What's new in human rights doctoral research

A collection of critical literature reviews Vol. VI

edited by

Pietro de Perini, Paolo De Stefani

PADOVA UP

PADOVA UNIVERSITY PRESS

Original title *What's new in human rights doctoral research. A collection of critical literature reviews. Vol. VI*

Università degli Studi di Padova
via 8 Febbraio 2, Padova
www.padovauniversitypress.it
ISBN 978-88-6938-395-3

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Introduction

Pietro de Perini, Paolo De Stefani

What is in your hands or on your screen is the sixth edition of this series, which was created back in 2017 to provide a then emerging community of doctoral students in human rights with both an opportunity to start challenging themselves with the complex requirements of academic publishing, and a platform to share up-to-date knowledge about the issues on which their research interests were built with their peers. All of this was provided, from the outset, in a rigorous open-access format, allowing all editions to be freely accessible.

Over these seven years, such a community of doctoral students at the University of Padova has expanded and changed. It has added new disciplinary perspectives, themes, and actors to the broader reflection on human rights research that this series annually seeks to represent. Therefore, in providing a heterogeneous excursus of different themes and scholarships that may engage with human rights themes, these edited books provide an increasingly significant glimpse of what interdisciplinary research may mean in practice, as well as of what are the challenges for scientific rigour connected to it, and how and to what extent human rights, as a cross-cutting research subject and a method of inquiry, can contribute advancing this concept.

Consistent with this trend, the 10 critical literature reviews that make up the current edition provide insights from legal studies, political science, sociology, economics, psychology, and anthropology, ranging from problems of discrimination, exclusion, and violence toward specific groups (children, women, homeless people, migrants, and minority groups in divided societies), to broader human rights concerns with respect to current global challenges such as those connected with environment degradation, development, the cyberspace, and the need to control private corporations.

While most of the contributions of this book come from doctoral students at the University of Padova - the academic institution that launched and managed this editorial initiative and the home of the Ph.D Programme in Human Rights, Society, and Multilevel Governance - additional chapters were submitted by students from programmes managed by other universities which were engaged mostly thanks to the commitment of the home doctoral community to extend and exchange with other peers working on connected topics. The editors wish that this trend and the networking action supporting it will be further consolidated for the incoming editions.

This edition of *What's new in human rights doctoral research* opens with a scoping review on violence against women in the virtual space, by Thi Ngoc Anh Nguyen. More specifically, this chapter focusses on the role and human rights obligations of 'internet intermediaries', such as digital platforms and app distribution service providers, with respect to this new and globally widespread form of violence against women. The review addresses conceptual and scholarly debates about cyberviolence against women, the emerging academic literature on the role of digital platforms in spreading, influencing and intensifying this form of violence, and the existing approaches that are trying to address the complex balance between the influence and accountability of these 'internet intermediaries', when it comes to violence against women and, more generally, human rights violations.

A focus on women's rights and participation is also prominent in the second chapter, authored by Lucia Botti. Botti's review of the literature applies a feminist lens to investigate the effectiveness of transitional justice processes in Bosnia-Herzegovina. In particular, the contribution focusses on the role and impact of the Women's Court, a bottom-up people's tribunal-like initiative gathered in May 2015 in Sarajevo. Without aiming to replace the top-down established institutional system, this Court provided a safe space for women to shape both their narratives in the post-conflict reconciliation in former Yugoslavia, and their own model of justice. Besides investigating the origins, structures, shortcomings, and accomplishments of this civil society experience, this contribution also adds an original empirical contribution, based on data collected through a set of semi-structured interviews with stakeholders from civil society, academia, and international organisations.

Chapter 3, by Sati Elifcan Özbek, reviews the available literature on the evolution of what she labels 'development thinking', from the early approaches to this practice, based on a pure neoliberal economic perspective, to the more inclusive, rights-based and sustainable understanding of this concept that has been gradually permeating the global multilateral and civ-

il society approaches for the last decades (and which includes experiences related to the human rights-based approach to development and the right to development). The focus of this literature review is on all the dimensions of sustainable development (environmental, socio-economic and cultural), and is based on specific case-study, that of mountain areas, with respect to their geographic features, livelihoods and communities.

A concern with the environment and with the contribution of the human rights-based approach is also present in the literature review authored by Katarina Velkov, which takes the fourth spot in this edited volume. Velkov's contribution primarily addresses the issue of climate-induced displacements or environmental refugees, which have increasingly become a core global human rights concern. Moving from the weakness of current international refugee law when it comes to protecting the rights of those displaced because of natural catastrophes, this chapter adopts a human rights-based approach to address both policies and legal instruments adopted in Europe in the context of environment-induced migration. It also investigates the contribution of climate change litigation, through selected case law analysis, to assess the impact of this tool in shaping climate policy measures and human rights concepts related to climate issues. Velkov's contribution eventually focusses on an original perspective to address climate refugee status, presenting a new approach to the application of non-refoulment criteria in asylum requests.

The environment is part and parcel of the scope of the fifth chapter of this book, by Gianluca Pardi. This paper addresses the role of business enterprises in affecting the human right to a healthy environment, recently recognised by the international community, with a specific reference to the role played by digital enterprises. Pardi's review addresses the contribution that international law can make in understanding and guiding the difficult balance that exists with respect to the implications of technological development between the potentially negative effects on human rights it can produce, on the one hand, and the positive role it can play in the preservation of a safe, sustainable and healthy environment as a human right, on the other.

Chapter 6 is by Erika Iacona. This contribution addresses the evolving debate on care relationship in Italy, especially in the presence of serious illness situations, focusing on the innovations introduced by Italian Law 219/2017 (on provisions for informed consent and advance directives). Iacona's contribution reviews the existing literature on this debate, with specific reference to two inherent problems: lack of knowledge of the law under investigation on the part of all actors involved in its implementa-

tion process, and the difficulty that society at large faces in engaging in an open dialogue about serious illness and the end of life. Finally, the chapter provides an action-oriented contribution by discussing the merits of introducing 'death education' courses as a tool to achieve greater awareness of these sensitive issues at both the social and professional levels.

Isabella Valbusa is the author of the seventh chapter of this book, which addresses problems and concerns related to human rights and inclusion of children from a mainly psychological perspective. Framed with the expanding debate on the increased intertwining of growing diversity within social contexts and on the implications of this process on discrimination and social exclusion of children, especially in schools, Valbusa's chapter presents examples of interventions to promote inclusive attitudes and knowledge of inclusive rights. The interventions selected for the review are developed in the framework of 'Positive Youth Development', one of the most recent and accredited models for the positive and enhancement of positive characteristics of children and adolescents and their surrounding context.

Chapter 8 also considers children's wellbeing concerns. In this contribution, Ludovica Aricò, addresses the issue of child labour and begins from an acknowledgement of the differences with respect to the implementation of relevant ILO conventions in the Global North and in the Global South. Looking at the debate about the significant conceptual divide existing between the Northern and Southern understandings of child and childhood, Aricò's review eventually demonstrates that the prevalent approach currently applied to childhood issues at the global level is historically derived from a northern ideologic view of the phenomenon, thus supporting the position of those critical scholars who attribute the ineffectiveness of international norms related to children in the Global South to the perpetuated unbalanced representation of ideologies and conception in international action.

The ninth chapter of this book, by Franca Viganò, centres around the issue of homelessness. It reviews different definitions and understanding of vulnerability and marginalisation, with specific respect to people experiencing such a situation. Viganò's chapter considers both those measures that were adopted to meet the needs of those belonging to such a marginalized group and the other processes within the society that lead to marginalization. analysis of policies and interventions is deeply related to the territory analysed. Taking into account the importance of the territory in framing the analysis of policies and interventions on these matters, the review is carried out with specific regard to Italy, a crucial case study due to its regional administrative differences that also affect the management of

issues of marginalisation and homelessness. It has a specific focus on the policy responses to fulfil right to health of vulnerable groups in a post-Covid19 context.

Lamia Yasin concludes this collection of critical literature reviews with a contribution that delves into identity and citizenship and the political and social implications of different understandings of these two complex and multifaceted concepts. Yasin's chapter provides a multidisciplinary review (integrating sociological, psychological, and political science perspectives) on how identity and citizenship are intended in the current political and social landscape, their constituent elements, and the perceptions of the two concepts in multicultural societies. After having addressed both concepts singularly and with particular attention to their implications and significance with respect to human rights, this final chapter considers how these two notions interact and are integrated within the specific context of divided societies.

Cyberviolence Against Women: Shifting Toward Direct Human Rights Obligations of Internet Intermediaries

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Abstract: The incidence of cyberviolence against women has emerged as a growing global issue, representing a novel form of violence against women. The urgency to combat such violence is amplified by internet intermediaries becoming facilitators of such harmful acts. Consequently, there is a call for redefining norms to ensure that internet intermediaries fulfil their human rights obligations by taking proactive measures to safeguard against and deter the propagation of cyberviolence against women on their platforms. The article provides a remark on the concept of cyberviolence against women, the role of digital platforms in intensifying such violence, and the debate about the human rights obligations of internet intermediaries to tackle all forms of violence occurring on their platforms. Although there are still many questions and challenges regarding procedural and definitional, legitimacy, and abuse concerns, a shift of research focus on the role and duties of Internet intermediaries as subjects of international human rights law is essential to safeguard human rights online in today's data-driven society.

Keywords: cyber violence against women; internet intermediaries; digital platforms; human rights obligations

Introduction

At first, the Internet was believed to offer a platform for promoting free speech and possibly greater equality. With its increasing popularity during the 1990s, however, it is becoming more apparent that offline disparities are entrenched in the online world as well. As people's lives increasingly

depend on digital technology, more and more grave violations of human rights have also entered the virtual space, including violence against women (VAW). Jane (2017) argues that the historical treatment of women has been reflected in how they are treated online, with women forming a majority of victims of online violence and being abused in more brutal ways than males. The digital realm becomes a space where discriminatory beliefs and institutions reinforce sexist gender norms. 'Misogyny, in short, has gone viral' (Jane 2017, 3). Cyberviolence against women (CVAW), which occurs in various cyberspace, has risen as a burgeoning global phenomenon that encompasses a new dimension of VAW (Henry et al. 2020). Bailey and Mathen (2019) further highlight how CVAW fosters inequality and perpetuates discriminatory norms that prevent women from living freely and fully exercising their human rights.

Within this context, eliminating CVAW is even more critical, given the emerging role of digital platforms in enabling such violence to occur in the first place. This has also led to a discussion about new norms to guarantee *internet intermediaries*[1] uproot human rights commitments and take more aggressive actions in protecting against and preventing the spread of CVAW (for example, see Henry and Witt 2021; McNamee and Pérez 2017; Pavan 2017). Coombs (2021) argues that legal regulations are significant in upholding human rights and establishing digital platforms' accountability towards users who bring them enormous profits.

In this vein, this literature review examines the spectrum of VAW between physical and cyberspace and its intertwined relationship with digital platforms. Therefore, it does not look at studies on the types of technologies used to facilitate VAW. Rather, the article explores the nascent research literature on the responsibility of digital platforms regarding human rights protection. Although minors are also targeted by cyberviolence, this aspect is already extensively examined under specific legal regulations for children. Therefore, CVAW in this article is limited to victims who are adults over the age of 18.

The author conducted a scoping review (see Arksey and O'Malley 2005) of the scholarly literature written in English between January 2012 and December 2022. Most articles were searched through Google Scholar

[1] OECD (2010, 9) defines an internet intermediary as a corporate actor who "give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties." Various entities fall within the category of internet intermediaries, such as designated internet service providers, electronic service providers that facilitate communication between end-users, app distribution service providers, hosting service providers, hardware or software development companies, and digital platforms.

and Scopus in January 2023 using two search term groups. The first group included 'cyber,' 'online,' 'technology-facilitated,' 'digital platforms' in combination with 'violence,' 'abuse,' 'harassment,' 'harm,' 'coercive control,' and 'women.' The second group included 'digital platforms' and 'internet intermediaries' in combination with 'human rights,' 'responsibility,' and 'obligations.' Besides, a selection of recent documents from the United Nations (UN) and the European Union (EU) on CVAW was examined to better understand the phenomenon from a human rights-based approach.

The article begins by exploring the the conceptual and terminological obstacles associated with defining CVAW. The following section delves into the intricate concept of digital platforms as Internet intermediaries. It also examines existing scholarly literature on the prevalence, nature, and effects of digital platforms in intensifying and influencing CVAW's characteristics. Lastly, the third section analyses a range of academic discussions regarding the increasing concern of balancing the influence and accountability of digital platforms, along with suggesting potential directions for future research in this area.

1. Conceptualising Cyberviolence against Women

The first section explores a range of literature to examine the concept of CVAW and its characteristics. It focuses on the debate on terminology and scholarly argument on systematic abuse, harassment, and violence toward women in the digital space.

1.1 A Gendered-sensitive Approach to Cyberviolence

It is imperative to recognise that online interpersonal violence and abuse can affect both genders. This implies that men can also fall prey to such violence, while women can also be the perpetrators. In fact, women's representation on the Internet is less frequent than men's on a global scale[2]. Yet a large body of research suggests that cyberviolence disproportionately affects women, who often endure severe and pervasive forms of physical, sexual, psychological, and emotional abuse.

Taking online harassment and abuse as an example, Reed et al. (2016) research of 365 college students in the US reported similar rates of victimisation and perpetration between women and men, but women reported

[2] According to International Telecommunication Union (2022)'s report, men have a higher representation among internet users compared to women globally, with 69% of internet users being men and 63% being women, though this figure varies depending on the region.

higher anticipated levels of distress than men. The study by Lenhart et al. (2016) conducted in the US discovered that 47% of 3,002 individuals surveyed had experienced at least one form of online harassment or abuse, of which 53% were women and 40% were men. The outcome supports a previous study by Staude-Müller et al. (2012). Their survey of 9,760 German internet users aged 10 to 50 showed that women are significantly more likely than men to be victims of sexual cyberharassment and that the impacts of cyberharassment were more traumatic for female victims (Staude-Müller et al. 2012). Powell and Henry's (2017) research, which included 5,798 participants, further supports this finding, as 10% of Australian women and approximately 12% of UK women reported having experienced undesired sexual interaction with someone they first encountered online. The study found that in both countries, more than 32% of young women aged 18-24 reported having experienced online sexual harassment (Powell and Henry 2017).

In cases such as cyberstalking, Smoker and March (2017) discovered in their study, which involved 689 participants, that gender significantly predicted cyberstalking behaviour by intimate partners, with women being more likely to engage in such behaviour. This result is similar to those obtained by Working to Halt Online Abuse's study (2015), in which they found that 70% of the 4,043 victims of cyberstalking cases reported to the organisation between 2000 and 2013 were women. In the same way, a study by Chahal et al. (2019) found that in 73% of cases in India, women were cyberstalked by men.

Similarly, the prevalence of image-based sexual abuse[3] (IBSA) was examined in a 2017 Australian study (n = 4,122), where it was found that women (15%) were twice as likely as men (7%) to report non-consensual distribution of their explicit pictures by someone else (Office of the eSafety Commissioner 2017). Additionally, Powell et al. (2019) conducted a survey on self-disclosed IBSA perpetration with 4,274 participants. The results showed that 10% of the respondents reported participating in at least one IBSA behaviour, such as taking, disseminating, or threatening to distribute nude or sexual images. Men were found to be significantly more likely than women to engage in all individual IBSA behaviours, particularly men aged 20 to 29 years and 30-39 years. Several studies, such as Powell et al. (2018) and Walker et al. (2013), have also (unexpectedly) observed gendered victim blame as a consequence of CVAW. A survey of 3,044 adults

[3] IBSA refers to any act of "non-consensual creation and/or distribution of private sexual images" (McGlynn and Rackley 2017).

in the US by Ruvalcaba and Eaton (2020) also found that women face significantly higher rates of IBSA victimisation and considerably lower rates of IBSA perpetration compared to men.

1.2 A Phenomenon with Many Names

In recent years, there has been a surge in focus on various types of interpersonal VAW involving digital technologies. Researchers have used different umbrella terms such as 'technology', 'technology facilitated', 'ICT facilitated', 'cyber', 'digital', 'electronic', 'Internet' or 'online' to describe different types of 'abuse', 'victimisation', 'harassment', 'aggression', and 'violence' perpetrated with technological devices or digital platforms. Some terms such as 'technology-facilitated sexual violence', 'IBSA', 'technology-facilitated domestic and family violence', 'technology-facilitated coercive control', 'cyber harassment', 'cyber bullying' tend to be more precise about the form of violence being examined. Others adopt more general terms, such as 'technology-facilitated violence and abuse', 'cyberviolence', 'cyber misogyny', 'online victimisation' or 'cyber victimisation'. Nevertheless, despite the valuable insights and practical implications offered by the research on CVAW, advocates of this phenomenon have yet to reach a consensus on its precise term and definition (Patel and Roesch 2022; Henry, Flynn, and Powell 2020). Indeed, scholars in the field have readily recognised that the expression is frequently used 'vaguely, diversely, and often inconsistently' (Mitchell et al. 2022, 2).

The usage of terms that prefix 'technology-facilitated' to highlight the role of technology in facilitating VAW, or 'cyber' or 'online' to focus on the environment where VAW occurs, has attracted considerable scholarly attention. On the one hand, feminist criminologists have played a key role in the advancement of the concept of 'technology-facilitated violence' (for example, see Henry et al. 2020; Henry and Powell 2018). They were responsible for coining the term to encompass a range of gender-based harms that occur through the use of digital technology, an area of study that had been previously overlooked by scholars. Powell and Henry (2017) and Powell et al. (2018) argue that the use of the 'technology-facilitated' nomenclature captures the role of technology in facilitating violence without either overemphasising or diminishing its significance. It expands the scope of the phenomenon to include not only online abuse, but also acts committed outside the digital realm, such as the installation of secret recorder devices in victims' houses (Henry et al. 2020).

On the other hand, feminist sociologists focus more on the broader social-technological structure that influences the systematic of VAW from offline to online space. Vera-Gray (2017) argues that terms such as 'technology-facilitated' may shift the focus away from addressing the underlying structural causes, such as gender inequality, and instead attribute the main issues to technology itself. Douglass et al. (2019) similarly suggest that it is imperative to recognise technology-facilitated domestic violence as an act of 'coercive control' that is closely associated with broader cultural values and practises contributing to the prevalence of such violence. This is consistent with that of Reed et al. (2016), when they note that digital technologies are just one of many tactics employed within abusive relationships, used as tools to achieve various purposes like sexual gratification, coercion, retaliation, humiliation, and control.

In addition to academic scholars, different UN and EU bodies also try to frame and define the phenomenon in their documents and reports. For example, the Secretary-General of the United Nations Economic and Social Council (ECOSOC) used the term 'technology-facilitated violence against women' in the report E/CN.6/2023/3[4] to describe:

> …any act that is committed, assisted, aggravated or amplified by the use of ICT or other digital tools and that harms or disproportionally affects a person on the basis of gender. [The act] can be carried out by individual perpetrators, organised groups or institutions, all of which act with the objective of controlling, harming, silencing or discrediting a woman or a group of women (ECOSOC 2023, para. 35).

This broad definition covers a wide range of behaviours and outcomes that can have severe negative effects on others, be it physically, sexually, psychologically, socially, politically, economically or otherwise. However, its scope is also very broad, including the act of surveillance, physical violence, and even human trafficking.

On the contrary, the European Institute for Gender Equality (EIGE) proposes the term 'cyberviolence against women and girls' as an umbrella term:

> [Cyberviolence against women and girls] includes a range of different forms of violence perpetrated by ICT means on the grounds of gender or a combination of gender and other factors (e.g. race, age, disability, sexuality, profession or personal beliefs). Cyber violence can start online

[4] Report of the Secretary-General on innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls, see https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/771/55/PDF/N2277155.pdf?OpenElement.

> and continue offline, or start offline and continue online, and it can be perpetrated by a person known or unknown to the victim (EIGE 2022, 39).

The EIGE limits its definition to include five forms of cyberviolence against women and girls: cyberstalking, cyber harassment, cyberbullying, online gender-based hate speech, and non-consensual intimate image abuse.

Shortly after the EIGE's report was released, the European Commission proposed a new directive to combat all forms of VAW and domestic violence.[5] However, this directive has been heavily criticised by feminist activists for failing to take a gender-sensitive and rights-based approach and for failing to ensure that all forms of violence are included (for example, see WAVE 2022; European Women's Lobby 2022). Article 4(d) of the Commission's proposed text defines cyberviolence as 'any act of violence covered by this Directive that is committed, assisted or aggravated in part or fully by the use of information and communication technologies.' The definition appears to be too broad and nebulous, embracing too many different types of violence that occur in both online and offline settings, making it difficult to use to shape the notion of CVAW. This proposal 'represents a missed opportunity to take a more holistic and comprehensive approach to online abuse, [...] thereby continuing the misrecognition and misunderstanding of women's experiences,' as stated by Rigotti and McGlynn (2022).

The lack of consensus on formulas in the realm of cyber abuse, harassment, and violence poses a great challenge for researchers and policymakers. This results in difficulty when comparing studies, particularly concerning prevalence rates. Douglass et al. (2019) highlight the challenge of research to adequately capture the context, significance, and effects of cyberviolence, thus potentially overlooking the gendered nature and consequences of such violence. Neglecting to include additional details about the relationship, the use of other forms of abuse, repetition and duration of the abuse, and the psychological impact on victims, may result in disregarding the gendered nature and effects of violence involving digital technologies (Douglass et al. 2019; Dragiewicz et al. 2018).

1.3 Offline and Online: The Continuum of Violence

Taking Kelly's (1988) 'continuum thinking' theory as her starting point, Boyle (2019) argues that CVAW ought to be perceived as a continuum of

[5] Proposal for a Directive of the European Perliament and of the Council on combating violence against women and domestic violence COM/2022/105 final, see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0105.

gender-based violence (GBV) performed in the physical world that manifests distinct features of violence perpetrated online or through digital technologies. This view is supported by several academic studies recognising CVAW as a manifestation of 'a continuum of violence', with offline and online forms of violence often intertwining into each other (McGlynn et al. 2017; Powell and Henry 2017; Bailey et al. 2022; Douglass et al. 2019).

In fact, the prevalence of online misogyny is deeply rooted in historical and ongoing unequal power relations between men and women, leading to gendered cultural norms and social beliefs in both the offline and online environment (Jane 2017). Furthermore, while CVAW does not involve physical violence, it perverts the original purposes of the Internet by perpetuating gendered stereotypes and discourses, and enables the public shaming of women through harassment, assault, stalking, and policing of their sexuality (Chemaly 2015). CVAW can be used to maintain or regain power over women, as a means of threatening victims, or as a form of punishment for their actions. This aligns with the argument that VAW is a men's mechanism to subordinate women (Kelly and Radford 1998; Dworkin 1981), supporting the theory of 'continuum' violence between CVAW and traditional VAW.

In addition, these CVAW acts, which initially occur online, can spill over into offline spaces, exposing the victim's private information, sharing sexual images, or even sexually assaulting them (Jane 2017). Extensive research has shown that gender-based online abuse exhibits impacts comparable to those resulting from offline violence, while also exacerbating the adverse physical, psychological, and financial effects experienced by victims (Citron and Franks 2014; Henry and Powell 2016).

Moreover, online platforms exacerbate the detrimental effects of CVAW through the continuous occurrence and enduring presence, leading to more severe and persistent harm compared to offline violence (Jane 2017, 61). This view is supported by Henry et al. (2020), who extended the work of Wajcman (2004)[6] on the 'actor network' theory with 'continuum thinking'. They argue that the experience of technology-facilitated harassment, abuse, and VAW is not separate from non-technological abuse tactics but rather part of a constellation of abusive behaviours, in which nonhuman elements are actively involved and employed. This underscores the importance of acknowledging the intricate interplay between technology and human actors in perpetuating oppression and violence, rather

[6] Wajcman (2004) proposes, building upon Latour's (1991) 'actor network' theory, an examination of how gender dynamics persist within human-technical 'hybrid' social systems.

than viewing CVAW solely as an extension of traditional VAW in the online realm (Henry et al. 2020).

In addition, the Group of Experts on Action against Violence against Women and Domestic Violence's (GREVIO) recommendation in 2021 highlights the continuum of violence and stresses the importance of recognising the digital dimension of VAW as an increasingly prevalent global form of GBV. The report defines the digital dimension of VAW as the envelope of various online or technological acts that are intrinsic to the GBV encountered by women in the physical realm (GREVIO 2021). Likewise, the European Commission Advisory Committee on Equal Opportunities for Women and Men (2020) asserts that cyberviolence is not isolated but instead originates from and perpetuates various forms of violence in offline space. Consistent with this viewpoint, the ECOSOC report E/CN.6/2023/3 highlights the importance of recognising the continuum between GBV in the digital and physical realms. The report notes that technology can exacerbate surveillance, trafficking, and physical violence against women and girls. As a result, they may feel compelled to self-censor, leave online platforms, or reduce their online interactions, restricting their involvement in public life and undermining democratic principles and human rights (ECOSOC 2023).

Pavan (2017, 74) concludes that CVAW acts are an intricate and continuously changing combination of technological capabilities and sociocultural behaviours. Therefore, it is crucial to acknowledge the 'sociotechnical nature' of these issues and approach them based on the actual practises involved, rather than making preconceived assumptions about what constitutes or should constitute online abuse and harassment. Powell et al. (2019, 149) also stresses that the phenomenon is a 'larger conceptual' that requires examining the nature and dynamics between digital and VAW. This approach is necessary for future research to effectively address these intricate and sensitive matters.

2 Visualising the Relationship between Digital Platforms and Cyberviolence against Women

As it is shown in the first section, it is essential to understand the dynamic between digital and society in which CVAW happen. Therein, the 'infamous' internet intermediaries – digital platforms – are among the most investigated. Pavan (2017) calls the relationship between digital platforms and CVAW 'what observers of contemporary power dynamics have called 'hidden influential actors' [...] who are able to significantly impact a process

while remaining invisible.' There are two critical aspects that form this relationship in the first place: the unique attributes of online platforms and how they can intensify violence; and the distinct characteristics of CVAW and how the platform environment facilitates these characteristics.

2.1 Defining Digital Platforms

In the Internet era, internet intermediaries gradually become important actors that significantly impact every aspect of our lives. Among them, digital platforms (also known as 'online service providers' or 'online platforms') suffered the most criticism because of their position as 'new governors' or 'superpowers' in the digital era (Henry and Witt 2021, 751). Their decisions on how to operate their platforms directly influence their users' daily lives (DeNardis and Hackl 2015; Gillespie 2017). But despite their influence, there is no commonly agreed definition of digital platforms in scholar research. While numerous definitions exist, differing interpretations persist, leading to confusion and misinterpretation of the term across different stakeholders (OECD 2019).

Although the term 'platform' has become a popular reference in public and academic discussions to describe certain types of companies, its usage in adjacent contexts, such as computing and Internet infrastructure, has pre-existing meanings. In the computational context, 'platform' refers to 'an infrastructure that supports the design and use of particular applications, be they computer hardware, operating systems, gaming devices, mobile devices or digital disc formats' (Gillespie 2010, 349). A platform serves as the foundation on which additional software can be built. Various platforms, such as Windows and Android operating systems, Apple's iOS and MacOS, Linux, Internet browsers like Firefox and Safari, and cloud service providers like Amazon Web Services and Microsoft Azure, offer online services to some extent, although not necessarily directly to individual users.

In academic research, 'digital platforms' are often understood as internet-based services operating through websites or applications to enable user interactions. Many scholars have tried to define them while focusing on different features of the platforms. Henry and Witt (2021, 751), for example, describe them as 'non-state, corporate organisations or entities that facilitate transactions, information exchange or communications between third parties on the Internet'. Srnicek (2016) recognises the position of platforms as intermediaries that 'bring together different users: customers, advertisers, service providers, producers, suppliers, and even physical objects.' Others such as McNamee and Perez (2017) propose a classifica-

tion system that categorises online service providers based on the nature of relationships among service providers, individual users, and third-party businesses and the financial transactional nature of the relationship.

Gillespie (2018, 18) argues that digital platforms have two main characteristics. First, they are online services that host, organise, and disseminate shared content or social interactions of users without being responsible for producing or commissioning most content. Second, they are built on an underlying infrastructure to process data for customer service, advertising, or profit (Gillespie 2018).

Examples of online platforms include social media platforms (Facebook, Instagram, Twitter, Reddit, etc.), video-sharing and livestreaming platforms (YouTube, TikTok, Twitch, etc.), messenger apps (WhatsApp, Telegram, Facebook Messenger, SnapChat etc.), search engines (Google Search, Bing, Yahoo!, etc.), online dating platforms (Tinder, Bumble, Hinge, OkCupid, Match, etc.), personal writing or blogging websites (WordPress, Tumblr, etc.), pornography or sexual service platforms (Pornhub, XVideos, xHamster, etc.), 'gig economy' platforms (Uber, Lyft, Airbnb, Booking, etc.), payment processors and crowdfunding platforms (Patreon, PayPal, GoFundMe, Kickstarter, etc.), review websites (Yelp, Travel Advisor, etc.); online commerce websites (Amazon, Ebay, Etsy, etc.). Until now, scholarly research primarily focuses on platforms where CVAW is most prevalent, including social media platforms, video-sharing and live-streaming platforms, messenger apps, online dating platforms, and pornography or sexual service platforms (for example, see Henry and Witt 2021; Nguyen 2022). However, it is also noted that the categorisation of digital platforms, while convenient for reference purposes, is not fixed, and many platforms may fall under multiple categories simultaneously.

2.2 The Role of Digital Platforms in Facilitating Cyberviolence against Women

Scholars have proven that online service providers play a significant role in exacerbating and intensifying online harassment, abuse, and violence toward women on their platforms (Suzor et al. 2019; Harris and Vitis 2020). Their substantial impact is due to their active involvement as the main networks for such harmful behaviours, as well as the influence of their services and business models on this issue.

2.2.1 Central Networks for the Spread of Cyberviolence against Women

In the context of digital platforms, as well as the cyber environment in general, there are distinct characteristics that alter and amplify the severity and scope of GBV, abuse, and harassment and its effects on individuals subjected to it. There are four main common remarks of the platforms that enhance their ability to host CVAW. First, the technological features of digital platforms, coupled with their business models centred around advertisement and thus orientated toward gaining and retaining user attention and engagement, appear to be designed to facilitate and amplify violent or abusive actions and content (Suzor et al. 2019; Gerrard and Thornham 2020; Gillespie 2020). Moreover, the broad online subculture of platforms connected with the 'alt-right', which includes male-dominated antifeminist groups known as the 'manosphere', also greatly benefits from the opportunities and algorithmic features of the current digital media environment. They are able to leverage these capabilities to manipulate news coverage, set agendas, and spread their ideas (Dragiewicz et al. 2018).

The second reason for the prevalence of CVAW is the simplicity, accessibility, and low cost of perpetrating abuse against individuals or groups on platforms. It results in a nearly zero cost of engaging in, automating, perpetuating, and amplifying abuse (Henry et al. 2020).

Third, the ability to remain anonymous and be part of a group online that engages in violence, abuse, or harassment significantly decreases the risks associated with these behaviours, such as being identified or caught (Semenzin and Bainotti 2020; Massanari 2017). As a case in hand, Telegram, since it was launched in 2013, has been constantly the hot spot for public criticism because many image-based sex crimes have occurred on this platform, such as the 'Nth Room'[7] in South Korea in 2020 or *'Stupro tua sorella 2.0'* ('Rape your sister 2.0')[8] in Italy. Semenzin and Bainotti (2020, 5) draw attention to the frequency of explicit IBSA content distributed in

[7] The 'Nth room' refers to a group of eight Telegram chat rooms established by an administrator who used the username Godgod, devoted to sexual abuse and 'sextortion' in South Korea. Preliminary data indicated that around 260,000 individuals accessed these chat rooms, but police have since reduced this estimate to approximately 60,000 users after considering also duplicated profiles. Each chat room had a minimum of 300 to a maximum of 700 members who paid approximately 50,000 won ($41) to gain access, and most of the payments were made in cryptocurrency. Within four chat rooms, 11,297 non-consensual sexual pictures and videos were shared, 107 of which featured children and adolescents (Yoon 2020).

[8] The channel "Stupro tua sorella 2.0," which had about 70,000 members, urged males to post non-consensual private sexual images of women and girls, as well as personal information like as names, locations, and phone numbers, so that others can harass, blackmail, or persecute them (Konsumer 2021).

multiple Telegram channels and groups with 30,000 to 60,000 members explicitly made to share 'doxing and image-abusing girls' material.

The fourth component is that abusers have become adept at exploiting and manipulating the features of digital platforms and content moderation policies to perpetrate abuse (Semenzin and Bainotti 2020; Massanari 2017; Dragiewicz et al. 2018). As an example, Dragiewicz et al. (2018) illustrate how Twitter's high level of anonymity, the ease of creating multiple accounts, and its history of not regulating user expression have resulted in rampant harassment and abuse. The authors also note that abusers have become proficient in using platform tools and culture by 'weaponising irony' to perpetrate online misogyny and technology-facilitated coercive control, creating significant governance challenges for platforms (Dragiewicz et al. 2018).

It is pertinent to acknowledge that the online environment plays a crucial role in both the perpetration and harmful consequences of CVAW on its victims, making it much more different than what we have already known about VAW. The distinct components of CVAW have particularly severe outcomes for those targeted by these offences. First, CVAW is transnational, which means that abuse materials can be easily accessed around the world no matter where the victims live (Rackley et al. 2021; Jane 2017). Such abuses are not limited by national borders, as cyberspace has no physical barriers. This implies that, except for countries without Internet availability, individuals could attack victims by any means and victims have no way to escape these situations.

Next, CVAW is distinguished by the extensive reach of the Internet, which significantly amplifies the damage to an individual's reputation, social status, future opportunities, personal relationships, and personal security when private information, whether accurate or false, is disseminated through such channels (Short et al. 2017; Citron 2014). Slowly, the impacts of CVAW can lead to a 'context collapse', where multiple social spheres that may otherwise have remained separate converge (Marwick and Boyd 2010, 122). It can worsen the impact of CVAW, as perpetrators can upload harmful content that poisons the victim's social world, making them more vulnerable to further harassment (Salter 2017). This strategy is constantly observed in IBSA research, where intimate images of victims are distributed online without their consent. The publication of personal information online makes victims more susceptible to online and offline victimisation, including harassment, stalking, and threats to their safety (Citron and Franks 2014; Henry and Powell 2016; Stroud 2014). Exposure of personal information on the Internet encourages internet users to approach victims

in person, leaving women particularly vulnerable to further harm (Citron and Franks 2014). Additionally, strangers may assume that women sought men's attention due to their private sexual images on the Internet (McGlynn, Rackley, and Houghton 2017; Flynn et al. 2022).

Jane (2017) comments that CVAW is not a one-time occurrence; it can repeatedly occur through online platforms and constantly affect victims' daily lives. This cumulative impact can turn abuse from relatively minor to severe. Consequently, the impacts of CVAW are exacerbated by the permanence of CVAW materials, including hate or defamation speech, harassment, or non-consensual sexual images. The ease with which images can be downloaded and saved from the Internet makes it next to impossible to erase them completely. The abuse can happen again at any time and repeatedly by the same perpetrators or even new ones (Franklin 2014; McGlynn and Rackley 2017).

At the same time, different scholars have demonstrated the lack of efficiency of digital platforms' policies regarding CVAW. For example, Henry and Witt (2021) point out the 'inconsistent, reductionist, and ambiguous' language in platform policies, the significant gap between policy and practice of content moderation practise, and the way they put the onus on victims to report and prevent the abuse and harassment. These results are consistent with those obtained by Dragiewicz et al. (2018) or Nguyen (2022), confirming that the inconsistent policies and attitudes of the digital platforms in responding to victims' requests and their removal practises are often fragmented. This implies that the problem of VAW has not been a top concern of technology companies. It further illustrates how the social context of gender inequality enables abuse by establishing circumstances in which women are prevented or dismissed in their attempts to receive help (Dragiewicz et al. 2018).

2.2.2 Nonhuman Content Moderation and Profit-Driven Business Models

When it comes to online platforms, it would be an oversight not to consider their two critical elements, content moderation design and business model, and their twofold effects amid CVAW. Numerous prominent platforms rely on advertisement-based business models that, when coupled with their technological capabilities, promote an atmosphere conducive to the spread of speech-based and image-based abuse, such as hate speech campaigns targeting individuals or marginalised groups, or sharing non-consensual private sexual images. Malicious users exploit the characteristics and algorithmic methods of content moderation to accomplish

their goals of harassing and intimidating women. At the same time, commercial interests and operational strategies implicitly and sometimes explicitly discourage actions that may impede such abuse.

In the platforming realm, content moderation constitutes a comprehensive and intricate socio-technical phenomenon, as observed by various scholars (Gillespie et al. 2020; Gorwa 2019). This process involves shaping information exchange and user activity by platforms, which make decisions and apply filters based on policies, legal requirements, and cultural norms (Gillespie 2018; Witt et al. 2019; Flew et al. 2019). Content moderation requires collaboration between human and nonhuman actors, as well as a balance between the epistemic authority and users' resistance and agency (Cotter 2019; 2021), while also generating conflicts between business interests and regulatory obligations (Suzor 2019). As the negative consequences of CVAW became more apparent, discussions about how online service providers moderate user-generated content attracted much public attention.

Gillespie (2020) expresses concerns about the risks associated with these platforms' increasing power to arbitrate what is considered irrelevant, false, or harmful. Other researchers, such as K. Crawford and Gillespie (2016) and Katzenbach and Ulbricht (2019), are also questioning the decision-making processes of these platforms that contribute to and perpetuate prejudice and bias. Gerrard and Thornham (2020, 1266) used the 'sexist assemblages' concept to examine content moderation practises on Instagram, Pinterest, and Tumblr. Their analysis revealed how these strategies amalgamate human and technological components to reinforce conventional gender norms and regulate depictions of the women's bodies (Gerrard and Thornham 2020).

Algorithms are now prevalent in the governance of online platforms (Gillespie et al. 2020; Zeng and Kaye 2022). However, algorithmic governance relies primarily on machine learning mechanisms that operate as 'black boxes' for predicting, classifying and filtering content, thereby introducing opacity and errors (Cotter 2021). Users face many challenges in holding platforms accountable due to the connection between algorithmic ambiguity and inevitable blunders. Furthermore, an unsuitable implementation of algorithmic content moderation can generate feelings of injustice, insignificance, and mistrust between users (Gillespie 2020; Myers West 2018).

As platforms increasingly rely on algorithmic curation and recommendation, they have the ability to regulate user-generated content by intentionally boosting the visibility of content deemed more relevant and appro-

priate rather than solely relying on deletion requests (Gillespie 2017; Suzor 2019). This further leads to the 'visibility moderation' concept, referring to the practise in which digital platforms employ algorithmic or regulatory methods to manipulate user-generated content reach, either by amplifying or suppressing it (Zeng and Kaye 2022, 82). This supports what Bucher (2012) found while investigating the disciplinary power exerted by Facebook's content ranking algorithms. In particular, Bucher (2012, 1164) argues that social networks can exert influence through the 'threat of invisibility' or the persistent risk of becoming insignificant and outdated. To maintain or improve their relevance and visibility, social media users engage in what Cotter (2019, 895) called the 'visibility game' by modifying their behaviours (Bucher 2012). Gillespie (2020) criticises that algorithms are increasingly being used to regulate content, leading to the dominance of a human bias statistical approach that might lead to inaccuracies and negatively affect their users.

In another case, Reddit[9], a community site, was criticised for how its algorithm based on a voting system ('upvote' and 'downvote') influences a toxic masculinity culture. It is argued that the voting algorithm is 'discursively inseparable' from the Reddit culture (Graham and Rodriguez 2021, 10). In the same vein, Massanari (2017) argues that two cases, #Gamergate[10] and 'The Fappening'[11], which propagate the misogyny notion that women should be humiliated and deserve a lower level of privacy due to their sexual history, are symbolic of a pattern of 'toxic technocultures' that has gained an enormous presence on Reddit. They thrive and sustain through the exploitation of the platform design, including 'the site's design, its governance structure and algorithmic logic, administrator unwillingness

[9] Reddit (or reddit.com) is a social media platform based in the United States that aggregates news, rates content, and fosters discussions. An individual just needs an email account to sign up for Reddit, and one email can be used to verify multiple accounts (Reddit 2021).

[10] Gamergate, also known as GG, was an unorganised online harassment campaign that occurred from 2014 to 2015. It had a misogynistic tone and aimed to oppose feminism, diversity, and progressivism within the video game culture. The campaign used the hashtag "#Gamergate" and targeted women in the industry through different tactics such as doxing, rape threats, and death threats (Stuart 2014). Online platforms such as Twitter, 4chan.org, and the now-defunct 8chan were used for harassment, with a particular focus on the Reddit subreddit /r/KotakuInAction (Massanari 2017).

[11] The Fappening refers to a notorious incident in August 2014 when hundreds of private photos belonging to various celebrities, predominantly women, were hacked from Apple's cloud servers and publicly disseminated on 4chan.org. These images, many of which featured nudity, quickly spread through Reddit's subreddit /r/thefappening, with Reddit's algorithm promoting them to the front page so any visitors to the site between August 30 and 7 September 7 2014 can see them (Massanari 2017).

to intervene and make universal decisions regarding offensive content, and its reputation as a geek-friendly environment' (Massanari 2017, 341–42).

Into the bargain, scholars have observed that digital platforms often prioritise their own economic interests when making decisions about content moderation, community standards, and feature design (Dragiewicz et al. 2018; Matamoros-Fernández 2017; Hall 2019). These interests are often highlighted by the platforms' persistent failure to address the issue of online abuse, which generates significant traffic and interaction on their platforms, leading to increased economic revenue. For instance, Hall (2019) argues that hate speech can be considered a by-product of the current privatised form of Internet technology, which has been developed to serve the requirements of globalised capital.

However, algorithms are not everything when it comes to content moderation. There are still numerous features through which perpetrators frequently manipulate and take advantage to enable sexist, misogynistic, and harassment and sexual abuse content on platforms, such as content reporting, flagging system, or paid advertisements. Pavan (2017) emphasises the importance of recognising that platform features encompass more than just a user tool for engaging in the management and regulation of a community platform. The simplicity of a flag as 'a single data point,' whether something is reported or not, masks the complex interplay of system designs, various actors with different 'intentions, assertions, and emotions' (K. Crawford and Gillespie 2016, 411).

Lastly, the discussion about content moderation should also be broadened to include encrypted[12] messenger apps that are driving significant changes in the evolution of social media, such as WhatsApp, Telegram, Signal, and so on. This method is an effective way to secure data during transfer and can also be used to protect stored personal data (Ermoshina et al. 2016). However, while encryption is an ideal technology to protect individual privacy in the era of mass surveillance, it also creates a perfect environment for the perpetration of CVAW, especially IBSA like in the case of Telegram. Frequently being abused for harmful purposes, encrypted platforms are at the centre of global debates around content moderation, user privacy, security, freedom of expression, and CVAW (Semenzin and Bainotti 2020; Vitis 2021).

[12] Encryption is a method that involves converting plain text into hashed code using a key. The resulting data can only be decrypted using the corresponding key, reducing the risk of data leakage during processing. Encrypted data is essentially unusable to third parties without the correct key.

2.3 The Role of Digital Platforms in Characterising Cyberviolence against Women

Digital platforms play a significant role in facilitating CVAW and simultaneously contribute to developing three critical characteristics of CVAW. These characteristics, in turn, enhance their potential to intimidate, silence, and control their targets, which leads to adverse consequences for marginalised communities.

2.3.1 Weaponisation of Speech and Images

Although CVAW may frequently take the form of speech, it is not limited solely to this form of expression. Instead, it comprises concrete actions that have both immediate and long-term consequences for women's lives, impacting their capacity to exercise fundamental human rights and freedoms. Which seems merely a speech at first has become a weapon to attack women, causing a range of negative impacts for women who engage online. Such expressions explicitly and implicitly belittle, dehumanise, and marginalise women and their speech (Maclure 2018). Besides, these misogynist expressions encourage or justify discrimination against women and expose them to more violence, abuse, and harassment (Megarry 2014). It leads to silencing women, causing them to self-censor, avoid central public discussion forums, and even leave the Internet altogether, which deprives women of significant freedoms, such as the ability to exercise freedom of expression online (Sundén and Paasonen 2018; Citron 2019), and associated rights and liberties, such as participating fully in the world as political actors, without fear or hesitation (Citron 2019; 2014; Sumner 2009).

In addition to speech, images are also used to attack women online. There are two main types of images that are weaponised to harm women by perpetrators, which are private images (especially private sexual images like in the case of IBSA as previously described) and internet 'memes'[13]. Numerous Internet users share and disseminate these memes as a form of communication or humour, which regrettably contains sexist undertones (Paciello et al. 2021; Romero-Sánchez, Megías, and Carretero-Dios 2021; Drakett et al. 2018).

It is argued that the usage of memes to perpetuate sexist practises on platforms to reinforce the practise of patriarchal cultural domination that

[13] Internet memes refers to digital devices that share common features, such as form, content, or attitude, that are intentionally created, circulated, imitated, or altered by numerous internet users (Shifman 2013).

occurs in the physical world. Romero-Sánchez et al. (2019) describes this phenomenon as a form of communication intended to intimidate women's social identity. Maulana's (2021) findings also reveal that individuals' perceptions of patriarchy have transformed into a cognitive framework that impacts biased behaviour and gender prejudice, thereby contributing to online sexism. The Internet serves as a platform where men establish their dominance, and using different memes to name and depict women is a manifestation of symbolic violence that fosters the emergence of new sexist attitudes on the Internet. It is further argued that memes are used as a means of legitimising patriarchal power through symbolic forms of violence (Maulana 2021).

2.3.2 Social Gamification and Networked Distribution of Violence

CVAW is often organised and coordinated on various digital platforms, taking advantage of their collective mass action, online social dynamics, and technical infrastructure. These coordinated attacks exploit the features of these services and can generate networks that would not have formed otherwise. By employing platforms' recommendation mechanisms, which suggest, endorse, and promote content based on user interactions, CVAW can aggregate collective action and social dynamics, resulting in significant harm to targeted individuals or groups.

Jeong (2018) elucidates how 'persistent harassment campaigns [...] are often planned and executed within a distinct online space.' This planning and coordination may occur within a 'forum' space such as the 4chan, Telegram or Facebook group, with the actual attack subsequently launched on Twitter or another platform where the targeted individual or group is active (Marwick and Caplan 2018). In addition, Marwick and Caplan (2018) argue that online abuse, through the 'gamification' process, becomes a social activity that fosters bonding, entertainment, and competition among participants. Although online harassment is not typically viewed as a social activity, the coordination and strategies used by harassers suggest otherwise. The social element acts as a strong incentive, motivating perpetrators to escalate their attacks to gain approval and admiration from their peers (Marwick and Caplan 2018), and to maintain social bonds and gendered recognition (Bindesbøl Holm Johansen et al. 2019).

CVAW is a distributed problem that can be difficult to address due to the involvement of numerous actors across large networks. Each participant may contribute only one or a few messages or clicks and spend little time and effort harassing the targeted women. However, the combined impact of a network's volume of abuse on a single individual can be se-

vere. Taking Twitter as an example, Geiger (2016) explains the 'disparities of scale' that arise from the act of 'pilling on'. This problematic form of harassment involves numerous individuals sending a small number of messages to the target, which ultimately overwhelms them (Citron 2014; Matias et al. 2015). Many anti-feminists use anonymous imageboards to funnel the attention of their thousands of followers to particular user accounts. It takes very little effort to send a single harassing message, but it takes far more time and effort to react to harassment for the individual on the receiving end. In this context, collective action is essential for practical counter-harassment work (Geiger 2016).

2.3.3 Normalisation and Legitimation of Violence

Looking through history, the normalisation of VAW has been one of the most focused topics in feminist research (for example, Buchwald et al. 1993; Dressel et al. 1995; Kelly and Radford 1998). Approaching from this point of view, society then once again normalises CVAW, perpetuating harmful stereotypes, sexualising, and objectifying women, and providing channels for the dissemination of hate speech and misogyny (Lumsden and Morgan 2017; Nadim and Fladmoe 2021; Flynn et al. 2022).

In parallel, platforms strongly contribute to the normalisation and legislation of sexist and misogynistic content on their platforms. An example is the 'manosphere', online communities on various social networking platforms, which are repeatedly linked to the promotion of persistent and virulent misogynistic beliefs and discourse (Ging 2019; Marwick and Caplan 2018; Winter 2019). These communities include socio-cultural and political commentators, content creators, conservative activists, self-proclaimed intellectuals, and average users with similar views. Through routine online interactions and coordinated efforts, these communities popularise misogynistic ideologies, sometimes in conjunction with other far-right positions such as white supremacy, homophobia, transphobia, racism, nationalism, fascism, Islamophobia, and antisemitism (Ben-David and Fernández 2016; Lewis 2018). Such promotion occurs through a web of loosely yet consistently connected individuals with overlapping beliefs.

Moreover, persistent and amplified harmful speech online not only normalises harm towards women, but also provides justification for such harm to those who hold oppressive beliefs. This discourse can even foster the belief that violence is a logical and necessary response for those who adhere to misogynistic or oppressive ideologies. Consequently, the continued presence of online gender-based hateful speech can potentially escalate into physical violence and extremism (Powell et al. 2019).

The growth and intensification of misogynistic rhetoric and ideology and its resulting violence and the overt and subtle impacts on women's daily lives are inexorably linked to the capacity of platformed CVAW to expand, propagate, and enlist supporters on the Internet. Digital platforms are contributing to the normalisation and legitimation of CVAW, resulting in a culture that stifles women's voices and limits their participation in the online space. This trend reflects the larger issue of gender inequality and the continuum of VAW, leading to an atmosphere of insecurity where women's fundamental human rights are under direct threat.

3 Power vs Responsibility: The Debate on Direct Human Rights Obligations of Internet Intermediaries

Internet intermediaries have a significant role in both enabling and defining the CVAW that occurs on their platforms. In many cases, different online platforms are operated and governed by the exact Internet corporations, establishing such corporate as influential gatekeepers of the Internet (Coombs 2021; Zalnieriute and Milan 2019). Internet intermediaries possess the power to shape the online landscape by facilitating internet traffic, communication, commerce, and content regulation, shaping the sharing and accessibility of information online (Karaganis 2007). Callamard (2019) further highlights the potential for internet intermediaries to become advocates for human rights and contribute to the development of human rights norms in our data-driven society.

3.1 The Necessity to Explore the Full Potential of Internet Intermediaries' Obligations in International Human Rights Law

There is growing scepticism about the commitment of internet intermediaries to upholding human rights. These non-state actors (NSAs) have become powerful monopolies that rely on collecting, analysing, and selling personal data, which raises concerns about their actions, rights and duties in relation to all forms of violence spreading on their services (Henry and Witt 2021; Belli and Zingales 2017; MacKinnon et al. 2014). The emerging wave of criticism focusses on the notion of Internet corporations abusing human rights and subsequently promoting human rights violation targeted marginalised groups, as previously evident in the case of CVAW.

One of the primary concerns revolves around the responsibility of Internet intermediaries in relation to third-party content related to CVAW and the potential legal liability[14] they may face. In Amas M. v. Facebook Ireland (2017), a German court ruled that Internet intermediaries should not be held liable for content that violates criminal provisions if they expeditiously remove such content upon notification. This aligns with many jurisprudence decisions and national laws, creating a perfect situation where internet corporations can operate without legal accountability despite their immense power (Suzor 2019). Despite the general principle of nonliability of corporate intermediaries, there are emerging instances that challenge this notion, particularly in Europe (for example, see Die Grünen v. Facebook Ireland Limited 2017). This suggests a lack of uniformity in legal interpretation, but also hints at a possible departure from the established norm.

It is argued that Internet intermediaries should be responsible for safeguarding human rights. The Council of Europe Committee of Ministers issued two recommendations in 2012 and 2014, emphasising the importance of intermediaries to respect human rights and the rule of law. They call for the implementation of self- and co-regulatory frameworks, consisting of procedural safeguards and provision of efficacious redress mechanisms for victims of online violence, with particular attention given to violence driven by misogyny and sexism (Committee of Ministers of the Council of Europe 2012, 2014). Additionally, public-sector involvement in online human rights governance is minimal and relies primarily on the private sector to 'notice and takedown' content considered illegal (Zalnieriute and Milan 2019). It creates a 'global default' situation in which private actors set limitations to human rights online based on their business models without regulatory action and public sector participation (Wagner 2016).

It seems as if we live in a contradiction in which technology firms have been indirectly given impunity throughout the world. This happens partly because of loopholes in the jurisdictions in which the corporations operate, together with the absence of accountability under international law. Traditionally, corporate intermediaries are not treated as subjects of international law; therefore, they cannot be regulated by international human rights treaties. International regulations do not govern private actors, nor can they be adjudged in international tribunals. Zalnieriute and Milan

[14] Callamard (2019, 209) indicates three factors determining liability: whether the content violates criminal or civil laws, whether the platform received notifications to remove the content but failed to do so promptly or acted negligently without notice, and whether the court has jurisdiction over the company responsible for the platform or its data ownership.

(2019, 8) call this a 'human rights gap' whereby the delegation of human rights enforcement to private actors undermines not only international human rights legislation, but also domestic laws and constitutions.

The context in which we find ourselves also exhibits significant accountability deficits and a legal void, primarily due to the jurisdictional uncertainties surrounding extraterritorial content and non-domestic entities. From a human rights perspective, the initial assertions that the Internet would foster a more compassionate and equitable society of the intellect (Barlow 1996) are now facing severe challenges, if not outright rejection. NSAs play a dual role, with their impact ranging from ambiguous to potentially detrimental, posing a risk to the foundational principles of the Internet. This is evident through their business models, normative frameworks influenced by US-centric culture, and failure to invest in and commit to effective self-regulation, similar to what other sectors have been compelled to adopt (Callamard 2019).

That being the case, scholars have tried to tackle the responsibility gap of internet corporations to safeguard human rights on their platforms. Specifically, research has focused on the state's duty to protect human rights (Aziz, 2017; Aziz and Moussa, 2016; Coombs, 2021; Pavan, 2017), corporate social responsibility and its advantages (Grosser and Tyler 2022; Gürgey 2020; Henry and Witt 2021), international soft law mechanisms and their potential (Gürgey 2020; Suzor et al. 2019; Heasman 2020), and the ethical and moral justification for assigning social responsibilities to profit-driven businesses (Belli and Zingales, 2017; MacKinnon et al., 2014). However, scholarly research has become overwhelming in recent years with the rise of soft law and the lack of enforcement mechanisms, leaving unclear validity and legitimacy problems regarding the role of internet intermediaries. The failures of the current approach are becoming increasingly apparent, with CVAW on the rise and authoritarian regimes tightening their grip on online content.

Nevertheless, Ratner (2001) argues that the very nature of human rights requires that businesses be incorporated into the human rights sphere because the realisation and materialisation of these rights also need the protection of NSAs. Compared to existing soft-law regulations, direct judicial responsibilities would affect the issues of enforcement, redress, and overall compliance with human rights standards in this context. Many scholars challenge the emphasis on the centrality of international legal personality (Alston 2005) or its dominant interpretation (Clapham 2006; Higgins 1994; Reinisch 2005), arguing that it is outdated and lacks imagination. Bethlehem (2014, 23) further suggests that ageing treaties and established rules

of international law are often relied upon to address modern conduct and shape a global system that may not be relevant to their original purpose. This is not a satisfactory solution. With the emergence of Globalisation 3.0, where individuals and corporations are the principal agents of change, there is a need for international law to evolve and recognise the international legal personality and subjecthood of NSAs. More inclusive, responsive, and efficient mechanisms must also be developed to address their interests and perspectives. Importantly, scholars also suggest that the capacity of internet intermediaries to bear such obligations is a critical factor in determining their international duties (Callamard 2017).

In June 2014, the United Nations Human Rights Council began building an international legally binding instrument to govern the activities of multinational corporations and other business entities under international human rights law. Ecuador chairs an Open-ended Intergovernmental Working Group tasked with developing an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (Human Rights Council 2022). The Working Group's sessions have slowly attracted a certain amount of research uprooting for a binding treaty on BHR, for example, Bilchitz (2016), Choudhury (2018), De Schutter (2016), Gatta (2020), Vecellio Segate (2022). This can be the foundation for the development and evolution of international law on the rights and duties of corporations, including Internet intermediaries.

In the end, Clapham (2017, 8) suggests that the extent of obligations for NSAs depends on their specific characteristics, operating context, and any relevant commitments they have made. In the context of the online world, NSAs, particularly Internet intermediaries, play a central role. In simple terms, the functioning and even existence of the online world are highly dependent on Internet corporates that drive the digital realm.

3.2 Concerns regarding Direct Human Rights Obligations of Internet Intermediaries

As a premise, it should be noted that the concept of state, which is closely linked to the principle of 'state sovereignty', is central and foundational to public international law (J. Crawford and Brownlie 2012; Oppenheim 2008; W. E. Hall 1904). It would violate the concept of sovereignty to demand state-like behaviour from private actors, as this would make them a potential source of power. Additionally, scholars emphasise that Internet intermediaries are already subject to international human rights

law, primarily through the responsibility of states to prevent third-party violations (Callamard 2019). Moreover, imposing a direct human rights obligation on NSAs like Internet corporations can cause many challenges, including procedural and definitional questions, legitimacy questions, and abuse concerns.

Firstly, creating a legally binding instrument for multinational corporations faces procedural and definitional challenges, particularly regarding their involvement in international norm-setting (Monnheimer 2021). International norms are typically established through treaties or customary rules, where NSAs have limited participation, except for international organisations. Examining how international norms can legitimately impose obligations on internet intermediaries and the impact on norm-setting is necessary. Questions arise about whether corporates can become parties to the treaty and the need for international accountability mechanisms (Blitt 2012). Imposing obligations without jurisdictional links raises concerns about legitimacy and opposition from other states.

In addition, capacity is suggested as a criterion (Noortmann and Ryngaert 2010; Wettstein 2016), but it creates evidentiary burdens for victims and challenges in defining and addressing changes in capacity (Steinhardt 2005). Defining capacity becomes a challenge, as it is unclear what level of capacity should qualify an actor as a duty bearer (Vázquez 2004). Furthermore, addressing cases where NSAs lose capacity or dissolve their legal or institutional structures raises additional complexities (Monnheimer 2021). These questions highlight the difficulty of using capacity as a yardstick for imposing binding international obligations on NSAs. Moreover, establishing the accountability relationship between states and NSAs is crucial, considering situations where NSAs cause harm based on legislative provisions or governmental orders (Knox 2008; d'Aspremont et al. 2015). Ensuring clear accountability is essential to avoid shifting responsibility and potential conflicts between states and NSAs.

Secondly, internet intermediaries may struggle to balance conflicting human rights and public interests due to inadequate political legitimacy and resources. Protecting human rights involves actively fostering an environment that respects and promotes these rights, which requires achieving an appropriate equilibrium. Even refraining from violating human rights requires weighing competing rights and interests, as safeguarding one individual's rights may impact others and conflict with public interests. In some cases, violating rights may be necessary to protect other rights or achieve legitimate public objectives. However, discussions on direct human rights obligations for NSAs often overlook the need to achieve a suitable balance.

Private actors such as internet intermediaries lack the legitimacy and resources to evaluate competing interests and make adequate proportional decisions.

Only state organs dispose of legitimacy, transparency, and democratic processes to assess competing interests and find solutions. Private actors are entitled to pursue their own interests and exercise personal freedom, while states have to observe a certain neutrality vis-à-vis private actors and have the monopoly on using force to impose the law and enforce human rights. Accordingly, to impose obligations on NSAs to exclusively pursue public interests contradicts private freedom and autonomy (Hsieh 2015; De Schutter 2014). Furthermore, Monnheimer (2021) argues that private actors lack the legitimacy to define the material content of human rights and determine the justifiability of infringements. Therefore, entrusting them with such responsibilities risks biased decision making influenced by business interests.

Finally, imposing direct human rights obligations can lead to abuse and hinder long-term improvements. There are two potential avenues for abuse: states evading their duties by shifting responsibilities to private actors, and unwelcome side effects from granting NSAs the means to fulfil obligations. In principle, allowing states to neglect their human rights obligations by imposing obligations on other actors is a serious matter of concern (Skogly 2017). This can serve as an excuse for states to disregard their own obligations and reduce incentives to improve their human rights record. It is crucial to clearly define the accountability relationship between states and private actors, highlighting that states maintain primary responsibility. On top of that, Knox (2008) expresses his concerns about the risk of states misusing direct obligations to regulate and persecute NSAs under the guise of enforcing human rights.

Granting Internet corporations human rights obligations requires corresponding rights to fulfil them (Thirlway 2017). Extending the entire range of obligations to NSAs requires considering whether allocating additional resources may lead to more severe human rights violations (Monnheimer 2021). In this situation, it is argued that Internet corporations may be ill-equipped to balance the rights and interests necessary for implementing the human rights framework. Corporations focus on economic interests such as Internet intermediaries, and imposing on them the duty to shape a rights-respecting society contradicts their fundamental purpose. The private nature of corporate interests introduces a high risk of human rights abuses when accompanied by increased powers and resources (Bishop 2012).

Discussion and Conclusion

This paper has shown how different scholars have approached the phenomenon of CVAW within the last decade. Feminists has sought to elucidate the nature, extent, and impacts on women of various forms of the phenomenon, demonstrating the systematic and continuum of violence between online and offline spaces. Even though there is still debate on terminology, many scholars agree that it is important to address the nature of the interaction between the digital and social factors that are driving the practices of CVAW (Powell et al. 2019; Pavan 2017). In addition, socio-legal scholars have paid attention to the architecture of digital platforms as internet intermediaries, and how they influence and characterise CVAW through their service. Concerns have been raised about their behaviours and responsibilities in the propagation of any kind of violence on their platforms (Henry and Witt 2021; Belli and Zingales 2017; MacKinnon et al. 2014).

The debate about extending human rights obligations to NSAs is not a new one, but it is becoming urgent with the rise of powerful internet intermediaries enabling CVAW. It appears that these tech giants are not adequately prepared for the breadth and depth of human rights responsibilities that they bear. Their endeavours to regulate their platforms in accordance with human rights principles have been either ineffective or, in some cases, irresponsible. These intermediaries have failed to acknowledge that their policies and how they are implemented may constitute an abusive contractual framework that violates human rights standards and oils the wheel of CVAW.

Even though there are many concerns regarding Internet intermediaries' human rights obligations, it is argued that altering the existing regulative dimension is necessary to accommodate a new information society. The capacities of intermediaries provide one of the strongest arguments for advocating the reconceptualisation of their role in safeguarding human rights in cyberspace (Callamard 2019). Due to the vast amount of online content across borders, it is beyond most states' technical and jurisdictional range to regulate or protect individuals from abuse and harm. Schmitt and Watts (2016) highlight how the state-centred legal framework of public international law may appear unsuitable or insufficient in addressing the complexities posed by the highly influential non-state actors in cyberspace. As such, although states remain the ultimate duty bearers, online human rights protection is unlikely to be fulfilled without the NSAs' active participation under the current technological and economic conditions.

It is, however, essential to consider the requirements of an international legal framework that ensures the protection of human rights and holds Internet intermediaries accountable in the online space. This would involve reconsidering the notion of territory to encompass digital territory and boundaries and understanding the international legal consequences associated with these concepts (Callamard 2019). To achieve this, we ought to shift the sources of law to incorporate industry-driven and coregulatory standards while giving legal weight to principles agreed upon in multi-stakeholder discussions. Establishing apparent competence in reviewing the role and duties of Internet corporations as subjects of international human rights law becomes necessary, with particular attention to the Internet architecture in which they govern our rights. In the absence of adequate legal obligations, 'the roles and responsibilities of intermediaries in relation to online gender-based violence remain unclear' (Pavan 2017, 63).

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The Women's Court in Bosnia and Herzegovina: An Alternative Model of Transitional Justice through a Feminist Lens

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Abstract: This paper aims to investigate civil society's engagement in the process of transitional justice in Bosnia and Herzegovina, detailing the experience of survivors in a peculiar People's Tribunal known as the Women's Court. To dig deeper into the subject of how effective autonomous bottom-up strategies were in achieving their goals, the work resorts to empirical research grounded in qualitative methods. By relying on an original set of testimonies, it analyses the Women's Court as an opportunity for the victims to leverage formal justice and bring feminist storytelling to bear, as well as highlighting shortcomings that may have occurred. The findings suggest that the goal of this sui generis tribunal was not to substitute the established system; rather it created a safe space for women that gave them the chance to shape their own narratives, regardless of their ethnic or religious legacy, home countries, and the kind of violence they suffered from. Moreover, the Women's Court wanted to avoid the potential re-traumatization element that characterized formal proceedings, the emotional burden of which was difficult to bear for many witnesses, who were not psychologically trained to do so.

Key-words: Women's Court; Gender; Transitional Justice; Bosnia and Herzegovina; Reconciliation; Civil Society.

Introduction

In the aftermath of the conflict that ravaged Western Balkans in the early 1990s, the bulk of scholarship focused on top-down initiatives to

set peace, emphasizing especially lights and shadows of formal transitional justice in Bosnia and Herzegovina. On the contrary, literature about the ability of formal institutions, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), to endorse autonomous bottom-up strategies is scarce. The length and difficulty of bringing judicial processes to completion, especially those concerning wartime sexual violence, triggered a full-blown transnational movement of solidarity towards women. Not only, but many of the female actors directly involved in the proceedings, empowered by external support, succeeded in organising themselves and structuring different initiatives to pacifically interfere with mainstream formal justice or, as in the case of the Women's Court in Sarajevo, to shape their own model of justice.

Descending from the tradition of People's Tribunals, World Courts of Women are symbolic trials carried out in the form of public hearings to provide a platform for dialogue for traditionally excluded people and subaltern identities. In the words of Corinne Kumar, the International Coordinator of the World Courts of Women, those represent:

> '[...] an attempt to define a new space for women, and to infuse this space with a new vision, a new politics. It is a gathering of voices and visions of the global south, locating itself in a discourse of dissent: it is in itself a dislocating practice, challenging the new world order of globalisation, crossing lines, breaking new ground: listening to the voices and movements in the margins' (Kumar 2004, 190).

World Courts of Women, the first of which was held in Lahore in 1992, perform at least two important tasks: unearthing testimonies and experiences that are normally overlooked by the public discourse, and providing food for thoughts for social and political movements involved in social justice and women empowerment. These alternative courts are 'conceived and established to be the voices of global civil society'[1] and arise whereby national governments, as well as national and international tribunals, are unable or unwilling to implement international standards on human rights (Blaser 1992). Particularly when local authorities are responsible for perpetrating or tolerating serious crimes, People or Women's Courts embody a bottom-up tool for reporting violations, reflecting the idea that international law shall be not an exclusive prerogative of governments, but civil society can actively contribute to its development as well (De Vido 2016, 59). These are normally composed of philosophers, historians, attorneys, scholars, and activists devoted to increasing international law's ethical

[1] Final decision of the Tokyo Women's Court, December 2001. Online at: https://archives.wam-peace.org/wt/wp-content/uploads/2020/03/Judgement.pdf

and political relevance (Falk 2016). It is important to underline that these courts are not official tribunals, meaning that their verdicts are not legally binding, but they rather work as *public conscience*, by calling popular attention to the failures of the traditional legal system in protecting civilians and vulnerable categories and ensuring them equal justice, treatment, and opportunities.

This work focuses on the analysis of a peculiar People's Tribunal known as the Women's Court, which took place in Sarajevo from 7 to 10 May 2015. The first section explores its origins, structure, and organisational issues. The Court carved out its own space under the coordination of the Women in Black from Belgrade, but it was the result of the joint effort of at least 200 NGOs, civil society groups and women's associations. The second section, on one hand, sheds light on the main accomplishments of the process, achieved first and foremost thanks to the transformative potential of a feminist approach to transitional justice; on the other hand, it focuses on the main procedural, organisational and Bosnia-related shortcomings of the Women's Court.

As regards methodology, the paper resorts to a combination of literature review and empirical research grounded in qualitative methods. The latter builds on 16 semi-structured interviews that were conducted between November 2018 and February 2019 in Sarajevo, involving civil society groups, local feminist organisations, researchers, academics, and staff members of regional organisations based in the country. The findings suggest that the goal of this sui generis tribunal was not to substitute the established system, rather it created a cathartic platform where women could freely talk and feel safe at the same time. They could shape their own narratives, regardless of their ethnic or religious legacy, home countries, and the kind of violence they suffered from, especially if not codified in formal criminal justice, the main purpose of which is not reconciliation. The findings also highlight that through its activities the Women's Court wanted to avoid the potential re-traumatization element that characterized formal proceedings, the emotional burden of which was difficult to bear for many witnesses, who were not trained to do so.

1. Origin, Structure, and Organizational Issues

Although the creation of an *ad hoc* criminal tribunal for the prosecution of war crimes was unanimously welcomed, Duhaček emphasized at least two concerns, namely that the ICTY 'will not address all the grievances

of those who suffered' and that 'the approach to those who suffered will not be in compliance with feminist insights' (as cited in Zajović 2015, 74). The natural consequence of this analysis was a reorganization within the feminist community, which pushed for the institution of a space where survivors could feel free to process their pain outside formal legal boundaries (Duhaček 2015).

What emerged during the preparatory works of the Women's Court was that, while the ICTY was the only institution serving justice in the territories of the Former Yugoslavia, the national judicial system still refused to comply with the Tribunal's standards. Local authorities interpreted war crime trials exclusively as an international obligation, which serves more to obtain political accountability rather than restoring a climate of justice and moral order (Zajović 2015, 7). This sense of mistrust towards national and international judiciary rapidly increased between November 2012 and May 2013, when the ICTY acquitted six former officials from Croatia, Kosovo, and Serbia[2]. This event resulted in a reinvigoration of the nationalist narrative in Serbia, where this tribunal has been considered an anti-Serb institution for a long time. Serbian political leaders interpreted these acquittals as tangible evidence of their country's non-implication in war atrocities perpetrated in Bosnia and Croatia (Vukpalaj 2018) and the perception that the ICTY has capitulated without bringing justice to the victims across the region grew accordingly. This is one of the preconditions that sketched the idea of a Women's Court.

The interviewees explained that the official Women's Court was held in Sarajevo on 7-10 May 2015; however, the project had been previously discussed for at least 15 years. In 2000, the feminist activists Žarana Papić and Korinne Kumar launched the initiative in Sarajevo, which was appointed for its multi-ethnic personality, sorrowful legacy, and not least for being the geographical core of the Former Yugoslavia (Byrnes and Simm 2018). Papić, who abruptly died in 2002, was one of the founders of the Center for Women's Studies and the Women in Black Belgrade, as well as a promoter of the first feminist conference on Yugoslav soil, *Drug/ca žensko*

[2] The acquittals started on 16th November 2012, with the former chief commander of the Croatian Army Ante Gotovina and the former commander of the Croatian Special Police Mladen Markač, who have been strategists and commanders of the military operation Oluja. Two weeks later, the Tribunal acquitted Ramush Haradinaj, one of the former commanders of Kosovo Liberation Army (KLA). The series of acquittals proceeded with Momčilo Perišić, the former chief of General Staff of the Serbian Army from 1993-1998 (February 2013). In May 2013, also Jovica Stanišić, the former head of Serbia's Intelligence services in the 1990s, and his deputy Franko Simatović were acquitted.

pitanje, novi pristup? in 1978[3]. Kumar is a feminist activist, the international coordinator of the World Courts of Women, and one of the leaders of the human rights advocacy group El Taller International. For almost 6 years the project was paused due to Papić's death, but it came to light again in March 2006, when Women in Black Belgrade decided to re-launch the initiative under the *Peoples' Women's Tribunal for Crimes against Peace*. Another similar regional initiative called RECOM[4] took place during the same years but, regardless of its relevance, it failed both in encompassing a feminist perspective (Zajović 2015, 9) and giving adequate space to women survivors[5]. This was the reason why, between 2008 and 2010, some of the pioneering activists who sponsored the Women's Court managed to organize a series of informal meetings and round tables that converged in the international preparatory workshop *Court of Women for the Balkans: Justice and Healing* (Sarajevo, 14-16 October 2010). The five years between 2010 and 2015 were dedicated to public presentations, educational seminars, feminist discussion circles, and training sessions at the regional level, as well as to defining the members of the Organizational Committee of the Court. The latter was composed of ten different women's groups operating across the Former Yugoslavia, but the whole process was regionally coordinated by the Women in Black from Belgrade.

The Women's Court sought financial support from several international partners, in particular Reconstruction Women's Fund (RWF), the Global Fund for Women, Mama Cash and Urgent Action Fund. Moreover, the Women's Court Organizational Committee collaborated with international organizations and missions, such as UNDP in Croatia and Kosovo, EULEX and OHCHR in Kosovo, with a specific engagement on the topic of gender-based wartime sexual violence (Zajović 2015, 11). UN Women was involved with its field office in Sarajevo[6].

The expectations for a successful commitment of civil society actors were extremely high, but the lack of critical attitude and the excessive involvement of NGOs in the countries engaged curtailed the participation.

[3] Skype interview with Jasmina Tešanović, feminist activist and Woman in Black (Sarajevo, 20th December 2018).

[4] RECOM was established in 2006 and it is a regional intergovernmental commission established for seeking truth and justice for all the victims of war crimes and other serious human rights violations committed on the territory of the Former Yugoslavia from 1991 to 2001. It received wide international support and funds from the EU, CoE, and several foreign foundations and embassies.

[5] Skype interview with Nela Pamuković, Croatian activist and co-founder of Centre for Women War Victims (ROSA). She actively participated in the creation of the Women's Court (Sarajevo, 4th December 2018).

[6] Skype interview with Daniela Lai, PhD (Sarajevo, 7th December 2018).

Especially in the case of Bosnia-Herzegovina, international donors and foundations imposed a top-down approach in leading the work, coupled with evidence that civil society organizations were predominantly pro-government and unconcerned with transitional justice queries. This resulted in a glaring case of 'NGOization', a term that was made popular by Arundhati Roy to describe the condition where social movements start to depoliticise discourses and practices due to becoming more vertically structured, bureaucratised and institutionalised. NGOs, which started to thrive between the late 1980s and the beginning of the 1990s are portrayed as a neoliberal disease that 'defuse political anger and dole out as aid or benevolence what people ought to have by right' (Roy 2014).

Similarly, Velma Šarić[7] confirmed that initiatives like the Women's Court tend to have a lower impact than expected due to the lack of synergy among activists and civil society. The absence of grassroots organisations in the processes was coupled with severe underfunding. She also underlined the lack of a long-term perspective, since local and regional initiatives receiving international funds are subject to shifts in donors' priorities. Therefore, if the focus of donours switches, no continuity will be guaranteed for initiatives that are not self-financing. Furthermore, NGOs hardly work through a strong vertical structure nor employ professionals; rather, they rely on voluntary and/or occasional adhesion of members (Clark 2016, 16). This resulted in a crucial obstacle to encountering witnesses and properly training them for sharing testimonies before the Women's Court. In addition, the intermittent communication around the initiative hampered its outcome, as many potential witnesses were not even aware of the event taking place and hence did not join.

Regarding the methodology, the Women's Court adopted a feminist approach (Zajović 2015, 12-16). The tribunal's activity was horizontal and decentralized, as the organizers set standardized but flexible working guidelines that each country could easily adapt to its level of readiness through preparatory activities like seminars, workshops, and round tables, 'in accordance with the feminist principle of autonomy and appreciation of different rhythms of work' (Zajović 2015, 22). Another important pillar was the permanent mutual support among the actors involved, based on communication and information, reflection, and experience-sharing. Women in Black coordinated the effort by merging expertise and resources through the publication of written and audio-visual material.

[7] Personal interview with Velma Šarić, President and Co-Founder of the Post-Conflict Research Centre (Sarajevo, 15th January 2019).

It was chosen to divide the initiative into five thematic panels aimed at 'weav[ing] together the objective reality (through analyses of the issues) with the subjective testimonies of the women; the personal with the political; the logical with the lyrical' (Kumar 2005, 190). According to the Judicial Council of the Women's Court, these panels tackled the most widespread crimes committed against women both in peace and in wartime. Those were:

a. *War against civilians*, which included several warfare methods, such as the segregation of men from women, the slaughter and disappearance of women, men, children and elderly, separation of families, forcible removal from homes and lands, the devastation of properties, internal displacement, forced mobilization of women and men, subjection to torture and other degrading treatments.
b. *Women's bodies – a battlefield*, addressing crimes such as sexual violence in a broad sense, i.e. rape, multiple rapes, sexual slavery, forced impregnation, detention for sexual violence, sexual torture and humiliation, both in war and peacetime, in the private and the public sphere.
c. *Militaristic violence and women's resistance* reiterated the persistence of rigid gender identities through mobilization, meaning that men were forcibly recruited to fight. This condition erupted with virulence in Serbia (Mamut 2018; Tešanović 2018) and affected primarily men who were members of minority groups, such as Serbian Croats, Hungarians, Roma, and Rusyns; men who publicly expressed a different political opinion, such as dissidents and anti-war activists; refugees from Krajina in Serbia. The two faces of militaristic violence hit men and women differently, as the first were mostly subject to forced mobilization, while the latter widely suffered from the psychological implications of this practice. However, witnesses reported cases of women who organised their own forms of resistance, by hiding their sons from conscription or travelling to war zones seeking their relatives.
d. *Ethnic violence* took a variety of forms that are interwoven with the other kinds of violence listed, such as militaristic, socio-economic, and gender-based. This violence shifted from mass killings to forced detention in camps, torture, and sexual violence based on ethnicity. What emerged from the testimonies of the participants was that multi-ethnic families and communities were targets for exile and/or break-ups. Moreover, especially after the war, several women denounced that they lost their jobs or were victims of mobbing and mistreatment because of their ethnic legacy.
e. *(Un)declared war*, including crimes that cannot be tried under interna-

tional criminal law but constitute forms of social and economic violence, both in war and post-war period. Especially in Bosnia, certain economic reforms have worsened women's working and economic conditions. Under Tito's regime and in the pre-war period, industries were nationalized. When the conflict erupted, those state-owned factories were closed or destroyed and, while men were being conscripted, women remained jobless and without salary. At the end of the war, labour reforms focused on the privatisation of public assets, with the consequence that industries shut down or were drastically reduced, bringing a decrease in employment. A big industrial hub like Zenica, for example, was a great example of gender balance in terms of the proportion of employees during the Yugoslav period, but right after 1995, the number of workers dropped from 20 000 to 2 000. These days, in Zenica and in Bosnia by extension, the rate of unemployed women has arisen, with the result that many of them are forced to join the informal economy, carry out unpaid tasks or work under precarious or unfavourable conditions (Lai 2018)[8].

The structure of the Court was hybrid. Even though it did not constitute a formal tribunal, and thus its aim was not to hold perpetrators accountable, it maintained some semblance of an official court. There was an International Judicial Council composed of international and local scholars and professionals with solid legal backgrounds. There were survivors giving first-person testimonies before the audience that were coupled with 'testimonies from expert witnesses who situated personal experiences of violence within their historical, political, and socio-economic contexts' (O'Reilly 2016, 9). Only judges and defendants were missing, since no formal judgement was delivered; the goal was instead to 'naming […] the social, political, economic forces which have offered structural support to, and thus led to, injustice' (Zajović 2015, 72). It resorted to legal terminology as well to identify participants in the process, namely *witnesses*, *expert witnesses* and *judicial council*.

[8] Skype interview with Daniela Lai, PhD (Sarajevo, 7th December 2018).

2. Lights and Shadows of the Women's Court: A Good Starting Point or a Wasted Opportunity?

2.1 Major Strengths of the Women's Court

In its historical and geographical context, the Women's Court was a brilliant intuition that served as a guidepost for the transition across the Former Yugoslavia. The Yugoslav transitional process has been extremely convoluted because the transition was twofold: from socialism to capitalism and from war to peace (Mlinarević 2019)[9]. In this sense, the Women's Court had no previous model to draw inspiration from and it could have become a milestone for forthcoming initiatives of that kind. In addition, Iveković defined a third layer of transition, namely from patriarchy to its dissolution (Zajović 2015, 131). According to her words, the Women's Court is potentially successful because it was not based upon the pre-existing patriarchal foundations that characterize the formal judicial system. The goal of international criminal law is to assess individual criminal responsibility by ascertaining the truth. However, as the Women's Court organizers claimed, truth is not univocal[10]. It represents a complex of different narratives that are inherently linked and proportionate to the injustice suffered. Moreover, truth has very often been the object of misappropriation and manipulation (Zajović 2015, 121), being a perfect slogan for political propaganda. In this sense, the Women's Court's potential lies in the strong political claim that crossed national borders. It gave women the chance to create their own narratives, regardless of their ethnic and religious legacy, their countries of origin and the kind of violence they suffered from.

> 'It was called *Women's Court* because women were put at the core of the initiative itself, to show that their experiences matter. Everyone was there to listen to them, and they were free to say what they have been through without any judgement on the part of the audience. It was a *safe space* for women, where they can talk about kinds of violence which are not always codified in the formal criminal justice system, such as enforced militarization and forced labour for example. Those were abuses inflicted upon women and their immediate family members, that irreparably destroyed their lives [...] The Women' s Court was conceived to supplement what formal criminal justice cannot do for victims, but it was also meant for the public to spread knowledge about other forms of violence' (Mamut 2018)[11].

[9] Personal interview activist for CARE International Jadranka Mlinarević (Sarajevo, 23rd January 2019).

[10] Personal interview with Kada Hotić, member of the Mothers of Srebrenica, Sarajevo (10th December 2018). Her husband, son and two brothers were killed in the genocide.

[11] Personal interview with Lejla Mamut, former Human Rights Coordinator at TRIAL Internatioanl, actual OSCE Programme Officer and expert on gender-related issues

The creation of a *safe space* was perhaps the greatest intuition of the Women's Court's organisers. Although 'Defence and Prosecution attorneys are not therapists'[12], for many victims giving their testimonies before The Hague Tribunal entailed re-traumatization. Some of them were not aware of how a formal trial develops, what they can be questioned about, how they should answer questions and they were not psychologically trained to bear the emotional burden of the proceeding. The act of witnessing in front of a formal court has rarely helped survivors to recover from their traumas, especially because offenders were in the same room, only a few feet away from them. Despite the creation of a special unit called the Victims and Witnesses Section (VWS)[13] within the ICTY, under Article 22 of its Statute, some of the witnesses felt threatened and expressed faint confidence that justice would be served (Wald 2001).

Moreover, some of the witnesses found it difficult to abide by the dynamics of the trial, as they were frustrated and disappointed by the impossibility of telling their own version of the story, but they were required to stick to the scheme of 'answering with a *yes* or a *no*'[14]. Furthermore, despite understanding the pivotal role played by international criminal justice, they were tired of being confined to the passive role of victims of sexual violence. As the totality of the interviewees confirmed, even though rape is one of the most disruptive offences a person can suffer from, it is not the only form of violence that women experience both in war and in peacetime. Organisers emphasised the recurrence of a set of misconducts that overwhelmingly affected women even before the conflict erupted and will be committed again if their root causes are not eradicated. This is linked to the inherent nature of criminal justice, which, by definition, deals with crimes of genocide, war crimes, crimes against humanity, and the crime of aggression, occurring in the course of a conflict; as a consequence, it overlooks certain forms of oppression that are so entrenched in societies that they become structural injustice (Young 1990) in peacetime.

Instead of focusing on 'an abstract concept of justice' (Clark 2016, 8), the focal point on injustice adopted by the Women's Court constituted the link between Haldemann's justice as recognition and feminist approaches to transitional justice. During the 1990s, pioneering feminist scholars

(Sarajevo, 4th December 2018).

[12] Confidential source, personal interview (Sarajevo, 9th December 2018).

[13] See Rule 34 regarding witnesses' right to protection and counselling. The Rule of Procedure and Evidence were adopted by the Tribunal on 11 February 1994 and amended for the last time on 10th July 2015 (IT/32/Rev.50).

[14] Personal interview with Vildana Džekman, lawyer and activist for CURE Foundation (Sarajevo, 16th November 2018).

(Askin 1997; Chinkin 1994; Copelon 1994) combined efforts to set out a legal framework for treating violence against women in international humanitarian law and international criminal law. This feminist critical-reflective literature also pointed the finger against the recurring practice of international criminal law of sexualizing and infantilizing women. This means that defining women as passive subjects of sexual abuse forecloses them from the possibility of playing different roles in justice, such as survivors, political activists, combatants and even perpetrators (Bonora 2018; Engle 2005). Moreover, feminists from this scholarship accuse international criminal law of quelling both individual women victims and more radical feminist critical movements in general. On one hand, individuals are silenced because their complex experiences are useless from a juridical perspective since they very often diverge from the legal facts a court is interested in; on the other hand, radical feminism is often neglected by international criminal law, since it delves into the causes that engender violent conflicts, such as global economic interests and structural gender inequalities (Otto 2009).

The struggle for dealing with the past and laying the groundwork for the future through a feminist approach expressed all the transformative potential of the Women's Court. Above all, this potential emerged from the fact that, for the first time, the transitional narrative was enriched with 'histories of violence that had never found an escape valve before' (Lai and Bonora 2019). When listening to the 36 witnesses at the Sarajevo Court[15], who 'spoke freely and flawlessly' (Džekman 2018), it was soon evident that different forms of grief overlapped in their testimonies, both in a temporal and substantial sense. For instance, a woman from Srebrenica was the victim of both wartime rape and domestic violence. When she finally summoned up the courage to leave her husband, she faced multiple discriminations for being a refugee, a divorced woman with children and a person with mental health issues at the same time. Her condition reflected upon her sons, who are still incapable of finding a job because of the economic crisis in Bosnia (Lai and Bonora, 2019). Another relevant story was that of a Croat woman married to a Serb official. She was forced to flee Zagreb, lost her job and was a victim of militaristic violence in her country, as she was 'a Serb by chance'[16].

Secondly, all the countries of the region enjoyed equal status in front of the Court and all the testimonies fitted in a broader geographical, social,

[15] A documentary has been realised Ženski sud - feministički pristup pravdi, that can be found on the website of the Women's Court at: http://www.zenskisud.org/en/filmovi.html.
[16] *Ibid*.

and cultural environment. Mutual care and support among witnesses produced the elimination of a hierarchy of grief, which can be inferred from the fact that 'while listening to the story of a woman from Serbia about the mobilization of her two sons for war in Kosovo, a woman from Srebrenica who has lost everything is not judgmental and there is no hierarchy of pain or guilt'[17].

Thirdly, another feature of utmost importance is that the rules of local participation in post-war justice processes changed thanks to the Women's Court (Bonora and Lai 2019). As part of the feminist approach to transitional justice, the Court did not envisage only an adjustment of the meaning of *justice*, but also a radical rethinking of means and methods through which women from civil society took an active part in justice processes. Many of the women who testified were not serving in any grassroots organization, proving that the court was geared toward engaging with broader sectors of society. Given the attempt to overtake regular transitional justice processes and embrace other aspects of the post-conflict reconstruction, such as dealing with the past, the violence and the traumas, the Women's Court tried to dismantle 'structural inequalities of liberal democracy and its forms of participation' (Bonora and Lai 2019), adopting a feminist point of view. It, therefore, drew the perimeter for a 'subaltern space of confrontation and deliberation' (Fraser 1990) for women to explore.

Finally, the fourth element that expressed the transformative character of the Women's Court was the intent to detach itself from a purely restorative scheme of justice. Restorative justice is quintessentially victim-centred and it thus reiterates the idea of a woman as a passive more than a resilient actor. As Ljupka Kovačević[18] of the NGO Anima of Kotor claimed during the Press Conference opening the Women's Court on 5 May 2015: 'Women's Court is not a psycho-therapeutic court, but a political court'. This restorative approach can once again be interpreted as a product of the neoliberal rhetoric imported into Bosnia and other failed states during the 1990s (Mlinarević 2019)[19]. The *pathologization* of Former Yugoslav States and primarily Bosnia has been a tool in the hands of Western countries to justify interventionist policies. International organisations and NGOs toned down local communities' resilience (Hughes and Pupavac 2006) by

[17] Peace meeting of the activists from Croatia and Serbia, Poreč, 25-27th April 2014. Quoted in Zajović, S. (ed.). (2015). *Women's Court: About the Process*, Belgrade: Women in Black.
[18] Quoted in Bonora, C. and Lai, D. (2019). The transformative potential of post-war justice initiatives in Bosnia and Herzegovina. In Evans, M. (Eds.). *Transitional and transformative justice: Critical and international perspectives*. Routledge.
[19] (n.20).

treating Bosnian people exclusively as victims, overemphasizing and publicly displaying their traumas without focusing on the roots of the conflict, following the typical pattern of 'pornography of pain' (Halttunen 1995). In this sense, the Women's Court constituted a good countertendency, where feminist activists, women's groups and local civil society associations formulated their own scheme of justice, which reached the climax on 7-10 May 2015, but was intended to be an ever-evolving process. As Pamukovic and Zajović[20] explained, participants are still meeting and brainstorming. A great achievement was that some of the survivors who testified in Sarajevo became activists as a result of the event and established women's groups in their communities or organised empowering activities aimed at building self-confidence. In Pamukovic's words (2018):

> 'We would like to create smaller courts that could tackle specific gender-related topics. For example, we were planning to establish a court denouncing economic discrimination in Serbia. In Slovenia, we enhanced the cooperation with local activists on specific issues raised by citizens. Moreover, we expanded our knowledge on other issues that have not been brought about during the 2015 Court. Therefore, we started working with refugee women'.

In this respect, the Women's Court was a success. It was the first initiative held on European soil that managed to connect different layers of civil society who usually do not communicate with each other, such as local and international agents, Bosnians and Croats with Serbs, and Kosovars with Serbs, overcoming stereotypes and ethnic barriers. Moreover, in the case of Bosnia and Herzegovina, the Women's Court conveyed an important message. For the first time, a country where local activism, despite remarkable exceptions, is weak and lacks a common agenda (Džekman 2018; Mlinarević 2019; Šarić 2019) hosted an event as such. Bosnian women, who still 'hang their heads and lower their voices when a man walks into the room'[21] had a great opportunity to empower themselves through the Court. However, regardless of the noteworthy effort that converged on the initiative, the totality of the interviewees underlined several aspects that could have been managed better.

[20] Phone interview with Staša Zajović (9th December 2018).
[21] Vildana Džekman made this example to explain why CURE Foundation projects on women's empowerment do not include men's participation.

2.2 Shortcomings and Organisational Flaws

Certain issues were procedural. According to Lejla Mamut[22], there have been clear missteps in the organization. First, the Women's Court personnel informed witnesses only at the end of the process that their statements given in public could have been used in formal courts at a later time both by the prosecutor and the defence. Furthermore, the initiative was held under the sponsorship of the Women in Black from Belgrade which, despite representing a vital organization in their national context, made the Women's Court's narrative centred on Serbia and, in particular, crimes committed by Serbia (e.g., the responsibility of Serbia as a State, especially in relation to Bosnia and Herzegovina; the responsibility of Serbian army; forced mobilisation within Serbian border). This constituted a main organizational flaw, which disadvantaged experiences other than those of Bosniak women, excluding Serbian women who have suffered from the Bosnian or Croat army.

Specifically, regarding the Bosnian case, the image depicted of the country by the Women's Court reinforced certain stereotypes (Bonora 2018). Some civil society groups were overrepresented, albeit always engaged in every post-conflict initiative and although they never proclaimed themselves a feminist association, like the Mothers of Žepa and Srebrenica[23]; or, while other participant countries involved witnesses that took the stand and denounced different kinds of violence, in the case of Bosnia, mainly Bosniak women who survived rape at the hands of Chetniks gave their testimonies. Similarly, 'the Women's Court even was restricted in its ability to provide a wide-ranging and inclusive public account of BiH women's experiences of the conflict' (O'Reilly 2016, 12), due to the short time at participants' disposal, which was five panels in four days. Bosnian witnesses focused only on two forms of abuse: direct sexual violence (Bonora 2018) and indirect violence through the violations suffered by male members of their families (Mlinarević and Porobić 2016). Moreover, Bosnian stories retraced only wartime experiences, neglecting gendered structures of inequality that foster the recurrence of gender-based violence, insecurity, and discrimination in peacetime.

[22] Personal interview with Lejla Mamut, former Human Rights Coordinator at TRIAL International, current OSCE Programme Officer and expert on gender-related issues (Sarajevo, 4th December 2018).

[23] Bonora specified that this was the opinion of a Bosnian feminist scholar who participated in the Women's Court and was particularly critical of certain issues.

Furthermore, all the Bosnian survivors came from the Podrinje Valley, in the Eastern part of the county (O'Reilly 2016, 13). This means that the Court excluded a series of other critical areas notorious for the mass atrocities that have been perpetrated there: urban centres like Sarajevo and Mostar; a resilient city like Tuzla, where the local government countered ethnonationalism during the conflict; all the towns located in the Bosanska Krajina like Banja Luka, Bihać and Jajce, where slaughter occurred, and concentration camps were built. This structure reinvigorated the dichotomy of women as victims, which is historically untrue, since almost 5360 women were recruited and deployed by the Army of Bosnia and Herzegovina, serving as soldiers and/or logistic personnel (Omanić et al. 2010). In October 1994, a group of women who fought in the First Corps of the ARBiH founded the Association of Women-Combatants from the Sarajevo Area (Hadžiahmić 2011). Including those female veterans would have widened the debate around the different roles and identities that women can play during a conflict, and who can be considered survivors and perpetrators at the same time.

Participation of Bosnian women at the Women's Court was limited not only in terms of topics covered but also and especially in terms of numbers. The Court aimed at enhancing and expanding the engagement of survivors and civil society groups in the processes of transitional justice; however, a variety of cultural and religious constraints prevented many other Bosnian survivors from intervening in the forum to report cases of sexual violence. First, women are reluctant to publicly denounce it because rape is still associated with a strong social stigma (Goldblatt and Meintjes 1998; Mertus 2008; O'Reilly 2016). During formal trials, victims are often questioned about their previous sexual conduct, alluding to their promiscuity as guilt and associating rape with something unavoidable if 'you brought this on yourself' (TRIAL International, 2011). Is not unusual that women who took the stand were blamed or even disavowed by their fathers and husbands. Jasmina Tešanović shared a story, which was not told before the Women's Court, but clearly explains how, in a patriarchal society, sexual abuse can cause self-blame, alienation, depression and even push someone to self-harm. Despite the length, it is important to report it in full:

> 'I knew a girl of Serbian ethnicity who lived in Sarajevo, got raped by her four neighbours and got pregnant. When her family discovered she was carrying a baby, her father kicked her out of the house. She found a shelter in Belgrade, among the women of the support network SOS Hotline for Women and Children Victims of Violence. She was only 17 and, during the labour, she was screaming: "I do not want to become a mum, I want

> my mum". As soon as the child was born, the girl received a message from her father, telling her she could have returned home if the child had been a boy. However, it was a baby girl. Mother and daughter went living in a flat provided by the support network, whose volunteers were helping and taking care of them. One night, one of the volunteers found the girl hanging from the windowsill trying to kill herself and, when asking her why she was trying to commit suicide, the girl replied: "Tonight, for the first time, I looked at my baby's face and I noticed the resemblance to one of my rapists' face. I found out who the father was and I did not want to leave with this burden"' (Tešanović 2018).

Over the years, rape survivors in Bosnia have been subjected to huge press and political coverage. They felt very often exploited on two fronts: on one hand, ruling elites capitalized on them 'seeking to profit from a narrative of the atrocities committed by others to *their women*' (Mlinarević 2015)[24]; on the other, victims have been in the spotlight of international journalists, scholars, human rights advocates, fact-finding commissions, who were morbidly interested in gruesome details and often heedless of the risk of re-traumatization. Therefore, many of the survivors preferred to simply forget, and privately dispose of their experiences, instead of exposing themselves publicly (Džekman 2018).

Many of the interviewees (Balta 2018; Mamut 2018; Miličević 2018; Mlinarević 2019) pointed out the existence of three separate pieces of legislation for victims of war in the country – one for the Federation, one for the Republika Srpska and one for Brčko District- none of which is totally beneficial to the victims. In the Federation, art. 54.3 of the Common Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children[25] provides for compensation for victims of sexual abuse and rape[26]. This law entitles women to a monthly pension of BAM 563.00 (approx. 280 euros). The Federation was the first country in the world to consider rape as 100% incapacitating, without the need to prove physical disability (Mlinarević 2019). However, Jadranka Miličević[27] provided an example of how this amount of money is insufficient to cover all living expenses: 'A friend S. has been raped during the war and she got pregnant. She receives State compensation, and she pays 100 euros only for medicines. How can a person survive with 180 euros per month?'.

[24] *Ibid*., p.7.
[25] Official Gazette of the Federation of BiH, 36/99, 54/04, 39/06 and 14/09.
[26] Amendments and supplements to the Law published in the Official Gazette of the Federation of BiH, no. 39/06.
[27] Personal interview with human rights advocate Jadranka Miličević, 10th January 2019.

The local community is divided between those who believe in the necessity of drafting *ad hoc* laws for women victims of war (Miličević 2018) and activists who have been critical of this system, believing that passing a separate law for women victims of sexual abuse during the conflict may paradoxically allow gender-based discriminations to endure. Moreover, women who receive State compensation tend to become dependent on it, relying on the invalidity pension as their only source of income (Mlinarević 2019).

In Republika Srpska (RS) the situation is more convoluted. First, RS does not distinguish between victims of sexual crimes and other civilian victims. Second, the national law does not comply with the international humanitarian law principles enshrined in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968) and the UN Convention on European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (1974), as it sets a deadline for submitting applications for compensation for war damages that expired on 31 January 2007 (Brammertz et al. 2016). Similarly, in the Federation, the application had to be supported by relevant medical documentation, dated no later than 1997, and certified by an NGO (O'Reilly 2016, 15; Mlinarevic 2019). Third, a woman in RS can be recognised as a victim of war entitled to compensation under the Law on Protection of Civilian Victims of War only if certain other conditions are met, namely the percentage of bodily damage has to be 60% or higher; and the victim must be RS citizen or she must have been injured between August 1990 and January 1992, 'on the condition that [she] obtain[s] RS citizenship' (Subotić and Zaharijević 2018). This regulatory complexity made it extremely difficult to address the topic of compensation in a forum such as the Women's Court.

However, not only Muslim women from Bosnia were suspicious about participating in the Women's Court. Serbian women of Bosnia and Herzegovina felt the same way, being hindered by the fact that the initiative appeared less neutral than it was supposed to be. On one hand, the main concern of Women in Black Belgrade was to reaffirm Serbian responsibilities towards Bosniaks, as the ethnic group who suffered the most during the conflict and in the aftermath (Mamut 2018). On the other hand, the impression that the court favoured Bosniak victims at the expense of Serbian ones was strengthened by the decision of the Women in Black to appoint the Mothers of Žepa and Srebrenica as Regional Board members (O'Reilly 2016, 16). Moreover, while in the Federation the Women's Court barely received media coverage (Bonora 2018), in Republika Srpska it was subject-

ed to a negative campaign conducted by war veterans, who condemned the initiative (O'Reilly 2016, 16). However, the run-up to the Women's Court seemed to raise authorities' awareness of the status of women who survived sexual violence in Republika Srpska. If, theoretically, it seemed a positive outcome, in practice it implied the exploitation of victims for political purposes. They were depicted as forgotten victims of war, who were made invisible by Muslim women, reinforcing thus the nationalist rhetoric.

According to some activists (Džekman 2018; Pamukovic 2018), a more heterogeneous sample of witnesses would have had a greater impact. Even though the Women's Court Judicial Council was comprised of civil society exponents both from inside and outside the Balkans, survivors who told their experiences were from the entire Former Yugoslavia. Women's Court should have included stories of women who survived other conflicts, like the coeval Rwandan, as the most effective way to strongly impact national governments is to brainstorm and diversify strategies (Džekman 2018). In conclusion, interviewees revealed that the participation of Bosnian political leaders in the initiative was extremely low and, the few who decided to step in, did it as private citizens and not on behalf of their institution.

Conclusions

This paper showed that other forms of justice can be exercised along with the traditional ones. The Women's Court did not aim at substituting the formal judicial system, nor it must be interpreted as a critique against the ICTY; rather it constituted a tool in civil society's hands to reclaim public space. The Sarajevo Court was bottom-up, entirely political and nowhere near judicial, except for its structure. It was not entitled to pass legally binding judgments and defendants were not allowed in. However, this court can be intended as a platform for the engagement of female activists where all parties were co-starring. The Women in Black from Belgrade, as regional coordinators of the initiative, encouraged the mobilisation of different sectors of civil society across the Former Yugoslavia and outside its boundaries; as a result, more than 200 local and international NGOs cooperated in the lead-up activities of the Women's Court. They brought their joint reflections, experiences, and insights to feminist discussion circles, contributed to the field research that converged in public presentations, wrote, filmed and performed at regional educational seminars and, not least, provided potential witnesses with psycho-therapeutic support.

Nonetheless, many of the interviewees lamented that, due to a lack of funds and political interest, the initiative did not receive noteworthy international attention. Moreover, due to the aforementioned organisational issues, its regional impact was limited as well.

Ultimately, albeit its limitations, it can be concluded that the success of the Women's Court was being *one of a kind*. Its good outcome was including those parties who felt less represented by the international criminal justice system, like feminist groups and victims' associations. And, hopefully, it will also be the first step towards a more integrated approach between formal and alternative schemes of transitional justice.

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Contextualising Development and Human Rights in Mountain Areas

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Abstract: This work aims to shortly introduce the emergence and evolution of development thinking, the ideas of the right to development, and the rights-based approach to development. It covers the paradigm shifts from a purely economic perspective to one including a human component and, finally, to a sustainability-based understanding over the last 50 years. It also touches upon the international soft law instruments that have shaped the construction and content of the right to development and the rights-based approach to development. In order to illustrate the practices of sustainable development with a rights-based approach, this paper focuses on the specific context of mountain areas while taking into account their environmental, socio-economic and cultural characteristics.

Keywords: development, rights-based approach; mountain areas

Introduction

Right to development and rights-based approach to development are relatively new ideas in the development and rights discourses. In the course of time, the new understandings and challenges in the global level have contributed to the rapprochement of these discourses, thanks to the tireless works of development thinkers, economists, jurists, and political scientists up to today. While efforts in the development thinking have instrumentalised the human rights discourse as a tool to redefine development as more than economic growth in a more holistic approach; the idea and construction of the right to development have created a common tool

that incorporated the theoretical and practical aspects of human rights and development thinking in international law.

In the next sections, we will first point out how the right to development and rights-based approach to development emerged, constructed, and evolved in a brief historical perspective. We will note the changes in the development thinking and rights and freedoms discourses: shift from an economic perspective to human-central elements, and to the contemporary sustainability concerns. While doing so, we will briefly explain the construction of the right to development in international instruments and its expansion of the content with the emerging issues on the global agenda. Lastly, to better comprehend the development practice in today's understanding of sustainability and the rights-based approach, we will focus on mountain areas with their geographic features, livelihoods, and communities.

1 Rights-based Approach to Development and Right to Development in Brief Historical Perspective

1.1 Development Thinking

The term 'development' may have various meanings or interpretations in different contexts (Abuiyada 2018, 115). For the purposes of this work, the context is global political economy and development thinking.

Traditionally, development thinking was associated with economic development, and even it was to be considered as a subdiscipline of economics. The traditional perspective in developing thinking took, for instance, Gross Domestic Product (GDP) per capita as a measure of development based on traditional welfare economics (OECD 2018, 133). This reflects the origins of the development thinking in global political economy: a Western-style development understanding based on industrialisation and welfare, and capitalism as its economic system.

After the outset of the Second World War, the critical and alternative approaches to development led to the broadening of the development thinking, and the development thinking experienced paradigm shifts. For example, the differences between the experiences of industrialised Western countries and emerging economies in the global South in their aspirations for development paved the way for alternative thinking in the development discourse. This led to the realisation that the strategies, policies, and paths of development could be multiple. Moreover, the critical ap-

proaches carried the understanding that while the basis for development had still been economic principles and financial capitals, the inclusion of social and environmental factors of development had started to emerge, such as the emerging global consensus on the importance of human development (OECD 2018, 134-136).

Undergoing a change or paradigm shift is a dynamic process in the face of new understandings and challenges in the development thinking, as well as in any other discourse. In this regard, the intertwined emergence of right to development and rights-based approach in the last decades illustrates how the new understandings and challenges brought development and human rights discourses to a common ground, and therefore smoothed the way for changes in both development and human rights thinking.

1.2 Intertwined Emergence of Right to Development and Rights-based Approach to Development

In the human rights discourse, in the 1970s, Vasak Karel and Keba M'Baye planted the seeds for the understanding of right to development through their new theory on human rights: the solidarity rights. These rights would 'seek to infuse human dimension into areas where it had been missing, such as development and environment' (De Feyter 2001, 21). In fact, today, the right to development is considered as a solidarity right.

Before the emergence of the idea of solidarity rights, the human rights discourse primarily focused on civil and political rights and economic, social, and cultural rights. It is important to point out that this period (1970s) for the understanding of right to development coincides with the international debate on the articulation of a new international economic order ideally to be based on equity, sovereign equality, interdependence, and cooperation, after the three decades of the decolonisation period around the globe (Uvin 2007, 598; Declaration on the establishment of a new international economic order, 1974). Under this circumstance, it is no surprise that while the developing countries of the global South pioneered the articulation of right to development as a collective right, the developed Western states inclined to keep the focus on the individual level by reinforcing the importance of the first two generations of rights (Uvin 2007, 598).

After the emergence of the idea of right to development in 1970s, the term right to development had first undergone a construction process -conceptually and practically- within the human rights discourse, and later experienced a content enlargement. The process is still relevant to date, and this aspect will be covered in the following sections.

After the emergence of the idea of right to development, in 1990s Amartya Sen's view of freedom as development had been a turning point for the understanding of rights-based approach to development. According to Sen's (1999) basic premise, there is a dialectical relationship between development and freedom: 'a view of development as an integrated process of expansion of substantive freedoms that connect with one another.' (Coderre 2003). The substantive freedoms can be exemplified as access to healthcare, education, or equality. In this regard, Sen (1999) sees the freedoms both as an end and means for the development process where 'political, economic, and social freedoms link with each other and with the ends of enhancement of human freedom in general.' (Coderre, 2003). Human development should therefore be free from the scourges of poverty, inequality, and repression. In this way, Sen's ideas touch also upon the direct link between the human rights and development discourses: 'the more rights or freedoms are observed, the greater the feasible levels of political and economic development may be sustained' (Coderre, 2003).

Amartya Sen's idea of development as freedom shaped the concept of 'development' for the development economists, bringing the human and freedom components to the front in the development thinking. In this light, for instance, the three core values of development, namely raising people's levels of living (life sustenance), self-esteem, and freedoms, are formulated and emphasised in the development thinking by the contemporary development economists such as Michael Todaro. (Fischer 2022).

At this juncture, we see how the human rights (and freedoms) and development discourses entered each other's spheres, finding a common ground. The efforts in development thinking to redefine development as being more than economic growth found one way to construct a more holistic definition: talking about human rights (Uvin 2007, 597). On the other side, the emergence of the idea of right to development created a sound combination of the theoretical and practical aspects of human rights and development: 'the integration of the norms, standards, and principles of the international human rights system into the plans, policies and processes of development, specifically by acknowledging that development itself is a human right' (Piovesan and Fachin 2018, 2).

In the next section, we will elaborate on the construction and advancement of the concept of right to development in international instruments.

1.3 Construction of the Right to Development in International Instruments

Despite the long history of the construction of right to development, the foremost international instrument that placed the right to development in concrete grounds is the United Nations (UN) Declaration on the Right to Development (1986, UN General Assembly res. 41/128). Article 1 of the Declaration (1986) states:

> The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realised.

According to the Declaration (1986), then, the right to development incorporates not only the economic aspect of development thinking, but also the other aspects. Moreover, development is depicted as a state where all human rights and fundamental freedoms can thrive on; therefore, we can see the mutually enforcing relationship between rights and development discourses.

The Article 2 of the Declaration (1986) specifies that 'the human person is the central subject of development and should be the active participant and beneficiary of the right to development.' In this light, the Declaration takes a holistic, human-centred approach to development (Marks 2011, 1-2). In addition, the Declaration establishes equity, equality, and justice as primary determinants of development, reiterating the rights-based approach to development (Subedi 2021, 1). Furthermore, the use of word groups such as 'every human person and all people' and 'individually and collectively' throughout the Declaration shows that the right to development was considered both at the individual and collective levels. The last consideration is that the Declaration (1986) was built upon the principles that had already been inserted in the previous international human rights instruments, such as the 1966 Covenants (Subedi 2021, 2).

Second, it is worth mentioning that even before the Declaration (1986) laid out the right to development, there had been a forward-looking regional human rights instrument that placed the right to development in its content: the African Charter on Human and Peoples Rights (signed in 1981, entered into force in 1986). The Article 22 on the right to development of the African Charter states:

> All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

This choice of mentioning 'peoples' in the African Charter clearly reflects the aspiration of the global South to advocate for the right to development as 'a collective right' from the beginning of the emergence of the idea. In addition to this, the African Charter proves once again to be a forward-looking instrument with Article 24 on the right to a general satisfactory environment favourable to development, inserting the environmental aspect into the rights and development thinking spontaneously. In the 1990s, there was a visible paradigm shift in development thinking: environmental concerns, such as climate change and biodiversity loss, came to the forefront as emerging issues at the global level, and therefore the discourse of sustainability entered in the development thinking at lightning speed.

Third, in this regard, the Rio Declaration on Environment and Development (1992) marks the following:

> Principle 1 'Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.'
>
> Principle 3 'The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.'

Given the above principles of the Rio Declaration (1992), the focus on the sustainability and environment pillars becomes self-evident. When we take a glance at the Rio Declaration, we see the mention of present and future generations, environmental protection, ecosystem conservation and restoration, and sustainable development as word groups while still recognising the human-centred approach to development.

Fourth, going back to the human rights agenda concerning right to development, we see that the Vienna Declaration and Action Plan (1993) 'reaffirms the right to development as a universal and inalienable right and an integral part of fundamental human rights' (para.10); quotes that 'development facilitates the enjoyment of human rights and fundamental freedoms'(para.10), and recognises that 'democracy, peace, development, and human rights are mutually reinforcing and interdependent' (para.8).

Since then, the right to development or rights-based approach to development has been covered in a wide range of international instruments. The Working Group (WG) on the Right to Development was established in 1998 by the UN to monitor and review the promotion and implementation of the right to development (OHCHR, 2014). In the last four years, there have been a series of resolutions of the General Assembly and the Human

Rights Council on the human right to development. However, it is important to point out that all the international instruments that we have up to date on right to development are soft law instruments; in other words, they are not legally binding. In order to bridge this gap, the Working Group keeps up the work by developing a potential legally binding instrument on the right to development.

Today, there exists a 'Draft Convention' on the right to development that consists of 36 articles in five sections, which is drawn on existing instruments and their principles. The Draft Convention still has a long way to go through a negotiation and re-drafting process. When we have a look at the content of the draft, we see that it reiterates the above-mentioned elements of right to development as a human right and rights-based approach to development. The coverage of the draft convention ranges from the active and meaningful participation of people in the development process, to international cooperation, to the individual and collective nature of the right, to state duties and to a monitoring body. As expected, the Draft Convention is more detailed and extensive compared to the Declaration and includes some normative changes and additions (Teshome 2022, 12). Fairly, the draft Convention takes a step further and 'addresses environmental concerns by adopting sustainable development as one of the guiding principles of the right to development' (Teshome 2022, 14).

All in all, bearing in mind the journey of right to development and rights-based approach to development, we can evidently see the paradigm shifts and content enlargement: first from an economic development thinking to a human development thinking, and lastly to a sustainable development thinking.

In sustainable development practice, the different contexts bring about different development processes and different concerns about the right to development. Therefore, we know that 'one size does not fit all'. In order to better comprehend a development process, we tend to contextualise what we have in hand. For instance, the development processes and right to development concerns of the global North or global South countries, urban or rural populations, marginalised and vulnerable groups (such as indigenous community or minority group) or mainstream groups, can differ from one another significantly. Thus, each case may require specific attention. In this work, we refer to mountain areas as a focal point.

In the next section, we will encapsulate the characteristics of the mountain areas, from geographic, socio-economic, and cultural perspectives.

2 Defining the Mountain Areas and their Peculiarity

Mountain areas cover 24 percent of the Earth's land surface and are home to 15% of the human population (Alfthan 2018, 6). The mountain areas are mostly characterised as rural areas, given their low population density, remoteness, agriculture-based economy, limited infrastructure, and small share of human settlements in the landscape (Fischer, 2022). Therefore, the perception of mountains as remote and inaccessible areas hard to govern, administer, and develop is widespread (Wehrli 2014, 405). As a result of their remoteness, the political and economic centres are located generally far away from the mountain areas and this plays a role in the marginalisation of these areas, especially in national policies and development interventions (Wehrli 2014, 405). Considering the inhabitants of the mountain areas, the mountain communities are likely to be neglected in the development considerations as well, especially in the global South. Expectably so, when we look at the profile of a poor community that struggles with poverty at the global level, we see that they are predominantly rural farmers living in the mountain areas (Fischer, 2022).

After this brief, in order to set the general context in detail, we will start with the environmental and geographic characterisation of mountain areas.

2.1 Environment and Geography

To begin with, in terms of environmental and geographical scale roughly, the mountain areas are characterised by altitudes and slopes, high value of nature and landscape, rich biodiversity, whilst in high altitudes by limited vegetation, lack of soil development, rough terrain, harsh climate conditions and extreme events. Given that this characterisation is notably vague, a better understanding of what constitutes a mountain area is needed. Up today, there is no universally accepted precise definition of a mountain area since the concept of a mountain area could be defined differently by the local perceptions (Kapos et al. 2000, 1). However, 'as mountains enter more into the political agenda, definitions have been produced to suit purposes' (Gerrard 2014, 2). The components mostly taken into consideration while defining a mountain area have been elevation (altitude), volume, relative relief, steepness, and even sometimes climatic zones, and the definition is based on a combination of these characteristics (Gerrard 2014, 3). The numerical values attributed to these components for a mountain area definition in the scientific literature have been various through the course of time (Messerli and Ives 1997; Price 1981; Brunsden and Allison

1986 cited in Gerrard 2014). Today, the UNEP-WCMC[1] (Global Delineation 2000) approach to define mountain areas, 'developed iteratively by scientists, policymakers and mountaineers, has proved broadly acceptable to a wide variety of international organizations and to the scientific community' (Gloersen et al. 2004, 19). This approach notes that 'altitude alone is needed to define mountain areas above 2500 m and combines altitudinal and slope criteria to define mountains above 1000 m. For lower elevations (300-999m), an additional criterion based on local elevation range is used to identify mountainous areas' (Gloersen et al. 2004, 19). According to the UNEP-WCMC scheme, there are six elevation classifications:

Table 1. Classification of mountain areas (UNEP-WCMC)

Classification	Criteria
Class 1	elevation ≥ 4.500 m
Class 2	elevation 3.500–4.500 m
Class 3	elevation 2.500–3.500 m
Class 4	elevation 1.500–2.500 m and slope ≥ 2°
Class 5	elevation 1.000–1.500 m and slope ≥ 5° or local elevation range > 300 m
Class 6	elevation 300–1.000 m and local elevation range > 300 m

Despite the different classifications, any area that falls within these criteria is considered a mountain area. Bearing in mind especially the high elevation and slopes, the environmental characteristics of mountain areas are also worth mentioning. Apart from the highlands that are characterised by the presence of limited vegetation, rough terrain, snow cover, or glaciers, the mountain areas are hotspots for biodiversity in themselves (Chakraborty 2021, 589). The rich fauna and flora mean that the endemism rate is high since the mountain physiology and climate conditions lead to endemism and speciation. (Hoorn et al. 2018 cited in Chakraborty 2021, 589). In general, at medium altitudes, the forests are the most common

[1] The United Nations Environment Programme World Conservation Monitoring Centre (UNEP-WCMC)

constituent in a mountain ecosystem, and the higher the elevation, the tougher the climate conditions get and therefore the ecosystem features are due for change. Although mountains around the world differ significantly from one another, the complex topography of mountainous areas remains as a common characteristic (Beniston 2006, 3). This complex topography plays a significant role in the modelling of mountain weather and climate patterns, along with other determinants such as latitude, altitude, and continentality (Gommes 2002; Barry 1994 cited in Beniston 2006, 4). Typically, mountain climate is identified by rapid changes in climatic parameters at spatial and temporal scales, especially when it comes to temperature and precipitation, and distinctive wind and radiation patterns (Becker and Bugmann 1997 cited in Beniston 2006, 3; Gommes 2002, 2). The mountain topography as an orographic barrier leads to changes in atmospheric circulation patterns (Houze 2012 cited in Chakraborty 2021, 589) that eventually can cause wind turbulences altering the up and down valley air flow (Gommes 2002, 3), and 'forced ascent of precipitation, condensation, and runoff processes' (Chakraborty 2021, 589). These sudden modifications in patterns result in the extreme weather or climate events (such as heavy precipitation leading to floods, and storms) not only concerning the highlands, but also having implications for the downstream. Moreover, the mountain landscape is marked by the landslides, erosion, rockslides, avalanches, and other geophysical movements bearing in mind the topography, geomorphology, and climate conditions. (Chakraborty 2021, 589-591).

Given these geographic, environmental, and climatic characteristics, it is no wonder that the mountain areas are 'highly dynamic and fluid spaces' (Chakraborty 2021, 599), at the same time vulnerable settings with natural and specific constraints.

Next, we will cover the socio-economic characterisation.

2.2 Socio-economy

At the socio-economic scale, we will take into account the demography, livelihoods and infrastructure in mountain areas in a broad perspective. It is crucial to consider that the content of these features differs from one mountain region to another in the world, but these differences will be exemplified when necessary. With respect to demography primarily, the global mountain population has doubled in the last 50 years, in accordance with the global population growth rates (Ehrlich et al. 2021,1-15). This increase in mountain population is attributed to the urbanization trends in

many mountain regions (Thornton et al. 2022, 20). However, the population distribution patterns vary significantly: For instance, while in Europe (at high latitude) the mountain population is concentrated below 1.000 m (lower altitude) with overall low density, in sub-Saharan Africa (low latitude) it is concentrated between 1.000 and 2.500m (higher altitude) with higher density (Huddleston et al. 2003, 5; Ehrlich et al. 2021,15). Despite the fact that the urban centres or clusters can be found in mountain regions, the mountain landscape is mostly identified with rurality. Only 34% of the global mountain population lives in cities (Ehrlich et al. 2021,1) and the rest inhabit within suburbs and rural areas, which marks the overall low population density. Furthermore, in these rural mountain settings, demography is often portrayed by trends of depopulation. To illustrate this, in Italy many mountain municipalities are exposed to a worrying depopulation phenomenon due to emigration, low birth rates, and high levels of aging (Reynaud and Miccoli 2018, 1-5). In other words, especially the youth are leaving the rural mountain areas for the urban centres in the high and lowlands, and the aging population remains.

Despite the different trends and characteristics, whether rural, urbanistic, high, or low elevation, the mountain landscape is inhabited, and therefore the livelihoods and economy are a few points worth stressing. The mountain economies host many sectors, though their prevalence and contribution patterns change in different settings. First, agriculture and its related activities play a major role in mountain economies especially in rural settings (Sati 2014, 5) where the climatic and geographic conditions are feasible. The agricultural activities can include crop/plant, fruit, vegetable farming, livestock, fisheries, beekeeping, and other products that are derived primarily from them. Related to agriculture, the forestry and forest products (especially wood and timber) are also important components of the livelihoods. Secondly, considering the geomorphology of mountains, they are rich in mineral and natural resources, and thus the mountain economy hosts extractives and renewable energy sectors (mainly hydropower, but also solar and wind) (Alfthan 2018, 32). In urban and suburban settings, the small-scale manufacturing and processing industries are part of mountain livelihoods and economy as well. Lastly, the natural and cultural heritage accompanied by high biodiversity allows for the tourism sector and its related activities to thrive in mountain areas. The type and scale of tourism activities vary by place: for instance, the European Alps are a hotspot for the winter (ski) tourism, and the Himalayas are famous for mountain trekking and climbing for various purposes. Nevertheless, in all cases,

tourism sector becomes an integral part of the livelihoods and economy of the mountain communities.

As can be noted, the mountain livelihoods and economy are contingent upon the nature: natural resources, natural heritage, and climate conditions. At the same time, infrastructure is a substantial facilitator of livelihoods, economy, development, and everyday life in the mountains. The infrastructure comes in the form of facilities and services provided by public or private actors, covering the areas of communications, transportation, energy, water, healthcare, and education in the most general terms. Recalling mountain topography, it is not surprising that 'the mountain areas are lagging behind in infrastructure' (Sati 2014, 5). Especially in the rural and highland ambiances, the geospatial difficulties, climate conditions and demography pave the way for low returns on investment, and therefore the provision of facilities and services becomes costly and limited compared to the lowlands. This calls for strong public interventions in infrastructure development to guarantee affordable access to basic goods and services that set the scene for the quality and standard of living in mountain communities.

In the following sub-section, we will address the cultural aspects.

2.3 Culture

Regarding cultural characteristics, it is important to note that the mountain areas are home to many indigenous peoples and minority populations each with diverse cultures, languages, values, and belief systems (Sati 2014, 137; FAO 2016). There is a profound relationship between these populations and nature that manifests itself in the form of attributing cultural or religious significance to natural formations such as mountains, forests, and rocks. For example, the mountains have been places of religious worship, pilgrimage, rituals, and spirituality around the world since the ancient times: Mount Olympus was believed to be the home of the Greek Gods; Mount Kailash in the Himalayas of Tibet is a sacred pilgrimage site for many Asian religions (FAO 2016). In Uganda, the indigenous Tepeth tribe has numerous sacred sites and spiritual places on Mount Moroto, including a forest (Andrian et al. 2020, 87). Hosting minority populations, the mountains are also hotspots for language richness: for example, Ladin, an ancient Romance language, is still spoken by about 30.000 people in the Dolomites, the mountain range of the northern Italian Alps. (FAO 2016). These features are regarded as natural and cultural heritage of the

mountains, and they are intertwined with society and livelihoods, thus they should be protected.

To sum up the entire section, the mountain areas are delineated by remoteness, altitude and ruggedness, rich biodiversity, abundance of resources, climate extremes, low population density, unbalanced demography and depopulation trends, natural resources-based livelihoods, limited infrastructure, limited and costly access to goods and services, and ethno-cultural diversity.

This brief characterisation reveals that mountain areas are environmentally and socio-economically and culturally fragile. At the same time, global challenges, including climate change, are increasing the pressure on mountain resources and communities (Wehrli 2014, 405), against the background of the trends in demography, economics, and governance that are shaping these areas. (Dasgupta et al. 2014, 619).

Bearing in mind all these, we can see that mountain areas require special attention, additional support, and specific policies when it comes to development practice, rights, and freedoms.

3 Synthesis and Implications

Considering the environmental, socio-economic, and cultural features explained above, the mountain areas emerge as a distinctive point for reflections. The perception of mountain areas as remote, inaccessible, and hard places to govern, administer and develop turns into a harsh reality in development and governance practices.

In the first place, the mountain regions are generally marked by marginalisation – whether geographical, political, or economic- in representation and decision-making at the upper levels of governance, which often bring about neglect in policy making. While the mountain communities can take a chance to actively participate in local processes; they have limited access to policy and decision making, and thus representation, beyond the local or district levels (Sati 2014, 139). The political and economic centres are located in lowlands far from the mountain areas and there is the tendency to perceive mountains as hinterlands that supply resources, therefore the mountain issues are commonly addressed through sectoral lenses (forestry, agriculture, energy and so on) with a lowland focus (Sati 2014, 139). In this way, the fragility and specificities of mountain ecosystems and the needs and interests of mountain people are easily overlooked (Sati 2014,

139). Moreover, the neglects and marginalisation couple with low returns in investment; therefore, it becomes challenging to receive a share from the available public and private funds. This reiterates the statement of the need for specific policies and additional support for mountain areas. To wrap it up, the neglects in the policy and decision making, lack of investment, and failure to understand the specific challenges of mountain environments add up to the vulnerability of the communities and their livelihoods, as well as of the ecosystems (Wehrli 2014, 405; Sati 2014, 139).

The scope of these challenges along with environmental, socio-economic, and cultural characterisations thereinbefore lays the way open for their association with the considerations on the human rights and fundamental freedoms of the mountain peoples. This includes various aspects of civil and political rights; economic, social, and cultural rights; and solidarity rights considering the individual and collective levels. The exemplification enables a better grasp of the interconnections: for instance, the political marginalisation in policy and decision making, and in representation, falls within the scope of the Article 25 of the International Covenant on Civil and Political Rights (1966) that states 'every citizen shall have the right and opportunity to take part in the conduct of public affairs directly or through freely chosen representatives'. The same article extends to have 'access to public services on general terms of equality'. Besides, considering the inadequacy of infrastructure and services in mountain areas, we can see the relevance of the Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966) on 'the right to adequate standard of living and to improvement of living conditions' for the mountain communities. This can be extended to the right to health and education, in terms of provision of and access to services such as health facilities and schooling. Furthermore, with respect to minority populations and indigenous communities that inhabit the mountains, we can deliberate on the protection and development of cultural diversity and heritage in connection with the fulfilment of cultural rights, and additionally refer to specific instruments such as the Declaration on the Rights of Indigenous Peoples (2007). Last and foremost, recalling the first part of this work, the content of the right to development incapsulates in numerous ways the concerns raised previously for the mountain peoples: it stands for not only economic development but also social, cultural, and political development; based on environmental sustainability and considerations for future generations. This further illustrates that the right to development is consistent with and based on all other human rights and fundamental freedoms. For instance, free, active, and meaningful participation of people in the development

process is incorporated in Article 4 of the Draft Convention on Right to Development, therefore the participation and access of mountain communities to decision and policy making becomes once again relevant. Herein, the tendency of mountain communities to seek the fulfilment of the right to development is at the collective level. In the mountain areas, the practical implications of this right go hand in hand rigidly with a focus on poverty alleviation, sustainable livelihoods, and improved infrastructure and access to basic goods and services. The state duties at this juncture come to the forefront given the high potential of government neglect of the rural and mountain areas.

In short, if a development process is to be successful in a region or country, it must recognise that the mountain areas, with their natural resources, communities, livelihoods, and peculiarity, hold upmost importance for the aspirations toward economic development, environmental protection, ecological sustainability, and human wellbeing (ICIMOD 2011, 5). They generously provide goods and services that are crucial for both natural and human systems in up and down streams (Wehrli 2014, 405). In connection to this, the promotion and protection of human rights and fundamental freedoms must be placed as a part of the outcomes of the development policies and initiatives (Marks 2011, 1).

Conclusion

The concepts of right to development and rights-based approach to development have come a long way in the last 50 years. Due to the intertwined emergence and advancement processes of the concepts, we have reached a contemporary understanding of sustainable development and the right to development as a human right in our time. We evidently see the paradigm changes that had been shaped by the global agenda historically: a shift from an economic thinking to a human-centred thinking, and lastly to a sustainable development thinking. The advancement in these fields is a dynamic process that is still relevant today: in the face of global challenges and understandings, they are being revised, and updated.

The insertion of a rights-based approach into development and the construction of development itself as a human right have been mutually reinforcing and interdependent: Development facilitates the observation of human rights and freedoms, while the observation of human rights and freedoms lays the foundations for development processes.

Today, in sustainable development practice, we see that different contexts bring about different development processes and different concerns for the right to development: for instance, those of global North vs global South, and those of urban vs rural populations. After all, one size does not fit all.

Focalisation becomes of paramount importance for a better understanding of the practical implications of development process and rights concerns, and in this regard, the mountain areas and communities require special attention, additional support, and specific policies in the light of their environmental/geographic, socio-economic, and cultural characterisation.

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Addressing Climate Change Induced Displacement: Towards Human Rights-Based Approach

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Abstract: Displacement based alone on environmental disasters does not meet the requirements for refugee protection. To be considered a refugee, one must meet the criteria outlined in Art 1A of the 1951 Refugee Convention, and victims of natural catastrophes consequently must meet the same criteria. Because international refugee law can only be implemented to a limited extent, international human rights law may be used as a 'complementary' foundation for environmentally displaced persons seeking protection. This literature review reflects on how to create conditions for the protection of refugees displaced by environmental disasters, the responsible actors, and the ones to provide protection. Taking a human rights-based approach, it reviews European policies and protection instruments in the context of environmental-induced migration. It also deals with climate change litigation, with the purpose of assessing whether climate policy measures exist as a result of climate litigation, and if so, in what way the legal rulings are changing human rights concepts.

Keywords: human rights; refugees; international law; climate change

Introduction

According to the United Nations International Organization for Migration, predictions are that up to a billion people will become climate migrants over the next thirty years (IOM 2021), while the World Bank esti-

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mates that by 2050, more than 143 million people will be displaced due to climate change in sub-Saharan Africa, South Asia, and Latin America (Rigaud et al. 2018). In addition, Internal Displacement Monitoring Center states that catastrophic climatic events cause an average of 24 million people to be displaced every year. Human-induced environmental disasters are creating new type of casualties – environmental refugees, but there is no consensus on providing legal aid to this category of people. While migration policies focus primarily on separating 'justified' from 'unjustified' refugees, the continued degradation of the environment and its impact on world population movements are largely silenced. Classis modalities and theories on migration, e.g., the division according to the level of readiness – voluntary and involuntary (Massey et al. 1994), are not entirely applicable in these circumstances, or are rather too simplified. Indeed, environmental factors can and do co-exist with other drivers of migration such as socio-economic factors, conflicts, and violence in countries of destination, but unlike human-caused catastrophes, the forces of nature show all the fragility of social systems to cope with climate change and the environment in an efficient way.

This literature review focuses on the issue of climate-induced migration in general and in relation to one or more of the selected climate change effects (i.e., floods, sea-level rise, and droughts), and it explores how the international framework responds to the issue of climate refugees. The following section then examines the jurisprudence of international and supranational courts and analyses the impact of climate change litigation on human rights concepts.

The paper presents the first findings and developments of the research by building on insights from human rights perspective, legal studies, and political science. The research fills a gap in the discussion about the climate refugee status and aims to bring a new approach to the application of the non-refoulement criteria in asylum requests. The adopted methodology, i.e., doctrinal, analytical, and interdisciplinary, will allow further exploration of this phenomenon on the supra-national level.

1. Defining 'Climate Refugees'

The International Organization for Migration (IOM) was one of the first international organizations to work on environmental migration. To address the migration, environment, and climate nexus, a dedicated Migration, Environment, and Climate Change division was established in

2015. This institutional reform has formalised IOM's involvement in the topic, making it the first international agency to do so[2]. However, despite the growing number of both scientific and academic literature, including reports, reviews, and policy recommendations on the topic of climate change-induced displacement, national and international response to this challenge has been vague or limited, and thus remains in the grey area of protection. The issue that arises is the complex task of defining who the 'climate refugee' is, as they are neither specifically identified as a category nor protected by the 1951 Convention relating to the Status of Refugees and thus face a strong security gap (European Parliamentary Research Service 2019).

Although coined in 1985 by El-Hinawi in United Nations Environment Programme's report (UNEP), EU instruments still struggle to legally recognize environmental refugees (Rosignoli 2022). Over the decades, the term remained controversial or rather criticized because of its vague conceptualization, and due to a disagreement on the terminology (Bates 2002). The lack of a common working definition and agreement on methodology are some of the main difficulties in defining refugees affected by environmental factors (Rosignoli 2022). In the absence of a legal definition, it remains uncertain who should be included in the equation – voluntary or forced migration, internal or cross-border displacement, the type of environmental changes as a driver of migration, or the cause (whether the environment is the only or accompanying factor of migration). The definition of climate refugees in this paper relies on the definition of Biermann and Boas that emphasizes the role of climate change:

> 'People who have to leave their habitats, immediately or in the near future, because of a sudden or gradual alternations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity' (Bierman and Boas 2010, 67).

Non-governmental organizations and human rights advocates, on one hand, point to human rights violations and call for amendments to existing legislation. International and refugee law, on the other, encounter vicissitudes when it comes to a comprehensive answer to the question - how can the conditions for the protection of refugees displaced by environmental disasters be met? But despite the discrepancies in the literature concerning the level of urgency and legal response to human mobility influenced

[2] See IOM's history and mandate, retrieved from: https://www.iom.int/ (accessed: 10/05/2022).

by environmental factors, authors from different scientific fields agree that climate change is and will become an even more significant driver of migration in the not-so-distant future. In addition, the fact that the United States has allowed Temporary Protected Status to over 300.000 people fleeing from disaster-related consequences in countries including El Salvador, Honduras, Nicaragua, and Somalia, demonstrates that cross-border displacement in the aftermath of natural disasters is a real phenomenon (Scott 2018).

Furthermore, some governments are addressing climate change induced displacement through resettlement projects. To be prepared for the 'black scenario' in case their residents need a new place to live, in 2014, Kiribati's government purchased a piece of land in Fiji to displace its population once the rising sea level reach irreversible consequences (Pala 2021). To offset the increasing sea levels due to climate change and ease severe pressure on housing, the government of the Maldives, one of the lowest-lying terrains in the world, is developing at least three artificial islands (Nasa Earth Observatory 2020). Even within the European continent, the Danish parliament approved the construction of a one-square-mile barrier island in Copenhagen Harbour to house 35.000 people and safeguard the city from storm surges and increasing sea levels (Smithson 2021).

The abovementioned examples confirm the magnitude of the phenomenon in its current and future estimates. Innovative approaches in terms of infrastructure in response to mass displacement are a step forward, however, the question that remains on a supra-national level and seeks multi-level governance is the recognition of climate refugees through a new legal lens.

1.1. Towards New Subjectivity

Who are 'climate refugees' and what should be the proper terminology? Because climate-induced migration is varied and multicausal, the answers to these concerns are still debatable. Existing research suggests that various forms of environmental deterioration are likely to lead to various migration patterns (McAdam 2020). The first division recognizes occurrences having a delayed onset and those with a rapid one.

Sea level rise, heat waves, and desertification are examples of slow-moving climate change that might result in migration. For people living in low-lying island states like Kiribati in the Pacific, implications of slow-onset processes like sea level rise gives the potential for statelessness. There are five distinct types of climate-induced migration, including

forced relocation due to unrest or violence brought on by a lack of critical resources, migration brought on by slow-onset degradation, sinking small island states, high-risk zones, and sinking small island states (Rosignoli 2022). It is challenging, however, to establish the precise contribution of climate change to a climate-related event, such as a natural disaster.

Negative long-term effects on the environment, such as sea level rise, salinization of the groundwater and soil, droughts, and desertification, are characteristics of slow-onset disasters. Depending on the degree of environmental degradation, people affected by slow-onset events have several options - remaining where they are, moving, or eventually leaving when forced to. Depending on the situation and setting, these tactics may be permanent or transitory. Small island developing states, for instance, are a special kind of slow-onset disasters that are in the final stages of environmental degradation, rendering them uninhabitable. As a result, planned relocations are becoming an increasingly common last alternative (Ionesco et al. 2016).

Large-scale displacement is the most typical result of rapid-onset disasters, which include floods, storms, hurricanes, typhoons, cyclones, and mudslides. These events all have detrimental short-term effects. People who migrate to escape the effects of climatic disruptions rarely cross state borders and instead relocate within their nation of origin as Internally Displaced Persons, notwithstanding variations in migration patterns caused by the climate. The fact that climate-induced migration is multicausal is another shared characteristic (Scott 2018; Rosignoli 2022). Environmental variables can coexist with other factors that influence migration, such as unemployment, war, violence, and social networks in the nations of destination. One of the most challenging issues in comprehending the elements affecting human mobility is establishing how and to what degree different factors interact.

Environmentally induced migration can also be qualified as temporary, where there is potential for return, or permanent, without such potential and the urge for permanent resettlement (Joarder and Miller 2013). The first group consists of population movements brought on by environmental stress or steady deterioration of the environment. This category primarily refers to those who have been harmed by natural disasters like earthquakes and volcanoes, severe storms like hurricanes, and environmental calamities such as Chernobyl. Although the resulting devastation is serious, after reconstruction, both the land and habitable conditions may typically be restored. On the contrary, the second group is linked to the execution of long-term environmental changes induced by humans, such as

deforestation, desertification and the human actions of the multinational companies which generate environmental degradation.

In conclusion, climate-induced migration seeks to be seen through the lenses of place, time, and context because of its multi-causal and diverse character. These characteristics not only provide a framework for understanding migration, but also reveal the size and propensity of the impacted population to survive, and consequently, their legal standing. The questions that arise are: Is the current legal system equipped with tools to address a multi-cause and heterogeneous event like climate-induced migration? Is it possible to overcome the legal obstacles that prevent 'climate refugees' from being recognized as a new legal subjectivity?

2. International Legal Framework

Being part of the customary international law[3], the principle of non-refoulement constitutes the cornerstone of international refugee protection, and it is enshrined under Article 33 of the Convention Relating to the Status of Refugees (1954), which is also binding on States Party to the 1967 Protocol[4], and further regional refugee law instruments (UNHCR 2007). The non-derogable character of the principle has been reaffirmed by UNHCR, while the General Assembly has called upon States 'to respect the fundamental principle of non-refoulement, which is not subject to derogation'[5]. To be recognized as a refugee, one must establish a 'well-founded fear' of being persecuted on the ground of race, religion, nationality, political opinion, or membership in a particular social group (Convention Relating to the Status of Refugees 1954). Such definition narrows down the matter of persecution and persecutor to a human factor (Durieux 2022), and has been supplemented by international and regional human rights law. The latter stepped in to fill certain gaps by protecting people from being returned to a 'real risk' of being tortured or subjected to other cruel treatment (McAdam 2014).

The principle has also been introduced in human rights treaties, e.g., in Article 3 of the Convention against Torture and Other Cruel, Inhuman or

[3] See: UNHCR, The Principle of Non-Refoulement as a Norm of Customary International Law.
[4] Article I(1) of the 1967 Protocol provides that the States Party to the Protocol undertake to apply
Articles 2–34 of the 1951 Convention.
[5] Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Degrading Treatment or Punishment (1984); Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance (2006); obligations under the Articles 6 (right to life) and 7 (right to be free from torture or other cruel, inhuman or degrading treatment or punishment) of the 1966 Covenant on Civil and Political Rights. According to the United Nations Human Rights Committee (UNHRC), the principle is an essential component of the defence against torture and other types of cruel, inhuman, or degrading treatment or punishment, as well as unreasonable deprivation of life. Regional human rights courts, including the European Court of Human Rights (ECtHR), have reached similar conclusions[6].

The concept extends to all refugees and asylum seekers under refugee law. However, this means that a person must meet certain conditions before he or she can be granted refugee status. A state must, in all cases, respect, protect, and fulfil the human rights of all people under its jurisdiction. The key distinction between the various codifications of the concept of non-refoulement is the issue of who is covered and for what purposes. It prevents refugees from being returned to countries where they are persecuted under refugee law, but it only applies to some groups of people impacted by armed conflicts under international humanitarian law (McAdam 2014). Thus, it is crucial to examine specific human rights treaties to illustrate the expanded scope of non-refoulement and threshold eligibility.

Debates about climate refugees are rather found in academic and scientific debates than in international or regional law-making. Instead of introducing binding forms of compliance, the international community approached the environmental sphere with a soft law kind of governance. Over the last years, the EU has set various measures to combat environmental crisis, while many efforts were focused on climate change[7]. The first steps towards a 'greener future' on the policy-making level can be found in the 1970s, when the EU Member States agreed to cooperate in this area, starting with the first Environmental Action Programme and several policies adopted. During the eighties, other global initiatives were established, including the Intergovernmental Panel on Climate Change and the European Commission's Directorate for the Environment. Noticeable is also the formal integration of environmental protection into EU treaties with the

[6] Soering v. The United Kingdom, 1/1989/161/217, para.88, Council of Europe: European Court of Human Rights, 7 July 1989, retrieved from: https://www.refworld.org/cases,ECHR,3ae6b6fec.html.

[7] See European Green Deal and European climate law, retrieved from: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en (accessed: 02/05/2023).

Single European Act, which resulted in a remarkable body of legislative and non-legislative measures including, according to the Commission, more than 200 pieces of EU legislation. Furthermore, Amsterdam Treaty recognized 'sustainable development' as an EU formal goal and carved a path for the Member States to act together and implement these goals through Millennium Development Goals from 2000 and the 2030 Agenda and its Sustainable Development Goals from 2015 (Paul et al. 2018).

When it comes to the environmental migrants, there was no new policy element in the international debate until 2015, when the adoption of the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Protection Agenda) and the 2030 Agenda on Sustainable Development reignited interest in and awareness of the nexus between environmental threats and migration. At the regional level, the Kampala Convention adopted by the African Union presents the result of a regional effort to find answers to problems such as forced migration, prevent and mitigate displacement, and provide protection and assistance to persons displaced because of natural disasters and climate change (IOM 2011).

3. Legal Protection in the Context of Climate Change Displacement

The traditional criminal justice system, centred on investigating crimes and prosecuting perpetrators, would not be applicable to victims of climate change as the perpetrators are not clearly identifiable. Proving human factors when it comes to environmental migration and displacement are problematic on several counts, as they are vague in establishing the attribution of causality. Environmental events are usually not of (direct and solely) human origin.

Additionally, these types of victims may be the targets of human rights violations committed by States by their actions or inaction. The right to live in a healthy environment and have access to relevant information is becoming more widely acknowledged. In Budayeva v. Russia[8], the ECtHR found violations and granted damages to the victims for the state's inability to provide notice of a natural disaster and assist with evacuation. Since this kind of litigation is still in its beginnings, it will be interesting to observe in the years to come the course of action of the Courts and whether human rights law can be applied in cases of climate change victims.

[8] ECtHR, Budayeva and others v. Russia, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008.

As seen in the previous section, seeking asylum under existing refugee law is not feasible for individuals fleeing their homes as a cause of climate disasters because (1) they are not persecuted, (2) climate change is not one of the admissible criteria, and (3) climate displacement can be internal rather than to another country. In a study by the European Parliament published in 2011, the agency noted that the term 'climate refugee' is not legally recognized by the European Union and consequently, existing legislation cannot interpret climate refugees in a way that would include them in the protection regime. The study also highlighted that the EU would need to amend its asylum framework, either by expanding the current scope or introducing new legal provisions, to legally protect people displaced by rapid and slow-onset climate disasters (European Parliament 2019). One of the mechanisms that could be triggered in the event of a large influx of migrants into the EU is the Temporary Protection Directive (TPD). After Russian armed forces started a large-scale invasion of Ukraine on February 24, 2022, and the number of displaced people increased dramatically, 'the Commission advocated activating the procedure provided for by the 2001 directive on temporary protection'[9]. This was the first time the TPD was triggered since its introduction in 2001.

However, despite several agencies and scholars proposing this instrument as a potential temporary solution to environmental migration, it encounters few shortcomings. Besides the vague interpretation of the term 'mass influx' (TPD Art. 2(d)), the lack of political will within the EU is sufficient reason for the complicated process of activating the directive. The directive was not initiated even during the European migration crisis of 2015-2016. Additionally, although theoretically it may offer a remedy for disasters with a rapid onset, it is hardly applicable for the slow-onset ones, like sea-level rise, land, and forest degradation, etc.

Humanitarian protection against repatriation may occasionally be provided to displaced individuals who do not qualify as refugees if they are concerned about suffering substantial harm in their home nation or region. However, these circumstances are frequently rare and brief, such as public emergencies or natural disasters. There are certain loopholes in how international law is put into practice, so displaced persons 'who may not qualify as refugees under international or regional law, may in some situations also require international protection, on a temporary or longer-term basis'

[9] European Commission, Proposal for a COUNCIL IMPLEMENTING DECISION establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection, Brussels, 2.3.2022 COM(2022).

(UNHCR 2017). The definition of 'displaced people in need of international protection' includes those who are displaced due to natural catastrophes or the negative effects of climate change but are not refugees.

3.1. Addressing Environmental Displacement through National Policies and Initiatives

Although there is no international consensus on the protection of persons fleeing environmental disaster, there have been national attempts to introduce or at least expand the existing asylum framework. In general, when granting temporary protection, national agencies usually cite humanitarian over environmental reasons.

The Swedish Aliens Act provides protection for a person who 'is unable to return to the country of origin because of an environmental disaster. The corresponding applies to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence'[10]. The residence permit duration is for up to 3 years[11]. In the commentary following the revision of the Act, while appreciating the practice, UNHR also expressed concern that such short-term permit issued to persons granted subsidiary protection will be of limited duration, thus not enabling its holders to gradually integrate into the local community (UNCHR 2021).

The Finnish Aliens Act entails a similar possibility of granting humanitarian protection. Under Section 88a, it is mentioned that 'an alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under section 87 or 88 for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe'[12].

When faced with an influx of Haitian refugees following the 2010 earthquake, Brazilian legislation proved incapable to cope effectively with the crisis. Brazilian officials stated there was no legal basis to admit Haitian migrants as refugees (Andrade 2015). After introducing interim solutions, the government has adopted a draft of a new law that would more comprehensively address this issue. Brazil's 2017 Migration Law (No. 13445), among others, expended the number of categories for a temporary visa, also providing a temporary humanitarian visa for those displaced due to environmental catastrophes (Soter and Lessa 2021). In its report, IOM

[10] Swedish Aliens Act (2005:716), Chapter 4 section 2a together with Chapter 5 section 1.
[11] The mechanism is currently suspended as a consequence of the high number of arrivals in 2015-16.
[12] Finnish Aliens Act 301/2004, Chapter 6 Section 88a.

however pointed out that Brazil hasn't established adequate measure for immediate displacement impacts of disasters, in particular strategies to address migratory movements resulting from the adverse effects of climate change and environmental degradation (IOM 2018).

Although state practice can have an impact on EU legislation, due to the modest number of member states with environmental protection provisions, it is doubtful that this will result in fruitful changes to the EU law (Scott 2018).

4. Rights-based Litigation: Some Case Examples

4.1. UN Human Rights Committee

When evaluating the asylum and refugee claims for seeking protection in the context of environmental displacement and ultimately invoking the principle of non-refoulement, the decision of the UN Human Rights Committee (HRC) on Ioane Teitiota v. New Zealand[13] ruling published in January 2020 provides an excellent insight into how the international legal system is coming to address climate change displacement. Ioane Teitiota, a national of Pacific Island Kiribati, requested refugee status in New Zealand in 2013 on the grounds that negative effects of climate change had compelled him to leave Kiribati. His application was denied by the Immigration and Protection Tribunal, and both the High Court, Court of Appeal, and Supreme Court all supported this judgment on appeal. Mr. Teitiota then filed a communication with the HRC under the Optional Protocol after exhausting all domestic remedies, arguing that deprivation of asylum status in New Zealand violated his right to life.

The HRC ruled that no such violation took place at the time of the facts, as despite the severe situation in Kiribati, adequate security measures were implemented. However, Committee experts did acknowledge that the case set forward new standards[14]. According to the HRC, there have been several reasons for the failure of the claim, including the establishment of the element of personal risk, as stated in Article 6 of the

[13] Ioane Teitiota v. New Zealand, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020, retrieved from: https://www.refworld.org/cases,HRC,5e26f7134.html.

[14] OHCHR (21 January 2020) 'Historic UN Human Rights case opens door to climate change asylum claims', retrieved from: https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims (accessed 14/05/2022).

ICCPR[15], and hence a general situation of violence will not suffice. Teitiota's situation was not unique, as he made no proof that his family suffers any worse than anyone other in the Kirabati community. (Behrman and Kent 2020; McAdam 2020). In addition, although HRC recognized that sudden-onset and slow-onset climate change induced occurrences create a real risk for Kiribati and that the island may be completely submerged, consequently triggering overall population displacement, the Committee rejected the 'imminence' of the risk, as required to be a violation of Article 6 (McAdam 2020).

However, the ruling is considered a notable milestone in the international jurisprudence on the matter of climate change displacement, according to various scholars (McAdam 2020; Steenmans and Cooper 2020). They pointed out the significance of this decision for future cases, including its contribution to evolving international human rights law in the context of climate change-related human mobility. It was a first time that HRC confirmed that Article 6 of the ICCPR could result in non-refoulement responsibilities on the part of a 'sending state' in settings where infrastructural, and security environment may be considered to have degraded to the following extent due to factors related to climate change:

> (i) in the case of lack of access to fresh water, would 'produce a reasonably foreseeable threat of a health risk that would impair [a person's] right to enjoy a life with dignity or cause [their] unnatural or premature death'[16] or
>
> (ii) in the case of violence during land disputes, represent 'a real, personal, and reasonably foreseeable risk of a threat to [their] right to life'[17].

The following represents the landmark statement:

The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized[18]. The Committee agreed with Teitiota's claim that in 10 to 15

[15] General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life.
[16] HRC Teitiota (n 1) para 9.4.
[17] Ibid, para 9.7.
[18] Ibid, para 9.11.

years Kiribati will be uninhabitable, however, it also underlined that the Kiribati government still have time to intervene and relocate the inhabitants before the disaster scenario happens.

On the other hand, environmental and climate change legal frameworks still encounter challenges. The literature and policy-making debates over whether displaced persons should be classified as climate refugees or (forced) climate migrants (IOM 2008). Teitiota was requesting 'refugee' status in New Zealand in this instance. When initially rejecting an application for asylum, the Immigration and Protection Tribunal made clear in its ruling that this 'does not exclude the possibility that environmental degradation could 'create pathways into the Refugee Convention or protected person jurisdiction'[19]. Overall, the term 'refugee' has not impacted the way that the term 'climate refugee' is used in the case and although the HRC acknowledged the scope, Teitiota was ultimately not recognized as a climate refugee.

4.2. European Court of Human Rights

Closely related to the issue of climate migration, the number of climate litigation is growing on the international level as well. To date, most litigation interconnecting human rights and climate change has been brought before domestic courts and the protection has only been provided in cases where the inaction of a state to act has been established. Only in the recent years, claimants have started to bring cases within international and regional human rights mechanisms for climate change-related harms. Understanding human rights law and its applicability to climate change requires thorough analysis of the logic and strategy behind the cases, as that assessment could be beneficial for the prospective cases to follow (Lewis 2021).

One of the ground-breaking cases in Duarte Agostinho and Others v. Portugal and 32 Other States[20]. Claudia Duarte Agostinho, a Portuguese citizen, along with five of her peers aged between 8 and 21 years brought a case against 33 European nations[21] claiming that the accused have violated human rights by failing to take sufficient action on climate change and

[19] Ibid, para 2.2.

[20] Duarte Agostinho and Others v. Portugal and Others App no 39371/20 (ECHR, Communicated Case, 13 November 2020).

[21] States include: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom.

requiring them to take more ambitious action. The complainants claim that there has been a breach of the ECHR (1950), specifically Article 2 (the right to life), Article 8 (respect for private and family life) and Article 14 (freedom from discrimination) and that the effects of climate change in Portugal, such as forest fires, threaten their right to life and furthermore that heat-waves are affecting their living conditions and health.

The case is the first climate change claim to come before the ECtHR, while at the same time being significant for naming numerous states as respondents. On May 6th, 2021, several human rights groups filed joint third-party interventions to the case. They underlined international and regional legal standards to indorse States' human rights obligations to provide appropriate measures and ultimately address environment crisis by reducing negative impact both within and outside their territories[22]. The Court's ruling is greatly anticipated as the first opportunity to connect the relationship between ECHR and climate change (Lewis 2021).

4.3. Climate Change Litigation

Climate change litigation has gained an unprecedented growth in importance in the last years, with high visibility reached by recent judgments such as Urgenda Foundation v. State of the Netherlands, and Milieudefensie et al. v Royal Dutch Shell. The pressure on the private sector in the fight against climate change is rising, and multinationals specifically are attracting a great deal of attention (Weller and Tran 2022). One method for requiring both businesses and the government to adequately address the concerns posed by climate change is through litigation. The term 'climate change litigation' can have a range of meaning, and it most broadly 'refers to cases that relate specifically to climate change mitigation, adaptation, or the science of climate change' (UN Environment Programme).

Most research on climate litigation to date have focused on its 'pro-regulatory' objective, which is to improve government mitigation or

[22] The human right groups include: Al-Haq, ALTSEAN-Burma, Center for the Study of Law, Justice and Society – Dejusticia, Comisión Colombiana de Juristas (CCJ), Comité Ambiental en Defensa de la Vida (CADV), the European Center for Constitutional and Human Rights (ECCHR), FIAN International, Fédération Internationale des ligues des Droits de l'Homme (FIDH), the Global Initiative for Economic, Social, and Cultural Rights (GI-ESCR), Human Rights Action (HRA), the International Human Rights Clinic at the University of Virginia School of Law, Layla Hughes, Minority Rights Group International (MRG), Observatori DESC (ESCR observatory) and the Oficina para América Latina de la Coalición Internacional para el Hábitat (HIC-AL). The ESCR-Net secretariat provided coordination for the filing. All reports retrieved from: http://climatecasechart.com/non-us-case/youth-for-climate-justice-v-austria-et-al/ (accessed: 22/06/2022).

adaptation activities (Eskander et al. 2021). The claimants and defendants have been primarily NGOs and individuals (or combination) against governments. Strategic intent was mostly to create public awareness, change government behaviour and furthermore advance climate policies (Setzer and Higham 2021). UN Environment identified several trends in climate change litigation in its global survey, which looked at the purpose of the case. The most prevalent ones involved seeking to enforce governments' legislative and policy obligations and establishing liability for efforts and/or to adapt to climate change (Preston 2018).

On the other hand, litigation with potential negative impact on policy-making is also growing. This sort of lawsuit was first described as 'anti-regulatory' or 'against climate litigation' (Peel and Osokfsy 2015). To understand the full spectrum of both pro- and anti-regulatory cases, it is crucial to comprehend the motives and objectives behind.

4.3.1. Urgenda Foundation v. State of the Netherlands

The Hague court mandated the state to reduce greenhouse gas emissions by at least 25% at the end of 2020 compared to the level of the year 1990 after the Urgenda Foundation, a Dutch environmental group, and 900 Dutch citizens sued the Dutch government to require it to do more to prevent global climate change. Urgenda's claims were adopted by The Hague District Court in 2015, which determined that the government's current commitment to reduce emissions by 17% by 2020 was insufficient to preserve the lives of Dutch residents. In a decision that was influenced by the application of human rights norms and standards, the court determined that the Government was required to pursue climate change mitigation measures. As a result, it gave the government the mandate to cut emissions by 25% by 2020. The decision was later appealed, however unsuccessfully, as it was dismissed in 2019 by the Supreme Court of the Netherlands, reaffirming that the government had a responsibility to protect its citizens' rights to a private and family life in accordance with Articles 2 and 8 of the European Convention on Human Rights. The Court, among others, cited the 'no harm' principle of international law[23].

The ruling provides crucial findings that will likely have impacts on future climate change litigation (Lewis 2021; Rosignoli 2022). The risk caused by climate change falls under the scope of Article 2 and Article 8 because the hazards are sufficiently immediate and genuine. The Supreme Court stated that these dangers could manifest in a various context, e.g., 'extreme

[23] The State of the Netherlands v Urgenda Foundation, The Supreme Court of the Netherlands (20 December 2019), case 19/00135 (English translation).

heat, extreme drought, extreme precipitation, or other extreme weather. It is also causing both glacial ice and the ice in and near the polar regions to melt, which is raising the sea level'[24]. Although one cannot predict the exact time when the hazardous effects will take place, the Supreme Court determined that the cumulative effect of such hazards could result in high number of victims in Western Europe in the later decades of this century in the absence of proper climate policy[25]. In this context, the Court also relied on the precautionary principle: the state in relation to both Article 2 and 8 has a due diligence obligation to take preventive measures to achieve targets negotiated with regards to the greenhouse gas emissions.

4.3.2. Milieudefensie et al. v Royal Dutch Shell

The case that builds on the Ugenda decision, Milieudefensie et al. v Royal Dutch Shell[26], was brought before the Dutch court in 2019. Milieudefensie/Friends of the Earth Netherlands, co-plaintiffs including other NGOs[27], and more than 17000 citizens claimed that Shell's contributions to climate change violate its duty of care under Dutch law and commitments to human rights, arguing that that Shell must comply with the Paris Climate Agreement by reducing its CO2 emissions by 45% by 2030 relative to 2019 emission levels and to zero by 2050. As a result, the multinational company has been ordered by the Dutch court to radically reduce its carbon emissions because of its responsibility in climate change, becoming the first ruling where a fossil-fuel company has been legally accountable for its individual contribution to global greenhouse gas and its role in global warming (Setzer and Higham 2021).

5. What Next?

Environment and migration have been always interconnected, but political awareness of the importance of this factor is recent (IOM 2008). With growing interest in this topic from research fields including climate change, migration, disaster and development, international law and policy researchers have also offered several proposals when it comes to the protection of environmentally displaced people. Some of them were 1) to

[24] Ibid, para 4.2.
[25] Ibid, para 2.1.
[26] Milieudefensie et al. v. Royal Dutch Shell plc., C/09/571932 (The Hague District Court 2021).
[27] Including: ActionAid NL, Both ENDS, Fossielvrij NL, Greenpeace NL, Young Friends of the Earth NL, Waddenvereniging.

extend the 1951 Convention Relating to the Status of Refugees; 2) to add a protocol on climate refugees to the United Nations Framework Convention on Climate Change; 3) to adopt a new legal framework; 4) to use temporary protection mechanisms. Each of the proposals deserves a separate debate and has its own advantages and disadvantages, nonetheless to this date, none has been implemented (McAdam 2014; Paul et al. 2018; Rosignoli 2022).

Another question that arises is about the best mechanism or body for establishing a new international legal framework, including the action of existing institutions, litigation, international conventions, international instruments of soft law, or finally, a combination of all the above, which would probably be the most comprehensive solution. This paper primarily focused on court cases and their competences to transform the nature of international justice. Indeed, the advantages of litigation lie in the power to 'force' states to commit to international cooperation. On the other hand, the main difficulty is determining the causal relationship, i.e., individual responsibility of states or non-state actors for the consequences of climate change.

Recent climate litigation before national and supra-national courts changed the shift about the roles and responsibilities of state and non-state actors. Some authors point out the increasing expectations of the community that those historically responsible for emissions will need to change perception and act to address the climate issue, as for instance in the case like Milieudefensie et al. v Shell (Setzer and Higham 2021). Environmental law has been developing litigation for dealing with corporate polluters and compensating victims, and it will be interesting to explore whether this may serve as groundwork to develop compensation mechanisms for climate change victims.

The question warranting further investigation is growing jurisprudence in supra-national courts indicating that environmental changes have impact on human rights and that litigation has been affecting the interpretation of normative meaning of human rights. Indeed, there has been expansion of climate-focused laws and policies around the world on the national level, with 2.200 new regulatory measures introduced in the last few decades (Setzer and Higham 2021). Analysis of the drivers and trends of courts' rulings may help understand how the concept of a climate refugee in international law may transition from a non-binding possibility to a binding reality.

Conclusion

The most important instruments of reference for climate refugees at the international level are human rights conventions and UN principles related to internally displaced persons. General concerns about the protection of environmental migrants lays in the fact that there is no universal recognition of the problem. Legal, international, and regional hard and soft law instruments indicate two closely connected elements – environmental threats are a violation of human rights, and they are driving force for displacement. It is crucial to see in which way refugee law can intersect climate-induced situations. The pressure is largely coming from civil society and activist groups, and it is also visible in the higher number of case law before ECtHR and national courts. All of this points to the magnitude of security needs and concerns about protection gaps in the sphere of climate change.

Although there are some positive developments in the legal sphere when it comes to the protection, almost all of them stop at the local or national level. International consensus is still lacking, but these frameworks can serve as a guide for supranational bodies to implement effective practices and stop postponing the matter of climate justice.

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The Relationship between Business and the Human Right to a Healthy Environment: a View on the Role of the Technology Sector

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Abstract: The Human Rights Council and the General Assembly of the United Nations have recently recognized the existence of a human right to a healthy environment, culminating a path that had already been started at the international level several decades ago and that had also seen the appointment of an ad hoc Special Rapporteur on human rights and the environment. The discourse around this specific human right has to do with both protecting the environment from pollution and fighting the effects of climate change, insofar as these phenomena can undermine the environment in which man is placed. A prominent role here is played by business enterprises, which are capable of heavily affecting a wide range of human rights, including the right to a healthy environment. In fact, the UN Guiding Principles on Business and human rights, the Sustainable Development Goals (SDGs), and also the Draft Binding Treaty on Business and human rights, all take into account the environmental impact of business activities and suggest incorporating the concerns of sustainable development. Furthermore, the EU Proposal for a Directive on Corporate Sustainability Due Diligence, issued in February 2022, also has the explicit purpose of addressing adverse human rights and environmental impacts, including in the value chains. The following paper will aim to analyse the relationship between business activities and the right to a healthy environment, with specific reference to digital enterprises. These companies can affect human rights in a completely new and unforeseen way, due to their peculiarities. For this reason, they have been addressed by a specific project of the High Commissioner for Human Rights (B-Tech project). At the same time, technological progress (especially digital technologies), can play a decisive role in the preservation of a safe, sustainable, and healthy environment: some

notable examples are in the fields of industry, manufacturing, agriculture, and energy consumption. This paper has the purpose of understanding the role that international law can play to further progress in this field.

Key words: business and human rights; right to a healthy environment; digital technologies; technology sector; environmental law.

Introduction

It is well known that business activities can produce negative impacts on human rights and the environment, whose effects have a transnational or even global scope, as for climate change. Entities like multinational enterprises have not yet been considered as full subjects of international law, since they are not yet bearers of any kind of international obligations. Despite that, corporations also have significant power over states, to the extent that they are even able to influence their decisions.

The linkage between business and human rights has been for several decades at the centre of the international agenda, and it still is. Especially countries from the Global South have complained over the years (since as early as the 1960s; Deva 2018) about an imbalance in transnational value and supply chains to the detriment of their citizens' human rights: some examples of these negative impacts are forced and child labour, environmental disasters, violations to the rights to life, privacy, non-discrimination, etc.

This is also accompanied by the difficulty of holding these companies accountable for their activities abroad due to the corporate veil doctrine. Thus, the division between home and host companies.

For all these reasons, 'business and human rights' is still considered a major issue for the international community, such that there have been various attempts to regulate this matter, culminating in the relatively recent process of drafting a binding treaty on business and human rights within the United Nations.

In parallel, the path of international environmental law was also being charted, starting with the famous Stockholm Declaration of 1972, where the basis for this subject was established. In the following years (thanks also to the 1987 Brundtland Report) many important ideas came into existence, including the concept of sustainable development, the consideration for future generations and, of course, the right to live in a healthy environment.

Nevertheless, an official recognition of the human right to a clean, safe, healthy, and sustainable environment has occurred only in very recent times, even though it was already being preconceived in various documents of international scope. This important recognition, therefore, represents the definitive intersection of two pathways (those of business and human rights, and environmental law), with significant implications for the future development of research.

Given this, today's scenario is becoming increasingly complicated, with new and unpredictable ways in which human rights can be violated, due to relentless technological progress and the evolution of corporate patterns. Consequently, there is an increasing need nowadays to rethink human rights and corporate standards from a more inherently environmental perspective, and to adapt existing instruments (primarily the 2011 UN Guiding Principles on Business and Human Rights, the most prominent document in this field) to these new concerns.

This contribution will address the above-mentioned important issues, with reference to the relationship between the right to a healthy environment and business activities, with a special focus on the technology sector, given the increasing reliance on digital technologies such as AI, blockchain, machine learning, and so on.

The paper will, therefore, have a 'concentric' structure: first, it will analyse the right to a healthy environment, as described by the UN Human Rights Council and the General Assembly; then it will more narrowly address the relationship between business activities and the environment; and finally, the last section will focus on a particular subset of businesses, those in the technology sector, and is intended to better understand whether digital technologies can have either positive or negative effects on the specific human right to a safe, clean, healthy, and sustainable environment. In the end, the paper will seek to draw a few conclusions about the (perhaps too optimistic) perception that institutions and scholars have of digital technologies, whose negative effects on the environment are often given insufficient consideration.

1. The Right to a Clean, Healthy, Safe, and Sustainable Environment.

In October 2021 and July 2022, respectively, the United Nations Human Rights Council (A/HRC/RES/48/13) and the General Assembly (A/76/L.75) officially recognized the right to a healthy environment as a proper human right. Even though these statements don't produce bind-

ing effects, they represent a crucial step in the affirmation of such a right, since it is now possible to include it among the internationally recognized human rights. The wording used by the resolutions is almost identical and enshrines a strongly anthropocentric perspective of the environment: both HRC and GA have recognized '*the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights*' and they note that such a right is '*related to other rights and existing international law*'. In this regard, it is worth noting that adjectives like 'healthy' or 'safe' (removed at the last minute from the HRC resolution but used in other UN documents, as for example the 2021 resolution which has renewed the mandate of the Special Rapporteur on human rights and the environment) describe a notion of the environmental protection that pays little attention to purely natural aspects, in favour of a more human-related view. In contrast, terms such as 'clean', 'sustainable' or 'non-polluted' can be attributed to an environment given or not the presence of a human settlements in a certain geographic area. Despite this, we should not be surprised by this markedly anthropocentric approach: these resolutions are merely the result of a process that began more than 50 years ago, starting with the Stockholm Declaration, adopted in 1972 at the conclusion of the United Nations Conference on the Human Environment.

In fact, Principle 1 of the Declaration states that:

> Man has the fundamental right to freedom, equality and adequate conditions of life, in an *environment of a quality that permits a life of dignity and well-being*, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Even though the second part of Principle 1 seems to design a concept of environment more reliant upon human interactions (such as discrimination or oppression), the combination with other principles - which are about 'vital' natural resources, wildlife, its habitats, etc. - results in an environment which is indirectly safeguarded to preserve the well-being of individuals.

Starting from that point, in the past decades, there have been many other documents of international scope that have affirmed a similar right: reference should be made to the IUCN's Draft International Covenant on Environment and Development (IUCN, 1995), which provides in its Article 15 that States '*undertake to achieve progressively the full realization of the right of all persons to live in an ecologically sound environment adequate for*

their development, health, well-being and dignity'; or even to Principle 2 of the 1992 Rio Declaration on Environment and Development, which affirms that: '*human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature*'. In addition, there are also some regional treaties (as for example the African Charter on Human and Peoples' Rights and the San Salvador Protocol to the American Convention on Human Rights) that include a substantive right to a healthy environment (Gonzalez 2015, 157).

These and many other efforts at the international level (we can also mention UNEP, SDGs, UNFCCC, etc.) have brought, over the years, a significant number of States to incorporate a similar right in their Constitutions and laws, and it also stimulated international, regional, and even domestic judiciaries to implement a human rights-related approach to environmental protection in their judgments (Lewis 2018, 201-235; Peel and Osofsky 2018). This widespread acceptance throughout the world conducted also to another crucial step, made in recent years, i.e. the appointment by Human Rights Council of an *ad hoc* Special Rapporteur on human rights and the environment in 2012 (formerly Professor John Knox, currently Professor David Boyd), emphasizing the importance of this issue. Interestingly, we can observe that already in the full wording of this position - which before 2015 was an 'Independent Expert' (A/HRC/RES/19/10) – were the adjectives that should be attributed to the environment to fulfil the recently recognized right: 'clean', 'healthy', and 'sustainable', with the addition of 'safe'.

Moving now to the content of the right to a healthy environment, we can summarize the potential legal and non-legal measures to satisfy it into three broad categories:

1. measures that address pollution of air, water, and soil;
2. measures for preventing, adapting to, and mitigating climate change impacts; and
3. measures for managing the use of natural resources, such as rare earth elements, other kinds of minerals, metals, but also water, soil, etc. In this third category we could also include measures dedicated to the preservation of biodiversity, which we can consider as a natural resource itself.

The above measures give us an understanding of how the right to a healthy environment has obvious links to human rights to life (particularly to adequate living conditions) and health (physical and psychological). However, what also does not come through at first glance is the fact that this right is also reflected in the rights of indigenous peoples, who may

have a very close relationship with their home territory (Marinkás 2020, 135-141; Pustorino, 2023, 141-143). Therefore, it is possible to affirm that such a right goes beyond the boundaries of individuals' right to health and entails a broader notion of (human) environment, which can be understood also as a space devoted to present and future human communities. This is why the concept of sustainable development is often mentioned in connection with this right.

Furthermore, as Lewis (2018) points out, this set of actions can consist of either negative obligations for states to refrain from making decisions that compromise the enjoyment of the natural habitat, or positive obligations aimed at preventing (*ex ante*) or restoring (*ex post*) environmental damage (Pustorino 2023, 230-232). In this context, the main actors - alongside States - are business enterprises, especially multinational corporations, which are capable of producing negative impacts on all three aforementioned layers: their activities can pollute, emit greenhouse gases, and consume natural resources.

The following section will explore more specifically the connection between the right to a healthy environment and business enterprises, and will seek to understand the extent to which international legal instruments today are capable of taking into account the needs of environmental protection and climate change mitigation.

2. Business, Human Rights and the Environment

When we discuss the impact of human activities on the environment, it is essential to recognize the significant role played by business enterprises. Companies have the power to significantly affect a broad range of human rights, including the right to a healthy environment. Various frameworks and initiatives have emerged to address this issue. In this regard, it is worth noting the most authoritative (non-binding) document in the field of business and human rights: the UN Guiding Principles on Business and Human Rights, published in 2011 thanks to the work of Professor John Ruggie, appointed six years before by UN Secretary-General Kofi Annan as Special Representative on the issue of human rights and transnational corporations and other business enterprises (E/CN.4/RES/2005/69). This document actually represents the third attempt at United Nations level to regulate this issue. In fact, the first two documents - which were intended to provide binding obligations on companies - both failed in their purpose: the 1974 early attempt to put in place a Code of Conduct for Transnation-

al Corporations was declared unsuccessfully ended in 1994 due to sharp disagreement between developed and developing countries on (Sauvant 2015), while the later 'UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' were declared to have 'no legal standing' in 2004 by the Commission on Human Rights (E/CN.4/2004/L.73/Rev.1; Bilchitz and Deva 2013, 7). Therefore, the UNGPs represent a paradigm shift toward a voluntaristic approach, so far attempted only by the UN Global Compact, launched by Kofi Annan during the 1999 World Economic Forum, and featuring the so-called Ten Principles (of which 7, 8 and 9 concern specifically the environment). An important element to point out is that UNGPs don't make any distinction among the different human rights, while specifying in Principle 12 that reference is made 'at a minimum' to those expressed in the International Bill of Human Rights and in the ILO Declaration on Fundamental Principles and Rights at Work. This means that in general they cover all internationally recognized human rights, also including the right to a healthy environment, although in the text of UNGPs and in the commentary the environment is almost never mentioned.

Leaving aside now some of the thorniest issues related to business and human rights, such as the question of the extraterritorial scope of human rights obligations or the extent to which businesses should avoid 'contributing' (Principle 13) to abuses, it is worth noting that all three of the fundamental pillars of UNGPs have something to do with the human right to a healthy environment. Among the various categories mentioned above, of particular interest in this regard is the issue of climate change, which, because of its transnational and 'collective' nature, can be seen as one of the most cross-cutting business and human rights issues. It is an area of concern that raises various legal questions, especially from the perspective of responsibility since it is the result of the combined action of public and (mostly) private actors, as for example the fair share question (Liston 2020). On the 'State duty to protect' side (Pillar I), in fact, although a right to a 'stable climate' has not yet been officially recognized (Macchi 2022, 29), many distinguished scholars, a number of Constitutions, and even the current Special Rapporteur, Boyd (A/74/161), discuss it as an essential component of the right to a healthy environment, to the point that states, recognizing its relevance, have repeatedly committed themselves – at the international, regional and domestic level - to curb the increasing trend of climate change. On the other hand, as for 'Corporate responsibility to respect Human Rights' (Pillar II), the UNGPs require that business enterprises 'should respect human rights' (Principle 11) by putting in place (among oth-

er things) environmental and human rights due diligence processes (Principle 14, but also Principle 4), which consists by definition in 'an on-going management process that a reasonable and prudent corporation has to undertake in order to meet its responsibility to respect human rights' (OHCHR 2012, 6). In this respect, it should be pointed out that, unlike UNGPs, the OECD Guidelines for Multinational Enterprises (recently updated in 2023) contain a special section about the environment that prescribes certain behaviours that companies must engage in, primarily to address climate change (OECD 2023, 33-38). Furthermore, we should note that, although the above-mentioned international instruments (UNGPs and OECD GLs) do not entail any binding legal obligation on companies to carry out a process in these terms, the proposed EU Directive on Corporate Sustainability Due Diligence (CSDDD), if approved, would. Article 4 from the last update of the directive, as amended by European Parliament on 1 June 2023, states that 'Member States shall ensure that companies conduct risk-based human rights and environmental due diligence [...]'. On the specific issue of climate change, moreover, the latest draft of the directive provides in Article 15(1) the following:

> Member States shall ensure that companies referred to in Article 2 develop and implement a transition plan in line with the reporting requirements in Article 19a of Regulation (EU) 2021/0104 (CSRD), to ensure that the business model and strategy of the company are aligned with the objectives of the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119 (European Climate Law) as regards its operations in the Union, including its 2050 climate neutrality target and the 2030 climate target. This plan shall include a description of:
>
> - the resilience of the company's business model and strategy to risks related to climate matters;
> - the opportunities for the company related to climate matters;
> - where appropriate an identification and explanation of decarbonisation levers within the company's operations and value chain, including the exposure of the company to coal-, oil- and gas-related activities, as referred to in Articles 19a(2), point (a)(iii), and 29a(2), point (a)(iii), of Directive 2013/34/EU;
> - how the company's business model and strategy take account of the interests of the company's affected stakeholders and of the impacts of the company on climate change;
> - how the company's strategy has been implemented and will be implemented with regard to climate matters, including related financial and investment plans;
> - the time-bound targets related to climate change set by the company

for scope 1, 2 and, where relevant, 3 emissions, including where appropriate, absolute emission reduction targets for greenhouse gas for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence, and a description of the progress the company has made towards achieving those targets;
- a description of the role of the administrative, management and supervisory bodies with regard to climate matters.

Finally, about Pillar III, 'Access to remedy' in recent years both States and multinational corporations have been called to account for such commitments in judicial and arbitration proceedings (sometimes against each other as in the case of Investor-State dispute settlements; International Chamber of Commerce 2019; Pardi 2023).When these cases specifically involve 'material issues of climate change science, policy, or law' (Setzer and Higham, 2022) they fall under the umbrella of so-called 'climate litigation' (Peel and Osofsky 2020), which has variegated forms and uses several legal avenues and strategies (Macchi 2022). Several examples can be cited in this regard (including the famous *Urgenda*, *Leghari*, *Notre affairs a Tous*, etc.) but here it is sufficient to specifically mention one more recent case involving Royal Dutch Shell, which saw the District Court of The Hague order the company, in 2021, to review its policies in a way that would reduce its group's emissions by 45% by 2030, namely *Milieudefensie et al. v Royal Dutch Shell PLC*.

Lastly, still regarding the relationship between business and the human right to a healthy environment, it is also pertinent to make reference to the Draft Binding Treaty on Business and human rights (Hartmann and Savaresi 2021), which explicitly mentions this human right in the definition of 'human rights abuse' itself, in Article 1(2) of its Third Draft (2021). International community is currently negotiating the adoption of this instrument, whose process formally started in 2014 with the so-called 'Ecuador Resolution' (HRC 2014, A/HRC/26/L.22/Rev.1), drafted by Ecuador and South Africa. The resolution constituted the first step of this internationally led initiative and provided the institution of an *ad hoc* 'open-ended intergovernmental working group', which has so far prepared four drafts from 2018 (the 'Zero Draft') until 2021. Even though the drafts – unsurprisingly (Macchi 2022) – don't impose binding obligations directly on business enterprises and don't contain a clear definition of environmental due diligence, since the Second Draft they require that State parties 'ensure that their domestic law provides for a comprehensive and adequate system of legal liability' on business enterprises (Art. 8), both if abuses arise from their own

activities and if their lack of control on other subject with which they have a 'business relationship' caused or contributed to the abuses.

3. A Focus on the Technology Sector: The Role of Digital Enterprises

Coming to the last section of this work, it is intended to focus on a particular business sector, which is expected to play an increasingly prominent role in the international arena: the technology sector. We know that in our modern digital age, a particular attention should be paid to digital enterprises and their impact on human rights, including the right to a healthy environment. These companies possess unique characteristics that enable them to affect human rights in new and unforeseen ways (Ebert et al. 2020): just think of certain technologies such as artificial intelligence, facial recognition, blockchain, internet of things (IoT), cloud computing, and other kinds software, which are increasingly emerging and being used by public and private entities in recent years. This is particularly true when we consider that, for example, 7 of the 10 companies with the highest market value in the world operate in the digital field, with Apple and Microsoft occupying the top two positions (Forbes 2023). Moreover, even those companies that can be described as "non-digital" per se are largely using digital technologies and data to carry out their activities (Automation Alley 2022), especially in the aftermath of the Covid-19 pandemic (Vargo et al. 2020; Mondal et al. 2022). However, the unquestionable importance of such technologies nowadays has not found the same attention within international legal documents (both soft and hard law), as for example the Draft Binding Treaty on Business and human rights (Cambridge Core Blog 2019), which only include in the definitions of 'business activities' and 'business relationships' a reference to those undertaken by 'electronic means' (Article 1), without clearly specifying what these means are or what consequences on the remedy side this affirmation would have. In this regard, it may be useful to keep in mind that, from 2011 (the year the UNGPs were published) to 2018, the number of people using social media has almost tripled (Our World in Data 2019).

Nevertheless, since the Human Rights Council resolution of 2012, 'The Promotion, Protection and Enjoyment of Human Rights on the Internet', and the subsequent General Assembly resolution of 2014, 'The Right to Privacy in the Digital Age', the spotlight has gradually turned to the relationship between these technologies and internationally recognized human rights, as well as also in the field of business and human rights.

Acknowledging this, in fact, the Office of the High Commissioner for Human Rights launched the 'B-Tech Project' in 2019, specifically targeting the technology sector. The main reason behind the establishment of this initiative is to address '*the urgent need to find principled and pragmatic ways to prevent and address human rights harms connected with the development of digital technologies and their use by corporate, government and non-governmental actors, including individual users*' (B-Tech Project 2019), and doing it using UNGPs as an authoritative framework. Not surprisingly, its focus areas (presented in the project's 'Scoping paper') basically replicate the three pillars of the UNGPs, with the addition of a fourth focus area, in which a 'smart mix of measures' is proposed: this kind of effort is actually not new in the discourse about business and human rights, since it was already prescribed by the commentary to Guiding Principle 3. This provision, indeed, calls on states to consider measures of various kinds, such as national, regional, international, mandatory, or voluntary, in order to 'foster business respect to human rights'.

Despite the B-tech project's highly technical and practical approach in guiding businesses and policymakers in the application and development of digital technologies to benefit human rights, environmental issues seem to be missing from the documents released so far. This may be representative of a still lack of awareness of the impacts of digital technologies on the human right to a healthy environment, which in truth seems to be growing in very recent times. This may be representative of a still lack of attention on the impacts-positive and negative-of digital technologies on the human right to a healthy environment, which in truth seems to be increasing in very recent times. Shortly after the conclusion of COP26 (held in Glasgow, UK, in late 2021), in an opinion paper from early 2022, several scholars from all corners of the world (Dwivedi et al. 2022) questioned precisely whether digital technologies were a possible solution or 'part of the problem', highlighting both their positive and negative effects on the environment. One of the final recommendations of this editorial study was, therefore, to have a 'holistic and balanced perspective' so that individual consumers, manufacturers, and state governments are properly informed of the choices they make daily.

On the side of international institutions and organizations (but also in the opinion of some scholar: Ryzhenkov and Burinova 2021), conversely, the trend seems to be one of widespread optimism, balanced by some caution: digitalisation is sometimes portrayed as a 'silver bullet' in solving environmental challenges, especially climate change. For instance, in the May 2023 report of the Office of the Secretary-General's Envoy on Tech-

nology called 'Our Common Agenda Policy Brief 5', the establishment of a Global Digital Compact is proposed: within this document it is stated that these technologies (such as AI) can help collect enough data to inform 41% of the 92 environmental SDGs indicators and that networks such as the Coalition for Digital Environmental Sustainability (CODES) - facilitated by the United Nations Environmental Programme - 'can help to promote common sustainability standards and access to environmental data and to align incentives for accelerating green transitions' (United Nations 2023). In fact, again CODES, in a November 2022 report, proposed an action plan that has environmental sustainability as its goal: in it, the absolute relevance of digital transformation to the future of humans and the planet is emphasized, though not without also noting the negative aspects of using such technologies, such as the onerous material and energy requirements (CODES, 2022). Further, the International Energy Agency (IEA), in a 2021 report regarding the environmental sustainability of cities, seems to consider their digitization - and the consequent transformation of them into 'smart cities' - as the best possible solution to achieve net-zero emissions of urban settlements and make them energy efficient, while at the same time supporting the inclusiveness of citizens (IEA 2021).

However, there are also more cautious points of view, which question about the sustainability of digitisation itself. One such example is the OECD, which, in a report from late 2022, conducted an analysis of the environmental impact of artificial intelligence, concluding that to date, data on the sustainability of AI (think, for example, of the enormous amounts of energy used to train these systems) is still insufficient to adequately inform policymakers' choices (OECD 2022). What is needed, it argues, is to share knowledge and ideas, and develop innovative AI applications so that states' use of them is as sustainable as possible.

Drawing on this specific technology, some scholars (among them some AI ethicists, who question the appropriateness of the use of AIs) have emphasized a particular duality, i.e. 'AI for sustainability' v. 'Sustainability of AI' (Wynsberghe 2021), which also has implications for the activities of regional and international policy makers, including in the field of business and human rights (Fasciglione 2022). A similar reasoning, then, can also be conducted with respect to other technologies, such as blockchain, internet of things (Piracés 2018) or metaverse (Umar, A. 2022).

To better understand whether the reliance of the international actors is well placed or not, it is perhaps appropriate to try to list, in a non-exhaustive way, the positive (George et al. 2021) and negative impacts of digital technologies with respect to the human right to a healthy environment.

The opinion paper first mentioned, concerning the outcome of COP26, can be considered a good starting point, as it was written from a multidisciplinary perspective and with the help of experts in the corresponding fields.

Therefore, some examples of positive impacts are:

More efficient energy management (smart cities and smart buildings, but also controlling power plants' activities) resulting in reduced emissions for energy production;

Better waste management;

More efficient use of natural resources (e.g. agricultural water distribution);

Ventilation and air quality management;

Reducing the carbon footprint in various ways (e.g. work from home);

Spreading of 'green' ideas via social media.

Conversely, some examples of negative impacts are:

Significant energy consumption of some technologies (such as blockchain or AI). A study has shown that Google's AI AlphaGo Zero, generated 96 tonnes of CO2 over 40 days of research training which amounts to 1000 h of air travel or a carbon footprint of 23 American homes' (Analytics Inside, 2020; Wynsberghe 2021);

Requirement of rare earth elements, for the production of digital devices (e.g. tantalum, from Coltan; Lawrence 2021);

Electronic waste (often due to planned obsolescence);

Positive use cases for digital technologies may produce negative impacts on other relevant human rights, as for example violations of the right to not be discriminated, privacy (Beduschi 2022), or labour rights. Beyond that, the exploitation of these resources can exacerbate economic inequalities between developed and developing countries, where the resources needed to build electronic devices are sometimes located.

To sum up, in light of the above, this enhanced optimism from some international players can be seen as a double-edged weapon, leading us to reason about the fact that the use of new technologies and the actions of digital enterprises need close attention. Too often the benefits of these technologies are considered with enthusiasm, but the downsides are not given equal weight, especially in a delicate phase for governments such as the green transition.

Conclusions

As we have just noted, although digitization is obviously beneficial in many fields (such as industry, manufacturing processes, agriculture, and energy consumption) for the preservation of a safe, sustainable, and healthy environment, it requires some significant efforts, which inevitably have environmental and social impacts. Hence, we can draw some conclusions about the relationship between the human right to a healthy environment and enterprises in the technology sector.

First, the environmental downsides of digital technologies that have been listed should not be taken lightly by policymakers. This is actually already taken into consideration by some, such as the European Union, which had started regulating the use of hazardous substances in electrical and electronic equipment (RoHS) since the early 2000s. Or we can also mention the directive on waste electrical and electronic equipment (2012/19/EU) and other related rulings, such as Parliament Europe's adoption of USB type-C as the standard port for electronic devices. In addition, as noted, some international initiatives such as the B-tech project and OECD papers are gradually beginning to analyse data on the environmental impact of digital technologies and are proposing common standards for them. Second, there are perhaps some caveats that should be observed in relation to the use of such technologies, such as preferring software upgrades rather than hardware so as to limit the extraction of new natural resources (the proposed EU directive on promoting the repair of goods is interesting in this regard). Or, again, the preference, where possible, of nature-based or hybrid solutions (Depietri and McPhearson 2017; Feng and Audy 2020), so as to limit energy consumption, use of raw materials and at the same time have a direct positive impact on emissions. Third, the balance with regard to digital technologies by the experts, beyond everything else, is still positive (Dwivedi et al. 2022), stating that the trust placed in such technologies is not in vain. The warning, however, is not to think of them as a one-size-fits-all solution, but to give due consideration to the negative aspects as well in order not to violate other internationally recognized human rights and not to further aggravate the North-South divide (Gonzalez 2015).

To summarize, we can affirm that business-related human rights issues require a multi-stakeholder and multi-governance approach, because it is crucial to ensure that businesses activities, particularly digital enterprises, align with the needs of a more sustainable world, among all levels of governance. Technological advancements offer opportunities to mitigate environmental harm and promote sustainability, but they must be harnessed

responsibly. To this extent, international law has a pivotal role to play in setting standards, fostering collaboration, and holding businesses accountable also for their environmental impacts (Turner 2021), but at the same time it must try not to fall behind and adapt to the technological and sustainability challenges of tomorrow.

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Law 219/2017 among New and Critical Issues

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Abstract: Self-determination and dignity are two of the fundamental points contained in Universal Human Rights. Law 219/2017 is inspired precisely by these two concepts, in order to make them operational, so as to improve the care relationship, especially in the area of serious illness and health, highlighting the centrality of the patient and his or her autonomy in deciding which treatments to undergo. In spite of the innovations introduced by the law, especially those relating to shared planning of the treatment plan and Anticipated Treatment Directives (ATDs), there is still a great deal of resistance, due both to the lack of knowledge on the part of citizens and also of healthcare personnel with respect to the law, and to the lack of initiatives to fill this gap, not to mention the difficulty on the part of society to dialogue on issues related to death and dying. What is needed, therefore, is a territorial intervention model that optimises relations between the population, the municipal administration and the health authority for the promotion of ATDs and the shared care plan. Given that the underlying reasons listed above are attributable, on the one hand, to the need to remove the thought of one's own death and, on the other hand, to the lack of a community competence to understand how and where it is possible to turn to acquire the skills needed to draw up ATDs, a solution is possible through the activation of death education' pathways aimed at stimulating mature reflection on finitude and reducing death anxiety through activities that facilitate acceptance and understanding of it. In order to give life to death education pathways as useful and adequate as possible for this purpose, it is necessary to study and deepen the underlying difficulties in the use of the device so as to draw up good practices and models that help all the actors involved in the process and to identify the most suitable strategies to implement interventions capable of underlining the innovative scope of Law 219/2017.

Keywords: self-determination, Law 219/2017, dignity, human rights, Advance Treatment Directives, Death Education

Introduction

This paper aims to highlight the main innovations introduced by Law 219/2017 and in particular the repercussions it has on the care relationship, especially in the presence of a serious illness situation.

The first part of the paper will enunciate the legislative path taken in Italy to arrive at the promulgation of the Law and will specifically present the main aspects legislated.

The second part of the review, through the analysis of not only Italian but also international literature, will address the major critical issues related to the application of the law. Despite the need that has been felt in recent years, by politicians as well as citizens, for a law to be enacted that would be able to put in writing the importance for patients to self-determine, that is to say, among other things, to have autonomy in deciding on the treatments to be undergone, to date there are still few people who decide to avail themselves of this right. The literature reviewed here has investigated, through numerous studies, the underlying reasons for this trend. Two in particular will be analysed in this work: the lack of knowledge of the law on the part of all the actors involved in the process due to the scarcity of initiatives in this regard, and the difficulty on the part of society in engaging in an open dialogue about serious illness and the end of life.

Finally, a way will be presented that can help people to achieve greater awareness of these issues, namely the use of Death Education courses. This means giving life to meetings, held by professionals, capable of enabling people to acquire greater competences regarding the end of life and at the same time to diminish the anguish and fear that these topics arouse, so as to counteract the natural tendency to censor everything that concerns death and dying. In order to be most effective, these meetings must take the whole community into account, i.e. they must be addressed to the entire population (and not only to people who are already in a situation of serious and/or chronic illness) and also to health professionals. The latter are, in fact, among the main actors mentioned within the Law and must, therefore, be prepared not only with respect to the contents of 219/2017, but must be put in a position to learn new communication skills in order to relate with the patient and his or her family members.

Some of the factors that must be taken into account when activating pathways of this type will therefore be presented.

1 Two Fundamental Rights: the Right to Self-determination and the Right to Dignity

Everything concerning end-of-life and healthcare legislation revolves around two key concepts, that of self-determination and that of dignity. These concepts, once introduced into the legal dispute over the end of life, have opened new issues, such as the need to introduce criteria to determine to what extent a treatment is useful and at what point we can speak of therapeutic obstinacy, but also how to respect and safeguard the patient's decision-making autonomy.

The term dignity, which comes from the Latin dignitas, is used to denote an attribute proper to every human being as such. The Universal Declaration of Human Rights has also taken it up: Article 1 mentions that 'all human beings are born free and equal in dignity and rights'. The concept of dignity is also contained in the Charter of Fundamental Human Rights, drafted in 2001, according to which human dignity is an inviolable right and, as such, must be respected and protected. However, references to dignity also appear within the Oviedo Convention, the Human Constitution and all those documents drafted following the horror of the Second World War.

The concept of self-determination, the cornerstone of Law 219/2017, which is in continuity with Law 38/2010, has become increasingly important following a publication by Deci and Ryan (1985), who first conceptualised the Self-Determination Theory, postulating that the possibility for individuals to act autonomously and to manifest their agency allows them to experience a greater sense of well-being and self-efficacy.

The term Self-determination refers to a complex and multidimensional construct that concerns both the individual and their social sphere. It is also closely related to the concept of motivation. Moreover, the individual's capacity for self-determination does not remain stable over time. It undergoes fluctuations determined, to some extent, by what is enacted by political systems, which may or may not limit the individual's self-determination, but also by the context in which the person lives and the cultural values in force - whether based, for example, on an individualist or collectivist logic (Chirkov et al. 2003).

The literature highlights how self-determination responds to one of the three primary human needs: feeling competent in one's relationship with one's environment and oneself, having the possibility of establishing stable relationships with others, and perceiving oneself as an autonomous being capable of self-determining one's behaviour and life. These psychological needs are essential for the functioning of the individual: if satisfied, they allow for the regular growth of the person accompanied by a greater level of well-being; but if left unfulfilled they can generate frustration and other problems that are all the more serious the more frequently one experiences failure (Deci and Ryan 2012).

Self-determination and dignity are interdependent constructs. The loss of functionality and control over oneself influences the perception of dignity, which also depends on the perception one has of oneself, which, in turn, suffers the effect of the perception one thinks others have. Above all, though, control and self-determination affect the level of personal dignity one experiences the most (Rodigruez-Prat et al. 2016).

This association between these two concepts, well analysed by Chochinov and colleagues (1995) and preceded by the studies of Van Der Maas et al. (1991; 2007), is counted among the main reasons why people request or desire an early death. This request, in fact, stems from the perceived loss of personal dignity linked to the feeling of no longer being able to self-determine.

2. The Italian Legislative Path up to Law 219/2017

The importance of the rights just mentioned opened a series of issues related to the caring relationship, creating a sequence of debates culminating in the approval of Law 219/2017. The law was approved by the Italian Parliament on 22 December 2017, following a multitude of previous bills that were never actualized and events that shook public opinion by highlighting the need to create an apparatus capable of regulating certain aspects linked, in particular, to the caring relationship and the end of life.

The law that came into force on 31 January 2018 concerns the 'Norms on informed consent and Advance Treatment Directives' and aims, as stated in Article 1, to safeguard people's right to life, dignity, and self-determination, establishing the inadmissibility of undertaking or prolonging any health treatment if there is no explicit informed consent from the person undergoing it. It does not, however, explicitly refer to procedures such as euthanasia and assisted suicide.

The legislative path in Italy was very long. Preceding the law, on 26 March 2009, the Italian Senate approved a bill containing instructions on informed consent and the 'living will'. This bill complies with the provisions of Recommendation No. 1418 of 25 June 1999 of the European Council. It is also in line with what the Convention on Human Rights and Biomedicine, signed by the Italian Government in Oviedo in 1997, had already enshrined and with what the Code of Medical Ethics set out in paragraph 5 of Article 35 and Article 38 (Buzzi et al. 2010).

Moreover, it is in continuity with what has already been affirmed by the Italian Constitution in Articles 2, 13 and 32 and the Charter of Fundamental Rights of the European Union (1, 2 and 3) concerning the right to dignity, the right to health and life, the right to integrity and self-determination and some decisions of the Supreme Court of Cassation that have followed over the years (such as those related to the emblematic Englaro case) concerning consent and living will, destined become famous cases, most recently by the Supreme Court in its judgment of 21/04/1992.

Information turns out to be a cornerstone of the law, as it is mandatory to inform the patient about their health condition, diagnosis and prognosis, possible medical treatments and their consequences, as well as the alternative options available to them. They must also have access to pain therapy and not be subjected to unnecessary or disproportionate treatment. Finally, it also offers guidance on treatment targeted to minors and incapacitated persons.

The law aims to affirm the autonomy and self-determination of the patient within the caring relationship with the healthcare personnel through the possibility of accepting or refusing treatment, Shared Care Planning and, finally, Advance Treatment Directives, allowing citizens to determine their own therapeutic choices based on their principles while having the security of the availability of a legal ruling that guarantees that their decisions are respected (Ciliberti et al. 2018).

Going into the details of the law, it regulates these pivotal points:

In continuity with what has already been affirmed by the aforementioned Articles 2,12,32 of the Italian Constitution and Articles 1, 2 and 3 of the Charter of Fundamental Rights of the European Union, it sanctions the impossibility of starting or continuing any treatment without the patient's informed consent (Art. 1 paragraph 1)

The establishment of a relationship of trust between doctor and patient in favour of an open confrontation between the two, also providing (if the patient so wishes) for the involvement of a family member or trusted person (Art. 1 para. 2)

The importance for the patient, if they so wish, to be informed about their health condition. At the same time, the patient has the full right to refuse any information or to delegate a trusted person as an interlocutor for this type of communication (Art. 1 para. 3)

It stipulates that the time used for communication is part of the time devoted to care and treatment (Art. 1 para. 8) (Art. 1 para. 8)

The obligation for each facility to comply with the law and for professionals to update themselves periodically regarding the rulings introduced by 219/2017 (Art.1 paragraphs 9 and 10)

The doctor must refrain from administering any treatment that is not appropriate and is therefore disproportionate, following a cost/benefit assessment (Art. 2 para. 2)

It offers important indications regarding informed consent in order to establish the criteria by which it may be considered valid

The doctor is also obliged to respect the patient's full wishes even if they refuse treatment which is useful for their survival, while still informing them of the possible consequences, and is in no way liable to civil or criminal prosecution (Art. 1 para. 5 and 6)

It states that adequate pain therapy must always be guaranteed, and it introduces the possibility of deep palliative sedation (Art. 2, para. 1 and 2)

It gives indications concerning consent in regard to minors or incapacitated persons.

It offers every citizen over the age of 18 the possibility to have recourse to the Advance Treatment Directives (ATDs)

This last point, governed by Article 4, is the most innovative aspect of the law, as it allows any citizen of age (able to understand and be of sound mind) to draw up a ATD, i.e. a document (written text or drawn up through a different but similar channel) indicating the patient's wishes regarding their medical choices and the treatments they intend or not intend to undergo, both at present and in the future, even if they are no longer able to determine themselves appropriately. It also allows the patient to decide on treatments deemed necessary for survival, such as artificial nutrition and hydration. The doctor, in any event, is bound to respect these wishes, which may be disregarded only if they appear to be totally incongruous or if, at the time they were drawn up, there were still no cures and treatments available that could have changed the patient's clinical/health status. Obviously, the patient is expected to inform oneself adequately in regards to the medical aspects before drawing up the document.

The ATDs must be delivered at the Civil Status Office in paper form or even using video recordings or any device that enables an otherwise inca-

pacitated person to communicate. They can be revoked or modified at any time by means of a specific procedure.

As of 1 February 2020, a National Registry of ATDs is available, which is responsible for collecting the ATDs drawn up and delivered at the Civil Status Offices of the municipalities and notaries; the latter allows the filing of copies of the Directives and enables timely revision in the event of changes or revocation thereof. It also offers the possibility for the settlor, any trustee, and the treating doctor to have access to them and to consult them. The National Data Bank was made possible by the 2018 Budget Law in paragraphs 418 and 419 of Article 1, governed by Decree No. 168 of 10 December 2019, and it is expanded by the Civil Status Officials (particularly the ones of the municipalities of residence), by notaries and heads of Italian consular offices abroad, and by the heads of relevant organisational units.

The law also introduces the figure of the trustee (literally, a person whom the patient trusts), who is in charge of verifying that the patient's wishes are respected, interfacing and acting as an intermediary with healthcare facilities and figures, especially if the patient's medical condition no longer allows them to self-determine. The doctor can disregard the ATD (only in the cases mentioned therein) in agreement with the trustee; if a conflict arises between the parties, the decision is referred to the tutelary judge, who also has the task of possibly appointing a Support Administrator in cases where the trustee is, for whatever reason, unavailable or absent.

3 Critical Issues in the Application of Law 219/2017

Since the law came out, various complications have hindered its effective implementation, linked to several reasons such as ethical and legal concerns, difficulties in respecting the patient's wishes if the indications of the living will are unclear or contradict what is reported by the trustee, the healthcare personnel's lack of knowledge in regards to the law, the lack of knowledge on the part of citizens, the impossibility of making a comparison with other countries on this issue because they adopted different measures at different times, and finally the fact that those who should benefit from the advantages that have emerged from the law believe that they do not have to think about end-of-life issues because they are too young or because they are currently in good health (Simon et al. 2013).

The topic has come back into vogue following the advent of the global Covid-19 pandemic, which not only challenged the global health system by

showing its fragilities but also focused everyone's attention on the issue of death, which has come to dominate people's lives. However, this has also highlighted the need to reflect on the treatments one may or may not wish to undergo (McAfee et al., 2020).

Despite these premises, the percentage of people in Western countries who have completed the ATDs is minimal, not just in Italy but also in places where the law, albeit with differences, has been in force for several years (Aw et al. 2011).

As of today, it is impossible to know the exact number of people who have drawn up the Anticipated Treatment Directives. However, a research study commissioned by Vidas and conducted by Focus Management is of interest since, despite dating back a few years (2019), it contains some interesting insights that help a better understanding of the obstacles that stand in the way of citizens completing the ATDs. The research pointed out, in particular, that 28% of Italian citizens had never heard of Law 219/2017, and of the remaining 72%, only 19.3% claimed to know its contents specifically. The knowledge of the law among the 1602 participants involved showed that it is lower in the over-70s group: 57.3% of this group have never heard of it, and only 13.1% claim to be well informed about it. The level of knowledge is lower in the age group that, according to statistics, has a greater chance of suffering a more or less sudden death, as well as a higher incidence of potentially disabling diseases, especially given the increase in life expectancy, which has now almost doubled, and the increase in chronic degenerative diseases.

Despite this, when someone points out this paradox to them, the participants agree that raising awareness not only of this law but also everything concerning the end-of-life should start from the very youngest. They believe it is necessary to set up courses, particularly within universities, to stimulate reflection on these issues and make the users of these training sessions more inclined to consider the decision-making processes, which one needs to examine in the event of serious illness or accident. Education on these issues is, in fact, important at any age, especially if we consider that death or serious illness, as well as accidents, are not phenomena that only concern adult life and senility, an example being the very high number of accidents that cause unintentional injuries and that mainly affect the young or very young (Templeman et al. 2021).

Still taking into consideration the research done by Focus Management in 2019, we can see that although the level of favour on the part of respondents is average (with a score of 4.5 out of 7), 68.9% of them state that they have never thought about their own death, 39.8 do not feel com-

fortable doing so, while 16.7% believe it would be more practical to reflect on this topic in the future in a moment of necessity. Thought is turned towards these topics only occasionally and especially in correspondence with the release of facts and events that become news cases upsetting public opinion and that relate to ethical dilemmas concerning living wills, assisted suicide or euthanasia, such as the Englaro case and the Welby case (Maffoni et al. 2019).

Another study, also conducted in 2019, involving 2000 participants and aimed at investigating the Italian population's knowledge, opinion and attitudes towards Law 219/2017, collected similar results (De Panfilis et al. 2020).

Even within this study, the level of knowledge of the law appeared to be average, with most people stating that they had heard about the law thanks to mass media but did not know all its contents in detail. There is also a different level of knowledge of the various rights expressed in 219/2017: while the majority of respondents knew the right to be informed about one's state of health, the study found that the degree of competence of the participants decreased for the following rights: the right, on the contrary, to not be informed about one's state of health, the right to palliative sedation, and, finally, the rights related to suspending any type of treatment, including those related to artificial nutrition and hydration.

The level of agreement with the content of the law was also good, with majority of the participants being in favour of the topics covered by 219/2017. There were also no major differences based on the socio-demographic characteristics of the group, although people over 65 showed a greater interest in the law, considering it more important and innovative than the other age ranges.

Even in countries where the contents of the law are slightly different, and through studies conducted with populations with a different culture from ours, the results were not dissimilar: the percentage of people who had drawn up a ATD was rather low, even though almost all of them agreed that the laws in force in their country regulating ATDs governed a fundamental right for all citizens. The reasons for the low completion of Advance Treatment Directives were, for the most part, related to a low number of initiatives involving the community aimed to adequately publicize the contents of the law, associated with a tendency to procrastinate on the part of participants (Chan et al. 2019). Furthermore, there is a consensus in the literature that a low level of knowledge of the law is also a problem for healthcare professionals and facilities as a whole (Sullivan et al. 2003).

The study by Chan and colleagues (2019) also revealed slight differences in the acceptance of ATDs based on religious belief: Catholics and Buddhists, in this case, are more willing to accept the law than non-believers, who, instead, show a greater tendency not to address end-of-life issues (Testoni et al. 2015).

3.1 Doctor-patient (and Family) Communication around Finitude: the Novelties Introduced by the New Legislation

The doctor-patient relationship plays a fundamental role within Law 219/2017 as it reinforces the patient's decision-making autonomy (without time limits), already enshrined, for example, in Article 32 of the Italian Constitution and Law 833/1978, clearly defines the ways through which the patient's consent can be considered valid, offers guidance on therapeutic obstinacy and access to pain therapy, and finally regulates two ways to accept or deny care and treatment, namely Advance Treatment Directives and Shared Care Planning (Bolcato et al. 2021).

Since the boundaries imposed by the law bring about a significant change in the relationship between doctor and patient under the aspect of assistance, it is a priority that the facilities and the professionals working within them be informed about the nodal points introduced by the law and the boundaries it draws.

However, knowledge of the law does not always appear to be good, even among healthcare professionals (despite what is stipulated in Article 1, paragraphs 9 and 10 of the law), and one of the substantial critical issues encountered in the application of the law concerns precisely the difficulties that exist to date in the relationship between healthcare and those who benefit from care, namely patients.

A study conducted by Bolcato and colleagues in 2021 set out to investigate the current knowledge of the law among Italian medico-legal experts, who are pivotal figures in ensuring that hospitals are adequately updated and preventing critical incidents involving the doctor-patient dyad.

Although the survey highlighted that the young medical experts believe they are familiar with Law 219/2017, most of them state that they are unaware of how to file Advance Treatment Directives and the procedures for drawing up a Shared Care Plan. Moreover, although the participants declare that the facilities in which they work have organised training and refresher courses for the staff regarding the law, most of them do not believe that their institution has adequate procedures for the application of

the new legislative provisions, nor that it has set up a legal counselling service regarding the aspects governed by 219/2017.

The study by Maffoni et al. (2019), conducted in Italy with professionals working within palliative care, confirmed the same result. Although most of the participants agree that the new law is a resource in working with patients, albeit with strengths and weaknesses, as well as a means of protection for their own professional and personal lives, they nevertheless seem to perceive difficulties on the operational level as well as feeling ill-prepared about the law's contents and perplexed about the discourse related to 'temporal dissonance', i.e. the possibility of deciding on one's own future health conditions.

Another fundamental aspect of the law concerns the concept of time; the patient must be given adequate time to discuss with professionals the goals and procedures of the treatments they are undergoing, as communication time is officially recognised as time devoted to care and treatment. In addition, time has a second value, i.e. every patient is allowed to make decisions regarding their own care, not only those made in the immediate present but also those that will possibly affect the patient in circumstances where they will no longer be able to self-determine (what we earlier referred to as ‹temporal dissonance›) (Di Paolo et al. 2019).

Further hindering the application of the law also seems to be the inability of healthcare professionals to have an honest and authentic conversation with their patients about end-of-life issues. It is not only the case in Italy, where the laws described so far are fairly recent, but also in countries such as the United States, where regulations governing end-of-life matters have been in place for years and where it is the law to ask patients whether they have drawn up ATDs and whether they wish to do so before being taken into care. Some studies (Katz and Genevay 2002; Servaty et al. 1996) have, in fact, highlighted how health professionals report finding dealing with death-related issues with their patients difficult.

The research carried out by Black (2007), involving a large number of doctors, nurses and social workers, pointed out that their view of death, their degree of acceptance of it, and elaborated and unelaborated previous bereavement experiences influenced their propensity to deal with the topic of end-of-life with patients. These factors seem to be able to trigger avoidant behaviour and avoidant attitudes towards this topic. In general, however, the research emphasises that practitioners feel unprepared and uncomfortable discussing end-of-life topics with patients and their families and that they have received little training on the subject (Coffey et al. 2016).

Family members, on the other hand, also experience the problem of having a conversation about end-of-life decisions with doctors and nurses; they also perceive difficulty in identifying a reference figure who can support them and adequately educate them on these issues, both among general practitioners and within the hospital or other facilities (Simon et al. 2015). This problem has also been explained as being linked to doctors and nurses fearing that talking about Advance Treatment Directives or end-of-life decisions may be considered upsetting to their interlocutors as, in their opinion, it indicates that there is no hope for the patient. The families, on the contrary, describe themselves as more fulfilled when they can share their choices with professionals, yet very few report that they have done so or had the opportunity to do so (McAfee et al. 2017).

Another difficulty that those who work within the healthcare sphere cited in relation to the application of the law concerns the discourse on conscientious objection, a subject that is not sufficiently explained in comparison to the new rulings and, in fact, not provided for by 219/2017 (Di Paolo et al. 2019). At the same time, they declare themselves uncertain about the application of the law in all those cases in which the deterioration does not only concern the physical component but also the cognitive one, causing the patient to no longer be able to self-determine (Cioffi et al. 2019).

As stated above, the novelties introduced by the law constitute a major change in the doctor-patient relationship hence the various difficulties just reported. In detail, everything that regulates the discourse related to informed consent and self-determination of the patient sanctions the passage from a paternalistic view of the doctor-patient relationship, in which it is the doctor, using their own criteria, that determines what is best for the patient, to a more patient-centred model, in which the latter can exercise his decision-making autonomy, becoming to all intents and purposes an actor in their health course, in a relationship no longer vertical but equal with the health professional (Testoni et al. 2023).

Thus, the health professional turns out to be a central figure in the whole of Law 219/2017, not only because they are the one who will have to respect the patient's wishes but also and above all, with regard to his role as an informant, correct information being essential in enabling the person to make the most appropriate decision in line with their own values. The law is extremely clear on this point: the patient, if they so wish, must be well informed with respect to their health condition, must know the treatments that they can undergo and the possible alternatives available (Art. 1, para. 3). The role of the health professional, however, does not end

with this function; the doctor, especially the general practitioner, can have an important role both in disseminating knowledge of the law among their patients but also in being a fundamental reference figure for the patient when they have to gather information useful to draw up the ATDs. Another pivotal point of the law (Article 4) reaffirms, in fact, the need for the subject to gather adequate medical information on the consequences of their choices so that what is reported is not the fruit of 'inexact, incomplete, out-of-date elements, or even lacking in medical-scientific foundations'.

In this case, the general practitioner, who is the one who should know the patient's entire medical/clinical history and who has a more direct relationship with them, should be the figure of choice for this type of work. The general practitioner, in this sense, not only possesses the medical skills to sufficiently prepare their patient but can also enable them to acquire more tools to understand and know the law, as well as to direct them towards the resources already present on the territory, thus configuring themselves as a figure to be revalorised, considering how much they have been one of the actors that have been most affected by the recent health policy strategies aimed at centralising health care in the hospital, thus constituting a hospital-centred structure of services.

3.2 Death Censorship and Death Education Courses: How to use Death Education to Improve the Enforceability of the Bill

The testimonies of doctors lead us to affirm that we currently find ourselves in a culture of denial that tends to have an avoidant attitude towards death, which is no longer seen as a natural event that is part of life, but rather as a failure of medicine that has been unable to keep someone alive.

However, the literature agrees that preparing for one's own death or that of one's relatives, as well as that of the people in one's care, is a fundamental step, as it allows one not to leave important suspensions and at the same time to plan accurately the moment of death and the states preceding it, thus enabling an increase in the quality of life of the person and, for those left behind, the possibility to cope more consciously with grief.

This censorship appears to be present above all in the western world. It is a relatively recent phenomenon, which began in the last century, highlighted as early as 1965 by the anthropologist Geoffrey Gorer and extensively studied by the leading exponents of the Terror Management Theory (Greenberg et al. 1986), who study the strategies implemented by individuals and societies to diminish the anguish connected with death.

This censorship that society has operated towards death has led people to reflect less and less on their mortality, leading them to increasingly procrastinate end-of-life decisions (Testoni et al. 2018; Testoni et al., 2019).

This unpreparedness for issues related to death and dying has necessitated the establishment of Death Education courses, the purpose of which is to make people as aware as possible of their condition as mortals in order to help them prepare for the moment of the end (Kastenbaun 2018). If, in the past, death education was practised informally within families, involving even children who participated in the funeral wakes and the preparation of the deceased, today we are witnessing the opposite phenomenon: not only are children completely excluded from any practice related to death, but adults also tend to remove as quickly as possible any stimulus that reminds them of the transience of the human being. This tendency entails the need to activate specific courses with the aim of bringing the topics related to death and dying back to the forefront to encourage the people and the community to reflect on them (Testoni et al. 2017). A Death Education implemented in this way makes it possible to diminish death anxiety; the meetings are, in fact, intended to enable people to come to a greater acceptance of the event of death, both when it concerns themselves and when it concerns others, and to understand it better so as to have less fear of it. It is divided into three levels: primary prevention aimed at everyone, adults and children, to enable them to acquire a greater awareness of the subject of death and to reflect maturely on this issue; secondary prevention aimed at people in the terminal phase of their lives and those accompanying them, to provide support in the anticipatory mourning phase; and finally Death Education at the tertiary level aimed at the grieving, i.e. those who have suffered a bereavement, to enable them to process it and to avoid a pathological drift (Testoni et al. 2020a).

Considering what was said above, Death Education constitutes a fundamental tool for several reasons: first of all considering that one of the reasons why people report not having drawn up the ATDs concerns the fear of thinking about these issues, a tendency that favours procrastinating any decision regarding one's own end of life; secondly considering the reluctance on the part of healthcare personnel to engage in a mature discussion with their patients on the subject of dying, also because they feel they do not have at their disposal the appropriate tools to communicate around this topic.

In this regard, in the past, Testoni and colleagues (2021) have already used Death Education in the context of the dissemination of Law 219/2017. In the study, they asked the participants to imagine receiving

a diagnosis of Amyotrophic Lateral Sclerosis and then having to draw up their own Advance Treatment Directives to put in writing the treatments to which they did or did not wish to be subjected (Testoni et al., 2021). Not only did the study show, as described above, that people are still not sufficiently informed about the contents of the law, but considering the effects of such an intervention, it highlighted how Death Education courses enable people to perceive themselves as better able to cope with serious illness and to empathise more intensively with families and patients forced to cope with this type of problem. Not only that, Death Education has enabled them to make important end-of-life decisions.

The lack of adequate knowledge of the law but in general of everything that regulates the end of life, in the absence of courses such as the one just described, sometimes causes serious misunderstandings, such as the fact that a large part of the population still believes that 219/2017 goes into the merits of ethical issues such as assisted suicide and euthanasia, thus giving rise to debates that also call into question religious values.

Not only can Death Education be useful within community-based interventions to reduce censorship and anguish towards these issues and to increase the dissemination of information regarding the law, it would also prove beneficial if aimed at healthcare personnel, not only to decrease burnout associated with the constant contact with death and dying in daily practice, but also to become more familiar and prepared towards these issues (Testoni et al. 2018). There are no specific teachings within the curricula of nursing and medicine degree courses that cover the topics of death and dying (except from a medical point of view) or that support students in acquiring the skills and tools to communicate with their patients and, in particular, to give them 'the bad news'. It is precisely this inability to relate to the patient around these issues, coupled with the lack of training, that can influence the ability of professionals to dialogue with patients and relatives about finitude (Steinhauser et al. 2001), causing two main difficulties: an increase in the avoidance behaviours described earlier (Black, 2007), and being conditioned in one's medical choices, for example, by not taking the patient's wishes sufficiently into account and perceiving the interruption of treatments as a failure from both a personal and a work perspective.

Indeed, it is precisely the avoidance behaviour described so far that has fuelled the tendency on the part of the healthcare system not to inform patients adequately about their real condition, to the detriment of truth-telling. If on the one hand, this seems to make it easier for professionals in their clinical practice, as they are able to evade the communication of bad news and thus very often meet with the favour of the patient's relatives,

who often declare that they are not ready to deal with these issues and above all do not want their loved ones to know about their condition because it is serious, on the other hand, this way of behaving has repercussions on the creation of a therapeutic alliance and also does not allow the patient to prepare himself adequately to perform his last evolutionary task. Hence the need for Death Education in order to counter these behaviours and their consequences and to foster the development of relational skills useful in dealing with those who die or those who accompany those who die (Testoni et al. 2020b).

Obviously, these kinds of courses are not only recommended for those who work as general practitioners or those who work in palliative care but also for those who, for example, work in emergency medicine. A study conducted with this type of participant showed that work aimed at death education could decrease the distress of professionals when working with the bereaved (Smith et al. 1999).

Useful, therefore, could be a path of education on death that not only takes into account these actors, i.e. citizens and health personnel and the structures in which the latter operate, but also avails itself of the support of the community, creating pathways at the community level capable of reducing barriers and cultural prejudices on these issues, in order to create a model of territorial intervention capable of strengthening relations between the population, the municipal administration, and therefore the territory, and the health company, so as to improve the promotion of the law's contents.

It is therefore essential to involve the entire territory, including those administrations which, despite providing the service, in particular that of Anticipated Treatment Directives, have not been able to maintain a high level of adherence on the part of citizens due to the difficulty of adequately intercepting the psycho-social instances that distance people from the thought of finitude.

The community approach, implemented by means of both informative meetings through the involvement of experts in the field, and artistic experiential techniques useful for processing one's own experiences regarding the end of life, is, in the light of these considerations, essential. Isolated death education projects, in fact, although useful, are not always able to bring about significant changes within society and combat the resistance that in many contexts, including schools, prevents meetings on these topics. In order to foster a process of normalisation of dying that helps to consider death education as an integral part of health and wellbeing promotion programmes, it is necessary to act on community engagement. This

term refers to considering and involving the community in such a way that it perceives itself as part of and active and responsible for the public health of all (Mills and Mills 2016).

Despite the fact that the work of raising community awareness of issues around the end of life and dying is one of the priorities identified in the policies of many countries, to date there are few active Death Education projects and even fewer involving local communities and health professionals at the same time. However, pathways that enable people to actively participate have proven to be the most effective as they allow people to tap into social resources and perceive themselves as active promoters of change (Matthiesen et al. 2014).

Conclusions

Although the various studies reviewed underline that a large part of the population agrees with the points regulated by Law 219/2017, there are still major obstacles that make knowledge of the law and its dissemination difficult to date.

The main difficulties lie in the population's lack of knowledge of the contents of the law and their rights regarding end-of-life; the same lack of knowledge of the law that is also present in healthcare professionals; but also, the complexity or even lack of communication between doctor and patient on the subject of the end-of-life. Finally, one must take into account a social issue that influences all the aspects examined above, namely society's censure of the topic of death.

All these points lead to further implications for which it is difficult to find a single solution.

A step forward, however, can be taken by activating Death Education courses, i.e. meetings organised to discuss end-of-life issues with a purpose that is not only informative, with experts helping to understand the various paragraphs of the law, but also elaborative, to enable people to talk about death and become aware of their relationship with it and the feelings associated with it.

As said before, it is necessary not only to intervene with the community, which as of today does not have the necessary tools to adequately understand the contents of the law due to the scarcity of initiatives related to the rights involved by 219/2017, but also with healthcare professionals who turn out to be, together with the patient, the central figures of the law. Again, the courses should not only aim to 'inform' but also to dissect

the feelings that healthcare professionals associate with death and dying, as the communication behaviour of professionals inevitably depends on their personal attitudes towards death.

Obviously, this is not a definitive solution, as a cultural change is needed to overcome all the reticence that exists to date around the subject of dying.

Moreover, it should not be seen as work to be done with individuals but rather with the community, and not just with single professionals but with structures.

Law 219/2017, in fact, significantly modifies the doctor-patient relationship and asks the structure to adapt to what is regulated; in fact, not only are the structures obliged to offer constant training to their employees regarding the new legal provision, but making communication time a time devoted to care and treatment requires an adaptation of the time and work carried out by doctors and nurses.

Death Education is therefore configured as a first and important tool to make the law more applicable, but also to manage some of the problems that currently afflict the healthcare system, predisposing a change in the mentality currently present in many places of care.

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The Role of Human Rights and Inclusive Attitudes in Fostering School Inclusion

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Abstract: This literature review aims to critically discuss recent developments in the fields of inclusion and human rights from a psychological perspective. It consists of five parts. In the first part, after a brief introduction about the current threats and challenges faced by young generations all around the world, the concept of inclusion is explored with a specific focus on school inclusion processes. In the second part, the theoretical model called 'Positive Youth Development' is presented. It considers a set of resources as crucial for promoting the ability to interact with others and resolve conflicts appropriately, thus influencing the construction of inclusive social and school contexts. The third part considers the impact of the attitudes towards inclusion and human rights in inclusion processes, focusing on the strategies that promote positive attitudes towards others in children. The fourth part considers the role of knowledge about human rights and inclusion in school children with an overview of training programmes that seek to foster knowledge about children's rights. Finally, it attempts to draw some conclusions, stressing the importance of designing school training to promote inclusion by combining two crucial elements: the knowledge of inclusive human rights and positive attitudes towards inclusion and the respect for one's own and others' human rights.

Keywords: inclusion, human rights, inclusive attitudes, human rights knowledge, inclusive social skills

Introduction

In the 21st century, children live in an interconnected and rapidly changing world with emerging challenges and risks, such as the exploitation of natural resources, globalisation, technological innovation, and the increase in the frequency and scale of phenomena such as war and environmental disasters. These challenges and risks are intensifying migration processes, influencing the development of young people worldwide, and increasing their intercultural exchanges in everyday life (Greener 2022; Capua 2020).

In recent decades, several scholars have called for the emergence of *superdiversity* in relation to increasing global migration flows worldwide, to describe cultural and linguistic differences in social contexts and the emergence of new social positions, statuses, and stratifications (Dahinden 2009; Troyan and Auger 2022; Vertovec 2019). More recently, to describe and analyse these newly emerging complexities, Vertovec (2019) uses this term to highlight an increasing number of individuals connected by different cultural, demographic, and socioeconomic perspectives. This phenomenon influences people's social networks (Dahinden 2009), making it necessary to consider different elements when analysing diversity within social contexts (Longhi 2013), and drawing attention back to how a set of related characteristics can be combined in different ways (Vershinina et al. 2009). These aspects are intertwined with other components that are traditionally and prototypically attributed to the issue of diversity, such as those related to disability, learning difficulties, gender differences, and so on (Nota and Rossier 2015).

The increased intertwining of diversity within social contexts is also found in school contexts, in that the same indices of variability can be observed in classrooms, albeit to a lesser extent, as in significantly larger and more numerous contexts. Within schools, the opportunity to interact with heterogeneous peers can foster cultural growth through the initiation of meaningful social relationships (Tajic and Lund 2021; Woodgate et al. 2020). On the other hand, the presence of heterogeneity in classrooms seems to lead to an increased risk of situations of discrimination and social exclusion such as bullying, violence, and victimisation, especially towards peers with vulnerabilities (Nota et al. 2019). According to some studies, this may be due to the limited opportunities students with vulnerabilities have to participate in both school and extracurricular activities, due to the necessity for more support such as the need for simplified homework instructions or the modification of the rules of a sport to allow for the active participation of peers with difficulties (Strand and Kreiner 2005; Ro-

jo-Ramos et al. 2023). One consequence of this is precisely the fact that students are less likely to initiate positive helping and collaborative behaviours towards those perceived as different (McPherson et al. 2001; Stark and Flache 2012).

Although the opportunity to experience a heterogeneous school reality seems to bring several advantages, literature still shows that the presence of certain conditions in the school context (impairment, migration experience, low socioeconomic status) is associated with an increased risk of micro- and macro-exclusion and victimisation. Indeed, some researchers have shown that, from early childhood, children display stereotypical beliefs, prejudices, and negative attitudes towards peers with vulnerabilities (Babik and Gardner 2021; de Boer et al. 2012; Freer 2021; Nikolaraizi et al. 2005). This has consequences on the social interactions between children with and without vulnerabilities. For example, students with disabilities are often less involved in positive social relationships and recreational activities with peers or are invited to participate in activities that are considered quieter by peers without disabilities, such as playing board games or watching television (Ostroky et al. 2015; Von Grunigen et al. 2010; Woodgate et al. 2020). Similarly, it has been found that, in the absence of specific professional interventions, the school inclusion of students with migration experience does not result in a condition of school engagement and inclusion (Juvonen 2015; Svensson 2017).

These phenomena may increase the risk of social isolation, depression, anxiety, and other behavioural and psychological health problems in children with vulnerabilities (Aluede et al. 2008; Bacioglu 2022; Fredstrom et al. 2011; Sporer et al. 2020). Moreover, this also implies a violation of their right to participation and inclusion, as affirmed in the Convention on the Rights of the Child (CRC, 1989) (MacKenzie et al. 2020).

It is difficult to deal with the complexity and heterogeneity of these contexts and to prevent situations of discrimination and social exclusion, also given the impact of these situations on psychological well-being and respect for human rights. To do so, it can be useful to favour the construction of inclusive school contexts by promoting inclusive skills as early as possible, to foster the development of the capacity to live together, to cooperate, and to be tolerant and supportive of others, despite ethnic, religious, economic, and impairment differences (Amor et al. 2019; Kennedy 2013). In this regard, the new social paradigm of inclusion, which has emerged in response to the socioeconomic changes associated with the growth of globalization and the multi-diversity present in social contexts, emphasises the need to promote a set of skills, attitudes, and behaviours

(Shek et al. 2019; Wehemeyer and Shogren, 2018). These are useful in ensuring peer acceptance and positive social relationships with all peers, preventing situations of discrimination and social exclusion, and building welcoming and inclusive school environments for all children, including those with disabilities and vulnerabilities (Broekhuizen et al. 2016; Nix et al. 2013).

Based on these premises, this review aims to present examples of interventions to promote inclusive attitudes and knowledge of inclusive rights, within the framework of Positive Youth Development, one of the most recent and accredited models for the positive development of children and adolescents. To this end, it is considered necessary to start from the concept of inclusion and to make explicit the aspects that characterise inclusive school contexts.

1 Towards Rights-Conscious Inclusive Societies

Given the challenges and threats of today's society and the emergence of superdiversity in social contexts and the levels of discrimination and social exclusion, school inclusion is a way of thinking about the present and the future to promote social participation and quality of life for children and young people.

The concept of inclusion is the result of a process that began in the 1970s, when people started to talk about the 'school inclusion' of pupils with vulnerabilities, proposing their placement within classrooms. However, the mere physical placement of pupils with difficulties within classrooms was reductive and insufficient for the realisation of inclusive school contexts (Armor et al. 2019; Forlin et al. 2013). Thus, the need emerged to actively involve all students and allow them to actively participate. The term 'integration' was introduced to indicate the need for pupils with and without vulnerabilities to carry out activities together in the classroom, respecting the specificities of each, with some kind of support to facilitate this process (Kurth and Gross 2014; Nilholm and Göransson 2017).

However, there was still a specific focus on people with difficulties. Inclusion, unlike the two terms 'inclusion' and 'integration', is concerned with contexts and their capacity to enable active participation and a satisfactory standard of living for all people, rather than being focused on an individual student with vulnerabilities (Wehemeyer and Shogren 2018). In school contexts, the concept of inclusion implies ensuring the active participation of each student and creating a school environment charac-

terised by positive social relationships between peers and intergroup harmony (Juvonen et al. 2019). School inclusion is therefore seen as a process that concerns all students, with and without disabilities, with similar and different cultures of reference, who participate in school activities (Nilholm and Göransson 2017).

Even within the United Nations Convention on the Rights of the Child (CRC, 1989), the concept of inclusion implies that every child, without distinction and with the recognition of their uniqueness, has all the fundamental rights and freedoms contained in the Convention. The concept of inclusion is closely associated with the concept of the dignity of the person (Griffo and Mascia 2019; Shogren et al. 2016). In this sense, it can be seen as a means of realising human rights, removing barriers to their realisation, and building inclusive societies (MacKenzie et al. 2020; Vaghri et al. 2020).

2 Positive Youth Development: A Model on Positive Development

The importance of developing a wide range of positive and inclusive internal and external assets is emphasised by the Positive Youth Development (PYD) framework, which is based on the work of Eccles and Goodman (2002), and Roth and Brooks-Gunn (2003). From a theoretical perspective, the PYD emphasises that social and inclusive attitudes and skills are positive nutrients for personal development (Sancassiani et al. 2015), as they are associated with children's ability to interact with others and resolve conflicts appropriately (Denhan 2006) and can help children develop positive social relationships and cope with problems (Sancassiani et al. 2015). This theoretical approach emphasises the promotion of capabilities through environments that pay attention to the creation of opportunities for building positive, reciprocal relationships between young people and the context, rather than focusing on difficulties (Larson 2000; Snyder et al. 2012). This is because young people's well-being and quality of life are not only influenced by the presence or absence of problems and concerns but rather by individual capabilities and the positive factors of social environments that contribute to children's positive development (Catalano et al. 2004; Weare and Nind, 2011). Therefore, this framework is in line with the recent definition of inclusion, overcoming the limiting views that focus on the vulnerabilities and difficulties present in social contexts, and instead emphasising the strengths of all people, i.e., the capacities of each individual to contribute to the construction of inclusive contexts (Shek et al. 2019).

This approach has been operationalised by Lerner and collegues (2009) and encompasses 5 components. Competence regards a positive view of one's actions in domain-specific areas including the social, academic, cognitive, and vocational ones. The vocational area involves work habits and the exploration of career choices. Confidence refers to an internal sense of overall positive self-worth and self-efficacy. Connection regards positive relations with people and institutions, reflected in bidirectional and mutual exchanges between the individual and peers, family, school, and community. Character refers to respect for societal and cultural rules, having standards of correct behaviour, a sense of right and wrong (morality), and integrity. Finally, Caring and Compassion refer to a sense of sympathy and empathy for others.

According to this model, when these 5Cs are expressed synergistically in young people, they are more likely to develop trajectories that contribute to positive family, community, and societal growth. In other words, positive trajectories across the life course are the result of reciprocal relationships between the person and the features of the context that support and promote growth, with benefits for both the person and the social system.

PYD-based interventions focus on protective and risk factors in peer, school, community, and family contexts that enhance individual development and support young people's growth within their living environments (Taylor et al. 2017). In addition, promoting positive developmental nutrients, including social skills and positive attitudes towards others, can enhance social acceptance and a sense of context (e.g., being part of a group, developing friendships with peers, etc.), contributing to the school and social inclusion of all individuals, including those with disabilities (Broekhuizen et al. 2016).

Given the importance of the positive development of children and young people in promoting inclusive school processes, some researchers have investigated factors that can promote the building of positive social relationships and an increased focus on conflict resolution. Among these factors, positive attitudes towards others and the acquisition of knowledge about inclusive rights are particularly relevant. Therefore, the following sections will focus on these two elements.

3 The Impact of Attitudes Towards Inclusion

Among the variables that have the greatest impact on building positive social relationships among peers, particularly in school contexts, positive

attitudes towards others, and especially towards students with vulnerabilities, were found to be a relevant factor in fostering inclusion and respect for inclusive rights.

An attitude can be defined as a personal view or disposition towards a person, object, or idea (Gall et al., 1996). In the school setting, children's attitudes towards classmates with vulnerabilities have been analysed, and overall, although numerous studies (de Boer and Pijl 2016; Petry 2018; Schwab 2017; Tsaridou and Polyzopoulou 2019; Wang and Qi 2020) have shown that children tend to have neutral or negative attitudes towards peers with disabilities, other equally numerous researches (Alnahdi 2019; Arampatzi et al. 2011; Dias et al. 2020; Hellmich and Loper 2018; Pivarc 2022) have found positive attitudes, especially when specific interventions are implemented to promote peer relationships.

Attitudes are composed of three dimensions: cognitive, emotional, and behavioural (de Boer et al. 2012). The cognitive aspects refer to beliefs or knowledge about a person; the emotional aspects relate to emotions and feelings felt towards others; the behavioural aspects refer to behaviours and intentions to initiate positive relational behaviours towards others. Various scholars (e.g., de Boer et al. 2012; Freer 2021; Werner et al. 2015) believe that these components are interrelated, pointing out, for example, that positive beliefs correspond to positive emotions and behavioural intentions. Conversely, when children hold negative stereotypical beliefs about peers with vulnerabilities, they tend to show negative feelings such as fear or pity and act towards them with discriminatory and social exclusion behaviours.

Studies on attitudes towards school inclusion have focused on the attitudes of typically developing students towards peers with disabilities. In terms of the cognitive component, research has focused on knowledge and beliefs about disability, finding low levels of knowledge about it (Ginevra et al. under review) and a tendency to generalise and categorise peers with disabilities, seeing them as part of a group 'other' than their own (Al-Kandari 2015; Alzyoudi et al. 2021). This often leads to simplifications, generalisations, stereotypes towards peers with disabilities, and lower intentions to initiate positive relationships or choose them in recreational activities (Werner et al., 2015; Rojo-Ramos et al., 2023). Some studies have also shown that children have more negative perceptions towards peers with intellectual impairment compared to those with motor disabilities (Petry 2018; Werner et al. 2015; Yıldırım Hacıibrahimoğlu 2022). This is related to greater difficulty in understanding the causes of more com-

plex, abstract, and less visible disabilities such as intellectual disabilities (Ginevra et al. under review).

Regarding the affective component, children tend to show negative feelings such as sadness, anger, or fear towards their peers with difficulties (Alzyoudi et al. 2021). Some studies have investigated the effect of age on children's feelings towards peers with difficulties obtaining mixed results. According to some studies (Dias et al. 2020; Tsaridou and Polypozoulou 2019), older children tend to react more negatively emotionally towards peers with vulnerabilities, while according to others (Werner et al. 2015; Petry 2018) they are more likely to experience empathy or compassion by showing fewer negative emotions. Furthermore, it seems that the lower the pupils' fear of people with difficulties (disabilities, behavioural problems), the more they experience interpersonal sympathy towards them (Pivarc 2022).

Research on the behavioural component has found that students tend to interact with peers with disabilities differently depending on the type of impairment and the type of relationship required (Yıldırım Hacıibrahimoğlu, 2022). In terms of the type of impairment, there is a greater tendency to engage in positive relationships of help, collaboration, solidarity, and friendship with peers who have a temporary rather than a long-term disability, a motor or sensory one rather than an intellectual one and/or one associated with behavioural problems (Di Maggio et al. 2022; Werner et al. 2015; Yıldırım Hacıibrahimoğlu 2022). Other studies have investigated the preference to play with peers with and without vulnerabilities and found that both peers with and without difficulties tend to prefer to play with children without disabilities in particular younger children who seem to feel unable to engage in friendship relationships with the latter (Yu et al. 2015; Petry 2018; Yıldırım Hacıibrahimoğlu 2022; Yu et al. 2015). Regarding the type of relationship, a greater tendency to engage in helping rather than friendship relationships with classmates with disabilities has been found, although this appears to depend strongly on, among other things, the importance that peer friendship seems to have at different ages (Kalymon et al. 2008; Pivarc 2022).

Considering these findings, there is a clear need to design and implement interventions aimed at fostering the development of positive attitudes towards peers with disabilities, to promote the establishment of meaningful social relationships.

3.1 Intervention Strategies for the Promotion of Inclusive Attitudes

In recent decades, some effective strategies in promoting positive attitudes towards inclusion are those based on Allport's contact theory (1954; Pettigrew and Tropp 2006; Schachner 2019). According to said theory, interacting with people who are perceived as different from oneself promotes positive attitudes towards them and reduces prejudice (Allport, 1954). Based on this theory, some scholars have proposed direct and indirect contact strategies between members of different groups to promote positive attitudes and improve intergroup relations (Santilli et al. 2019). Direct contact consists of having face-to-face experiences between ingroup and outgroup members[1] and is the most effective strategy for promoting positive attitudes towards peers with disabilities and vulnerabilities (Lemmer and Wagner 2015).

Since direct contact is not always possible due to reduced opportunities to meet an outgroup member, scholars have proposed indirect contact strategies (Vezzali et al. 2014; Crisp and Turner 2012; Miles and Crisp 2014), which have also been found to be effective in reducing anxiety about hypothetical future interactions with outgroup members (Ioannou et al. 2018; de Carvalho-Freitas and Stathi 2016) and in promoting positive relationships with others (Crisp and Turner 2012; Stathi et al. 2012; Vezzali et al. 2014).

Three types of indirect contact have been identified in the literature (Dovidio et al. 2011): vicarious, extended and imagined. *Vicarious* contact refers to observing a member of one's group (ingroup) while having a positive and successful interaction with an outgroup member (Wright et al. 1997; Vezzali et al. 2017). In school contexts, many studies (Aronson et al. 2016; Cameron et al. 2011; Liebkind et al. 2014) have used stories in which ingroup and outgroup characters have positive interactions with each other and found that reading these stories and discussing them in a group with an adult (conductor) has positive effects on children's and adolescents' attitudes and behaviours. More recently, Vezzali et al. (2019) implemented a vicarious contact intervention aimed at reducing prejudice towards people with a migration experience and increasing inclusion in school contexts using videos that show the establishment of friendship re-

[1] An ingroup member refers to a person who is part of one's group, while an outgroup member refers to a person who is considered to be outside one's group. In this text, ingroup refers to pupils who are part of a school class, while outgroup refers to pupils who may be considered different from the majority of children in the school setting (e.g., with disabilities, with a migration experience).

lationships between peers from different cultural backgrounds. The results showed that watching videos of intercultural friends interacting positively influenced attitudes towards outgroups and reduced negative stereotypes about them. Furthermore, the intervention was also effective in increasing the intention to interact with peers from different cultural backgrounds.

Extended contact occurs when an individual is aware that one or more ingroup members have positive social relationships (e.g., friendship, collaboration) with outgroup members (Dovidio et al. 2011; Vezzali et al. 2014). Several studies have demonstrated the long-term effectiveness of this strategy with primary school children in reducing negative stereotypes (Feddes et al. 2009) and increasing intentions to help peers with vulnerabilities (Christ et al. 2010). For example, Vezzali et al. (2015) implemented an extended contact intervention to promote the formation of friendships with outgroup members in school contexts by asking some students to participate in a competition in which the group that wrote the best essay about their experience of befriending peers with a migration story would win a prize. The aim was to encourage an exchange of positive peer stories that would highlight the benefits of interacting with peers who have a migration experience. The results show that the children who participated in the competition were more likely to initiate friendship relationships with peers who had a migration story, compared to a control group who was asked to write an essay about friendship in general.

Imagined contact seems to be a particularly promising indirect contact strategy which consists of imagining a positive and successful interaction with an unknown person (Crisp and Turner 2012; Vezzali and Giovannini 2011). In the literature, studies on imagined contact have found positive effects in terms of improved intentions to interact with outgroup members (Husnu and Crisp 2010; Stathi et al. 2014) and intentions to help others (Vezzali et al. 2015). Furthermore, in children, the mental simulation of positive social interactions prepares them to develop positive social relationships with hypothetical new classmates and fosters positive future interactions (Ioannou et al. 2018; de Carvalho-Freitas and Stathi 2016). The effectiveness of imagined contact has also been demonstrated in several studies implementing interventions to promote the social inclusion of people with disabilities (de Carvalho-Freitas and Stathi 2017; Falvo et al. 2014; Vezzali et al. 2015) rather than those with migration experience (Crisp and Turner 2009; Vezzali et al. 2012). For example, Ginevra et al. (2021) found that an intervention using imagined contact combined with providing information about peers with sensory disabilities, intellectual disabilities, and behavioural difficulties was effective in reducing stereotypes and fostering

positive attitudes, feelings, and intentions towards contact with peers with sensory disabilities, intellectual disabilities, and behavioural difficulties and positive interaction with peers who have a migration experience.

More recently, imagined contact has been used to promote assertive behaviour in situations where children are victims of social exclusion and bullying. For example, Vezzali et al. (2020) used a new form of imagined contact to promote assertive behaviours in confronting discrimination and bullying. Specifically, they conducted a three-week intervention programme with primary school children. The pupils were asked to imagine a scenario in which they become friends with an unknown child with a disability and to react to forms of discrimination against their new friend to defend him or her. After each session, there was a group discussion about what they had imagined. The intervention not only confirmed the effectiveness of the imagined contact in fostering more positive social relationships and greater intentions to interact with others but also fostered greater intentions to react to bullying and social exclusion behaviours towards the new hypothetical friend with a disability and to engage in helpful behaviours towards them.

In light of the studies on the effectiveness of indirect contact strategies and, in particular, of this new form of imagined contact proposed by Vezzali et al. (2020) that fosters inclusive attitudes and the adoption of defensive behaviours to confront situations that violate inclusive rights (such as bullying and social exclusion), it could be useful to consider this intervention model to design effective programmes that promote, on the one hand, positive social interactions and, on the other, the ability to recognise situations that violate inclusive rights and, therefore, the intention to counteract them.

4 The Role of Knowledge about Inclusion and Human Rights

Given the importance of promoting positive attitudes towards inclusion and human rights and considering the role of knowledge as a fundamental cognitive dimension to recognise situations of violation of inclusive rights, it is necessary to promote children's knowledge of inclusion and human rights (Nota et al. 2019; de Boer et al. 2012). To this end, analysing children's knowledge of inclusion and related rights and understanding how they develop greater attention and propensity to respect rights is a fundamental step in designing interventions to promote inclusive school contexts that are attentive to respect for human rights (Levy et al. 2022).

Recent literature has analysed the knowledge of human rights about inclusion, suggesting that the principles contained in the Convention on the Rights of the Child (1989) should be used as a framework, as it is a primary instrument for ensuring respect for children's rights that considers children as the main agents of their rights (Collins and Paré, 2016). Within the Convention, participation rights have been recognised as crucial for the design of intervention programmes aimed at promoting school inclusion (Blaisdell et al. 2021). In particular, several scholars (Casas et al. 2006; Grugel 2013; Kilkelly and Lundy 2006; Lundy 2019) have argued that the rights to social participation (Art.12) and to express one's views and to be heard (Art.13) are particularly relevant for ensuring the initiation of positive and meaningful social relationships, as they imply a sense of responsibility to ensure that these rights are respected both for oneself and for others.

To date, research has mainly focused on children's rights knowledge and *rights consciousness*, two closely related but distinct constructs (Perry-Hazan 2021; Struthers 2015). Regarding rights knowledge, the literature suggests that the way children perceive rights is mediated by their experiences of rights in their own lives (Ruck et al. 1998) and that children's beliefs about their rights may influence their attitudes towards their own and others' rights (Campbell and Covell 2001). Moreover, knowledge of rights can promote a greater sense of responsibility associated with respect for rights (Howe and Covell 2010; Shue 2006). For children, the ability to exercise responsibility changes according to age and developmental stages and is a key aspect in fostering their active participation in respecting human rights (Howe and Covell 2010). To this end, it may be crucial to motivate children to be active in respecting their own and others' rights, thus fostering a personal interest in respecting rights in general (Howe and Covell 2005).

As regards the concept of rights consciousness, it can be defined as the individual's perception of rights and is associated with the ability to define problems in terms of respect for rights (Almog and Perry-Hazan 2011; Merry 2003), facilitating the recognition of situations of rights violations (Perry-Hazan 2021). The development of rights consciousness seems to be influenced by the emotions aroused by situations in which rights are violated (Perry-Hazan 2021). In this sense, emotions such as anger, indignation, hope, and courage facilitate the recognition of situations in which rights are violated (Abrams 2011).

4.1 Interventions that Promote Rights Knowledge in Children

In recent decades, several scholars have affirmed the need to teach children their rights (Barton 2020; Covell and Howe, 2000; Howe and Covell 2021; Stavrou et al. 2022), arguing that knowing one's own and others' rights and acquiring the necessary skills to ensure their respect goes hand in hand with the development of inclusive attitudes, values, and behaviours, especially in school contexts, also to prevent situations of rights violations such as those of bullying and social exclusion (Fantaye et al. 2022; Holland and Martin 2017; Howe and Covell 2010, 2021; Isenstrom 2022).

Few studies have proposed structured training to improve children's rights knowledge and have shown positive results in promoting knowledge, understanding, and support of human rights (Campbell and Covell 2001; Howe and Covell 2021). Most of these are based on the principles of Human Rights Education (HRE) to promote rights learning, which is effective in fostering in children not only knowledge of human rights but also a sense of responsibility to respect them (Howe and Covell 2005, 2021). In the school context, HRE consists of three dimensions: education *about*, *through* and *for* human rights (Howe and Covell 2010; Struthres 2015). *Education about human rights* has been defined as the cognitive component of HRE (Howe and Covell 2021), as it consists of imparting knowledge about rights but also about the tools for their realisation and the underlying values such as equality and inclusion, as well as about possible situations that threaten the respect of rights such as discrimination and social exclusion. Some research has shown that knowledge of rights alone is not sufficient to promote rights-conscious and inclusive contexts (Parker 2018; Quennerstedt 2020). Therefore, it is important to combine this cognitive component also with the learning of skills and behaviours useful for building rights-conscious and inclusive contexts. *Education through human rights* is about learning skills to ensure that one's rights and the rights of others are respected, including the identification of situations in which they are violated. These skills can be fostered using strategies such as modelling, role-playing, and group discussions (Howe and Covell 2021). *Education for human rights* refers to the promotion of the intention to act in a manner that respects human rights, through behaviours aimed at counteracting situations in which rights are violated, to promote the construction of rights-conscious and inclusive social contexts.

Several studies (Dunhill 2018; Naser et al. 2020; Quennerstedt and Moody 2020; Sebba and Robinson 2010; Wallberg and Kahn 2011) have demonstrated the effectiveness of HRE-based intervention programmes

with children in terms of increased support for the principles of inclusion and participation associated with human rights, such as those of non-discrimination, acceptance of diversity, and increased intentions to engage in helping behaviours towards others.

Following the principles of HRE, Howe and Covell (2010) conducted a three-year study on the impact of children's rights knowledge in primary schools, which included the implementation of the Rights, Respect, and Responsibilities (RRR) programme developed by Covell (2007). The programme consisted of modifying the school curriculum to teach students about human rights and structuring teaching activities around respect for the children's rights contained in the Convention on the Rights of the Child (1989) so that teachers could use strategies such as modelling and role-playing. The RRR programme has been implemented in 300 primary and secondary schools over the past 10 years (Covell 2010; Covell et al. 2011; Covell et al. 2008; Howe and Covell 2013, 2020), and has had significant success in promoting knowledge of human rights and the negative effects of their violation, awareness of how a right can promote equality and social justice for all, and understanding of the primary and inalienable nature of one's own and others' rights (Howe and Covell 2005, 2021). In addition, the programme fostered the development of inclusive skills, such as the ability to collaborate with others and the intention to actively participate in school activities, and increased cooperative and inclusive attitudes and behaviours, concerned with respecting the rights and needs of one's peers, particularly those with difficulties (Howe and Covell 2021).

Conclusion

This review has analysed, from a psychological perspective, some of the key elements that need to be considered for the construction of inclusive and rights-conscious social contexts. A particular focus was on school contexts to explore which intervention strategies are most used to promote inclusive school processes. Specifically, two key aspects were examined, which are inclusive attitudes and inclusive rights knowledge, conducting a critical analysis of the interventions aimed at increasing these two variables. Furthermore, studies that implemented intervention strategies were examined. Said strategies, from a preventive perspective, aimed to implement these two variables in children to prevent situations of social exclusion, starting from primary school.

Based on the studies in the literature, it appears that, in terms of promoting inclusive attitudes, contact strategies are effective in fostering positive attitudes towards others and positive social relationships between peers. In particular, the new form of imagined contact recently developed by Vezzali et al. (2020) seems to promote not only helpful behaviours towards peers with disabilities but also defensive behaviours to face bullying and social exclusion. Concerning rights knowledge, HRE interventions seem to foster the acquisition of knowledge about rights, but also the enactment of inclusive behaviours such as intentions to help and cooperate with others (Howe and Covell 2021).

Although both intervention models seem to have positive results, studies on contact strategies in the literature seem to focus on specific types of vulnerability, such as disability and migration experiences, while Human Rights Education interventions focus on children's acquisition of all rights. Perhaps, the combination of these two approaches could be particularly significant in promoting the construction of inclusive school contexts, aimed at stimulating knowledge of one's own and others' rights, a sense of responsibility for respecting them, and the development of positive attitudes towards situations of vulnerability.

In particular, regarding the knowledge of rights, it could be crucial to focus on the rights most associated with inclusion, such as the rights to participation and self-expression, to promote the recognition of one's own and others' rights, as well as the situations in which rights are violated, which hinder the construction of inclusive contexts. In terms of promoting positive attitudes towards others, the use of imagined contact could encourage the imagining of situations of social exclusion towards classmates to promote the intention to counteract these situations, regardless of the presence or absence of vulnerability.

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The Fight against Child Labour: the Challenges Posed by Northern Ethnocentrism

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Abstract: The Minimum Age Convention (1973) and of the Worst Forms of Child Labour Convention (1999) of the International Labour Organisation (ILO) have been implemented worldwide, becoming the most relevant instruments to tackle child labour. However, the phenomenon is still alarming: more than 160 million children are employed in child labour, with a major incidence in the countries of the so-called 'Global South'. Various authors claim that this ineffectiveness exists due to the perpetuated unbalanced representation of ideologies in international action, product of a historical Northern ethnocentrism. Particularly, since the Second World War aftermath, the structure of the international community has favoured Western States, granting them to accumulate more capital than the rest of the world. This unequal distribution has then generated an asymmetry of power that is well reflected in international forums where they can impose their ideologies and derail final outcomes conveniently. With particular attention to the antichild labour framework, the Western conception of childhood has shaped international action, ignoring the Southern understanding of children's rights and child labour. It resulted in a permanent European hangover of the Dickensian memory of the child. Long-term, local peculiarities have been sacrificed on the altar of universalism, seriously undermining the Southern fight against child labour. This single-handed target is the primary cause of the unbearable and counterproductive implementation of policies worldwide.

This paper seeks to present the major contribution on the matter, trying to highlight the basic differences between the Northern and the Southern understanding of childhood and child labour. Ultimately, it will demonstrate that the current approach mainly reflects the Northern historical ideologies.

Keywords: child labour, children's rights, childhood, the International Labour Organisation, Northern ethnocentrism, Global South

Introduction

The employment of children in Western societies has historical roots that originated well before the Industrial Revolution of the XVIII century, especially in agricultural and family undertakings (Lieten et al. 2011). Children's participation in economic life was part of a larger traditional and educational scheme, aimed at contrasting idleness and vice, as prescribed by the founder of Methodism John Wesley (Cunningham 2011; Tuttle 2011). More commonly, it was a means of spreading survival skills and knowledge among future generations (*Ibidem*). Later, the development of technology, the imposition of compulsory education led the new capitalistic society to develop a new sensibility and to condemn this practise. Indeed, from the beginning of the XIX century, child labour became an urgency that States had to deal with through *ad hoc* legislation (Nardinelli 1990). Subsequently, State actors began to feel the need to tackle child labour using international debates and the deployment of universal legal standards. Since its foundation in 1919, the International Labour Organisation (ILO) has been the major actor in this sense (Maul 2019). The ILO has produced various international documents and implemented numerous national and international programmes to eradicate child labour worldwide. The actual milestones of international action rely on two ILO's Conventions precisely: The Minimum Age Convention of 1973 (ILO C0138) and The Worst Forms of Child Labour Convention of 1999 (ILO C0182). Nevertheless, this solid international framework has not led to the annihilation or diminishment of the. More than 160 million children are employed in child labour worldwide, with a major incidence in Sub-Saharan Africa (ILO 2021).

The ineffectiveness has generated a huge debate among scholars over the last decades (Congdon Fors 2008). Largely, prominent authors have claimed that the anti-child-labour framework has been shaped on the image of the Western conception of childhood, children's rights, and child labour, ignoring the understanding of Southern States in which the phenomenon was -and still is- extremely challenging (Meyers 2001). A practical example is that the ILO has established the minimum age for employment as the minimum legal basis for eradicating child labour, assuming that the age is the principal element to distinguish children from adults. This biolog-

ical consideration is typical of the historical Western approach to children's rights but not of the Southern (Bourdillon et al. 2009).

Following the line of development studies' authors, this happened because the structure of the international community has favoured Western States, granting them more capital than the rest of the world. This unequal distribution has then generated an asymmetry of power that is well reflected in international forums where they can impose their ideologies conveniently (Fairclough 1995). Therefore, international policies have become a tool Global North's tool to impose its principles and solidify dependency bonds through a restyled form of colonial imposition (Escobar 1995). Indeed, any attitude that does not conform to the international model is condemned as antidevelopment, leading to economic repercussions (Howard and Okyere 2015).

With particular attention to children's rights, this Northern ethnocentrism has resulted in a hypocritical approach that obliges Southern States to impose labour regulations that Western States enacted only when they reached high development levels (Nardinelli 1990; Pamoukoglou 2020).

This unbalanced system of representation appears as the main cause of the ineffectiveness of the actual fight against child labour because it imposes standards that do not respect the cultural backgrounds of the countries in which the phenomenon is still urgent (Bourdillon et al. 2009.). This paper seeks to present the major contribution to the matter.

The first paragraph will overview the major contributions to the definition of childhood and child labour, evidencing distance that exists between the Global North and the Global South. The second paragraph will illustrate different interpretations of the link between education and child labour, outlining the involved cultural, economic, and social elements. The third paragraph will show prominent models that attempt to associate the phenomenon of child labour with the economic dimension and the international trade. The conclusion will present final observations.

1 Childhood and Child Labour

The anti-child-labour framework deals with two controversial concepts: childhood and child labour.

From a judicial point of view, international forums managed to elaborate definitions that are accepted worldwide. The United Nations Convention on the Rights of the Child defines the 'child' as 'every human being below the age of eighteen years'.

The ILO affirms that child labour is 'work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development [...]' (IPEC 2004).

Accordingly, States agreed to establish that:

childhood is a stage of life that is fixed by biological constraints, in particular the achievement of 18 years old.

child labour includes all work that is not age-appropriate and that can represent a threat to the future of the child.

Although the legal definitions of 'childhood' and 'child labour' have been universally accepted, there is no truly common interpretation of them. It seems that the ILO, despite its heterogeneous composition, has established legal foundations that mainly recall euro-American images of 'Dickensian memory' (Meyers 2001).

As a matter of fact, the living literature has broadly demonstrated that the actual interpretations of these concepts are not able to merge and equate the Northern and the Southern visions. In addition, globalisation has favoured the diffusion and rooting of homogeneous and unique visions of childhood and child labour (White, 1996, 831).

1.1 Childhood or Childhoods?

The actual definition of childhood is recent. In the Western Medieval world, it did not exist nor in theory or in practise: the child was just considered a miniature version of adults. Only in the XVII century, the Western development psychology started elaborating this new social idea. It evoked the child as a human being who was needy, dependent, and vulnerable, due to its physical and psychological connotations (Desmet et al. 2015). During the Enlightenment, European society solidified the theory of children as humans yet to be and the future of a new and progressed society (Verhellen 2015). Lately, the affirmation of this theory led societies to see childhood as a different stage of human life, completely distant from adulthood (*Ibidem*). This phase is marked by biological patterns and is determined by vulnerability and dependence (Rodgers and Standing 1981). This division has slowly directed modern society to assign to each social group specific activities to perform. Leisure and study were prerogative of the child only, while working and earning money were earmarked for adults specifically. (Ariès 1996). These two dimensions could not overlap, and they must remain categorically remote (*Ibidem*). This attitude is historically proved by the Western delegations' requests in the ILO during the WWII aftermath. They constantly demanded for the child's removal from

the world of work, insisting on the incompatibility of these two dimensions of human life. They stressed the duty of the State to protect a figure who is incapable of doing so alone (Dahlèn 2007).

As a result, Western society delivered a definition of childhood that results problematic because it implies an extremely rigid categorisation that is unable to adapt itself in the modern world. Work and leisure, such as studying and earning money, tend to overlap continuously both in the Western and Southern societies. (James et al. 1998). In the South particularly, children are used to combining these activities because of economic and cultural requirements (Bequele and Boyden 1988).

Prominent authors claim that universal standards ignore the existence of multiple childhoods that differ from each other according to their social, cultural, and historical heritage. (Qvuortup 1994; Punch 2003). Indeed, Southern societies have a vision of childhood that strongly challenges the Western established one. Children are recognised as active actors that need to work to earn their place (Woodhead 1999). Their purpose and value are determined by the local community and, if necessary, they are required to fulfil their part even before the achievement of the abovementioned biological bar (Schlemmer 1996). Poor and deprived societies may require children to act as an adult to respond to economic shocks or necessities without respecting precise orderliness or customs (Burton et al. 1996). In other cases, such as in Sub-Saharan African societies, children are considered adults only upon the completion of rites of passage. Only after these, they can transit to the next stage of their life because they have proved their abilities to the society (Fyfe 1989).

It seems clear that, enforced standardisation has sacrificed Southern peculiarities to represent the Northern historical journey, seriously affecting its long-term effectiveness (White 1996).

1.2 The Ideologies Asymmetry on Child Labour

Child labour has always been a complex concept to define. This complexity depends on the cultural challenges that the terms 'child' and 'work' may imply (Schlemmer 1997). There is no widespread definition, and the initial English meaning has been weakened in language adaptation over the years (Morrow, 2015). This complexity has been documented in institutional and international frameworks. As a matter of fact, the ILO took more than 50 years to include the wording *child labour* in a legally binding document and quite 80 years to provide a universal legal definition. Indeed, although the 'protection of children' appeared in the preamble of the

ILO Constitution of 1920, and the 'child welfare' objective was introduced with the Declaration of Philadelphia; Member States were not interested in providing a more comprehensive designation. Only after WWII, the Organisation started its path toward the achievement of the definition of child labour (Maul 2012). The ILO C0138 of 1973 is the first international legally binding document in which the term child labour figures explicitly, but only the ILO C0182 of 1999 succeeds in defining the phenomenon and its worst forms (ILO 2019c).

The length of the process may be explained by the struggle of the ILO Conference to merge cultural relativity into a single universal standard (Woodhead 1999). Western countries were tied to the image of the frail child in the XIX mills and factories that clashed with that of the newly independent States (Hanson et al. 2015). As a result, the ILO definition is unable to paint the phenomenon as an established social phenomenon (Humpries 2011, p 45).

Even scholars struggle to find a common definition of child labour, further proving the ideological distance that separates the Global North and the Global South in this aspect.

Western countries are the strongest condemners of child labour worldwide, judging it as a threat to the development of future adults. Children, as they are vulnerable and easy to manipulate, must be safeguarded by any possible exploitative circumstance (ILO 2004). However, Western actions and requests are often valued hypocritical for various reasons (Nardinelli 1990). Firstly, they are promoting a deceitful and strict classification of child work and child labour. The first is a safe activity, and the latter is a threat to the psychological and physical development of the child (Bourdillon 2006). This imposition comes from the classical assumption that labour is an obstacle for the formation of personal subjectivity, while leisure and study are adjuvants of this process (Petrillo and Belleli 1993). This division is not realistic and does not recognise that all works can be both harmful and unharmful according to the circumstances and modalities. These elements cannot be taken for granted (Bourdillon et al. 2015, 2). Secondly, they are demanding Southern States to enforce severe regulation that they first did not implement when child labour was an urgency in their national realities (Albot 1908). A historical evaluation of national policies has demonstrated that the Euro-American block has imposed strict child labour bans only after the achievement of a good level development (Nardinelli 1990; Pamoukoglou 2020). In the first stages of industrialisation, eradicating child labour was not a priority for Western governments (Powell 2014).

Moreover, some authors have remarked an alarming actual paradox: even if Southern child labourers are the great majority, their voice is the least represented. Although, logically speaking, their perspective should be the rule and not the stigma (Boyden 1990). Unfortunately, they are today's *subalterns*[1] and, consequently, their claims are not easily heard (Liebel and Invernizzi 2019, 148).

In general, Southern States have a more merciful vision of child labour (Meyers 2001). This statement does not assume that they always support child labour as positive in absolute terms. It signifies that these States perceive the phenomenon differently, in line with their specific political and social values (Lavalette 2019). Various authors observed an overall trend in Southern families to treat children as mature family members that need to contribute to their economic life (Meyers 1999, 40). Indeed, in these environments the society pushes children to act with liability, as they must be responsible not only for themselves but also for their loved ones (Godard 2002). This social requirement is easy to find in on-field examinations, as demonstrated by Woodhead in 1999. Generally, this investigation showed that children were not obliged by exploiting employers, but they decided to work to gain pride and to sustain their families' livelihood (Woodhead 1999, 16). In other cases, particularly in rural circumstances, families acknowledge the future returns of work for their child. For example, studies in Ghana and Pakistan show that rich-land families send their children to work to let them learn agricultural techniques to preserve their land and not form mere economic needs (Bhalotra and Heady 2023).

Furthermore, some academics have evidenced the role of religion in stimulating child labour in some areas of the Global South. To be precise, some religious precepts can persuade the local society to portray the employment of children as an act of diligence and respect. For example, Calvinism encourages adherents of any age to work and accumulate wealth in the attempt to merit their place in the community (Tawney 1926). Generally, in Southern contexts, some religions may promote child labour more than others to realise the well-being of society. (Krolikowski and Pencavel 2007). For example, in Ghana 'Christian children are the least likely to work, while Muslim children, children with no religion, and children affiliated with a traditional African religion, are more likely to work than Christian children' (*Ibidem*, 43). In India, Hinduism has strengthened a system of social stratification which foresees individuals to be employed in occupations

[1] In their paper, the authors use this term to portray Southern working children and not as in Antonio Gramsci's theory.

that are fixed for the social groups they were born into (Lagasse 2007). The Indian caste system expects that members of the lowest castes perform the humblest jobs, such as weaving carpets. Various studies have demonstrated that children working in the Indian carpet industry mostly come from scheduled castes[2] (Kanbargi 1988).

This vision of children as a predestined, mature, responsible, and social actor is rooted in the history of the Global South. It is visible in regional documents, especially in the African Charter on the Rights and Welfare of the Child[3] (ACRWC), in which the 'responsibilities of the child' are listed as obligations of children for the defence of their communities.

2 Education and Child Labour

Education has always played a relevant role in contrasting child labour. This concept is entrenched in European judicial history because of the conviction that compulsory education guaranteed the drastic decline of child labourers in the late nineteenth century (Humpries, 2011). This conception has been transmitted to the ILO since its early years of activity (Bhukuth 2008; Orrnert 2018). In the Constitutional Preamble, the ILO invited State Members to improve 'the organisation of vocational and technical education and other measures'. Then, with the declaration of Philadelphia, the achievement of 'quality education and vocational training' has been incorporated in ILO's world programme. The duty to complete compulsory schooling before being employed has been stressed during the entire Minimum Age Campaign (Dahlèn 2008). The C0138 of 1973 fixed the minimum age bar to the school-leaving age. The C0182 of 1999 explicitly declares that free basic education plays a key role in combatting worst forms of child labour. Recently, the International Programme on the Elimination of Child Labour (IPEC) of the ILO has stated that work that does not prevent children from studying must be classified as child work, thus not target of international action (ILO 2019d).

Many researchers confirm the valuable effects that education can have in child labour-dominated areas. It is described as the best means to construct a brighter future for children and break the vicious cycle of poverty

[2] "Scheduled castes" refers to the untouchable communities, thus to individuals belonging to the lowest castes in the system.

[3] The ACRWC, adopted by the Organisation of African Unity (AU) on 11th July 1990, is a regional human rights instrument that has been ratified by 50 AU Member States. Out of these 50, no one has made reservations for article 31, which lists the responsibilities of the child.

(Edmonds 2009). More specifically, the lack of compulsory schooling increases the number of future child labourers and, ultimately, the creation of a vicious cycle of poverty in their society and families (Krolikowski and Pencavel 2007; Samanova 2014; Rahman 1999). In fact, uneducated children do not have enough human capital to occupy high-level positions; thus, they can produce low levels of income only, perpetuating family poverty and undermining the country's economic growth (Villamil 2002).

2.1 Challenges to the Established Approach

Nowadays, more and more actors in the international community are contesting the established approach of promotion of universal education to eradicate child labour.

The causal link between compulsory education and the eradication of child labour has been disproved on various occasions (Rahikainen 2011). A good example is that compulsory school attendance did not contribute to the decline of child labour in the first stages of industrialisation in England and Wales; rather, these laws caused relevant economic losses for families, increasing general poverty (Kirby, 2011). Despite its ineffectiveness in the short term, compulsory education has become the main instrument to fight against child labour in wealthy States. This happened also because of the political value that this legal action possesses. In various European experiences, education helped solidify cohesion, promote national spirit, and shape the minds of the future working class (Gubin 2011). Schooling was implemented to improve skills and knowledge useful to the development and growth of the State even outside the European continent. In Japan, for example, public compulsory education was enforced to perpetuate the culture of self-advancement and to protect children in the interest of a strong and prosperous future society (Saito 2011). In general, the authors have noted that States want to model children's education to pursue specific national objectives. For this reason, the minimum age to employment, connected to the school leaving age, has become the dominant policy for these States, also in international forums (Boyden and Morrow 2018).

Various actors of the international community question the adequacy of this model in the Global South.

The most obvious problem is that the model fails to recognise that in some Southern realities work is 'generally considered part of acceptable child-rearing practice' (Bourdillon et al. 2015; Bourdillon et al. 2009, 107). In many communities, working is considered the best school that a child can attend, as it is part of an unharmful process of learning and growing up.

In this non-Western conception, children can improve their character, develop a good sense of productivity, and have awareness of their own abilities (Woodhead 1999, 18; Miljeteig 2000, 7; Bequele and Boyden 1988, 4).

Additionally, scholars have highlighted that working children live a process of socialisation that can guide them to gradually shift from immaturity to adulthood. Especially in African societies, this progression allows old generations to transmit relevant survival skills that can be used in the future and to ensure the subsistence of both their families and society (Bekomno 1981; Agiobu-Kemmer 1992; Schlemmer 1997). For example, Kenyan traditional families strongly encourage children to work in plantations or in domestic chores to acquire specific know-how and applied skills (Onyango 1988). Similarly, Nigerian communities support the involvement of children in the local labour market because their early labour participation can shape a healthy moral of the child and transform them in diligent citizens who work for the cohesion and well-being of the society (Omokhodion et al. 2006; Oloko 1993). It is not a case that the ACRWC does not include 'education' as a mean that the Member States can implement to contrast child labour, as stated in article 15.

Other examples are children in Bogotá and Peru who prefer to work because schools teach them useless concepts for their future employment, and which will certainly not require high levels of education. By working they can see how to act and behave in the labour market and, at the same time, staying away from the negative influences of the *barrio* (Salazar 1988; Guillén-Marroquín 1988). In this sense, a certificate, such as the high school diploma, results in being worthless for their future and extremely time-consuming (Agiobu-Kemmer 1992, 7). In the Philippines, poor families do not send their children to school because the lectures offered are not valuable or suitable for the market requirements. For them going to school results in a mere loss of earning (The Institute of Industrial Relations of the University of the Philippines 1988).

Indeed, a worrying aspect noted by numerous researchers is that schooling can be very expensive due to direct and indirect costs. Especially for low-income families, school is a luxury that cannot be afforded. Many families are forced to send children to work because it is economically convenient. The necessities of family income are more urgent than personal educational improvements. (Woodhead 1999; Petrillo and Bellelli 1983). School may teach children to count apples when they do not have money to buy a single apple (Ruffato 2006). Moreover, poor parents tend to not send children because of the inadequacy of educational facilities, such as

unstable infrastructures, expensive transportations, and untrained teachers (Kanbargi 1988; Abdalla 1988). This unproductive situation is fundamentally perpetuated in the Global South due to historical unfair distribution of power (Fairclough 1995).

3 The Economic Dimension of Child Labour

The ILO has produced the definition of child labour in terms of economic activity and has adopted a family-centred vision in its evaluation (Bhukuth 2008, 2). Therefore, international action mainly targets economically active children: those who produce goods and services that are ultimately destined for the market or that produce a sort of income for their families. According to this affirmation, children engaged in homeworking enter under the umbrella of child labour, while those engaged in domestic tasks do not (*Ibidem*). However, even if work is practiced inside or outside the family environment, family and poverty are the main drivers of child labour. The need for financial and economic support pushes families to encourage child to avoid hunger and starvation (ILO, 2004).

Scholars tend to question this economic definition of child labour terms because it does not understand that children exploitation is as severe in domestic activities as in economic ones (Prügl 1999; Congdon Fors 2008). This limited economic vision of child labour has been affected mostly by the past experiences of industrial Europe (Bourdillon et al. 2009, 107). Europeans have always seen household chores as part of children's reasonability towards their families and not a threat to their development, particularly after The Great Depression (Dahlen 2007; Maul 2019). This historical neglect has generated a frail framework.

Another interesting element of discussion treats the costs and benefits of children in family planning, with particular attention to poor contexts. Generally, the influence of northern ethnocentrism has gradually hardened the idea that children in the Global South are obliged to work because of heartless and egoistic parents (Bourdillon and Meyers 2013; Hanson et al. 2015; Wright, J.D. 2017, 166). This condemnation of Southern families is fundamentally contradictory and hypocritical. Historical evaluations have strongly demonstrated that in the Global North, families have always used their children to buffer against poverty and extreme economic conditions (Aitken 2006). For example, the US government in the XVII century pushed families to send their children to work because they were 'a national asset which may be used to further the material greatness of America' (Albot

1908, 21). In the Swedish first industrial capitalism, from the beginning of the XIX century to the middle of the XX century, families saw children as essential economic forces to overcome unemployment and deprivation (Olsson 2011). Thus, it is possible to state that children's employment was a mere cog in the family system that was used to handle economic and financial problems. Nowadays, the child continues to be an active agent of the economic system and in the family strategy (Qvortrup 2001). The only difference is that today's child labourers are in the South. As a matter of fact, a comparative study confirmed that children, whether they have a wage or not, work because their families need extra income to alleviate relatives suffering (Woodhead 1999, 35). In other cases, as it happens in Nepal, children are sent to work because one of the parents is ill and, therefore, incapable of producing useful income (ILO et al. 2012). According to the renowned economics of child labour, families in these cases are not driven by evilness or stinginess, but they perpetuate practices that are common to poor households. In practice, they realise a strategic choice that is dictated by credit and poverty constraints. When the family cannot meet its subsistence needs through the work of appropriate-age members, children become the last resource to be employed (Basu and Van 1998; ILO et Anker 2000). It is not a case that most working children come from non-wealthy families in poor regions. Their activities are necessary to contribute to the livelihood of their own family, especially in case of massive economic shocks (Boyden and Morrow 2018; Fukui 1996; Punch 2003, 283).

3.1 The Market Dilemma: to Ban or Not to Ban?

Even though scholars tend to agree on the national macrolevel deformations that endure child labour, the most controversial theories emerge in the analysis of the child labour in international trade.

Market distortions that occur at national level are even more amplified in international trade, where inequalities between states are pronounced and evident (Lockwood, 2021; Powell 2014). In the actual global market Southern States are expected to produce and export primary sources, labour-intensive goods, and services (Woodhead 2003). The high competitiveness of this enlarged market may have negative repercussions in the diffusion of child labour in already frail contexts. Some authors believe that companies exploit children to reduce production costs at minimum and to maximise profits (Biggeri and Mehrotra 2007). Indeed, companies and corporations have been urged to assume human rights obligations and to

protect working conditions with due diligence, especially in global supply chains (ILO 2019a; ILO 2019b). The product labelling system and trade bans have been supported worldwide to offer incentives to industries that are able to guarantee the absence of children in the production scheme (Ibidem). Nevertheless, these 'zero child labour' policies and claims of 'zero child labour' are receiving different critics, generating a vivid debate that is inserted into the broader 'North-South' question.

On the one hand, experts support trade bans and regulations are valuable means that governments can deploy to ensure universal protection of labour's rights (Waite et al. 2015). In this environment, unilateral trade preferences, such as those used by the US government, manage to impose labour conditionality and to ensure a trade based on the respect of common standards (Vogt 2015). Social labelling has received more appreciation recently. Even if this approach has not been completely effective in the short term; it has had limited success in the long term. As the Rugmark case has shown in India, social labelling has not eradicated child labour, but it has helped spread awareness and sensibility also in narrower contexts (Ravi 2001, 1141).

On the other hand, these instruments are being strongly contested. Numerous academics think that bans and labels will never work because they do not address the primary cause of child labour; they only try to hide the reality to 'palliate the guilt of Northern nations' (Arat 2002, 197-198). Children work because of family poverty or extreme economic conditions to provide a further useful income. Therefore, chasing children away from work can only worsen the situation, forcing them into a vicious cycle of poverty (Powel 2015). They are constrained to accept more dangerous activities to obtain some sort of income. This theory was proved at the end of the 1990s when trade bans obliged Bangladeshi factories to immediately fire children. This caused a peak in the number of children employed in illicit activities, such as drug selling or prostitution (Rahman 1999, 1000). Ultimately, children have been forced to pick the worst forms of child labour to support their families, who, in turn, have been ulteriorly impoverished. The main problem is the incapability of these actions to target family poverty (Ibidem). Due to these tangible negative effects, some scholars have assumed that rich countries use these instruments as hidden protectionist weapons to maintain their long-lasting position of power (Grootaert and Kanbur 1995, 187). This attitude, combined with the abolitionist approach held by trade unions and international organisations, are inducing poorer exporter countries to obscure data on child labour or to enact laws that regulate children's employment rather than eliminating (White 1999).

Final Remarks

The asymmetry of power in the international arena has granted to some states a position of relevance in international forums, ensuring them to model international action according to their ideologies. Following this theory, common in scholars of development study such as Fairclough and Escobar, this unbalanced system of representation has generated the todays' anti-child-labour framework, in which Western interpretation of child labour prevails. Major academics sustain that this asymmetry is the main cause of the partial ineffectiveness of the international action in the Global South.

This paper tried to overview major authors' conclusions on the matter, trying to highlight the different interpretation of child labour that exists between the Global North and the Global South.

The first part presented various scholars, including White, Boyden, Woodhead and Meyers, and demonstrated that the international legal definition of childhood and child labour mainly reflects Western historical ideologies, mostly linked to biological constraints and psychological vulnerability. Instead, the Southern interpretation of children as mature and active actor does not join the same level of representation.

The second part confronted authors who discussed the relation between child labour and education, such as Gubin, Rahikainen and Kanbargi. It presented a controversial debate, emphasizing that the use of compulsory education to tackle child labour is a direct product of Western historical journey and that does not fit in Southern local areas. Indeed, in the Global South this action cannot work due to cultural, social, and economic burdens.

The last part displayed the major contributions on the economics of child labour and international trade, such as Basu, Van, and Edmonds. This showed systemic asymmetries in understanding child labour as an economic activity in the North and in the South and that international trade bans and regulations can appear more as an instrument to perpetuate power inequalities than to defend children's rights.

In general, it is possible to say that, on one hand, the living literature has the merit to clearly display the different understanding of child labour worldwide and, ultimately, to denounce systemic problematics in the attempt to protect the best interest of the child. On the other hand, it is based on the old-fashioned classification of Global North/Global South or developed/developing counties. This division, particularly famous in 1990s theories, risks to generalise excessively the difference between these two

poles and within these poles too, missing the opportunity to examine specific national and local cases.

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Approaches and Perspectives on Policies and Social Dynamics Related to Vulnerability and Homelessness

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Abstract: The analysis of policies and interventions is deeply related to the territory analysed. A focus on a specific area must consider the social, cultural and political settings that intersect within socioeconomic dynamics. This analysis of the literature considers the changes brought throughout the years within welfare systems by neoliberalism and other streams of policy making processes and political realms. The review aims to present different definitions and nuances of vulnerability and marginalisation, with a special focus on people experiencing homelessness, by studying not only measures 'tailored' to these groups' needs, but also other marginalising processes within society. The dynamics operating in the contexts defined by these characteristics are multifaceted and dense with sociocultural significance. This analysis poses questions related to the social definitions of the beneficiaries of such measures, which are produced by themselves, experts, the political discourse and citizens. Italy is used here as an example because of its history of profound differentiation between Regions regarding the levels of assistance and attention to specific issues. This heterogeneity poses questions about administrative, bureaucratic and social barriers, which are telling of the priorities underlined by the social and political contexts. The Covid-19 pandemic exacerbated some of these dynamics while creating new ones and redefining individualities. The realisation of the right to health of vulnerable groups became a topic of discussion confronted with different means, depending on the contextual forces in question.

Key-words: Policy, Homelessness, Vulnerability, Italy, Health

Introduction

This literature review is linked to a research project that is divided in two main conceptual frameworks studying the Italian territory. The first is related to the macro level analysis of the context of institutions and policies related to healthcare and homelessness, analysing eventual changes in their narrative during and after the Covid-19 pandemic. The second is focused on the micro level analysis that observes which resources were activated during the years of the pandemic by the providers of health and social services as well as from institutions, while observing how measures and provisions were received and implemented. The main goal in this case is also related to the perception of the right to health and if it is felt realisable in its entirety. This perception is related both to the perceived efficacy of services and programmes within the context of emergency and control of the contagion and to the subsequent period of readjustment of activities and provision of services. In this paper, the material analysed is a basis to construct an observation to see how policies influenced the reaction to the pandemic and vice versa, especially when related to people experiencing homelessness in Italy.

This review is divided as follows: the first part will focus on the definition of vulnerability and its social implication for people experiencing homelessness. The analysis will continue with an overview of some of the literature regarding poverty and the social pressure generated by its dynamics. This part will also focus on rights related to health and socioeconomic assistance, discussing the constraints linked to the problems that arise from trying to define these complex societal matters. The overall discourse is accompanied by an analysis of the influence of neoliberalism on policies and development, linking this dynamic to the general understanding of vulnerabilities. The following section will be related to the issues that arise within the policy making process and how they interact with the process of 'othering' a part of the population (Lister 2016). The risk of this dynamic consists in overlooking individuals' agency and the influence that services and policy directions have on the perception and elaboration of the phenomenon by citizens themselves. The concluding remarks give an overview of the context analysed, underlining the difficulties that welfare systems are facing while illustrating challenges and possibilities ahead.

1 Experiencing Vulnerability

The concept of vulnerability is dense and intersects with a vast number of social, economic and historical dynamics. It is the product of several factors, culminating in the exposure to the risk of losing real and perceived 'social protection'. Over time, those citizens who once felt 'included' have become at risk of 'falling out' from their – social, cultural, economic – safety nets, generating further crises within the overall crisis, which increased inequality among citizens (Meo and Negri 2013). Furthermore, vulnerability, as a set of characteristics, often affects people experiencing homelessness, representing the product of a journey that culminates in the loss of home. This discourse can illustrate how 'new' types of individuals find themselves in this situation, which is not the starting point, but an element of a long path. Therefore, this relatively 'new homelessness' does not come from a stereotyped experience of marginalisation or distress. It is important to analyse the effects of these changes on social and cultural constructs (e.g., in Italy losing home can produce a cultural shock, being the house itself a valuable and widely owned resource across the country). The concept of home in Italy (*dimora* in Italian) must be understood within the cultural discourse of living (*abitare*) itself. Home can be thought of as a place that is not only physical, but it can be also an environment where identities (social and personal) and relationships are constructed. The heterogeneity of the homelessness phenomenon resides in its incorporation of different social profiles. Necessities change together with society, with the risk of producing a decrease in the capacity and in the will to initiate or continue processes like social integration and other endeavours (Meo and Capponi 2010).

The resulting diversity in the outcomes is influenced not solely by external factors, but it operates in a continuum with the responses elaborated by individuals. These processes are explained as 'coping' (Meo 2009). This dynamic is characterised by the activation of personal resources that are used to overcome obstacles. These resources can be also understood as the capacity of activating them, which depends on different factors (personal and contextual), especially on the social level. These aspects of the phenomenon become central if connected to the progressive weakening of social networks (particularly the ones with relatives, since the importance of the impacts that networks generate on the macro, meso and micro levels throughout the individual's life (Lubbers et al. 2020)). People experiencing homelessness often depict superficial relationships with their peers, which are sometimes affected by the competition for the appropriation of resources, while the ones with their relatives are weak or interrupt-

ed[1]. The relationship with institutions and other services is usually structured to construct the daily life of individuals experiencing homelessness, while obtaining resources for their necessities. In these cases, 'coping' can be understood as a concept that helps to realise a sense of predictability within their vulnerable situation. The time that individuals spend within the homeless experience changes their behaviour towards the different happenings in their lives. There are different adapting phases within these dynamics starting from rejection, continuing towards adaptation while often developing chronic aspects of homelessness (Meo 2009). These distinctions are not fixed and an experience like this one cannot be easily divided into stages, since they intersect with many changes surrounding them. However, a certain degree of systematisation can be useful to describe different phenomena. As a matter of fact, studies show how the experience of chronic homelessness is often overrepresented in some cases, since a lot of individuals are in a situation of temporary homelessness for many different causes. This characteristic shows how mutable and dynamic the experience and the phenomenon can be. The continuum in which this population interacts, consists in shortfalls linked to hardships brought by health and other spheres of life that can be either precursors or results of the homelessness experience. The heterogeneity is not limited to these aspects, it can be observed as well within the shelter experiences, during which different roles are interpreted in a cycle that can make them result in facilitators for coping mechanisms that reduce the possibility to exit the homeless status. Furthermore, the literature confirms how homelessness is in fact a structural issue, intersecting with individuals' reactions and agencies (Lee et al. 2010). To elaborate this statement, data from the Italian territory can be used to visualise these factors. Studies conducted within the city of Padua showed that most respondents experiencing homelessness had some form of economic support (Citizen Income, *Reddito di Cittadinanza* in Italian, or even different types of support), while still being 'outside' the labour market (despite having different competences and specialised skills). The vast majority of the people interviewed for this study declared that they received benefits and economic help by services alone and almost never by relatives, friends or acquaintances. Furthermore, the results showed that citizens who did have weak or absent social networks consequently had fewer economic resources available. Therefore services,

[1] Data from a study carried out in Rome in 2014 during the 'RacContami Project'. Nevertheless, the respondents strongly valued family relationships and friendships, while they seemed to have less trust towards institutions (Fondazione Rodolfo Debenedetti and Università Bocconi 2014).

public and private, seemed to represent the crucial point where vulnerable groups searched and found the benefits needed to construct their own outlooks for the future, while influencing their life in a significant way. The authors of the study suggest that local administration, healthcare services and other organisations within the territory must work jointly, especially to overcome the logic of the 'emergency', which is a preponderant characteristic of this type of assistance. The characteristics of an emergency cannot exist anymore within these dynamics because they come back cyclically, while bringing new types of individuals in vulnerable positions both socially and economically. Hence, the coordination between services, since the often-remarked absence of specific ones for people experiencing homelessness, becomes a strong point that must be valued in a new possible view for social policies. Recurrent meetings between organisations and simpler, while generally shared and agreed, protocols to follow can benefit both parties (users and organisations/institutions). This last point becomes important when pondering about the necessity of operative protocols to face a phenomenon like the pandemic. Accessibility and integration must become the starting point for organisations to improve and implement systems for reintegration that are dynamic and do overcome the 'shelter logic'. Supporting the users of services in their tasks whenever they find bureaucratic, linguistic and cultural barriers (to name a few), while educating workers and the general 'housed' population on the territory, are all activities and objectives indicated as beneficial to the reconstruction of a network that can protect individuals from 'falling out' again (Gaboardi et al. 2021).

2 Pathways to Marginalisation

Noting the importance of organisations and groups within the results of different studies in literature, a meso-level concept that did not receive the same attention in literature is that of social networks, specifically for its role in poverty, as it is explained in the work of Lubbers, Small, and García (2020) 'Do Networks Help People to Manage Poverty? Perspectives from the Field'. This characteristic might seem surprising because poverty is a relational concept, lived, managed, negotiated, and reproduced within relationships with others. It appears clear that networks have a role in escaping and coping with poverty itself. Scholars have different positions regarding this matter, some underline the characteristics that make networks essential to activate a survival mechanism, others affirm that they

can increase the risk of social exclusion. Effects deriving from networks can be beneficial as well as damaging for individuals. This can happen because social relationships conduct social support together with norms and social pressure. Scholars have called for attention to the consequences of policies based on assumptions related to the existence of networks for every individual and their capabilities. Another result of these dynamics can be represented by the general distrust, where some relationships are characterised by conflicting interest and differences in power dynamics. These relationships can increase vulnerabilities, further limiting access to resources because of the lack of trust within and between groups. In these cases, ties created between peers fade away in a short period of time, mostly because of the increase of requests to satisfy necessities. For what concerns policies, they can be developed from the perspective of social support networks for people experiencing poverty – thus reducing the risk of exclusion – while empowering welfare systems. In this sense, organisations can help to build the infrastructure to create social networks (Lubbers et al. 2020).

Since services speak through their protocols and their providers, how they are perceived and perceive their work influences incisively the development of activities and programmes. Studies conducted within photovoice projects in Europe, show that workers from social services are more vulnerable to burnouts and higher stress levels because of their work with people with different multifaceted issues (with the additional risk of a repeated exposure to trauma), more than other emergency services providers. In these types of working environments, the expectations towards the clients' goals greatly influence workers themselves. Service workers often manifest the need for institutional agreements to have disposable economic resources for their service. Furthermore, they also manifest the need to perceive that their activity is influencing policies. The participation and communication with the community to overcome stigmatisation is noted as an important part in this process. Regulations' clarity is a feature that helps to overcome obstacles that might multiply the workload while helping people with their needs. In the field of social services, the characteristics of users accompanied by their multifactorial and chronic problems, may generate frustration for the service providers (Gaboardi et al. 2022). Moreover, research showed that the type of aid and support that institutions and organisations provide can go beyond their formal intention. There is a need to underline informal support: how it flows and thanks to which factors. Therefore, it is important to pay attention to institutional practices of organisations, to see their presence and actions in practice.

Small and Gose study the conditions that allow organisations to support social capital formation within vulnerable groups. They underline the importance of the boost that institutional norms give to social interactions among members, with a focus on joint tasks and long-lasting activities. This process might activate reciprocity and more access to other organisations (Small and Gose 2020). An example of the importance of the role that support plays during these processes can be found in the paper 'Homeless Women's Personal Networks: Implications for Understanding Risk Behavior' (Tucker et al. 2009), which contains an analysis focused on women with children. In comparison with housed mothers in poverty, people experiencing homelessness live with minor support from their networks, with a lack of trust in their relationships. Even if these groups have other relatives, contact with them is scarce. In general, close relationships do not provide the support they need. Literature explains how these groups are usually interfacing with networks that are small and do not have strong ties with a significant level of assistance. The results of this study, conducted with purposive sampling, show that the subjects follow in part the stereotypical vision of women experiencing homelessness as isolated individuals with small networks paired with minor support. Relatives came into the discussion more often than other types of relationships. The emotional closeness registered with relatives is not supported by frequent contact (geographical distance might play a major role in this case). For what concerns service providers, when accessing the services women were provided with food and other means to satisfy their necessities (as planned from the services used to examine the sample). Nonetheless, these actions might be perceived as coming from organisations and not from service providers specifically. It is possible that the limited resources of the providers represent a barrier to the satisfaction of their needs. However, the authors argue that there is a possibility to improve the quality of these relationships, which may constitute positive role models. Previous research on mothers that were single and with low-income, argues that a larger network could lower the risk of homelessness. In general, people with a diversified network tend to lead a healthier lifestyle (the hypothesis to explain this behaviour is related to the assumption that they might feel the responsibility and a certain degree of social pressure to do so) (Tucker et al. 2009).

Elaborating on the considerations prosed, the importance of organisations on the territory that constitute a bridge between vulnerable groups and institutions and other services is crucial. However, the macro level analysis of policies must confront with other levels where individuals construct their relationships and their individualities. They encounter different

barriers when it comes to constructing relationships outside their environment, as it is hard to keep the previous ones (this could be another example that underlines the importance of raising awareness among citizens and the general public about homelessness). Social and cultural marginalisation goes hand in hand with economic deprivation, which can create obstacles to the fulfilment of the rights of these groups. To avoid the risk of becoming 'hard to reach' and 'invisible' (Flanagan and Hancock 2010), these groups must elaborate strategies together with organisations, keeping in mind that overlooking specific difficulties in these cases might construct a wall when communicating with institutions. This aspect of vulnerability is more remarkable when it is related to the right to health. In this case, the conditions are not only linked to individual choices but also to social conditions that limit personal agency and influence the decisions of the individual. Therefore, marginalisation, as a concept, is constructed with the help of various factors, including networks, the ability to react and adapt, political exclusion and socio-economic status. It affects the ability to interact with institutions which is mutually determined by the perception of oneself (Vargas 2015). This type of dynamics can be also related to forms of exercising power and expectations. For example, within the studies of what is called the 'sociology of waiting', there is a definition of a different universe that gives to the concept of time different meanings according to perceptions and power relations. Temporality can be manipulated within these dynamics, generating conflict and bargaining of time itself. Social time becomes a different value, depending on the situation. The meaning given to waiting for services or other types of benefits produces effects on the individual, changing not only the perception of a right, but also that of a need, creating and recreating subordination through expectations (Auyero 2011).

3 Defining a 'Problem'

As some of the works cited in this paper demonstrate, there have been numerous studies regarding homelessness with different perspectives and methods. Therefore, it is not a matter of a lack of knowledge and insights related to the 'problem': it is rather an issue related to values and political moves. Consequently, the definition of a wicked problem could be useful to understand this complex landscape. Head and Alford describe how a wicked problem is centred around the debate of its nature and eventual solutions, while being linked and mutually affected by other problems.

These problems are not symptomatic of the lack of possible solutions, but they are rather built by political (and consequently policy-related) directions (Head and Alford 2015). Homelessness as a social and political phenomenon fits this scheme, being a multifactorial issue built not only on personal and family dysfunctions, but also by the different degrees of State regulations and organisations' management.

Within different countries characterised by diverse welfare states, markets, social and political contexts, Housing First (HF)[2] is an approach adopted in different regions as a solution to homelessness. The turning point is in the paradigm shift that this approach brought, changing the responses towards people experiencing homelessness. One of the main pillars of this approach is the centrality of the tenants' choice related to the level of relationship with social and health services tied to HF (this aspect is consistent with the normative framework related to housing as a human right). HF is an approach highly dependent on the policies and structural systems of countries. Outside the US, this system has to contend with different social services, cultural contexts and consequent reactions (e.g., the public opinion's positions and responses towards the program's interaction with the housing market rather than with social housing). Therefore, while HF remains an approach that brought new methods and results to the table, it may not be a real shift in every country because it is context-dependent. In some territories there are already social housing services and authorities that provide direct access to housing, all without an apparent change in the social or health behaviours (however, it is noted that some illnesses and conditions may still exclude a part of the population). Mental illnesses and addiction are often requirements to access HF, linking the approach to healthcare systems, while in other countries these characteristics are not usually considered in the eligibility criteria. For what concerns the eligibility criteria and management of the different cases, there might be an imposition of a homeless identity. The homeless identity can often result in a limitation in the set of people's abilities, aspirations and values. In this case, when categorised, people appear for their material deprivation (Parsell 2017).

Together with other outcomes that affected different spheres of societies, the pandemic generated deep and dramatic consequences on homelessness. Since the phenomenon has been identified as a public health

[2] Sam Tsemberis developed the approach during the early 90s, within New York City's Pathways to Housing program. The original concept orbited around three main priorities linked to: the choice of the consumer, the role of the community and support services that are mobile (Parsell 2017).

emergency, governments funded numerous programmes in addition to previous ones. To understand the reasons behind certain responses, we can observe how motives before the pandemic were related to a *poverty of ambition*[3], which resulted in a lack of actions by governments while data and evidence demonstrated the health consequences of homelessness and what was necessary to solve, or in some cases to ease, these issues. Therefore, Parsell, Clarke and Kuskoff (2020) suggest that the effects of this rather novel virus on the health of people experiencing homelessness is not the only factor that justifies these measures: it is rather the possibility related to their vulnerability to contract and spread the virus to the rest of the population. Policies and programmes need to be tailored to local contexts and existing policies, adapting them to different environments within vulnerable groups, while being guided by empirical evidence. Following Bacchi's (2009) argument, the authors explain how policies and programmes are never a response to clear unbiased social problems: they are the result of problems' representation. The latter are the product of 'political rationalities' which logics permit the exercise of political power in certain contexts. In the context of 'neoliberal rationalities', homelessness appears as an issue of not socially functioning individuals that are in need of support for their behaviours and illnesses. In the neoliberal process of problematization, the health and medical frameworks have been crucial. Furthermore, it appears that certain policy measures have been oriented towards adjusting individuals by fixing them, rather than addressing their status as people experiencing homelessness. These discourses are also linked to the more moralising ones, blaming individuals for their 'bad choices and behaviour', with provisions aiming to punish them. A less common discourse is the one describing homelessness as the product of structural processes (markets dynamics, welfare, etc.) while promoting collective solutions (e.g., social housing) (Parsell et al. 2020).

[3] 'Homelessness arises from our poverty of ambition. Cameron was clear that it's a societal problem, not just a government issue. "Most of my work has been with adults and they've been homeless and marginalised most of their life from birth – poverty, trauma, out of home care and so on. We need to think about the social conditions and seeds early on in life that contribute to homelessness. Housing first is a philosophy. We need to work from the premise people can choose. People don't want service providers in their life. What is our exit strategy? We need to think of normality and what comes out of the service system"' (PeakCare 2019).

4 Dynamic Frameworks, Ideologies and Definitions

The discourses and frameworks mentioned, which surround rationalities and political orientations, are layered in historical, social, cultural and economic dynamics. To understand certain policy directions, it is important to investigate the ideologies and social changes that prompted them. In this paragraph the focus will be the neoliberal discourse and its mutual influences on institutional and social movements, redefining and sometimes adapting to the foundations underpinning welfare states. The pathways formed by these processes are far from static: in literature there are debates and works on the evolution of neoliberalism throughout the years, resulting in what can be called 'liberal neo welfarism', as Ferrera (2013) proposes. This ideology combines liberalism and social democracy foundations to modify and structure the role of the State. Its adapting and transformative nature still has to come to terms with internal and external constraints brought by political directions and contexts, which vary from one nation to the other. In this framework, equality becomes dynamic and multidimensional, prioritising the ones in need for benefits and socioeconomic assistance[4]. Furthermore, this focus on neoliberal ideologies, rationalities, and their evolution, is interesting to analyse because it poses questions on the realisation and resilience of certain frameworks. The success of a set of ideas, even when related to policies tackling a specific issue, is related to their compatibility, and thus adaptability, with the institutions already present[5]. This statement means that the implementation of policies needs to be linked to institutions, actors, and their interests in practice. Therefore, these considerations can be used as instruments to understand why and how neoliberalism acts and adapts in different ways depending on the

[4] Other concepts within this framework are: 'productivist solidarity' (social benefits viewed within their productive characteristics, relying on reciprocity understood as the will and the capacity to participate and work within society), 'active inclusion' (benefits receivers are expected to participate to the activities viewed as necessary to reinclude and reintegrate them, with the ultimate goal being autonomy and self-sufficiency) and 'social promotion' (as in the processes linked to the preparedness of the population to counter risks with instruments like social investments, rather than having to invest in reparative measures), which function as a linkage to include and come to terms with some discrepancies coming from the liberty and equality concepts. The underlying discourse within these characteristics is the 'access to subjective rights', which relies on the foundations of the welfare model in Europe (implying the access to civil and political rights without influences that can rise from the personal or familial status of the citizen) (Ferrera 2013, 19-20)

[5] 'Historical institutionalism, moreover, suggests that once ideas are institutionalised, they represent powerful forces for continuity. This may occur through the 'path dependence' of existing ideas, the constraints on innovation, and on alternatives' (Schmidt and Thatcher 2013, 37)

national specific context (Schmidt and Thatcher 2013). In this paragraph, the excursus on these matters will consist in a brief general overview of the evolution and implementation of certain rationalities in order to connect them to approaches and perceptions of issues related to vulnerability and marginalisation.

Neoliberalism is defined as policy orientations, conceptual perspectives and regulatory provisions that aim to expand market characteristics and dynamics to an increasingly larger spectrum of social activities, while counting on a strong State involvement. These considerations do not mean that the set is fixed and coherent. Therefore, neoliberalism can be used to illustrate processes of change guided by neoliberal ideas in constant mutation, path dependent and with blurred lines. There is evidence that descriptive limits can be related to the lack of a systematic reorganisation of policies with competitive frameworks. Neoliberalization is a strong paradigm and in its analysis tends to absorb other elements that challenge or modify it, such as social changes and institutional frameworks. It is difficult to explain a change in policies only with a particular ideology as a framework of reference, because ideas do not replicate their influence in a unique ideological sphere. Hence, ideologies are never the only causes for ideas and changes: they need to be understood in a wider framework of forces. In neoliberalization theses, there is a tendency to underestimate the nature of social change. Changes in the political, economic and social spheres do not happen only because of long-term planning and pondering: they are also the product of the adaptation to new issues that social and political environments create, mobilising policy instruments. It is not only a product of top-down reforms, since there is an active role of sociocultural processes that model governance and normative frameworks (Pilson and Morel Journel 2016).

To design a timeline for the process of neoliberalization, May, Cloke and Johnsen (2005) in their analysis of New Labour and Britain's crisis of street homelessness – while discussing Peck and Tickell's analysis[6] – underline the 'roll-back' (referred to as one of the welfare safety nets after an economic restructuring) and the 'roll-out' (a welfare reform discourse to rule the ones marginalised by the roll-back within neoliberalism during the 80s) processes. Different scholars highlighted the importance of decentralisation and recentralisation (during a time defined as the States 'hollowing out' welfare regimes). The authors then follow works such as

[6] See: Peck, J. and Tickell, A. (2002) 'Neoliberalizing Space', *Antipode*, 34(3), 380-404.

Ling's[7], defining the shift from governance, as in welfare pluralism with labile regulatory structures with a certain level of independence for private welfare providers, to governmentality, characterised by stronger regulatory controls to improve self-regulation of private welfare providers and beneficiaries, along with the emergency dynamics of the post-welfare regime. These modifications resulted in complex relations between central and local governments, as well as between public and private actors. The authors propose some perspectives on the delivery of services, focusing more on the advantages of offering different forms of services, instead of focusing on their amount in terms of quantity. This reasoning serves as a base to construct a coherent 'landscape of care' (May et al. 2005, 728) that is even and useful to providers and beneficiaries of services. The focus on the quality of care services offered by non-statutory sectors could be the key to build this landscape, without deciding a priori who is deserving of certain benefits and support. To give a more comprehensive outlook on the general topics covered in this paper, the work of Head and Alford (2015) can be useful to discuss some considerations regarding governmental organisations, represented as good at implementing policies and providing services that are defined as standardised, routinary and characterised by a higher volume. Following the work of scholars like Kettl[8], these organisations are defined as delivering services like caring for patients, responding to citizens' needs and the like. However, they seem to be less responsive towards tasks that do not fall into routine or standards. Debates and critical points of view regarding complex policy problems and their effects emerged during the 70s, continuing throughout the 80s. The general malcontent with approaches that were rational and technical was present, especially when it came to the decision-making processes and their implementation. From the critics' perspective, these approaches were expecting efficient and effective achievements of goals because of defined information, objectives and methods. During the 70s and the 80s, leaders tried to minimise the scope and role of the State, reducing community expectations regarding the responsibility of governments when addressing issues, enhancing the matter – while pairing this approach with markets' logic – as if individuals were responsible for them. An analysis of the literature suggests that a big part of issues is defined by strong disagreement on the nature and significance of both problems and solutions themselves.

[7] See: Ling, T. (2000) 'Unpacking partnership: The case of health care' in Clarke, D., Gewirtz S. and McLaughlin E. (eds.) *New Managerialism, New Welfare?*, London: Sage, 82–101.
[8] See: Kettl, D. (2009) *The next government of the United States: Why our institutions fail us and how to fix them*, New York: W.W. Norton

Therefore, there is not a single origin or single road towards a solution to undertake since, as the authors argue, a definition of a problem implies a designated solution (Head and Alford 2015).

In delicate and multifaceted social phenomena like poverty and, more specifically, homelessness, statistics can help visualise a situation and orient research on different levels. Analysing the macro levels and overall pictures must not overshadow what has been discussed on agency, groups' influences, and the role of perceptions. Lister (2016) offers an interesting perspective on this matter, pushing the discourse towards a critical view of quantitative analysis on specific social issues. The author argues that the focus on statistics has led towards misunderstandings regarding 'measures and definition' (Lister 2016, 140). The process focusing on how individuals are perceived and experienced by others, underlines the problems related to diversity. 'Othering' is the way a group that is identified as 'not poor' defines and socially distances themselves from 'the poor'. This process is based on the justification provided and established by social distance (both on the interpersonal and institutional level), closely related to stigmatisation and stereotypes. This is another example of how agency has to be linked to structural contexts that involve people's lives. Inequalities and divisions produce different types of poverty experiences. However, the author argues that not all agencies are purposefully beneficial, since they can be related to violent responses to humiliation, and the ones who do not activate them might feel even more ashamed (since agency is related to the relationship with the group). Another concept explained is 'getting by', which can be used as a tool to understand the dynamic nature of these social phenomena. It is described as an active setting involving agency. Its characteristics are time-related when managing low-income households, paired with the skills and the emotional resources needed. 'Getting by' is often exhibited as a proof of distance from poverty while protecting social identity. People paths formed by agency and structures have been studied with datasets that analyse the longitudinal trajectory of the same individuals over the years. These analyses show that poverty is not always a permanent state, but it can be short-term or recurrent. Quantitative studies can provide an overall picture that cannot fully illustrate the dynamics influenced by individuals' agency or the difficulties that households encounter to 'get out' of poverty. In these cases, qualitative analysis constitutes a valuable contribution. Furthermore, the author argues that macro level studies declare that poverty is characterised by low levels of collective initiative, underlining the conceptualisation of 'poor people' as the ones without political agency. There are numerous factors that fight against the

creation of categorical identities that limit individuals in a defined set of capabilities. Poverty is a socioeconomic definition, rather than a factor that defines the individual on a personal level. The categorisation of the 'poor' does not automatically lead to a collective categorical identity: the distance from homogeneity in this case is clear. The empowerment of political agency while reacting to shaming related to poverty has been highlighted by the language of human rights, making it easier to construct collective identities, underlining what we have in common as human beings rather than what makes us different. Lister continues arguing that the analysis of policies needs to concentrate and tackle measures that have the potential to increase shame. Claiming benefits and services is often defined as 'dehumanising', representing an obstacle towards the effectiveness of services while damaging individuals' feeling of being heard by them. The result consists in a failure to realise validation and perceived respect. In these cases, the human rights framework can be helpful towards an increased attention to the protection and promotion of users' human dignity (Lister 2016).

5 Territories: an Italian Perspective

To investigate the specificity, density and importance of field studies related to policies, a focus on the Italian territory can be useful to understand the general discourse. With the 2001 reform of Title V of the Italian Constitution (Constitutional Law 18 October 2001, n. 3), social policies have become residual competence (*competenza residuale*) of the Regions. Therefore, Regions are the principal pole for the legislation and programming of services, such as those concerning extreme poverty. The State plays a role by defining the essential levels of benefits and assistance while overseeing and defining the rights that must be guaranteed. Concerning services and programmes for people experiencing homelessness, the main role in this case is the one attributed to Municipalities, pursuant to law 328/2000 (Article 8), that are responsible for their design, management and provision. In these cases, non-profit organisations come into play as they often collaborate with public institutions for the delivery of services. The non-profit and general social assistance providers from private sectors (in Italy also known as: *Terzo Settore*), read the needs of the territory in a specific way since they are deeply rooted in the community system – also thanks to volunteers – resulting as a greater value in these contexts. Additionally, their involvement within the territory benefits from the minor

administrative obstacles in accessing services encountered by users. The concept of taking care of marginalised groups must be understood with the connection between the population and the territory, while mediating personal, social and cultural conflicts. This process is realised with the development of good practices, the sensibilisation of civil society, and the definition of the concept of 'care' within organisational, emotional, and resource dimensions (fio.PSD 2015). As experts of the field reminded during the pandemic, the necessities lie in the need of a communal view of public healthcare, while protecting the right to health for vulnerable groups. As previously stated, the placing among the top priorities of the political agenda of these matters also comes from the perception and attention towards them, specially within the political discourse during the pandemic. As a matter of fact, these groups face higher risks when it comes to Covid-19 and their right to health, whose status is aggravated by their living condition often accompanied by difficulties related to chronic diseases, addiction and other adversities (fio.PSD 2020). For what concerns the additional risks for the right to health, it is interesting to note how chronic diseases and therapies are already national issues that differ among Regions. In these cases, chronic diseases are strictly linked to implicit determinants, which are defined as primary causes. These factors are related to dynamics implemented and exacerbated by social, cultural and economic changes (namely: globalisation, urbanisation, ageing, poverty, environmental issues, etc.). Data shows how chronic diseases affect 40% of the Italian population, a percentage that the experts define as increasing. An action towards defining new Essential Levels of Assistance (LEA, in Italian: *Livelli Essenziali di Assistenza*) where ideally Regions will agree uniformly on, will be on track with the drastic changes brought by the pandemic (adding them to the ones already in action). These modifications would bring a change within the system and an increase for the uniformity of the distribution of services all over the national territory, since the disparities between Regions are evident due to the different social, political and economic landscapes of these territories (Nicoletti 2022).

Concluding Remarks

The landscape for policy measures and programmes related to healthcare and social issues is already very heterogeneous and differentiated. The situation becomes increasingly difficult to analyse and understand while considering the multifactorial and multidimensional aspects of vulnerabili-

ties, especially for people experiencing homelessness. The need for a clear direction and information on the matter is useful not only for social studies and policy making, but also for a real, informed and culturally shared attention towards poverty and marginalisation. A phenomenon like the Covid-19 pandemic demonstrated the fragilities of welfare systems already experiencing a multitude of crises. These difficulties are multifaceted and concern individual identities. Therefore analyses, and their results, must address the different scopes with dedicated tools that change according to the context in question. As Farrugia and Gerrad (2016) explain, research on homelessness has been focused and led by the political direction of policy measures. The attention in this specific field of research is directed towards the assistance and mitigation of distress for people experiencing homelessness, as well as advocating for their rights and increasing their public presence. Homelessness, as a social phenomenon, is linked to power relations, displaying structural inequalities and its problematization within the public discourse (as Bacchi, 2009 argues) influences its consequences for both people experiencing homelessness and the political discourse. To link this argument with the shift towards preventing risks with policies and measures, which has been discussed in this paper, a study on disaster preparedness, response and recovery in Nova Scotia by Karabanow et al. (2021) can be used as a tool for different subsequent considerations. The study explains how there is a need to consider how homelessness is a dynamic phenomenon that intersects with other given identities linked to marginalisation (e.g. ethnicity, sexuality, gender, etc.). This discourse might be also connected with the aforementioned essence of the phenomenon as a 'wicked problem' (Head and Alford 2015). The authors of the report affirm how, while the future for people in these conditions is uncertain, the past was already clear before, defining homelessness as a 'disaster even before the pandemic. The pandemic magnified existing inequalities and surfaced more' (Karabanow et al. 2021, 31).

The difficulties encountered by people experiencing homelessness are multiplied by a deficiency when it comes to political consideration. Therefore, the barriers in front of these groups can be defined as structural, which often tend to overwhelm the ones trying to engage into the different realms of society with severe disadvantage towards the realisation and enjoyment of their rights, the satisfaction of their needs, and the development of their capabilities and aspirations (Parsell 2017). A debate on policies and measures cannot overlook how people experiencing homelessness interact within the system or, as for example Parsell and Plage argue:

how these individuals 'actually *do*[9] health' (Parsell and Plage 2022, 41). Undermining and overlooking the agency owned and exercised by people experiencing homelessness reinforces the overwhelming power of the barriers they encounter. Their 'choices' are not uniquely connected to a personal lifestyle since they are manufactured within social relations, as well as within contextual consequences. The authors propose a movement towards a conception of care that pays attention to 'the situations of choice', which are hugely influenced by cultural contexts not fixed in a period of time but characterised by dynamic changes. Therefore, novel organisations of good practices are not the only ones needed in these cases: questioning must go through narratives and thus through representations. Research and analysis on experiences and discourses are collective tools to develop evidence for policies related to the social and health spheres, with the aim of a better framework for inequalities (Parsell and Plage 2022). Furthermore, research on healthcare policies in light of the pandemic, within the different contexts in which policies, measures, institutions and people experiencing homelessness interact, is necessary not only to enrich the intellectual discourse and to advocate for the difficulties encountered by these groups: as demonstrated by the literature cited in this work, issues that seemed already understood and dealt with are now emerging and adapting to the new (or reframed) challenges ahead. Preparedness and recovery are words that must be incorporated and elaborated not solely by the people that experience marginalisation, they need to enter all the discourses surrounding these phenomena.

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Identity and Citizenship: A Review

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Abstract: This paper aims to provide a comprehensive understanding of the contemporary issue surrounding the notion of identity and citizenship in today's society. This article consists of three main parts. Firstly, the notion of identity will be examined from both a psychological and sociological perspective, exploring the relationship with conflicts and its implication for human rights. Second, the focus shifts to the concept of citizenship, assessing its role in multicultural societies and its significance in relation to human rights. Thirdly, the paper will explore the interaction between the two concepts in a divided society and emphasise their use and challenges. Lastly, the paper examines the continuous evolution of the two notions especially in strongly divided societies and emphasises the need for global attention to future developments.

Keywords: identity, citizenship, divided society, nationality, human rights

Introduction

Identity, as a complex and wide-ranging topic, encompasses various subcategories, including ethnic and social identities, all of which are interconnected. Similarly, citizenship undergoes development and declination influenced by state policies. Both identity and citizenship are of immense relevance in democratic societies, particularly in unified or divided multicultural contexts. Ensuring the appropriate application of these concepts is fundamental and forms the foundation for the enjoyment of individual fundamental rights, especially for minority groups. The approach taken by governments towards these concepts over time underscores the sig-

nificant influence of identity and citizenship, particularly in societies with deep divisions. Consequently, the awareness required to discern positive or negative manipulation becomes crucial in determining whether we are progressing toward a shared society of peace or further division. Hence, this review focuses on studying the constituent elements of identity and citizenship and examines their perceptions in multicultural societies. The initial sections of this document aim to comprehensively assess the meanings of identity and citizenship, providing a foundational understanding of the issues. The final part will specifically explore the integration of these two notions within the context of divided societies.

1 Identity, the Answer to Who I Am

There is no general agreement on what identity means; this notion has been debated over the decades as a multifaceted concept. Historically, the perception of identity in socio-political discourse starts to emerge during the process of secularisation of society. Followed by the establishment of the concept of self-determination of individuals and people at the beginning of the enlightenment period (Castiglione et. al 1999). In the late 1960s, in postmodern society, the main mind-set revolved around the idea that the notion of identity should not be given a stable definition. Instead, it was understood as a situational and contextual construction influenced by an individual development in social interaction. Whenever the concept of identity arises, it is important to specify the particular category of identity being referred to, to avoid the possibility of it being divided into multiple subcategories (Fabbri and Formenti 1991).

However, it is still possible to give an overall agreed definition of what identity means; taking into account Erikson's definition, identity is the answer to the question 'Who am I?' (Erikson 1950).

His psychosocial theory emphasises that the overall valences of an individual's identities are defined on both sociocultural positive and negative identity elements. These are important aspects of the self that serve as a basis for their identities. The valences of identity elements are affected by desirable and undesirable images of the individual and its community that are widely shared in the sociocultural context (Hihara et. al. 2022). Erikson suggested in his theory of *ego identity formation* that the achieved identity is the result of a period of exploration and examination that typically takes place during adolescence and that leads to commitment in various areas (Erikson 1968). Young people seek to develop identities that align

with sociocultural expectations by internalising positive identity elements and rejecting negative ones. Hence, youngsters emphasise on the self and continuous comparison with the other. The development of this process is significantly dependent on the social context, as young people adapt to social conditions during adolescence, constructing their identities in relation to social roles (Świątkiewicz-Mośny 2017).

Although adults continue to reassess their identities throughout their lives, changes in their identities are relatively small. Therefore, according to Erikson (1956), this significant identity development during adolescence is essential to form a solid self-concept and developing a direction in life.

Marcia added to Erikson's work a set of four identity statuses based on identity exploration and commitment. The additions of Marcia's (1966) suggestion were diffusion as a person who neither engaged in exploration nor made a commitment; foreclosed a commitment made without exploration; opposite to foreclosed, there is a moratorium and achievement, meaning the firm commitment to one's identity following a period of exploration. According to this author, identity is defined as a mental framework consisting of elements that an individual considers relevant for their self-definition or self-identification.

According to the sociological approach, the notion of self-reflexion and identification is a key point in defining identity. Mead (1934) differentiates the psychological I, which contains the subconscious need of the individual, from the social Me, which reflects the impact of society on the individual. This means that the overall identity that emerges is produced from the advancement of these two aspects. As stated by Gallino, identity means the ability to define a visible difference between one's self and the *other* and to be able in time to maintain that difference. In connection to that vision, Melucci also argues that one can refer to the identity of an individual or group when three elements persist: continuity, clear boundaries that separate the subject from the others, and the ability to both recognise and be recognised. By this reasoning, the individual can identify itself when it establishes a clear distinction between itself and the surrounding environment, and when the latter acknowledges the identity of the individual. Thus, none of these forms of identity can exist independently without others' perception and identification (Bilotta e Barlessina 2020).

1.1.1 Social Identity

In that context, recognising the individuality of others requires actively recognizing one's own individuality and cultural roots, as well as valuing

identity as a dynamic and evolving reality. Here, we introduce the concept of social identity as *the sum of all social identification used by an individual to define themselves*. Therefore, identity encompasses an individual's or a group's perception of themselves within a social context, including their self-concept and interpersonal connections. Social identity is constructed with its foundations often established within smaller groups like family or schools. The theory of social identity takes into account intergroup conflicts and the behaviour of individuals within the social dimension, along with their understanding of the social and relational dynamics that surround them (Oakes 2002; Phinney 1990).

For this reason, identity is inherently connected to the sense of belonging, since it mainly develops with a crucial social context that shapes identity formation. Consequently, several scholars propose that an individual identity can be defined as their capacity to differentiate themselves from others while maintaining their unique essence.

1.1.3 Ethnic Identity

The mutual feeling of belonging to a community plays a crucial role in the construction of one's identity. Without it, the individual's process of identity formation would be weakened, considerably impacting them. Minority groups, especially ethnic communities, highlight the need to actively build and cultivate a sense of belonging. Regarding the general notion of identity, there is no general agreement on the definition of ethnic identity. However, Tajfel (1978) provides a definition for it ''as that part of an individual self-concept that derives from the individual's knowledge of a social group together with the value and emotional significance attached to that membership''.

Maldonado (1975) argues that ethnic self-identity is crucial for the development of individual's belonging to minority groups as part of their personal identity. Existing theories have highlighted that the process of belonging to a minority group starts with the internalisation of the values and attitudes of the majority culture, which includes the assimilation of negative perspectives held by the majority towards minorities (Phinney 1989). The process of internalising the majority's negative attitude is part of the progress to construct and embrace one's identity, which initially involves a sense of disorientation and uncertainty while acquiring a new perspective on one's own identity.

However, after the initial phase of assimilating these negative elements, individuals have the potential to create increased awareness of a

positive self-perception and a favourable view of their group. This contributes to envisioning and establishing their ethnic identity. According to Erikson's ego theory, once individuals have a clear understanding of their ethnic group and overcome negative self-perceptions, they acquire the confidence to embrace their own ethnic identity (Tajfel 1978).

Another significant factor to consider in the formation of minority identities and their relationship with the majority and other groups is territorial segregation. In certain cases, ethnic distinction aligns with territorial segregation in the majority society (Sanders 2002), further compounded by other negative social elements that set minority groups apart from the rest of the population. Consequently, this pattern affects intergroup relations and contributes to the creation of ethnic boundaries.

The attitude and impact of public opinion on one's ethnic affiliation hold great importance, particularly at a psychological level. This significance is heightened for ethnic minorities, who may face the unfortunate circumstance of their group or culture being poorly represented or subject to discrimination. In such instances, the concept of ethnic identity serves as a crucial tool for comprehending how an individual asserts their identity when they perceive it to be threatened within certain social dynamics (Phinney 1990).

Nevertheless, it is worth highlighting that ethnic identities are considered fluid, capable of evolving over time and varying across social contexts (Sanders 2002).

1.2 Relationship between Conflict and Identity

It is worth noting that, throughout history, the need to differentiate oneself from others has often been used as a convenient means to establish a common enemy.

Within the social context, a sense of belonging emerges in individuals, which is fundamental for the process of identity formation. As Melucci suggested, this formation occurs primarily through contrasting with and recognition of others. Researching and recognising an enemy is perceived as a way to assert one's own identity and establish a sense of supremacy over others. As a result, difference in identity, when compared to others, is used as a tool to distinguish individual and community values from those of others.

With this in mind, when analysing the correlation between identity and conflict, it becomes evident that identity serves as a driving force in defining one's own individual or collective identity in contrast to others (Ramotti

1996). Identity has become a prominent concept for comprehending and analysing social conflict, particularly when it becomes intertwined with ideology rooted in group membership (Cook-Huffman, 2008). In such scenarios, identity is perceived as non-negotiable, especially when it jeopardises an individual's fundamental self-concept (Northrup, 1988) or threatens the autonomy of a minority group. This situation often leads to a spiral in which the notion of identity becomes the central issue of the conflict.

According to Burton (1990), individuals have four essential needs: personal development; security; recognition, and identity. When any of these are threatened, they form the basis for a potential violent social conflict. This conflict can escalate further when the general population does not acknowledge the importance of identity or any other of the four needs of minority groups. Theories on ethnic conflict offer valuable insights into how collective identity is mobilised for political purposes through community action (Cook-Huffman 2008).

The spiral of violence and conflict extends beyond individual or community identity construction and also applies at the state level. The construction of each state's identity is based on juxtaposition with other states.

As Cook-Huffman (2008) pointed out, identity and conflict are intrinsically connected. The latter is triggered by identity concerns, and, conversely, identities are manipulated and shaped during conflict based on convenience and expediency. The notion of identity, particularly nationalism grounded in individual citizenship, is often associated with generating conflict, as argued by Bell (2016).

While identity serves as primary driver of conflicts, it can also play a crucial role in deescalating a conflict through a reverse process of constructing a unified collective identity. This was evident at the end of the World War II, where the formation of shared values and development of a common identity resulted in the establishment of international and supranational organisations and institutions, uniting nations and their populations under a shared set of values and identity. Notable examples of this include the European Union and the League of Arab States, which aims to unite nations with seemingly diverse national identities under common values, ideals, and objectives.

1.3 Identity as Human Rights

As stated and agreed upon by scholars, the formation of an individual's identity takes place during adolescence. Within this particular period, the values internalised by the individual may incorporate the notions and vir-

tues of human rights, contributing to the development of a sense of civic identity.

Conversely, the absence of membership and the consequent denial of recognition can have a negative impact on the development of personal identity and collective harmony, potentially leading to conflict. Therefore, the need for identity is inherent and can be classified as a fundamental human right.

International and regional legal frameworks have addressed the concept of identity in several conventions and treaties. The UN Convention on the Rights of the Child (1989) is the most relevant instrument defining the right to identity. Art. 8 (1) prescribes that the 'States Parties undertake to respect the right to the child to preserve his or her identity [..] Where a child is illegally deprived of some or all of the elements of his or her identity, the States Parties shall provide appropriate assistance and protection to re-establish speedily his or her identity' art. 29 (1) Let. C of the same convention highlights the importance and respect of cultural identity. Additionally, Article 6 of the UDHR prescribes that every individual has the right to a legal identity, and 'everyone has the right to recognition everywhere as a person before the law'. Hence, this article emphasises the importance of legal recognition of one's identity and the equal treatment of individuals by the law. The International Covenant on Civil and Political Rights further underscores the right to identity in Article 16: 'Everyone shall have the right to recognition everywhere as a person before the law,' with particular attention also to ethnic, religious, or linguistic minorities as part of a community with cultural and social identity safeguarded.

It is crucial to note that at the international level, identity is categorised into legal identity and sociocultural identity, with the understanding that these notions are interconnected and not mutually exclusive.

Indeed, identity represents a distinct human right that encompasses various aspects, including personal and legal recognition, self-identification, and the right to be protected against unlawful or arbitrary interference with one's identity. This right is explicitly and implicitly safeguarded by international human rights law.

All things considered, the right to identity is a fundamental human right independent of other connected rights and is deeply intertwined with the concept of citizenship.

2 Citizenship

The concept of citizenship, like identity, has evolved over time (Marshall, 1950). Pinson (2008) notes the difficulty in providing a precise definition, as citizenship includes both exclusionary and inclusionary aspects, as highlighted by Hall and Held (1990) in their concept of the politics of citizenship:

> [..] citizenship has entailed a discussion of and a struggle over the meaning of scope of membership of the community in which one lives [..]. The issue around membership, concerning who does and does not belong, is where the politics of citizenship begins.

Joppke (2007) proposed a comprehensive approach to understanding citizenship. Consider three different aspects of citizenship:

a. Citizenship as a status, referring to formal membership in a state and the process of acquiring this status;
b. Citizenship as a right, connected to the legal capacities and protections associated with the status;
c. Citizenship as identity encompassing the behavioural aspects of individuals, both as a single person and as a member of the collective.

Identity has become an essential element in political analysis, intertwined with historical and public identity concepts, including the identity of citizenship (Tilly 1995). Citizenship being a legal status of the individual can also be seen as an aspect of identity, as Turner defined it as a sense of belonging and solidarity within a community. Although this notion has changed somewhat, it is still inherently linked to the state. Thus, citizenship, emphasises the bond as a member of a state, has an inherent exclusionary dimension, which contrasts with the ongoing process of globalisation, which fosters ethnic diversification of society. Rosanvallon (2000) argues that a ''good society' is one that allows the peaceful co-existence of differences, rather than guaranteeing inclusion through redistribution. In this framework, the concept of citizenship is reduced to a common trust in autonomy.

The liberalisation of access to citizenship has also enabled an ethnic, cultural, and religious minority to obtain citizenship. This has posed a problem for state authorities considering the rise of minority rights and the inability of the state to enforce a substantive identity as a requirement for acquiring citizenship (Joppke 2017). This situation has created an unprecedented problem in society. Young (1998) used to criticise liberal citizenship based on her analysis of universality, highlighting how associating citizenship with the dominant identity obscures the belief that citizenship

should be defined in terms of dominant identities, thus creating a de facto unequal situation even though everyone has the same ''legal right'' to citizenship de jure.

2.1.1 Citizenship in a Multicultural Society

Citizenship is a complex and sensitive issue in multicultural societies. In contemporary times, states are placing significant emphasis on the notion of citizenship to foster social cohesion. Thus, the importance of this concept in state agendas is considered essential, particularly in contexts where the social fabric comprises different ethnic, religious, or cultural groups. Therefore, there is a pressing essential need to establish a shared sense of belonging, and a comprehensive understanding of citizenship in multicultural societies (Parekh 1999).

However, in present-day Western countries, multiculturalism has slowly been rejected due to the growing sentiment and demand, particularly among voters of right-wing party supporters, to rebuild and strengthen national identity. This resurgence of exclusionary notion of citizenship (Tabachnick and Bradshaw 2017) undermines the inclusive understanding of citizenship, thus excluding not only nonnationals but also legal citizens who do not meet the state-defined criteria of national identity.

The intersection of multiculturalism and citizenship has a significant implication for many countries, as they face the challenge of adapting their policies to the constant evolution and diverse nature of their populations.

A response of different states to the growing ethnic diversity (Joppke 2004) has been the development of the concept of *differential exclusion*, in conjunction with assimilation and pluralism. Differential exclusion refers to the situation in which immigrants or minorities are absorbed into specific areas of society, such as the labour market, while being denied access to other domains, such as citizenship or political participation. This approach is often observed in countries where the sense of belonging and unity is based on membership in a particular ethnic group. Under these circumstances, the application of differential exclusion contributes to the formation of split societies (Castles 1997).

Within this context, various countries have implemented what is known as the *politics of citizenship* (Stokke 2017). This concept refers to the goal of community membership and the associated issues surrounding it, as well as the relationship between citizenship and national identity. It aims to foster inclusivity by ensuring that the general population is part of the collective in the ''we'' (Pinson 2008). According to Strokke (2017), cit-

izenship is generally understood as membership in a community based on formal status as citizens, with rights and active participation in line with legal statutes. He distinguishes four dimensions of citizenship as legal status; as right; as membership; and as participation. In today's multicultural and multiethnic societies, rife with conflicts, citizenship should be considered as an evolving concept (Papisca 2007).

2.1.2 Citizenship as a Human Right

The UDHR, Article 15 declares that 'Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". Consequently, citizenship has the leverage to confer a sense of identity. However, it is important to note that citizenship, unlike identity, is not inherently considered a human right per se. Instead, it serves as a fundamental instrument that enables individuals to enjoy rights. These rights ensure that individuals are not arbitrarily denied citizenship, have access to a fair legal process, can freely move and return to their country, and can participate in the political process. The concept of citizenship is often associated with the notion of nationality, as seen in Article 15. The right to nationality is closely linked to citizenship due to the legal bond between an individual and a specific state. While terms are often used interchangeably, there exists a subtle distinction between the two. Nationality encompasses the broader concept of the legal relationship between an individual and a nation, whereas citizenship specifically focuses on the legal status, associated rights and responsibilities granted by a country. The determination of who qualifies as nationals falls under the jurisdiction of each state, as stated in The Hague Convention on Certain Questions Relating to the Conflict of Nationality Law (1930). The ties of nationality concern individual rights and impose obligations that a state reserves for its population.

Recognising the right to nationality as a human right underscores the significance of legal identity, protection against statelessness, and ensuring equal access to rights and opportunities for all individuals. Any limitation imposed should adhere to international human rights standards. Citizenship plays a pivotal role in shaping an individual's legal and political identity, as well as their relationship with the state. It grants individuals specific rights and privileges while imposing certain obligations and responsibilities as members of a particular country. The enjoyment of rights is crucial for full membership in society, and citizenship grants those rights, presuming that the possessors are full-fledged citizens (Bosniak 2000). Papisca (2007)

characterises citizenship as a tree, with its trunk and roots representing the juridical status of the individual, universal citizenship, and its branches symbolising national and subnational citizenship. Hence, it is categorised as a plural conceptual and legal category. Additionally, citizenship signifies the right to have rights (Arendt 1973) and is associated with membership and formal citizenship status. In theory, it ensures equal rights for all citizens within a political community. The institution of egalitarian citizenship not only provides democratic legitimacy, but also fosters social integration through widespread political participation (Habermas 1996). Thus, egalitarian citizenship goes beyond equal status; it must become a shared political culture. Many scholars have increased the significant connection between citizenship and human rights (Morris 2012), as citizenship serves as the means through which most individuals access their fundamental and universal human rights. Moreover, it can be argued that citizenship acts as a measuring tool for the degree of human rights power held by the individual based on their citizenship status. The absence of robust citizenship, or at the very least, being stateless, implies a lack of fundamental human rights protection.

2.1.2 People without Citizenship

According to Arendt (1973), the concept of 'the *right to have rights'* asserts that national citizenship is the prerequisite for enjoying human rights. This means that how individuals are treated in the system depends on their citizenship status (Owen 2018). Statelessness refers to the condition of individuals who are not considered nationals by any country. The Convention Relating to the Status of Stateless Persons, Article 1 defines a 'stateless person' as someone who is not considered a national by any state under its law. Statelessness can result in the denial of basic rights and access to essential services, such as education, healthcare, and employment. Since citizenship serves as the gateway for individuals to exercise their fundamental rights, as also stated in the Universal Declaration of Human Rights (UDHR), the absence of citizenship causes severe harm to the individual. There is a pressing need for an effective right to nationality that addresses and prevents statelessness and its adverse consequences.

Arendt's argument applies not only to stateless individuals, but also extends to a strongly divided society where minority groups are denied the right to citizenship, or in the context of migrants and border politics. This creates a nexus where citizenship, being an exclusive and inclusive notion, becomes a basis for both equality and inequality (Glenn 2000), solely based

on the happenstance of one's place of birth. Arendt asserts that there has been and continues to be a failure within modern democratic tradition to achieve this ideal.

3 Identity and Citizenship in a Divided Society

Identity comprises both continuity and changes; as highlighted by Banhabib. It possesses a dual nature, on one hand, being the alignment of one's identity with a specific social category. On the other hand, identities are interactive and subject to continuous redefinition through individual and social narratives and descriptions (Benhabib et. al 2007). The examination of identity and citizenship reveals their crucial roles, particularly concerning minority or marginalised groups. These concepts can be used as a tool in political and social discourse, especially in countries with a multi-ethnic population and the presence of minority groups. Therefore, these definitions can be used to justify security measures or political decisions by infusing the concepts of national identity and citizenship with specific meanings. In many contemporary states, the majority group typically pursues a national agenda that often neglects the interests of the minority group and, in many cases, directly conflicts with them (Peleg 2015). This manipulation aims to identify perceived *enemies* during times of internal and external challenges, which can potentially pose a threat to the definition of national identity. Divided societies often face internal struggle to establish a consensus on the definition of national identity. This definition is intrinsically linked to the universal instrument of citizenship, which should ideally guarantee equal rights without discrimination for all citizens within a democratic country.

These are particularly prevalent in deeply divided societies, where the political system is heavily influenced by these tensions. Identity narratives *are instrumental in nature and retroactive in function*, as emphasised by Christia (2012). The case of Northern Ireland, for example, exemplifies the complexities of navigating identity dynamics. Indeed, since many argue that national ethnic identities can be constructed, they can also easily be modified, as they have been shaped by various influences in the past, it can also be done in the future (Nagle and Clancy 2012). An illustration of the after-mentioned political behaviour, in addition to Northern Ireland, can be observed in various divided societies. For example, Israel exhibits segregation and ethnic discrimination, between Israeli Jews and Palestinian citizens of Israel. The case of Cyprus involves a national division re-

sulting from an ethnic conflict between Greek Cypriots and Turkish Cypriots. These instances all involve multiethnic and multicultural societies, where minorities face discrimination from national authorities. The sense of identity and belonging to a specific community is employed to segregate minority groups. It is important to note that this context is not limited to recent times, but has also been witnessed throughout the past centuries, such as the case of the Rwandan civil war and the Yugoslav war. These situations have demonstrated the deliberate manipulation of national ethnic and religious identity as a discriminatory factor to separate segments of society, leading to catastrophic consequences.

In this complex scenario, citizenship assumes a pivotal role, empowering individuals, particularly minorities, to exercise their legal and human rights, while also serving as an instrument to foster unity within a multiethnic population. Citizenship has a definition that can unify and harmonise the entire country. An example of a deeply divided society where both identity and citizenship considerations were taken into account is the partition of Czechoslovakia in 1993. The country had recognised the existence of two national identities, Czech and Slovak, and attempted to provide political decision-making and harmony through federalism (Saladin 1991). However, as Saladin (1991) has argued, the perception of government legitimacy and the form of democracy are crucial, especially in divided societies. Establishing a constant majority-minority dialogue, particularly on politics that directly impact minorities, becomes essential to allow different identity groups to claim direct control over important issues. Examples such as Québec's French speaking area in Canada, Spain's autonomous communities of Catalonia or Basque Country, or Switzerland's cantonal demonstrate how democracies with diverse ethno-religious- cultural populations can design their national constitutions (Peleg 2015).

Conclusion

The excursion into these topics has underscored the importance and impact that identity and citizenship have on societies. Therefore, in contemporary society, it is crucial not to take these notions for ascertained, especially considering the constant evolution of societies. The formation of an individual's identity also reflects the sociocultural and economic conditions to which the person has been exposed, particularly in the adolescent period. Hence, if the negative elements and valence assimilated during the period of formation are not compensated with positive ones, there

is the potential of continuing, or starting, a vicious circle of violence and segregation inside a state.

Moreover, an individual's identity is also shaped by social recognition from their own group and the perception of collectivity. Citizenship, on the other hand, represents the legal recognition of belonging to a state, assuring *de jure* rights to the citizens. However, when the identity associated with citizenship fails to align with general ideas and perceptions, particularly for minorities, there is a *de facto* limitation on the enjoyment of the fundamental rights recognised to the individual citizens of the country.

Within the complex scenario of contemporary societies, identity and citizenship continue to play a decisive role in safeguarding minorities. This becomes more evident in countries where the policies differentiate between the majority group and minority groups, providing justification for discriminatory practices implemented by states. However, there are numerous examples that illustrate the possibility of building a society grounded in sustainable peace. Shared societies with multicultural and ethnic compositions can foster a collective sense of civic or national belonging that transcends differences, facilitating peaceful negotiations in public space.

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ISBN 978-88-6938-395-3

€10,00