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THE PREVENTION OF GROSS HUMAN RIGHTS VIOLATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW



NIENKE VAN DER HAVE

THE PREVENTION OF GROSS HUMAN RIGHTS VIOLATIONS
UNDER INTERNATIONAL HUMAN RIGHTS LAW

The Prevention of Gross Human Rights Violations Under International Human Rights Law
Ph.D. thesis, University of Amsterdam, the Netherlands

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THE PREVENTION OF GROSS HUMAN RIGHTS VIOLATIONS
UNDER INTERNATIONAL HUMAN RIGHTS LAW

ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad van doctor

aan de Universiteit van Amsterdam

op gezag van de Rector Magnificus

prof. dr. ir. K.I.J. Maex

ten overstaan van een door het College voor Promoties ingestelde

commissie, in het openbaar te verdedigen in de Agnietenkapel

op woensdag 8 maart 2017, te 14:00 uur

door Nienke Suzanne van der Have

geboren te Kaoma, Zambia.

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Promotor:	Prof. dr. P.A. Nollkaemper	Universiteit van Amsterdam
Promotor:	Prof. dr. Y.M. Donders	Universiteit van Amsterdam
Copromotor:	Dr. R. van Alebeek	Universiteit van Amsterdam
Overige leden:	Prof. mr. dr. H.G. van der Wilt	Universiteit van Amsterdam
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LIST OF ABBREVIATIONS

APB	Atrocity Prevention Board
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AComHPR	African Commission on Human and Peoples' Rights
AU	African Union
Basic Principles	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CESCR	Committee on Economic, Social and Cultural Rights
Code of Conduct	Code of Conduct for Law Enforcement Officials
CPA	Coalition of Provisional Authorities
CP rights	Civil and Political Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECtHR	European Court of Human Rights
ESC rights	Economic, Social and Cultural Rights
GA	General Assembly
Genocide Convention	Convention for the Prevention and Punishment of the Crime of Genocide
Hague Regulations	Respecting the Laws and Customs of War on Land
HRCee/HRC (fn)	Human Rights Committee
HRC	Human Rights Council
IACoMHR	Inter-American Commission on Human Rights
IACPPT	Inter-American Convention to Prevent and Punish Torture
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice

ICJ Statute	Statute of the International Court of Justice
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
IO	International Organization
Maastricht Principles	Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights
MRT	Moldovan Republic of Transdnistria
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organization
OGPRtoP	Office on Genocide Prevention and the Responsibility to Protect
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP	Optional Protocol
OSAPG	Office of the Special Adviser on the Prevention of Genocide
Rome Statute	Rome Statute of the International Criminal Court
RtoP	Responsibility to Protect
SC	Security Council
TRNC	Turkish Republic of Northern Cyprus
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UN Charter	Charter of the United Nations
UNMISS	United Nations Mission in the Republic of South Sudan
UNPROFOR	United Nations Protection Force in Bosnia and Herzegovina
US	United States
VCLT	Vienna Convention on the Law of Treaties
VRS	Army of Republika Srpska
WSOD	World Summit Outcome Document

GLOSSARY OF IMPORTANT TERMS

Content and scope of obligations

In the context of this study, the terms “content” and “scope” are used in relation to a state’s obligations, not the human right. The term “content” refers to what measures states are required to take. The term “scope” refers to the extent of these measures in particular circumstances. The two concepts are connected and are sometimes referred to as an obligation’s scope *rationae materiae*.

Capacity (to ensure human rights)

The term “capacity” or “capacity to ensure human rights” is used to refer to any expressions in treaties, case law or other sources of interpretation that take into account a state’s resources, powers or other factors that influence what it is capable of doing to ensure human rights obligations in particular circumstances.

Violation or offence

The term “violation” is sometimes used in a general sense as synonymous to an injurious event, referring to the substantive violation of an individual’s right by either state officials or private individuals. It is also used to refer to a violation of an international obligation attributable to a state. When discussing only the acts of private individuals, who cannot directly violate international obligations, the term “offence” is used.

Trigger (of knowledge)

The term “trigger” or “trigger of knowledge” is used in reference to obligations to prevent that are only incurred by a state when it has a certain degree of knowledge that there is a risk of a violation or continuing violation.

Threshold

The term “threshold” is used in reference to extraterritorial obligations that are only incurred by a state when it exercises extraterritorial jurisdiction or other forms of influence abroad.

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