



# Hoarding disorder and the legal system: A comparative analysis of South African and Dutch law



Richard Cramer<sup>a</sup>, Michel Vols<sup>b,\*</sup>

<sup>a</sup> Mineral Law in Africa, Kramer Law Building, University of Cape Town, Middle Campus, Rondebosch, Cape Town 7700, South Africa

<sup>b</sup> Department of Legal Methods, University of Groningen, PO Box 716, 9700 AS Groningen, The Netherlands

## ARTICLE INFO

Available online 21 September 2016

### Keywords:

Hoarding  
Disability  
Reasonable accommodation  
Functional comparative analysis  
Therapeutic jurisprudence  
Eviction

## ABSTRACT

Hoarding is an internationally recognised disability. Those who suffer from hoarding behaviour can be comfortably brought within the definition of disability found in the Convention on the Rights of Persons with Disabilities and should be provided with “reasonable accommodation” where doing so does not place an unjustified burden on others. However, hoarding also poses a threat to public health, and hoarders’ behaviour may infringe on the rights of their neighbours and landlords. Thus, through their behaviour, hoarders may ultimately come into conflict with various areas of law, including neighbour law, housing law as well as administrative law. This article examines how hoarding may be addressed by the law in both South Africa and the Netherlands. It seeks to answer to what extent hoarders are provided with “reasonable accommodation” when their behaviour brings them into conflict of the law in these two jurisdictions. It also takes cognisance of the need to balance the provision of “reasonable accommodation” with the rights of neighbours and landlords. Finally, it seeks to assess which of the two jurisdictions provides the most balanced approach to handling hoarding, in light of the need for therapeutic jurisprudence.

© 2016 Elsevier Ltd. All rights reserved.

## 1. Introduction

Hoarding disorder is an internationally recognised disorder “characterized by the acquisition of and failure to discard a large number of possessions that cover the living areas of the home and cause significant distress or impairment” (Frost & Hristova, 2011, p. 456). It was originally treated as a subtype of obsessive compulsive disorder (Frost & Hristova, 2011), although it has since been classified as a distinct disorder in the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (American Psychiatric Association, 2013). Items that are often hoarded include animals, newspapers, magazines, containers, bottles, food and food garbage, as well as rubbish discarded by others (Frost, Steketee, & Williams, 2000).

In terms of Article 1 of the *Convention on the Rights of Persons with Disabilities (CRPD)*, disabled persons include “those who have long-term ... mental ... impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. Not everyone diagnosed with compulsive hoarding can necessarily be classified as disabled. However, a number of sufferers can clearly be brought within this definition, due to the importance of being able to properly care for oneself and properly maintain a household for effective participation in society (Cobb et al.,

2007).<sup>1</sup> The CRPD requires states to make reasonable accommodation for persons living with disabilities (Article 5(3)). This requires the state to make adjustments where necessary, to allow disabled persons to exercise their fundamental rights on an equal basis with others (Article 2). The requirement of reasonable accommodation for sufferers of hoarding disorder on the grounds of disability in certain circumstances in the housing law context already exists in the United States (Bratiotis & Woody, 2014; Cobb et al., 2007). While what is required of reasonable accommodation may not be settled, it clearly does not provide a “free pass” to the hoarder (Bratiotis & Woody, 2014).

Until recently, the rights and duties that stem from the CRPD were not applicable to the Dutch legal system. In April 2016, however, the Dutch Parliament ratified the CRPD (Staatsblad, 2016). Furthermore, in April 2016 the Dutch Parliament also passed the Implementation Act concerning the CRPD (Kamerstukken I, 2015–2016).

South Africa has both signed and ratified the CRPD (UN Enable, 2015). Under South African law, the Promotion of Equality and Prevention of

<sup>1</sup> Not every impairment will necessarily be classified as a disability. As Timpano et al. point out, distinctions should be made between impairment, disability and handicap. Impairment entails “abnormal function or a deviation from some norm”. Disability describes a situation in which “impairment has a direct effect on ability”. Handicap, finally, “indicates that the impairment and disability interact with a social and environmental context to limit or prevent normal functioning”. The effects of “multiple, interacting deficits” experienced by those suffering from hoarding disorder may ultimately constitute a disability or handicap (Timpano, Smith, Yang, & Çek, 2014, p. 102, 115).

\* Corresponding author.

E-mail address: m.vols@rug.nl (M. Vols).

Unfair Discrimination Act (Prevention of Unfair Discrimination, 2000, hereafter: PEPUDA) defines unfair discrimination against disabled people as including a failure to accommodate them reasonably (section 9(c)). PEPUDA contains no definition of disability, but requires that the Act interpretation keep in mind international law (section 3(2)(b)), which would include the CRPD and its definition of disability. The state must take cognisance of the potentially discriminatory effect of the application of laws that are superficially neutral (*HM v Sweden*, 2012; Grobelaar-Du Plessis & Nienaber, 2014). The Constitutional Court in South Africa has acknowledged the possibility of discrimination arising from an otherwise neutral rule, which despite its important purpose, may result in the marginalisation of certain segments of society (*MEC for Education*, 2008). Some people who suffer from hoarding disorder may unduly suffer as a result of the application of otherwise neutral laws and rules. Their behaviour may bring them into conflict with authorities, neighbours and landlords. The strict application of legal rules puts them at risk of convictions for failing to abide by health and safety legislation, and where they are not the owners of their dwellings, they even stand to lose their homes. Given their vulnerability, it is necessary for there to be some degree of reasonable accommodation for people who hoard (Cobb et al., 2007).

However, hoarding disorder does not only have consequences for the sufferer, but affects those living around him/her. It presents a source of nuisance and poses health and others hazards to others. The neighbours of hoarders are the people most affected in what has been described as a community health problem (Frost et al., 2000). Hoarding often creates unsanitary conditions that are characterised by rat and cockroach infestations (*Psychiatric Times*, 2007; Frost et al., 2000). Odours are also a common complaint where hoarding occurs (Frost et al., 2000). Hoarding can furthermore create a significant fire hazard, due to the accumulation of possessions near stoves and other points at which a fire may start (Frost et al., 2000). Additionally, the accumulation of clutter in a dwelling will hamper effective firefighting in the event of a fire (Frost et al., 2000). Landlords also bear additional financial and administrative burdens with hoarding tenants (Cobb et al., 2007). Besides damage to the property itself, they must bear the costs of pest extermination where such costs are not recoverable in terms of the lease agreement, increased insurance premiums as well as the negative impact on the marketability of neighbouring apartments (Cobb et al., 2007).

The hoarding of animals is particularly problematic for public health (Frost et al., 2000; Arluke, Frost, Luke, & Messner, 2002; Frost, Patronek, Arluke, & Stekete, 2015; Berry, Patronek, & Lockwood, 2005). It often creates a greater public health risk than the hoarding of mere possessions (Frost et al., 2000). The hoarding of animals also poses a threat to animal welfare. Hoarded animals are often denied sufficient food, water and veterinary care (Berry et al., 2005). In one case of hoarding in South Africa, a woman was found to have 160 cats, many of which were malnourished (Samodien, 2007). Seven dead animals were found in her home (Samodien, 2007).

The preferable solution for hoarders would be for the law not have to intervene at all, but for the hoarder's underlying mental health issues to be addressed through the support of family and neighbours. This would save on the unnecessary costs and trauma that may be entailed by the law's intervention to compel the hoarder to clean up her dwelling. Being non-legal, there is little more than a moral duty on those close to a hoarder to intervene and prevent unnecessary conflict between the hoarder and the law. While such behaviour should be encouraged, unfortunately it cannot be relied upon in many cases of hoarding, requiring us to turn our attention to the various legal instruments that exist in South Africa and the Netherlands.

This paper focuses on legal mechanisms where non-legal mechanisms are no longer helpful to tackle problems associated with hoarding. It seeks to address to what extent the law in the Netherlands and South Africa strikes a balance between two conflicting responsibilities for the state. On the one hand, the state is required to provide reasonable accommodation to hoarders as disabled persons. On the other, the state must protect

the public from the harms that arise from hoarding. There is, ultimately, only so much neighbours and landlords can be expected to tolerate from nuisances and hazards that arise from hoarding. Although we acknowledge that the role of mental health professionals is an important issue, this is outside the scope of this paper, and as such we focus our attention on the manner in which the law responds to hoarding and the need for reasonable accommodation.

The analysis will be done through a functional comparative analysis of the two jurisdictions. One of the understandings of the functionalist approach in legal research is encapsulated in the "idea that law responds to society's needs" (Graziadei, 100). This assists in understanding the differences and similarities that exist between legal systems (Graziadei, 100). When conceiving of law as a body of rules, a functional approach to comparative analysis is beneficial, as rules seek to solve human problems, which many societies share (Örücü, 2007). Functional comparative analysis places emphasis on the universality of social problems, and requires a concrete problem as a starting point when research is conducted (Örücü, 2007). Given its focus on responding to society's needs, the functional comparative analysis is regarded as one of the best "working tools in comparative legal studies" (Graziadei, 2003, p. 100). Adopting this approach, we will describe, juxtapose and identify the similarities and differences between the ways in which South Africa and the Netherlands make reasonable accommodation for people suffering from hoarding disorder (Örücü, 2007). We do not only assess legislative texts, but aim to analyse the law in action too. Colombi Ciacchi characterised judicial decisions as "the most classical sources of law in action" (Colombi Ciacchi, 2013, p. 29). We agree that the "comparing the case-law treatment of one and the same factual problem" will "help discovering complexly new patterns of divergence and convergence between national solutions" (Colombi Ciacchi, 2013, p. 30).

A comparative analysis between the Netherlands and South Africa is interesting for a number of reasons. For the purposes of a legal definition of disability, we will be relying on the definition provided by the CRPD, given that both nations are signatories and have ratified the convention. The relevant anti-discrimination legislation in both countries under review does not contain a definition of disability (Prevention of Unfair Discrimination, 2000; *Wet Gelijke Behandeling op grond van Handicap of Chronische Ziekte* of, 2003).<sup>2</sup> Mental disorders are a universal social problem and it is beneficial to examine how different jurisdictions may approach them. Specifically, to what extent do different jurisdictions make reasonable accommodation for such individuals, particularly where their behaviour has a negative impact on others. A mental disorder such as hoarding has implications for numerous areas of law in both jurisdictions, including health and safety legislation, neighbour law as well as rental housing and eviction law. The Netherlands and South Africa both have obligations to ensure the protection of the home. The South African Constitution provides for housing rights in section 26 (Constitution, 1996). Sections 10 and 12 of the Dutch Constitution and Article 8 of the European Convention on Human Rights (ECHR) offer residents protection against the loss of their home (Fick & Vols, in press). However, both countries also have duties towards the public,<sup>3</sup> and must provide protection against the potential harms that may result from compulsive hoarding. Lastly, hoarding has been examined from a legal perspective in other jurisdictions, particularly in the context of rental

<sup>2</sup> The South African Mental Health Care Act 17 of 2002 defines "severe or profound intellectual disability" as "a range of intellectual functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self care and requiring constant aid and supervision, to severely restricted sensory and motor functioning and requiring nursing care" (section 1). Such seems to be in line with the definition in the CRPD.

<sup>3</sup> For example, section 24(1) of the South African Constitution states that everyone has the right "to an environment that is not harmful to their health or well-being". Section 7(2) requires the state to protect such rights. Section 21 of the Dutch Constitution states that "it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment".

housing in the United States (Cobb et al., 2007). This paper will be the first to examine hoarding from a legal perspective in the Netherlands and South Africa.

The rest of this paper has been divided into four parts. The first part analyses the way hoarding is addressed within the law of nuisance. The second and third parts contain a similar analysis of housing law and administrative law respectively. In the fourth part a comparative legal analysis is conducted in order to discover similarities and differences between the two jurisdictions. Furthermore, we will use theoretical insight of therapeutic jurisprudence to assess whether the best balance of the rights and obligations of all interested parties is achieved. This final part presents the conclusions too.

## 2. Neighbours and law of nuisance

In South Africa and the Netherlands, neighbours are entitled to initiate legal proceedings against neighbours that cause nuisance. In this section we analyse the law of nuisance in both jurisdictions. We examine whether hoarding could result in an actionable nuisance and what legal remedies are available for the aggrieved neighbours.

In the Netherlands, the Civil Code (*Burgerlijk Wetboek*, hereafter: BW) prohibits owners and non-owners (e.g. tenants) of immovable property from causing nuisance that can be considered unlawful to other owners and non-owners of immovable property (section 5:37 BW; Hoge Raad, 1992). Under South African law, two types of nuisance can be distinguished: statutory nuisance and nuisance under common law. Where a statutory nuisance has been proven, it is unnecessary for an aggrieved party to establish that a nuisance exists at common law (Van der Walt, 2010). Where legislation fails to address nuisance, an aggrieved neighbour may turn to the common law. Nuisance under common law refers to “conduct whereby a neighbour’s health, well-being or comfort in the occupation of his or her land is interfered with ... as well as the causing of actual damage to a neighbour” (Badenhorst et al., 2006, p. 111).

In both countries, the law obliges neighbours to tolerate some degree of interference from their neighbours’ normal and reasonable use of their land (Van der Walt, 2010; Gien, 1979; Mijnsen, 2008). Consequently, courts have to establish whether the nuisance can be reasonably tolerated. If the interference exceeds what may be reasonably tolerated, it may be found to be an actionable nuisance (Van der Walt, 2010; Gien, 1979; *Gerechtshof’s-Gravenhage*, 2009).

In order to answer the question whether the nuisance can be reasonably tolerated, Dutch courts will analyse whether the nuisance violates the aggrieved neighbours’ rights or the unwritten rules of proper social conduct (section 6:162 BW). The court will take into account all the circumstances of the specific case (Verheij, 2010). An analysis of Dutch case law shows that courts use a number of additional factors in determining whether nuisance can be characterised as unlawful: the nature and seriousness of the nuisance, the duration and the damage caused by it (Hoge Raad, 1991; Verheij, 2010). A recent analysis of over fifty lower court judgements found that courts pay considerable attention to the specific circumstances of every case (Vols, Kiehl, & Sidoli del Ceno, 2016). Consequently, the Dutch case law concerning the question of what constitutes an actionable nuisance is very casuistic.

The question to be answered by South African courts is whether the normal person, “of sound and liberal tastes and habits” (Prinsloo, 1938, p. 575), would tolerate the interference in question (Van der Walt, 2010; Badenhorst et al., 2006; Prinsloo, 1938). Relevant considerations include the extent and duration of the interference in question (Van der Walt, 2010; Mostert, 2013; Badenhorst et al., 2006; Laskey, 2007; Allacras, 2007); the hours during which the interference occurred (Van der Walt, 2010; Laskey, 2007); the locality in which the nuisance occurred (Van der Walt, 2010; Mostert, 2013; Laskey, 2007); the benefit the offending landowner derives from the conduct as opposed to the harm suffered by the plaintiff (Van der Walt, 2010; Laskey, 2007); and the practicality of abating or terminating the nuisance (Van der Walt, 2010; Mostert, 2013; Regal, 1963).

In this respect, it is interesting that South African law – unlike Dutch law – distinguishes between nuisance in the narrow sense and nuisance in the wide sense (Van der Walt, 2010). The former results in an annoyance, which constitutes an interference with a neighbour’s right to the normal enjoyment of his land (Van der Walt, 2010). In these circumstances, the plaintiff will usually be entitled to an interdict aimed at preventing or terminating the cause of the nuisance (Van der Walt, 2010). The latter concerns abnormal use of land which results in patrimonial loss or damage to the plaintiff (Van der Walt, 2010). In these circumstances, the plaintiff may be entitled to delictual damages (Van der Walt, 2010).<sup>4</sup>

In light of the above, we believe that hoarding activities may exceed what may be reasonably tolerated and may be found to be an actionable nuisance in both South African and the Netherlands (Berger, 2004; Wibbens-de Jong, 2009). We have found two cases in reported Dutch case law in which hoarding seems to play a role. In both cases, the residents hoarded animals: in the first case 18 cats and in the second case 28 dogs (*Rechtbank Alkmaar*, 2009; *Rechtbank Leeuwarden*, 2010). The accumulation of animals caused serious nuisance (e.g. noise and smells) to the neighbours and the animals attracted flies too (*Rechtbank Alkmaar*, 2009; *Rechtbank Leeuwarden*, 2010). Although the courts stated that under Dutch law neighbours have to tolerate some nuisance from each other, it held that the hoarding of animals is unlawful, because the nuisance was very serious and unacceptable under the given circumstances (*Rechtbank Alkmaar*, 2009; *Rechtbank Leeuwarden*, 2010). In both cases, the court ordered the hoarders to reduce the number of animals and imposed a penalty for each day that the hoarders did not comply with the court order (*Rechtbank Alkmaar*, 2009; *Rechtbank Leeuwarden*, 2010).

Despite the absence of reported South African case law concerning hoarding, there are examples of nuisance in the case law that would most likely arise where a neighbour compulsively hoards certain forms of property. The examples include cases of nuisance that concern smells emanating from a neighbour’s land, the keeping of animals (Whittaker, 1912; Van der Westhuizen, 1912) and the disposal of rubbish (Howard Farrar Robinson, 1907; Dell, 1879). Even in the absence of noticeable smells, should the objects being hoarded attract flies, this would likely be sufficient grounds to constitute an actionable nuisance under South African law (Van der Walt, 2010). Although conduct that usually attracts a significant amount of flies will likely result in smells as well (Whittaker, 1912), the attraction of the flies on their own would most likely be found to be unreasonable in residential localities. Hoarding can also create unsanitary conditions characterised by rat and cockroach infestations (*Psychiatric Times*, 2007). To the extent that this impacts on the hoarder’s neighbours, we believe an actionable nuisance under South African law would exist.

Where hoarding does not cause smells or pose other forms of health risks, a South African and Dutch neighbour will most likely have to tolerate her neighbour’s use of her land. Where objections to hoarding are based purely on aesthetic considerations, the law in both jurisdictions will unlikely provide an aggrieved neighbour with a remedy. Some academics, relying on case law, are opposed to allowing aesthetic considerations to play a role in the law of nuisance (Church & Church, 2006; Mostert, 2013; Mostert & Pope, 2010; Dorland, 2002. Cf. Knobel, 2003; Van der Walt, 2010). The problem with aesthetics is that, per *Dorland v Smits*, “they are notoriously subjective and personal” (Dorland, 2002, p. 383F). A similar view has been expressed in Dutch law (*Gerechtshof’s-Hertogenbosch*, 2013).

Where aesthetic objections are coupled with other grounds on which to establish a nuisance, the matter will be a fairly simple one. A neighbour may object to the accumulation of waste on neighbouring land, due to the smell as well as possible health risks. This could also

<sup>4</sup> The term “delict” is a civil law term for “a civil wrong which can be redressed by civil proceedings” (Van der Merwe and Pope, 2007, p. 1091). It is the civil law equivalent for the common law term “tort”.

amount to an eyesore, should such accumulation be visible to the hoarder's neighbours. A trickier situation would exist where the hoarder accumulated objects such as garden gnomes. If such accumulation does not constitute a fire or other hazard, it would remain a purely aesthetic consideration. A neighbour may be unhappy about what he regards as an eyesore in his neighbourhood, but his reaction to an army of garden gnomes would be a personal one, even if it is shared by a majority of his neighbours. Such aesthetic objections, in the absence of more serious discomfort or annoyance, would be too subjective in order to justify a finding of unreasonableness under Dutch or South African law (Mostert, 2013).

### 3. Landlords and housing law

It is necessary to consider the law of lease as well as rental housing legislation. Hoarding is often incompatible with the legal obligations that attach to the occupancy of rental housing due to the health and fire hazards created in addition to the poor sanitation such behaviour often entails (Cobb et al., 2007). In particular, this may conflict with the duty to take proper care of the leased property that exists in both South Africa and the Netherlands (Glover, 2014; Vols, 2015).

The Dutch Civil Code obliges tenants to act as prudent tenants with regard to the rented premises and use the premises as agreed upon (sections 7:213; 7:214 BW). Based on established case law, compulsive hoarding may be in conflict with these obligations (Rechtbank Rotterdam, 2010; Gerechtshof Arnhem-Leeuwarden, 2013; Rechtbank Amsterdam, April 2014). Nonetheless, the Court of Appeal in Den Bosch stated that hoarding in itself does not constitute a breach of the lease (Gerechtshof's-Hertogenbosch, 2013). According to this court, it is possible to store a large amount of objects and still use the premises as agreed upon (Gerechtshof's-Hertogenbosch, 2013). Besides, the court stated that hoarding objects does not automatically mean that the hoarder is not a prudent tenant. If the tenant damages the property or the hoarding causes nuisance to neighbours, he or she will, according to the court, violate the obligations arising from the Civil Code (Gerechtshof's-Hertogenbosch, 2013).

Under South African law, hoarding potentially comes into conflict with the duty to ensure the property is properly cared for by the occupant too (Glover, 2014; Manley van Niekerk, 1977). This puts the hoarder – just like in the Netherlands – at risk of legal proceedings instituted by the lessor due to breach of contract (Glover, 2014). In both countries there are a number of remedies for the lessor: an interdict to stop the threatened breach, as well as a possible order for specific performance where a positive duty has been neglected by the lessee (Glover, 2014; Hielkema, 2012). Furthermore, the lessor may terminate the lease and request the court to oblige the tenant to evict the premise (Glover, 2014; Vols, 2015).

Whether the breach is sufficiently serious to warrant cancellation and ejectment will depend on the severity of the damage to the property as well as whether the lessor faces irreparable loss in the circumstances (Glover, 2014; Abas, 2007). It is feasible that such circumstances may arise in cases of hoarding, particularly in circumstances where hoarders are uncooperative in rectifying the situation. Where fire hazards are created or environmental harm is occurring, it would seem that a lessor is faced with the potential for irreparable loss. In addition, a lessor may find the marketability of his property affected, as potential purchasers may not wish to buy property occupied by a hoarding tenant. On the face of it, it would seem the lessor would be entitled to terminate the lease and seek the ejectment of the hoarder.

In both South Africa and the Netherlands, however, the lessor's right to exercise the right to terminate the lease is not absolute. Although Dutch landlords are entitled to give a notice of termination of the lease if tenants do not behave as prudent tenants (Sections 7:274 (1) BW; 7:271 (5) BW), the landlord still has to request court to terminate the lease if the tenant disagrees with the termination (Sections 6:626 BW; 7:272 BW). According to the Dutch Civil Code, any breach

of contract justifies the termination of the lease (Section 6:265 BW; Bakels, 2011). Nonetheless, the court has the discretion not to terminate the lease if the breach, given its specific nature or minor importance, does not justify the termination overall (Section 6:265 BW). However, a court is only entitled to assess the proportionality of the termination of the lease if tenants advance a proportionality defence (Hoge Raad, 1999).

An analysis of reported Dutch case law shows that landlords can successfully request courts to terminate the lease in the case of hoarding (Gerechtshof Arnhem, 2008, Gerechtshof Arnhem-Leeuwarden, 2013). However, they do not request termination and eviction immediately, but only after warnings have been given and agreements between hoarder and landlord have been made (Rechtbank Arnhem, 2007; Gerechtshof Arnhem-Leeuwarden, 2013; Rechtbank Amsterdam, April 2014). We also found cases in which the court dismissed the landlord's claim. There are two main reasons why courts dismiss the claim. First, the court concludes that the hoarding does not result in a breach of the lease, because it causes no nuisance or a fire hazard (Gerechtshof's-Hertogenbosch, 2013) or that the landlord did not prove convincingly that the tenant breached the lease (Rechtbank Arnhem, 2007). Second, the court holds that the termination of the lease and the subsequent eviction would have a disproportionate impact on the tenant and his or her family (Rechtbank Rotterdam, 2010).

Moreover, we found a relatively small number of Dutch cases in which the landlord did not request the court to terminate the lease and evict the tenant, but an interdict to stop the breach, as well as a possible order for specific performance where a positive duty has been neglected by the lessee (section 3:296 BW). This order obliges the tenant, for example, to clean the premises, to keep the premises clean and/or to hire a cleaner (Rechtbank Amsterdam, June 2014). It may also prohibit the tenants from storing a large number of objects in the premises (Rechtbank Amsterdam, June 2014). In a number of cases, the court issued this type of order because it found that the tenant breached the lease (Rechtbank Rotterdam, 2010). However, we also found a case in which the District Court of Amsterdam held that the hoarding did not cause nuisance and, consequently, did not constitute a breach of the lease. The court, therefore, found no reason to issue an order to clean the premises (Rechtbank Amsterdam, June 2014).

With regard to the South African law, in the case of *Maphango v Aengus Lifestyle Properties (Pty) Ltd.* (Maphango, 2012), the Constitutional Court found that eviction proceedings against the appellants should be stayed until the Rental Housing Tribunal had determined whether under the circumstances such a termination amounted to an unfair practice. Among the orders the Tribunal could make is to set aside the termination of the lease (Maphango, 2012). While not concerned with hoarding, the case demonstrates the manner in which a lessor's right to terminate is restricted.

In this respect, it may be argued that where the breach of contract on the part of the lessee stems from a disability, that cancellation of the lease without providing a more generous period of time within which to remedy the breach may inflict undue hardship on the lessee (Cobb et al., 2007). In fact, it may constitute an unfair practice, on a particular interpretation of the Rental Housing Act (Rental Housing, 1999) and its regulations. The Act defines an "unfair practice" as either "any act or omission by a landlord or tenant in contravention of this Act" or "a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord" (section 1). Regarding the first definition, the Rental Housing Act requires that a landlord not discriminate against a tenant on grounds of disability (section 4(1)). A failure to provide a more generous period in which to remedy the breach may constitute a failure to make "reasonable accommodation" for persons with disabilities, and thus amount to discrimination (section 99(c) of Prevention of Unfair Discrimination, 2000; Cobb et al., 2007). The legal rights of the lessor, even though neutrally applied, may have a discriminatory effect on persons with disabilities (HM v Sweden, 2012; Grobbelaar-Du Plessis & Nienaber, 2014).

As to the second definition, various provincial regulations concerning unfair practices in terms of the Act prohibit the landlord from engaging in “oppressive or unreasonable conduct” or “oppressive or unconscionable conduct” (e.g. section 14(1)(d) *Gauteng Unfair Practices Regulations, 2001*). According to Maass, Cameron J’s judgement may be interpreted as preventing the termination of leases by lessors where “it has an unfair or unreasonable impact on the tenant’s rights or interests” (Maass, 2012, p. 653).

Given the vulnerable position hoarders may find themselves in, particularly in circumstances in which they are elderly and where their disorder can be brought within the definition of disability, not to provide them with a reasonable time in which to rectify any breach stemming from their disability may be an unfair practice (Cobb et al., 2007). This may be the case even where the breach is serious, given the possible consequences for the hoarder of facing eviction proceedings and homelessness in her circumstances. This position is strengthened by the prohibition on oppressive conduct by landlords in provincial regulations on unfair practices.

The above will have to remain speculation in the absence of a court interpreting “unfair practice” in the manner suggested. The wording of the relevant legislation and regulations appears sufficiently wide to allow for reasonable accommodation of a hoarding tenant.

What is clear, however, is that a lessor can only be expected to tolerate so much in accommodating a lessee who is damaging her property and/or creating a nuisance through her hoarding behaviour (Cobb et al., 2007). In both the Netherlands and South Africa, it will be necessary to balance the interests of the respective parties in determining whether the lessor should be restrained in exercising her right to cancel and seeking the ejection of the lessee. While a lessor may be expected to show some restraint in her dealings with a tenant with a disability, the lessor cannot be unreasonably expected to carry the attendant costs, especially in circumstances where a tenant is uncooperative. Furthermore, the lessor does not have only his interests to worry about, but also possibly the health and well-being of her other tenants and neighbours who may live in close proximity to the dangers created by the hoarder’s behaviour (Vols & Kiehl, 2015).

After the termination of the lease, the hoarder will usually have to be evicted from the premise. As a rule, a Dutch court will issue an eviction order after it has terminated the tenancy agreement. The court will usually allow the tenant a reasonable eviction period (e.g. two weeks). Consequently, in most cases there is no need to consider the proportionality of the eviction because the court has already considered proportionality issues while determining if the lease should be terminated (Vols, Kiehl, & Sidoli del Ceno, 2015).

Under South African law, nobody may be evicted from a home without a court order, made after considering all the relevant circumstances (section 26(3) of *Constitution, 1996*). This is given effect to by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (*Prevention of Illegal Evictions, 1998*, hereafter: PIE). Where an eviction is sought by a private owner a court must decide whether it is just and equitable to grant an eviction order in light of all relevant circumstances, which includes the rights and needs of disabled persons (section 4(6) and (7); Muller, 2014). This gives effect to the requirement that reasonable accommodation be made for disabled persons. In circumstances where an organ of state seeks an eviction of an unlawful occupier from a piece of land that falls within its jurisdiction, a court may grant an eviction order if it is just and equitable to do so, following a consideration of the relevant circumstances (section 6(1)). PIE further makes provision for mediation (section 7).

If it is just and equitable to grant an eviction order, the South African court, considering all relevant circumstances (section 4(9)), must decide on a just and equitable date by which the occupier must have vacated the land (section 4(8)(a)). It must also decide on a date on which the eviction order may be carried out in the event of the occupier not having done so (section 4(8)(b)).

Given that compulsive hoarding constitutes a mental health disorder that can fall under the definition of disability, the rights and needs of those who suffer from it should evidently be dealt with as disabled persons in terms of PIE or Article 8 (2) of the ECHR. This is important in providing a humane approach to hoarders in eviction cases. A failure to consider the rights and needs of this vulnerable would constitute an irregularity on the part of a court (Arendse, 2013; McCann, 2008). Disability, however, will not be a guarantee against eviction, particularly where a private party seeks eviction to make use of property for their own benefit (City of Johannesburg, 2012; Ives, 2012).

Unlike their Dutch counterparts, South African courts will require that attempts at mediation are made (*Port Elizabeth Municipality, 2005*). This is important for compulsive hoarding, in which eviction may entail severe psychological harm, given the attachment people develop towards their accumulated belongings (Slatter, 2009). In the context of mental illness, a mediated settlement is undoubtedly preferable, as it will avoid subjecting a vulnerable party to the trauma of unnecessary litigation. Time and professional help may help a hoarder come to terms with disposing of that which they have accumulated and cannot take with them.

The requirements that a forced eviction must be “just and equitable” (South Africa, sections 4(8) and 4(9) of PIE) or complies with the principle of proportionality (ECHR, Article 8), will likely demand a humane approach in evicting a person suffering from compulsive hoarding. It is best in a case of hoarding that a forced clean-up by strangers is used only as a last resort in the event of a hoarder who refuses to cooperate, given the potential impact a forced clean-up may have on the psychological wellbeing of the hoarder (Slatter, 2009). The hoarder should ideally be given a fair opportunity to organise their belongings and discard what is no longer needed. During this period, professional help could be provided to assist the hoarder with coming to terms with letting go of that she cannot take with her. Nonetheless, the interests of the private owner will also have to be borne in mind when determining whether it is just and equitable or proportionate that a hoarder must vacate the property.

#### 4. Local governments and administrative law

In both countries, local authorities may have to intervene in situations in which hoarding causes a fire hazard or affects the quality of life of neighbourhoods. Under South African law, the Local Government: Municipal Systems Act (Municipal Systems, 2000) requires municipalities to “promote a safe and healthy environment in the municipality” (section 4(2)(i)). A municipality may exercise either its executive or municipal powers in order to achieve this objective (sections 11(3)(l) and 11(3)(m)). Likewise, Dutch municipalities are obliged to promote the quality of life in neighbourhoods and address fire hazards and nuisances to the public (section 21 of the Dutch Constitution; sections 1a and 1b Housing Act).

Under Dutch law, the legal instruments with which local authorities are able to address problems associated with hoarding are mainly regulated in national legislation. Therefore, there are no major regional differences in the way Dutch local authorities deal with these problems. In South Africa, however, regional differences will exist in the legal options available to address problems associated with hoarding due to different local by-laws. For the sake of simplicity, the example of the City of Cape Town will be used.

In both countries, the law provides local authorities options to tackle problems that occur as result of hoarding of animals. Under Dutch law, the Animal Health and Welfare Act entitles the national government to seize animals (sections 36 and 106). An analysis of reported case law shows that this power can only be used in the case of serious maltreatment of the animals (College van Beroep voor het bedrijfsleven, 2011). Furthermore, the hoarding of animals may also result in a violation of the Spatial Planning Act (section 7.10). Case law demonstrates that

local authorities intervene in these types of cases because of non-compliance with zoning regulations ([Rechtbank Almelo, 2012](#)).

The City of Cape Town's Animal By-Law ([Animal By-Law, 2010](#)) limits the number of dogs and cats that may be present on different types of premises (sections 2 and 14). An authorised official may seize any animal held in contravention of these limits (section 7(1)(h) and 16(1)). A person who has previously had an animal removed from their care in terms of the by-law or has been subject to a conviction or civil judgement in respect of an animal in her care may no longer keep a dog (section 2(4)) or cat (section 14(4)).

Under South African law, hoarding of animals can also be controlled by the Animals Protection Act ([Animals Protection, 1962](#)). It creates a number of offences in respect of animals such as providing inadequate space (section 2(1)(b)), underfeeding an animal (section 2(1)(c)) in addition to deliberately or negligently keeping an animal in a dirty condition (section 2(1)(e)). A court may order that a person convicted in terms of the Act be deprived of ownership of the animals in question (section 3(1)(b)), in addition to being declared unfit to "own or be in charge of any animal, or of any animal of a specified kind, for a specified period" (section 3(1)(c)).

South African local authorities have multiple options to address fire hazards and threats to environmental health too. The City of Cape Town's By-Law Relating to Community Fire Safety ([By-Law Relating to Community Fire Safety, 2002](#)) prohibits the storing of combustible materials in such quantities or in a position that it creates a fire hazard (section 34(1)). It defines "combustible material" as "combustible refuse, combustible waste or any other material capable of igniting" (section 1). Furthermore, this by-law states that owners or people in charge of premises may not permit the accumulation of combustible materials in such a way that creates a fire hazard (section 34(2)). Where a fire hazard exists in contravention of the by-law, a controlling authority has the power summarily to abate such a condition (section 4(2)), including an order of closure of the premises until the violation has been rectified (section 4(3)).

In addition, the City of Cape Town's Environmental Health By-Law ([Environmental Health By-Law, 2003](#)) obliges occupiers to take precautions to prevent conditions that may result in the prevalence of vermin and pests (section 7). The by-law defines "health nuisance" broadly enough to tackle harmful forms of hoarding, including odours, waste and conditions attracting vermin. Where occupiers fail to comply, an authorised official may issue a notice requiring the prevention or eradication of any vermin or pests within a specified time (section 7). The by-law further prohibits the accumulation of materials on any premises that may cause a health nuisance (section 8).

Furthermore, where a hoarder accumulates what may be regarded as "waste", this may contravene the Waste Act ([Waste Act, 2008](#)). The definition of "holder of waste" in terms of the Waste Act includes any person who accumulates or stores waste (section 1). The Act places a duty on a holder of waste to "manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts" (section 16(1)(d)).

Under Dutch law, the Housing Act (*Woningwet*) is by far the most important for local authorities in addressing fire hazards and threats to environmental health. It prohibits every owner and user of a building or land from violating the national Buildings Decree 2012 ([Bouwbesluit, 2012](#)). This Decree bans behaviour that can be linked to hoarding disorder. For example, the decree prohibits the owner and user of a building or land from causing fire hazards or endangering the safety or health of other people (section 7.22). Furthermore, it prohibits the use of a building or land in a manner that causes a nuisance to other users or the local community (section 7.23). This nuisance may include causing a stench or causing noise nuisance. In the case where the condition or the use of a building or land complies with the Buildings Decree 2012 but, nevertheless, is dangerous for public safety or health in general, then the local authority is still entitled to intervene on the basis of a residuary provision in Section 1a of the Housing Act.

The local authorities are entitled to enforce the Housing Act with a number of different instruments in the case of a violation. First, it may impose an order subject to a penalty for non-compliance. In this order the authority instructs offenders what to do in order to stop the violation. If the offender does not comply with the order, then he/she needs to pay a penalty (section 5:31d of the [Algemene Wet Bestuursrecht](#)). Second, the authority may impose an administrative enforcement order instead. In this case, the offender is given an order too, but non-compliance will result in the municipality stopping the violation itself. The offender will have to pay all the costs of the enforcement action (section 5:21 of the [Algemene Wet Bestuursrecht](#)). If the case is of urgent importance the local authority is entitled to act immediately and stop the violation. Third, the authority may impose an administrative fine on the offender in the case of a repeated offence (section 92a of the Housing Act).

An analysis of reported case law shows that Dutch local authorities use these powers to address problems caused by hoarding ([Raad van State, September, 2013](#); [Raad van State January 2014](#); [Raad van State, April 2014](#); [Rechtbank Midden-Nederland, 2013](#), [Rechtbank Amsterdam March 2014](#)). For example, a resident of the municipality of Zoetermeer used her home to store a lot of papers and other combustible materials ([Raad van State, 2012](#)). Because the resident refused to open her door, the mayor issued a warrant to enter the dwelling ([Raad van State, 2012](#)). After the inspectors of the municipality entered the premises, they concluded that the condition of the premises caused a very serious fire hazard and attracted mice ([Raad van State, 2012](#)). Consequently, the local authority issued an administrative enforcement order and prohibited the further use of the premises ([Raad van State, 2012](#)). The resident was only allowed to use the premises again after the hoarded materials were removed and premises were cleaned ([Raad van State, 2012](#)). The local authority decided not to recover the costs because of the resident's personal circumstances ([Raad van State, 2012](#)). The resident appealed both the warrant to enter the dwelling as well as the administrative enforcement order. In both cases, the appeal was unsuccessful. First, the Council of State (i.e. the supreme administrative court in the Netherlands) ruled that there was a clear indication that the Housing Act was violated, that the warrant complied with all the requirements of the General Act on Entry into Dwellings and it, therefore, did not violate the resident's right to respect for the home codified in Article 8 ECHR ([Raad van State, 2012](#)). Second, the Council of State concluded that the administrative enforcement order complied with all the statutory requirements too ([Raad van State, 2012](#)). The local authority had proven convincingly (i.e. with photographs) that the condition of the premises caused nuisance and was unhealthy to the resident as well. The Council of State denied the resident's defence that the local authority's actions violated the proportionality principle because of the resident's bad health and poor financial situation ([Raad van State, 2012](#)).

As a last resort, the local authority is entitled to issue a closure order and close down a building (including a home) in the case of a repeated violation of Sections 1b or 1a of the Housing Act. Besides that, the repeated violation has to threaten the neighbourhood's quality of life or the safety or health in the neighbourhood (section 17 Housing Act).

Although local authorities do not seem to issue closure orders based on the Housing Act on a regular basis ([Vols, 2013](#)), our analysis of the case law shows that this instrument is used to address problems associated with hoarding disorder. The local authority in Vlaardingen issued a closure order and closed down the applicant's home in 2014 after it already cleaned the premise in 2006 and earlier in 2014 ([Rechtbank Rotterdam, 2014](#)). According to the local authority, the resident clearly violated the Housing Act because the condition of the premises (i.e. serious pollution) threatened the quality of life of his neighbours ([Rechtbank Rotterdam, 2014](#)). Although the court acknowledged that the Housing Act was violated and there is a clear societal need to intervene, it nevertheless found that the closure order violated the principle of proportionality ([Rechtbank Rotterdam, 2014](#)). The court held that closing down a home in this case was disproportionate because no urgent need for closure existed anymore because the resident had accepted help to

deal with his mental disorders (Rechtbank Rotterdam, 2014. See also Rechtbank Amsterdam, 2015).

## 5. Discussion and conclusions

In this last section we will juxtapose and identify the most relevant differences and similarities in the way the law deals with problems associated with hoarding in the two legal systems under review. The most obvious similarity of South African and Dutch law is that they do not directly address the issue of hoarding. Nonetheless, the law is by no means without implications for hoarders. This is particularly where their hoarding has an impact on others, whether they be neighbours or private owners of rental housing.

We have found several reported cases in Dutch law that deal with problems that are associated with hoarding. We have found some case law about the hoarding of animals, in which neighbour initiate legal proceedings and request court to set a limit on the number of animals their neighbour may have in his/her home. Furthermore, we have analysed several cases about landlords that initiate eviction proceedings because of hoarding of the tenant. Lastly, our analysis of case law shows that Dutch local authorities try to address hoarding with orders subject to a penalty for non-compliance or administrative enforcement orders. The local authorities do also close down hoarders' homes, but only if other less intrusive interventions were not successful.

There are currently no reported cases about hoarding in South Africa. The case of the woman who hoarded 160 cats was dealt with at Magistrates' Court level (Samodien, 2007), and as such was never reported. Because of the dearth of reported cases, this paper has approached the problem in the abstract with regard to the South African law's approach to hoarding by making suggestions as to the manner in which hoarding may be addressed by neighbours, landlords and local authorities.

In the absence of fieldwork, the reasons for the absence of hoarding in South African case law, compared to the cases that arise in the Netherlands, will have to remain speculative. Nevertheless some suggestions can be put forward. In the Netherlands, nearly half of all available premises are rental premises homes and people live close together (Vols & Kiehl, 2015). In South Africa, by contrast, there is a high rate of homeownership and the middle classes tend to live in suburbs (Cokayne, 2012; Selzer & Heller, 2010). This may account for why only an extreme case of animal hoarding by a homeowner in a suburban environment has been reported in the media (Samodien, 2007). However, studies in the United States have found hoarding to be more prevalent among the poor than the wealthy (Samuels et al., 2008; Wheaton, Timpano, LaSalle-Ricci, & Murphy, 2008). As such, homeownership and the greater space between neighbours the South African middle and upper classes enjoy cannot be a satisfactory explanation for the absence of case law concerning hoarding. It is more than likely that cases involving hoarding – whether they be in the context of rental housing or eviction – involve those who find themselves in the lower income brackets. It seems probable that their cases never get beyond the Magistrates Court level and are thus never reported.

The next step is to distinguish different types of instruments with which to address hoarding. The analysis above shows that three types can be distinguished. First, there are instruments which focus on the eviction of the hoarder. Second, we distinguish instruments which compel the hoarder to clean her home. Third, there are instruments that compel the hoarder to clean her home, but also seek to address the underlying mental health issues.

The next step in the analysis of the different types of instruments will be to identify what we consider the “best approach”. As stated above, we apply the functional method in our comparative analysis. So which type of instruments is preferable? This question is not easy to answer. In answering it, we cannot rely on the functional method applied in the above comparative analysis because this method's objective is “to lead to solutions, which are comparable, not to point out which are the best” (Oderkerk, 2007, p. 331). Consequently, “the criteria of evaluation

must be different from the criteria of comparability. (...) Equivalence functionalism makes comparability possible, but simultaneously suggests restraint in evaluating results” (Michaels, 2006, p. 375).

So if we want to point out the preferable type of instrument, we need to be clear about the evaluation criteria we use in assessing the different types of instruments. First, the instrument needs to strike a balance between the obligation to protect the public from the harms that arise from hoarding on the one hand and the responsibility to provide reasonable accommodation to hoarders as disabled persons on the other hand. Second, if such a balance is achieved, we argue that the law should be applied in a way that minimises anti-therapeutic consequences of the legal intervention as much as possible. With regard to this, we agree with Wexler who argues that law should be applied “in a more therapeutic way so long as other values, such as justice and due process, can be fully respected” (Wexler, 2008, p. 4).

As stated above, the first type of instruments address hoarding with eviction. Both Dutch and South African law allow landlords and local authorities to evict hoarders from their home. There are legal instruments that seek the eviction of a hoarder in circumstances where he or she has become an unlawful occupier of her dwelling. This may be due to the landlord cancelling the lease for breach where the hoarder has been uncooperative in remedying the breach or for other reasons such as failure to pay rent, the landlord's intention to use the property for his own purposes, etc.

Eviction will probably help to stop the nuisance and health hazards to the neighbours of the evicted hoarder. Nevertheless, we do not believe that eviction will strike a balance between the neighbours' (and maybe the landlord's) rights and the rights of the hoarder. Eviction functions as a blunt weapon, compelling the hoarder to leave his/her home, while not addressing the underlying mental health issues at all. Moreover, eviction has severe anti-therapeutic effects that will probably even deepen the hoarder's problems. The consequences of the eviction can be devastating for the residents in general and people suffering from a hoarding disorder in particular. Case law shows, for example, that a young child was placed under the supervision of a family guardian after the home of the mother was closed down because of the unhygienic conditions of the premises (Rechtbank Maastricht, 2010). Eviction is a clear pathway to homelessness and it will deprive the hoarder and his family of the psycho-social benefits of having a home (Kearns, Hiscock, Ellaway, & MacIntyre, 2003; Vols, 2014).

Nonetheless, our analysis has also shown that Dutch and South African law protect people against use of this first type of instruments. Both jurisdictions provide a number of safeguards against eviction: courts must test the eviction against an objective standard. In doing to it must balance the interests of the affected parties and consider all relevant circumstances (Fick and Vols, in press). Article 8 of the ECHR and built-in safeguards in Dutch tenancy and administrative law entitle occupiers to have the proportionality of the eviction determined by a court (Vols et al., 2015). In South Africa, the procedures set out in PIE must be followed. This piece of legislation, giving effect to section 26(3) of the Constitution, requires a consideration of all relevant circumstances, including the rights and needs of disabled persons (section 4(6) and (7)).

In the context of rental housing and eviction law, the South African Constitution and the ECHR clearly prescribe the need to take into account the particular circumstances of hoarders. While their interests will inevitably need to be balanced against those of landlords and private owners, acknowledging their mental disorder as a disability means that the law allows for a humane approach towards them. The procedural and substantive safeguards will presumably limit the use of eviction against hoarders and, therefore, force local authorities and landlords to use less intrusive instruments to address the problem behaviour.

Nonetheless, disability is not an absolute guarantee against eviction. Under South African law, however, the requirements of PIE clearly allow for some degree of reasonable accommodation in the eviction process for a hoarder. The law can provide for reasonable accommodation of

hoarders while at the same time protecting the interests of parties affected by such behaviour. Particularly in the suggested interpretation of the relevant rental housing legislation, it is suggested that the hoarder can be provided with reasonable accommodation in remedying any breach that results from her behaviour (Cobb et al., 2007), while at the same time a landlord will be entitled to terminate the lease should a hoarder remain uncooperative. However, in the event of an eviction order being sought and ultimately granted, PIE provides for a consideration of the rights and needs of disabled persons. Under Dutch law, the protection of eviction does not go that far: it does not require to authorities to offer alternative accommodation (Fick and Vols, in press). It is therefore submitted that the South African law strikes a better balance between the state's duties to hoarders as disabled people and those affected by their behaviour in this respect.

The second type of instruments compels hoarders to clean her home, while not addressing the underlying mental health issues. Such instruments are usually concerned with addressing immediate threats to neighbours and the public at large. An example would be the law of nuisance in both countries. The function of nuisance law is not to address the underlying mental health problems of the hoarder, but rather to eliminate the immediate nuisance to her neighbours in the short term. Although not concerned with addressing the underlying mental health issues, nuisance law does appear to strike a sufficient balance between the interests of the relevant parties. Evidently private neighbours hold no legal duties towards the hoarder, and where the hoarder's use of her property results in discomfort that can be classified as an actionable nuisance, the law should compel abatement of the nuisance. However, nuisance law does not allow the unwarranted harassment of hoarders who do not infringe on the rights of their neighbours. In particular, a neighbour is unlikely to succeed with a nuisance claim based on aesthetics in the absence of genuine discomfort caused by smells etc.

Another example of the second type of instruments are the powers of local authorities provided by Dutch and South African administrative law. These powers focus on compelling the cleaning of the home with the aim to eliminate fire and health hazards, or animal welfare. Although hoarding may fall within the scope of these laws, addressing mental health issues is clearly not a primary consideration. Of course, the hoarder is better off if this type of instrument is used compared to the use of the blunt weapon of eviction: he is not at risk of homelessness. Nonetheless, the second type of instruments merely focuses on tackling the symptoms of the hoarding and not the underlying problems. In conclusion, the use of the second type of instruments does strike a better balance between the different rights of the interested parties and the state's different obligations, but the outcome cannot be characterised as truly therapeutic.

The third type of instruments is very similar to the second type of instrument, but still differs on a crucial aspect. This type of instruments compels the hoarder to clean her home, but also seek to address the underlying mental health issues. This type of instruments can be characterised as the most therapeutic: they do not only aim to address the symptoms of the hoarding but also to resolve the underlying causes of the problem behaviour (Wiener, Winick, Georges, & Castro, 2010). The intervention makes sure that the hoarder will not be threatened with eviction and will not lose his home, because this will have clearly anti-therapeutic consequences. The authorities do tackle the nuisance and hazards caused by the hoarding (i.e. step by step clean-up of the home) and at the same time try to prevent the reoccurrence of the problem by working together with mental health care agencies and focussing on the making of relapse prevention plans. The third type of instruments, therefore, seem to strike the best balance between the different rights and obligations of all interested parties and seem to achieve the most therapeutic and sustainable outcomes.

However, in our analysis we did not find explicit examples of the third type of instruments to address hoarding disorder in the legal

systems under review. Dutch and South African law do only provide instruments of the first (eviction) or second (forced clean-up) type. Therefore, we can conclude that the legal structure or framework is not designed in a therapeutic way: there is no explicit therapeutic design of the law, as Wexler would characterise it (Wexler, 2015).

Nonetheless, we believe that authorities and courts could easily transform the available second type instrument into more therapeutic instruments of the third type by a more therapeutic application of the law (Wexler, 2015). Given that hoarding will likely never be directly addressed by the legislatures in either the Netherlands or South Africa, creative interpretations of existing law perhaps provides the best avenue to provide reasonable accommodation for hoarders. Administrative and rental housing laws in both jurisdictions under review already give the authorities and landlords flexible and discretionary powers, which they use in a more therapeutic way. For example, Dutch landlords are entitled to request a court grant an interdict to stop the hoarding, as well as an order for the hoarder to seek help for his problems and to establish a relapse prevention plan (Vols & Veen, 2015). In South Africa, for example, the landlord's right to cancel in the event of a breach of lease is not absolute, and on the suggested interpretation of the Rental Housing Act, reasonable accommodation for a hoarding tenant should be required. Reasonable accommodation in these circumstances would take the form of a more generous period in which hoarder can remedy a breach of her lease stemming from her hoarding behaviour (Cobb et al., 2007). This effectively allows the underlying behaviour to be addressed, while addressing the concerns of the landlord and the impact the hoarding has on neighbours. A therapeutic approach to interpreting the existing law must not lose sight of the need to sufficiently protect the interests of those affected by hoarding behaviour. We, however, submit that the interpretations of the existing law suggested do strike an ideal balance between the competing interests of the parties concerned.

We hope this first comparative legal analysis will provide further comparative research with a framework to deepen our understanding of the way legal systems deal with hoarding. However, more research is needed. It is suggested that fieldwork would be beneficial to determine the manner in which these cases are dealt with in practice. While the law in both countries superficially can provide hoarders with the requisite reasonable accommodation they need, it is not guaranteed this occurs in practice. There are important questions that only fieldwork can answer. Two central questions come to mind. To what extent are hoarders provided with reasonable accommodation when they are subject to termination of their leases and subsequently eviction? To what extent are their mental health issues addressed when their hoarding brings them into conflict with authorities, neighbours and landlords? It is hoped this article will provide a basis for such research in the future.

## Acknowledgements

We would like to thank the anonymous reviewers for their valuable feedback. We also would like to thank Professor Hanri Mostert of the Department of Private Law at the University of Cape Town and the members of her PhD hour reading group for reading an early draft of this article and providing us with valuable feedback.

Michel Vols would like to acknowledge and thank the support of the Netherlands Organisation for Scientific Research (NWO). This work is part of the VENI research project "Neighbours from hell": from eviction to solving problems' with project number 451-15-013, which is financed by the NWO.

Richard Cramer would like to acknowledge and thank the support of the National Research Foundation of South Africa for their generous funding of his doctoral studies, which has allowed him the opportunity to collaborate with Professor Michel Vols.



## References

- Abas, P. (2007). *Bijzondere overeenkomsten. Huur*. Deventer: Kluwer.
- Algemene Wet Bestuursrecht.
- Allaças Investments (Pty) Ltd v Milnerton Golf Club 2007 (2) SA 40 (C).
- American Psychiatric Association (2013). *Diagnostic and statistical manual of mental disorders: DSM-5* (5th ed.). Washington, DC: American Psychiatric Association.
- Animal By-Law, 2010 (City of Cape Town).
- Animals Protection Act 71 of 1962.
- Arendse v Arendse 2013 (3) SA 347 (WCC).
- Arluke, A., Frost, R. O., Luke, C., & Messner, E. (2002). Health implications of animal hoarding. *Health and Social Work*, 27, 125–136.
- Badenhorst, P. J., Pienaar, J., & Mostert, H. (2006). *Silberberg and Schoeman's the law of property* (5th ed.). Durban: LexisNexis Butterworths.
- Bakels, F. B. (2011). *Ontbinding van overeenkomsten*. Deventer: Kluwer.
- Berger, K. F. M. (2004). *Burenrecht, mandeligheid, erfdiensbaarden* (4th ed.). Deventer: Kluwer.
- Berry, C., Patronek, G., & Lockwood, R. (2005). Long-term outcomes in animal hoarding cases. *Animal Law*, 11, 167–194.
- Bouwbesluit (2012).
- Bratiotis, C., & Woody, S. (2014). Community interventions for hoarding. In R. O. Frost, & G. Steketee (Eds.), *The Oxford handbook on hoarding and acquiring* (pp. 316–330). New York: Oxford University Press.
- Burgerlijk Wetboek.
- By-Law Relating to Community Fire Safety, 2002 (City of Cape Town).
- Church, J., & Church, J. (2006). Nuisance. In W. A. Joubert (Ed.), (Founding ed.). *The law of South Africa*, vol. 19. Durban: LexisNexis Butterworths.
- City of Johannesburg v Changing Tides 74 (Pty) Ltd 2012 (6) SA 294 (SCA).
- Cobb, T., Dunn, E., Hernandez, V. T., Okleberry, J. M., Pfefferkorn, R., & Spector, C. (2007). Advocacy strategies to fight eviction in cases of compulsive hoarding and cluttering. *Journal of Poverty Law and Policy*, 41, 427–441.
- Cokayne, R. (2012, June 26). *Homeownership in SA remains high*. Star, 24.
- College van Beroep voor het bedrijfsleven 21 April 2011, ECLI:NL:CBB:2010:BN4891; ECLI:NL:CBB:2011:BQ3305 & ECLI:NL:CBB:2012:BZ2688.
- Colombi Ciacchi, A. L. B. (2013). Strengthening the comparative method in European legal research: Three suggestions. In C. Godt (Ed.), *Cross border research and transnational teaching under the treaty of Lisbon: Hanse Law School in perspective* (pp. 25–37). Nijmegen: Wolf Legal Publisher.
- Constitution of the Republic of South Africa, 1996.
- Convention on the Rights of Persons with Disabilities (adopted 13 December 1966, entered into force 2 May 2008) UNGA/61/106 2515 UNTS 3 (CRPD).
- Dell v The Town Council of Cape Town (1879) 9Buch 3.
- Dorland v Smits 2002 (5) SA 374 (C).
- Environmental Health By-Law, 2003 (City of Cape Town).
- Fick, S., & Vols, M. (2016). Best protection against eviction? A comparative analysis of protection against evictions in the European Convention on Human Rights and the South African Constitution. *European Journal of Comparative Law and Governance*, 3 (in press).
- Frost, R. O., & Hristova, V. (2011). Assessment of hoarding. *Journal of Clinical Psychology*, 67, 456–466.
- Frost, R. O., Patronek, G., Arluke, A., & Steketee, G. (2015). The hoarding of animals: An update. *Psychiatric Times* (Retrieved from <http://www.psychiatrictimes.com/printpdf/204813>. Last accessed: 10–12-2015).
- Frost, R. O., Steketee, G., & Williams, L. (2000). Hoarding: A community health problem. *Health and Social Care in the Community*, 8, 229–234.
- Gauteng Unfair Practices Regulations, 2001.
- Gerechthof Arnhem-Leeuwarden 26 February 2013 ECLI:NL:GHARL:2013:BZ2350.
- Gerechthof Arnhem 25 May 2008 ECLI:NL:GHARN:2008:BD2432.
- Gerechthof's-Gravenhage 10 November 2009 ECLI:NL:GHSGR:2009:BK2852.
- Gerechthof's-Hertogenbosch 26 November 2013 ECLI:NL:GHSHE:2013:5637.
- Gien v Gien 1979 (2) SA 1113 (T).
- Glover, G. (2014). *Kerr's law of sale and lease* (4th ed.). Durban: LexisNexis Butterworths.
- Graziadei, M. (2003). The functionalist heritage. In P. Legrand, & R. Munday (Eds.), *Comparative legal studies: Traditions and transitions* (pp. 100–128). Cambridge: Cambridge University Press.
- Grobelaar-Du Plessis, I., & Nienaber, A. (2014). Disability and reasonable accommodation. *South African Journal on Human Rights*, 30, 366–379.
- Hielkema, H. (2012). *Burenoverlast* (2nd ed.). Apeldoorn: Maklu.
- HM v Sweden (19 April 2012). *Communication 3/2011, CRPD/C/7/D/3/2011*.
- Hoge Raad (3 May 1991). *Nederlandse Jurisprudentie 1991, 476 (De Jong v. Van Tol)*.
- Hoge Raad (24 January 1992). *Nederlandse Jurisprudentie 1992, 280 (Aken v Heideman)*.
- Hoge Raad (22 October 1999). *Nederlandse Jurisprudentie 2000, 208 (Twickler/R.)*.
- Howard Farrar Robinson & Co. v East London Municipality (1907) 24 SC 685.
- Ives v Rajah 2012 (2) SA 167 (WCC).
- Kamerstukken I 2015–2016, 33090, A.
- Kearns, A., Hiscock, R., Ellaway, A., & MacIntyre, S. (2003). Beyond four walls. The psycho-social benefits of home: Evidence from West Central Scotland. *Housing Studies*, 15, 387–400.
- Knobel, J. C. (2003). Inbreukmaking op die estetiese as oorlas. *Tydskrif vir hedendaagse Romeins-Hollandse Reg*, 66, 500–505.
- Laskey v Showzone CC 2007 (2) SA 48 (CPD).
- Maass, S. (2012). Conceptualising an unfair practice regime in landlord-tenant law. *Southern African Public Law*, 27, 652–670.
- Manley van Niekerk (Pty) Ltd (Now Video Sound Studios (Pty) Ltd) v Assegai Safaris and Film Productions (Pty) Ltd 1977 (2) SA 416 (A).
- Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd 2012 (3) SA 531 (CC).
- McCann v. United Kingdom (2008) 47 EHRR 40.
- MEC for Education: Kwazulu-Natal and Others v Pillay 2008 (1) SA 474 (CC).
- Michaels, R. (2006). The functional method in comparative law. In M. Reimann, & R. Zimmerman (Eds.), *The Oxford handbook of comparative law* (pp. 339–382). Oxford: Oxford University Press.
- Mijnssen, F. H. J. (2008). *Mr. C. Assers handleiding tot de beoefening van het Nederlands burgerlijk recht. Zakenrecht. Deel 5. Eigendom en beperkte rechten*. Deventer: Kluwer (Chapter 4).
- Mostert, H. (2013). Nuisance. In D. Visser, & E. Reid (Eds.), *Private law and human rights* (pp. 256–293). Edinburgh: Edinburgh University Press.
- Mostert, H., & Pope, A. (2010). *The principles of the law of property in South Africa*. Cape Town: Oxford University Press.
- Muller, G. (2014). On considering alternative accommodation and the rights and needs of vulnerable people. *South African Journal on Human Rights*, 30, 41–62.
- Oderkerk, M. (2007). The CFR and the method(s) of comparative legal research. *European Review of Contract Law*, 3, 315–331.
- Örücü, E. (2007). Developing comparative law. In E. Örücü, & D. Nelkin (Eds.), *Comparative law: A handbook* (pp. 43–65). Oxford: Hart.
- Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC).
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.
- Prinsloo v Shaw 1938 A.D. 570.
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.
- Psychiatric Times (2007). Hoarding: Studies characterize phenotype, demonstrate treatment efficacy. *Psychiatric Times* (Retrieved from <http://www.psychiatrictimes.com/articles/hoarding-studies-characterize-phenotype-demonstrate-treatment-efficacy>. Last accessed 10–12-2015).
- Raad van State 22 August 2012 ECLI:NL:RVS:2012:BX5271.
- Raad van State 11 September 2013 ECLI:NL:RVS:2013:1089.
- Raad van State 15 January 2014a ECLI:NL:RVS:2014:41
- Raad van State 23 April 2014b ECLI:NL:RVS:2014:1440.
- Rechtbank Alkmaar 22 October 2009, ECLI:NL:RBALK:2009:BL1065.
- Rechtbank Almelo 15 March 2012, ECLI:NL:RBALM:2012:BV9131.
- Rechtbank Amsterdam 11 March 2014a ECLI:NL:RBAMS:2014:1116.
- Rechtbank Amsterdam 7 April 2014b, ECLI:NL:RBAMS:2014:1722.
- Rechtbank Amsterdam 26 June 2014c ECLI:NL:RBAMS:2014:4188.
- Rechtbank Amsterdam 3 March 2015 ECLI:NL:RBAMS:2015:1267.
- Rechtbank Arnhem 24 August 2007 ECLI:NL:RBARN:2007:BB2730.
- Rechtbank Leeuwarden 12 May 2010, ECLI:NL:RBLEE:2010:BM5481.
- Rechtbank Maastricht 7 December 2010 ECLI:NL:RBMAA:2010:BO7477.
- Rechtbank Midden-Nederland 28 June 2013 ECLI:NL:RBMNE:2013:3263.
- Rechtbank Rotterdam 28 September 2010 ECLI:NL:RBROT:2010:BN9785.
- Rechtbank Rotterdam 2 May 2014 ECLI:NL:RBROT:2014:3630.
- Regal v African Superslate (Pty) Ltd 1963 (1) SA 102 (A).
- Rental Housing Act 50 of 1999.
- Samodien, L. (2007, September 2). *Women with 'hoarding obsession' own 160 cats*. Sunday Argus, 5.
- Samuels, J. F., Bienvenu, O. J., Grados, M. A., Cullen, B., Riddle, M. A., Liang, K., ... Nestadt, G. (2008). Prevalence and correlates of hoarding behavior in a community-based sample. *Behaviour Research and Therapy*, 46, 836–840.
- Selzer, A. K., & Heller, P. (2010). The spatial dynamics of middle class formation in post-apartheid South Africa: Enclavization and fragmentation in Johannesburg. In J. Go (Ed.), *Political power and social theory*, vol. 21. (pp. 147–184). Bingley: Emerald.
- Slatter, M. (2009). 'Stuff', 'mess' and 'hoarding': A maze of language and law. *National Hoarding and Squalor Conference* Retrieved from <http://www.hoardingsqualorconference.com.au/2009/files/presentations/Stuff%20Mess%20and%20Hoarding%20a%20maze%20of%20language%20and%20law%20-%20Michele%20Slatter%20-%20Associate%20Professor%20of%20Law.pdf> (Last accessed: 10–12-2015).
- Staatsblad (2016). *Rijkswet van 14 april 2016, houdende goedkeuring van het op 13 december 2006 te New York tot stand gekomen Verdrag inzake de rechten van personen met een handicap*.
- Timano, K. R., Smith, A. M., Yang, J. C., & Çek, D. (2014). Information processing. In R. O. Frost, & G. Steketee (Eds.), *The Oxford handbook on hoarding and acquiring* (pp. 100–119). New York: Oxford University Press.
- UN Enable (2015). *Convention and optional protocol signatures and ratifications*. United Nations Enable (Retrieved from <http://www.un.org/disabilities/countries.asp?navid=17&pid=166>. Last accessed: 10–12-2015).
- Van der Walt, A. J. (2010). *The law of neighbours*. Cape Town: Juta.
- Van der Westhuizen, v. D. T. (1912). *CPD*, 184.
- Van der Merwe, C. G., & Pope, A. (2007). Property. In F. Du Bois (Ed.), *Wille's Principles of South African Law*.
- Verheij, A. (2010). Fault liability between neighbours in the Netherlands 1850–2000. In J. Gordley (Ed.), *The development of liability between neighbours* (pp. 107–131). Cambridge: Cambridge University Press.
- Vols, M. (2013). *Woonoverlast en het recht op privéleven*. Den Haag: Boom Juridische Uitgevers.
- Vols, M. (2014). Neighbors from hell: Problem-solving and housing laws in the Netherlands. *The Arizona Summit Law Review*, 7, 507–526.
- Vols, M. (2015). Artikel 8 EVRM en de gedwongen ontruiming van de huurwoning vanwege overlast. *WR Tijdschrift voor Huurrecht*, 24, 55–62.
- Vols, M., & Kiehl, M. (2015). Balancing tenants' rights while addressing neighbour nuisance in Switzerland, Germany and the Netherlands. *European Property Law Journal*, 4(1), 1–30.
- Vols, M., & Veen, C. (2015). *Visiedocument Woonoverlast effectief aanpakken met gedragsaanwijzingen*. Utrecht: Centrum voor Criminaliteitspreventie en Veiligheid.
- Vols, M., Kiehl, M., & Sidoli del Ceno, J. (2015). Human rights and protection against eviction in anti-social behaviour cases in the Netherlands and Germany. *European Journal of Comparative Law and Governance*, 2(2), 156–181.

- Vols, M., Kiehl, M., & Sidoli del Ceno, J. (2016). Burenrecht en onrechtmatige hinder in de stad van de 21e eeuw. *Weekblad voor Privaatrecht, Notariaat en Registratie*, 7098, 206–2012.
- Waste Act 59 of 2008.
- Wet Gelijke Behandeling op grond van Handicap of Chronische Ziekte of 2003.
- Wexler, D. B. (2008). *Rehabilitating lawyers: Principles of therapeutic jurisprudence for criminal law practice*. Durham: Carolina Academic Press.
- Wexler, D. B. (2015). Moving forward on mainstreaming therapeutic jurisprudence: An ongoing process to facilitate the therapeutic design and application of the law. In W. Brookbanks (Ed.), *Therapeutic jurisprudence: New Zealand perspectives* (pp. v–xiv). New Zealand: Thomas Reuters.
- Wheaton, M., Timpano, K. R., LaSalle-Ricci, V. H., & Murphy, D. L. (2008). Characterizing the hoarding phenotype in individuals with OCD: Associations with comorbidity, severity and gender. *Journal of Anxiety Disorders*, 22, 243–252.
- Whittaker v Hime (1912) 33 NPD 72.
- Wibbens-de Jong, A. C. (2009). *Burenrecht* (4th ed.). Deventer: Kluwer.
- Wiener, R., Winick, B. J., Georges, L. J., & Castro, A. (2010). A testable theory of problem solving courts: Avoiding past empirical and legal failures. *International Journal of Law and Psychiatry*, 33, 417–427.