CINETS
Crimmigration Control
INTERNATIONAL NET OF STUDIES

List of Students– workshop CINETS February 2014 – Student Workshop Sessions

10-14th February

Workshop 1 - Organization of Justice and Society & Human Rights and Migrations – 10 Feb 2014

Student	Origin	Workshop session	Order of Presentation
Egge Luining	Leiden	Organization of Justice and Society & Human Rights and Migrations	1 – 10 fev – 17h15
Jelmer Brouwer	Leiden	Organization of Justice and Society & Human Rights and Migrations	2 – 10 fev – 17h30
Melissa Leeworthy	Leiden	Organization of Justice and Society & Human Rights and Migrations	3 – 10 fev – 17h45
Ekaterina Kopylova	Leiden	Organization of Justice and Society & Human Rights and Migrations	4 – 10 fev – 18h00
Florence van Rosmalen	Leiden	Organization of Justice and Society & Human Rights and Migrations	5 – 10 fev – 18h15
DISCUSSION			**18h30**

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Students Resume/CV and Abstract

Student	Origin	Resume/CV	Abstract	Workshop session
Egge Luining	Leiden	EggeLuining, was born and raised in Alphen aan den Rijn, a small town near Leiden. He started studying Criminology at Leiden University in 2008 and completed his bachelor degree in 2011. He also completed a bachelor degree in Law in 2013. He is engaged in several extracurricular activities such as a stay abroad for one full year the University of Texas Law School in Austin, research internships, a teaching job and chairman of a tenant's organization for student housing. Currently he is participating in the Criminal Justice master's program and the additional research program called the Talent Program at Leiden University.	***The 'judge before the judge': the legitimacy and fairness of the Dutch punishment order*** Introduction The Dutch criminal justice system is often characterized as either 'moderately adversarial' or 'moderately inquisitorial'. Either way you look at it, strong inquisitorial elements are present within the Dutch system. This means that the purpose of the Dutch criminal law trial is, theoretically, to find the truth. The prosecutor also has this goal of truth finding instead of merely accusing the suspect and trying to convince the judge of his guilt, as is the case in pure adversarial systems. Therefore, the prosecutor has large discretion in deciding what to do with a case. He can either drop it, bring the case before court or reach a settlement with the suspect (in Dutch: *transactie)*. In a settlement the prosecutor offers the suspect not to bring the case before court in exchange for a sum of money. The goals of this measure are clear: lowering the workload of the courts and a swifter and immediate criminal justice response towards certain (minor) wrongdoings. Since 1983 settlements can not only be reached for traffic or minor offenses, but also for certain crimes. This large discretion can be explained by the large trust the Dutch traditionally have in magistrates, be that judges or prosecutors. However, the powers of the prosecutor became even broader with the introduction of the punishment order (*strafbeschikking,* art. 257a Dutch Penal Procedural Code) in 2008, a measure which ought to replace the aforementioned settlement. The differences between the two seem not so significant at first glance, but formally and morally there is a large discrepancy. With a settlement, the suspect can refuse to	1 10 Feb 2014

			pay the required sum and the prosecutor has to bring the case to court in order to get a conviction, or drop the case after all. With a punishment order, the prosecutor is literally the 'judge before the judge' as he has to decide on its own whether the suspect is guilty of a crime. A punishment order is legally a statement of guilt. If the suspect does not pay within the stated term, the suspect is officially convicted. In other words, the prosecutor does not have to bring the case to court when the suspect refuses to pay. In order to be acquitted the suspect has to take the initiative himself and oppose to the punishment order in a written document. This is the crucial difference between the settlement and the punishment order. Another difference is that the range of punishments the prosecutor can choose from has been extended. The prosecutor can also impose community service or demand other conditions to which the suspect needs to adhere to. Only the most far reaching punishment of imprisonment is still reserved for the judge only. Research questions and methodology My research will focus on this new power of the Dutch prosecutor to impose extrajudicial sanctions (punishment orders or *strafbeschikkingen*) for certain crimes. My main research question has yet to become clear but will be something like the following question: ''Is the punishment order imposed by the Dutch prosecutor detrimental to a fair trial?'' The literature review will probably focus on the punishment order as a concept within the current structure of the Dutch criminal justice system and will involve a historic and legal analysis, as well as questions regarding the legitimacy, effectiveness and accountability of this power. This will also include analyzing the different standpoints on the traditional role of the prosecutor versus the judge, and the right to a fair trial for the suspect. Empirical research could probably also be an important aspect of my research, as this will provide better understanding of the punishment order. Law in the books may differ from the law in action and therefore empirical research is desirable. Moreover, it can possibly provide a better insight of the practical consequences of punishment orders, especially with regard to the outcome for suspects. For example, for which cases does the prosecutor impose these new punishment	

			orders, as opposed to dropping them or taking them to court? And does the severity of the punishment differ from the guidelines of the Dutch prosecutor when he brings a case to court? Does the severity of the punishment differ from the previously used power of settlement (*transactie)* in similar cases? Many other interesting (empirical) questions can be raised as well. In order to get answers to these questions data from the prosecution office (and courts) are needed.	
Jelmer Brouwer	Leiden		***The legitimacy of using criminal instruments to counter irregular migration*** The academic debate about crimmigration has so far been characterized by two specific focusses. First, most of the literature has focused on the United States, despite signs that indicate similar trends in (continental) Europe. However, the interconnectedness between crime and immigration has in Europe mostly been studied against the more broad theoretical framework of securitization. Second, studies have generally been limited to the legal level. Calls have been made for including the socio-political dimension of crimmigration, which requires more interdisciplinary research that goes beyond the mere legal acts of the legislator. This would make more comparable research between countries better possible. This paper will look into recent developments in the Netherlands that indicate a trend towards an increased use of criminal instruments - most notably the practices regarding alien detention and the proposed criminalization of illegal stay - to counter irregular migration. This criminal approach towards migrants will be placed within broader socio-political developments, such as the increased attention for irregular migration in both the public and political discourse - including seeing crime and migrants more often as directly connected - and more negative attitudes towards immigrants in general and irregular migrants in particular. Although such developments can easily be placed within the securitization framework, it will be seen whether they can also be identified as signs of increased crimmigration in the Netherlands, meanwhile also considering whether there are developments that indicate a different or even reverse direction. In the second part of the paper the legitimacy of the identified instruments will be tested, starting with a legal analysis. Considering the specific European context, it	2 10 Feb. 2014

			will be analyzed whether the identified instruments are compatible with European Union law and European and International Human Rights law (particularly the ECHR). In line with the earlier identified need for more interdisciplinary research into crimmigation that also takes the socio-political dimensions into account, this legal examination will be accompanied by a study of the acceptance of the identified instruments by society at large. The results can form a starting point for more comparative research between various European, and possibly non-European, countries.	
Melissa Leeworthy	Leiden		***A Legal, Evolutionary Perspective on Gender Crimes and the Role of the International Criminal Court: The Importance of*** **The Prosecutor v. Jean-Pierre Bemba Gombo** Beginning with the 1949 Geneva Conventions and the 1977 Protocols, international law took a firm stance on gender violence. Explicitly prohibiting rape, enforced prostitution, any form of indecent assault, and a call for special protection of women, the Geneva Conventions classify gender violence as 'crimes of honor' instead of 'crimes of violence' (Copelon, 1994).However, international law and international courts, such as the International Criminal Court (ICC), have skirted the issue of wartime gender violence. Only three out of twenty-one ICC cases have explicitly dealt with gender-based war crimes and only one of those three have been convicted of gender based crimes (O'Connell, 2010). The three cases include *The Prosecutor v Thomas LubangaDyilo(Lubanga)*, *The Prosecutor v Germain Katanga and Mathieu NgudjoloChii(Katanga and Ngudjolo),*and *The Prosecutor v Jean-Pierre Bemba Gombo(Bemba)*.The ICC, the main international mechanism for prosecuting "the most serious crimes of concern to the international community," appears to have seemingly neglected its' duty to prosecute wartime gender crimesand has focused elsewhere, signaling a lack of commitment to victims (Rome Statute, 1998). Once hailed as the "most advanced articulation in the history of gender based violence," this thesis will investigate the extent to which the ICC and the legal theory that helped form it, present in the Rome Statute, are equipped to successfully prosecute gender-based war crimes on an international scale. Thus, I would like to address two central questions. First, to what extent the current legal understanding	3 10 Feb 2014

			of 'gender based violence' limits the ability of the ICC to prosecute gender crimes. Second, to what extent the ICC is the most appropriate and/or effective body to prosecute gender crimes to best fulfill the needs of victims. In order to best assess these questions, it is integral to chronicle the development of gender crimes in the legal sphere. After the introductory paragraphs, the first chapter will detail the definition development of gender-based crimes in addition to analyzing the different international legal bodies that have been or are responsible for prosecuting gender crimes. The first chapter will focus on why different legal bodies, such as tribunals, were established, investigation strategies, and the three ICC cases that specifically dealt with wartime gender crimes. The second chapter will discuss the first research question, the extent to which the ICC is limited by pre-existing definitions of wartime gender-based crimes and if the definitions are a hindrance to effectiveness. The chapter will focus on the recent activity of the ICC, particularly in relation to the rulings on three ICC cases pertaining to wartime gender violence. The most 'original' aspect to this thesis will be the analysis as to what the three cases mean to the future of the ICC (minimally), the investigation of gender crimes, and how the legal definitions of war crimes has been altered by them. The third chapter will evaluate the second research question, the extent to which the ICC is the most appropriate and/or most effective international legal mechanism to prosecute these crimes. In accordance with the second question, this chapter will also address other bodies that could potentially prosecute wartime gender crimes, the need for new or updated legal theory (update Geneva convention, law to catch up with the time), and the potential need for a new body or additional protocol to the ICC. The conclusion will focus on the future of the ICC and the implications for future gender crimes in light of the three recent ICC cases and what I conclude in the aforementioned chapters. I will discuss the ramifications of the Rome Statute's use of 'gender' and discuss this in context of the effectiveness of the ICC. Also, in light of the important three ICC cases for gender, I will discuss the extent to which new actors could bemore involved. If the ICC will focus more on the protection of women	

			and children instead of traditional war crimes, it is important to explore the extent to which the investigative, or even prosecution, strategy should be altered. This chapter will explore the possibility to new defenders of gender violence and the role they could play in relation to (or even in order to replace) the ICC. So far, I have found a rather small literature base to build my thesis around. I have found a few highly important articles, which all appear to be citing each other, indicating that this particular field is not very large. I have included the literature I have found so far and have begun to read some of the articles.	
Ekaterina Kopylova	Leiden	Graduate and PhD candidate at Moscow State Institute of International Relations (MGIMO-University), specialization in Public International Law. Sphere of professional interests covers international dispute settlement, international criminal law, international co-operation in criminal matters, international humanitarian law, international law of treaties.	***Immunity from Criminal Jurisdiction and Inviolability Of Foreign State Officials and Extradition Proceedings*** Immunity from criminal jurisdiction is currently high on the International Law Commission's agenda; the first Special Rapporteur Roman A. Kolodkin has already produced three reports, the third report by the second Special Rapporteur on the functional immunity is expected in June. However, extradition seems to have been left outside the scope of the commission's mandate. The object of the study is to investigate what bearing, if any, immunities accorded to foreign public officials under international law have on the outcome of their extradition proceedings. There might be a clash between state obligations to respect immunity (inviolability) and obligation to co-operate under an extradition agreement. Within the scope of the study I will look into: immunity *ratione personae*, immunity *ratione materiae*, their subjective, temporal and material scope, inviolability and nature of extradition. It is necessary to establish whether extradition may actually be assimilated to the exercise of criminal jurisdiction. Since immunities are governed both by conventional and customary international law, relevant treaties (Vienna Convention on Special Missions, Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations etc.) and state practice will form the material basis of my study.	4 10 Feb 2014
Florence van Rosmalen	Leiden	Florence van Rosmalen is a student at Leiden University. She is studying for the Masters in Criminal Justice and her	Globalisation has changed the world. Increased mobilisation of people is one of the globalisation features. A negative coincide of this increased mobility are the flows of illegal migrants entering the European countries and the development of new types of cross-border crimes and terrorism (Newburn, 2013). These flows of migrants are	5

		research focuses on the issues around ethnic profiling in relation to community policing. Alongside her studies, she is co-organizing the CINETSII (Crimmigration Control International Net of Studies) conference which will be held in Leiden on the 9th and 10th of October 2014.	more often stereotyped by European member states as potential risks and seen as dangerous outsiders (Beck, 2006). Beck refers to the current risk society where we are living in. Migration issues have a dominant place on the Dutch political agenda. Not only migration issues, but also law enforcement of the different ethnicities present in the Netherlands is discussed in relation to its potential selective character. Amnesty international launched two reports in October and November 2013, respectively Proactive policing as a threat to human rights: Recognizing and fighting ethnic profiling and Equality under pressure: The impact of ethnic profiling, in which they argue that the Dutch police enforces their stop and search powers selective between different types of ethnicity, whereas ethnic minorities are disproportional stopped and searched (Amnesty International, 2013). Selectivity on the basis of ethnicity is referred to as ethnic profiling and is after the publication of the Amnesty reports a highly discussed item in the political as well as in the public debate. Amnesty International argues that ethnic profiling in the case of the Dutch police officers is a form of discrimination, which should be seen as a serious human right violation (2013). Minister Opstelten requested for an independent research on ethnic profiling by the police, especially the police in The Hague (Omroep West, 2013). This police corps has been subject of the ethnic profiling discussion, because police station 'De Heemstraat', located in The Hague, has been accused for ethnic profiling in their law enforcement approaches. The discussion about ethnic profiling can be seen as a paradox from the perspective of the government and law enforcement agencies. On one hand they notice an increased fear for ethnic minorities, illegal migration and the external threat they potentially pose on the Dutch territory (Pakes, 2004). And different statistics prove that ethnic minorities are overrepresented in criminal activities (Bovenkerk, 2003). On the other hand they receive very critical reactions on the increased policing of the Dutch society as a whole and specifically of the ethnic minorities. The styles of policing changed over the years as well. The increased fear for the above mentioned threats and risks have led to pro-active styles of policing in order to be better able to prevent the society against certain risks. Preventive methods, such as stop and searches and irregular migration detection methods by	10 Feb 204

			police officers, gave rise to feelings of selectivity, exclusion and loss of privacy and civil liberties (Hudson & Ugelvik, 2012). The Rule of Law warns for the balance of the provision of security and the provision of civil liberties and human rights. Both need to be protected and respected (Hudson & Ugelvik, 2012). There are different styles of policing and the Netherlands knows a dominant style of policing, named community policing. The community (oriented) policing model is known of its attempts to develop strong ties with the society as a whole in order to develop an effective cooperation with the police and trust in the police (Pakes, 2006). Pakes his critique on this model of policing relates to potential selective application of police approaches, because of the high level of discretionary power by the police officers (Pakes, 2006). Selective approaches or approaches which do not fit with all the ethnicities within the community might end up in distrust in the police. Distrust in the police can work very counter-productive. It is important to conduct more research in the field of ethnic profiling. Little scientific research has been done on this topic in relation to the Dutch police. Leiden University is doing research on the police officers in The Hague and Amsterdam in relation to their contact with the community. For a better understanding of ethnic profiling in general, in relation to the Dutch police and in relation to community policing, is it important to conduct more research. Statements made by Amnesty International about the Dutch police can have far-reaching consequences for the relation between the police and the community. Future research need to control if the approaches of certain police officers might be selective and need to conclude whether this is discrimination and disputable or not. The above described scientific and societal interest of more research in the field of ethnic profiling have led to the following research question: to what extent might potential ethnic profiling by the Dutch police undermine the community policing model? First, the theoretical basis underlying this research question will be outlined, including the procedural justice model of Tyler (2003). This model starts with the idea that if a criminal justice procedure is right and fair the outcomes will be right and fair as well. This means that unfair and discriminatory law enforcement by police officers is not the right basis for good outcomes. The theoretical basis will	

			include applicable theoretical explanations from the field of public administration, which makes this study multi-disciplinary. Public administration is a field of science with focus on broad societal problems in relation with governmental structures and approaches and can be very useful for this research on a very broad societal problem as well. Second, interviews will be held among other police officers and policy makers to get a clear overview of the impact of being qualified as ethnic profiling on the community policing approaches and other relevant law enforcement outcomes. Third, a policy comparison between different countries will be conducted of different approaches against selectivity and ethnic profiling within police organisations. These approaches range from training and stricter selection of officers to the development of anonymous reporting monitors within police organizations (EU, 2010). The main aim of this research will be the provision of more clarification in the ethnic profiling debate and the creation of more societal awareness of the counter-effects of such a sensitive debate on the effectiveness of policing.	