



NETHERLANDS NETWORK FOR  
HUMAN RIGHTS RESEARCH

# REPORT OF THE NNHRR 'TOOGDAG' 2018

THE FUTURE OF HUMAN RIGHTS

HUMAN RIGHTS OF THE FUTURE

NETHERLANDS NETWORK FOR HUMAN RIGHTS RESEARCH - NNHRR

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Edited by

Ximena Arenas, Irina Ivanova, Angus Sargent



## FOREWORD

The Annual Research Day (Toogdag) provided an invaluable opportunity for academics, activists and policy makers to engage with their peers, offering opinions and sharing knowledge from a variety of disciplines to enrich debate on improving the protection of human rights globally. This document summarises the discussions held during the Toogdag, expounding the pressing issues that members of the Netherlands Network for Human Rights Research (NNHRR) are seeking to address. The structure of this report reflects the agenda of the day, with each summary concluding with 'key takeaway' points, to highlight the most pertinent elements of a discussion.

The event began with a morning information session for PhD candidates seeking to have their doctoral manuscripts published. Subsequently the afternoon session, opened by Professor Ernst Hirsh Ballin and Professor Nicola Jagers, began with a keynote address from Professor Morten Kjaerum, who spoke about current challenges facing the international human rights regime. Panel discussions were held thereafter, focusing on three different thematic areas, namely, Business and Human Rights, Migration, and Digital affairs. These discussions then culminated in a dialogue with members of the NNHRR advisory board, the final event of the day. This report concludes with a collection of summaries of the poster presentations delivered by PhD students during the lunchtime recess of the Toogdag.

Ultimately, this report is an invitation to explore further avenues of collaboration among network members regarding human rights protection, in the hope that such action now will lead to better outcomes in the future. We thank each and every participant who contributed to its preparation.

The Editors

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## ABOUT THE NNHRR

The [Netherlands Network on Human Rights Research \(NNHRR\)](#) is a platform that connects junior and senior human rights researchers from Dutch universities. The aim is to build a bridge between these two demographics by sharing research, expertise and ideas. A fundamental goal of the NNHRR is to connect human rights research and practice. . The NNHRR is a continuation of the long-standing Netherlands School of Human Rights Research and is administered and coordinated by the Asser Institute.

## ABOUT THE TOOGDAG 2018

The 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights provides an important opportunity to assess the impact of the human rights framework in today's societies. In a rapidly changing world, new challenges are arising every day; an increasing number of refugees are testing the resilience of international conventions; many states have become powerless in preventing human rights violations by non-state actors; and scientific developments question the sustainability of day-to-day practices. As the current human rights framework comes under greater pressure, the Toogdag intends to share knowledge on pressing issues of international law, exploring ways to expand the scope and role of human rights, and seeking to enhance collaboration in the areas of research and field work.

As a follow-up to the toogdag, we would like to encourage members to seek collaboration and explore further the issues discussed at the toogdag. In particular, we would like to put forward the existence of the NNHRR Working Groups, three of which are dealing with topics related to the three main themes of the toogdag: business and human rights, migration and human rights, and human rights in the digital age. More information on the Working Groups can be found on the network's [website](#).

## PHD SESSION: PUBLISHING YOUR PhD

The Toogdag started with a short session for more advanced PhDs on issues related to publication of the PhD manuscript. The NNHRR has an agreement with the publishing house [Intersentia](#) for special terms and conditions on publishing PhD manuscripts delivered by members of the network. The series is called “Human Rights Research Series” and up to now counts more than 80 volumes. All contributions are related to general questions on the nature and meaning of international human rights standards, their application and promotion in the national legal order, their interplay with national standards, or the international monitoring of such standards and their application.

Tom Scheirs, head of marketing at Intersentia, explained amongst other things the different steps of the publication process, including the different deals Intersentia offers based on the number of prints. The participants had the opportunity to ask specific questions on the editing process and additional costs that might be included for spelling checks and other services. Mr. Scheirs also provided information on the possibility of publishing the manuscript as e-book.

- **Key Takeaways for PhDs:**
  - Start reaching out to the publishing house early.
  - Be aware of the publication requirements of your university.
  - Check if your university offers editing services before using and paying for the service offered by the publishing house.



## KEY NOTE ADDRESS: PROFESSOR MORTEN KJAERUM

In his opening address, Professor Kjaerum pondered we are witnessing the end times of Human Rights. 'Are human rights coming under such pressures from populist and authoritarian forces, as well as from new technologies, that they soon will be disregarded? Have they done discredit to themselves by becoming aligned too closely with neoliberal economic agendas? Or are they stronger than ever, but just changing face?' Led by these questions, he discussed a number of key challenges facing the contemporary human rights regime and some of the counter-movements that can address these challenges.

Professor Kjaerum spoke of how these developments stand out most clearly in Europe, referencing the refugee crisis and increasing inequality globally. Here, he described how the human rights framework has been critiqued by certain scholars for primarily addressing mass atrocities and elite issues, but for its failure to combat the day-to-day discrimination and infractions of these rights – where 99% of violations occur. He observed how neoliberal economic decisions have largely usurped the power of the individual vote, and that the political establishment has been sidelined by these economic rules – perceived as being untouchable. Additionally, lower and middle working classes have borne the brunt of technological changes within the global economy, with their concerns about growing inequality being largely neglected by the political establishment. In these circumstances, Professor Kjaerum lamented that human rights, despite being a tool for humanity, have become a victim of the neoliberal agenda.

Professor Kjaerum explained how this growing inequality and narrowing of the democratic space has given greater rein to populist movements. Due to static economic paradigms, populist leaders have taken advantage of the situation by espousing anti-pluralist rhetoric, claiming to speak 'in the name of the weak people'. He highlighted how democratic institutions such as the courts and media organisations are increasingly targets for populist movements, referring to the situations in Poland and Hungary where the rule of law has come under serious threat. He noted that such situations do not occur in isolation, and that similar xenophobic agendas to dismantle the democratic and human rights values of the European Union (EU), albeit in different tones, are currently occurring in other member states. Professor Kjaerum emphasised the fact that human rights are universal, however, as a project they are much more limited in their reach than what some people would like to believe.

After outlining these main challenges, Professor Kjaerum then described the more positive evolutions of the modern human rights regime, identifying four trends that could be a cause for optimism. The first trend he identified was the greater awareness by human rights organisations of the structural inequalities that currently exist within our societies, such as tax evasion and corruption. He spoke of how the links between human rights violations and the erosion of democratic institutions through corruption have become more prominent. This, he argued, was due in part to the awareness generated by the Panama Papers scandal and other high profile exposures. Far from being a 'victimless crime', Professor Kjaerum spoke of how human rights can contribute by putting a face to the victims of corruption. Furthermore, he observed how such issues are now making their way onto the agendas of international bodies like the United Nations Human Rights Council (HRC).

The second trend he discussed was the concept of 'human rights by design' and the mainstreaming of human rights into policy – particularly with reference to the EU. Professor Kjaerum cited a variety of sectors including Security and IT where human rights are increasingly being taken into account. Regarding IT, he spoke specifically about privacy in the digital age and how developments such as the adoption of the General Data Protection Regulation (GDPR) and decisions by the European Court of Justice regarding Facebook's privacy policies were evidence that institutions are now actively thinking about the

challenges that technology poses. Here, Professor Kjaerum pointed out that ‘human rights by design’ can help to strengthen the regulation of the online environment.

The third trend he presented as gaining momentum was the human rights city movement. This movement has evolved due in part to a global decline in trust for centralised governments and global governance, where instead people are turning to local governments for representation. Professor Kjaerum spoke of how within these city networks, people were far more motivated to achieve better outcomes for their local communities, providing the example of a human rights-based hospital that through the involvement of the local community established the right to health. He noted that the Raoul Wallenberg Institute was now coaching cities and conducting field research to assess the impact of these initiatives.

The final trend discussed by Professor Kjaerum was the need for more evidence-based human rights work, to respond to the call for more knowledge and a better understanding of the prevalence and impact of human rights within society. He observed that most states lack empirical data and statistics on human rights violations. He spoke of how statistical evidence was vital in helping governments and policy makers to determine whether the institutions tasked with protecting the needs of the most vulnerable were in fact functioning effectively. He discussed the important role of the EU Fundamental Rights Agency in changing the approach of human rights from almost exclusively legal normative assessment to adding more sociological and political science approaches.

When concluding, Professor Kjaerum remarked that despite the perceived setbacks of human rights in recent times, over a period of at least 2,500 years they have slowly moved forward to the point that ‘every generation has been able to say, from a human rights perspective, they would rather live today than in any past generation’.

- **Key Takeaways:**

- Human Rights face significant challenges: they have become increasingly associated with the ideas of globalisation and neoliberalism; it needs to be unbundled from these concepts in order to step out from the political-economic discourse.
- To combat the threat posed by nationalism, human rights need to be available for and applicable to all people, not just elitist causes, in order for populations to see the value in defending such rights.
- Despite the perceived setbacks, human rights can still play a significant role in addressing the challenges of today’s societies, be it by means of combating political corruption through the HRC, increasing people’s privacy through the GDPR, supporting local governments to address the concerns of their constituents, or supporting central governments in developing tools for gathering more data related to human rights issues such as discrimination.



## PANEL A: BUSINESS AND HUMAN RIGHTS: QUO VADIS?

In today's world of highly globalised trade and transnational operations, large corporations often wield significant power. The operation of business entities across a multitude of state jurisdictions poses a litany of challenges when seeking to ensure corporate accountability for human rights violations. In response to these perceived 'governance gaps', the UN Guiding Principles on Business and Human Rights sought to provide a basic set of principles for both states and corporations, contributing to a 'socially sustainable globalisation'. Since the adoption of these principles, a variety of new initiatives have emerged from both government and private sectors, which seek to further reduce the negative impact of business globally.

This session was moderated by **Professor Nadia Bernaz**, (Wageningen University) with presentations from **Dr Antoine Duval** (Asser Institute), **Lucas Roorda** (Utrecht University) and **Everhard Tilstra** (Groningen University).

- **Key Takeaways**

- The division between public and private international legal regimes is being challenged due to the increased role played by private entities in the public sphere.
- The complex structures of transnational corporations and their subsidiaries pose a challenge in determining legal liability when a violation occurs.
- As a result, new forums and methods need to be developed to ensure a victim of a violation has access to an effective remedy.



## PRESENTATION 1: 'SHOULD WE ARBITRATE BUSINESS AND HUMAN RIGHTS DISPUTES?'

Dr Antoine Duval

Dr Antoine Duval, a senior researcher at the Asser Institute, spoke of the need to find remedies for human rights violations that occur in the private sphere. Dr Duval has expertise in both private international law and international commercial arbitration. As a result, one of his areas of interest is how international private actors interact with national and international jurisdictions. During his panel presentation the key questions he sought to address were; why is there a turn to arbitration in business and human rights disputes? And what are the potential benefits and risks of such a turn?

He emphasised the importance for human rights in ensuring access to remedy, stating that the focus should be on developing a mechanism to concretise the promises made by human rights. Here, reference was made to the United Nations Guiding Principles on Business and Human Rights, specifically concerning John Ruggie's third pillar of remedy. Under these UN Guiding Principles, Dr Duval observed the state remains the primary duty holder to provide remedy, however often the state has vested political and economic interests against providing strong remedies for human rights violations by Transnational Corporations (TNCs). In this context he explained that if a state provides an effective remedy against TNCs for human rights violations, it is at (perceived) risk of making itself less economically competitive against its neighbours, as companies can simply leave a domestic jurisdiction at whim.

In these circumstances, Dr Duval claimed there are three main doctrinal obstacles to ensuring human rights accountability of multinational companies in national courts. The first is the sharp and rigid division between the public and private spheres, even though transnational private actors are sometimes more powerful than formally public entities. Second was the issue of sovereignty, whereby a national court is unwilling to interfere in the domestic affairs of another sovereign. However, Dr Duval argued that in practice interferences were already happening by virtue of free trade agreements and the extraterritorial effects of national private law. Third, he stated that national courts still sharply separate the operations of the mother company from its subsidiaries in other jurisdictions. He also noted that non-judicial remedies remain weak at the OECD national contact points and elsewhere, such as internal grievance mechanisms.

- **Key takeaways**

- Arbitration could be an interesting pathway for resolving human rights disputes in business as it circumvents the vested interests of the state and the traditional doctrinal roadblocks limiting access to remedy in the business and human rights context.
- The use of arbitration in the business and human rights context is supported by groups with polar opposite interests - commercial arbitrators and lawyers see it as a potential financial opportunity, corporations view it as a familiar type of justice, and human rights NGOs believe it can have greater potential to finally deliver justice.
- Internationally TNCs have come to fully embrace the use of arbitration in commercial matters. However, the key question is whether we are able to fit arbitration to the needs of business and human rights constellations?

## PRESENTATION 2: 'JURISDICTION PROBLEMS IN EU BUSINESS AND HUMAN RIGHTS CASES'

Lucas Roorda

Lucas Roorda, a PhD candidate at Utrecht University, spoke of why we should 'grind' for national remedies for human rights violations by businesses, especially now the U.S. Alien Tort Statute has been restricted. Mr Roorda discussed how the rise of multinational corporations and their roles in ensuring the enjoyment of human rights have shot to prominence over the last two decades. He spoke of the many challenges that arise when a victim of a violation seeks re-dress in the home state of these multinationals. Often the claims fall outside the scope of jurisdiction of the States' courts, due to the actual perpetrator being a subsidiary entity incorporated in the host state or a third state.

Mr Roorda spoke of how the Brussels I Regulation provides a solid basis for litigation against the parent company if it is based within the EU. The problems lie in trying to litigate against the subsidiary based outside of the EU, where redress through the national courts of that subsidiary's place of incorporation is often difficult. He noted however, that in these circumstances it is sometimes possible to litigate through EU courts provided the two cases of the parent and subsidiary could be linked, or if it is possible to demonstrate a form of necessity in order to prevent denial of justice. He observed that under the current human rights framework, the 'Right to remedy' under Article 6 of the European Convention of Human Rights (ECHR) is limited to a territorial and/or jurisdictional basis and thus often not applicable to any cases against foreign subsidiaries.

Finally, Mr Roorda spoke of the global value in preventing denial of justice through connection with the state through the domicile parent company. Here, he observed that current international law neither prohibits nor mandates home states to increase the access to remedy for individuals. Under these circumstances he queried what level of denial of justice does a situation have to be in order to bring a case abroad? He spoke of the need to rethink how we link foreign abuses with home state remedies, taking into consideration; a) the level of corporate control of the parent company over the subsidiary, b) the financial ties and streams that exist between the two, and c) the market effects of supply chain products. However, Mr Roorda also stressed that these proposals are all normative arguments, and even if implemented they would only remedy a small number of cases.

- **Key takeaways**
  - How can we ensure accountability of multinational companies who operate across a variety of legal jurisdictions?
  - What circumstances should constitute a 'denial of justice' that would permit a case to be brought in a foreign jurisdiction?

## PRESENTATION 3: 'A MULTILEVEL GOVERNANCE APPROACH TO BUSINESS AND HUMAN RIGHTS IN THE GRONINGEN GAS EXTRACTION'

Everhard Tilstra

Everhard Tilstra, a PhD candidate at the University of Groningen, spoke of the tensions that arise between human rights and business interests – with specific reference to the current gas extraction occurring in the province of Groningen. In recent years the geological destabilization in the region, caused by the extraction of large amounts of natural gas, has resulted in an increased frequency and intensity of earthquakes. During his panel presentation Mr Tilstra posited the question of 'How can human rights strengthen the prevention and remedying of negative effects caused by business activities in the Netherlands, in particular with respect to the gas extraction in the province of Groningen?'

After providing a brief overview of how the province has been affected by the earthquakes, Mr Tilstra spoke specifically of the economics involved with the gas extraction project. Here he identified the two parties with major financial stakes in the project, one being NAM - the joint venture between Exxon Mobil and Shell, and the other the Dutch Government. Mr Tilstra observed that after royalties, taxes and fees, approximately 85-95% of the financial benefits have gone to the State, which accounts for between 5-10% of the government's budget and has resulted in a total revenue of about 265 billion euros from the start of the project in 1963 until 2017.

However, despite the enormous profits generated from the gas extraction, Mr Tilstra also noted the detrimental effects to the lives of people living in the region. These include the direct impacts - such as damage to housing, and more indirect effects due to a decline in habitability and quality of life - leading to mental health issues such as stress, depression and anxiety. In these circumstances he observed a number of rights under the European Convention on Human Rights would be applicable, including the right to private and family life, right to effective remedy and right to property – though up to this point all compensation claims have been dealt with domestically. Additionally, he queried whether there could be a justified limitation of these individual rights in order to strike a balance between the interests of affected individuals and the benefits to the rest of the country?

To further develop this research, Mr Tilstra spoke of using a governance perspective to see if such an approach can help clarify the differing roles and relationships of the various actors involved i.e. between the State and NAM, or the central government and lower governments, and the implementation of economic, social and cultural Rights in the Netherlands. It is this area that his research will continue to focus on.

- **Key takeaways**

- Human Rights remains a primarily state centric approach, however should other alternative forms of governance structures be considered instead of the traditional top down approach?
- There has recently been a new damage protocol introduced, whereby an independent state operated committee determines the amount of compensation to be awarded by both the government and NAM. However should the fact that NAM has less influence over these decisions mean they incur less responsibility and liability for compensation claims?

## PANEL B: PEOPLE OUT OF PLACE: WHAT TO EXPECT FROM HUMAN RIGHTS LAW?

One of the greatest challenges for Human Rights Law is to ensure protection of undocumented peoples. This challenge brings into question central notions of law such as citizenship, urging us to think of ways in which human rights can be realised in situations of statelessness. This year, the Toogdag event was offered profound insights as to how governments are restricting people's citizenship across the globe. There were also discussions about what is at stake when victims of human rights violations struggle to find a safe place elsewhere, when lacking national identification documents.

The session was moderated by **Professor Conny Rijken** (Tilburg University), with contributions from **Dr Laura van Waas** (Tilburg University) and **Dr Otto Spijkers** (Utrecht University). **Professor Ernst Hirsch Ballin** (Tilburg University) provided final remarks.

- **Key takeaways:**
  - Citizenship is not being guaranteed to everyone. Even those who have been awarded citizen status can be at risk of losing their citizenship.
  - Citizenship was supposed to provide a minimum guarantee of equality, but it is being used as an instrument of segregation.

## PRESENTATION 1: 'PUTTING PEOPLE OUT OF PLACE: CITIZENSHIP AS A WEAPON OF EXCLUSION'

Dr Laura van Waas

Dr Laura van Waas, from the Institute of Statelessness and Inclusion and Assistant Professor at Tilburg University, presented a wide array of threats to human rights through removal of citizenship or denial of citizen status, whether as a means by a state to avoid obligations with respect to certain populations or as a political tool to undermine the work of human rights activists, journalists and opponents to governments. The spectrum of human rights violations discussed included the scrutiny of citizenship already afforded years or even decades ago; to population re-registration programs preventing access to citizenship for specific groups; and to technological obstacles in citizenship procedures against targeted communities. She pointed out that a key task lay ahead for society to define if, and under which conditions, citizenship may be constrained, and how people's legal status can be protected against political manipulation to the detriment of human rights.

With entire populations in stateless limbo, Dr van Waas suggested that human rights research will need to explore ways in which core notions of the (inter)national rule of law can be reconceptualised to ensure that no one is left without citizenship. This is at a time when security, technology and globalization are being used to threaten inclusion. Yet overcoming the limitations of the current legal regimes also implies making human rights operational in all levels of the administration, because she has observed that exclusion is engrained in both national as well as local systems. For that, legal systems on the whole, and the technological tools through which they are implemented, must be designed to avoid the incorporation of biases that may jeopardize access to the entitlements and benefits inherent to the status of citizen.

At the end of her presentation, Dr van Waas asked us to think of the fundamental roles that human rights research may play, so as to identify how research can contribute to solve the social problems of our time. She urged us to go beyond legal diagnostics, daring to question traditional approaches that have been insufficient in tackling those social problems. With regards to statelessness, this translates into thinking more about how "citizenship" as a legal concept is shaped by societal processes, and what is needed to engender inclusion.

- **Key takeaways:**
  - If citizenship becomes conditional, then we have to question who defines any such conditions, and assess whether we can trust that rules will not be changed for the worse by future governments.
  - If you are stateless, all you can pass on to your own children is your statelessness.

## PRESENTATION 2: 'A CASE STUDY: THE ROHINGYA'

Dr Otto Spijkers

Dr Otto Spijkers, University Lecturer of public international law at Utrecht University Law School, became interested in human rights violations against the Rohingya people when he learned about them from a Rohingya student who participated in the Utrecht Summer School unit coordinated by Dr Spijkers. During the Toogdag, Dr Spijkers shared with the audience his knowledge on the struggles of the Rohingya people, bringing to our attention how the existing legal frameworks are insufficient in ensuring human rights protections for vulnerable peoples in Bangladesh and Myanmar.

Among the legal challenges posed by the struggles of Rohingya and other minorities in the region, Dr Spijkers pointed out the difficulties in affording protection to the Rohingya under the international framework for assistance to refugees, mainly because Bangladesh, the state where most Rohingya are concentrated nowadays, has not ratified the 1951 Refugee Convention.

Dr Spijkers also called our attention to the challenges concerning the protection of civilians, particularly after the terrorist attacks perpetrated by members of the Arakan Rohingya Salvation Army, which has been followed by the intense and disproportionate use of violence in clearance operations carried out by the Myanmar military, affecting hundreds of thousands of innocent people. In this regard, since a considerable number of Rohingya members are children, Dr Spijkers highlighted the need to prioritize the effective application of the Convention on the Rights of Children (especially but not limited to Article 22), while seeking mechanisms of protection for all victims regardless of their age.

Dr Spijkers also brought to our attention the fact that bringing justice for crimes committed against the Rohingya and other minorities in the region will be challenging due to the fact that Myanmar is not a party to the Rome Statute of the International Criminal Court (ICC). Additionally, it remains unclear as to whether the ICC will pursue prosecutions relating to violations against Rohingya people in other territories such as Bangladesh. Finally, he pointed out that classification of the crimes within any eventual prosecution would be problematic also, because the facts at hand may be insufficient in substantiating a charge of genocide. While other concepts such as ethnic cleansing or apartheid might be more appropriate, there are legal gaps that make it difficult to afford protection to these individuals under the narrow mandate of the ICC.

Beyond the specificities of the Rohingya conflict, the discussions held in this panel made clear the need to strengthen collaboration between academics and NGOs. Furthermore greater awareness of situations on the ground is also vital, as migration tends to increase due to violence, poverty and climate change. Here again, new categories, notions and practices will need to be incorporated for a globalised world, where migrants have diverse origins, where social cohesion will need to be defined in a more comprehensive way, and where marginalization and discrimination may be overcome.

- **Key takeaways:**

- Conflicts such as that involving the Rohingya people show us that legal frameworks still have to advance in order to effectively secure people's rights.
- Scholars have more possibilities, and can take more responsibility, to speak out about conflicts such as those relating to stateless communities. Because of this, collaboration between scholars and human rights organizations should be strengthened. The work undertaken by the Netherlands Network for Human Rights Research and similar initiatives is crucial to materialize this aspiration.

## PANEL C: HUMAN RIGHTS IN THE DIGITAL AGE: NEW FRONTIERS

With the emergence of new technological developments, and the creation of media platforms such as Facebook and YouTube, allowing both people and companies to share opinions with a world-wide audience, we must protect freedom of expression in the digital age.

Prior to the Internet, traditional actors shaping the public debate were professional journalists and media organisations. However, today there is a plethora of new influencers such as bloggers, online gatekeepers, academics, NGOs, and whistle-blowers. With new actors, many of which are not trained for the profession, how do we ensure freedom of information in the digital age?

It is not uncommon that those who contribute information on the Internet face harassment and are subjected to violence, this is particularly true of female journalists. As we speak about human rights in the digital era, we need to protect those who provide us with the information.

Now is the time to rethink how the game is played. The publishing standards that were initially developed, no matter how revolutionary at the time of their adoption, have had to contend with the new unforeseen challenges. To face the present challenges, we need to know the technology we deal with, through an interdisciplinary cooperation between engineers and scholars. With collaboration, lawyers will understand the technology and adapt the legal foundations accordingly, and engineers will adhere to the needs of the law and the people. Proper dialogue and collaboration will make research relevant beyond the walls of universities.

This session was moderated by **Dr Tarlag McGongagle** (University of Amsterdam) with presentations from **Anna Berti Suman** (Tilburg University), **Anne Kamphorst** (Groningen University) and **Dr Mando Rachovitsa** (Groningen University).

- **Key Takeaways:**

- Striking the balance between protecting freedom of expression and the right to privacy, while ensuring that the fundamental rights of people are protected is one of the challenges we are faced with. While the living treaty aspect of certain human rights treaties might be able to account for modern changes, protecting freedom of expression and the right to privacy poses more difficulties.
- Dialogue between engineers and legal scholars is integral in understanding the technology we deal with. With new actors in this field, we need interdisciplinary cooperation and training.
- In the digital era, it is easy to be abusive online and cyber threats can be done with a click of a button. To preserve freedom of information, those who contribute information need to be protected.

## PRESENTATION 1: 'THE PROTECTION OF HUMAN RIGHTS IN THE CORE INFRASTRUCTURE OF THE INTERNET'

Dr Mando Rachovitsa

In her presentation, Dr Rachovitsa, an Assistant Professor at the University of Groningen, stressed that before we speak about the protection of human rights in the digital age, we first need to know the core infrastructure of the Internet. Grasping the interplay of everything from the content layer (websites, search engines), to the logical layer (internet protocol, coding, domain names) to the physical layer (submarine cables, internet routers) is crucial for that.

The content layer allows people to express ideas. Freedom of expression and other human rights can be easily abused here. The logical layer, which includes coding and domain names, allows private companies and other influencers to dominate and set regulations on what information is provided, limiting freedom of speech. The information stored or passed through the physical layer of the Internet can be tapped and hacked, something that has already become an issue.

Dr Rachovitsa discussed that currently the focus of human rights lawyers is on the content layer of the Internet. However, with privatisation of domain names, we see that human rights can be violated at the logical layer. At the moment there are no guidelines on what to do when a private company buys a domain name ending in, for example, .health or .pharmacy. With private companies owning powerful domain names relating to people's health, who decides on what information is right and what is wrong? Dr Rachovitsa provided examples with how every layer of the Internet has its own influence and effect on human rights, so before we speak about law and protection of rights online, it is essential to understand how the Internet works and the interaction of different layers.

Dr Rachovitsa pointed to the [website](#) of the Human Rights Protocol Considerations Research Group, as well as a number of her [contributions](#) on the topics of Internet Engineering Task Force (IETF) and human rights and issues concerning ICANN and Generic Top-Level Domain Names.

More information on issues concerning the can be found [here](#). In addition, Dr Rachovitsa published on issues concerning ICANN and Generic Top-Level Domain Names.

- **Key Takeaways:**

- To protect all forms of human rights, all layers of the Internet need to be understood. Breach of privacy, limitation of freedom of speech and other human rights violations can be done at every layer of the internet's structure. To ensure that human rights are respected online, we need to understand the core structure of the Internet.
- Privatisation of domain names is already happening, however there are currently no standards on what information should be on web pages with domain names that, for example, are concerned with people's health. Since there are no standards of trustworthiness, with powerful domain names comes great influence over people.



## PRESENTATION 2: 'CHALLENGES FOR THE RIGHT TO A FAIR TRIAL IN THE DIGITAL ERA: ASSESSING THE FAIRNESS OF ONLINE CONSUMER DISPUTE RESOLUTION'

Anne Kamphorst

Anne Kamphorst, a PhD candidate at the University of Groningen, spoke about the connection between law, dispute settlement and technology. Technology is always present in our lives and today we can even settle our legal disputes online. Ms Kamphorst's research focuses on assessing the fairness of settling consumer online dispute resolution (cODR procedures)

cODR allows the settlement of disputes at costs lower than those in a court. The idea is to make dispute procedures simpler, more flexible, and adaptable to knowledge of the consumer and their socio-economic status. Court cases can be lengthy and expensive and because most consumer disputes are concerned with relatively little amounts of money, online dispute resolution allows everyday consumers to have easier access to justice and cheaper trials. However, when the dispute is settled online it can be less transparent, making it more difficult to assess the fairness of the trial. As part of her research, Ms Kamphorst is identifying the variables that should be included in a fair trial and placing them within the cODR framework.

As we are moving away from traditional trials into digital ones, more parties are involved in a dispute. A traditional trial typically involves only 2 parties and 1 judge, whereas with online dispute resolution, there are more actors present. Here, an example of an extra party is the software of the online platform; another party to the settlement is the cODR provider. Importantly, with more actors, there are more ways of violating the right to a fair trial, a point that should not be forgotten.

Ms Kamphorst recently began her research, and is currently working on defining what exactly the right to a fair trial includes, before beginning her analysis of the fairness of the cODR procedures.

- **Key Takeaways:**
  - We need to think about sensitive trial related information storage, how much access other parties have to that information and the possibility of it being hacked.
  - When enhancing the fairness of the cODR procedure, the increases of the cost should be proportionate to the benefit. The goal of having online dispute settlement is to increase the accessibility of trials for consumers. As we continue to improve the process of online dispute procedures, every element that is inputted as part of the procedure is likely to increase the cost.

## PRESENTATION 3: 'CITIZEN SENSING FOR A CO-GOVERNANCE OF THE RISK: THE FUKUSHIMA SAFecast CASE'

Anna Berti Suman

Anna Berti Suman is a PhD candidate at the Tilburg Institute for Law, Technology, and Society (TILT) at Tilburg University. Her active participation in the Toogdag involved a presentation of her research in the Digital panel as well as in the lunchtime session devoted to the poster presentations. With a personal background as an environmental lawyer, Ms Berti Suman researches the interrelations between technology, people and the environment. Her current research focuses on 'Citizen Sensing', a sub-domain of Citizen Science, which stands for the engagement of non-expert people in gathering evidence for science and policy-making. Citizen Sensing is on the rise since people are becoming increasingly distrustful about how institutions are handling the environment they live in. In addition, possibilities for individuals to track their surrounding environments are multiplying thanks to recent developments in sensor technologies.

A fundamental question is who should have the right to provide the legitimate evidence for the governance of environmental risks affecting our health? Due to the interconnectedness between the right to access information and the right to health – on matters such as personal health – and due to the increased distrust in governments, people take it in their own hands to monitor government compliance with environmental regulations.

Among her case studies, Ms Berti Suman focused on the Fukushima Safecast project – a volunteer-based Citizen Sensing project aimed at measuring radiation levels in the areas affected by the Fukushima nuclear accident in Japan. In the situation of Fukushima Safecast, people built and used simple but accurate sensor technologies to monitor radiation levels. By virtue of this initiative, people were able to decide for themselves whether living in certain areas would have adverse effects on their health and were properly informed and equipped to make that decision.

Ms. Berti Suman explores how practices of Citizen Sensing may influence policy-making on risk management, ultimately succeeding in the improvement of risk governance. During her presentation she demonstrated the many thrilling aspects of the Fukushima Safecast case study. The first aspect being that the initiative is entirely driven by citizens. Secondly, the initiative has delivered highly credible and useful results, by virtue of its scientific robustness. And third, the project has become stronger and more sophisticated over time, courtesy of the tireless efforts of the volunteers. This project is a promising avenue for community participation, ensuring more inclusive environmental risk governance. Through the support of Citizen Sensing technologies, the Safecast volunteers have become better equipped to contest institutional governance structures and advocate with solid evidence for a healthier environment, free from radiation.

- **Key Takeaways:**

- Input legitimacy: we should bear in mind who provides us with the information. Being sceptical is key and it is never wrong to question. The Fukushima Safecast case showed that even official government reports can be inaccurate.
- The right to health is intertwined with the right to information, and technology has direct influence on these fundamental human rights. Thus, when we speak about human health, we also speak about access to accurate information which affects our health.

## THE FUTURE OF HUMAN RIGHTS - PANEL DISCUSSION WITH MEMBERS OF THE NNHRR ADVISORY BOARD

The Toogdag event ended with an insightful discussion about the challenges that lie ahead for increasing human rights protections, particularly as civil society continues to be squeezed by populist rhetoric and extremist policies. This session was moderated by **Professor Yvonne Donders** (University of Amsterdam & Chair of the NNHRR steering committee) with submissions from **Jos Silvis** (Procurator General, Supreme Court of The Netherlands); **Morten Kjaerum** (Director Raould Wallenberg Institute, Sweden); **Eduard Nazarski** (Director of Amnesty International, The Netherlands); and **Farah Karimi** (Director of Oxfam Novib, The Netherlands). The panellists were confronted with a selection of questions raised by participants of the toogdag throughout the day. The following summary reflects and combines the reactions of all panellists to those questions.

First, all panellists were asked to reflect on what they consider to be the main challenges to human rights. Their reactions highlighted that now, more than ever, it seems important to moderate human rights debates in a way that appeals to average citizens, enabling them to identify with narratives other than those instigating fear, extremism or intolerance. The integration of victims of globalization into the human rights agenda therefore demands urgent attention in order to address the inequalities created by a dominant neoliberal agenda. However, to do so requires questioning of the very economic foundations on which many modern societies have been built. Regarding those groups who have been marginalised by this new order, academia can be used to channel their voices in a constructive manner. It can also play a vital role in helping understand how the world is changing, how societies in which we live can better adapt to those changes, and how conflict between competing interests in economics, politics and law can be overcome for the purpose of improving the livelihoods of individuals.

When confronted with questions concerning criticisms of the human rights framework, the panellists expressed their support for advances achieved by the international community, but also acknowledged that for large populations this framework is failing to deliver on its promises. Rather than empowering citizens, numerous states are limiting the scope of application of human rights, constraining the voices of many NGOs, all at the expense of those most vulnerable. Simultaneously, social leaders, environmentalists and journalists are increasingly being targeted by threatening behaviour, intimidation and persecution, rendering their tasks even more challenging to carry out.

Thus, realisation of the full benefits that human rights have to offer inevitably requires a collective effort. NGOs should be given full autonomy to critique governments and private actors, in order to demonstrate to citizens where those entities have failed. Here, academia can play a more active role in connecting with civil society and serving as a source of reliable information, easily accessible for the general public, thereby enabling that citizenry to better understand the society in which they live. The more informed average citizens are on human rights issues, the more likely they are to support NGOs and other groups who are working to improve the situation. NGOs would likely then enjoy greater financial independence from governments and corporations, thus becoming more able to follow through on their intended missions.

Finally, the panellists called upon academics to intensify their rapport with civil society. With greater connections at local, national and international levels, it will be easier to reach the average person on the ground and demonstrate how human rights can directly affect their lives. Achieving this however, will require less legalistic approaches, more interdisciplinary methods, and greater collaboration between scholars and human rights activists. All are crucial tools through which human rights research can have a greater impact.

- **Key Takeaways:**

- Greater collaboration at the local, national and international level is required to make sure human rights address the needs of the average citizen. Moderating legalistic language is needed too; academia should engage individuals in a way which they can appreciate the relevance of human rights in their lives.
- If people have a better understanding of human rights, there will be greater support for defending human rights. Nowadays, many NGOs depend on funding from governments or corporations, thus rendering them unable to speak out against the actions of these entities due to fear of losing this financial support.
- Human rights work must continue. However, to do so will require innovative methods and creative approaches to prevent abusive governments and private actors from abrogating their human rights responsibilities.



## JUNIOR ACTIVITIES

**Violet Benneker, PhD researcher, Institute of Political Science, Leiden University.**

### **“Patchwork Compliance”**

Violet Benneker presented her work on human rights compliance. Triggered by a mismatch between cultural norms and human rights norms, she studies how such mismatch influences affect human rights compliance. For example, why governments take decisions to violate certain human rights, despite having ratified international instruments regarding those rights, and why governments choose to privilege other human rights, even if those choices may be unpopular in their own countries. In many circumstances international relationships and reputational risks may account for some of these decisions, however Ms Benneker also studies how fulfilment of human rights obligations is influenced by differences in cultural, religious or social values.

**Tihomir Sabchev, PhD Researcher, Utrecht University**

### **“Human Rights and Refugee reception and integration at the local level in Greece and Italy”**

Tihomir Sabchev’s research focuses on the recent emergence of cities as important actors in two separate, but at the same time closely, related fields – migration governance and human rights interpretation and implementation. More specifically, his research aims to reveal whether the use of human rights as law, praxis and discourse at the local level (by local authorities and civil society organizations) affects a city’s response to the reception and integration of asylum seekers and refugees. His case study focuses on Italy and Greece, which due to their geographical location became the main points of entry for forced migrants in Europe. One of the main hypotheses is that greater decentralization and more space for discretion for local authorities in the field of reception and integration of immigrants, would lead to better opportunities for the realization of human rights at the local level. Mr. Sabchev’s research will compare two small, two medium, and two large sized cities in each country, to see if the invocation of human rights makes them more welcoming and open to the arrival of refugees and asylum seekers. His research is part of a wider ‘Cities of Refuge’ project, which researches the effect of human rights on the reception and integration of forced migrants within Europe.

**Dr Stephanie Rap, Leiden University**

### **“Refugee children’s right to effective participation in asylum procedures”**

Stephanie Rap’s research focuses on refugee children and their right to effective participation in asylum procedures in the Netherlands. Since asylum procedures can get lengthy and complicated, the rights and interests of these children are not always acknowledged and implemented effectively. The research focuses on both accompanied and unaccompanied children traveling alone and the implementation of their right to be heard, as well as their right to information, legal representation and access to justice during the asylum procedures.

## Benjamin Thompson, Tilburg University

### “Researching Business, Human Rights, and Operational-level Non-judicial Grievance Mechanisms”

Benjamin Thompson presented on his thought process in the first six months of his PhD research in business and human rights. Ben aims to carry out participatory research on the effects of the UN Guiding Principles on Business and Human Rights' endorsement of operational-level, non-judicial grievance mechanisms, both as a means of ensuring better access to remedy and meeting a business's responsibility to respect human rights. Ben aims to carry out empirical research on three case studies. For the first five months of his PhD, Ben has been attending a series of courses from Tilburg University's Law and Development PhD programme (EDOLAD), which include focusses on globalization and development; trade; anthropology and sociology; poverty and security; decolonizing your research; gender and research skills. Ben summarized the key lessons that he had taken from this process. In particular, he discussed the key challenges relating to his own positionality as a business and human rights researcher and the difficulties of connecting empirical research to a normative research question. He laid out some future tools he would be exploring including discourse analysis, legal pluralism, sociological approaches, research approaches that deal with power, and multi-sited case studies.

