Christophe Munzihirwa sj (Evêque de Bukavu), Bruxelles, 31 October 2015.

### 3.3.5 The Human Rights Council from below (UAntwerpen)

- Research: Arne Vandenberghe
- Promoter: Prof. Wouter Vandenhole

#### Objectives of the project

This research project studies how local organizations impact upon the international human rights architecture, in particular the Human Rights Council (HRC). This was done through a case-study, namely the trajectory of the Declaration on the Rights of Peasants to the HRC. The goal of this research was to ascertain whether or not local human rights issues and struggles get incorporated into the work and normative output of the HRC. In order to accomplish this goal the research set the following objectives:

- 1) identify the various avenues for bringing local human rights cases to the Human Rights Council (Universal Periodic Review; Special Sessions; SR; HRC; Advisory Committee; complaint procedure; the Expert Mechanism on the Rights of Indigenous Peoples; Forum on minority issues; Social forum; Forum on business and human rights);
- 2) track down one or various local issues and examine the trajectory to the HRC;
- 3) examine the preliminary impact of the issue on the output of the HRC; and
- 4) propose recommendations which could facilitate further integration of these issues into the work of the HRC.

#### Research performed and results obtained

In year 2 we finalised the report on the ‘Human Rights Council from below’, that was launched at an event on 13 June 2014. The study contains some important lessons for the process of localising human rights. It concludes that the Human Rights Council’s Advisory Committee and the special procedures particularly stand out as the two most relevant institutionalized HRC mechanisms for localising human rights. However, they only provide the opportunity to ‘localise’. The effectiveness and the expertise of the network of local and international organisations, paired with many circumstantial factors, were of utmost important in the success of the peasants’ rights campaign. Our case-study cannot be considered successful yet, as a Declaration on the Rights of Peasants which reflects the local needs is still to be adopted. Follow-up research is needed on this norm-setting process as well as on other cases if we want to further expose the idiosyncrasies of localising processes.

In year 3, the research results were published as the first issue of the *Localising Human Rights Working Paper Series*. An article based on the research project was also accepted for publication by the *Journal of Human Rights*.

#### Presentations at conferences / workshops

Vandenbogaerde, A., “The Human Rights Council from Below. A Case Study of the Declaration on the Rights of Peasants”, paper presented at the ISA Human Rights Joint Conference, The Hague, Netherlands, 8-10 June 2015.

#### **3.3.6 Foreigners in the labyrinth of human rights (ULB)**

- Research: Moritz Baumgärtel
- Promoters: Prof. Emmanuelle Bribosia and Prof. Isabelle Rorive

#### Objectives of the project

The point of departure of this project is that the reality of legal pluralism complicates the evaluation of the empirical effects of human rights law, including judgments of European supranational courts which are assumed to be highly influential. In the area of migration, recent scholarship has proven to be particularly skeptical about the true merit of human rights review – including what are allegedly ‘landmark’ cases – of migration policies. The central objective of the research is thus to analyse its added value in an interdisciplinary, practical and empirical way. The focus lies on the question whether positive judgments of the European Court of Human Rights and the Court of Justice of the EU have contributed to the actual enjoyment of human rights by migrants in Europe. In emphasising the relevance of case law for the lived situation of migrants, the project seeks to go beyond more common analyses of the legal merit of specific decisions. It combines legal and social scientific methodologies, using qualitative methods such as interviews with stakeholders that have been involved in the most important cases to describe the effects of the courts’ decisions on migrants.

#### Research performed and results obtained

During the first year of the project, the focus was on establishing the theoretical and methodological backdrop. Particular importance was hereby paid to the theoretical challenges that arise from using the perspective of the human rights ‘user’ (leading to a publication in the project-led special issue of *Human Rights & International Legal Discourse*), above all in the case of migrants and especially undocumented migrants. A second, collaborative effort of Moritz Baumgärtel with Sarah Ganty (ULB) led to another publication in same special issue of *Human Rights & International Legal Discourse*, focusing this time on the impact of legal remedies in Belgium and their intimate relation to the basic capabilities of migrants as human rights users. In the second year, the focus shifted to the interdisciplinary methodology of the project and its possible operationalization. The immediate outcome was a detailed PhD proposal which placed the project in the general context of the growing scholarship on the evaluation of the impact of

international courts on the one hand, and existing works on the evolution of migrant rights on the other. The proposal was reviewed and approved by the ULB supervisory committee of the project in May 2014. A short version of it was presented at two international conferences in Paris and Copenhagen. The gathering of data in the form of qualitative interviews with judges, lawyers, government officials and NGO representatives began in August 2014.

The third year of the project was primarily dedicated to data collection. 26 interviews had been conducted by the end of November 2014. They were held in various cities in the Netherlands, London, Rome and Brussels. Based on the impressions gained from the interviews and further theoretical reflections, an ‘issue-based’ approach to evaluating court effectiveness was developed and formulated in a first thesis chapter, which was prepared partly during a research visit to the iCourts Centre at the University of Copenhagen (March/April 2015). A second chapter on the theoretical and practical dimensions of the ‘migrant rights deficit’ was submitted in August 2015. Moreover, the analysis of interviews materials provided the basis for an additional book chapter, to be published in an edited volume (Gammeltoft-Hansen and Aalberts, eds.) by Cambridge University Press.

#### Presentations at conferences / workshops

- Baumgärtel, M., “Promoting Migrant Rights? Towards an ‘Issue-Based’ Evaluation of the Effectiveness of the two European Courts”, 5th doctoral summer seminar of the Institute of European Studies, Université libre de Bruxelles, 3 September 2014.
- Baumgärtel, M., “The European Court of Human Rights and Migration Regimes”, Contested Migration Regimes, midterm conference of the European Sociological Association working group “Sociology of Migration” (RN35), Goethe University Frankfurt, 13 November 2014.
- Baumgärtel, M., “Evaluating the Impact of European Courts: Political Issue Translation and Case Selection”, PhD seminar ‘Methodological approaches to case-law research: sharing experiences’, Human Rights Centre, Ghent University, Belgium, 26 May 2015.

### **3.3.7 Other contributions related to WP 2 (ULB)**

#### Presentations at conferences / workshops

- Bribosia, E., “Reasonable accommodation”, international workshop ‘Grammars of Equality: A Transatlantic Conversation’, ENS Paris, 13 March 2015.
- Isailovic, I., “Political recognition and same-sex marriage”, Seminar ‘Sextant, Atelier Genres et Sexualité’, ULB, May 2015.
- Isailovic, I., “Political recognition and same-sex marriage”, Institute for Global Law and Policy, Harvard Law School, 1-3 June 2015.
- Rorive, I., “Reasonable accommodation”, international workshop ‘Grammars of Equality: A Transatlantic Conversation’, ENS Paris, 13 March 2015.
- Rorive, I. (with Bribosia E.), “The unbearable conscientious objection in reproductive healthcare”, interdisciplinary international conference ‘Conscience Wars: Rethinking the balance between religion, identity and equality’, Cardozo School of Law, New York, 20-21 September 2015.

### **3.4 WP 3: Bridges between different layers of human rights law (ULB, USL-B, VUB)**

WP 3 is jointly supervised by USL-B, VUB and ULB. It is dedicated to the analysis of “Bridges between different layers of human rights law”. The research examines ways in which an integrated view of human rights may be envisaged, both as a project of normative development, and as a matter of current procedural practice. Two specific aspects of that topic are analysed by HRI PhD researchers. The “Methods and procedures of bridge-building: case study of the European Court of Human Rights” are studied by Dorothea Staes (3.4.1), while Marijke De Pauw’s doctoral research focuses on “Building new rights on an integrated reading of existing sources: The case of the rights of the elderly” (0). Sébastien Van Drooghenbroeck and Frédéric Krenc (USL-B) have also undertaken a systematic research on the recent case law of the European Court of Human Rights (3.4.3). Collective research work has moreover been carried out in the field of fundamental rights protection by the Belgian Section of the *Réseau des Académiques sur la Charte Sociale européenne et les droits sociaux*, to which Sébastien Van Drooghenbroeck (USL-B) and Isabelle Hachez (USL-B) belong (3.4.4.)

#### **3.4.1 Methods and procedures of bridge-building: case study of the European Court of Human Rights (ULB, USL-B)**

- PhD research: Dorothea Staes
- Promoters: Prof. Isabelle Rorive and Prof. Sébastien Van Drooghenbroeck

##### Objectives of the project

The context and objectives of Dorothea Staes’ research may be described as follows. The fragmentation of human rights law is a product of both the diversity of its sources and the division of tasks and responsibilities among the institutions responsible for its surveillance. In practice this division seems to become more and more blurred, for instance by the practice of the European Court of Human Rights of referring to ‘sources’ outside the European Convention on Human Rights, including to the case law of other bodies. This practice might lead to an increased harmonisation and a reduction in fragmentation within the human rights architecture. It might equally serve the interests of rights holders and other human rights users. On the other hand, references to external ‘sources’ as made by the Strasbourg Court might lead to several challenges that might pose a threat to the legitimacy of the practice. The objective of the research is to gain further insight into and evaluate the practice of importing external instruments as exercised by the Strasbourg Court. Besides theoretical legal insights, this research will carry out a detailed description and analysis of recent relevant case law of the European Court of Human Rights. In addition to an analysis of case law and literature, empirical data will be obtained from interviews with actors in the human rights field including the judges of the European Court of Human Rights.

### Research performed and results obtained

In the third year of her research, Dorothea firstly finished an article on the topic of external referencing by the Strasbourg Court in light of the principle of legal certainty. The article was published under the title “The importation of ‘external sources’ by the European Court of Human Rights - Challenges and opportunities in light of legal certainty” in the book of M. Arcari and L. Balmond (eds) on *Le dialogue des juridictions dans l’ordre juridique international. Entre pluralisme et sécurité juridique* (Napoli, Editoriale Scientifica, 2014, pp. 61-91). Secondly, Dorothea also developed an elaborate structure of her thesis and wrote three chapters: ‘Content and boundaries of research: the use of external instruments for interpretation purposes’, ‘The context of external referencing practice’ and ‘General characteristics of ECtHR’s referencing practice in the light of *Demir and Baykara v. Turkey*’. She received profound comments on these writings by the members of her PhD guidance committee in May 2015. In August 2015, Dorothea finished reading the more than 100 Strasbourg Court cases that are part of her empirical research objective: examining all Grand Chamber cases since the case of *Demir and Baykara v. Turkey* (12 November 2008), including all separate opinions. She ordered all relevant parts of each of the judgments, guided by certain research focal points. The latter touches upon the nature of the used external instruments, the function they fulfill within legal reasoning, the justification that accompanies their use, etc. The analysis of the information gathered by reading the Strasbourg cases is currently under full development. Dorothea’s methodological insights on case selection and the examination of judicial behavior were shared on the Strasbourg Observers’ blog, with the title: “Examining Strasbourg case law and judicial behavior: a view across disciplines” (26 August 2015, available on [strasbourgobservers.com](http://strasbourgobservers.com)). The PhD candidate decided on two perspectives guiding her analysis: a top-down and a bottom-up view on (human rights) integration. The first perspective includes the hypothesis that external referencing leads to enhanced convergence within the normative architecture, and that it can thus serve as a means to combat ‘fragmentation’. The second perspective includes the hypothesis that external referencing carries potential to integrate the lived experience of rights holders comprehensively, but that this potential is not optimally concretized in the Strasbourg Court’s reasoning. Parts of Dorothea’s research on methodological considerations about applying a users’ perspective were published under the title “The Use of Documents Other than the European Convention on Human Rights and Its Protocols in Cases Before the European Court of Human Rights: Reflections from and upon a Users’ Perspective”, in *Human Rights & International Legal Discourse* (n° 2, 2014, pp. 186-215). Recently, Dorothea (together with her colleague Joseph Damamme, PhD-researcher at the ULB) applied both perspectives of top-down and bottom-up integration in respect of a specific human rights domain, namely the protection of rights of persons with disabilities. Dorothea finished writing her research results on this issue. This work, carrying the provisional title “ECtHR’s external referencing: progresses and (missed) opportunities for rights of persons with disabilities”, will be presented at the HRI international conference in Ghent in December 2015. Also Dorothea’s paper on the ‘Staatkundig Gereformeerde Partij’, a Dutch orthodox political party that did not allow women on its voting lists, touched upon users’ perspectives for instance by paying attention to the orthodox communities’ internal viewpoints and to the states’ obligation to combat stereotypes. Her research results on this political party and the Strasbourg Court’s case law in this respect, were published under the title “Non-discrimination and the autonomy of political parties” in French in the *Journal européen des droits de l’homme - European Journal of Human Rights* (n° 2, 2015, pp. 123-144). To further enrich her research, Dorothea worked twice temporary under a ‘visiting



scholar' statute: once at the *University of California*, Berkeley (USA) under the supervision of professor David Oppenheimer (August – November 2014) and once at the *Universiteit Antwerpen* (Belgium) under the supervision of professor Patricia Popelier (July – September 2015).

#### Collaborations between the different teams

According to a convention concluded by USL and ULB in spring 2013, Dorothea Staes' doctoral research is co-supervised by both institutions. The co-directors of the doctoral dissertation are Professors Isabelle Rorive (ULB) and Sébastien Van Drooghenbroeck (USL). The candidate is currently registered in the two universities. During academic years 2012-2013 and 2013-2014, she has conducted her research at the ULB's Centre Perelman de Philosophie du droit. Since October 2014, and until October 2016, she works on her thesis in the USL's Centre interdisciplinaire de recherches en droit constitutionnel et administratif (CIRC).

Composed of her co-directors (Van Drooghenbroeck and Rorive) and of professors Bribosia (ULB) and De Schutter (UCL), the PhD Supervisory Committee of Dorothea Staes has met on 20 May 2015. Given the good state of advancement of the work of the candidate, the Committee issued a positive advice.

#### Presentations at conferences / workshops

Staes, D., "External referencing in the setting of the European Court of Human Rights – an (effective) tool for multiple human rights users", presentation to the « *Berkeley Comparative Equality and Anti-Discrimination Study Group* », University of California, Berkeley Law, Berkeley USA, 26 November 2014.

Staes, D., "The use of external instruments in decisions of the European Court of Human Rights", presentation at the second annual meeting on « *Human Rights Integration* », USL-B, Brussels, 12 February 2015.

Staes, D., "The ECtHR and its References to External Instruments – the case of SAS v. France", presentation at a seminar of the 'LLM Legal Theory' on « *Global Perspectives on International Adjudication: The European Court of Human Rights and its Relation to External Actors* », ULB, Brussels, 13 May 2015.

Staes, D., "Analyzing case law of the European Court of Human Rights. Case selection and reflections on the examination of judicial behavior", presentation at a HRI doctoral seminar on « *Methodological approaches to case-law research: sharing experiences* », Ghent University, Ghent, 26 May 2015.

### 3.4.2 Building new rights on an integrated reading of existing sources: The case of the rights of the elderly (VUB, USL-B)

- PhD research: Marijke De Pauw
- Promoters: Prof. Paul De Hert, Prof. Stefaan Smis and Prof. Sébastien Van Drooghenbroeck

#### Objectives of the project

The aim of the project is to assess to what extent a universalist or holistic approach to treaty interpretation – reflected in evolutive interpretation, judicial dialogue and the use of external instruments as interpretive tools – can contribute to a more uniform understanding and increased effectiveness of human rights norms, particularly in light of emerging human rights. It thus aims to determine whether it is possible for international human rights law to become “harmonized”, as well as more effective through judicial interpretive practice.

In order to provide an answer to this question, the doctoral research focuses on the effects of a universalist or holistic approach to treaty interpretation on a specific group identified as being in need of a more harmonized and effective human rights framework: the elderly. One of the causes of the fragmentation of international human rights law is the emergence of new human rights issues, responded to by the drafting of new human rights treaties. In that regard, the rights of older persons forms an excellent example as the need for a new international binding instrument tailored to their needs is the subject of an on-going debate within the UN Open-Ended Working Group on Ageing. Negotiations have, however, been dominated by the disagreement between States in favour of a new binding instrument as it would provide a clear and coherent overview of older persons’ rights and, States who claim this to be unnecessary considering the many existing human rights instruments and mechanisms already applicable to older persons. The focus on the rights of older persons will therefore also allow the assessment of whether evolutive treaty interpretation, cross- referencing and judicial cross-fertilization can produce such a powerful integrating effect that it can lead to the construction of a *corpus juris* that is functionally equivalent to the drafting of a hard law instrument. International elder law itself can also be described as particularly fragmented as the provisions protecting the rights of this group are scattered over a multitude of international and regional human rights instruments. There also currently exists a large number of soft law instruments on the rights of the elderly, which can be considered a unique key element characterizing this field of human rights. In addition, some of the most important provisions on the rights of older persons concern second generation rights, allowing for an interesting analysis of how courts and monitoring bodies can build bridges between different generations of human rights.

The interpretive practices, described above, in direct or indirect relation to the rights of older persons, will be discussed based on a comparative case law analysis, focusing specifically on the jurisprudence of international and regional human rights courts and quasi-judicial bodies. The proposed research thus aims to distinguish itself by looking at how this practice could potentially benefit a particular group of persons and may thus respond to emerging human rights issues. Its outcome will therefore not remain at a theoretical level, but will include practical recommendations of importance for the legislator, the judiciary, NGOs as well as the

elderly themselves. The aim of the research is namely to provide information on the need for additional binding instruments, as well as the role that courts and judges can play in the protection and implementation of the rights of older persons.

The research also aims to draw attention to similarities as well as differences between regional actors and to promote interaction and learning processes between regional and global human rights mechanisms. Although the outcome of the proposed research can of course be very diverse, the findings will contribute to the ongoing debate on how to better protect the rights of the elderly as well as continued human rights standard setting at UN level as regards the categorical rights of newly identified vulnerable groups.

### Research performed and results obtained

From February until May 2015, Marijke De Pauw conducted her research at UC Berkeley School of Law, as a visiting researcher under supervision of Prof. Dr. David Oppenheimer. During her stay, M. De Pauw participated in the course “Comparative Equality and Anti-Discrimination Law”, taught by Prof. Oppenheimer, as well as the conference organised within the framework of the course. M. De Pauw was an editor for the *Berkeley Journal of International Law* and contributed two posts for the Journal’s blog (‘Travaux’), related to her doctoral research. Within this time period, M. De Pauw finalised the first chapters of the thesis, which focus on the demographic projections and sociological perspectives on ageing; the human rights situation of the elderly population; and the development of an international human rights approach to ageing.

The first chapter discusses demographic projections, highlighting specific concerns and regional differences. It also includes a sociological analysis of ageing in order to demonstrate how it is socially constructed and to provide better insight into the root causes of ageism. The chapter identifies global and region-specific human rights violations older persons face as a result of their old age, based on an analysis of relevant NGO reports, academic research and UN documents. The outcome demonstrates that although ageing is a global phenomenon, it affects older persons very differently, depending on the region, their cultural background, socio-economic background and gender. The most frequent human rights violations identified are categorised into sections; (i) age discrimination; (ii) elder abuse; (iii) employment, pensions and poverty; (iv) health; (v) autonomy, legal capacity and access to justice; (vi) humanitarian assistance. This categorisation is further used throughout the thesis as the basis for discussing the existing normative framework and the comparative case law analysis.

The second chapter discusses the development of a global human rights perspective on ageing, dating back to the 1948 Draft Declaration of Old Age Rights up to current calls for a new UN treaty on the rights of older persons. It identifies the motivation and different actors that have contributed to putting ageing on the global agenda, first from a development perspective, and more recently as a human rights issue. The chapter provides important insights into the dynamics within the Open-Ended Working Group on Ageing and the argumentation put forward by both the opponents and proponents of a new UN Convention on the Rights of Older Persons.

These chapters were restructured and re-written later in the year, based on the comments received from the supervisory committee during a meeting in June 2015 (see *infra*).

During the second part of the third year of doctoral research, M. De Pauw has fine-tuned and finalised the introduction to the thesis, including the research context, research questions and objectives, methodology and outline of the thesis. In addition, she has drafted a chapter on the research background and theoretical framework of the thesis. The chapter discusses in detail the state of the art as regards the fragmentation of international human rights law; the different perspectives and theories of managing the plurality of human rights; human rights treaty interpretation and the fundamental rights of older persons. The chapter also clarifies how the doctoral research builds on the existing literature as well as what distinguishes it from previous studies.

Further research was also carried out as regards the existing normative framework on the rights of older persons at both the international and regional levels. Existing norms were identified, including both hard and soft law, that are either relevant in light of the different human rights violations identified (*supra*); or that explicitly refer to older persons or age as such. Particular attention was given to the ongoing normative developments within the African Union and the Organisation of American States (OAS). Particularly the latter was included in the analysis as in June 2015, the first regional binding instrument on the rights of older persons was adopted within the OAS.

As of 1 September 2015, M. De Pauw is a visiting scholar at the Europa Institut of the University of Basel. Her research stay is part of the Research Network Europe and Global Aging, which aims to establish an interdisciplinary network of academics researching issues of global ageing within the European region. In addition, since June 2015, M. De Pauw is a Management Committee Substitute within the EU COST Action on Ageism; an interdisciplinary research network that aims to research all aspects of ageism. M. De Pauw is a member of the Working Group on Law and Ageism, in which she has also presented her own doctoral research. Within this framework a publication is being prepared on the international policy developments regarding the rights of older persons, in collaboration with AgePlatform Europe and HelpAge International.

#### Collaborations between the different teams

Marijke De Pauw's doctoral research is carried out under the joint supervision of the Vrije Universiteit Brussel and of the Université Saint-Louis – Bruxelles, under the direction of Professor Paul De Hert (VUB) and co-direction of Professor Stefaan Smis (VUB) and Professor Sébastien Van Drooghenbroeck (USL-B). This co-direction has been established through a joint supervision agreement, which has been concluded between USL-B and VUB in spring 2013.

As of 1 October 2014, M. De Pauw is conducting her doctoral research at the Université Saint-Louis – Bruxelles (Centre Interdisciplinaire de Recherches en droit Constitutionnel et administratif).

On 2 June 2015, a meeting was held with the doctoral researcher and the PhD Supervisory Committee. The committee consists of both the VUB (P. De Hert, S. Smis) and USL-B (S. Van Drooghenbroeck) supervisors, and Dr. Nathalie Van Leuven (Associate researcher USL-B). During the meeting, M. De Pauw first presented three thesis chapters, which were submitted prior to the meeting. The content and structure of the chapters, as well as the overall progress of the doctoral research was discussed, and committee members provided their input and comments.

### Presentations at conferences / workshops

- De Pauw, M., “Interpreting equality – comparing the ECHR, ECJ and IACtHR”, the Comparative Equality and Discrimination Law Conference, UC Berkeley School of Law, 18 April 2015.
- De Pauw, M., “Interpreting the ECHR in light of emerging human rights issues: an older persons’ perspective” at the EU COST workshop “Ageism from a Multi-National, Interdisciplinary Perspective”, Berlin, 10-11 September 2015.
- De Pauw, M., “Human rights integration through interpretation: the rights of older persons”, Third IAP Annual Meeting, Ghent University, 8 October 2015.

### **3.4.3 Systematic analysis of recent leading cases of the European Court of Human Rights (USL-B)**

#### Objectives of the project

In complement to the researches carried out by D. Staes and M. De Pauw, Frédéric Krenc (USL-B) and Sébastien Van Drooghenbroeck (USL-B) have undertaken, since 2014, a systematic analysis of recent ECHR case law. Particular attention is given to Grand Chamber decisions of the Court comporting references to “sources” that may be considered as “external to the European Convention of Human Rights”.

#### Research performed and results obtained

The research of Frederic Krenc and Sébastien Van Drooghenbroeck is currently translated into semestrial case law chronicles, published in the *Journal des Tribunaux* (2014, p. 669-677; 2015, p. 537-547). The next chronicle will be published in December 2015.

### **3.4.4 Research work of the Belgian Section of the Réseau Académique sur la Charte sociale européenne et les Droits Sociaux (USL-B)**

The main mission of the *Réseau des académiques sur la Charte sociale européenne et les Droits Sociaux* is to promote the European Social Charter and social rights in Europe. For this purpose, it undertakes every initiative conducive to make that Charter known and to improve its implementation and the protection of social rights, both at the level of the Council of Europe and within each Member State of this organisation. In the autumn of 2014, a Belgian Section of this Section was formed, bringing together teachers and researchers of all Belgian universities (including USL-B, UGent, UAntwerpen, ULB and VUB). Sébastien Van Drooghenbroeck (USL-B) and Isabelle Hachez (USL-B) have taken an active role in the constitution of this section and in its activities during the year 2014-2015.

These activities have first consisted in the organisation of a bilingual study afternoon (28 May 2015) on the Actualities of the European Social Charter. This afternoon intended to clarify, for the intention of the academic and practitioner audience, several questions related to the justiciability of this Charter in the internal legal order, its relations with other European and international legal instruments, and the role of the European Committee of Social Rights and its

case law on several themes (foreigners law, rights of persons with a disability). During this afternoon, Isabelle Hachez presented, in collaboration with F. Louckx, a communication entitled: *“Les différentes formes de justiciabilité reconnues aux droits consacrés par la Charte sociale européenne au sein de l’ordre juridique belge”*.

Sébastien Van Drooghenbroeck (USL-B) has, furthermore, taken an active part in the writing of the “Brussels Document on the future of social rights protection in Europe”, presented in the framework of the Belgian presidency of the Council of Europe (February 2015).

#### Presentations at conferences / workshops

Hachez, I., in collaboration with Louckx, F., “Les différentes formes de justiciabilité reconnues aux droits consacrés par la Charte sociale européenne au sein de l’ordre juridique belge”, study afternoon on the Actualities of the European Social Charter, 28 May 2015.

### **3.5 WP 4: Maximisation of added value of human rights texts/mechanisms: Do we need a national Bill of Rights? (USL-B)**

- PhD research: Olivier van der Noot
- Promoter: Prof. Sébastien Van Drooghenbroeck
- Mixed doctoral guidance committee (presence of Prof. Jan Velaers, UAntwerpen)

#### Objectives of the project

The doctoral research carried out by O. Van der Noot within WP4 originally aimed at “analysing the discourses held by the ‘users’ of Swiss, Belgian, Dutch and Luxembourg Bills of Rights during and about the works that have been dedicated to their systematic revision since the 1990s”. More specifically, it was framed as trying to “determine what such discourses reveal about the status and functions of these Bills and, subsequently, about their potential in terms of ‘integration’ of human rights law”.

As already underlined after the second year of this research, that initial formulation of the objectives of the project were adjusted in three ways. Firstly, an in depth analysis of the ‘works’ at stake teaches that the role of human rights (law) “users” in the aforementioned total revision processes should by no means be overestimated. Therefore, it appears more adequate, as far as WP4 is concerned, to problematize that weak investment of “users” in these constitutional revisions and, subsequently, to study the potential tension between the ideas of “using” human rights (law) and “integrating” it through constitutional codification. Secondly, the fact that the Swiss, Dutch and Luxembourg processes are expressly mentioned as inspiration sources by the promoters of an “update” of title II of the Belgian Constitution advocates, alongside with the necessary readability of this doctoral study, to envisage these three foreign experiences as references of a Belgian enterprise considered as the ‘central axis’ or ‘main object’ of WP4 research. Thirdly, the concepts of “law”, “human rights” and “human rights law” should be more clearly thematized and distinguished, especially as far as their articulation with the key HRI concepts of “use”, “users” and “integration” is concerned.

In the light of these remarks, one may reformulate the first paragraph of this section as follows: the doctoral research carried out by O. Van der Noot within WP4 aims at analysing the project of total revision of title II of the Belgian Constitution, notably in the light of the Swiss, Dutch and Luxembourg inspiration sources mentioned by its promoters. More specifically, it will try to identify and critically examine the conceptions of these promoters regarding the concepts of “law”, “human rights”, “human rights law”, “Constitution”, “Bill of Rights”, “users” and “integration” and the relations between these concepts.

#### Research performed and results obtained

The six first months of this third IAP year have been spent continuing the chapters started the year before about the research topic at stake, i.e. the constitutional source of human rights law in the light of the total revision project undertaken in Belgium in the noughties and of its declared Swiss, Dutch and Luxembourgish sources of inspiration. In this endeavour, O. Van der Noot could

rely on the assistance and expertise of the CIRC (Saint-Louis’s public law center), to members of which these chapters, notably focusing on the principle of subsidiarity and on maximisation clauses, were submitted in May 2015. On the basis of the many comments received during the meeting that followed, O. Van der Noot revamped these texts and started working on new ones during the six months that followed. During that same period, O. Van der Noot also took part in a series of seminars and conferences in his home university as well as in other institutions, namely ULB, ULg and UCL. On these occasions, he got in touch with a certain number of scholars interested or active in his research field, which notably allowed him to discover the “dematerialization” approach to human rights.

In reaction to these thrilling events and encounters, Olivier Van der Noot wrote or co-wrote one article and one book-contribution about, respectively, “subnational constitutions” and the R.M.T. case of the European Court of Human Rights. This gave him the opportunity to deepen its comprehension of the concept of “maximisation clause” and to better grasp the relation between the concepts of constitution and democracy.

#### Presentations at conferences/workshops

Van der Noot, O., “La mise à jour du titre II de la Constitution”, Séminaire de l’école doctorale en sciences juridiques de la Communauté française de Belgique, Saint-Louis University Brussels, 20 March 2015.

Van der Noot, O., "Revamping or Understanding? National Bills of Rights as Sources of Human Rights Law", Getting Closure: Human Rights after Human Rights, Faculty of Law, Université libre de Bruxelles, 4 May 2015.

Van der Noot, O., "Droits constitutionnels et reconstruction du droit institutionnel", Conférence des Assistants (ACCE), Faculty of Law, Université Catholique de Louvain, Louvain-la-Neuve, 29 May 2015.



### 3.6 WP 5: Optimizing access to international human rights mechanisms (UGent)

- PhD research (from 1 October 2013 until 30 June 2013): Valeska David
- PhD research (since 15 September 2014): Eline Kindt
- PhD research, affiliated (since 1 October 2013): Helena De Vylder
- Promoter: Prof. Yves Haeck

#### Objectives of the project

This work package examines the procedural dimensions of human rights integration, with a focus on international complaint procedures. While monitoring bodies such as the European Court of Human Rights and the Inter-American Commission and Court on Human Rights are confronted with mounting or even huge amounts of incoming petitions, individual petitioners and in particular members of vulnerable groups still experience practical and legal obstacles hindering them to effectively pursue cases of alleged human rights violations. The research will formulate clear-cut and substantiated proposals reconciling optimal access with the need of procedural efficiency and an efficient management of incoming cases. Particular attention will be paid to examining to what extent solutions and strategies developed within one system (also beyond the regional mechanisms) may benefit another.

#### Research performed and results obtained

##### Eline Kindt

After a reshuffling within the Ghent team (see also under 3.7.1), Eline Kindt has been working since 15 September 2014 on this work package.

Following up on the research performed by Valeska David, the objectives and research questions of her (PhD-oriented) research have been formulated as follows:

Optimal access, especially for vulnerable groups, needs to be balanced with procedural efficiency and efficient management of incoming cases at these international and regional bodies. Within this broader framework, her research will focus on the figure of the class action, which is up until now nonexistent in procedural international human rights law.

The European Court of Human Rights in particular has been confronted with an increasing case-load that threatens the Court's operation, while individual petitioners and in particular members of vulnerable groups keep experiencing practical and legal obstacles to the exercise of their right to petition to the Court. Her doctoral thesis will propose a procedural reform in the European Human Rights System that is aimed at mediating both posited problems: the class action procedure. Class actions in this context are defined as a representative action brought by a private litigant on behalf of a group of similarly situated litigants. The decision that is made in these cases is then binding towards all the members of the class. On the one hand, the introduction of a class action procedure could reduce the case-load at the European Court of Human Rights. The huge amounts of incoming petitions stem mostly from recurring human rights violations that have already been adjudicated. These petitions can be grouped so as to increase the Court's judicial efficiency. This has already been pursued with the creation of the

Pilot Judgment Procedure at the European Court. However, the class action procedure combines this aim of judicial efficiency with an increased accessibility. Thus, on the other hand, a class action procedure would shift the power to the victims of these human rights violations to decide whether to group their cases. Additionally and most importantly, a class action is meant to lower the threshold for these persons to exercise their right to individual petition. This is particularly true for persons belonging to vulnerable groups (e.g. persons residing under the discretion of the state, such as detainees and persons with a (mental) disability living in an institution, children, migrants, persons belonging to a minority, persons living in poverty).

This doctoral thesis will thus endeavor to find an answer to the following main research questions:

- 1) Would a class action procedure at the European Court of Human Rights be desirable, in that it could effectively remedy both the overburdening of the court, while also improving accessibility for individual petitioners, particularly those belonging to a vulnerable group?
- 2) If so, how would this procedure best be fine-tuned to fit the European Human Rights System?

During the first year of her research term, Eline studied the procedure of the class action in the global context in order to refine her research questions. Since Eline is trained in Belgium, a civil law country that only recently introduced a procedure for collective action, she is not familiar with the procedure so she had to start from the absolute basics. During this time, she focused primarily on the class action system in the US, after which she moved on to comparative studies of the procedure. She had the chance to first present her research at the second annual meeting of the HRI Project on 12 February 2015 during which she received feedback from professors in human rights and other PhD candidates. Next, Eline worked on her knowledge of methodology in legal research. In this context, she organized a PhD Seminar together with two other PhD candidates of the HRI Project concerning methodology in the context of case law research on 26 May 2015 during which she was introduced to several methods of research. Since then and on the basis of the information gathered during the seminar, Eline has started her quantitative empirical research by creating a database of pilot judgment cases and other cases involving systemic human rights systems. She will be working with the program NVIVO during this and further stages and is reading up on the topic. She is also keeping a log of her research steps, as proposed by a speaker during the seminar.

Lastly, through a colleague at the university who is a board member at the *Liga voor Mensenrechten* (League for Human Rights), a Belgian NGO working on human rights, Eline discovered that this organization is researching the possibility of initiating a class action against Facebook on the basis of the new collective action law. Eline contacted the organization and has since been invited to two meetings concerning the topic. She has also written a small memo concerning standing issues on the basis of the new collective action law.

### Helena De Vylder

In October 2013, Helena De Vylder started her PhD mandate, funded by the Research Fund of Ghent University under the supervision of Prof. Yves Haeck. Moreover, she is an affiliated researcher in the IAP-Network. For her PhD research, she will critically analyse “The present-

day ‘Admissibility conditions’ restricting the ‘Right to Access of Individuals’ to Regional Judicial and Quasi-Judicial Human Rights Bodies in the Americas, Africa and Europe”.

The right of individual petition is the cornerstone of each international human rights mechanism. In order to guarantee the consequent access to justice at the international level, the freely and fully guaranteed and exercised right of individual petition is required. The so-called ‘admissibility-conditions’ literally form the gateway to a successful procedure or failure before an international monitoring body. In view of the right of access to justice, it is absolutely essential that the admissibility conditions are applied in a correct way: in conformity with their purpose, and during proceedings which are compatible with the guarantee of due process.

However, the current trend clearly shows that international judicial and quasi-judicial monitoring bodies are primarily concerned with the strengthening of the ‘filtering-function’ as a result from the huge number of individual petitions. When they do not fully take into account the impact of their actions on the key ‘right to access’, this poses a threat to the right of individual application. The wish of international policy makers and states of an underlying and creeping policy towards a ‘pick-and-choose’ and ‘cherry-picking’ decision-making is apparent. Moreover, case-law shows that certain groups of vulnerable applicants suffer various burdens to meet the admissibility criteria. In the same time, it seems that adjudicators are less and less giving proof of a user-friendly approach.

This study aims to (1) analyse in-depth and critically the issue of admissibility and (2) to form recommendations for regional human rights bodies to reform, review and streamline the admissibility conditions and their examination thereof, by reconciling the user’s interests and efficiency in the light of the existing caseload.

The first 6 months of the research, Helena De Vylder dedicated to contributing to two (text)books concerning the European human rights system: this created the opportunity to expand her knowledge about the admissibility requirements the European Court of Human Rights applies in specific, and its procedure in general. (H. De Vylder and Y. Haeck, “Jurisdictie voor het Europees Hof voor de Rechten van de Mens”, in J.H. Gerards, Y. Haeck et. al. (eds), *EVRM: SDU Commentaar: Procedurele bepalingen*, Den Haag, SDU Uitgevers, 2014, pp. 125-169; Y. Haeck and H. De Vylder, “Ontvankelijkheidsvereisten voor het Europees Hof voor de Rechten van de Mens”, in J.H. Gerards, Y. Haeck et. al. (eds), *EVRM: SDU Commentaar: Procedurele bepalingen*, Den Haag, SDU Uitgevers, 2014, pp. 170-217; J. Vande Lanotte, Y. Haeck and H. De Vylder, *Procedures before the European Court of Human Rights* (working title) [in preparation]. At the same time, a database of relevant cases for the PhD was set up.

Later on, Helena De Vylder mainly looked into the Inter-American Human Rights system. She studied the overall proceedings in general, and the admissibility conditions and proceedings in particular. This research resulted in a publication concerning the extraterritorial reach of the American Convention. (H. De Vylder, “The Territorial Scope of the American Convention on Human Rights.” In Clara Burbano Herrera, Yves Haeck, and Oswaldo-Rafael Ruiz-Chiriboga (eds), *Inter-American and European Human Rights Journal*, 2014, pp. 205–224. Since June 2014, Helena shifted her focus to the right of access to justice and fair trial more in general. She looked into the relation with legitimacy and will take into account procedural justice. To gain more insight in these matters, she attended the Summer school organized by the Venice Academy of Human Rights which focused on ‘Judicial Legitimacy and the Rule of Law’ (7-16 July 2014).

Furthermore Helena De Vylder focused on the historical underpinnings of the right of individual petition in general and the admissibility-requirements and procedures specifically. Next she dedicated much of her time on the right of access to justice on the international level. As it turns out, this is very ill-defined, so she will undertake an analysis of this right as constructed for the national level and research to what extent those findings can be applied on the international level too.

#### Presentations at conferences/workshops

De Vylder, H., “Opening or closing the door to international justice: A Critical Evaluation of the present-day ‘Admissibility conditions’ restricting the ‘Right to Access of Individuals’ to Regional Judicial and Quasi-Judicial Human Rights Bodies in the Americas, Africa and Europe”, Third HRI Annual Meeting, Ghent, 8 October 2015.

Kindt, E., “Combining accessibility and efficiency: class actions at the European Court of Human Rights”, Second HRI Annual Meeting, Université Saint-Louis, Brussels, 12 February 2015.

### **3.7 WP 6: Divergence and Coherence in Human Rights Law (UGent, ULB, VUB)**

Work package 6 examines the value there may be in not – entirely – integrating human rights law. As stated in the detailed description of the project, “a central question in the multi-layered architecture of human rights law is that of the extent to which it makes room for variations on a single theme, i.e. different formulations and interpretations of the same norms”. Within this research package, UGent, ULB and VUB cooperate, approaching the central question from different angles.

#### **3.7.1 Regulating Divergence: identifying the tools (UGent)**

- PhD research:  
Valeska David (Since 1 July 2014)  
Sander Steendam (from 1 October 2013 until 1 July 2014)
- Promoter: Prof. Eva Brems

#### Objectives of the project

The PhD research is geared at defining in the first place a guiding framework for the demarcation of acceptable degrees of divergence in specific situations. Next, the research will provide an inventory of – both existing and new – legal techniques that allow to accommodate and at the same time control divergence in human rights formulations and interpretations. A thorough analysis of the work of regional and global human rights monitoring bodies will allow a mapping of techniques that are currently employed and of the areas and themes on which divergence is more or less accommodated. Moreover, the study of the legal doctrine will allow an assessment of how the current practice is received, what is considered best practice, in which situations current practice is contested, and what normative solutions are put forward. Finally, this research will employ out-of-the-box thinking to devise new tools for the management of divergence in universal norms and for upgrading existing tools toward better performance as defined by the guiding framework. The UGent contribution will support the analysis in the VUB and ULB case studies within these work package.

#### Research performed and results obtained

During this first year of research in WP 6.1 (cf. shuffling that took place in the UGent team in 2014) Valeska David has mainly worked on literature review and selection of case-law. This has allowed her to refine the focus of her research, prepare papers and participate in academic discussions. The doctrine studied focuses on the universality and diversity debate in human rights; critiques to human rights law (particularly the post-colonialists); cultural diversity, equality and non-discrimination, exclusion and poverty, and political theory discussing recognition and redistribution. As to the case law, most work has concentrated on cases from the European and the Inter-American Courts of Human Rights. The research examines the accommodation of diversity and socio-economic rights claims with regard to structurally discriminated groups. In this framework, a sample case study has been conducted on case law

concerning Indigenous peoples and Roma and Travellers within the Inter-American and the European Courts of Human Rights, respectively. At this stage, preliminary results on this topic point at some difficulties that have arisen in the course of the legal development that has taken place in the judicial protection of Indigenous and Roma people within the European and the Inter-American Court of Human Rights. Cultural identity, as it often happens with gender, race and other identity-grounds, has often been constructed in an essentialist and fixed way which risks excluding people and socio-economic entitlements from protection. At the same time, although in different ways, both courts have retained a restrictive approach to equality, which also curtails the possibilities to address the structures underlying the violations endured by Roma, Travellers and Indigenous People. Moreover, the European Court has been reluctant to take a more structural approach and revise socio-economic policies and institutions. The Inter-American Court, more venturous in this respect, has however underutilised its declared contentious jurisdiction over socio-economic rights. The research on this issue has aimed at providing suggestions as to the legal tools that could be utilised by these Courts to deal with cultural and socio-economic inequalities affecting these, and possibly, other groups as well. In the coming months and years the research is expected to explore issues of diversity and socio-economic rights before supranational adjudicatory bodies with regard to other discriminated groups.

The research conducted during 2015 resulted in two draft papers concerning introductory aspects of the research. That is, the relationship between cultural diversity and socio-economic inequality and its treatment by supranational adjudicatory bodies of human rights. One of these papers was written in Spanish as so was requested for its inclusion in a book (*A liber amicorum* for Cecilia Medina, Tirant Lo Blanch Ed.). In this paper Valeska explores general issues of diversity, equality and socio-economic disadvantage. They are examined against the backdrop of ‘southern’ and ‘third world’ approaches to human rights, with reference to the Inter-American system’s work. The second paper also deals with the practice of this regional system but focuses more specifically on its standards concerning human rights struggles related to property. This second paper was presented in an international conference in Brussels (see below Presentations at conferences / workshops). During this year Valeska has worked on another paper for a IAP book project: rewriting judgments from an integrated approach to human rights. The paper touches upon some issues related to her research. Its provisional title is “Caring, rescuing or punishing? Rewriting R.M.S v Spain from an integrated approach to the rights of women and children in poverty”. In addition, Valeska successfully submitted 2 abstracts to international conferences that will take place in December 2015.

#### Collaborations between the different teams

Collaboration has taken place between different areas of WP6. In particular, during 2015 Valeska David and Derek Inman made a joint panel proposal for the International Conference of the Commission on Legal Pluralism to be held in December 2015 in Mumbai (International Conference on Normative Interfaces of Globalization and High-Tech Capitalism: Legal Pluralism and the Neo-Liberal Turn.) The Panel entitled “Human Rights Through the Lens of Legal Pluralism: Paths to Social Justice, Emancipation and Redistribution?” was accepted and will host eight presentations divided in two sessions (17 December 2015). The concept of the panel does not only build upon the research conducted by both PhD candidates, but also upon the premises that underlie the Human Rights Integration Project.

### Presentations at conferences / workshops

David, Valeska, “Property, inequality and the flexibility of international human rights norms: exploring the Inter-American experience”, International conference in Brussels: “Getting Closure: Human Rights after Human Rights” (4 and 5 May 2015, ULB).

### **3.7.2 Court of Justice of the European Union and national margin of appreciation: the case of fundamental rights (ULB, VUB)**

- PhD research: Francisco Javier Mena Parras
- Promoters: Prof. Emmanuelle Bribosia and Prof. Paul De Hert

### Objectives of the project

The main research objective of the PhD project is to analyse how European courts, that is, the European Court of Human Rights and, most importantly, the Court of Justice of the European Union, accommodate diversity in the field of protection of fundamental rights through the technique of the national margin of appreciation. More precisely, the research question is to what extent the margin of appreciation can be considered as an optimal tool to regulate divergence at the European level.

On the basis of the margin of appreciation doctrine developed by the European Court of Human Rights (towards which a critical approach is adopted), the research aims to provide a systematic and comparative analysis of the use of this technique by the CJEU in the field of fundamental rights.

One of the main parts of the research focuses on assessing, from a legal theory perspective, the role of the national margin of appreciation in the search of a balance between uniform application of EU law and different constitutional values concerning the protection of fundamental rights, and more largely, on its impact on the relationships between EU law, national constitutional law and the ECHR system.

From the perspective of the human rights users, the research will focus on the ECtHR and the CJEU as judicial users. The research is done from the perspective of the functions performed by these courts within a legal space where different legal orders overlap, while considering the importance of respect for diversity in the legal orders in which both courts operate. In this regard, the ECtHR is defined as somewhere in between an international court of human rights and a constitutional court, while the CJEU is considered as a hybrid court performing the functions of a federal constitutional court and a supreme court, according to the different legal nature of the ECHR system and the EU legal order. Of particular importance are the questions of how these different roles are reflected on the use of the margin of appreciation and the consideration of it as an optimal tool to regulate divergence at the European level, as well as the impact of the use of this technique, as a tool to accommodate diversity, on the question of the legitimacy of both courts.

Finally, as regards the perspective of human rights integration, the research will adopt a “holistic” perspective, taking into account the different legal orders overlapping at the European level and the impact of the margin of appreciation concept on the relationships between EU law, national constitutional legal orders and the ECHR system.

### Research performed and results obtained

The research until now has focused on different parts of the PhD project, most importantly on the following elements. Firstly, the doctrine of the margin of appreciation in the ECHR system as a starting point of the research on this technique as an optimal tool to regulate divergence at the European level. Secondly, the roles of the ECtHR and the CJEU, as well as the legal nature of the ECHR system and of EU law, with an accent on the EU constitutional architecture of fundamental rights. Thirdly, a systematic analysis of the CJEU case-law in the field of fundamental rights mobilizing the notion of margin of appreciation or margin of discretion, and its impact on the relationships between EU law and the national legal orders. Finally, the study of the existing literature on the different theoretical models concerning the relationships between the different legal orders overlapping at the international level and, more particularly, at the European level. As regards the results obtained so far on the analysis of the transposition into EU law of the margin of appreciation concept, there exist, beyond some common elements, important distinct features on the use of this technique by the CJEU as compared to the ECtHR case-law, as for example regarding the impact on the scope of the margin of appreciation of factors such as the existence or absence of a European consensus in the field. Despite these differences, there is nonetheless a similar approach when compared to the use of margin of appreciation concept by the Strasbourg court, by the interconnection of the notions of consensus, harmonization and subsidiarity in EU law, which allows to argue that the use of the margin of appreciation by the CJEU can also be considered as a tool to accommodate diversity, in that sense that its use provides a balance between the respect of the EU constituent and legislator choices and those of the national authorities. These differences, as well as the similar final consideration of the margin of appreciation as a tool to regulate divergence in both legal orders, are explained by the different legal nature of both legal systems and the different roles of the ECtHR and the CJEU. These results have been reflected in the publications appeared last year (see below).

### Collaborations between the different teams

According to a convention concluded by ULB and VUB in July 2013, Francisco Javier Mena Parras' doctoral research is co-supervised by both institutions. The co-directors of the doctoral dissertation are Professors Emmanuelle Bribosia (ULB) and Paul De Hert (VUB). The doctoral guidance committee consists of Professors Emmanuelle Bribosia (ULB), Paul De Hert (VUB), Isabelle Rorive (ULB) and Antoine Bailleux (USL-B).



### 3.7.3 Indigenous' peoples' rights to traditional lands, territories and resources: a comparative view from the various human rights systems (VUB)

- PhD research: Derek Inman
- Promoters: Prof. Stefaan Smis and Prof. Paul De Hert

#### Objectives of the project

The research project examines the divergent ways in which different human rights fora have framed indigenous peoples' rights to traditional lands, territories and natural resources. On 13 September 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Some of the main hurdles in drafting were the reference to the right to self-determination and indigenous peoples' access to traditional lands, territories and resources, rights which received a prominent place in the UNDRIP. However, the questions of indigenous peoples' rights to self-determination and to their lands and natural resources remain heavily contested and the UNDRIP does not fully clarify the position of international law in this regard. The objective of the research is to fill that gap and to clarify what is meant by economic self-determination for indigenous peoples and in particular what meaning should be given to the right to traditional lands, territories and resources. This issue will be approached through comparative research involving both the universal as well as regional human rights protection systems. Taking an integrated perspective on human rights, the study will analyze in particular the impact of the developments consolidating in one human rights system and see how they might or are influencing other human rights systems.

#### Research performed and results obtained

A significant portion of Derek's PhD dissertation aims to provide a detailed analysis of the evolution of Africa's approach to protecting and advancing the human rights of indigenous peoples on their continent, eventually comparing and contrasting this with the approach utilized by the other regional human rights systems and the international human rights system. Indigenous peoples' rights have been discussed at length in the international and the Inter-American human rights regimes for over 40 years: as such, there is no shortage of academic literature, jurisprudence and *travaux préparatoires* one can examine in detail to understand the evolving nature of indigenous peoples' rights, to comprehend the future of indigenous peoples' rights, and to disseminate a synthesized version of the debates accessible to the public.

However, this is not the case at the African level. While the views advanced by the African Commission on Human and Peoples' Rights (ACHPR) have been well documented, the discussions and compromises needed to get there have not. Without such documentation, one cannot understand the variety of views espoused by numerous African governments or, perhaps more importantly, one is missing valuable input from the local indigenous communities themselves and the grassroots NGOs on the ground representing indigenous peoples.

In an effort to truly understand the various perspectives on indigenous peoples in Africa and, in order to utilise a more nuanced approach throughout my doctoral dissertation, Derek believed that accessing the staff, resources, and network of University of Pretoria's Centre for Human Rights (CHR) would undoubtedly be the best choice for a research stay and would prove to be

invaluable. The CHR has been internationally recognized as the premier research institute in the region, attracting the top academics, lawyers, civil servants and human rights practitioners from across the continent of Africa. The wide array of staff members, as well as the network of alumni advancing and strengthening human rights all over the Africa continent, would be accessible to Derek for advice, feedback and information, placing him in the best position to successfully complete an extensively researched and original dissertation.

In terms of resources, the CHR's *African Human Rights Law Reports* contains legal decisions of relevance to human rights law across Africa, including selected domestic decisions, as well as the decisions of the ACHPR and the United Nations treaty bodies dealing with African countries, with some documents that are unavailable anywhere else. The Reports are indispensable for anyone dealing with human rights in Africa and capture the evolving human rights jurisprudence of the African continent.

Fortunately, Derek was awarded an International Mobility Grant by the Flanders Research Foundation (FWO) and was able to spend over 5 months at the Centre for Human Rights where he discussed the development of indigenous peoples' rights in Africa with the leading African scholars who have been working to secure indigenous peoples' rights for numerous years, who have been meeting with the ACHPR to bring an African perspective to indigenous peoples' rights on the continent, who have met with governments resisting indigenous peoples' rights, and who have worked tirelessly with local NGOs to monitor human rights violations and bring them to the attention of the international community. These discussions have assisted Derek to truly understand the various perspectives on indigenous peoples in Africa and will allow him to utilise a more 'complete' approach throughout his doctoral dissertation.

Another priority for Derek at the CHR was to develop pertinent sections of his doctoral dissertation. He has managed to complete this task and it was enriched by performing an extensive literature review of the numerous reports, articles, and legal decisions available in their library and by utilising the extensive network of academics, practitioners and alumni making contributions to the CHR by performing in depth interviews. Moreover, Derek was able to present his research findings through a series of monthly research meetings and obtained invaluable insights from the entire academic staff and other doctoral students.

In addition, being affiliated with the CHR staff members who already have an established relationship with numerous indigenous communities allowed Derek invaluable access to on-the-ground resources that would be unavailable to him otherwise, and gave him contact to local NGOs and representatives who are willing to continue to assist his research in the coming months.

Moreover, Derek was invited to attend and participate in the CHR's short course on indigenous peoples, which was attended by representatives from indigenous communities from across sub-Saharan Africa. From these individuals Derek was able to gain knowledge about what was happening "on the ground", which would otherwise be impossible to ascertain simply by doing desk research. Derek gained a tremendous amount of information through his discussions with members of the Endorois community of Kenya, an indigenous group he discusses in detail in his doctoral dissertation because of recent jurisprudence at the African Commission. The contact he has made with the representatives of the Endorois community will undoubtedly prove invaluable in the coming months as the Kenyan government recently established a task force to

tackle the implementation of the aforementioned case and the representatives Derek met will be meeting with the Government of Kenya Task Force and will keep him abreast of any pertinent developments.

In addition, the short course was led by experts in the field of indigenous peoples, most notably Dr. Alexandra Xanthaki, and by members of the African Commission on Human and Peoples' Rights Working Group of Experts on Indigenous Populations and Communities, most notably Dr. Albert Barume. Discussing his research with Dr. Xanthaki and Dr. Barume provided Derek with invaluable insights into recent developments on the African continent but also past and future developments at the regional institutions, the African Commission and the newly formed African Court of Justice.

There is no doubt that the primary expertise Derek acquired at the CHR has been with regards to African regional human rights law. Of course much knowledge can be gained from extensive literature review but the vast network of the CHR allowed Derek to have contact with employees who are currently working for the African Commission, members of the African Commission's Working Group of Experts on Indigenous Populations/Communities, and NGOs who are monitoring the implementation of the African Charter on Human and Peoples' Rights. Creating and maintaining this network will undoubtedly enrich the quality of Derek's doctoral dissertation.

As far as exchanging expertise, Derek also worked with Katy Hindle, Project Manager of the Gender Unit at the CHR, and Pierre Brouard, Director of the Sexualities, AIDS and Gender at the University of Pretoria, in developing a paper, *Transgender and Intersex Rights – Highlighting the Implementation Gap*, which will be submitted to the Department of Justice and Constitutional Development of South Africa in the coming months. Since Derek has experience in the area of LGBTI rights in international human rights law through his former position with the International Commission of Jurists, and since he was a civil servant for the Government of Canada for many years, Derek was able to provide strategic insight from a policy development perspective and he was able to provide legal analysis from an international and comparative perspective.

Aside from his research stay at the Centre for Human Rights, Derek's third year comprised mainly of continuing to develop a significant portion of his doctoral dissertation. Luckily Prof. Koen De Feyter has agreed to be part of Derek's PhD Advisory Commission, along with Prof. Smis and Prof. De Hert. Looking forward to his final 1.5 years as part of the IAP project, Derek will be submitting significant portions of his dissertation to his promotors in order to receive feedback with the aim of officially submitting his doctoral dissertation by the end of 2016.

In the more immediate future, Valeska David (UGent) and Derek submitted a panel proposal, entitled "Human Rights Through the Lens of Legal Pluralism: Paths to Emancipation and Redistribution?", for the Biennial International Conference of the Commission on Legal Pluralism, and it was accepted. Valeska and Derek will be attending the conference in Mumbai (India) on 12-14 December 2015 to convene their panel but also to present papers. Also, Derek will have a poster presentation and presentation at the upcoming IAP International Conference, which will be held on 9-11 December 2015 in Ghent.

Finally, in January/February of 2016, through the assistance of colleagues from Bukavu (Democratic Republic of Congo), Derek has been invited to provide guest lectures at the *Université Catholique de Bukavu*. While there, Derek is also planning to establish contact with local NGOs in an effort to perform informal interviews concerning access to justice locally and regionally.

#### Presentations at conferences/ workshops

Inman, D., “Update on Research Findings”, Human Rights Integration Annual Meeting, Facultés universitaires Saint-Louis (Belgium), 15 February 2015.

Inman, D., “Re-writing the *Ogoni* Decision”, Centre for Human Rights, University of Pretoria (South Africa), 29 May 2015.

### 3.7.4 Rights of children and young people (UGent, UAntwerpen)

- Research: Dr. Ellen Desmet

#### Objectives of the project

Children and young people are one of the categories in international human rights law that have been the subject of additional and “divergent” provisions. An additional stream of research within WP6 has been developed, focusing on the relevance and effectiveness of children’s rights and youth rights.

#### Research performed and results obtained

On 5 November 2015, an international expert seminar “Children’s rights in the global human rights landscape: isolation, inspiration, integration?” was organized (see 4.1.2). A book proposal based on this seminar, edited by Eva Brems, Ellen Desmet and Wouter Vandenhole, has been accepted by Routledge and is currently being prepared.

Also, the “Routledge International Handbook of Children’s Rights Studies”, edited by two members of the HRI network, Wouter Vandenhole and Ellen Desmet, together with Didier Reynaert and Sara Lembrechts, was published in 2015. The volume offers a multidisciplinary approach to children’s rights, and addresses key thematic issues in children’s rights at the intersection of global and local concerns.

#### Presentations at conferences/ workshops

Brems, E., “Lessons for children’s human rights from women’s rights?”, International expert seminar “Children’s rights in the global human rights landscape: isolation, inspiration, integration?”, Ghent, 5 November 2014 (partner = UGent).

De Hert, P., Children’s rights in the global human rights landscape: isolation, inspiration, integration? Ghent University, Ghent, 5 November 2014 (participant at the human rights expert panel) (partner = VUB).

- Desmet, E., “Lessons for children’s human rights from indigenous peoples’ rights?”, International expert seminar “Children’s rights in the global human rights landscape: isolation, inspiration, integration?”, Ghent, 5 November 2014.
- Isailovic, I., Children’s rights in the global human rights landscape: isolation, inspiration, integration? Ghent University, Ghent, 5 November 2014 (participant at the human rights expert panel) (partner = ULB).
- Vandenhole, W., “Distinctive characteristics of children’s rights law”, International expert seminar “Children’s rights in the global human rights landscape: isolation, inspiration, integration?”, Ghent, 5 November 2014 (partner = UAntwerpen).

### 3.7.5 Other contributions related to WP 6 (ULB, UGent and UAntwerpen)

#### Presentations at conferences / workshops

- Bribosia, E., “Fundamental rights and mutual trust”, international workshop ‘EU fundamental rights landscape after opinion 2/13’, University of Maastricht, 26 June 2015 (partner = ULB)
- Desmet, E., “Land and natural resources: property, power and law in a globalizing world”, Global Studies Research Day, Ghent Centre for Global Studies, Ghent, 24 October 2014 (partner = UGent and UAntwerpen)
- Desmet, E., “Inheemse volkeren en mensenrechten”, guest lectures in course of Prof. Yves Haeck, Ghent, 14 November 2014 and 27 March 2015 (partner = UGent and UAntwerpen)
- Desmet, E., “Identifying rights-holders in natural resource regimes. A critical assessment of the Peruvian protected areas legislation”, Workshop on the Rule of Law, Governance and Natural Resources, Amsterdam, 22-23 January 2015 (partner = UGent and UAntwerpen)
- Desmet, E., “Mensenrechten in niet-westerse contexten: een (mis-)match met inheemse volkeren?”, ACCA Conference, Université catholique de Louvain, Louvain-la-Neuve, 29 May 2015 (partner = UGent and UAntwerpen)
- Desmet, E., “What may the Draft Declaration on the Rights of Peasants imply for Indigenous Peoples?”, Sixth Multidisciplinary Meeting on Indigenous Peoples (EMPI), Ghent University, Ghent, 10-11 June 2015 (partner = UGent and UAntwerpen)
- Desmet, E., Panel “Indigenous Peoples’ Struggles and Human Rights” with indigenous leaders from Latin America, Sixth Multidisciplinary Meeting on Indigenous Peoples (EMPI), Ghent University, Ghent, 10-11 June 2015 (moderator) (partner = UGent and UAntwerpen)

### 3.8 WP 7: Clarifying the grey zone between internal human rights abuses and crimes against humanity (VUB)

- PhD research: Mathias Holvoet
- Promoters: Prof. Paul De Hert and Prof. Stefaan Smis

#### Objectives of the project

The PhD project under Work Package 7 focuses on one contextual element of crimes against humanity in particular, namely the requirement under Article 7(2)(a) ICC Statute that the widespread or systematic attack directed against any civilian population should be carried out *'pursuant to or in furtherance of a State or organizational policy to commit such attack.'*

The PhD project aims to answer the following central research question: 'Taking into account the perspectives of the different users under International Criminal Law and the allocation of jurisdiction between domestic courts and the ICC under the principle of complementarity, what is the meaning, scope and content of the concepts of 'State', 'organizational' and 'policy' under Article 7(2)(a) ICC Statute?'

During year 3, the general research question and research sub questions were reframed. The general research question now goes as follows: *'What is the status and substance of the policy element under the law of crimes against humanity within the pluralist ICL landscape, taking into account the perspectives of the various users within International Criminal Justice?'* The dissertation contains six main chapters, each answering one of the following sub questions: What are the different theories behind the concept of crimes against humanity and more specifically, what is its bearing on the conceptual necessity of a policy element and the extension of the concept of crimes against humanity over the conduct of non-state actors? How are the ideas of legal pluralism of interest and relevant when studying ICL? What is the status of the policy element under international law? Notwithstanding the status of the policy element, how should the element in all its aspects be understood substantively? How is the policy element regarded beyond the ICC Statute within the pluralist landscape of ICL? What are the perspectives of the various ICL users on the usefulness and the substance of the policy element?

#### Research performed and results obtained

During year 3, the research questions and different chapters of the dissertation were slightly reframed (see above). Moreover, the writing of chapter four of the dissertation, studying the interpretation of the policy element as laid down in the ICC Statute, was nearly finalized. Furthermore, a significant amount of time was spent on redrafting the paper on the interrelation between international human rights law and the law of crimes against humanity. The article was resubmitted to the *Journal of International Criminal Justice* and was fairly positively assessed during the first round of peer-reviewing. Mathias was also significantly involved in organizing Track 4 of the IAP Conference, by inviting keynote speakers, helping out with the selection of the papers and setting up the program of the different panels. Mathias will present a poster on his PhD-Research at the IAP-Conference. Lastly, Mathias carried out various side-activities during year 3. He was for instance invited by Leiden University to act as a Bench Member during the ICC

Moot Court Competition and taught Guest Courses on International Criminal Law at the Faculty of Law and Criminology of the Vrije Universiteit Brussel.

The first main aim for year 4 is to rework and resubmit the article to the *Journal of International Criminal Justice* in order to get it published. The second main aim is to finalize the last two chapters of the dissertation and to present conclusions and recommendations. It is important to note that Mathias conducts the last year of his doctoral research as a Visiting Scholar at the Whitney R. Harris World Law Institute, Washington University in St. Louis. To this end he was awarded a FWO Mobility Grant. A research stay at the Harris Institute will undoubtedly constitute an added scientific value. The Institute is a renowned center of expertise in the field of International Criminal Law and the law of crimes against humanity more in particular. Since 2008, the Harris Institute is the hosting institution to the *Crimes Against Humanity Initiative*, set up to draft a Convention for Crimes Against Humanity. The *Initiative* incentivized the International Law Commission to start drafting a Convention for Crimes Against Humanity to be adopted, sooner or later, by the United Nations General Assembly. Due to its involvement as hosting institution of the *Initiative*, the Harris Institute is home to a great amount of valuable documentation with regards the law of crimes against humanity. Furthermore, a great deal of in-house expertise on the law of crimes against humanity is present since the Institute is being led by Professor Leila Sadat, Special Adviser on Crimes Against Humanity to the Prosecutor of the International Criminal Court.

## **4 Network activities**

### **4.1 International conferences, seminars and related activities**

In the third working year, a substantial number of international seminars and research days were organised by the partners of the Human Rights Integration network. A diversity of formats, collaborations and approaches can be discerned.

#### **4.1.1 Equality Law Clinic of the Perelman Centre for Legal Philosophy and the Legal Department of the Institute for European Studies (ULB)**

The Equality Law Clinic (ELC), based at the Perelman Centre for Legal Philosophy and the Legal Department of the Institute for European Studies (IEE) of ULB was created in October 2014 within the framework of the HRI project. The ELC is offering to a selected group of graduate students (at MA 2 level) the opportunity to enhance their legal knowledge and practical skills by working on specific transnational issues in equality and non-discrimination law. In order to combine theoretical and practical work, the ELC offers a transdisciplinary training which embeds legal knowledge in the socio-economic context, promoting equality and justice by focusing on an integrated perspective to human rights. Students follow a general and a focused module, which include clinical courses as well as seminars and conferences with the participation of scholars and professionals engaged in the human rights field. At the end of the programme students are expected to have made a contribution that can assist affected individuals and/or partner organisations working in the field. The ELC is organised by Prof. Isabelle Rorive and Prof. Emmanuelle Bribosia with the help of HRI-affiliated researchers of the ULB.

Students of the ELC's first year in 2014-15 focused on four different projects in the areas of disability rights (supervised by Joseph Damamme), immigration and asylum law (supervised by Moritz Baumgärtel and Sarah Ganty), reproductive justice and abortion rights, and transgender rights (both supervised by Ivana Isailovic). Final outputs included a roundtable on "transnational abortion rights" (see 4.1.7 of this report), a draft code of conduct for the ULB concerning disability rights, and draft guidelines for lawyers on reception conditions for persons seeking leave to stay on medical grounds. Three project will be continued in the academic year 2015-16, building on and continuing the work completed in the previous year



#### **4.1.2 International expert seminar: “Children’s rights law in the global human rights landscape: isolation, inspiration, integration?” (UGent, UAntwerpen)**

On the occasion of the 25<sup>th</sup> anniversary of the Convention on the Rights of the Child, this one-day international expert seminar, on 5 November 2014, explored how children’s human rights law and other branches of human rights law can inspire and enrich each other, to arrive at a more integrated experience and enhanced effectiveness of human rights law. It brought together legal experts of children’s rights and human rights in a semi-closed setting. Through a combination of classic and innovative methods, potential contributions were assessed (i) from children’s human rights law to the global human rights landscape; and (ii) to children’s human rights law from other branches of human rights law. The organizing committee consisted of three IAP members: Eva Brems (UGent); Wouter Vandenhoele (UAntwerpen) and Ellen Desmet (UGent /UAntwerpen). Various other IAP network members participated as human rights experts: Paul De Hert (VUB); Ivana Isailovic (ULB) and Dirk Voorhoof (UGent and Copenhagen University). A book proposal based on the seminar has been accepted by Routledge.

#### **4.1.3 Research day: “Les droits de l’Homme: la dernière utopie” (USL-B)**

On 7 November 2014, Saint-Louis University has organized, in partnership with the Universities of Louvain (UCL) and Namur (UNamur), a research day, entitled “Les droits de l’Homme: la dernière utopie?”. The purpose of this research day was, in a firmly interdisciplinary perspective, to discuss the contribution of human and social sciences to the reflexion on human rights, and was supported by the IAP. Various representatives of HRI member universities have taken part to this event, be it as organizers (Sébastien Van Drooghenbroeck, Pierre-Olivier de Broux and Ludivine Damay – USL-B), as speakers (Eva Brems (UGent), Justine Lacroix (ULB), Patricia Naftali (ULB), Julien Pieret (ULB), Barbara Truffin (ULB), Bart de Sutter (UAntwerpen)), or as participants.

#### **4.1.4 International seminar: on the right to education in China (UAntwerpen)**

On 25 February 2015, an international seminar was organised at UAntwerpen to present the results of the China project on localising human rights (see 3.3.2). The seminar explored the relevance of human rights for migrant children and their parents in Chongqing, China. Presentations on the research results were given by Koen De Feyter (UAntwerpen), Jingrong Chen (UAntwerpen) and Ellen Desmet (UAntwerpen/UGent). Prof. Jan De Groof (College of Europe) and Ms. Henrike Prudon (Utrecht University) gave complementary presentations on the right to education and human rights in China (for the full programme, see Appendices).

#### **4.1.5 Lecture: “L’Europe des valeurs est-elle possible? , Álvaro Gil Robles (ULB)**

Álvaro Gil Robles, former Commissioner for Human Rights of the Council of Europe, visited the ULB on 24 February 2015 to hold a lecture. He discussed the contemporary relevance of Europe as a “value project” as initially envisioned by Europe’s founding father and as reflected in the

Treaty of Rome. During his lecture he also explained the function of the Commissioner for Human Rights, elaborating on the different priorities set during his time as a Commissioner (1999-2006). The event was organized by the Institute of European Studies (ULB) in collaboration with the Faculty of Social Sciences and Politics (ULB).

#### **4.1.6 Seminar with Jacco Bomhoff, *Balancing Constitutional Rights: The Origins and Meanings of the Postwar Legal Discourse* (ULB)**

Jacco Bomhoff, Associate Professor of Law at London School of Economics, presented his new book entitled *“Balancing Constitutional Rights: The Origins and Meanings of the Postwar Legal Discourse”* (CUP, 2015) on 24 March 2015 at the ULB. Professor Van Drooghenbroeck (USL-B) acted as discussant.

#### **4.1.7 Roundtable: *“Transnational Abortion Rights: Analyzing a Shifting Legal Landscape”* (ULB)**

The aim of this roundtable, co-organized by Ivana Isailovic, Isabelle Rorive and Emmanuelle Bribosia, on 3 April 2015 was to analyse how abortion rights are evolving across different domestic and international legal regimes. The discussion focused more particularly on policies and ideas supporting legal changes and strategies (including transnational litigation) deployed by civil society groups and their advocacy networks. This event brought together experts working on these topics, from both civil society and academia, who addressed some of the following issues:

- Evolutions in domestic and international law
- Innovative strategies and new spaces of contestation
- The role of conservative advocacy groups and their networks
- The pros and cons of strategic litigation

For more details, please see the programme in the Appendices.

#### **4.1.8 International conference: *“Getting Closure: Human Rights After Human Rights”* (ULB / USL-B)**

This conference (4-5 May 2015) explored topics and perspectives that have emerged after, and as a reaction to the increasing number of human rights critiques in the recent years. Some of these critiques have been of such a fundamental nature that they have left not few researchers in the field with a nagging doubt about human rights and their status as an ideological project and a so-called ‘last utopia’. Still, human rights continue to play a significant role both in high-level politics and, even more importantly, in grassroots initiatives, becoming in fact the dominant vocabulary for expressing and challenges injustices. This two-day event provides an opportunity to confront the challenges that result from the ambivalence of human rights.

Martti Koskenniemi (University of Helsinki), Vidya Kumar (University of Birmingham) and Justine Lacroix (Université libre de Bruxelles) were the keynote speakers. Along keynote addresses we organized several parallel thematic sessions (see the programme in the Appendices). The conference was organized by the research team of the ULB (in collaboration with USL-B) and has benefited from the funding of the National Fund for Scientific Research (FNRS).

#### **4.1.9 International expert seminar: “Rewriting decisions from a human rights integration perspective” (UU and all teams)**

On 7 and 8 May 2015, the University College Roosevelt (UU) hosted an international expert seminar in Middelburg, where the draft chapters of the book on rewriting decisions from an integrated human rights perspective were discussed in a closed setting (see 3.1.1 and programme in Appendices).

#### **4.1.10 Conference-debate: “Evolutions des droits de l’homme, de la participation citoyenne et de la liberté d’expression dans les pays du Maghreb: du possible au souhaitable” (USL-B)**

On 11 May 2015, in the framework of the Projet Victor Hugo / ICORN@Universities in Brussels 2014-2015, Saint-Louis University – Brussels (Sébastien Van Drooghenbroeck, Antoine Bailleux) organised a conference-debate on the theme “Evolutions des droits de l’homme, de la participation citoyenne et de la liberté d’expression dans les pays du Maghreb: du possible au souhaitable”. This conference-debate has, in particular, been the occasion of a communication by Professor Stefaan Smis (VUB) on the theme “Droits de participation citoyenne dans l’Union africaine: le cas du Maghreb”.

#### **4.1.11 Lecture: David Thor Bjørgvinsson (ULB)**

Prof. David Thor Bjørgvinsson (University of Copenhagen), former Judge at the European Court of Human Rights, visited the ULB as the special guest to a one-day event (13 May 2015) that brought together members of the Human Rights Integration Project with students from the LLM in Legal Theory, a programme co-organized by other members of the Perelman Centre for Legal Philosophy. The topic of the day was the increasingly important relationship of the European Court of Human Rights to external actors such as states, NGOs and civil society organizations, individuals and other domestic and international courts. The first part of the day consisted of a keynote speech by Prof. David Bjørgvinsson and a PhD seminar (see 4.2.3). The afternoon was dedicated to an in-class exercise followed by an open discussion about the status and the added value of separate opinions in judgments of the Strasbourg Court.

#### **4.1.12 Research afternoon: Current thoughts on the European Social Charter (USL-B)**

On 28 May 2015, the Belgian section of the Academic Network on the European Social Charter and social rights, which is bringing together researchers from all Belgian universities, organised,

under the scientific direction of Sébastien Van Drooghenbroeck (USL-B) and Filip Dorssemont (UCL) a study afternoon on the European Social Charter.

#### **4.1.13 International conference: Sixth Multidisciplinary Meeting on Indigenous Peoples (UGent, VUB, UAntwerpen)**

On 10-11 June 2015, the Sixth Multidisciplinary Meeting on Indigenous Peoples (*Encuentro Multidisciplinario de Pueblos Indígenas - EMPI VI*) took place at Ghent University. The programme consisted of a welcome speech, two keynote speeches, four bilingual parallel panels (Track 1: Indigenous peoples and their interrelation with international law; Track 2: Land, territories, consultation and consent; Track 3: Rights in tension and opportunities; Track 4: Legal pluralism) and two discussion panels with indigenous leaders from Latin America, who come every year to Deusto University to participate in the Program of Formation on Human Rights organized by the UN High Commissioner for Human Rights. The organizing committee of the conference included various HRI members of different universities, who each chaired one or more panel sessions: Eva Brems (UGent); Yves Haeck (UGent); Koen De Feyter (UAntwerpen); Stefaan Smis (VUB); and Ellen Desmet (UGent / UAntwerpen) (see Appendices). Next to the IAP, the conference was co-funded by the Science Foundation Flanders (FWO) and enjoyed the support of the Ghent Centre for Global Studies.

#### **4.1.14 Conference-debate: “Crise des réfugiés, crise de l'accueil” (USL-B)**

In the margin of its programmes of Specialisation Master in Human Rights and of Master in European Studies, Saint-Louis University, Brussels (Sébastien Van Drooghenbroeck and Antoine Bailleux) organised, on 12 October 2015, a conference-debate on the theme “*Crise des réfugiés, crise de l'accueil? Cadre, enjeux et perspectives*”. This conference-debate led to interventions of persons from the academic, judiciary and associative world.

#### **4.1.15 Lecture: “Climate and Human Rights” (USL-B)**

On Wednesday 18 November 2015, Serge de Gheldere, president of Klimaatzaak asbl/vzw, gave a lecture at Saint-Louis University, Brussels on the following theme: “*Quand le citoyen plaide la cause du climat devant le juge. Les enjeux des « affaires climat » au regard du droit à la protection d'un environnement sain et du rôle du juge dans nos sociétés démocratiques*”. This conference was jointly organised by the Specialisation Master in Human Rights (USL-B, UNamur, UCL) and the Specialization Master in Environmental Law and Public Real Estate Law (USL-B, UNamur).

#### **4.1.16 COST Action: “Ageism - a multi-national, interdisciplinary perspective” and panel proposal: Understanding the Relationships Between Law, Aging, and Ageism (VUB)**

Since June 2014, the Research Group Fundamental Rights & Constitutionalism (VUB) is a member of the EU Cost Action IS1402 “Ageism - a multi-national, interdisciplinary perspective”, in particular of the working group “Law and Ageing”. Active members within this project are mainly Prof. De Hert, Marijke De Pauw and Eugenio Mantovani ([http://www.cost.eu/COST\\_Actions/isch/IS1402](http://www.cost.eu/COST_Actions/isch/IS1402)).

Within the COST working group, prof. De Hert, together with other members, has submitted a panel proposals for the 2016 Law and Society Association Meeting in New Orleans: “Understanding the Relationships Between Law, Aging, and Ageism: The COST Action on Ageism - A Multi-National, Interdisciplinary Perspective.” In this panel, the relevant research that is undertaken within the FRC on aging and law will be presented and discussed. This includes the research of Prof. De Hert and the PhD research of Marijke De Pauw, which form part of the IAP Human Rights Integration.

#### **4.1.17 Panel proposal: Human Rights and Vulnerable Groups: The Pros and Cons of Affording Special Protection (ULB, UAntwerpen, UGent and UU)**

A second panel proposal was submitted to the 2016 Law and Society Association Meeting in New Orleans, on the pros and cons of affording special protection to vulnerable groups. The rise of the international human rights system has gone hand in hand with the establishment of protection regimes for specific groups such as women, children, persons with disabilities, and migrant workers. Yet, members of these and other groups often remain in vulnerable positions, having difficulties to access legal remedies or to target the structural causes of marginalization and discrimination. The panel gathers contributions which critically assess from empirical and normative angles the effectiveness, limitations or the lack of such special protection instruments and bodies. How do they fare in comparison to more 'general' human rights treaties and tribunals? The idea of the panel is to share and compare the insights obtained in research across different vulnerable groups including the elderly, children, peasants, migrants, and socio-economically underprivileged persons.

The session organizers are Moritz Baumgärtel (ULB) and Sarah Ganty (ULB). Prof. Brems (UGent) would chair the session, and Prof. Engle Merry would act as a discussant. Paper proposals have been submitted by Moritz Baumgärtel (ULB), Marijke De Pauw (VUB), Arne Vandenbogaerde (UAntwerpen) and Ellen Desmet (UAntwerpen/UGent), Joseph Damamme (ULB) and Dorothea Staes (ULB), Sarah Ganty (ULB) and Barbara Oomen (UU).

## 4.2. HRI training sessions

In year 3 of the IAP, four PhD seminars were organised for the researchers of the HRI network and other interested researchers of the partner universities and beyond. Two of these had a thematic focus, dealing respectively with children’s rights law and methodological approaches to case-law research. In two other seminars, the PhD researchers benefited from the feedback provided by high-level international experts.

### 4.2.1. Children’s rights law in the global human rights landscape: isolation, inspiration, integration? (UGent; UAntwerpen)

After the international expert seminar on 5 November 2014 (see 4.1.2), a PhD training seminar was organised on the same theme of interaction between children’s rights law and human rights law. Three PhD researchers presented their research, on educational supervision (Maria De Jong, Leiden University); environmental rights (Danielle Van Kalmthout, UGent); and transnational obligations (Gamze Erdem Türkelli, UAntwerpen). They received feedback from the children’s rights and human rights experts who had participated in the international seminar (see programme of international expert seminar in Appendices).

### 4.2.2. PhD Seminar with John R. Spencer (Ganshof Van der Meersch Chair) (ULB, VUB)

On 19 and 31 March 2015, several doctoral students had the opportunity to present their ongoing research projects and to receive comments from John R. Spencer, Professor of Law at the University of Cambridge. The event took place in the framework of the Ganshof Van der Meersch Chair, which was awarded to Prof. Spencer for the academic year 2014-15, and which is supported by the Wiener Anspach Foundation.

Presentations:

- Chloé Brière (ULB), “Strengthening the fight against trafficking in human beings in priority third countries and regions”
- Joseph Damamme (ULB), “How can obesity fit within the legal concept of “disability”? A comparative analysis of judicial interpretations under EU and US discrimination law after *Kaltoft*”
- Emmanuel Slautsky (ULB), “Electricity Regulators in Belgium and the United Kingdom: Implementing European Law Requirements”
- Ines Armada (VUB), “What is the Court thinking? An attempt to elucidate Strasbourg’s exclusionary rationales”
- Céline Cocq (ULB), “Does a legal fertile ground exist in ASEAN to facilitate intelligence and information sharing in combating serious transnational crime?”
- Irene Wieczorek (VUB), “Making sense of national criminalisation scholarship: object-based, objective-based and procedures-based legitimacy?”

#### 4.2.3. PhD Seminar with David Thor Bjørgvinsson (ULB)

In addition to a lecture (see 4.1.11), Prof. David Thor Bjørgvinsson (University of Copenhagen) also acted as a discussant during a PhD Seminar. The seminar took the form of a series of short and interactive presentations of the HRI members, based on their research, who then received reactions from Prof. Bjørgvinsson. Two PhD students of the HRI project, Moritz Baumgärtel (WP 2) and Thea Staes (WP 3), had the opportunity to present their research projects during the event. Former PhD candidate and HRI-affiliated researcher Markus Fahlbusch also presented his completed doctoral work. The event was also attended by Isabelle Rorive and Ivana Isailovic from the HRI project as well as Gregory Lewkowicz and Stefan Goltzberg (both Perelman Centre for Legal Philosophy, ULB).

#### 4.2.4. Methodological approaches to case-law research: sharing experiences (UGent)

Valeska David (WP 6), Eline Kindt (WP 5) and Helena De Vylder (WP 5) co-organized a PhD seminar entitled “Methodological approaches to case-law research: sharing experiences” which took place in Ghent University, on 26 May 2015.

The aim of the seminar was to help PhD students doing case-law research to reflect on their methodology design and strengthen the methodological underpinnings of their research. As a PhD student, methodology is one of the biggest hurdles to overcome. And as PhD students in law, working on case-law can pose its own set of questions. Therefore, this seminar focused on research methodologies with respect to case-law. The seminar was organized in a three-tiered structure, based on the different stages in research of case-law, the kind of question the researcher would like to get answered, and methodological tools to facilitate the research. *The first track* looked into the process of selecting and normatively analyzing cases. *The second track* focused on comparative research methods and the analysis of the dialogue between legal actors. *The third track* addressed methods originating from social sciences from which legal researchers can benefit.

As experience is an important source of knowledge, seven senior PhD researchers and fresh doctors in law illustrated which hurdles they struggled with and how they developed their methodology in order to overcome these problems (see programme in Appendices). The seminar provided an interactive forum in which PhD-researchers could discuss each other’s methodology in a convivial setting.

The initiative was most welcomed by students and academics and due to the great interest on the topic, the seminar was followed by a series of blogposts in [Strasbourg Observers](#). The series focused on the methodological approaches to deal with the case law of the European Court of Human Rights.

### 4.3. HRI annual meetings (all teams)

The **second annual meeting** of the IAP Human Rights Integration was originally scheduled on 24 November 2014. Due to a railway strike and given the importance attached to a wide attendance from the different partners, the meeting was postponed to 12 February 2015, with approval of BELSPO. This annual meeting was hosted by the Université Saint-Louis – Bruxelles, and focused on a mid-term review of the progress made in the research projects of the different work packages, through presentations by the PhD researchers and discussion afterwards (see programme in Appendices). A second part of the meeting was reserved for the preparation of the 2015 international HRI Conference, with – among others – discussion of the concept note and the call for papers. On behalf of BELSPO, Ms. Véronique Feys participated in the meeting.

On 8 October 2015, the **third annual meeting** was organised in Ghent. In this meeting, the floor was given to the researchers affiliated to the IAP project, who presented their research and how it related to the overall objectives of the Human Rights Integration network. In the afternoon session, further preparations were made and decisions taken regarding the December conference (see programme in Appendices).

Moreover, the annual meetings each time serve as an informal platform for exchange and coordination regarding other network activities, such as panel proposals for international conferences.

### 4.4. IAP International Conference 2015 (all teams)

During the third work year, preparations intensified for the network-wide conference “The Global Challenge of Human Rights Integration: Towards a Users’ Perspective”, to be held from 9 to 11 December 2015 in Ghent. This international conference aims to explore the foundations and implications of human rights fragmentation and integration. Human rights law today is characterised by the coexistence of a large variety of norms, which leads to a compartmentalised view of human rights. Yet, its ‘users’ (rights holders, duty bearers and other actors) are confronted simultaneously with multiple and often uncoordinated layers of human rights law. The three-day conference invites human rights scholars to add an integrated perspective of human rights law to their work and to reflect upon opportunities and obstacles created by the complex architecture of human rights law.

The seven work packages were rearranged into five broader tracks, with each partner university leading one track. UGent takes up the overall coordination.

#### **Track 1 – Fragmentation and integration in human rights law: theoretical and conceptual approaches**

Track leader: Barbara Oomen (UU) – based on WP1

#### **Track 2 – Convergence and divergence within international human rights law**

Track leaders: Emmanuelle Bribosia and Isabelle Rorive (ULB)

Procedural and substantive dimensions combined: based on WP 3-5-6



**Track 3 – Convergence and divergence between national and international human rights law**

Track leader: Sébastien Van Drooghenbroeck (USL-B)

based on WP 4, but extended

**Track 4 – Convergence and divergence between international human rights law and other branches of international law**

Track leaders: Paul De Hert and Stefaan Smis (VUB)

based on WP 7, but extended

**Track 5 – Analysing users’ trajectories in human rights law**

Track leader: Koen De Feyter (UAntwerpen)

based on WP 2

The scientific committee of the conference is composed of all IAP professors of the different universities as well as the project manager, namely Prof. Antoine Bailleux (USL-B); Prof. Eva Brems (UGent); Prof. Emmanuelle Bribosia (ULB); Prof. Koen De Feyter (UAntwerpen); Prof. Paul De Hert (VUB); Dr. Ellen Desmet (UGent / UAntwerpen); Prof. Yves Haeck (UGent); Prof. Barbara Oomen (UU); Prof. Isabelle Rorive (ULB); Prof. Stefaan Smis (VUB); Prof. Wouter Vandenhole (UAntwerpen); Prof. Sébastien Van Drooghenbroeck (USL-B).

The call for papers was launched in early March (see Appendices). The call was a great success (more than double the amount of abstracts that could be accepted) and the overall quality of the submissions was high.

The conference will feature thought-provoking lectures by renowned keynote speakers, namely Andreas Føllesdal (University of Oslo), Shalini Randeria (The Graduate Institute, Geneva), Olivier De Schutter (UCL), Bruno De Witte (Maastricht University), Maya Hertig-Randall (University of Geneva), Jan Velaers (UAntwerpen), Patricia Pinto Soares (European University Institute), Damien Scalia (University of Geneva and UCL), and Balakrishnan Rajagopal (Massachusetts Institute of Technology).

The conference will also include an event on Scholars at Risk (on Human Rights Day – 10 December), a poster exhibition, a children’s rights walk, a publishers’ stall, human rights documentaries as well as a conference reception and dinner.

## 4.5. Collaboration in relation to PhD research

Collaboration between the different teams in relation to PhD research is concretised through the co-supervision of PhD theses and through the mixed composition of doctoral guidance committees and examination boards.

### 4.5.1. Co-supervision of PhD theses

The co-supervision of PhD theses implies collaborations between the following teams:

- ULB and USL-B
  - o Co-supervision of the PhD of Dorothea Staes (WP 3) (Prof. Rorive and Prof. Van Drooghenbroeck)
- VUB and USL-B
  - o Co-supervision of the PhD of Marijke De Pauw (WP 3) (Prof. De Hert, Prof. Smis and Prof. Van Drooghenbroeck)
- ULB and VUB
  - o Co-supervision of the PhD of Francisco Javier Mena Parras (WP 6) (Prof. Bribosia and Prof. De Hert)

### 4.5.2. Mixed doctoral guidance committees

In addition, the doctoral guidance committees of various PhD researchers are composed of members of different IAP partners, leading to the following cooperation:

*Mixed doctoral guidance committees, including members from partner universities who are actively involved in the IAP:*

- UGent and UAntwerpen:
  - o Doctoral guidance committee of Valeska David (WP 6) (Prof. Brems, Prof. De Feyter and Ellen Desmet)
- UAntwerpen and UGent:
  - o Doctoral guidance committee of Pascal Sundi (WP 2) (Prof. De Feyter, Prof. Timmerman, Prof. Verschraegen and Ellen Desmet)
  - o Doctoral guidance committee of Shisang Jiang (WP 2) (Prof. De Feyter and Ellen Desmet)
- ULB and USL-B:
  - o Doctoral guidance committee of Laura Vanden Eynde, “Interpreting Rights Collectively Comparative Arguments in Public Interest Litigants’ Briefs on Fundamental Rights Issues” (WP 3) (Prof. Bribosia, Prof. Rorive and Prof. Van Drooghenbroeck); Private Defence (23 October 2015, ULB), Public Defence (12 November 2015, ULB)
  - o Doctoral guidance committee of Thea Staes (WP 3) ((Prof. Bribosia, Prof. Rorive and Prof. Van Drooghenbroeck)

- ULB and VUB:
  - o Doctoral guidance committee of Fisnik Korenica (WP 6) (Prof. Bribosia, Prof. De Hert & Prof. Smis), “The EU accession to the ECHR: between Luxembourg’s search for autonomy and Strasbourg’s credibility on human rights protection” private defense (2 February 2015, VUB) and public defense (5 March 2015, VUB).
- ULB, VUB and USL-B:
  - o Doctoral guidance committee of Francisco Javier Mena Parras (WP 6) (Prof. Bribosia, Prof. De Hert, Prof. Rorive and Prof. Bailleux)
- VUB and USL-B:
  - o Doctoral guidance committee of Marijke De Pauw (WP 3) (Prof. De Hert, Prof. Smis, Prof. Van Drooghenbroeck)
- VUB and UAntwerpen:
  - o Doctoral guidance committee of Derek Inman (WP 6) (Prof. De Hert, Prof. Smis and Prof. De Feyter)

*Mixed doctoral guidance committees, including other members from IAP partner universities:*

- USL-B and UAntwerpen:
  - o Doctoral guidance committee of Olivier van der Noot (WP 4) (presence of Prof. Velaers, UAntwerpen)

#### **4.5.3. Mixed doctoral examination boards**

Finally, in the third working year of the HRI network, various doctoral examination boards were composed of members of the different partner universities within the network.

- UGent and VUB:
  - o Prof. Smis (VUB) was a member of the examination board of the PhD defense of Cécile Vandewoude: “The Meaning of Democracy in International Law. A Study on State Practice within the United Nations Framework”, with prof. Brems (UGent) as promoter, on 4 March 2015.
- UGent and ULB:
  - o Prof. Rorive (ULB) was a member of the examination board of the PhD defense of Saïla Ouald Chaib “*Belief in Justice. Towards more inclusivity in and through the Freedom of Religion Case Law of the European Court of Human Rights*”, with prof. Brems (UGent) as promoter, on 15 June 2015.
- VUB and UGent
  - o Prof. Brems (UGent) and Prof. Smis (VUB) were members of the jury of the doctoral thesis of Paul Quinn: “Stigmatizing Expression by the State and the Problems They Pose to the Law”, with prof. De Hert (VUB) as promoter, on 2 September 2015.

## 4.6. Communication

### 4.6.1. External communication

The website [www.hrintegration.be](http://www.hrintegration.be) continues to be the main platform of external communication. Between 1 October 2014 and 30 September 2015, the site was visited by 10,833 persons, of which 7,422 unique visitors (see Figure 1). This represents an **increase with 260%** of unique visitors to the website, compared to the previous year. This can be partly explained by the call for papers for the international HRI conference, which was launched in March 2015.

Network activities are also communicated to the list of ‘followers’ of the HRI project, consisting of people having expressed their interest in the network.

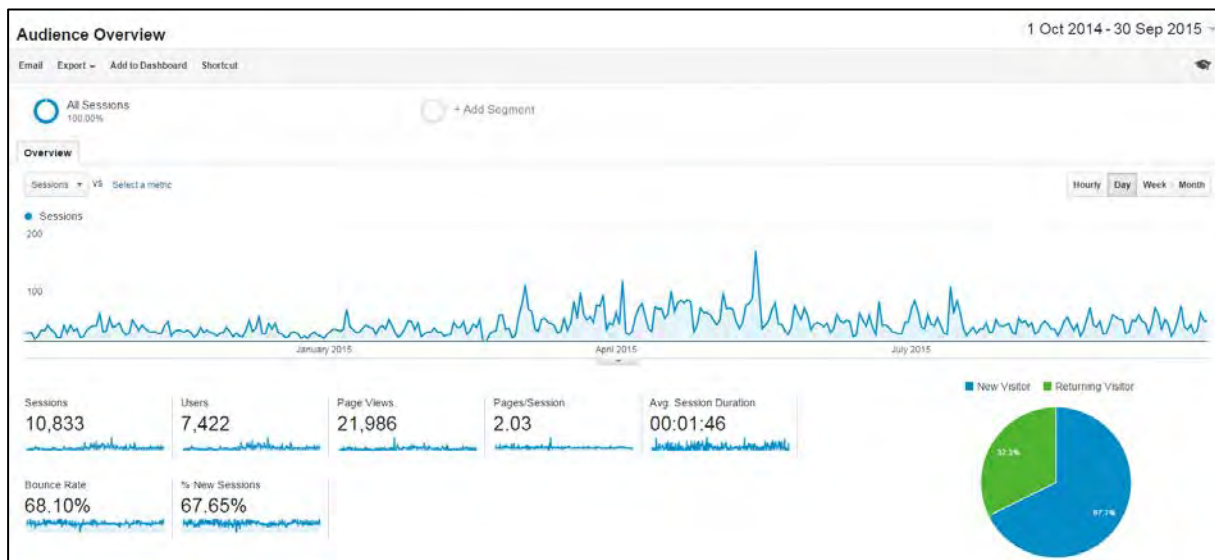


Figure 1. Reach of [www.hrintegration.be](http://www.hrintegration.be) between 1 October 2014 and 30 September 2015 (Google Analytics)

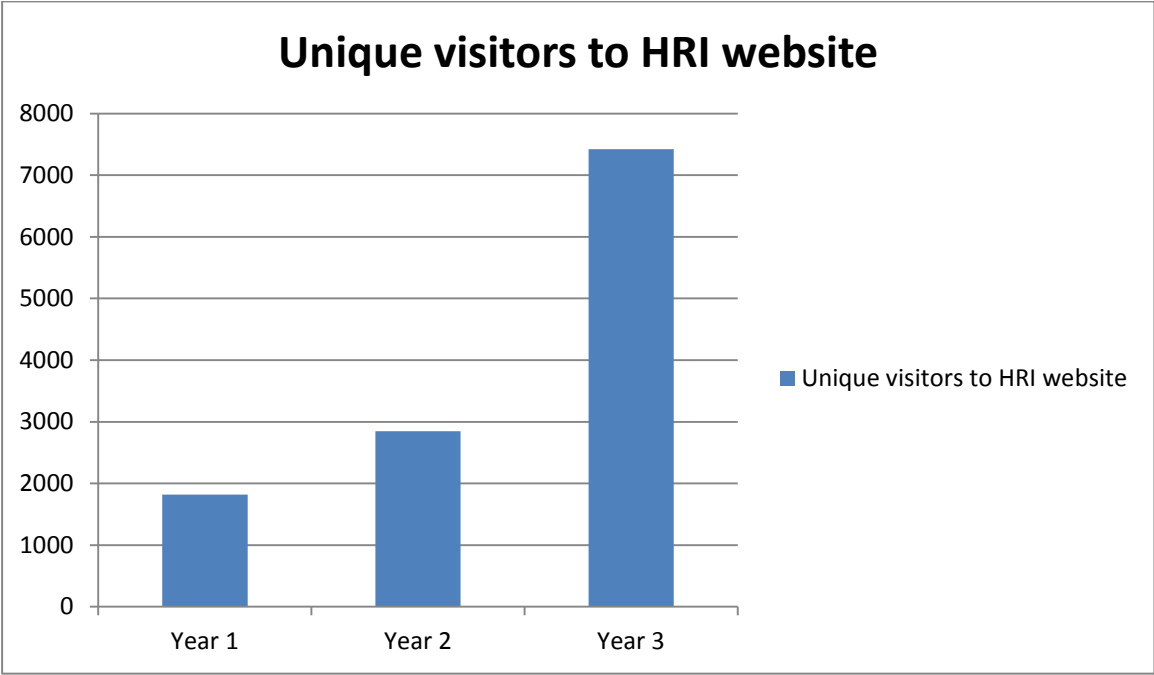


Figure 2. Comparison of unique visitors to Human Rights Integration website during three first working years (2012 – 2015)

**4.6.2. Internal communication**

Also in its third year, the Human Rights Integration network has functioned in an open and dynamic way. A continuous and intensive communication is guaranteed through regular meetings and a mailing list including all project members (Yahoogroups). Key project documents, work in progress and relevant literature are made available through Dropbox. Moreover, where appropriate, e-mail communication and bilateral exchanges took place.

## 5. Publications

### 5.1. Publications from each team

#### UGent

##### *Peer-reviewed publications:*

Brems, E., and Desmet, E. (eds), “Studying Human Rights Law from the Perspective(s) of its Users”, *Human Rights & International Legal Discourse*, 8 (2), 2014, pp. 109-326.

Brems, E., and Desmet, E., “Studying Human Rights Law from the Perspective(s) of its Users – Editorial introduction”, *Human Rights & International Legal Discourse*, 8 (2), 2014, pp. 111-120.

David, V. and Fraser, J., “Juvenile Criminal Justice before the Inter-American Court of Human Rights: Aims and Limitations on the Imprisonment of Children” in Y. Haeck, C. Burbano-Herrera and O. Ruiz-Chiriboga (Eds.) *The Inter-American Court of Human Rights: Theory and Practice, Past, Present and Future*, Cambridge: Intersentia Publishers, 2015, pp. 537-561.

David, V., “The Inauguration of the Inter-American Defenders’ Era: Reflections after the Furlan Case” in *Inter-American and European Human Rights Journal* 7(1), 2014, pp. 245-268.

Haeck, Y., Burbano Herrera, C., and Ruiz-Chiriboga, O. (eds), *35 Years of the Inter-American Court of Human Rights: Theory and Practice, Present and Future*, Cambridge, Intersentia Publishers, 2015.

Kindt, E., “De federale GAS-wet en het recht op spelen: een onderzoek naar de overeenstemming van het begrip van de openbare overlast met de internationale mensenrechten”, 7 *TBP*, pp. 368-383.

##### *Non-peer-reviewed publications:*

David, V., De Vylder, H. and Kindt, E., “Blog post series: legal research methodologies to deal with case law from Strasbourg (and beyond)”, *blogpost* on the website of “Strasbourg Observers”, published online 25 August 2015, available at <http://strasbourgobservers.com/2015/08/25/blog-post-series-legal-research-methodologies-to-deal-with-case-law-from-strasbourg-and-beyond/>.

#### ULB

##### *Peer-reviewed publications:*

Baumgärtel, M., “Perspectives on the ‘User’: Unpacking a Concept for Human Rights Research”, *Human Rights and International Legal Discourse* 8 (2), 2014, pp. 142-159.

Bribosia, E. and Rorive, I. (eds.), *L’accommodement de la diversité religieuse. Regards croisés Canada, Europe, Belgique*, P.I.E. Peter Lang, 2015, 372 p.

Bribosia, E. and Rorive, I., “Introduction. Au-delà de Dr Jekyll and Mr Hyde”, in I. Rorive and E. Bribosia (eds.), *L’accommodement de la diversité religieuse. Regards croisés Canada, Europe, Belgique*, P.I.E. Peter Lang, 2015, pp. 17-26.

Bribosia, E. and Rorive, I., “Les droits fondamentaux, gardiens et garde-fous de la diversité religieuse”, in I. Rorive and E. Bribosia (eds.), *L’accommodement de la diversité religieuse. Regards croisés Canada, Europe, Belgique*, P.I.E. Peter Lang, 2015, pp. 171-202.

Ganty, S. and Baumgärtel, M., “Effective Remedies as Capabilities: Toward a User Perspective to Human Rights of Migrants in Belgium”, *Human Rights and International Legal Discourse* 8 (2), 2014, pp. 215-234.

Rorive, I. and Bribosia, E. (with J. Damamme), “Chronique 2014 - Droit de l’égalité et de la non-discrimination”, *European Journal of Human Rights*, no. 2, 2015, pp. 223-243.

Rorive, I. and Bribosia, E., “Anti-discrimination Law in the Global Age”, *European Journal of Human Rights*, no. 1, 2015, pp. 3-10.

*Non-peer-reviewed publications:*

Baumgärtel, M., “Divided Nations and Political Membership in Contemporary Europe”, *Human Rights Review* 16 (1), 2015, pp. 183-186.

Baumgärtel, M., “‘Part of the Game’: Government Strategies against European Litigation Concerning Migrant Rights”, in T. Gammeltoft-Hansen and T. Aalberts (eds.), *Changing Practices of International Law*, Cambridge University Press (forthcoming).

Bribosia, E., “Fundamental rights and mutual trust in the European Union – the story of a clash foretold?”, in M. Claes, S. Imamovic and B. De Witte (eds.), *The EU fundamental rights landscape after Opinion 2/13, Collective Working-Paper*, 2015 (forthcoming).

Rorive, I., Bribosia and Ringelheim, J., “Le droit de la non-discrimination: promesses tenues?”, in G. Herman, A. Rea and J. Ringelheim (eds.), *L’impact des politiques anti-discriminatoires. Regards interdisciplinaires*, De Boeck, 2014, pp. 67-84.

**VUB**

*Peer-reviewed publications:*

Inman, D., “Indigenous Peoples as ‘Users’ of Human Rights: Pushing the Boundaries of Indigeneity and Influencing International Law *Human Rights and International Legal Discourse*, 8 (2), 2014, pp. 258-292.

Inman, D., Smis, S. and Muhindo Magadju, P., “International Crimes, National Trials and the Role of Victims’ Rights: Locating the Problems and Possibilities of Victim Participation in the Democratic Republic of Congo”, in Thomas Obel Hansen (ed.) *Comparative Study of Post-Conflict Justice Mechanisms in African Countries*, Kenyan Human Rights Commission, 2015, pp. 28-46 (in press).

Inman, D., Smis, S. and Muhindo Magadju, P., “Impunity in the DRC: One Step Forward, Two Steps Back?”, *JURIST - Academic Commentary*, 12 February 2015, <http://jurist.org/academic/2015/02/muhindo-inman-smis-impunity-drc.php>.

**UAntwerpen***Peer-reviewed publications:*

Destrooper, T. "Reconciling discourses on women's rights. Learning from Guatemalan indigenous women's groups." *Journal of Human Rights in Practice*, 2015 (forthcoming).

Destrooper, T. "Linking discourse and practice. The HRBA in the Village Assainis program in the Kongo Central." *Human Rights Quarterly*, 2016 (forthcoming).

Destrooper, T. "Reinjecting 'the local' into human rights-based approaches to development programming." *Development in practice*, 2015 (forthcoming).

Destrooper, T. and Sundi, P. "A Praxis-Based Understanding of New Duty-Bearers: Examining Contextual Realities in the DRC" *Human Rights Law Review*, 2016 (accepted for publication).

Vandenbogaerde, A. , "Localizing the Human Rights Council: A Case Study of the Declaration on the Rights of Peasants", *Journal of Human Rights*, 2016 (accepted for publication).

*Non peer-reviewed publications:*

De Feyter, K. and Desmet, E. (eds), *Localising Human Rights Working Paper Series*, Antwerp, University of Antwerp (2015 - ...).

Destrooper, T., An analysis of the human rights-based approach to development. UNICEF's role in the Village Assainis program in the Bas-Congo, University of Antwerp, *Localizing Human Rights Working Paper Series No. 2*, 2015.

Vandenbogaerde, A., "The Human Rights Council from Below – A Case Study of the Declaration on the Rights of Peasants", University of Antwerp, *Localizing Human Rights Working Paper Series No. 1*, 2015.

**USL-B***Peer-reviewed publications:*

De Pauw, M., "The Inter-American Court of Human Rights and the Interpretive Method of External Referencing: Regional Consensus v. Universality" in Y. Haeck, C. Burbano Herrera and O. Ruiz-Chiriboga (eds), *35 Years of the Inter-American Court of Human Rights: Theory and Practice, Present and Future*, Cambridge, Intersentia Publishers, 2015.

Krenc, F., "Quels défis pour l'avocat dans l'Europe des droits de l'homme ? ", *Rev. trim. dr. h.*, 2015, pp. 39-50.

Krenc, F., and Van Drooghenbroeck, S., "Chronique de jurisprudence de la Cour européenne des droits de l'Homme (1er janvier- 30 juin 2014)", *Journal des Tribunaux*, 2014, pp. 669-677.

Krenc, F., and Van Drooghenbroeck, S., "Chronique de jurisprudence de la Cour européenne des droits de l'Homme (1er juillet 2014- 31 décembre 2014)", *Journal des Tribunaux*, 2015, pp. 537-547.



Krenc, F., and Van Drooghenbroeck, S., “Chronique de jurisprudence de la Cour européenne des droits de l’Homme (1er janvier 2015- 1er juillet 2015)”, *Journal des Tribunaux*, 2015, to be published.

Van der Noot, O., “Subnational Constitutions. The Belgian Case in the Light of the Swiss Experience”, *Perspectives on Federalism*, 2014, 2, pp. 272-298.

Van Drooghenbroeck, S., “Fitness ‘Ladies Only’ et répartition des compétences dans la lutte contre la discrimination. Vérité à Liège, erreur à Bruxelles?”, observations sous Liège, 4 novembre 2014. *Journal des tribunaux*, 2015, pp. 43-47.

*Non peer-reviewed publications:*

Bailleux, A., and Tulkens, N., “Chronique – Les droits fondamentaux dans l’ordre juridique de l’Union européenne (1er octobre 2015 – 31 octobre 2015)”, *J.D.E.*, forthcoming in 2015.

Bailleux, A., “Du constitutionnalisme supranational au cosmopolitisme républicain ? Citoyenneté, droits fondamentaux et libre circulation dans la jurisprudence de la Cour de justice”, in L. Potvin-Solis (dir.), *Le statut d’Etat membre de l’Union européenne*, forthcoming in 2016.

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Hachez, I., “Précision et droits de l’homme dans l’ordre juridique belge: *focus* sur la notion polysémique d’effet direct”, Actes de la journée d’étude “Précision et droits de l’homme”, Nanterre, 5 février 2015, *Revue des droits de l’homme*, n. 7/2015, 19 p.

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## 5.2. Co-publications

Various network members have a **double affiliation**:

- Ellen Desmet (UGent/UAntwerpen)
- Francisco J. Mena Parras (ULB/VUB)
- Marijke De Pauw (VUB/USL-B)
- Dorothea Staes (ULB/USL-B)

### UGent/UAntwerpen

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## **ULB/VUB**

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### *Non-peer-reviewed publications*

Mena Parras, F. J., “From Strasbourg to Luxembourg? Transposing the margin of appreciation concept into EU law”, *Centre Perelman Working Papers Series*, 2015/7.

## **VUB/USL-B**

### *Peer-reviewed publications:*

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## **6. Appendices**

- 6.1. International conferences, seminars and related activities**
- 6.2. HRI training sessions**
- 6.3. Annual meetings**
- 6.4. International conference December 2015 – call for papers**