Program online symposium

Futureproofing human rights

Developing thicker forms of accountability

18 June 2024

11:30 – 17:15 (CET)

Program

11:30 – 12:00 CET
Welcome and presentation of the 'Futureproofing Human Rights'-project
Tine Destrooper (Ghent University)

12:00 – 13:15 CET
Panel 1: Layers, relations and networks of accountability
Chair: Rosamunde Van Brakel (Vrije Universiteit Brussel)

Human Rights Accountability in Polycentric Systems: Lessons from Blockchain Governance
Gustavo Prieto (Ghent University)

Strengthening Human Rights Compliance: Towards a Relational Normativity
Matthias Vanhullebusch (Hasselt University)

Living up to obligations through the ICRC? A critique of state's attempts to shift obligations when addressing missing persons
Grażyna Baranowka (Hertie School) and Nasia Hadjigeorgiou (University of Central Lancashire)

14:00 – 15:15 CET
Panel 2: Threads of Responsibility: Diverse Pathways to State Accountability
Chair: Elif Durmuş (University of Antwerp)

Rethinking accountability from the bottom: Setting a research agenda on traditional grassroots justice mechanisms
Piergiuseppe Parisi (University of York)

The Escazú Agreement as an accountability mechanism to protect Indigenous human rights defenders
Cesar Gamboa (Universidad de Salamanca)

A human rights law approach to address socioeconomic segregation in education in Flanders: the challenging road ahead
Merel Vrancken (Hasselt University)

15:30 – 16:45 CET
Panel 3: The formal human rights architecture, visibility and erasure in the quest for accountability
Chair: Marie-Bénédicte Dembour (Ghent University)

How Rude? Prohibitions on Insults and Abuse in International Human Rights Complaint Proceedings
Lisa Reinsberg (Leiden University)

Magnitsky sanctions: A Dual Accountability Framework for Human Rights Violations
Yifan Jia (King's College London)

Beyond the Binary: Unveiling and Addressing Grey Areas in Accountability in the 21st Century
Jorge Peniche (Universidad Iberoamericana de México, Guernica Centre for International Justice)

16:45 – 17:15
Closing remarks
Wouter Vandenhole (University of Antwerp)

Abstracts

Panel 1: Layers, relations and networks of accountability

Rarely can one accountability mechanism or approach provide a sufficient backstop in case of (ongoing) HR violations. In this panel we explore how various approaches to and understandings of accountability can be complementary, notably in fleshing out the role of and interaction between state and non-state actors. Proposals include a call for polycentric accountability orders, relational governance, but also the use of global human rights sanctions when relations of trust fail.

Human Rights Accountability in Polycentric Systems: Lessons from Blockchain Governance

Gustavo Prieto

The dominant approach to human rights accountability at the international level places judicial bodies at the center of its operational logic. In this model, courts play a central role in defining the contours and content of human rights protection, tying its legitimacy and effectiveness predominantly to formal legal processes. However, the emergence of ‘polycentric’ normative orders—the ones organized around multiple nodes, each with its own dynamics, yet part of a larger interconnected system as described by Polanyi in 1951—arising now from disruptive technology such as blockchain and artificial intelligence, poses a new challenge. Here, potential threats to human rights emanate not from a single entity, but from multiple actors operating decentralized, code-based systems, most of which are not affiliated with a single states or large multinational corporations. In this context, I explore How can code-based decentralized systems be made compatible with international human rights law? What counts as a human rights violation in polycentric systems? And who should be held accountable for human rights obligations?

I address these questions by arguing for the need to integrate international human rights obligations into different levels of polycentric orders. Part 1 explores the methodological choice of analyzing decentralized codebase systems through the lens of 'polycentric orders'. Part 2 describes the dynamics of technical standardization communities and national regulators currently engaged in creating accountability for blockchain infrastructure. Part 3 integrates the descriptive sections and argues that a way forward is the creation of a transnational hybrid public-private accountability framework with two features: the existence of an international multilateral mandate in which human rights considerations should be embedded in the governance of new decentralized infrastructures, and the creation of a public-private convergence body to coordinate and oversee the work of multiple standardization actors across different regulatory layers.

Strengthening Human Rights Compliance: Towards a Relational Normativity

Mattias Vanhullebusch

Human rights compliance has more than ever been the subject of political contestation in various global fora portraying an indeterminate picture of global human rights governance whose operational modes are reduced to scapegoating human rights abusers and accusatory rebuttals against human rights advocates. In order to escape such political stalemate and to strengthen human rights regimes instead, one must understand the conditions that give rise to such divergent interpretations on international human rights law (IHRL). With those aims in mind, this paper takes stock of the Theory on the Relational Normativity of International Law (TORNIL) which reconceptualizes the sources from which IHRL derives its binding force. Besides the norms themselves, i.e. treaties, international customs and general principles of law – the first source – and moral values which underpin those norms – the second source, TORNIL posits that a third – complementary – source of IHRL must be taken

into account, namely the context in which those norms and values are coming into being and are applied. That context is shaped by different sets of relationships between diverse (inter)national actors concerned with and affected by the development and application of IHRL. The nature of those relationships is characterized on a scale of trust and distrust. The more trust is present in those relationships, the more likely that compliance with existing IHRL can be secured or its future development can be promoted. Relational governance can here be instrumental in safeguarding IHRL whose development and application ultimately depends on the presence of trust between the different share- and stakeholders in global human rights governance. If one fails, however, to appreciate the context as a source from which IHRL derives its normativity, division will be inevitable and one risks jeopardizing global human rights governance in the long run.

Living up to obligations through the ICRC? A critique of state's attempts to shift obligations when addressing missing persons

Grażyna Baranowka and Nasia Hadjigeorgiou

The article identifies and explains a phenomenon whereby states attempt to shift their responsibility in relation to missing persons and their families to the International Committee of the Red Cross (ICRC). This has dual effects: firstly, it leads to rightlessness of the missing and their families, and secondly, it diminishes the obligations of the states, which are the duty bearers. The attempted shift does not, however, lead to the ICRC becoming a duty bearer, despite the organisation undertaking crucial actions in the analysed area. Two case studies, relating to two distinct types of missing persons, are used to illustrate the phenomenon: persons who disappeared during the conflict in Cyprus between 1963 and 1974, and migrants missing in the Mediterranean.

As the ICRC has immense experience and know-how concerning missing persons, it is reasonable for states to rely on the organisation and cooperate with it. However, while the ICRC can conduct effective search, and provide trainings and families with psycho-social support, its activities are not exhausting state obligations concerning missing persons. It is states, and not the ICRC, which have the capacity – and are obliged – to conduct investigations, prosecute perpetrators, and provide reparation to families. Thus, while cooperation between states and the ICRC is often the most effective way of addressing missing persons, the tendency of states to portray the ICRC as the leading (or, often, the only) actor in this collaboration, must be identified and avoided.

Panel 2: Threads of Responsibility: Diverse Pathways to State Accountability

Enhancing state accountability is a multifaceted endeavor that requires active engagement from institutional actors, civil society actors, and citizens. This panel examines when and how rights users mobilize a discourse on HR accountability to hold a duty-bearer accountable, and which understandings of accountability they propose in doing so? Panelists examine whether the existing HRL framework may be used to address deeply rooted social problems and rights violations, and whether the strategies adopted by accountability entrepreneurs align with institutional avenues for seeking legal, political and international accountability or instead seek to go beyond them? The panel also examines how existing HR accountability regimes stand to be enriched by practices rooted, for example, in other normative frameworks. By dissecting the involvement and strategies of diverse actors, this panel aims to illuminate diverse pathways to strengthen horizontal, vertical and diagonal state accountability.

Rethinking accountability from the bottom: Setting a research agenda on traditional grassroots justice mechanisms

Pierguiseppe Parisi

The human rights edifice offers a very rich tapestry of accountability mechanisms that require relevant actors – notably states – to account for their compliance (or failure to comply) with human rights. However, when states and, increasingly, non-state actors are found to have committed serious human rights violations, international human rights law (IHRL) generally identifies individual criminal accountability as the key redress mechanism that must be pursued. This emphasis risks obscuring and delegitimising the alternative (often extra-legal) modalities

to deal with violence and domination that persist at the local and community level in traditional societies, such as forms of indigenous justice. How may these traditional grassroots justice mechanisms (TGJMs) enrich our understanding of accountability?

This paper maps the existing criminological, anthropological, and socio-legal literature on communitarian forms of justice and connects it to debates on accountability for human rights violations. We then zoom in on the experience of Nasa indigenous justice in Colombia as a paradigmatic example of TGJM for dealing with serious human rights violations, including massacres, arbitrary killings, enforced disappearances, recruitment of child soldiers, destruction of sacred sites, and forced displacement. Through this case study, we aim to set a research agenda for assessing the place of TGJMs within the IHRL framework and reconceptualising accountability from the bottom. The paper lays the groundwork for a broader research project that we are developing in collaboration with a Nasa indigenous community and a regional prosecutor's office in the Cauca Department (Colombia).

The Escazú Agreement as an accountability mechanism to protect Indigenous human rights defenders

Cesar Gamboa

The Escazú Agreement or "Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean", is a very new treaty on environmental human rights (participation, access to information and access to environmental justice) which after six years of negotiation, with the technical support of the Economic Commission for Latin America and the Caribbean ECLAC, and with the active participation of civil society, came into force on April 22, 2021 for the fifteen members countries to this agreement.

Very similar to the Aarhus Regional Convention, the relevance of this agreement is that it includes in its article 9 the obligation to protect environmental defenders through the prevention, protection and prosecution of harmful acts. The member countries must adapt their national legislation to these international obligations and must also coordinate with the local organizations themselves to enhance the implementation and effectiveness of protection mechanisms in favor of environmental defenders. Also, the Escazú Agreement itself has mechanisms that can promote this protection, such as the mechanisms of public representatives, the support and implementation committee of the Agreement, the action plan of article 9, the Ad Hoc Group of Environmental Defenders and the Annual Forum on Environmental Defenders.

The threats and murders of environmental defenders has increased in the Latin America region (Civicus Report, 2022, Global Witness, 2022) and is associated with the defense of the environment and the indigenous territories in front of illegal activities. Also, regarding the lack of government inaction, local organizations have sought their own forms of protection through early warning systems and surveillance of their territories. In that sense, this proposal aims to analyze and recommend what type of coordination mechanisms the countries part of the Escazú Agreement can implement with what is presented by the local organizations that have been participating in this regional space.

A human rights law approach to address socioeconomic segregation in education in Flanders: the challenging road ahead

Merel Vrancken

Segregation in education on the basis of socioeconomic status is a widespread phenomenon, generating unequal educational opportunities. Flanders combines a high degree of de facto socioeconomic segregation with high levels of social inequality in schools. Segregation has detrimental effects on pupils' achievement in school and later life. The affected pupils feel this inequality in their everyday life, often without realising its origin. Although social science studies are clear in mapping the negative consequences that stem from such segregation, the guarantees that stem from human rights law are anything but. As a form of systemic discrimination, socioeconomic segregation in education slips through the cracks of human rights protection. This presentation

analyses how the existing international and European HRL framework may be used to address socioeconomic segregation in Flanders, thereby mapping out its challenges.

One such challenge is that educational segregation in Flanders is generally seen as de facto segregation, which is not (directly) attributable to any specific laws or policies. In addition, human rights law's focus has not traditionally been geared towards issues of socioeconomic inequality, making 'socioeconomic status' contested as a ground for discrimination. Lastly, HRL remains opaque in terms of what obligations to address segregation it encompasses. Desegregation is a challenging undertaking and becomes even more so in light of uncertainty concerning what states can, should and should not do. By applying the theoretical HRL framework to the concrete case study of Flanders, this presentation examines how state accountability for educational segregation can achieved and sketches the challenging road ahead.

Panel 3: The formal human rights architecture, visibility and erasure in the quest for accountability

This panel focuses on some of the shortcomings of formal HR accountability avenues. It zooms in on pitfalls and dynamics of erasure both within the formal HR accountability forums themselves (e.g. through their either-or logic or because of how they hamper access to effective remedies for rights holders who use disparaging language), as well as discussing how some of the core characteristics of the formal HR architecture generate opportunities for those seeking to offload accountability to do so, e.g. by creating grey zones in which accountability can hardly be ensured, by regime design (such as in migration issues), by diluting responsibility or by normalization of violence.

How Rude? Prohibitions on Insults and Abuse in International Human Rights Complaint Proceedings

Lisa Reinsberg

Each of the regional human rights courts and commissions, as well as the United Nations human rights treaty bodies, has the authority to reject individuals' human rights complaints when their choice of words disrespects the State or the mechanism. Some mechanisms consider such language to be an abuse of the right of petition or to be "out of order," while others specifically prohibit "disparaging or insulting language." Not only do human rights bodies apply these exclusionary clauses to foreclose access to justice at the international level, sometimes they do so based on behavior that is outside the purview of the complaint proceedings. How does this undermine the notion of accountability for human rights violations? Whose rights are being upheld in these cases? My research examines the policy rationales, competing values, and legal norms at issue in the application of such exclusionary clauses, grounded in a victim-centered view of fairness and accountability. Based on a review of the relevant procedural norms and decisions, the text will discuss whether human rights mechanisms are prioritizing institutional authority over individual rights and, therefore, implementing a particular, thin view of accountability. For this purpose, my research also compares human rights mechanisms' practices with select domestic civil and common law systems' responses to contempt of court or vexatious litigation in civil proceedings. Finally, I consider whether human rights mechanisms adequately consider or respect individuals' rights to freedom of expression and to due process when dismissing complaints on these grounds, in light of their own jurisprudence.

Magnitsky sanctions: A Dual Accountability Framework for Human Rights Violations

Yifan Jia

The weakness of the enforcement mechanisms of international human rights law is a longstanding issue. Although there is certain progress, there are still large numbers of world populations under no effective human rights protection mechanism, and many perpetrators enjoy impunity under the shield of their state boundaries. Human rights sanctions existed for a long time, and in recent years, there is a development in this regard, named global human rights sanctions (Magnitsky sanctions).

It was first established in the US in 2016, and have now been adopted by 35 countries. The sanctions regime empowers the government to impose travel bans, asset freezes, and transaction restrictions on foreign individuals and entities that commit serious human rights abuses. As a transnational regime, Magnitsky sanctions do not require state consent, and are backed by physical force, thus making it possible to enforce international human rights law regardless of state boundaries.

This paper aims to provide a conceptual framework to understand these newly developed sanction regimes. It structures the sanctions regime as a new human rights accountability mechanism that combines both individual and state responsibilities. It then establishes a dual human rights accountability framework that applies different accountability mechanisms to different sanction targets. By establishing the framework, this paper becomes one of the pioneering attempts to position human rights sanctions within the current legal landscape and to understand how they contribute to building accountability mechanisms.

Beyond the Binary: Unveiling and Addressing Grey Areas in Accountability in the 21st Century

Jorge Peniche

My participation advances some preliminary thoughts on the working notion of "grey zones of accountability" and how the term could add value when crafting and operationalizing justice-seeking strategies in challenging/adverse settings. We know that we live in "the era of human rights accountability." Although it has not always been like that, fighting impunity became a mirror (perhaps the mirror) to assess compliance with promoting and protecting human rights in a given context/situation/country. The set of principles for the promotion and protection of human rights through action to combat impunity has become the lingua franca of the anti-impunity agenda's architecture for the last thirty years. Yet, although accountability hardly happens in situations that clearly fall within the scope of this framework, based on fieldwork in different countries in Latin America, I argue that we are also witnessing an increasing trend: the emergence of contexts/situations that, notwithstanding they might share some of the features the UN anti-impunity framework is called to address (particularly the "volume" of human rights violations they entail), they are programmatically shielded from being addressed by robust forms of accountability. Drawing on the notion of "grey zone(s)," a term increasingly used from a critical studies standpoint in social sciences to describe complex phenomena (such as cooperation/cooptation between public and private actors in criminal violence; State formation vs. State-building capacities, and even in the spectrum of facilitators and enablers of human rights violations), I identify three initial dimensions where accountability is prevented in these adverse settings: by regime design (such as in migration issues), to dilute responsibility (contexts of large-scale criminal violence and criminal governance where crystal-clear individual responsibility is hard to capture), and by normalization of violence (where violence makes part of the "rules of the game" in how a political system was historically formed and thus currently works).

Practical information

Registration for non-presenting participants

We can no longer accept proposals for paper presentations, but we welcome everyone who is interested to join us as part of the audience.

Partipation in the online symposium is free of charge, but please register before June 14, in order to receive the login information and meeting invite.

Registration is possible via this form until 14 June 23:59 CET

Code of conduct

We are committed to fostering an inclusive and respectful online environment for all participants in this virtual meeting. We ask all attendees and speakers to the following code of conduct:

Respect and dignity: Treat all individuals with respect and dignity, regardless of their gender, gender identity, race, ethnicity, sexual orientation, ability, socioeconomic status, age, body size, or religion, including lack thereof.

Inclusivity: Embrace diversity and inclusivity in all discussions and interactions.

Harassment-free environment: Harassment in any form will not be tolerated. This includes, but is not limited to, intimidating, harassing, abusive, personally derogatory, or demeaning speech or actions.

Non-disruptive behaviour: Refrain from engaging in disruption of panels, talks, or other discussions.

Consent: Obtain explicit consent before engaging in any kind of online or offline recording during the meeting

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