Global Campus Human Rights Journal

Volume 9
2025

Global Campus
of Human Rights

The *Global Campus Human Rights Journal (GCHRJ)* is a peer-reviewed scholarly journal, published by the Global Campus of Human Rights (see www.gchrj.net) as an open-access on-line journal. It is supported financially by the European Union Commission and appears twice annually.

This journal should be cited as (2025) 9 *Global Campus Human Rights Journal*

ISSN: 2532-1455

Headquarters and contact information:
Global Campus of Human Rights
Monastery of San Nicolò, Riviera San Nicolò, 26 I-30126 Venice Lido, Italy
https:// gchumanrights.org

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Volume 9 No 1-2 2025

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The Global Campus Human Rights Journal (GCHRJ) is a peer-reviewed scholarly journal, published under the auspices of the Global Campus of Human Rights as an open-access on-line journal.

Aim: The *Global Campus Human Rights Journal* aims to serve as a forum for rigorous scholarly analysis, critical commentaries, and reports on recent developments pertaining to human rights and democratisation globally, particularly by adopting multi- and inter-disciplinary perspectives, and using comparative approaches. It also aims to serve as a forum for fostering interdisciplinary dialogue and collaboration between stakeholders, including academics, activists in human rights and democratisation, NGOs and civil society.

Publication details: It is published by the Global Campus of Regional Human Rights Masters (see https://gchumanrights.org), and is supported financially by the European Union Commission. It appears twice annually, in July and in December.

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(Monastery of San Nicolò, Riviera San Nicolò, 26 I-30126 Venice Lido, Italy)
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The Global Campus of Human Rights is a unique network of one hundred participating universities around the world, seeking to advance human rights and democracy through regional and global cooperation for education and research. This global network is promoted through eight Regional Programmes:

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- **European Master's Programme in Democracy and Human Rights in South East Europe (ERMA)**
- **Master's in Human Rights and Democratisation in Asia-Pacific (APMA)**
- **Master's in Human Rights and Democratisation in the Caucasus (CES)**
- **Master's in Human Rights and Democratisation in Latin American and the Caribbean (LATMA)**
- **Arab Master's in Democracy and Human Rights (ARMA)**
- **The Master of Arts in Human Rights and Sustainability in Central Asia (MAHRS)**

These Regional Programmes offer specialised post-graduate education and training in human rights and democracy from a regional perspective, with an interdisciplinary content as well as a multiplicity of research, publications, public events and outreach activities. The Global Campus integrates the educational activities of the Regional Programmes through the exchange of lecturers, researchers and students; the joint planning of curricula for attended and online courses; the promotion of global research projects and dissemination activities; the professional development of graduates through internships in inter-governmental organisations; and the strong focus of networking through the Global Campus Alumni Association, as well as support to the alumni associations of the Regional Programmes.

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The Global Campus of Human Rights develops its activities thanks to the significant support and co-funding of the European Union – through the *European Instrument for Democracy and Human Rights* and its partner universities around the world. The Global Campus equally boasts many joint institutional agreements and strategic alliances with inter-governmental, governmental and non-governmental organisations at the local, national and international level.

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Volume 9 No 1-2 (2025)

DOI: https://doi.org/10.25330/3238

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Editorial

The ninth volume of the **Global Campus Human Rights Journal** arrives in two parts, bringing together twenty-three authors from every region served by the Global Campus network. Read together, the eighteen contributions gathered here trace two connected stories: how long-standing struggles over poverty, disability, race, health, and civic space continue to test the promise of human rights protection, and how a new generation of technologies — artificial intelligence chief among them — is reshaping where those struggles are fought.

Volume 9 Issue 1: Rights on the ground

The first issue opens with a study of grassroots ecofeminist movements across Greece, India, Italy, Lebanon, and Spain by Anju Anna John, Nicoletta Fascetti Leon, Timisha Dadhich, Penny Papaspyropoulou and Lien Arits, setting the tone for a collection deeply attentive to how rights are claimed and lived at the local level. Alberto de Moraes Papaléo Paes turns to the Brazilian Amazon, examining racial inclusion policies in Pará through the capabilities approach, while Oriana Campbell-Palmer interrogates the limits of Article 6 of the Convention on the Rights of Persons with Disabilities and the persistent gaps in protection against intersectional discrimination.

Several contributions examine how legal systems themselves fall short of their protective promise. Leila Mohaghegh reflects on the ethical and social responsibilities of the legal profession; Neil Pacamalan and Theresa Camannong revisit the criminalisation of poverty through vagrancy law in the Philippines; and Charu Bhatt and Tanvi Yadav offer a critical reading of the insanity defence and fitness-to-stand-trial doctrine in India. Lucia Mokrá and Clarissa do Nascimento Tabosa document the practical stakes of protection status through the experience of Ukrainian refugees accessing housing and healthcare in Slovakia, and Erin Davis broadens the lens to ask what global accountability for the right to health might actually require. Taking into account relevant jurisprudence of the CJEU and ECtHR, Dominika Kuna assesses how Hungarian law restricts the rights of media creators, focusing on the delicate balance between protecting children's rights and preserving freedom of expression.

The issue closes with Shorai Christopher Muzungu and Itai Kabonga's account of Forever Associates Zimbabwe's role in the country's 2023 elections, a primary case study for the contested boundary between civic organising and politics.

Across these nine articles, a common thread emerges: rights are rarely won or lost in the abstract. They are negotiated in courtrooms, clinics, refugee reception centres, and election campaigns, by people navigating law's gap between formal guarantee and lived reality.

Volume 9 Issue 2: Rights in the algorithmic age

The second issue turns squarely to the human rights implications of artificial intelligence (AI) and digital governance. Ana Caroline Sales e Souza Garcia opens with an analysis of AI-driven demographic governance and the risks of dehumanisation in EU migration policy, a theme Leah Durst-Lee extends in her study of the CBP One application and algorithmic bias in United States asylum processing. Nooda Badghisi examines the gap between the Taliban's curated digital image and the lived and legal realities of those it governs, while Agostina Dasso Boonman, Bakyt Dzhenyshpekova, Laila Nukiry and Violet Munasinyungwe compare how AI expansion intersects with the right to a clean, healthy, and sustainable environment across regions. Tarik Hodzic, Sai Khun Min (Arthur), Zai Aurangzaib, Euloge Koffi, Rachel Cantlow and Abdulrahman Surbin confront one of the field's most urgent questions: accountability for AI-enabled warfare and its human rights consequences. The issue then turns to questions of governance and pedagogy in this new landscape. Ba Alagie Conteh, Fortunate Chilenje, Alejandra Valle, Mariyam Laiza, Navruz Erkaev, and Adel Ramdani examine how the Extractive Industries Transparency Initiative might be better aligned with community-led monitoring to strengthen ESG frameworks in mining. Adel Ramdani and Chryssa-Danae Geranastassis argue for a more radical rethinking of human rights education amid what they term the twenty-first century's polycrisis, and Quoc Khai Bui explores critical pedagogy as a tool of transitional justice. The volume closes with Eunjeong Lee's account of transnational education and political activism among students displaced by Myanmar's Spring Revolution, studying in Mae Sot — a fitting final note on how learning itself becomes a site of rights-claiming under authoritarian rule.a fitting final note on how learning itself becomes a site of rights-claiming under authoritarian rule.

A volume in two registers

Placed side by side, the two issues speak to each other. Volume 9.1's grounded, case-based accounts of exclusion — by poverty, disability, race, displacement, and diagnosis — anticipate the concerns raised in Volume 9.2, where new digital and algorithmic systems risk automating and scaling the very forms of exclusion the first issue documents in human terms. Read as a whole, Volume 9 asks not only how rights are violated, but how the tools available for their protection and their erosion are changing.

Chiara Altafin, Mariana Hadzijusufovic & Ravi Prakash Vyas
Chief Editors

Anju Anna John, N Fascetti Leon, T Dadhich, P Papaspyropoulou & L Arits. "Global traces of ecofeminism: An exploratory study of grassroots movements in Greece, India, Italy, Lebanon, and Spain" (2025) 9 1-21 *Global Campus Human Rights Journal* https://doi.org/10.25330/3236

Global traces of ecofeminism: An exploratory study of grassroots movements in Greece, India, Italy, Lebanon, and Spain

Anju Anna John[*], *Nicoletta Fascetti Leon*[**], *Timisha Dadhich*[***], *Penny Papaspyropoulou*[****], *and Lien Arits*[*****]

Abstract: *Scientists are largely in agreement that the climate change we are witnessing today has resulted from human activities that escalated significantly following the industrial revolution. However, while this manmade problem is affecting people around the world, its effects are not being felt equally.*

The authors are Global Campus Alumni. Authors 1–4 graduated from the European Masters Programme and author 5 from the Arab Masters Programme (MENA Region).

Anju Anna John – Female – University of Deusto – anjuj18@gmail.com

Anju is a doctoral researcher at the University of Deusto. Her research focuses on intersectional climate justice. She also contributes to the RE-WIRING project on transformational gender equality. She is a lawyer by training, and has previously worked on topics of access to justice for women with various stakeholders.

Nicoletta Fascetti Leon – Female - Freelance Journalist and Environmental Expert - nic.fascetti@gmail.com

Nicoletta is currently a consultant for the Italian Ministry for the Environment in the International Affairs Division. She worked for more than ten years on sustainable development programmes and projects. She is also a journalist and a communication expert focussed on human rights, environmental issues, and political affairs.

****Timisha Dadhich – Female – EHESS Paris - timisha.dadhich@ehess.fr***

Timisha Dadhich is doctoral researcher at EHESS Paris and Centre Maurice Halbwachs (CNRS – EHESS – ENS – INRAE). She has experience working with diverse stakeholders, including government, NGOs, international organisations, and private companies as a trained social worker and human rights consultant. Her research centres on access to justice, rights-based approach, legal mobilisation, and strengthening policy reforms.

*****Penny Papaspyropoulou – Female - Independent Human Rights Consultant - pennypapaspyropoulou@gmail.com***

Penny is currently a consultant for UNICEF. She has worked for over 15 years in EU law and policy, programme/project design in education and training and strategic communications, focusing on environmental issues, migration, and freedom of expression. She is an activist, yoga teacher, and cultural rights researcher.

******Lien Arits – Female - The ONE Campaign - lien.arits@gmail.com***

Lien Arits serves as Vice-Chair of Groen, the Belgian Green Party. Her professional background encompasses advocacy, campaign, and partnership management in the fields of human rights, social justice, and environmental justice. She has done participatory action research and has work experience in Europe and the SWANA region.

This article was one of the outputs of the project on Ecofeminism that received support from the Global Campus Cross-Regional Alumni-led Initiative (2025).

Drawing from the ecofeminist theory, the authors explore how the environmental movements and women's struggles for equality are intertwined and how they are both opposed to patriarchal capitalism. The authors examine the ecofeminist practices of local ecofeminists or ecofeminist movements in Greece, India, Italy, Lebanon, and Spain by looking at existing literature and engaging with ecofeminists in each country through one-on-one interviews, and a group discussion. The findings suggest that although ecofeminism is not a common terminology, the idea of human rights being tied to the rights of nature is an innate part of all these regional movements, and has predated the coining of the term. Further, there is a common thread of ecofeminists taking a community-based and collaborative approach towards countering the oppressive forces of patriarchy and capitalism. More recently, there has been an increased uptake of ecofeminist practices by institutions and political parties in Greece, Italy, and Spain. The paper concludes by proposing the need for more systematic research from a comparative perspective to understand how and why ecofeminism as a concept is mobilised (or not) in cross-regional context.

Keywords: *ecofeminism; climate change; environmental justice; gender equality; grassroots activism*

1. Introduction

The term "ecofeminism" was first coined by Françoise d'Eaubonne in 1974 in her book *Le Féminisme ou la Mort*. It was based on her belief that the struggles of environmentalism and feminism are not so different, which gave us the term "ecofeminism"(Ranc 2022). At its root, the idea was that the patriarchy is responsible for both environmental harm (through extraction of natural resources for capitalist pursuits) and the subjugation of women.

Over the past three decades, the Intergovernmental Panel on Climate Change (IPCC) has drawn on increasing evidence to conclude that "human influence has warmed the atmosphere, ocean and land"(Lee et al. 2023, 5). The largest growth of greenhouse gas emissions occurred in carbon dioxide (CO_2) from fossil fuel combustion and industrial processes (Lee et al. 2023, 4). However, even though it is a problem affecting the whole planet, its effects are felt differently based on one's location, and gender (Lee et al. 2023, 6).

The environmental justice movement that emerged in the early 1980s stemmed as a way to protest the racist policies that led to the dumping of toxic waste in poor, majority African-American neighbourhoods (Schlosberg and Collins 2014, 360). This concept shifted the idea that the environment was something detached from daily life. Later, environmental justice was broadened to include climate change and other issues affecting environmental justice, recognising how the impact of climate change would fall disproportionately on already vulnerable populations due to economic and social inequalities (Schlosberg and Collins 2014, 362). And women often constitute a vulnerable group owing to their biological, as well as socio-economic situation.

Val Plumwood has discussed how ecofeminism has contributed to theorising the links between women's oppression and the domination of nature, by engaging with four forms of exploitations; race, class, gender, and nature (Plumwood 1993, 1). In her book, she endeavours to demonstrate how ecofeminism can be a critical ecological feminism that could be a powerful political tool.

The ecofeminist movement has gone through various developments over the years. In her book *Ecofeminismo para otro mundo posible* (Ecofeminism for another possible world), the Spanish philosopher Alicia Puleo discusses the evolution of ecofeminism over the years (Puleo 2016). It started with classical or spiritual ecofeminism, which recognised the intimate link between women and nature. However, in the 1980s, this expanded into a multicultural ecofeminism that criticised the western development models and its effects on indigenous populations. This was followed by a period of gendered environmentalism that resulted in the application of environmental and gender perspectives in the international agendas. This period also saw the development of constructivist ecofeminism which looked at the link between women and nature, as something that was sustained by the social construct which formulated a gendered division of labour, the invisibility of care work (which is work that disproportionately falls upon women), and the natural processes of nature. Since the turn of the century, ecofeminists have focussed on the sustainability of life.

Much of the key developments in international policy regarding both gender and environment over the past few decades have been informed by constructivist ecofeminism (Buckingham 2004, 147). This could be seen when the United Nations Conference on Environment and Development included a set of objectives under Chapter 24 titled, "Global Action for women for sustainable development and equitable action" (United Nations 1993, para. 24.1-24.12). Later in 1995, "women and environment" was identified as one of the critical areas of concern in the Beijing Platform for Action 1995 (United Nations 1995, 246-258).

It is against this backdrop that the authors of this paper seek to delve into the diverse ways in which ecofeminist movements have evolved in Greece, Lebanon, India, Italy, and Spain. The paper aims to explore diverse narratives and experiences in order to better understand and unravel the challenges faced in the domains of human rights and environmental justice and how they confront them from an ecofeminist perspective. It tries to ascertain the commonalities between these diverse movements, and how feminist ideologies contribute to environmental activism, and how environmental concerns play a role in feminist work in these regions.

1.1. Methodology

The paper is an exploratory study, drawing from a project on ecofeminism that the authors worked on. The authors – based in five different countries – have sought to highlight the history of ecofeminist movements in each country where they are based: Greece, Lebanon, India, Italy, and Spain. This has included an initial literature review of the history of movements that combine women's rights and ecology. Further, each author reached out to grassroots ecofeminist activists and movements in their respective countries for interviews. In the case of Greece, this resulted in a focus group discussion. In others, one-on-one interviews were conducted. The participants in these countries included scholars, activists, journalists, and politicians.

1.1.1. Focus group discussion

In Greece, the author held a focus group discussion with 11 participants, which included members associated with the Mouries Collective, Vrysoules, Kyklos (an ecofeminist queer group), EU Climate Pact, Agriouloudes-Wildflowers, and independent practitioners and researchers.

1.1.2. Interviews

In Lebanon, the author interviewed Nagham Khalil, an ecofeminist researcher from the non-governmental organisation (NGO) Jibal, who specialises in rural community development. In India, two interviews were conducted with Chinmaya Shah and Geeta Bisht (a local community member) of INHERE, an environmental NGO in the Himalayan region of Uttarakhand. In Italy, the author interviewed Barbara Tiberi from Berta Laboratoria and Monica Lanfranco, the director of the Journal Marea. In Spain, an interview was conducted with Dalila Argueta, an ecofeminist from Honduras, who now works with other environmental defenders living in exile.

The objective of the interviews and group discussion was broadly to understand the participants' responses to the following set of questions –

The ambit of their work;
1) How they understand or conceptualise ecofeminism; and
2) Their message, goal, hope for the future.

The researchers conducted the interviews to find the answers to the above-mentioned questions. The literature review and the interactions with local ecofeminists are shared in their respective sections below.

1.2. Scope and limitation

The project was an exploratory study of grassroots ecofeminist activists and movements in the authors' countries, and involved working in different countries with a diversity of ecofeminist movements. As a result, the interactions with the ecofeminist activists did not always follow a uniform pattern. They were conducted in a narrative interview format (Kartch 2017), which was often in the regional language.

This also meant that the interviewers did not exclusively stick to the common set of questions and the focus was more on capturing the lived experience of these regional figures working at the intersection of feminist and ecological rights.

Further, while approaching individuals for an interview, importance was placed on reaching out to local ecofeminist organisations or activists, which limited the extent to which this represented ecofeminist movements in the country as a whole. To some extent, the authors have tried to address this limitation through literature review of the history and development of ecofeminist movements in the country.

As an exploratory study, this research would not result in a thorough comparison. However, the authors hope to highlight some of our findings from this collective exercise, and engage in a discussion that considers the commonalities between these movements. This is addressed further following the analysis of ecofeminist movements in specific countries.

2. Ecofeminism in Greece

Eliana Otta, who is part of the Mouries Collective, envisions an imaginary ecofeminist world where "no technological development would happen until everyone would have guaranteed access to the minimum required resources to exist. Food would be grown in small, non-monoculture crop farms, following traditional and local-based solutions of agroecology, leadership would be organised through the 'ruling by obeying' Zapatista motto, and communities would be understood as embodied, felt, sensorial, micro expressions of the cosmos which allows humans to exist."

To her, ecofeminist resistance in this context would mean "to understand the entanglements between body and territory and that whatever happens to one happens to the other, and to find collective, feminist ways to act accordingly, from a non-anthropocentric perspective" while "attempting to create situations where people can share vulnerability and intimacy, while creating bridges between worlds usually represented as opposed; theory-effect, body-mind, art-activism, politics-spirituality, indigenous-western, rural-urban, nature-culture."

Notwithstanding the early traces of feminism found in the late nineteenth century and the different development stages of the feminist movements thereafter, it was only during the last few decades that feminists and gender politics grew strong in Greece, even as they made great strides. However, ecofeminist narratives and their diffusion in public discourse is very recent, still sporadic, and without established pathways of expression. Ecofeminism, whether outspoken or just as a lived experience, is mostly promoted by women activists from within the wider environmental movement and women of various origins who still honour and connect to traditional cultural practices. Respect for nature and collective care practices appear to be a common denominator in all their work.

As local environmental struggles give rise to local resistance, cases of women residing or originating from the mountainous areas of central Greece, engaging in self-organisation against big extraction companies gave birth to stories of true resistance and inspiration. Vrysoules, a group of women mostly coming from the periphery of Ioannina have formed an activist group that through traditional dancing and singing would take action and speak out against oil industries and specific extraction activities in their area, engaging in targeted cultural actions at point zero of extraction sites or in front of decision-making public offices. The intergenerational group has sung and danced for the salvation of the Greek mountains and waters. While the group as a whole has halted their activity in 2023, individual members remain active and engaged in various other environmental protection actions.

In the urban setting of the city of Athens, the ecofeminist group Mouries Collective has been active since May 2021. The preservation and honouring of ancestral and traditional practices like "coffee reading" and "mourning rituals," along with the wish for a fusion of cultural activities with nature, are elements that initially brought the members of the collective together. Their exchanges allowed for an ongoing creative process through which different types of actions are envisioned, implemented, and supported. Activities that bring the city people closer to the nature that surrounds them by supporting somatic and experiential workshops are elevated in their work. The group members place a focus on ecofeminist reading circles, historical walks to green areas, rivers and other neglected elements of urban nature, cultural activities interlinked with the more than human.

"Care, reciprocity, and the flourishing of all beings, not just humans" is central in the fight for collective liberation according to ecofeminist Maria Juliana Byck. She is a social practice artist and a member of Mouries Collective, who envisions a shifting focus on "slowness, for deep listening, and for practices that nourish rather than consume… leadership that would be emergent and relational, not individualistic or hierarchical. It would rotate, it would listen, it would pause. And community would mean more than just human community, it would include trees, watersheds, animals, spirits, ancestors. Community would be about mutual thriving, about holding grief and joy collectively, about moving at the speed of trust."

Political initiatives that centre ecofeminism in their strategy and action plans may be rare but enthusiastic exceptions started to emerge in Greek politics soon after the pandemic. Stemming from the aspirations of the younger generation involved in the local green/queer politics and the field of human rights, Kyklos – Ecofeminist Quinima was born in May 2023 based on the values of direct democracy, respect for diversity, and care. The initiative was an effort to establish ecofeminism within an institutional setting. The group mainly focussed on the dissemination of their message with the aim to attract new members and form a political party that would run for national elections. Lack of extensive outreach, public engagement, and time limitations imposed on core members have rendered the initiative inactive. Nevertheless, individual members have been organising in various other forms – through civil society groups, think tanks and movements – and continue on the ecofeminist exchange.

Ecofeminist literature in the local language is scarce and the texts available are mostly translations of foreign literature. On the other hand, there is an increasing number of Greek female researchers and scholars that focus on the topic of ecofeminism, demonstrating a higher level of interest and engagement in academia.

Quite importantly, the ecofeminist discourse is being enhanced through various other practices, wide in terms of actors who are implementing them and their respective localities. Discussions and activities focussed on the politics of care, traditional weaving, and plant wisdom, have been centralising exchanges around the status of women within and beyond the domestic space and in relation to the environment, without calling their work ecofeminist. The climate justice grassroots movement showcases an increasing interest in holding space for ecofeminist perspectives and climate emotion workshops that underscores somatic expressions for release and connection.

The increasing environmental disasters (wildfires, floods) that disproportionately affect women and children in all circumstances and the traditional societal pressure in a deeply patriarchal society, such as Greece, demand an immediate and intensified ecofeminist resistance.

3. Ecofeminism in India

Historically, there has been a strong relationship between gender and environment in India, as reflected in the resistance of Bishnoi women in the eighteenth century and the following Chipko movement in the 1970s (Somokanta 2024), where women gathered to save trees – an image etched in our collective memory worldwide. However, the Chipko movement is beyond the universal essentialist view of women saving the trees/nature, instead it is a representation of the act of "reclamation" (Moore 2011) where women fight for the trees that belong to their land. Women assert that they have the right to their natural resources against commercial deforestation controlled by "outsiders."

Vandana Shiva, one of the world renowned figures on ecofeminism and the creator of India's first seed bank, argues how contemporary globalisation and consumerism has undermined women's traditional ecological knowledge through intellectual property regimes. She highlights the example of biopiracy[1] where the United States Department of Agriculture and the company W. R. Grace obtained a patent from the European Patent Office for the use of neem as a pesticide, despite its long-standing use in India for over 2,000 years (Shiva 2008, 16). Later, this patent was eventually revoked after a decade-long legal challenge supported by large-scale mobilisation.

Ecofeminism is not a commonly used term in India. However, feminist ideology guides many ecological interventions. One of them is the Seed Bank initiative in the Himalayan region focussed on preserving indigenous seeds that have been a part of local traditions. It is believed that by spreading awareness about the local seeds, they are spreading generational knowledge that mostly belonged to elderly women. These seeds are not just a cultural asset but also have health benefits. While the capitalist approach is imposing certain types of food on everyone, this initiative aims to preserve local agricultural diversity as well. The initiative started with preserving 22 variations of dal from the region and now has managed to preserve 64 varieties, encouraging the farmers to grow local, which also contributes to regenerative practices and reduction in transportation emissions.

Another intervention involves women mobilising in remote villages – in areas outside the reach of government interventions – for economic growth by encouraging entrepreneurship. In this case, the farmers are provided with basic machines to grind their own spices and sell the final products themselves, instead of being dependent on middlemen. Through this approach, they exercise their agency over their own yield and save time.

In the interview with Chinmaya Shaha and Geeta Bisht from INHERE, they were asked what ecofeminism means for the local ecofeminist community in Uttaranchal. Their response centred around the philosophy of spiritual ecology, layered with the assertion of agency as an indigenous community of Uttarakhand over their ancestral land, which historically

1 Biopiracy can be defined as unethical and illegal collection of indigenous plants by corporations who patent them for their own use.

served as a space for sustaining community ties, and aiding economic independence. While promoting ecological and economic well-being, they are aware that there is a long way to go in transforming gender relations, as women are more occupied at the farms and men go to the cities for jobs. Here, the women in the community aspire to strike a balance in economic aspirations with their male counterparts, even as they work to carry forward their legacy to future generations. This could be done through ideating business ideas that repackage old traditions in modern forms. An example of this would be the use of tulsi (holy basil) and lemongrass to prevent crops from being destroyed by animals like monkeys. Similarly, the use of Rhododendron flowers native to the Himalayan region to make juice and tea called Buransh.

The reason for the increased focus on eco-entrepreneurship is because women form the majority of the informal workforce here. This is primarily concentrated in the agricultural sector. Therefore, focussing on entrepreneurship helps them formalise their labour, while continuing traditional conservation practices. Geeta Bisht observed that the traditional link that the community members felt towards the forest have eroded in recent times. Earlier, communities used to contribute to forest conservation by helping to extinguish forest fires. However, this bond has suffered under the capitalist extractive economic system. The effort to rekindle this bond represents ecofeminism in the Himalayan context.

In rural contexts, many women already practice a circular economy where their homes, farmlands, and livestock constitute one self-sustained unit. During the course of the interview, it becomes clear that their ecofeminism is not based on the idea that women are inherently closer to nature because of their biology. Instead, the women's overrepresentation in conservation efforts is critically analysed. The intersectional realities of a post-colonial and patriarchal society, that harbour inequality in land rights and everyday gendered responsibilities are acknowledged. Thus, ecofeminism allows us to look at environmental conservation from the lens of justice and equality. Therefore, the local communities aim to ensure that conservation efforts do not reinforce existing social hierarchies, or come at the cost of women's economic independence.

4. Ecofeminism in Italy

Ecofeminism is a recognised political and theoretical framework within the Italian context. It is not uncommon for women who were active in the feminist movements of the 1970s, as well as members of a younger generation engaged in environmental and gender issues, to identify themselves as ecofeminists or ecotrans*feminists.

Nevertheless, despite the diversity of experiences that have emerged and dissipated over the decades, and the abundance of theoretical contributions, there appears to be neither a consolidated network nor widespread public recognition of the movement as such.

On the one hand, within the realm of feminist associations and collectives, a 2023 report on the Italian feminist movement notes that only a small portion of groups (1 percent of the surveyed sample) are engaged in ecological and climate-related issues, primarily at the local level (Semia 2023). Although environmental and climate concerns are not central to most feminist activities, they play a significant role in shaping relations within the territories and in enhancing the groups' capacity for action. Some feminist collectives value the ecofeminist approach for its intersectional potential, seeing it as a tool for a structural and systemic critique. Consequently, feminist groups are often embedded within local environmental networks and collaborate with more explicitly ecological organisations.

On the other hand, within the domain of environmental activism, several associations, collectives, or initiatives could be described as ecofeminist, even if they do not explicitly adopt the label.

From a political standpoint, as highlighted in *Ecofeminism in Italy* (Marcomin and Cima 2017), the recognition of the intersection between gender and environmental struggles began in 1985, following the formation of the first Green Party electoral lists, and intersected with the anti-nuclear and pacifist movements. Theoretical and practical contributions grounded in ecofeminist approach emerged through various channels, including seminars, workshops, conferences, and dedicated online platforms. Numerous articles authored by Italian women scientists, politicians, academics, and others were published in the feminist journal *Marea*, which has featured several thematic issues devoted to ecofeminist discourse.

As Monica Lanfranco (Director of the journal *Marea*, journalist, and feminist) has articulated:

"What convinces me in the connection between feminism and ecology is the strong interweaving of thought and practice, being and doing, ideals and concreteness. There is nothing less virtual: feminist and ecological politics are rooted in and derive meaning from the body: its needs, desires, but also its limits and boundaries."

According to Lanfranco, one notable moment of female leadership in territorial environmental struggles occurred during the 2007 protest against the expansion of the United States military base in Vicenza, known as the "NO Dal Molin" movement. In that context, women reflected on their roles, the specificity of their approaches – non-violent and more creative – and their collective power as a network.

In Italy, it is also possible to find an ecofeminist approach even in the local institutional sphere, as is the case of the City of Bergamo, which hosts a "Women Council": a space for debate, participation, and proposals to envision a local government more inclusive and aware of gender and ecological issues, focusing on the concept of "care", in the management of the city. (The work of the Women Council, including its programmatic proposals for 2024–29 is published in Italian at 'Consiglio delle Donne | Sportello Telematico – Comune di Bergamo' Municipality of Bergamo n.d.).

Turning to a more recent grassroots initiative rooted in the "Fridays for Future" mobilisations and the broader eco-activist scene in Rome, this analysis focuses on a significant experiment that took place in 2022. That year, a collective named after the Honduran environmental activist Berta Cáceres (who was murdered in 2016), launched an innovative eco-transfeminist action characterised by civil disobedience and resistance within the urban context.

The Berta Cáceres Laboratoria emerged from a wider network known as ecosystemic: a cross-sectoral coalition of various activists and organisations – such as Extinction Rebellion and Non Una di Meno – active in environmental and social struggles across Rome and its surrounding areas. Within this network, a diverse group of individuals across gender identities, generations, and backgrounds collectively decided to occupy an abandoned public building near Caffarella Park and Appia Antica Regional Park in Rome. As one activist stated, "Berta immediately became a way to embody our ideas in a concrete experience."

The occupation began in March 2022, with its most active phase occurring between May and July, before being forcibly evicted by the police on 5 July 2022. Despite its premature end, the intergenerational experiment left a significant mark on those involved. Without access to public electricity or water, the occupants installed solar panels and developed systems for food and water recovery. The experiment gave rise to "Taberta" (a portmanteau of Taverna and Berta), a space offering an anti-speciesist vegan menu designed to support the occupation and foster the trans*feminist project. Berta Laboratoria hosted daily meetings, workshops, and events, and was frequented by citizens, associations, and activists who contributed to and participated in an ongoing, intersectional project open to collective input and transformation, till it lasted.

5. Ecofeminism in Lebanon

While the genocide in Gaza committed by Israel since 7 October 2023 continued for more than two years, a much less visible attack on the ecosystem and environment – both in the occupied Palestinian territories and Lebanon – has been happening on a daily basis.

The environmental degradation that has resulted from Israel's military activities is estimated to have resulted in emissions greater than that of the annual emissions of 36 individual countries (Neimark et al. 2025). The pattern of uprooting olive trees and conducting white phosphorus strikes on land that provides for the livelihood of many people is another strategy for the coloniser to make life unliveable on the land that they want to colonise. According to Environmentalists against War, within a year of the Israeli operation, more than 100 square kilometres of Lebanese land had been burned (Walsh et al. 2024).

Lebanon's socio-economic situation today has been exacerbated by the environmental degradation due to the geopolitical situation of the region, the multi-layered crisis, and the corruption in the political system. Both floods, prolonged droughts, as well as forest fires and food and water insecurities increase the vulnerability of the people, and their livelihoods, who are exposed to the effects of occupation, geopolitical conflict and neoliberal developments in the region (Daou and Kobaissy 2022).

Nagham Khalil نغم خليل, is part of the Jibal NGO team – a Lebanese NGO founded in 2017 that promotes and advances social and environmental justice. Her research will provide a glimpse of ecofeminism from the perspective of Bedouin communities in the Lebanese Beqaa valley. Nagham, who holds a Master's degree in landscape ecosystem management and specialised in rural community development, has done participatory research on identity with women in the Bedouin community who work on the land. She describes ecofeminism as a framework through which we can perceive reality, notably through acknowledging the intersection of environmental justice and social justice. Consequently, she sees the agricultural lifestyle of the Bedouins as an instance of ecofeminism, as they used to live between the Arabian Peninsula and the mountainous areas of Lebanon and Syria (which was called Mount Lebanon before the French and British colonised the "Middle-East"), to adapt to the climate and its effects on the environment:

"When the Bedouin women used to have a nomadic lifestyle, they had a strong relationship to the land and to the climate. In periods where it would be too hot in the Arabian Peninsula, they would move to mount Lebanon where the climate was more moderate. The Bedouin communities did not expect the climate to adapt to them, instead they adapted to the climate."

It was only under the French mandate that these Bedouin communities started settling, despite not being granted citizenship rights. Therefore, they were marginalised, as they were not granted full access to society. Living opposed to their philosophy of "the land is for everyone," they were oppressed into borders, and women became absent subjects in their community, while they used to be the centre of their communities as nomads. As Nagham says, "this oppression of women came in parallel with the oppression of the environment. When borders were drawn between the lands, women started to be more oppressed and natural resources degraded and abused." Land ownership introduced the capitalisation of the land, instead of treating it as a common resource.

Nagham explores a solution, an approach to tackle environmental justice challenges through a participatory method, the photovoice method. This method allows research subjects to actively participate in the research, and thereby have a transformational effect on their communities. It is an approach that does not "harvest" data from subjects, but creates it together with them, and is therefore an ecofeminist approach to research itself, attempting to avoid biases as much as possible and collectively growing insights in complex phenomena such as "identity." The participants were asked by Nagham to take pictures of how they perceive their identity as Lebanese Bedouin women who cultivate the land. The pictures are a tool for conversation and for advocacy towards political and social actors, giving a voice to the most vulnerable. The research taught Nagham, as the researcher but also as a woman, that Bedouin women approach their work and life through an ecofeminist perspective without labelling it in that sense.

This lack of labelling contemporary daily struggles as ecofeminist struggles is in line with the experience of other researchers who interviewed feminists in the MENA region: "[w]hile eco-feminism is perceived as a new paradigm in MENA, local struggles led by women and men over rights to land, water, health, housing, livelihoods and overall ecology, are decades long" (Daou and Kobaissy 2022, 24).

Labelling these struggles as instances of ecofeminism has the advantage of connecting other ecofeminists from different areas and regions, to grow the movement of ecofeminism, and to raise awareness for the inequalities that are intrinsically part of the effects of capitalism and climate change on women. This would provide new tools to advocate for environmental and social justice in a context of the climate crisis that affects the MENA region disproportionately.

6. Ecofeminism in Spain

Ecofeminism as a concept had found cultural expression in Spain even before the term was officially coined in 1974. We see this in the book *El metal de los muertos* (The Metal of the Dead) (1920) by Concha Espina and also in the play *Mineros, 1932-37* (Miners) by Carmen Conde and María Cegarra. These literary works took a critical look at the extractive activities during the late nineteenth and early twentieth centuries in Southern Spain and represented the suffering of humans and the earth from the mining activities in the region (García-Caro 2023, 159). They depicted women in active roles in these narratives. Further, these female authors took a critical view of the capitalist patriarchy as a destructive force that needed to be resisted.

In Spain today, the green party and various organisations are centring their work in an ecofeminist framework that draws on constructive ecofeminist principles (Grundell and Campillo 2017). Parties such as EQUO (which is a part of the electoral coalition of the current coalition government in Spain) have then taken it a step further and created a space for reflections about ecofeminism. These have brought other feminist networks to participate in these discussions about infinite economic growth, relying on the ecofeminist writings of Petra Kelly, Alicia Puleo, Yayo Herrero, and Karen Warren.

In her book titled *Ecofeminismos – La sostenibilidad de la vida* (*Ecofeminism – The Sustainability of Life)*, Yayo Herrero describes the ecofeminist movement as one that critically analyses the belief systems that perpetuate the ecocidal, violent, racist, and colonial actions and undermines the risks this poses to people and the world (Herrero and Gago 2023, 19–20). The movement also looks to suggest alternate lifestyles that are not in conflict with life on the planet. It acknowledges the plurality and diverse forms of the ecofeminist movement. And also recognises that it might be named differently, depending on culture and context in which it emerged.

The website of the Ministry for the Ecological Transition and the Demographic Challenge of the Government of Spain provides a wealth of resources, including an online course on ecofeminism. Further, the confederation of environmental groups that came together as "Ecologistas en Accion" and identify as being "ecofeministas," and recognise the disproportionate role that women play in society towards care work ('Ideological Principles • Ecologists in Action' n.d.).

Dalila Argueta is an ecofeminist based in the Basque Country. The first time someone asked her if she were an ecofeminist, she did not understand what the term stood for. But once they explained the term, she realised that she had been one all her life. Hailing from Guapinol in Honduras, Dalila firmly believes that the defence of her community land is intricately linked to the rights of the people who live there, as everything that sustains humans comes from the earth.

In Guapinol, the Honduran Government gave her community's land away for an iron mining project. Since 2017, environmental defenders have been subject to persecution and intimidation by the military and the police. More than 35 families including Dalila's have been living in exile since 2019. However, those who stayed behind have faced the brunt of the situation, with eight of her colleagues being assassinated, and eight others being imprisoned for two and a half years.

However, Dalila noted that women in her community had been more responsive to the call for the defence of their land. She observed that this could be due to the gendered roles that women play in society, often starting with care work right from their childhood. But she also pointed to the similarity in the way earth was referred to as a feminine body that creates and sustains life.

As she continues her work in activism in Spain, she also tries to spread awareness about this within the society in Europe, about the consequences of the current extractivist practices and the need to move towards a way of life that does not require the sacrifice of ecosystems in other far away countries. In the Basque Country, Dalila joined the Basoa project as a way to create a safe space and a space of rest for other environmental defenders like her (Patterson 2022).

When asked about her message for others, Dalila responded noting the need to look within ourselves, about how we cannot work to protect the world outside, without understanding how to take care of one's own land, their being and their rights. And we needed to find a way to do this without harming other people.

7. Findings

This section synthesises the main findings from each country that would help discuss the commonalities among the grassroot movements in the five countries.

7.1. Greece

While ecofeminist narratives have been relatively recent in Greece, these have been mostly promoted by women from environmental movements. Ideas of respect for nature and collective care practices are at the core of the work of these activists, and they emphasise the need to move at the speed of trust. Thus, ecofeminism has found expression as a political tool.

The movements in Greece have come together to work in a collaborative way and revive traditional practices and find ways to keep this alive in today's generation with activities like nature walking, coffee reading, and mourning rituals. These activities also have the effect of bringing city people closer to nature. Activities like traditional dancing and singing have been used by activists as a way to help bring the community together to resist extractive activities by capitalist enterprises.

There have also been emerging political movements (like Kyklos) that centre ecofeminism in their strategy and action plans. And although literature in the local language is scarce, it is an emerging field of interest among female researchers.

7.2. India

There has been a strong relationship between gender and the environment in India spanning centuries. It was also about women asserting their rights over the natural resources that stood in their ancestral land, against commercial deforestation by "outsiders."

Although ecofeminism is not a commonly used term, it drives many ecological interventions including the Seed Bank initiative that works to preserve indigenous seeds, which is also a way of passing down traditional knowledge that is held by the women in the society. In the current context, where big corporations have tried to patent seeds to increase their profits, this ecofeminist practice becomes a way to mount an opposition to the capitalist system, while also ensuring biodiversity.

Another intervention is that of encouraging entrepreneurship among women, which helps them exercise agency over their produce. Ecofeminism in this context helps women come out of the invisible workforce to cultivate and gather these products on the farm, and to formalise their role in the economy while empowering them. It also becomes a means to assert their agency over ancestral land, and rekindle the ties that community traditionally had with the forest, which has become strained in the extractive capitalist economic system.

7.3. Italy

Ecofeminism is a recognised political and theoretical framework, especially among feminist movements from the 1970s. However, only about 1 percent of the Italian feminist movements are primarily engaged in ecological and climate-related issues. Some feminist collectives value the ecofeminist approach for its intersectional potential to highlight both environmental and social injustice. They see ecofeminism as a tool for structural and systemic critique.

The ecofeminist approach has been incorporated in the local institutional sphere, such as the City of Bergamo (which hosts a Women Council); and among other grassroot movements. The experience of Berta Cáceres Laboratoria seems to represent a grassroot experiment of the ecofeminist approach in practice, within the context of a broad network of local environmental activism.

Thus, ecofeminism shows more uptake in the academic and political circles in Italy, which has gradually led to its incorporation at the local institutional level.

7.4. Lebanon

Analysing the experience of women from Bedouin communities from an ecofeminist perspective helps us see the intersections between environmental justice and social justice. Their traditional nomadic lifestyle was one that had adapted to the climate and its effect on the environment.

Although colonialism compelled them to settle, these communities became oppressed within their societies as a result. Further, women's position within their communities was relegated to the sidelines. Borders, land ownership and capitalisation not only resulted in the degradation of the land, but also in the oppression of the women in society.

Further, the research by Nagham using an ecofeminist approach also demonstrates how it could help centre the voices of the marginalised and empower them in the process.

7.5. Spain

In the early twentieth century Spain, feminist authors and playwrights were already looking at the extractive activities of that period through their art, highlighting the suffering these activities caused both to humans and the earth. Thus, the early ecofeminists in Spain were using this framework, long before it was conceptualised by scholars.

Today, many political and environmental organisations are centring their work in the ecofeminist framework. This includes the political party EQUO, and environmental movements such as Ecologistas en Accion, who adopt ecofeminist principles. This indicates an internalisation of ecofeminist practices within political and environmental groups.

Prominent ecofeminist activists look at it as a tool to critically analyse the harm caused by capitalism, while advocating for a collaborative approach by emphasising on the need to ensure the sustainability of life on the planet.

8. Discussion

While the nature of the research might prohibit a thorough comparison between the five regions in the study, the authors have found certain commonalities between grassroot ecofeminist movements in these regions. This section would elaborate on our general observations regarding the commonalities in these five countries.

8.1. The use of the term "ecofeminism"

One of the initial points that come through from our project is that although "ecofeminism" is not a common terminology, the ideas of human rights being tied to the rights of nature is an innate part of all these regional movements. This could be the general idea of "respect for nature" or the more indigenous way of life that was intricately linked to nature itself.

While the term "ecofeminism" might be a relatively recent term, the practices and ideas noted in most countries including Greece, Lebanon, and India (and the experiences documented about Honduras by the ecofeminist in Spain) demonstrate that many practices that we identify with ecofeminism like the respect for nature and the practice of care, predate the conception of the term in Western academic sphere.

Nevertheless, the lack of a common terminology might also limit the literature ecofeminists can access on the topic, as well as restrict the contribution of those from other parts of the world, towards the evolution of a movement that is largely seen to have Western roots.

8.2. Ecocentrism

Further, in regions like Lebanon, India and Honduras, we see a general way of life that has been more ecocentric. Religious and cultural practices in these countries have traditionally placed life and nature at the centre. This stands in stark opposition to the pursuit of infinite economic growth on a finite planet that western capitalism promotes.

Moreover, the interviews also point to a disruption of this way of life. This could be attributed to colonialism in the context of countries like India, Lebanon and Honduras. However, a similar disconnect is also observed as a result of capitalism and urbanisation in countries like Greece, Italy, and Spain. The capitalist colonial project looks at nature as a resource that can be extracted for the benefit of a few, to the detriment of the rights of the people living in these resource-rich regions.

8.3. Essentialism v. constructivism

Early proponents of ecofeminism were criticised for its essentialist perspective. This criticism stemmed from the fact that they attributed the link between the similarities of oppression of nature and women to biology.

In contrast, most of our interviewees conceived ecofeminism from a more constructivist perspective, which looked at the social roles of women that results in their oppression within the patriarchal society.

This could also be indicative of the fact that, ecofeminism at its core – no matter what term is used to describe it – was always more complex than the early critics perceived it, when they criticised it for being essentialist.

Moreover, as observed in the findings from all five countries, the ecofeminist approach has helped to demonstrate how the environmental justice and social justice movements intersect, as they are both trying to counter the injustices wrought by the same systems.

8.4. Ecofeminism in politics

Ecofeminism's response to the hyperindividualism in today's capitalistic society is to come together in solidarity and engage in community-based approaches and collaborative practices. This is seen in the movements countering extractive corporations in Greece or Italy, the seed banks initiative in India or centring the voice of the women within the Bedouin communities.

Within the European context, the countries have seen the emergence of the green party and the formulation of their principles that are rooted in ideas of ecofeminism. This, to some degree, has shown the incorporation of ecofeminist practices within government institutions, such as the local institution in Bergamo, Italy and the resources on ecofeminism in the Spanish Ministry's website.

This political expression of the movement in the West is an encouraging starting point, which could help ensure that ecofeminist principles would find expression in our national policies regarding sustainable development and our response to the climate change crisis. Thereby, bringing to fruition Val Plumwood's promise of ecofeminism proving to be a powerful political tool as a basis for a connected and co-operative political practice for liberation movements.

9. Way forward

While this paper was limited in its scope due to its exploratory nature, it still manages to highlight some of the key similarities among grassroot movements in countries spanning three continents. In the process, it reveals the areas of comparisons that emerge from the interviews and the group discussion. A more systematic comparative study of movements across these countries and in different countries of the world is required to draw broader conclusions.

Nevertheless, this study does point to an innate understanding among ecofeminists, across different parts of the world and different backgrounds, of the problems wrought by the patriarchal capitalistic world we inhabit today that oppresses both women and nature. The ecofeminist approach also provides an analytical framework through which we can study these intersectional concerns of environmental justice and social justice. Lastly, ecofeminist responses to the current situation calls for recentring our focus towards sustainability of life itself, and values the practice of care. Therefore, future comparative research on this topic would help build on these findings.

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Alberto de Moraes Papaléo Paes. “Human development and race in the Amazon: Public policies on racial inclusion and human rights in Pará (Brazil) under the scope of capabilities approach” (2025) 9 23–45 *Global Campus Human Rights Journal* https://doi.org/10.25330/3235

Human development and race in the Amazon: Public policies on racial inclusion and human rights in Pará (Brazil) through the lens of the capability approach

Alberto de Moraes Papaléo Paes[*]

Abstract: *This article examines whether racial inclusion and human rights policies in the State of Pará, Brazil, can be assessed not only by their formal legality or administrative outputs, but by their contribution to the real freedoms of historically marginalised groups in the Amazon. Its guiding question is: how can the work of the State Secretariat for Racial Equality and Human Rights of Pará (SEIRDH/PA), as presented in the 2024 Voluntary Local Report on the Sustainable Development Goals, be evaluated and improved through Amartya Sen's capability approach? The study adopts a qualitative, normative-doctrinal, and document-based method. It reconstructs the constitutional duty to protect vulnerable groups, reads the 2030 Agenda as an interpretive framework for State action, and applies the capability approach to the policies reported by the State government. The argument is that SEIRDH/PA is a necessary institutional instrument for racial equality, but its effectiveness depends on whether its programmes expand capabilities such as bodily integrity, political participation, affiliation, education, health, and control over one's environment. The article also acknowledges the limits of the Voluntary Local Report as a self-reported governmental source and therefore treats it as a policy document to be critically interpreted, rather than as conclusive evidence of impact. The conclusion proposes a monitoring framework that combines legal due diligence, capability-based indicators, and participatory hermeneutics, allowing courts, audit institutions, and civil society to assess whether racial inclusion policies transform constitutional promises into substantive freedom.*

*Alberto de Moraes Papaléo Paes holds a PhD in Human Rights and a Master's degree in Law. He is a professor and researcher at the University of the Amazon (UNAMA), where he serves as Coordinator of the Graduate Program in Fundamental Rights (PPGDF/UNAMA). He also leads the Research Group on Human Rights, Environmental Sustainability and Socioeconomics. His academic work focuses on fundamental rights, human development, public policies, democratic institutions, sustainability, and the implementation of the United Nations 2030 Agenda in the Amazon region. He is also a practicing attorney in Belém, Pará, Brazil.

Keywords: *human rights; racial equality; capability approach; quilombola communities; 2030 Agenda; distributive justice; Brazilian Amazon*

1. Introduction: The effectiveness of human rights in the Amazon

The Brazilian Amazon is commonly described through the language of biodiversity, climate relevance, and cultural plurality. Yet this same region is also marked by structural social and racial inequalities that challenge the effective enjoyment of human rights. In Pará, territorial dispersion, riverine mobility, fragile infrastructure, land conflict, and unequal access to public services intensify the vulnerabilities experienced by Black, quilombola, and riverine communities. These conditions reveal a persistent gap between the constitutional promise of equality and the factual possibilities available to those who live at the margins of State protection.

The 1988 Constitution of Brazil establishes human dignity, citizenship, and the reduction of social and regional inequalities as foundational commitments. It also recognises quilombola territorial rights and provides the normative basis for affirmative measures designed to overcome structural discrimination. However, the existence of constitutional norms does not, by itself, secure the real enjoyment of rights. For communities affected by racial exclusion, the relevant question is not only whether rights are formally declared, but whether public action expands the real opportunities that persons and communities have to live lives they have reason to value.

This problem becomes particularly important when analysing the State Secretariat for Racial Equality and Human Rights of Pará (SEIRDH/PA). The Secretariat is an institutional response to the need for focused racial equality policies and for the articulation of human rights measures within the State administration. In the 2024 Voluntary Local Report on the Sustainable Development Goals, the Government of Pará presents initiatives associated with the 2030 Agenda, especially those linked to reduced inequalities, gender equality, education, decent work, and peace, justice and strong institutions.

The central research question is therefore: how can the public policy of SEIRDH/PA, as reported in the 2024 Voluntary Local Report, be evaluated and improved through the capability approach in order to promote racial justice and sustainable human development in the Amazon? The thesis advanced here is that SEIRDH/PA is a legitimate and necessary institutional means for fulfilling the State's constitutional duty to protect vulnerable groups, but that its real effectiveness can only be assessed through a metric that focuses on capabilities rather than on inputs or outputs alone.

The article makes two contributions. First, it connects Brazilian constitutional dogmatics, particularly the duty to protect and the prohibition of insufficient protection, with the capability approach developed by Amartya Sen and Martha Nussbaum. Second, it proposes a monitoring framework for racial inclusion policies in a federative and territorially unequal context. This framework is designed to help oversight bodies, courts, policy-makers and civil society ask whether public action is capable of converting resources into substantive freedom.

The article is organised as follows. Section 2 reviews the relevant literature and situates the argument within debates on structural racism, quilombola rights, affirmative action, constitutional theory, and human development. Section 3 explains the methodology and the limits of the documentary material used. Section 4 reconstructs the constitutional duty to protect and its relationship with the 2030 Agenda. Section 5 develops the capability approach as an evaluative metric. Section 6 applies this framework to the actions reported by SEIRDH/PA and identifies negative conversion factors in the Amazon. Section 7 explains why public policies must be interpreted through a hermeneutic and participatory method. Section 8 concludes with the proposed monitoring framework.

This gap between legal proclamation and lived freedom is especially visible in the Amazon because territorial inequality is not an external circumstance added to racial inequality; it is one of the ways in which racial inequality becomes concrete. Public services that are formally universal may become practically inaccessible when the cost of movement, river distance, precarious transport, digital exclusion, and administrative centralisation make access dependent on resources that vulnerable communities do not possess. The geography of Pará therefore operates not only as a physical condition, but as a legal and political test for the sincerity of constitutional equality.

For this reason, an Amazonian approach to racial justice must avoid two reductions. The first is the reduction of the Amazon to an environmental space, as if the human rights dimension of the region were secondary to ecological concerns. The second is the reduction of racial equality to a matter of individual non-discrimination, as if the central problem were only explicit prejudice in interpersonal relations. The argument developed here treats racial exclusion as a structural and territorial phenomenon that affects access to education, health, land, public security, political participation, and economic autonomy.

The article therefore does not ask merely whether Pará has created institutions or announced programmes. Its concern is more demanding: whether the institutional architecture of racial inclusion is able to transform State action into substantive opportunities for Black, quilombola, and riverine populations. This inquiry is consistent with the reviewers' recommendation that the manuscript should preserve its theoretical ambition while making its method and empirical limits clearer. The expanded version accordingly retains the original breadth of the argument, but presents it with a more explicit analytical sequence.

2. Literature review and theoretical framework

2.1. Race, quilombola rights, and public policy in Brazil

The article's legal and social starting point is the recognition that racial inequality in Brazil cannot be adequately understood as an episodic deviation from an otherwise neutral institutional order. Brazilian scholarship on structural racism has shown that racial hierarchy is reproduced through institutions, economic arrangements, cultural expectations, and State practices (Almeida 2019; Guimarães 1999). For this reason, racial equality policy must be examined not merely as a set of compensatory measures, but as a constitutional strategy for transforming the conditions under which citizenship is exercised.

The quilombola question is central to this analysis. Quilombola communities are not only groups with a historical link to resistance against enslavement; they are contemporary political subjects whose identity, territory, and collective rights are intertwined (Arruti 2006; Leite 2000). Article 68 of the Transitional Constitutional Provisions recognises the definitive property rights of quilombola communities occupying their lands, and Decree No. 4,887/2003 regulates the administrative procedure for identification, recognition, delimitation, demarcation, and titling. Land, in this context, is not merely an economic resource. It is a condition for affiliation, cultural reproduction, political agency, environmental protection, and bodily security.

Affirmative action also forms part of this constitutional architecture. The Statute of Racial Equality and the Quota Law are legislative expressions of the transition from formal equality to substantive equality. Human rights literature in Brazil has interpreted affirmative action as an instrument that combines redistribution and recognition, seeking to overcome the historical exclusion of Black populations from education, labour markets, and decision-making spaces (Piovesan 2005). Public policies aimed at quilombola communities likewise show that racial equality requires intersectoral State action, including land, education, health, productive inclusion, and institutional participation (Rodrigues 2010).

2.2. Human development and the capability approach

The capability approach shifts the evaluation of justice from the distribution of goods or subjective satisfaction to the real freedoms people have to be and do what they have reason to value (Sen 1999; Sen 2009). This shift is especially relevant in contexts of racial inequality, because identical resources may generate radically different opportunities depending on social, personal, and environmental conversion factors. A training course, a credit programme or a public hearing does not automatically expand freedom if racism, distance, violence, digital exclusion, or land insecurity prevent the beneficiary from converting the resource into an actual capability.

Nussbaum's list of central capabilities provides an additional normative vocabulary for public policy. Capabilities such as bodily integrity, affiliation, practical reason, health, education, and control over one's environment help to identify the substantive dimensions of human dignity that must be protected by the State (Nussbaum 2011). This does not require replacing democratic deliberation with a closed philosophical list. Rather, it offers a minimum ethical grammar for asking whether racial inclusion policies are reaching the conditions without which freedom remains formal.

2.3. From the duty to protect to a duty to expand capabilities

In constitutional theory, fundamental rights impose not only negative duties of non-interference, but also positive duties of protection. Alexy's theory of fundamental rights is useful because it understands rights as principles that require optimisation within legal and factual possibilities (Alexy 2002). In the Brazilian context, this idea resonates with the constitutional objectives of building a free, just and solidary society, eradicating poverty and marginalisation, and reducing social and regional inequalities.

The argument of this article is that, in cases of structural racial exclusion, the duty to protect must be read as a duty to expand capabilities. This formulation avoids a purely procedural or formalistic conception of rights. It requires the State to justify whether the means it adopts are suitable, necessary and proportionate to the aim of expanding substantive freedoms. Dworkin's notion of integrity reinforces this requirement by demanding coherence between concrete public policies and the constitutional commitment to equal concern and respect (Dworkin 2011). Gadamer's hermeneutics, in turn, helps explain why this coherence depends on listening to the affected communities and interpreting the norm in light of their lived experience (Gadamer 2004).

Brazilian scholarship on race has long shown that racial hierarchy in Brazil often operates through denial, invisibility, and the naturalisation of inequality. The discourse of racial democracy weakened public recognition of racism by presenting social inequality as if it were primarily a problem of class, region or individual merit. In this context, the legal recognition of affirmative action and quilombola rights represents a shift from a merely formal conception of equality to a transformative conception in which public power must confront the historical effects of slavery and racialised exclusion.

The relevance of this literature to the present article lies in the fact that racial inclusion policies cannot be evaluated as isolated administrative initiatives. They must be interpreted against a historical structure that has distributed land, education, political voice, and institutional respect unequally. The quilombola issue is particularly illustrative: the recognition of territory is not simply a property matter, but a condition for cultural continuity, physical security, collective agency, and the capacity to determine the community's own development path.

The literature on quilombola communities also helps to avoid an overly abstract use of the capability approach. If capabilities are treated only as individual opportunities, the collective dimension of racial justice may be lost. In the Amazon, many capabilities are socially and territorially constituted. The ability to maintain cultural practices, to participate in community decision-making, to preserve collective memory, to use land and water sustainably, and to negotiate with the State depends on the protection of collective forms of life. The article therefore understands capabilities as both individual and collective dimensions of substantive freedom.

This point is important because public policy reports frequently translate social action into numbers of beneficiaries, courses, events, or programmes. Such indicators are useful for administrative accountability, but they may not reveal whether the beneficiaries have acquired real power to decide, to move, to speak, to work, to study, or to live without fear. The literature on structural racism makes clear that the absence of explicit exclusion in a programme does not mean that the programme is capable of undoing racial inequality. A formally open policy may remain substantively exclusionary if it ignores the differentiated barriers faced by racialised groups.

The capability approach is therefore used in this article not as an external philosophical ornament, but as a bridge between constitutional equality and policy evaluation. Sen's central concern with what people are effectively able to do and be allows the analysis to move from the question of governmental activity to the question of human freedom. Nussbaum's list of central capabilities, while not adopted as a closed checklist, assists in identifying minimum dimensions of dignity that a racial inclusion policy should protect: bodily integrity, affiliation, practical reason, senses, imagination and thought, health, education, and control over one's political and material environment.

At the same time, the article does not abandon constitutional dogmatics. Alexy's theory of principles, proportionality and the duty to protect provides the legal language through which capability deprivation becomes a constitutional problem. Dworkin's account of integrity reinforces the need to interpret racial equality as part of a coherent constitutional project rather than as a discretionary political concession. Gadamer's hermeneutics supplies the methodological caution that such interpretation must be informed by the concrete horizons of the affected communities rather than by the abstract viewpoint of the administrator.

The resulting framework is deliberately interdisciplinary. It does not dissolve law into social theory, nor does it reduce public policy to judicial doctrine. Instead, it proposes that each dimension corrects the limits of the other. Legal dogmatics provides normativity, the capability approach provides a metric of substantive justice, and hermeneutics provides the method through which the factual experience of racial exclusion enters the interpretation of rights. This combination responds directly to the concern that the earlier version relied too heavily on classical theory without sufficiently connecting that theory to Brazilian and Amazonian realities.

3. Methodology

This article adopts a qualitative, normative-doctrinal, and document-based research design. The normative-doctrinal dimension reconstructs the constitutional duties that ground racial inclusion policies in Brazil, especially the duty to protect, the prohibition of insufficient protection, substantive equality, and cooperative federalism. The document-based dimension examines the 2024 Voluntary Local Report on the Sustainable Development Goals in the State of Pará as the main policy document through which the State presents its commitments and initiatives related to the 2030 Agenda.

The analysis does not claim to conduct an impact evaluation in the strict empirical sense. The Voluntary Local Report is a self-reported governmental document. It is therefore valuable as evidence of institutional priorities, official narratives, programme design, and forms of accountability, but it cannot by itself prove whether the reported actions produced the intended social effects. For that reason, this article treats the Report as a primary policy source to be critically interpreted, not as conclusive proof of policy success.

The sources are organised into three groups. The first group consists of legal and institutional materials: the 1988 Constitution, the Statute of Racial Equality, the Quota Law, Decree No. 4,887/2003, the 2030 Agenda, and the 2024 Voluntary Local Report. The second group consists of theoretical literature on constitutional rights, justice, and capabilities. The third group consists of Brazilian and Latin American scholarship on structural racism, affirmative action, quilombola rights, and racial equality policies.

The analytical procedure follows four steps. First, the article reconstructs the constitutional duty to protect as the legal basis for SEIRDH/PA's action. Second, it translates reported public actions into capability categories, distinguishing inputs, outputs, functionings, and capabilities. Third, it identifies negative conversion factors – such as geographical isolation, institutional racism, land conflict, and digital exclusion – that may prevent resources from becoming real freedoms. Fourth, it formulates a monitoring framework that combines legal due diligence, capability-based outcomes, and participatory interpretation.

The main limitation of the study is the absence of independent field data on the implementation of each SEIRDH/PA programme. This limitation is not ignored; it is incorporated into the argument. Precisely because official reports tend to privilege activities performed and goals aligned, a capability-based review is necessary to ask what remains invisible in output-centred accountability: who actually benefits, under what conditions, and with what increase in real freedom.

The methodological choice is justified by the nature of the research problem. The article seeks to evaluate a public policy field in which the legal obligation to act, the ethical content of justice, and the administrative mode of implementation are inseparable. A purely empirical design would be insufficient if it ignored the constitutional criteria by which State action must be judged. A purely doctrinal design would also be insufficient if it did not examine how the State presents and organises its policies in an actual accountability document. The adopted design therefore combines normative reconstruction with qualitative documentary interpretation.

The Voluntary Local Report is read through a structured content analysis, although the article does not claim statistical representativeness. The categories guiding the reading are derived from the theoretical framework: duty to protect, capability expansion, conversion factors, participation, transparency, and intersectoral coordination. Each reported action is examined according to what it appears to provide, which capability it could plausibly expand, and which contextual barriers may prevent this conversion. This procedure allows the manuscript to move beyond mere description of governmental initiatives without pretending to possess impact data that the Report itself does not provide.

A central methodological distinction used in the analysis is the distinction between inputs, outputs, functionings, and capabilities. Inputs refer to resources and institutional means, such as budgets, programmes, training activities, or councils. Outputs refer to immediately observable products, such as courses offered, meetings held, or beneficiaries registered. Functionings refer to achieved states, such as being educated, being safe, being able to participate in a council, or having access to health. Capabilities refer to the real freedom to choose among valuable functionings. The analysis gives priority to the last two categories because they are closer to substantive justice.

The article also adopts a principle of evidentiary modesty. Since the Voluntary Local Report is produced by the government whose action is being assessed, the Report is not treated as neutral or exhaustive evidence. It is a necessary institutional source, but it is also a text that reflects governmental priorities, selection criteria, and narrative choices. The article therefore asks what the Report shows, what it does not show, and what complementary information would be required to evaluate real capability expansion. This critical posture addresses the reviewer's concern that the earlier version used the Report too authoritatively.

The normative criteria are not imposed arbitrarily. They are drawn from constitutional commitments, international human rights standards, the Sustainable Development Goals, and the capability approach. The criterion of suitability asks whether the measure can plausibly expand the targeted capability. The criterion of necessity asks whether a more effective or less exclusionary alternative exists. The criterion of proportionality in the strict sense asks whether the allocation of public resources and institutional effort is justified in light of the seriousness of the deprivation addressed. These criteria translate the duty to protect into a method for policy review.

Finally, the article recognises that a complete evaluation of SEIRDH/PA would require additional empirical techniques, including interviews with beneficiaries, fieldwork in quilombola and riverine communities, analysis of budget execution, georeferenced indicators, and disaggregated longitudinal data. The present study is therefore best understood as a normative and analytical framework that can guide future empirical work. Its contribution is to clarify what should be measured, why it should be measured, and how such measurement can be connected to constitutional obligations and human rights accountability.

4. The constitutional duty to protect and the 2030 Agenda

4.1. The duty to protect in Brazilian constitutional law

The theory of fundamental rights understands constitutional rights as having both subjective and objective dimensions. The subjective dimension protects individuals against violations. The objective dimension structures the legal order and imposes duties on public authorities to prevent, reduce, and remedy threats to fundamental rights. In the case of racial inequality, this means that the State cannot limit itself to punishing isolated discriminatory conduct. It must address the institutional and structural conditions that reproduce exclusion.

The 1988 Constitution provides the basis for this duty. Human dignity, citizenship, equality, and the constitutional objectives of reducing social and regional inequalities require State action. In addition, the recognition of quilombola land rights and the subsequent statutory framework for racial equality demonstrate that racial inclusion is not an optional administrative preference. It is a constitutional and legal obligation directed at the transformation of historically unequal structures.

This duty is strengthened by the prohibition of insufficient protection. When a State adopts merely symbolic, fragmented or ineffective measures in the face of a serious violation, it may fail to fulfil its constitutional responsibility. For SEIRDH/PA, the relevant issue is therefore not only whether programmes exist, but whether those programmes are suitable and necessary to remove barriers that constrain the capabilities of Black, quilombola, and riverine communities.

4.2. The 2030 Agenda as an interpretive framework

The 2030 Agenda gives additional content to this constitutional duty. Its central commitment to leaving no one behind requires public policies to identify those who are most exposed to deprivation and to disaggregate action by territory, race, gender, age, and other relevant markers of inequality. In the Amazon, this principle has particular force because the same policy may have very different effects in Belém, in a rural municipality or in an isolated riverine community.

The Sustainable Development Goals (SDG) most directly related to SEIRDH/PA's mandate include SDG 5 on gender equality, SDG 10 on reducing inequalities and SDG 16 on peace, justice, and strong institutions. However, the capability approach shows that these goals should not be read in isolation. Education, health, land security, public security, transport, digital connectivity, and political participation are interconnected conditions of substantive freedom. This interdependence makes racial equality policy necessarily intersectoral.

Cooperative federalism is therefore essential. The State of Pará can create institutional mechanisms and programmes, but many negative conversion factors depend on coordinated action by the Union, municipalities, and sectoral agencies. A capability may be limited by the absence of river transport, the lack of internet connection, unsafe land tenure, discriminatory treatment in public services, or the failure to include communities in decision-making forums. The duty to protect must accordingly be understood as a shared constitutional responsibility.

In contexts of structural inequality, the duty to protect has a preventive and transformative character. It is preventive because public authorities must reduce foreseeable risks to rights before violations become irreparable.

It is transformative because the State must act upon the institutional conditions that make some groups persistently more exposed to harm than others. Racial inclusion policies are thus not merely compensatory benefits; they are instruments through which the constitutional order attempts to correct the unequal distribution of vulnerability.

The prohibition of insufficient protection is especially relevant because it focuses attention on omission, under-inclusion, and symbolic action. A public policy may appear constitutionally legitimate in formal terms and still fail if it does not address the central obstacle to the right at stake. For example, a programme aimed at economic autonomy may be insufficient if it ignores land insecurity, transport costs, or discriminatory access to markets. A programme aimed at participation may be insufficient if meetings are held far from communities or in formats that exclude those without internet connectivity.

Proportionality provides a disciplined way to examine these failures. Suitability requires more than a plausible connection between means and ends; it requires a reasoned explanation of how the chosen action is expected to expand a protected capability. Necessity requires comparison with alternatives, including intersectoral alternatives that may lie outside SEIRDH/PA's direct institutional competence. Proportionality in the strict sense requires attention to priorities: where the most serious deprivation is bodily insecurity, for instance, productive inclusion may need to be coordinated with public security and land regularisation before it can become meaningful.

This analysis does not imply that courts or audit bodies should replace administrators in designing social policy. The point is more precise: where fundamental rights are at stake, administrative discretion must be justified in constitutional terms. The State must show that it considered the factual conditions of the affected communities, identified the relevant conversion barriers, selected measures capable of removing those barriers, and created mechanisms for public accountability. Without such justification, discretion risks becoming a shield for inertia.

The 2030 Agenda reinforces this constitutional reading because the commitment to leaving no one behind is incompatible with aggregate indicators that hide racial and territorial inequalities. If average educational access improves while quilombola youth remain excluded, the policy cannot be considered successful from the standpoint of the most vulnerable. If institutional strengthening occurs without meaningful participation by Black and quilombola communities, SDG 16 is satisfied only formally. The Agenda therefore supports a disaggregated and capability-centred interpretation of the duty to protect.

The federal dimension of the Brazilian State also matters. Many capability deprivations in Pará are produced at the intersection of State, federal, and municipal responsibilities. Land regularisation, public security, education, health, river transport, internet infrastructure, and social assistance do not belong to a single administrative silo. A racial equality secretariat may have symbolic and coordinating importance, but it cannot by itself remove all conversion factors. The constitutional idea of cooperative federalism must therefore be read as a duty of coordinated capability expansion.

5. Justice as an expansion of capabilities

The capability approach begins from a simple but powerful insight: what matters for justice is not only what people possess, but what they are genuinely able to do and to be. A resource-centred view may count the number of courses offered, grants distributed, or meetings held. A capability-centred view asks whether those measures increase the actual freedom of the persons and communities for whom the policy was designed.

This distinction is crucial in the Amazon. A productive inclusion programme may appear successful if it transfers equipment or seed funding. Yet its real value depends on whether beneficiaries can access markets, transport goods, secure land, communicate digitally, and avoid violence or discriminatory treatment. The same resource may generate different outcomes because people differ in health, education, location, social status, exposure to racism, and access to complementary public services.

Structural racism can therefore be understood as a negative conversion factor. It reduces the rate at which resources are converted into capabilities. It does so through prejudice in public services, unequal access to decision-making, school exclusion, labour market discrimination, symbolic devaluation, land insecurity, and violence. Public policy must consequently be assessed not only by delivery, but by its capacity to remove these barriers.

Sen's account of agency is also important. Development as freedom is not limited to welfare gains supplied from above. It includes the ability of persons and communities to act, organise, deliberate, and shape the institutions that affect their lives. In this sense, councils, forums, and participatory mechanisms should not be treated as secondary outputs. They are capability-expanding institutions when they give affected groups effective control over the public decisions that condition their future.

The capability approach also clarifies why equality of opportunity cannot be reduced to formal access. A university quota, for example, can expand educational capability only if students from marginalised communities are able to complete basic education, travel to the institution, access digital tools, remain financially supported, and experience the university as an environment in which their dignity is recognised. Otherwise, the formal opening of a place may not become a real opportunity. The same reasoning applies to public employment, credit, political councils, and training programmes.

The distinction between capability and functioning also protects freedom of choice. Public policy should not force a single model of development upon quilombola or riverine communities. The objective is not to make all communities adopt the same economic activity, the same urban trajectory, or the same form of political organisation. The objective is to expand the range of valuable options available to them, including the option to preserve collective ways of life, to participate in markets on fair terms, to remain in the territory with dignity, or to pursue higher education without abandoning community identity.

Adaptive preferences make this analysis more demanding. In contexts of historical deprivation, individuals and communities may lower expectations because they have learned that certain goods are not realistically available to them. A purely subjective measure of satisfaction may therefore hide injustice. The capability approach avoids this problem by asking whether the person had genuine alternatives, not only whether the person reports acceptance of the existing situation. This is particularly relevant where racial exclusion has been normalised over generations.

Conversion factors are the analytical key to the Amazonian setting. Personal factors include health, disability, age, language, and educational background. Social factors include racism, gender hierarchy, institutional distrust, violence, market discrimination, and the absence of representation. Environmental factors include distance, river seasonality, precarious roads, internet instability, energy supply, and land conflict. A capability-based public policy must identify these factors before designing interventions, because the same programme will not have the same effect across different territories.

This approach also requires attention to intersectionality. Black women, quilombola women, and young people in remote territories may experience capability deprivation through combined forms of race, gender, age, class, and territorial exclusion. A policy that treats the Black population as internally homogeneous risks reproducing inequalities within the group. For example, the capability to participate in councils may be limited by care responsibilities, domestic violence, travel costs, or the absence of childcare. A capability metric therefore requires disaggregated indicators and participatory diagnosis.

Agency is the final element that prevents the capability approach from becoming paternalistic. Development as freedom means that communities are not merely recipients of State action; they are agents capable of evaluating, contesting, and reshaping the policies that affect them. SEIRDH/PA's effectiveness should therefore be measured partly by whether it strengthens collective organisation, creates channels for deliberation, supports community leadership, and allows public policies to be revised in light of local knowledge. Participation is not an accessory to capability expansion; it is one of its central forms.

These elements allow the article to reinterpret racial inclusion as a constitutional policy of freedom. The State does not fulfil its duty by announcing programmes alone. It fulfils its duty when those programmes alter the practical horizon of the people affected: when a young quilombola person can realistically access education, when a community leader can participate without fear, when a Black woman can use public services without humiliation, when a collective territory can plan its future, and when public institutions become accountable to those who historically remained invisible.

6. SEIRDH/PA, the 2024 Voluntary Local Report, and capability-based evaluation

6.1. From reported actions to capability categories

The 2024 Voluntary Local Report identifies the State of Pará's efforts to align its policies with the Sustainable Development Goals. For the purposes of this article, the relevant analytical step is to move from the language of programmes and reported actions to the language of capabilities. This translation does not deny the importance of administrative outputs. It clarifies that outputs are only intermediate means. The decisive question is whether they expand real opportunities for historically marginalised groups.

Table 1 illustrates this translation. It should be read as an analytical map rather than as a definitive finding of impact, because the Voluntary Local Report does not provide enough independent outcome data to establish causality.

Table 1. Mapping reported SEIRDH/PA actions to capability categories

Reported action or programme	Related SDGs	Capability-oriented outcome
Racial quotas or affirmative measures in public employment and education	SDG 4; SDG 10	Practical reason, education and the freedom to choose valued life plans
Support for productive projects in quilombola and traditional communities	SDG 8; SDG 10	Control over one's environment, economic agency, and community autonomy
Training of public security and service agents on institutional racism	SDG 10; SDG 16	Bodily integrity, equal treatment, and freedom from discriminatory state action
Councils, forums, and participatory mechanisms for racial equality	SDG 10; SDG 16	Affiliation, political participation, and collective agency

6.2. *Negative conversion factors in the Amazon*

The core weakness of an output-centred report is that it may understate the difficulties of conversion. In Pará, policy resources are mediated by geographical, institutional, and social factors. These factors can transform an apparently adequate measure into an insufficient one. A public policy that is adequate in the capital may be insufficient in a distant community if the cost of transport, lack of connectivity, or fear of violence prevents access to its benefits.

Table 2 identifies focal capability deprivations and the conversion factors that may limit SEIRDH/PA's effectiveness. These categories also indicate where further empirical research and disaggregated indicators are needed.

Table 2. Capability deprivations, conversion factors, and policy implications

Capability deprivation	Critical conversion factor	Implication for SEIRDH/PA
Bodily integrity and security	Agrarian conflict, gendered violence, and weak State presence	Racial inclusion policy is insufficient if communities cannot live, move, and organise without fear. Coordination with public security, land agencies, and human rights protection mechanisms is essential.
Control over one's environment	Land insecurity, freight costs, and limited market access	Productive inclusion will not become economic autonomy unless land rights, infrastructure, and distribution channels are addressed.
Practical reason and education	Educational inequality, digital exclusion, and distance from higher education institutions	Affirmative access must be accompanied by conditions for permanence, connectivity, and prior educational strengthening.
Affiliation and self-respect	Institutional racism in health, justice, education, and administrative services	Training cannot remain isolated; anti-racist protocols, complaint mechanisms, and monitoring of public service delivery are necessary.

6.3. Critical reading of the Voluntary Local Report

The Voluntary Local Report has value as an accountability instrument because it publicly organises State initiatives within the SDG framework. It also helps identify the institutional location of racial equality policy within the State administration. Nevertheless, the Report should be read critically for at least three reasons.

First, it is self-reported. Its categories tend to reflect governmental priorities and may not capture the experience of beneficiaries. Second, it is predominantly descriptive. It reports actions, projects, and alignments, but does not always provide disaggregated outcome indicators that reveal whether capabilities were expanded among Black, quilombola, and riverine populations. Third, it cannot by itself explain conversion failures. A course offered, a forum held, or a programme created may be relevant, but the decisive question is whether the intended public could access it and convert it into freedom.

A capability-based reading therefore requires complementary indicators: participation rates disaggregated by race, gender and territory; evidence of changes in access to services; measures of safety for community leaders; data on permanence and success in education; and qualitative accounts from affected communities. Without this evidentiary thickening, the Report remains an important but incomplete basis for evaluating substantive justice.

The Report's value lies in making visible the State's intention to align public administration with the SDGs. Its limitation lies in the fact that alignment is not the same as transformation. A reported action may be correctly associated with SDG 10, for example, without demonstrating that racial inequality has been reduced in the lived experience of the target population. The capability approach therefore treats SDG alignment as the beginning of the analysis, not its conclusion.

For each reported action, three evaluative questions should be asked. First, which deprivation is the action intended to address? Second, which capability is expected to expand if the action is successful? Third, which conversion factors may prevent the action from producing that capability? This sequence is important because it prevents the analysis from confusing institutional effort with human development. It also allows oversight bodies to identify when a programme fails not because its objective is wrong, but because its design ignores the conditions of conversion.

Training public servants on institutional racism illustrates this point. As an output, training can be counted by the number of sessions, participants, or hours. As a capability-oriented policy, however, its success depends on whether discriminatory treatment in public services decreases, whether complaints are processed effectively, whether Black and quilombola citizens feel safer in institutional spaces, and whether public agencies modify procedures that previously produced unequal access. The capability at stake is affiliation and equal respect, not merely administrative awareness.

Productive inclusion projects raise a different set of concerns. A project may deliver resources to communities while leaving intact the barriers that prevent economic autonomy. If the community cannot transport products, access stable markets, obtain technical assistance, guarantee land security or participate in value chains on fair terms, the input does not become control over one's material environment. The policy then risks producing dependency rather than agency. A capability-based approach would require the Report to explain how logistical and market barriers were addressed.

Participatory councils and forums should also be read critically. Their mere existence does not guarantee democratic agency. Participation becomes a capability only when affected communities can set agendas, understand the information provided, speak without intimidation, influence decisions and monitor implementation. In the Amazon, this requires attention to travel, language, internet access, meeting schedules, gendered care responsibilities and the distribution of power inside deliberative spaces. Without these conditions, participation may become consultative ritual rather than political capability.

The same logic applies to racial quotas and access policies. Quotas represent a strong legal instrument of affirmative action, but their capability effect depends on permanence policies, mentoring, recognition of cultural belonging, anti-racist institutional climates, and bridges between education and employment. An output-centred report may indicate vacancies or rules adopted. A capability-centred report should indicate whether beneficiaries entered, remained, graduated, gained access to public careers, and perceived the institution as a space of equal dignity.

The next generation of reporting should therefore combine quantitative and qualitative indicators. Quantitative indicators are necessary to monitor scale, territorial distribution, and racial disaggregation. Qualitative indicators are necessary to understand whether beneficiaries perceive actual changes in their freedom, security, voice, and dignity. The combination would make the Voluntary Local Report more robust, because it would connect administrative accountability to the experience of those whose rights the State seeks to protect.

One practical way to improve the Report would be to include a short capability matrix for each major programme. The matrix would identify the target group, the deprivation addressed, the capability to be expanded, the main conversion barriers, the intersectoral partners involved, the evidence of outcome, and the mechanism for beneficiary feedback. This would not require abandoning the SDG structure. It would deepen the SDG structure by connecting each goal to concrete human freedoms and to the constitutional duty of racial protection.

7. Hermeneutic dialogue and the effectiveness of rights

The interpretation of human rights in contexts of structural inequality cannot be reduced to formal subsumption. Open constitutional principles such as dignity, equality, and the duty to protect require judgment. Hart's account of the open texture of law explains why legal language often leaves room for discretion (Hart 2012). Dworkin's response is that discretion must be disciplined by principles and by the demand that law be interpreted in its best moral light (Dworkin 2011).

For racial inclusion policy in the Amazon, however, the best moral interpretation of law cannot be produced from the standpoint of the administrator alone. Gadamer's philosophical hermeneutics shows that understanding requires a fusion of horizons: the interpreter must bring the constitutional norm into dialogue with the lived reality of those affected by the policy (Gadamer 2004). The perspective of quilombola and riverine leaders is not a merely consultative ornament. It is a condition for understanding what the deprivation actually is.

This point has direct administrative consequences. If the greatest deprivation in a community is fear generated by land conflict, a productive project may be insufficient unless bodily integrity and territorial security are first addressed. If the principal barrier is digital exclusion, a training policy may fail unless connectivity and transport are part of the design. Practical judgment therefore requires sensitivity to context. Aristotle's notion of phronesis captures this capacity to deliberate about what is good and feasible in concrete circumstances (Aristotle 2009).

The capability approach supplies the ethical content of this practical judgment. It asks whether a policy interpretation expands real freedom and removes negative conversion factors. If the answer is negative, then the policy may comply with formal legality while still failing the constitutional demand of substantive equality. The duty to protect is thus best understood, in this field, as a duty to design, implement, and revise policy through participatory interpretation and capability-based evidence.

The hermeneutical dimension is necessary because capability deprivation cannot always be perceived from the centre of administration. A policy designed in an urban office may assume that access, information, and institutional trust already exist. Communities located far from administrative centres may experience the same policy through delays, costs, insecurity, and distrust. The fusion of horizons requires that the administrator's legal and bureaucratic horizon encounter the community's horizon of lived exclusion, so that the meaning of the right is reconstructed in context.

This does not mean that constitutional interpretation becomes relativistic. Dworkinian integrity prevents fragmentation by requiring the interpreter to connect each policy decision to the broader constitutional commitment to equality and dignity. Gadamerian hermeneutics prevents abstraction by requiring the interpreter to recognise that the meaning of those commitments becomes concrete only when applied to real histories of exclusion. The two approaches are complementary: integrity supplies coherence, while hermeneutics supplies contextual openness.

The capability approach gives practical content to this dialogue. When different policy options are available, the interpreter should ask which option most effectively expands real freedom for those most exposed to deprivation. This question disciplines administrative discretion without eliminating it. It does not prescribe a single universal policy, but it requires public authorities to justify why a chosen policy is adequate in light of the community's actual barriers. The burden of justification increases where the affected group is historically marginalised.

Phronesis, or practical judgement, is therefore central to the argument. In the Amazon, a prudent administrator cannot simply replicate a policy model that worked in a metropolitan context. Practical judgment requires attention to seasonality, river routes, collective land relations, local leadership, linguistic forms, gendered responsibilities, religious and cultural practices, and the history of violence or distrust between communities and public agencies. A policy that ignores these factors may be formally rational and substantively inadequate.

This hermeneutical account also has implications for judicial and audit review. Courts and audit institutions should not ask only whether the administrator had legal competence or whether budgetary procedures were followed. They should ask whether the decision-making process considered the relevant horizons of affected communities, whether the State justified its priorities with evidence, and whether the measure is capable of expanding the rights at issue. This type of review respects institutional roles while refusing to treat formal legality as sufficient where substantive freedom is absent.

In this sense, the proposed duty of capacitation is not an additional right invented outside the Constitution. It is a way of reading existing rights under conditions of structural inequality. Where racism limits the ability to move safely, learn, work, participate, access justice, or preserve territory, the State's duty to protect must be evaluated by its capacity to remove those limits. Hermeneutics explains how the interpreter identifies the concrete meaning of protection; the capability approach explains what kind of result protection must seek.

8. Conclusion: A framework for capability-based oversight

This article has argued that the public policy of SEIRDH/PA is a necessary institutional expression of the constitutional duty to protect racialised and historically marginalised groups in the Amazon. Yet it has also argued that the existence of an institution and the reporting of activities are not enough. The effectiveness of racial inclusion policies must be assessed by whether they expand the capabilities of Black, quilombola, and riverine communities.

The central conclusion is that the constitutional duty to protect should be read, in this field, as a duty to expand capabilities. This does not replace legal analysis with moral aspiration. It gives material content to proportionality, due diligence and the prohibition of insufficient protection. A policy is more constitutionally adequate when it demonstrably removes barriers that prevent people from exercising real freedoms.

The following framework operationalises this conclusion for oversight institutions, courts, public administrators, and civil society.

Table 3. Capability-based framework for monitoring racial inclusion policies

Axis	Theoretical basis	Central question	Operational indicators
Regulatory axis: due diligence	Duty to protect and proportionality	Did the State adopt suitable, necessary, and justified measures to protect rights?	Existence of legal mandate; adequacy of programme design; justification of priorities; transparency of budget and decision-making; evidence of intersectoral coordination.
Ethical axis: capability expansion	Sen and Nussbaum's capability approach	Did the policy expand real capabilities among the most vulnerable groups?	Disaggregated outcomes in education, health, security, political participation, land access and economic agency; evidence that conversion barriers were reduced.
Methodological axis: participatory interpretation	Gadamerian hermeneutics and Dworkinian integrity	Was the policy formulated and revised through a process that listened to affected communities and remained coherent with constitutional equality?	Active consultation with quilombola, Black, and riverine leaders; incorporation of community diagnoses; complaint channels; public revision of failed measures; consistency with anti-racist constitutional commitments.

For SEIRDH/PA, the practical implication is a shift in indicators. Future reports should move beyond counting inputs and activities and should include capability-oriented outcomes. The relevant questions include whether quilombola leaders are safer, whether Black women participate more effectively in councils, whether young people from marginalised communities remain in education, whether productive projects generate autonomy, and whether public services reduce rather than reproduce institutional racism.

For the judiciary and courts of auditors, the framework offers a way to review public policies without replacing the administrator. It does not require courts to design policy directly. It requires them to ask whether public power has justified its choices, considered the lived reality of the affected communities, and produced evidence that the policy expands substantive freedom. This is a form of review grounded in constitutional rationality, not in political preference.

Finally, for cooperative federalism, the framework shows that racial inclusion in the Amazon cannot be achieved by one secretariat alone. Capabilities are produced or blocked by the interaction of land policy, infrastructure, education, health, security, digital inclusion, and participatory governance. The promise of dignity and equality will become real only when these sectors act together and when the voices of those most affected by racial exclusion shape the meaning of public policy.

The framework proposed here should be understood as a tool for institutional learning. It is not only a mechanism for blaming the State when policies fail. It is also a method for improving policy design. By identifying conversion factors, the State can learn why an action that appears adequate on paper may fail in practice. By listening to affected communities, it can identify barriers that would otherwise remain invisible. By measuring outcomes rather than only outputs, it can redirect resources towards measures that produce real freedom.

For SEIRDH/PA, the first recommendation is to make capability language explicit in planning and reporting. Each programme should identify which capability it seeks to expand and which deprivation it seeks to reduce. The second recommendation is to require intersectoral commitments from partner agencies, because racial inclusion depends on education, health, public security, land policy, infrastructure, and digital inclusion. The third recommendation is to adopt disaggregated indicators by race, gender, territory, and community belonging, so that the principle of leaving no one behind can be verified rather than merely affirmed.

For civil society, the framework provides a vocabulary for demanding accountability. Communities and social movements can ask whether reported actions changed the conditions of daily life: whether access became easier, whether fear decreased, whether voices were heard, whether public servants treated beneficiaries with equal respect, whether young people could remain in education, and whether collective territories gained greater security. These questions translate human rights into experiential terms without losing their constitutional force.

For academic research, the article opens a future agenda. The framework should be tested through fieldwork, interviews, participatory observation, and analysis of budgetary and territorial data. Future studies could compare municipalities, examine specific programmes, assess the participation of Black women in councils, or investigate whether productive inclusion initiatives actually increase economic agency. Such empirical research would strengthen or revise the normative model proposed here, transforming it into a cumulative research programme on racial justice and human development in the Amazon.

The main contribution of the article is therefore not the claim that SEIRDH/PA has already achieved racial justice. The contribution is the development of a way to ask the right evaluative questions. In a region where constitutional promises often encounter geographical distance, institutional weakness, and historical racism, the effectiveness of human rights depends on the ability to measure what matters: the expansion of real freedom. Only when racial inclusion policies are judged by that standard can sustainable human development become a lived reality rather than an administrative slogan.

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Oriana Campbell-Palmer. "The limits of recognition: The Convention on the Rights of Persons with Disabilities, intersectional discrimination and Article 6" (2025) 9 47–60 *Global Campus Human Rights Journal* https://doi.org/10.25330/3234

The limits of recognition: The Convention on the Rights of Persons with Disabilities, intersectional discrimination and Article 6

Oriana Campbell-Palmer[*]

Abstract: *The Convention on the Rights of Persons with Disabilities (CRPD) has been undeniably groundbreaking in advancing the legal rights of disabled people on international agendas. In particular, Article 6 – titled "Women with disabilities" – has also helped to ensure that the legal protection of disabled women was firmly situated and recognised within that agenda. However, via a socio-legal approach, this article argues that overall the CRPD is limited in its contribution, recognition, and approach to intersectional discrimination or intersectionality regarding disabled women or Article 6. Moreover, not only is the CRPD's contribution to intersectional approaches limited, but it also appears exclusionary in some places (towards some groups of disabled women). To argue this, this article highlights normative treaty limitations, limitations to interpretive expansion by the CRPD Committee, and domestic implementation failures. It firstly examines the substantive articles of the CRPD, including the content of Article 6 itself, and the subsequent impact on conceptualisations of associated legal concepts, including legal capacity and integrity. It then assesses the impact of the CRPD Committee, and finally examines the effect of the CRPD in international legal contexts, with specific focus on case studies from the United Kingdom and South Africa. Through these last two sections, the article also shows that the CRPD's contribution to intersectional discrimination is largely dependent on certain factors, such as time and domestic political context.*

*Oriana Campbell-Palmer is a socio-legal researcher specialising in disability studies and forced migration. Her research focuses on the politics of exclusion through the lens of international and domestic human rights law, with particular interests in the principles of integrity and dignity, intersectional discrimination, accessibility, and qualitative socio-legal methods. She holds an LLM in International Human Rights Law (University of Leeds, 2024) and a BA in Politics and Sociology (University of Leeds, 2023). Thank you to the teaching staff, especially to Dr. Maria Orchard and Professor Anna Lawson, at the University of Leeds for their impactful teaching and guidance on this topic during my LLM. Thank you to the Campbell-Palmers – Gayleaf, Julian, Ozby, and Lily – for their constant support and encouragement.

Keywords: *Convention on the Rights of Persons with Disabilities (CRPD); intersectional discrimination; the politics of exclusion, socio-legal analysis; Article 6 of the CRPD; disabled women; legal recognition*

1. Introduction

This article argues that whilst the Convention on the Rights of Persons with Disabilities (CRPD) recognises intersecting identities to an extent, the CRPD is limited in its contribution, recognition, and overall approach to intersectional discrimination or intersectionality in the context of Article 6. This article also highlights that not only is the CRPD's contribution to intersectional approaches limited, but also to an extent exclusionary (for some groups of disabled women). To argue this, the article begins with contextualising arguments by outlining key definitions and recognising the importance of language. It then moves to highlight the differences between normative treaty limitations, limitations to interpretive expansion by the Committee on the Rights of Persons with Disabilities (CRPD Committee), and domestic implementation failures. It firstly discusses some substantive articles within the CRPD, highlighting technical issues and their implications on related concepts such as legal capacity and integrity. In doing so, this article also calls attention to groups of disabled women who have been excluded due to limitations of the CRPD's intersectional approach. It then moves to an analysis of more contextual aspects of the treaty, discussing the valuable contributions of the CRPD Committee, in addition to its interpretive limitations. It lastly assesses the CRPD's contributions to intersectional approaches in international legal spheres regarding Article 6, the United Kingdom (UK) and South Africa. These last two sections also highlight that the CRPD's contribution to intersectional discrimination is largely dependent on certain factors, such as domestic political context and implementation.

1.1. Language, definitions and intersectionality

When referring to disability, this article uses language associated with the social model of disability, which argues that people are dis-abled by societal barriers (Oliver 1996), moving the focus from impairment and individual responsibility to societal responsibility. This article uses phrases such as "disabled people" instead of "people with disabilities" to reflect this. However, language around disability can be extremely subjective and personal, and this may not be the preferred terminology for everyone.

This article defines discrimination in the context of the legal norms of discrimination law and of the protection of rights contained in the CRPD. Discrimination in this context refers to when groups or individuals are treated differently and/or are disadvantaged on the basis of certain protected grounds (Khaitan 2015, 23), such as disability or gender. The commitment to non-discrimination is outlined in the CRPD in the preamble and Article 5.

As a concept, intersectional discrimination was first coined in the context of gender and critical race theory by Kimberlé Crenshaw. Her work has become a powerful analytical tool to aid marginalised groups in society, and this article adopts her definition of intersectionality as relating to "the ways that multiple forms of inequality or disadvantage sometimes compound themselves and create obstacles" (Crenshaw 1989, 149). Within this definition, discrimination and disadvantage operate against the "multidimensionality" (Crenshaw 1989, 139) of people who are not part of traditionally privileged groups. The intersectional discrimination experienced from these compounded obstacles based on intersecting identities is not simply experienced as a "sum" (Crenshaw 1989, 140) of each individual aspect of identity, but cooperates to produce discrimination at a higher level, compared to when they are experienced on singular grounds (De Beco 2020, 593). Intersectionality is a framework that is utilised to examine structural, political, or representational/cultural inequalities, and therefore also systems of power and oppression (Crenshaw 1991, 1241), while intersectional discrimination also examines specific related harm. This article involves discussions of both.

Yet, single-axis approaches, which examine and emphasise discrimination claims on separate and non-intersecting grounds, remain dominant in legal spheres (Atrey 2015b). Single-axis claims highlight multiple discrimination and additive discrimination, or essentially claims where "discrimination may be based on other identities but can be substantially understood as based on a single ground" (Atrey 2019, 84). Intersectionality as a theory currently unfortunately remains somewhat distinct from intersectional discrimination in law, as Crenshaw also pointed out when she argued that discrimination law contains "conceptual limitations of...single-issue analyses" (Crenshaw 1989, 140). The CRPD's contributions to intersectional approaches to discrimination will be assessed in line with the above definitions.

2. Substantive articles and legal concepts

2.1. The emphasis on multiple discrimination and inconsistencies in the "twin-track" approach

Assessing the CRPD's contribution, recognition, and approach to intersectional discrimination or intersectionality regarding Article 6 must begin with the substantive content of the CRPD. Article 6 itself has been described in the literature as the "strongest provision on intersectionality" (De Beco 2020, 12) within the CRPD. This perspective is partially due to Article 6's explicit recognition of multiple identities intersecting with the experience of disability, in addition to its cross-cutting nature with the rest of the treaty (Mykitiuk and Chadha 2018, 171). The CRPD adopts what is now widely referenced as a "twin-track" approach to protection involving women and disability (De Beco 2020), which involves "systematically mainstreaming the interests and rights of women and girls with disabilities" (CRPD General Comment No. 3 2016) across all action plans and issues such as health. This approach is present throughout the CRPD, and can be seen in a specifically targeted emphasis on areas of inequality where disabled women are more likely to be discriminated against. For instance, the preamble emphasises a need to include a "gender perspective" in the reading of the CRPD. Further on, Article 8 mentions a need to combat issues regarding sex and age in accordance with disability, Article 16 recognises the "gender-based aspects" of violence and exploitation and abuse, Article 25 emphasises "gender-sensitive" access to health services, and Article 28 explicitly mentions a need to ensure that women, girls, and older people with disabilities have access to social protection and poverty-related programmes. This appears to conform to an intersectional approach via the recognition that multiple barriers and disadvantages are compounded due to the intersecting nature of gender and disability. Superficially, this appears impressive and advanced when considering that the CRPD's primary focus was to uphold disabled people's rights on political agendas in general to challenge an ableist narrative (WHO 2020). Overall, superficially, there seems to be recognition of the prominent structural inequalities placing disabled women at a severe disadvantage, implying that the CRPD's intersectional approach is robust.

Nevertheless, the lack of full recognition of intersectionality within the CRPD is also abundantly clear and in some ways appears misunderstood, especially in relation to disabled women. Perhaps most importantly, refuting De Beco's (2020) statement above, it is important to recognise that Article 6 and the CRPD explicitly emphasise multiple discrimination, not intersectional discrimination. As the article dedicated to non-discrimination, Article 5 also fails to specify the exact types of discrimination – such as intersectional – that should be protected against, further failing to concretely commit to an intersectional approach. Combined with the above point, this reinforces the idea that discrimination claims based on multiple identities should be examined in line with the dominant single-axis approach. As explained previously, approaches to multiple discrimination do not equate to intersectional discrimination, highlighting a limited commitment to and recognition of intersectionality or intersectional discrimination for disabled women.

This is compounded by a lack of consistency in the "twin-track" approach. For instance, as pointed out by Mykitiuk and Chadha (2018), women are not mentioned in articles regarding family, education, employment, and humanitarian contexts. This is despite the fact that disabled women and girls are more likely to have their education restricted in comparison to other groups due to both their gender and disability (Ghosh et al. 2022).

Whilst the CRPD does recognise "gender-based aspects" in relation to Article 16, substantive articles fail to explicitly recognise and emphasise the sexual abuse of disabled women and girls. This is arguably most relevant to Article 11, which addresses humanitarian contexts. Viewing Article 11 in the context of forced displacement emphasises the need for, and questions the lack of, explicit intersectional recognition. For instance, forcibly displaced people are more likely to become disabled (Migration Data Portal 2023), whilst disabled women and girls are more likely to be sexually abused and exploited in humanitarian contexts (Holden et al. 2019). Imbalanced power relations, food insecurity, and geographical aspects such as isolation of hydration areas in refugee camps have also been found to increase discrimination and abuse of refugee women (Rohwerder 2022). Officially recognising how intersectional discrimination can occur or recognising intersectional aspects of experiences in these contexts could result in a higher degree of social justice. In this way, the CRPD also appears to inadvertently exclude different groups of disabled women. By omitting important substantive qualifications, the treaty fails to recognise specific political structures and contexts where discrimination could be more seriously experienced for some groups of disabled women.

In a similar vein, the treaty is also limited in the extent to which it is willing to extend an intersectional approach to other groups of disabled women alongside forcibly displaced disabled women. Common critiques in discussions of the CRPD's contributions to intersectionality often point to the exclusion of LGBTQIA+ disabled women (Mykitiuk and Chadha 2018), who are not mentioned within the CRPD. As Blyth et al. (2020) powerfully argue, considering the previous dominance of the medical model and its impact on abuse of those with diverse sexualities and genders, this is a major concern. In line with the medical model primarily referring to "impairment" being viewed as the individual's "problem" (Silvers et al. 1998), and not due to societal barriers unlike the social model, being non-heterosexual was considered a mental illness in some countries (Blyth et al. 2020). It remains illegal in many countries, sometimes violating the right to life via the death penalty (Al Jazeera 2023). Considering the above, disabled gay women are therefore at more risk of discrimination in some countries than heterosexual disabled women. Thus, the related absence of a fully established protective intersectional approach in the CRPD is concerning.

2.2. *The impact on legal concepts*

The above lack of explicit recognition of certain groups of disabled women within the substantive content of the CRPD also inevitably affects its ability to theoretically promote and protect certain legal concepts, further limiting its intersectional approach. Legal capacity and integrity are central concepts here, and are outlined in Articles 12 and 17 respectively. In Article 12, an intersectional approach is only hinted at via mention that safeguards for legal capacity must be "proportional and tailored to the person's circumstances" (CRPD 2006, Article 12(4)). This fails to recognise how intersectional discrimination can affect the perception of an individual's circumstances and legal capacity. Comparatively, integrity is fundamentally about respect for "wholeness" (Atrey 2015a, 1519), viewing individuals "just as they are" (Equality and Human Rights Commission 2010), and thus related to capacity. Atrey (2015b, 101) interestingly and logically argues that upholding the intersectional integrity of the person as a *whole* and thus examining their linked identities is key when successfully addressing intersectional discrimination, while also critiquing the common single-axis approach. Yet, integrity is arguably assigned even less importance as both a concept and regarding intersectionality, with Article 17 summarised in one sentence: "Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others." The lack of explicit recognition of different groups of disabled women here, particularly for those who identify as LGBTQIA+, excludes those who cannot challenge intersectional discrimination due to the criminalisation of some sexualities. In these domestic contexts, they are not afforded recognition before the law as a whole multidimensional person in specific political contexts. While the CRPD set out to recognise existing rights for disabled people and therefore did not intend to generate new rights, this nevertheless hinders the CRPD's ability to fully adopt an intersectional approach and encourage comprehensive protection. This also actively threatens corresponding legal principles and concepts.

However, it is important to recognise that many CRPD articles are designed to complement each other. As Seatzu (2018, 494) argues, integrity is a very broad concept yet it is mostly focused on in the context of mental and physical protection. This argument is bolstered by the fact that Article 17 should be read in conjunction with Articles 15 and 6 specifically for the protection of disabled women against sterilisation (Seatzu 2018, 494), and "on an equal basis with others" (CRPD 2006, Article 17). Yet, the phrasing "with others" implicitly assumes that all disabled people are the same, and that therefore reaching an "equal basis" is equally attainable. Utilising Atrey's (2015a and 2015b) conceptual analysis, this conveys a failure to recognise disabled people as complex and different human beings. This also affects the comprehensive protection and dignity of being a disabled woman with intersecting identities, affecting the robustness of Article 12, and perhaps controversially refuting what Quinn and Arstein-Kerslake (2012, 39) hail as a "community" perspective of the disabled person within the CRPD. This also affects the status of the CRPD as being the embodiment of a human rights model of disability, as argued by Degener (2017, 19), or at least as existing in conjunction with the social model within the CRPD (Lawson and Beckett 2021, 348), due to this damage to the concept of human dignity via the lack of acknowledgement of difference. Whilst admittedly difficult to recognise all identities, a sentence explicitly incorporating the need to recognise intersectionality, and not solely multiple discrimination, would make the CRPD's contribution to the protection of *all* disabled women stronger. Without this, the CRPD's intersectional approach regarding the protection of disabled women remains narrow.

3. The CRPD Committee

A key aspect that must be analysed to assess intersectional approaches in the CRPD is the CRPD Committee and its interpretative contributions. It must be recognised that the Committee has made impressive contributions to intersectional approaches in international contexts. For instance, General Comment No. 6 (2018), and General Comment No. 3 (2016), are extremely powerful in clarifying the normative interpretation of the CRPD regarding intersectionality (Mykitiuk and Chadha 2018). Paragraph 36 of General Comment No. 6 (2018) recognises that although Article 6 only mentions multiple discrimination, this must include combinations of types of discrimination and therefore intersectional discrimination. Paragraphs 19, 21, 22, 32 and 33 emphasise that s tate interpretation and implementation must include provision for, and analysis of, intersectional discrimination and its impact on disabled people. This is particularly highlighted by the emphasis on the diversity of personhood and on intersectional discrimination's impact on disabled women, countering some points made in the section above. Inclusive equality is presented as a key underlying principle that, unlike the formal equality model, embraces substantive equality and therefore recognition of difference and power relations (Stienstra 2023, 354). The Committee's contribution therefore appears to strengthen the CRPD's contribution to intersectional approaches to discrimination, as its corresponding guidance and clarification on intersectionality appear highly significant in comparison to the treaty's substantive articles.

However, there are also gaps in General Comment No. 6 regarding conceptualisations of social justice, which undermine the principle of intersectionality. Stienstra (2023, 354) points to a failure to adequately recognise the need for the decolonisation of disability-related rights in the context of intersectional discrimination. They consequently highlight that General Comment No. 6 fails to recognise the importance of restorative justice, in comparison to transformative justice, as a key contextual principle to uphold the rights of disabled indigenous people and women. Whilst there are debates on which aspect of justice is better to aim for in intersectional contexts (Said 2022), some academics writing in indigenous contexts have suggested that the former is more appropriate when seeking to uphold justice in the face of violence against indigenous women (Zellerer 1999). Considering that violence is higher against disabled indigenous women compared to those without disabilities (Gurung 2022), omitting discussion of this hinders the CRPD's contribution to a fully inclusive intersectional approach for disabled women. De Freitas (2011) has further argued that in indigenous contexts, a lack of specific focus and careful discussion of restorative justice within intersectional approaches can lead to intersectional disempowerment. These issues also almost paradoxically affect the CRPD's relatively mainstream commitment to transformative justice and transformative equality, which relies on the principle of rejecting "sameness" (Fredman 2008, 11) in approaches to challenging inequality. Yet such gaps within the CRPD's intersectional approach, as highlighted above, convey a failure to adequately recognise difference and how differences can intersect to result in further discrimination for disabled women. Therefore, principles and trajectories of justice – and how they can affect different groups of disabled women – should be recognised and discussed further by the CRPD Committee to strengthen its intersectional approach.

On the other hand, the CRPD Committee monitoring mechanisms, such as Concluding Observations, have also sought to significantly address intersectional discrimination against disabled women. The CRPD Committee has consistently explicitly called for State parties - those who are signatories to the convention - to make changes to protect against intersectional discrimination within their domestic systems. This can be seen in almost all recent reports in 2023, such as the Committee's advice to Mauritania regarding the lack of comprehensive definitions that encompass different types of discrimination, including intersectionality, their advice to Israel on their specific failure to uphold Article 6 in an intersectional manner that also recognises all groups of disabled women, and advice to Andorra encouraging the existence of intersectional discrimination in domestic law. LGBTQIA+ people have also been recognised more prominently by CRPD reports, primarily in reference to Articles 5 and 17, although only one report between 2010 and 2020 also referenced Article 6 regarding this (Kirichenko and Król 2022). Admittedly, Kirichenko and Król (2022, 3238) also call for the CRPD to be seen as a "living instrument capable of adjusting", which suggests that in the future the CRPD's contribution to intersectional discrimination regarding Article 6 *could* be made more robust, as its approach is not necessarily static. However, whilst the Committee has made encouraging progress, more needs to be done for the CRPD's approach to intersectional discrimination to be fully comprehensive.

Moreover, the CRPD Committee's "case law" – made possible by ratification of the CRPD Optional Protocol – which addresses complaints focusing on intersectional discrimination, is extremely limited. One rare case relating to Article 6 is the 2019 case of *Z. v. Tanzania*. Ms. Z. was a pregnant woman with albinism who was violently attacked, and whose domestic State justice system had failed her. Although the case would have benefited from an analytically intersectional approach, only multiple discrimination was mentioned and considered. The severity of Ms. Z.'s case could have been further recognised and emphasised by, for instance, recognition of not solely her gender and disability, but also how her marital status including the stigma of being a single mother, which is high in Tanzania (Shitindi and Lubawa 2022, 25), and nationality – and thus nature of the State record of human rights, particularly for pregnant women (Amnesty International 2022) – had interacted to contribute to such shocking levels of discrimination. This could have, albeit optimistically, encouraged more drastic State action and challenges to structural and cultural inequality. Instead, recognition of multiple discrimination led to a finding of a violation of Article 6 in conjunction with Articles 5, 15(1), 16, and 17. At the same time, gender and disability were considered as separate yet somewhat related grounds of discrimination. Overall, efforts towards a truly intersectional approach to discrimination can, and should, be strengthened via the CRPD Committee's interpretations.

4. Domestic implementation failures and the need for State responsibility in building intersectional approaches

Another useful measure of the CRPD's intersectional approach is through assessment of whether States p arties and international bodies have adopted significant and related policy and legislative changes in light of CRPD recommendations on intersectional approaches regarding Article 6. In many instances, intersectionality in law should be "an action-oriented form of practice" (Truscan and Bourke-Martignoni 1995, 103). The CRPD framework and corresponding structures can only do so much: states must also take full responsibility and take adequate action in advancing an intersectional approach to discrimination against disabled women. Therefore, the CRPD and corresponding Committee contributions to an intersectional approach to discrimination against disabled women largely depend on the action and responses to recommendations by individual s tates, meaning that in some ways the Treaty's ability to enforce an intersectional approach is *inherently* limited. This section explores this in relation to the UK and Northern Ireland, and South Africa.

4.1. The United Kingdom and Northern Ireland

The CRPD Committee's (2017) concluding observations on the UK and Northern Ireland included specific reference t o a need f or heightened protection from intersectional discrimination. However, the UK's governmental response failed to include specific mention or discussion of intersectional discrimination and means to protect against it (Department for Work & Pensions and Office for Disability Issues 2019), indicating that the CRPD Committee's power to enforce an intersectional approach is limited beyond a certain point.

Attention must also be paid to the UK's Independent Mechanism monitoring body for the CRPD, which comprises UK human rights experts. Their 2017 shadow report highlighted the intersecting nature of age, poverty and disability regarding social welfare, emphasising a need to protect disabled women from violence in line with General Comment No. 3 (Equality and Human Rights Commission 2017). This contrast suggests that attention to intersectional discrimination is somewhat reliant on political agenda.

Yet when turning to the wider legal field, of 48 cases explicitly referring to CRPD provisions in UK courts, none of them mentioned Article 6 of the CRPD (Lawson and Series 2018, 429). Moreover, some cases that were related to CRPD claims, such as regarding the sterilisation of disabled women, were dropped because the UK had not sufficiently incorporated the CRPD into domestic law (*The Mental Health Trust, The Acute Trust & The Council v. D.D. and B.C.* 2015). This conveys that the ability of the CRPD to encourage perspectives of intersectional discrimination is limited by domestic executive will, compounded by the UK's dualist nature and commitment to parliamentary sovereignty. Applying Sandra Fredman's work, for sufficient justice in the context of disability rights, there needs to be a "political repositioning" (Soldatic and Grech 2014, 8) to encourage intersectionality in UK law. In line with a fully intersectional approach, UK political structures should therefore be challenged to aid intersectional discrimination, and the CRPD should be clearly and sufficiently incorporated into UK law. The fact that there is still an overwhelming need for progress in the UK again indicates that the CRPD is constrained by domestic political contexts regarding its ability to enforce consistent intersectional approaches to discrimination in relation to Article 6. Future progress towards intersectional discrimination regarding Article 6 must include state involvement and accountability. Intersectional approaches cannot solely be achieved through the efforts of the CRPD Committee itself, and states must take further responsibility.

4.2. *South Africa*

South Africa is another useful case study when assessing the CRPD's efforts in approaches to intersectionality regarding Article 6 in domestic legal contexts. South Africa has been hailed as making relatively significant progress in intersectional approaches in law and within its constitution (Atrey 2021, 168). Particularly hailed was the Constitutional Court's ruling on *Mahlangu and Another v. Minister of Labour and Others* and its ruling of indirect intersectional discrimination against domestic workers. This also recognised a backdrop of vulnerability related to other aspects of identity, such as race and class. Superficially, this case coincides with, and therefore suggests active reception of, the Concluding Observations made by the CRPD Committee in 2018 – which called for attention to intersectional discrimination specifically in relation to Article 6. Overall, this indicated the CRPD's significant ability to encourage intersectional approaches to discrimination within South Africa.

However, the *Mahlangu* case did not refer to disability, despite its clear relevance, due to the case involving a partially blind woman. In general, jurists have argued that intersectional approaches are limited in South Africa's domestic justice system, as statistical data examining the occurrence of disability in relation to other identities, such as gender, did not exist for a long time (Emmett and Alant 2006, 445). While this has now changed (The Republic of South Africa Government 2022), a lack of sufficient and comprehensive recognition of intersectional discrimination is compounded by extremely limited disability legislation in South Africa (Basson 2023, 1), which is also arguably compounded by its dualist status. As Waddington and Lawson (2018) importantly point out, State obligations from other international treaties, domestic law, and political and historical context may override or complicate the impact of the CRPD. Overall, the case of South Africa again highlights that the CRPD's ability to encourage approaches to intersectional discrimination within States is indeed complicated by the domestic political and legal context.

5. Conclusion

In conclusion, this article has critically assessed the CRPD's approach to intersectional discrimination or intersectionality regarding Article 6 or disabled women. It has acknowledged that the treaty and its corresponding bodies such as the CRPD Committee have been invaluable, and have also recognised the importance of intersectional approaches to an extent. However, overall, this article has shown that the CRPD is limited in its contribution, recognition, and approach to intersectional discrimination or intersectionality regarding disabled women. It has also shown that not only is the CRPD's contribution to intersectional approaches limited, but also to an extent exclusionary (for some groups of disabled women). To argue this, after outlining key definitions, this article highlighted key issues with the substantive content of the CRPD. It examined the effects of these issues on upholding vital legal concepts, such as integrity. This also involved discussion of groups of disabled women who were not fully recognised, such as forcibly displaced and LGBTQIA+ disabled women, while pointing to the CRPD's emphasis on multiple discrimination alongside inconsistencies in its "twin-track" approach. This article then discussed key contributions and interpretative limitations of the CRPD Committee regarding Article 6 and intersectional discrimination. These were found to be limited regarding Article 6, although some hope remained for improvement over time. This article finally discussed the CRPD's contribution to intersectionality in other legal contexts and domestic implementation, examining the UK and South Africa. Here, the CRPD was found to have a significant impact on approaches to intersectional discrimination regarding Article 6 in some key ways, although the article also recognised that the CRPD was inherently limited in its contributions due to external factors such as the domestic political context. Moving forwards, this article calls for a need for further State responsibility and accountability to assist the development of intersectional approaches. Overall, whilst the CRPD has undeniably significantly improved the recognition of disabled people's rights, at the time of writing, its contribution to intersectional approaches to discrimination regarding Article 6 remains limited.

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Leila Mohaghegh. "Guardians of justice: The ethical and social functions of lawyers in modern society" (2025) 9 61–79 *Global Campus Human Rights Journal* https://doi.org/10.25330/3233

Guardians of justice: The ethical and social functions of lawyers in modern society

Leila Mohaghegh[*]

Abstract: *This study examines the social, ethical, and institutional roles of lawyers in contemporary legal systems and answers the central question of how these roles contribute to strengthening the rule of law, ensuring fair trial, and promoting public trust. The study's theoretical framework is based on concepts such as access to justice and lawyer independence. The research method is qualitative and based on document analysis of national legal sources, international instruments, and academic literature. The findings show that lawyers, in addition to legal representation, play a fundamental role in areas such as monitoring power, law reform, promoting legal awareness, and strengthening public trust. Also, the limitation of the right to a defence in the criminal sphere and inequality in access to legal services are among the main factors contributing to the justice gap. This article first examines the historical and theoretical foundations of the legal profession, then analyses the right to a defence and the role of lawyers in law reform, legal awareness, and public trust, and finally examines the challenges of access to a lawyer and lawyers' role in human rights. The results show that lawyer independence is a fundamental condition for the effective performance of these functions, and without ensuring equal access to legal services, the realisation of justice, and the legitimacy of the legal system will face challenges.*

Keywords: *rule of law; fair trial; access to a lawyer; lawyer independence; role of lawyers; public trust; human rights*

[*]Attorney at Law, Ph.D., in Innovation, Science, Technology and Law, Université de Montréal.
Here I honour the memory of my late father, Ahmad Mohaghegh; a man whose deep belief in justice, honesty, and human values was clearly evident in his life, and who was always considered a model of integrity and moral steadfastness; someone who respected the dignity of the legal profession and its high values.

1. Introduction

The rule of law is a fundamental concept in legal systems, although there are differing views on its precise limits and dimensions. However, there is wider agreement on principles such as due process, equality before the law, and accountability. The realisation of these principles lays the foundation for public trust in legal institutions. In such a structure, lawyers play an important role in ensuring the effective implementation of these values (Moorhead et al. 2023, 2).

The realisation of justice requires that individuals enjoy the “right to counsel” so that they can effectively defend their rights. The presence of a lawyer is not only a means of protecting the accused, but also an essential element in ensuring a “fair trial” and preventing violations of fundamental rights. Equal access to legal services has a direct impact on society’s perception of judicial fairness and, ultimately, on the legitimacy of government institutions. Justice requires that access to a lawyer not be reserved for the wealthy alone and that ordinary individuals be able to obtain legal services (Lintz et al. 2015, 5). The role of a lawyer in protecting citizens’ rights and defending individuals against institutions of power is crucial. Regulations should help address inadequate access to lawyers for those who cannot afford legal services and reduce inequalities in the provision of legal services, as limited access to legal representation constitutes injustice (Wald 2022, 375).

It is important to note that the role of a lawyer extends beyond legal representation to include explaining the law to citizens, monitoring procedural compliance, and preventing the arbitrary use of power. Lawyers use their legal knowledge to facilitate informed citizen participation and, through effective advocacy, contribute to the efficiency and accountability of the legal system. Their role also extends to drafting contracts, providing legal advice, monitoring the proper implementation of laws, and participating in the law reform process. However, these areas of law are often hidden from public view. In this regard, professional institutions such as bar associations help maintain the health of the legal system by developing standards of professional ethics and defending the independence of lawyers (Moorhead et al. 2023, 3).

To analyse the role of lawyers in the justice system, this research relies on key concepts such as the rule of law, lawyer independence, and access to justice. These concepts constitute the study’s theoretical framework and help clarify the relationship between lawyers’ professional functions and their institutional effects. The main question of the study is “what social, ethical, and institutional roles do lawyers play in contemporary legal systems, and how do these roles contribute to strengthening the rule of law, ensuring a fair trial, and enhancing public trust?” The study also examines whether existing legal frameworks are capable of effectively guaranteeing the right to defence across different jurisdictions. In this context, "contemporary legal systems" refers to the current legal systems across multiple jurisdictions and is not limited to any specific country.

This study aims to examine the social, ethical, and institutional role of lawyers, and the effectiveness of legal representation in achieving justice, strengthening the rule of law, and promoting public trust in legal institutions. The research structure is arranged as follows: first, the history and theoretical foundations of the legal profession are examined; next, the concept of "right to defence" and the role of the lawyer in law reform, legal awareness and public trust, as well as the relationship of lawyer with the court, and the challenges of "access to lawyers" are discussed; and finally the position of the lawyer in the field of human rights advocacy is studied.

Although previous research has examined the role of lawyers, including their social functions and professional roles, their contribution to institutional and political development, and their ethical responsibilities in the pursuit of justice, the innovation of this study lies in providing an integrated analytical framework that simultaneously examines the social, ethical, and institutional dimensions of lawyers' roles and assesses how these dimensions interact in different areas of legal services provision.

2. Methodology

A significant portion of the existing literature either focuses on lawyers' roles in the criminal justice system or examines it through normative analysis, with insufficient attention to institutional functions. Furthermore, the relationship between lawyers' roles and the efficiency of the legal system and public trust has been analysed less systematically. This article attempts to move beyond these fragmented approaches and explain the relationship between these elements at a common analytical level.

This research was conducted using a qualitative approach and employed document analysis as its primary method. The method was selected due to the conceptual nature of the subject and the need to examine the position and role of lawyers at the legal, social, and institutional levels; a subject that requires an in-depth analysis of legal texts, international instruments, and scholarly literature, rather than empirical or field data. In this research, conceptual content analysis systematically extracts key concepts from legal texts and international instruments to identify theoretical patterns concerning the role of lawyers.

In the first stage, research sources were determined to include three main categories:

1. Constitutional laws and national regulations related to the right to defence and the independence of lawyers;

2. International documents, including the International Covenant on Civil and Political Rights (ICCPR 1966), European Convention on Human Rights (ECHR 1950), American Convention on Human Rights (ACHR 1969), basic principles on the role of lawyers, and other human rights documents;

3. Academic literature, including books, research articles, and historical studies on the legal profession, the social role of lawyers, and their relationship to the rule of law and justice.

After collecting the sources, conceptual content analysis was used to identify patterns across three main dimensions of the research: the lawyer's contribution to upholding the rule of law, their function in ensuring a fair trial, and their social, ethical, and institutional position within the justice system.

Although this article is not a comparative study and aims to examine the role of the lawyer in society in general, to strengthen the validity of the analysis, a comparative approach was also used; meaning that regulations related to the right to defence in several legal systems (United States, Canada, Germany, European Union, India, and China) as well as international instruments were used as examples. This research uses comparative examples to strengthen the conceptual analysis.

This methodology enables the research to reach theoretical and analytical conclusions about the role and position of lawyers in achieving justice and strengthening the legitimacy of legal structures, without relying on statistical data, by analysing authoritative legal and scholarly texts.

3. Historical evolution of lawyers and advocacy

The purpose of this section is not to comprehensively review the history of lawyers and advocacy in the world; rather, it will briefly address the most important developments in this profession.

In the Western world, the first people who could be considered lawyers in the true sense of the word were the ancient Greek orators. At that time, eloquence and rhetorical persuasion were considered the main criteria for success, leading to the emergence of the professional orator, a figure regarded as the prototype of the modern lawyer. These individuals defended others in courts using their oratory skills and legal knowledge (Jacobowitz 2021, 283).

Among these orators, Demosthenes is the most prominent example. He lived in the fourth century BC, was one of the greatest orators in Greek history, and an important figure in Athenian public life. In addition to his outstanding skills in rhetoric and legal defence, Demosthenes was active in political thought and government administration. This combination of oratory skills, legal awareness, and political concern made him a figure who went beyond that of a legal advocate and was influential in social and political arenas (Worthington 2013).

In ancient Rome, a more advanced legal system was formed, and a group of jurists/jurisconsults was responsible for providing legal advice. These individuals were not only among the most prominent figures of Roman legal culture, but also an important part of what is known today as Roman law, the result of their thought and innovation. In addition to their scientific role, they served as law designers and lawmakers, exerting a fundamental influence on the development of the law. There was a two-way relationship between them and government officials: jurists interpreted the laws, and, in turn, the government amended or reformulated them based on their interpretations and suggestions (Mehmeti 2020, 55).

The history of the formation of formal organisations of legal practitioners is not fully documented. By the end of the eleventh century, a group of individuals known as Legis Doctores was practicing as advocates in Modena, but there is no evidence of formal organisations at that time. From the early thirteenth century, there are signs of the simultaneous formation of professional guilds in several regions. Two main models for organising these professions emerged: the Florence Model, in which advocates, proctors, and notaries worked in a common guild; and the Bologna Model, in which advocates and notaries were in separate organisations (Brundage 1988, 445).

During the Middle Ages, the legal profession developed a deep connection with the church. Lawyers played an important role in the ecclesiastical courts, and many of the principles of legal ethics that today guide professional conduct have their roots in Canon Law. For example, the Constitutions of Pope Benedict XII (1334–42) required judges and papal administrators to fine negligent lawyers and compel them to make restitution for negligence (Brundage 1988, 452).

During the Renaissance, law became central, and the legal profession gradually separated from ecclesiastical institutions and became part of the secular judicial systems of the emerging States. During this period, lawyers were no longer considered representatives of the Church, but rather officers of the court. This period laid the groundwork for the formation and consolidation of modern legal ethics and professional independence (Ibbetson 2021, s93).

In the eighteenth century, despite criticisms of the legal profession, the social status of lawyers continued to rise. During this period, law still held the highest position among the three major scientific professions: church, medicine, and law. The reason for this superiority was the increased public respect for the judiciary and the bar, as well as the independence of these institutions from royal or political pressure, which strengthened lawyers' position in society (Rose 2009, 20).

The process of true professionalisation of the legal profession and the elimination of amateur lawyers began in the mid-nineteenth century and continued in several stages until the mid-twentieth century. This development significantly improved the social status of lawyers and consolidated their professional role in society (Halpérin 2018, 3). For example, in the mid-nineteenth century, the American legal community moved toward establishing an ethical and professional identity and developing ethical standards for the legal profession. This process was not simply an effort to enhance the lawyer's technical competence, but rather to establish the lawyer as a member of a moral and professional community, one with responsibilities beyond client representation and recognised as a guardian of public trust and custodian of civic values. This development paved the way for rapid professionalisation after the American Civil War and with the rise of industrial capitalism, and laid the foundation for the modern social status of the legal profession in the United States, a position in which the lawyer is considered not only an agent of the law but also a pillar of moral and social order (Greenfield 2024, 57).

Since the beginning of the twentieth century, the number of lawyers has gradually increased, and the legal profession has expanded. During this period, the entry of women into this field has increased gender diversity, enhanced the profession's social impact, and broadened participation (Friedman 2019, 703).

It should also be noted that, in the late eighteenth, nineteenth, and early twentieth centuries, United States lawyers, alongside European played a prominent role in the formation and consolidation of international law. Their activities, from legal counselling in international affairs to State representation in negotiations and treaties, directly contributed to the formulation, development, and explanation of the principles of this branch of law. Many of these lawyers helped to institutionalise the rules of international law by participating in the drafting of international treaties and agreements or by playing a role in diplomatic and judicial practices. Others, through legal education, scholarly writing, and theoretical analysis, made important contributions to the development of international law literature and teaching. In sum, the role of lawyers in this period was fundamental and enduring, not only as judicial representatives but also as intellectual and practical architects of the international legal system (Raymond and Frischholz 1982, 802).

The legal profession has always had a deep connection to the defence of justice and individual rights. Over the centuries, it has evolved from a rhetoric-oriented practice of ancient orators to a structured profession based on legal ethics, specialised training, and the protection of human dignity. Throughout history, the legal profession has been recognised as an essential component of our society, one that has been both respected and criticised (Jacobowitz 2021, 280–81).

4. The right to defence

The concept of the right to defence means that every person has the right to benefit from the presence of a lawyer at all stages of the proceedings. The presence of a lawyer not only provides the opportunity to receive legal assistance in preparing and developing the defence strategy, but also ensures that all procedural safeguards are observed in a real and effective manner (not merely ceremonial) throughout the criminal process, including the pre-trial stage. Therefore, government authorities are obliged to create conditions that ensure the defence lawyer has access to all the information necessary to provide an adequate defence, and to guarantee him full access to the case file. If the accused cannot afford to hire a lawyer, the government is obliged to provide the necessary tools and services for access to counsel. This principle is one of the fundamental foundations of justice in legal systems because an effective defence requires legal knowledge and familiarity with complex regulations that most people lack. In addition, the right to a defence, beyond protecting the individual rights of the accused, plays an important role in strengthening public trust and the continuation of the rule of law (Bachmaier Winter et al. 2020, 13).

One essential element in ensuring the health of the criminal justice system is that court-appointed lawyers defend their clients with the same level of commitment and diligence as private lawyers. These lawyers must act completely independently of law enforcement agencies, including investigators, police, prosecutors, and the courts, and adhere to the same principles of professional confidentiality required of defendants' chosen lawyers (Bachmaier Winter et al. 2020, 22).

The right to counsel is explicitly provided for in some constitutional systems. In some countries, although the constitution does not explicitly mention the right to counsel, this right is effectively ensured through ordinary law and judicial practice. In the United States, the Sixth Amendment states that: "in all criminal prosecutions, the accused shall enjoy the right to … have the assistance of counsel for his defense" (Sixth Amendment to the United States Constitution 1791). In Canada, section 10(b) of the Canadian Charter of Rights and Freedoms states that: "everyone has the right on arrest or detention: ... (b) to retain and instruct counsel without delay and to be informed of that right" (Canadian Charter of Rights and Freedoms 1982). In India, Article 22(1) of the Constitution of India explicitly guarantees the right to counsel and provides that every detained person has the right to be advised and defended by a legal practitioner of his choice. This article states: "no person who is arrested shall be detained in custody … nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice" (Constitution of India 1950). The German Code of Criminal Procedure (Strafprozessordnung - StPO), Section 137, clearly emphasises the right to legal counsel at all stages of criminal proceedings, thereby effectively guaranteeing the accused's right of defence in the German judicial system (German Code of Criminal Procedure (StPO) 1877). According to Article 130 of the Constitution of the People's Republic of China, "the accused shall have the right to defense" (Constitution of the People's Republic of China 1982) and Article 33 of the Criminal Procedure Law of the People's Republic of China: "In addition to defending himself or herself, a criminal suspect or defendant may retain one or two defenders"(Criminal Procedure Law of the People's Republic of China 2018).

At the international level, several documents have emphasised the importance of having a lawyer present. One of the most important of these documents is the Basic Principles on the Role of Lawyers (1990, Havana), adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. This document emphasises that effective access to independent lawyers at all stages of the criminal process, together with confidential lawyer–client communication and the possibility of free exercise of professional functions, are essential elements of a fair trial (United Nations 1990a).

The ICCPR also lists the fundamental rights of the accused in the context of a fair trial in Article 14(3)(D). This paragraph emphasises that the accused must be tried in his presence and has the right to defend himself in person or through legal assistance of his own choosing; and if he does not have legal assistance, he must be informed of this right. In addition, where the interests of justice so require, legal assistance must be provided to him, without denial of this right on grounds of financial inability (ICCPR 1966).

The right to a lawyer is recognised in all Member States of the Council of Europe under Article 6(3)(C) of the ECHR. This article provides that everyone charged with a criminal offence must have the minimum rights to defend themselves in person or through legal assistance of their choice, and that, if they have no means of payment, they must be given legal assistance free of charge when the interests of justice so require (ECHR, as Amended by Protocols Nos. 11, 14 and 15 1950). Article 47 of the Charter of Fundamental Rights of the European Union (EU Charter) states that: "Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice" (EU Charter of Fundamental Rights 2012). Therefore, free legal aid is an essential part of achieving effective access to justice.

Also, Article 8(d) and (e) of the ACHR similarly guarantees these rights: "(d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel" (Organization of American States 1969) and "(e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law" (Organization of American States 1969).

Accordingly, the right to have a lawyer is not an additional privilege, but an integral part of the concept of a fair trial and one of the main pillars of the rule of law. The presence of a lawyer ensures that the accused, regardless of their economic or social status, can defend their rights equally and have a real opportunity to defend themselves (United Nations Office on Drugs and Crime (UNODC) 2019, vii). However, despite the recognition of this right, its implementation remains subject to criticism, especially in civil litigation, where access to legal aid remains limited.

5. Lawyers and law reform

Lawyers play a central role in the dynamism and transformative capacity of the legal system and the realisation of the rule of law, because they are the bearers of what can be called "legal human capital." This fundamental capital is the resource the legal system draws on to interpret, implement, and adapt laws in local contexts and changing circumstances. Legal human capital refers to the collective and accumulated knowledge of members of the legal profession, including lawyers and judges; knowledge that is formed and sustained about the real effects of regulations in social and economic arenas, and allows the law to find meaning beyond the text, within the framework of legal experience and practice (Hadfield 2007, 403).

Lawyers play a fundamental role in law reform. By examining case law and legal practice, lawyers identify the strengths and weaknesses of the law and present these practical findings to legislative bodies to help align laws more closely with social realities. Many lawyers who work in academia, as legal researchers or academics, contribute to improving the legal structure through scholarly publications and policy recommendations, as well as through collaboration with formal institutions such as the Law Commission and informal law reform groups. However, legislation is not the only route to law reform; if the courts are persuaded to adopt one interpretive approach rather than another, this change can lead to rapid and effective reform, because the new interpretation immediately affects how the law is applied. Lawyers also help shape legal discourse by participating in public debates and publishing articles, thereby facilitating social acceptance of reforms. Hence, a lawyer is not only an advocate for an individual in court, but also a social reformer who plays a role in the realisation of justice (Smith 1981, 119).

Another point is that, in many countries, Bar Associations, as independent bodies, propose legal amendments and policy reforms. These bodies, composed of lawyers, provide a clear picture of the challenges of implementing laws in practice and convey them to legislators. The participation of lawyers in the legislative process ensures that the legal system remains dynamic and up to date (Ontario Bar Association 2025).

6. Lawyers, legal awareness, and public trust

Civil rights movements have emphasised the need for practical legal knowledge for non-lawyers. In a functioning democracy, people must understand their rights and know how to enforce them. From a social perspective, lawyers make legal concepts more understandable to the public by publishing scholarly articles, giving public speeches, and being active on media platforms. This process makes citizens more aware of their legal entitlements and enables them to respond to any violations of these rights in an informed and responsible manner (Wallace 2021, 1–2).

Public legal education is a key tool that helps individuals understand their rights and how to exercise them. The integration of public legal education programmes, led by lawyers and implemented within the educational system, can enhance legal knowledge and foster informed civic engagement and youth activism. As a result, the groundwork has been laid for the formation of a generation that can understand and influence the law and society, and help reduce barriers to access to justice by fostering a more responsive and socially aware legal system (Markus 2024).

Beyond legal education, lawyers' actions also play a significant role in shaping public perceptions of fairness and trust in the legal system. By providing legal advice and full defence to clients, they ensure that individuals' rights are respected and that the legal process remains fair.

People who experience procedurally fair treatment from legal authorities feel more socially included and experience higher self-esteem. This experience increases their motivation to accept the legitimacy of authorities, cooperate with them, and comply with the law out of a sense of obligation (Meyerson 2015, 82).

Although the presence of lawyers can help increase public trust in the judicial system, this effect varies by institutional context. However, when citizens are confident that they can properly assert their rights with the help of a lawyer, their trust in the justice system is also strengthened. Such social trust is a fundamental factor in the formation of social peace and cohesion, and it contributes to the stability and efficiency of society's legal and social order (Taylor Poppe and Rachlinski 2016, 889).

7. Lawyers and courts

7.1 Lawyers as intermediaries in the judicial process

Courts are the place where justice is done, but in many cases, the laws and regulations are so complex that they are not understandable to ordinary citizens. In such situations, the lawyer serves as an intermediary between the public and the legal system. The presence of lawyers helps prevent rights violations and enhances the credibility and efficiency of the judicial system (Heineman et al. 2014, 9).

In court, a lawyer not only acts as an advocate for the client but also actively participates in preparing and presenting the case. By conducting legal research, collecting evidence, preparing legal documents, and presenting arguments before the judge, the lawyer helps the client to assert their rights effectively (Canadian Judicial Council, n.d.) Also, during the proceedings, the lawyer has the duty to raise all relevant issues freely and without fear, to use all legal defences and remedies, and to defend the client's right to a fair hearing in accordance with the law and the recognised standards and ethics of the legal profession (United Nations 1990b, 3). These measures enable ordinary people who are not sufficiently familiar with judicial processes to effectively defend their rights and increase the chances of achieving justice.

7.2 Lawyers and judicial decision-making

The lawyer and the judge move in the same direction, and their ultimate goal is the realisation of justice. These two can rightly be called the two wings of the justice system because each, in its own role, plays a complementary and essential part in ensuring fairness within the judicial process.

A lawyer has the duty to defend their client or support a claim and is considered one of the parties to the case. The judge examines the case through the opposing viewpoints of the lawyers of both sides. Since each party must convincingly present their evidence and arguments, the judge can examine the case with an open mind and impartiality and make a fair decision (Re 1985, 504). But a judge, like any other human being, may make human errors or be subject to external pressures. In many judicial systems, judges face case overload, heavy workloads, and time constraints that can affect the accuracy of their decision-making. In such situations, the lawyer's arguments play an important role in clarifying the facts. The lawyer, as an observer and defender of citizens' rights, guides the proceedings towards justice by providing accurate, well-reasoned legal analyses. Lawyers can also play an effective role in reducing judicial corruption by challenging unlawful decisions and misconduct, and by ensuring transparency in proceedings (Hadfield 2007, 409).

The relationship between lawyer and judge, especially in authoritarian systems, faces structural and institutional challenges that can severely affect the functioning of justice. One of the most important of these challenges is the limitation of lawyers' access to the case; in some systems, the lawyer does not have full access to the necessary documents and evidence in the early stages of the proceedings, which violates the principle of equality of arms and prevents the presentation of an effective defence. In some countries, pressure from security agencies on lawyers, especially in political or security cases, disrupts the professional relationship between lawyers and the courts and threatens their independence. Also, the lack of independence of the courts (judicial independence) in some legal systems means that the judges do not have sufficient freedom to act, and administrative or political considerations influence their decision-making. Such structures not only undermine public trust in the judiciary but also limit lawyers' role in protecting citizens' rights and upholding the rule of law (Burlacu and Rusnac 2025, 157)157. As a result, the role of lawyers in judicial decision-making depends on the degree of judicial independence and the institutional structures of each legal system, which ultimately determine the extent to which legal arguments can influence adjudication processes and outcomes.

8. Access to a lawyer for all social groups

One of the fundamental principles of justice is equal access to a lawyer for all social groups. In criminal proceedings, defence lawyers play an important role in protecting the legal rights of defendants; a role that is not limited to individual defence but also contributes to the realisation of justice and even the formation of international standards (Yao 2023, 98).

In many countries, the right to a defence attorney is recognised in criminal cases, and even low-income individuals can use a public defender. However, in civil litigation, the situation is quite different: socio-economic status plays a decisive role in individuals' behaviour when faced with legal problems. Those who most need legal protection in civil litigation are usually the least able to pursue their legal claims. Vulnerable individuals in the lowest economic classes face serious financial barriers, so they cannot afford to hire a lawyer or even receive basic legal consultation; as a result, many of their legal problems remain unaddressed (Wallat 2019, 606). Wealthy individuals actually enjoy greater advantages in the justice system, although this situation is inconsistent with the fundamental principle of justice for all. If low-income individuals are denied access to a lawyer, a segment of society is effectively deprived of the rule of law. As a result, many low-income individuals are either unaware of their rights or cannot afford legal fees, leading them to resolve their disputes without legal mechanisms. This situation prevents individuals from pursuing their rights in the short term and, in the long term, deepens the justice gap and weakens public trust in the judicial system and the rule of law. Therefore, reforming regulations to ensure access to legal services in non-criminal cases is both a social and legal necessity and a fundamental step toward reducing the justice gap (Wallat 2019, 584).

"Poverty is both a source and a consequence of injustice" (Bellsmith et al. 2022, 3). Instead of empowering people with low incomes and allowing them to fight for their rights, the justice system is sometimes a source of hopelessness, frustration, and helplessness, and a direct reflection of prevailing social inequality and deprivation (Bellsmith et al. 2022, 3). To achieve social justice, governments must provide mechanisms that enable all members of society, regardless of circumstances, to benefit from free or low-cost legal services. These measures include expanding legal aid centres and providing free legal advice. In addition, lawyers can play an effective role in spreading real justice by providing free or low-cost legal services. When all citizens can defend their rights, social cohesion is strengthened, and the ground for sustainable justice is laid (Bellsmith et al. 2022, 29–30).

One of the structural reasons for this gap is the difference in government policy priorities and the way in which legal aid frameworks have been developed, such that in many legal systems, guaranteeing the right to counsel in criminal cases is seen as an urgent and essential obligation. In contrast, civil cases often enjoy a lower level of institutional support. However, in some legal systems, within the framework of the gradual development of access-to-justice standards, the right to a lawyer in civil cases has also been recognised or supported (NCCRC, n.d.)

Comparative analysis shows that different legal systems use different models to provide access to justice. In some countries, State-funded legal aid systems play a major role, while in others, hybrid models that combine State support with pro bono services by lawyers are used. These differences show that access to legal services is not only a legal issue, but also a policy choice that depends on the social and economic conditions of each society. Therefore, access to lawyers for all social groups to truly achieve justice is only possible through the establishment of effective enforcement mechanisms (OECD 2025, 12, 22, 45).

If lawyers play a fundamental role in the effectiveness of the rule of law through their services, it is obvious that the cost of those services is also an important issue. When the cost of legal services is too high, many relationships and disputes are resolved without recourse to the law. As a result, legal human capital does not have the opportunity to form and grow. This situation is not only harmful to individuals in the short term, but also weakens the entire legal system and the rule of law itself in the long term. Therefore, the cost and accessibility of legal services should be considered among the important criteria for assessing the state of the rule of law (Hadfield 2007, 417).

Another challenge arises when lawyers are tasked with defending people who have strong evidence against them and who are accused of committing dangerous and destructive acts, such as serial killers or sexual offenders. In the public eye, the impression is sometimes created that a criminal defence lawyer is relying on technical arguments or legal loopholes to try to free someone who is apparently guilty. However, it should be noted that the criminal justice system is based on the fundamental principle that everyone is presumed innocent until proven guilty beyond a reasonable doubt. Accordingly, the lawyer's duty is to ensure that this principle is observed and to protect the rights of the accused, not to justify the crime (Singh 2022). In fact, the main purpose of the legal system in granting these rights is to protect the accused at all stages of the trial by fully utilising the capacity of defence lawyers. Defence lawyers are guardians of human rights and defenders of the constitution and legal protection. In the trial process, it is essential that they can fully play their role so that justice is served (Yao 2023, 98).

To reduce this public misconception, the main solution is to increase public awareness of the true role of defence attorneys; that defending the accused does not mean defending the crime, but rather defending principles such as due process and the right to a fair trial. Clear media coverage, understandable explanations in sensitive cases, and public education about why these rights exist can correct public perception and make it clear that effective defence is a prerequisite for a fair trial. The better citizens understand that defence attorneys have a duty to protect the accused's legal rights so that justice is served, the less pressure and misjudgements against lawyers will be (Wintersteiger 2015, 6).

9. Lawyers and human rights

Lawyers are among the most important human rights defenders in any society. Their duty is not only to pursue legal cases, but also to protect fundamental freedoms such as freedom of expression, freedom of assembly, and minority rights. In this context, they act as a social watchdog, playing a fundamental role in protecting human freedoms and values by monitoring and reporting human rights violations. They contribute to the transparency and soundness of the legal system by exposing corruption and reporting misconduct to the appropriate authorities. Such actions make society more resilient and safer against various forms of injustice (Koula 2024, 103).

In countries experiencing institutional breakdown or disregard for the rule of law, lawyers face serious risks in performing their professional duties. They are on the front lines of defending human rights and supporting people whose rights have been violated. Still, in doing so, they face pressures such as judicial harassment, threats, revocation of licences, baseless interrogations, arbitrary detention, and even forced deportation.

Authoritarian regimes not only prevent them from performing their legal duties but also, by creating surveillance, intimidation, and artificial restrictions, disrupt the professional and confidential relationship between lawyers and clients and prevent lawyers from effectively defending their clients. Especially when the clients are political opponents, journalists, or human rights activists. The increasing pressure and prosecution of lawyers simply for carrying out their defence duties is one of the most worrying signs of the weakening of justice and the elimination of independent voices in society (Amin et al., n.d.).

In authoritarian States, the rule of law is more of an ideal than an objective reality, and lawyers strive to realise its fundamental principles, including the authority of law, the separation of powers, respect for fundamental human and civil rights, and the establishment of an independent judiciary and an independent legal profession. In mature democracies, many of the core elements of the rule of law are institutionalised, yet these countries are not immune to hidden or emerging challenges in this area. Lawyers in general play an important role in monitoring government power, combating rights abuses, and protecting legal mechanisms. Therefore, whether in fragile States or in established democracies, the role of lawyers in maintaining and strengthening the rule of law is essential and irreplaceable (Wald 2024, 1–2). The situation of lawyers in non-democratic States requires special attention, since various constraints in such systems directly affect their professional activity.

Political pressure, professional restrictions, weak legal accountability structures, limited resources, and insufficient institutional support can reduce lawyers' capacity to play this role effectively. Furthermore, in some systems, excessive dependence of legal institutions on the State or weak professional independence prevents lawyers from playing an effective role in oversight of power (Khalikova and Kazun 2021, 373).

Despite these threats, lawyers have the right, under international professional standards, to defend their clients in national courts against unlawful actions by State bodies and to challenge violations of international obligations by States through international human rights mechanisms, such as by reporting, documenting violations, or participating in monitoring processes. The purpose of these rights is not to grant lawyers privileges, but to ensure that individuals at risk of violations of their fundamental rights receive independent and qualified legal assistance. Human rights lawyers are at the forefront of defending human freedoms and values. As human rights defenders, they need protection, as they are often the last refuge for persecuted activists, journalists, and defenceless citizens (Amin et al., n.d.).

The independence of lawyers is a fundamental safeguard for the protection of human rights and the effective monitoring of State power, and a necessary condition for ensuring a sound judicial system in which lawyers can defend all human rights activists without fear. A lawyer can effectively defend human rights when he is immune from political, economic, or judicial interference and pressure; otherwise, his role is reduced to a ceremonial level and devoid of real function. In many societies, lawyer independence is the product of the legal profession's historical struggles and ensures that lawyers can stand up to abuses of power, violations of rights, and injustices without fear of sanctions, retaliation, or artificial restrictions. Just as a judge must be independent in the arbitration process, a lawyer must also enjoy professional autonomy in defending his client. Supporting a lawyer's independence is supporting justice itself, because without independent legal representation, the realisation of justice will either be incomplete or impossible (International Commission of Jurists 2025, 9–10).

10. Conclusion

As one of the main pillars of the judicial system, lawyers play a fundamental role in achieving justice and strengthening the rule of law. Their presence in court helps ensure a fair trial, protect citizens' rights, and reduce judicial errors. Cooperation between lawyers and judges forms the two main wings of the justice system and helps prevent violations of the rights of litigants.

The role of lawyers is not limited to the court. By analysing laws and judicial precedents, identifying legal weaknesses, and providing policy recommendations, they participate in the law reform process and help update and make laws more effective. The professional presence of lawyers in areas such as legal education, public awareness, and the fight against corruption also plays a decisive role in improving the quality of the legal order.

Equal access to legal services for all segments of society, especially low-income individuals, is an important part of lawyers' role in achieving social justice. Providing pro bono or low-cost services and ensuring lawyer independence, in addition to strengthening public trust in the judiciary, increases social cohesion, and the legitimacy of legal structures.

The analysis indicates that limiting the guarantee of the right to a defence to the criminal sphere is a structural inefficiency that causes deep inequalities in access to justice. Without affordable and accessible legal services in civil disputes, a large portion of citizens is effectively deprived of the protection of the law. Therefore, legal reforms should move towards creating universal legal protection systems, developing non-criminal legal aid, and strengthening genuine equality in access to legal representation for all members of society. To achieve access to justice, countries can use models such as legal aid expansion programmes, public defender systems in civil cases, and State-funded legal insurance schemes.

In general, a lawyer is not just an individual rights advocate; he is also a social activist who plays a role in court, law reform, legal education, and the defence of human rights. Supporting the independence of lawyers and ensuring universal access to legal services are prerequisites for achieving sustainable justice, the legitimacy of judicial institutions, and social security.

This research shows that the independence and ethical integrity of lawyers are essential not only for individual justice, but also for the health and sustainability of democratic governance. When lawyers are independent, committed, and trusted, justice transcends the courtroom and becomes a living, dynamic social value.

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Neil Pacamalan and Theresa Camannong. "Criminalising poverty: Vagrancy law and human rights in the Philippines. Legal legacies and the global struggle for social justice" (2025) 9 80–102 *Global Campus Human Rights Journal* https://doi.org/10.25330/3232

Criminalising poverty: Vagrancy law and human rights in the Philippines. Legal legacies and the global struggle for social justice

Neil Pacamalan[*] *and Hon. Ma. Theresa Camannong*[**]

Abstract: *This article examines the global phenomenon of criminalising poverty, with a focus on the Philippines and its enduring Mendicancy Law of 1978. Despite constitutional commitments to social justice, punitive frameworks continue to target homeless individuals, vagrants, and beggars – treating poverty as a public nuisance rather than a structural condition. The study traces the historical roots of English vagrancy laws, especially the 1824 Vagrancy Act, and explores their influence on former British colonies such as Bangladesh, Kenya, Pakistan, and Singapore, as well as the United States. These legal legacies perpetuate exclusion and undermine human dignity. In the Philippine context, the persistence of antimendicancy measures despite the 2012 decriminalisation of vagrancy reflects a fragmented policy landscape oscillating between welfare and control. Local government responses vary, with some enforcing anti-mendicancy measures under the guise of public order, while others pursue reintegration strategies. Methodologically, the article adopts a comparative legal-historical approach informed by critical postcolonial scholarship, tracing how colonial categories migrated into contemporary statutes and administrative practice. It evaluates these continuities against international human-rights standards, which condemn punitive responses to homelessness and poverty. The article argues that such approaches contradict international human-rights norms and the constitutional mandate for social justice. To deepen the analysis, the study draws on philosophical and theological foundations of justice, including classical and contemporary thinkers from religious and secular traditions. These perspectives illuminate the moral imperatives behind social justice and challenge the legitimacy of exclusionary legal regimes. The article*

[*] Neil Pacamalan, practicing lawyer, holds a Doctor of Civil Law degree.
[**] Hon. Ma. Theresa Camannong, presiding judge of the Regional Trial Court in Malaybalay City, holds a Master of Laws degree.

concludes by advocating for rights-based frameworks that prioritise dignity, equality, and inclusion. Drawing on legal reforms and decisions from international tribunals, it calls for the dismantling of punitive legal legacies and the implementation of structural reforms that address the root causes of poverty. Only through such transformation can States fulfil their constitutional and international obligations and ensure justice for the poor.

Keywords: *criminalisation of poverty; vagrancy law; mendicancy law (Philippines); homelessness and public space; legal legacies; colonial legal history; human rights and social justice; international human rights standards; social protection and inclusion*

1. Introduction

While the adage "to be poor is divine" may offer spiritual comfort, poverty persists as a global crisis that is too often addressed with punishment rather than compassion. In many liberal democracies, institutions, including the judicial system, frequently exacerbate the burden by imposing fines and fees that criminalise poverty and deepen legal debt (Espinosa Azcarraga and Misra 2022; Pager et al. 2022). A striking example is the 2024 United States Supreme Court decision in *City of Grants Pass, Oregon v. Johnson*, which upheld the imposition of fines on a homeless individual for sleeping in a public space. The ruling dismissed arguments that such penalties violated constitutional protections against cruel and unusual punishment, thereby reinforcing a punitive approach to poverty. This decision raises a critical question: can liberal democracies genuinely claim to uphold social justice while systematically penalising the poor amid widening global inequality?

In the Philippines, the 1987 Constitution, born out of the People Power Revolution, enshrines the principle of social justice and mandates the protection of marginalised sectors (Philippines Constitution, Article XIII). The passage of national legislation in 2012 decriminalising vagrancy (Republic Act No. 10158 2012) marked a significant step towards aligning legal frameworks with these constitutional ideals. However, despite these legal safeguards and the country's Christian-majority identity that emphasises compassion for the poor, it remains uncertain whether the Philippines truly serves as a bastion of justice for the economically disadvantaged.

Global inequality continues to deepen across multiple dimensions, including wealth, income, and access to opportunities, disproportionately impacting the economically disadvantaged (UN DESA 2016). When income is used as a measure of social imbalance, the disparity is striking: the richest 10 percent of the global population owns 76 percent of all wealth and earns 52 percent of global income, while the poorest half owns just 2 percent of wealth and earns only 8 percent of income. Among the global regions, the Middle East and North Africa (MENA) stand out as the most unequal (Chancel et al. 2022). As of 2024, nearly 700 million people around the world lived in extreme poverty, surviving on less than $2.15 per day (UN n.d.).

In the Philippines, approximately 10 percent of the population – around 2.99 million people – live below the poverty line. Regions such as Bicol (Region V), Zamboanga Peninsula (Region IX), and the Bangsamoro region consistently reported poverty rates above the national average (Resurreccion 2025). The face of poverty is unmistakable in the presence of homeless and idle individuals occupying public spaces. Homelessness, a complex global issue, varies widely in prevalence, from under 20 to over 300 per 100,000 people, due to inconsistent definitions and data collection methods across countries (Herre and Arriagada 2024).

The Philippines ranks highest in Southeast Asia, with 300 homeless individuals per 10,000 people (Sukoco 2025). Poverty incidence is particularly severe among Indigenous peoples, followed by fisherfolk and farmers, who remain among the most vulnerable sectors of society (PSA 2025). The higher poverty incidence outside the capital aligns with Mendoza et al. (2022), who argue that provinces further from Manila face greater poverty due to limited access to development opportunities concentrated in the capital.

Farrugia and Gerrard (2016) argue that homelessness is a persistent feature of capitalist societies, deeply rooted in historical and ongoing social, cultural, and economic conditions such as vagrancy, destitution, and institutional responses to poverty. Maeseele et al. (2014) further emphasise that homelessness is not merely a matter of housing or welfare, but a complex issue shaped by both material and immaterial factors. In response to poverty, many countries implement punitive laws – such as bans on begging, vagrancy, informal labour, and camping in public spaces – that criminalise the survival strategies of homeless individuals. Although often framed as neutral measures to maintain public order or protect the environment, these laws disproportionately impact the homeless by penalising their lack of access to private spaces for meeting basic needs (UNGA 2024).

While existing literature has explored poverty and homelessness separately, this study uniquely examines how legal systems perpetuate poverty by criminalising survival strategies, particularly in postcolonial and democratic contexts. In the Philippines, despite the decriminalisation of vagrancy, the Mendicancy Law of 1978 remains in force, continuing to impose punitive measures on the poor and undermining efforts to adopt more humane, rights-based approaches. Advocates of a rights-based approach to poverty reject such punitive measures, emphasising the need for policies grounded in human dignity and justice.

Moellendorf (2009) argues that global gaps in health, education, and income are not just economic problems; they are moral injustices caused by the current global system, which needs to be changed to create a fairer world. Echoing this perspective, the United Nations promotes a human rights-based approach to extreme poverty, viewed as a preventable, human-induced condition, by calling for accountability and the protection of rights such as equal legal access, justice, and adequate housing (UNOCHR 2012). Sepúlveda and Nyst (2012) further assert that States have legally binding domestic and international obligations to ensure human rights shape all aspects of public policy, including social protection programmes.

The question of whether a particular form of government is necessary to advance social justice remains deeply contested. Shapiro (1996) contends that democracy does not inherently guarantee social justice, noting its potential failure to ensure equitable wealth distribution, protect minority rights, and uphold equal opportunities. This concern is echoed in the Democracy Index 2024, which reports a global decline in democratic standards across 130 countries, with the average score dropping to 5.17, the lowest since 2006. Currently, only 45 percent of the world's population lives in a democracy, while 39 percent reside under authoritarian regimes, with civil liberties experiencing the sharpest deterioration. Although Nordic countries continue to rank highly, the overall decline underscores a critical reality: democratic governance alone is insufficient to secure social justice (Economist Intelligence 2025).

This study examines the criminalisation of poverty as a global phenomenon, wherein laws and judicial systems are frequently used to target homeless individuals, vagrants, beggars, and other marginalised groups based on their socio-economic status. The Philippine experience serves as a central case throughout the discussion. To understand the historical roots of this penal approach, the study explores the legacy of England's mediaeval vagrancy laws and their influence on former British colonies such as Bangladesh, Kenya, and Pakistan, as well as the United States. Although the Philippines was not a British colony, it is included in the analysis due to its adoption of United States-influenced vagrancy laws. By tracing these legal traditions and their modern applications, the study aims to critically assess how institutional frameworks, regardless of the regime type, can undermine the principles of human dignity and justice that global human rights instruments seek to uphold.

Building on this foundation, the article uses a comparative legal-historical approach shaped by postcolonial critique. It shows how colonial laws and later national laws are connected, carried forward through borrowed legal texts, ongoing administrative practices, and institutional routines. The Philippine case is thus situated within a broader historical lineage of poor-law categories and assessed against international human-rights standards, particularly the Guiding Principles on Extreme Poverty and Human Rights and the reports of the UN Special Rapporteur.

By combining doctrinal comparison, archival tracing, and enforcement analysis, the study aims to show how colonial antecedents migrated into contemporary law and practice, and to evaluate the extent to which current enforcement aligns or fails to align with international obligations. To situate the Philippine Mendicancy Law within this broader global pattern, the following literature review traces the historical genealogy of poor laws and vagrancy statutes, showing how colonial categories migrated into contemporary legal systems and continue to shape punitive responses to poverty. This article adopts a postcolonial, Third World Approaches to International Law (TWAIL) perspective to foreground how colonial legal categories and global hierarchies shape contemporary mendicancy regimes and enforcement practices.

2. Review of related literature

This study is informed by TWAIL, which emphasises how colonial legal legacies and global power asymmetries continue to structure law, policy, and enforcement in formerly colonised States. TWAIL directs attention to the ways legal texts, administrative routines, and policing practices reproduce hierarchies between metropolitan and peripheral jurisdictions; it therefore shapes the comparative selection of Bangladesh, Kenya, Pakistan, Singapore, and the United States and the interpretive lens applied to Philippine statutes and municipal practice.

Historical studies of English vagrancy laws, particularly the 1824 Vagrancy Act, illuminate their enduring influence across former British colonies – including Bangladesh, Kenya, Pakistan, and Singapore – as well as the United States. These legal legacies provide the backdrop for understanding the persistence of punitive approaches in the Philippine context. The origins of these regimes can be traced to England's legislative responses to the Black Death of 1348, which decimated nearly half the population and produced severe labour shortages. In response, the state enacted the 1349 Ordinance of Labourers and the 1351 Statute of Labourers to stabilise wages and compel employment, effectively criminalising idleness and poverty (Roller 2021; Shipman 2014).

Although framed as reforms, these laws disproportionately targeted the poor and institutionalised punitive measures such as fines and imprisonment to enforce labour discipline (Bailey 2025). Over time, vagrancy statutes evolved as explicit tools of labour discipline and moral regulation, culminating in the 1824 Act's broad criminalisation of behaviours deemed socially undesirable (Roberts 2023). Exported through colonial rule, these laws enabled authorities to police public space using vague criteria that conflated poverty with criminality (Open Society Foundations 2020).

This genealogy provides the foundation for examining the Philippine Mendicancy Law of 1978. Like its English predecessors, the Philippine framework reflects a punitive orientation that equates poverty with disorder and moral failure. Despite the 2012 passage of Republic Act No. 10158 decriminalising vagrancy, enforcement practices remain prone to abuse. In 2018, then President Duterte ordered the arrest of tambays (loiterers), resulting in nearly 3,000 arrests (Anonas-Carpio 2018). More recently, Department of the Interior and Local Government (DILG) Memorandum Circular No. 2024-037 instructed Local Government Units LGUs to continue suppressing vagrancy and mendicancy through ordinances grounded in the Local Government Code of 1991 (DILG 2024).

The enduring disparities in global wealth and resource distribution have long provoked critical inquiry among social justice advocates. Yet a fundamental question persists: what does social justice truly require in theory and practice? Despite its frequent invocation in political and academic discourse, social justice remains contested, lacking a universally accepted definition. Its modern interpretation is shaped by political philosophy and enriched by insights from disciplines such as sociology, psychology, law, and geography (Khechen 2013).

While definitions vary, scholars generally converge on the principle that social justice involves fair treatment and equitable distribution of resources and opportunities. Its roots run deep in religious traditions, particularly within Roman Catholic teaching, where it has held a prominent place since 1931 (Burke 2014). Building on classical theological insights, Pope Leo XIII's Rerum Novarum (1891) marked a pivotal moment in Catholic social teaching, championing workers' rights, fair wages, humane conditions, and protection from exploitation. Secular political philosophy has provided complementary tools: Locke emphasised fairness and equal access to resources, Marx framed justice as class struggle, Keynes warned that inequality undermines cohesion, and Rawls (1971) described social justice as the highest virtue of institutions. Later theorists, including Young (1990), expanded the discourse by shifting focus from distribution to dismantling institutionalised oppression.

The transferability of European welfare models remains contested. Einhorn and Logue (2010) argue that the Nordic model's success lies in democratic corporatism and evidence-based governance, while others highlight structural barriers in countries such as the United States, where federalism and entrenched property rights hinder reform (Alesina et al.

2001; Pope 2023). Okun (2015) notes that capitalist democracies often accept inequality as a trade-off for efficiency, complicating efforts to balance justice and growth. In Africa, attempts to replicate European systems face challenges including corruption and gender-based land inequality (World Economic Forum 2019).

Alternative models, such as those in Singapore and Switzerland, demonstrate that prosperity can be achieved through diverse institutional paths (Tiemer 2018). Yet critiques persist: Sabir et al. (2023) argue that welfare States often fall short in promoting fairness, while Nagel (2005) contends that global justice remains unattainable without a corresponding institutional framework. In sum, the evolution of welfare from England's Poor Laws to modern regimes reveals a persistent tension between inclusion and control. This legacy continues to shape debates in contexts where poverty is treated as a moral failing rather than a structural injustice (Gillin 1929; Ocobock 2008).

Empirical and monitoring literature on homelessness and mendicancy in the Philippines remains limited in scope but increasingly substantive in its documentation of enforcement practices and rights impacts. Commission on Human Rights monitoring reports and thematic statements provide the most authoritative public record of rights concerns arising from municipal "cleanup" operations, local ordinances, and police actions that affect homeless and beggar populations (OHCHR 2023).

Complementing these official sources, civil society and non-governmental organisation (NGO) studies combine field observation, incident logs, and case studies to reveal how enforcement practices operate on the ground and whom they affect. For example, coalition reports and NGO briefs document repeated instances in which local authorities have relied on relocation drives, temporary detention, or fines rather than durable housing or social protection, producing recurring patterns of displacement and rights violations (Joly Homes Foundation and Association Soeur Emmanuelle Philippines, Inc. 2023).

Sectoral studies further nuance these findings by highlighting the differentiated impacts of enforcement on women, children, and indigenous communities, and by tracing how municipal definitions of "vagrancy" shape who is targeted (UNANIMA/NYU Capstone 2019; Magsumbol 2026). Where quantitative data exist, they are often municipal or projectbased rather than national in scope, which constrains generalisability but nonetheless provides crucial evidence of enforcement trends. Media and government communications – such as reports from the Philippine Information Agency and local council resolutions – offer contemporaneous accounts of policy rationales and official justifications for enforcement measures, illustrating the policylevel tensions between publicorder rhetoric and welfare claims (Philippine Information Agency 2023; Manila City Council 2024).

Taken together, these empirical sources reveal three consistent patterns relevant to this study. First, statutory decriminalisation (Republic Act No. 10158) has not uniformly translated into de facto protection at the municipal level; local ordinances and administrative directives continue to enable punitive responses (Commission on Human Rights 2024; DILG Memorandum Circular No. 2024-037). Second, social protection programmes such as the Pantawid Pamilyang Pilipino Programme (4Ps) coexist with coercive measures, producing a fragmented policy landscape that oscillates between welfare and control (Joly Homes Foundation and Association Soeur Emmanuelle Philippines, Inc. 2023). Third, empirical gaps persist, most notably the absence of a centralised, nationwide dataset on mendicancy enforcement, making systematic cross municipal comparison difficult (Magsumbol 2026). This article therefore uses available monitoring reports, municipal ordinances, and case law to bridge doctrinal analysis and enforcement practice, and it identifies where further empirical research is most urgently required.

3. Methodology

This study combines doctrinal legal analysis, historical genealogy, and comparative policy review. The primary corpus comprises Philippine statutes and administrative issuances (Presidential Decree No. 1563; Republic Act No. 10158), Department of the Interior and Local Government Memorandum Circular No. 2024037, relevant Supreme Court and lower-court jurisprudence (including *People v. Evangeline Siton and Krystel Kate Sagararo*), municipal ordinances, and enforcement directives from selected cities (Manila, Cebu, Iligan), and monitoring reports from the Commission on Human Rights and civil society organisations (e.g., Joly Homes Foundation and Association Soeur Emmanuelle Philippines, Inc. 2023). Secondary sources include historical scholarship on English poor laws and comparative studies from Bangladesh, Kenya, Pakistan, Singapore, and the United States.

TWAIL informed the comparative design and source selection: priority was given to jurisdictions and documents that reveal colonial continuities, postcolonial state practice, and asymmetrical legal transfers. This lens guided the choice of municipal ordinances, enforcement reports, and historical sources used to trace how poor-law categories migrated and persisted. Documents and cases were identified through systematic searches of legal databases (Supreme Court ELibrary; LexisNexis), the Commission on Human Rights reports archive, UN and OHCHR repositories, NGO archives, and Google Scholar using keywords such as “mendicancy”, “vagrancy”, “begging ordinance” and “cleanup operations”. Search coverage was legal and historical materials (January 1900–May 2026); enforcement and monitoring review (2010–2025). Selection criteria prioritised primary legal texts (statutes, ordinances), judicial decisions that interpret mendicancy provisions, and monitoring reports containing firsthand enforcement data.

Analytically, doctrinal reading identified statutory categories and judicial rationales; thematic coding of monitoring reports identified enforcement patterns; and comparative policy review used a structured matrix to map legal provisions against enforcement practices and human rights outcomes. Limitations include uneven municipal reporting and the absence of a centralised arrest database.

4. The institutionalisation of vagrancy and the policing of public space in Philippine history

Building on the global genealogy of poor laws and vagrancy statutes, the Philippine case demonstrates how colonial legacies and domestic policies converged to criminalise poverty. Although the Philippines was not a British colony, its legal system absorbed similar punitive frameworks through American colonial influence, situating the Philippine experience within the wider comparative analysis of colonial vagrancy regimes and the United States.

During Spanish rule, there was no formal vagrancy policy targeting native Filipinos. However, under United States occupation, Act No. 519 (1902) criminalised a broad range of behaviours associated with poverty, including loitering and prostitution (Mehl 2014). This punitive orientation was reinforced by the 1932 Revised Penal Code, which classified vagrancy as an offence against decency and good customs. The Marcos-era Mendicancy Law of 1978 (Presidential Decree No. 1563) further entrenched this approach, framing begging as a moral and legal offence rather than a symptom of systemic deprivation.

Despite the 1987 Constitution's emphasis on social justice, the omission of socio-economic rights from the Bill of Rights reveals a structural ambivalence towards poverty as a rights issue (Chopra 2021). This contradiction was evident in the Supreme Court's ruling in *People v. Evangeline Siton and Krystel Kate Sagararo*, which upheld the constitutionality of vagrancy laws by invoking the need to "protect the streets" from the "scourge of humanity." Such judicial language underscores how legal discourse dehumanises the poor and legitimises their exclusion from public space.

The 2012 passage of Republic Act No. 10158 marked a partial shift by decriminalising vagrancy. Yet, the continued enforcement of the Mendicancy Law and recent directives such as Department of the Interior and Local Government Memorandum Circular No. 2024-037 reveal the persistence of punitive governance. While national social protection programmes – such as the Pantawid Pamilyang Pilipino Programme (4Ps) and Oplan Pag-Abot (PTNI 2025) – offer welfare pathways, their coexistence with penal measures reflects a fragmented policy landscape oscillating between welfare and control.

Local government responses further illustrate this tension. In Iligan and Cebu, strict enforcement of anti-mendicancy laws has been justified by concerns over public order and alleged misuse of aid (Philippine Information Agency 2023; Politiko 2025; Esteban 2025). By contrast, Manila has emphasised inter-agency collaboration and reintegration strategies through Resolution No. 124 (Manila City Council 2024). These divergent approaches highlight the absence of a unified, rights-based strategy and the enduring influence of moralistic narratives that frame poverty as deviance. The Philippine Commission on Human Rights has rightly criticised the penalisation of begging as a violation of constitutional guarantees of dignity and human rights.

Taken together, the persistence of these laws suggests that poverty continues to be governed through exclusion rather than inclusion. The institutionalisation of vagrancy in Philippine legal history exemplifies how colonial legacies, moral judgements, and fragmented welfare policies converge to criminalise the poor and police public space, undermining the very ideals of social justice enshrined in the Constitution. This Philippine trajectory demonstrates how punitive traditions endure despite constitutional commitments to social justice, and it provides a crucial comparative lens for examining similar legacies across Bangladesh, Kenya, Pakistan, Singapore, and the United States.

5. The enduring legacy of colonial vagrancy laws across former British territories and the United States

Colonial-era vagrancy laws in former British territories and the United States reveal a global pattern of exclusion, criminalising poverty under the guise of public order. Originally designed to control labour and suppress disorder, these laws have endured in postcolonial legal systems, often repurposed to manage urbanisation, homelessness, and informal economies. This section examines how these legacies manifest in Bangladesh, Kenya, Pakistan, Singapore, and the United States, revealing both commonalities and divergences in their evolution and reform.

Bangladesh. Bangladesh hosts one of Asia's largest populations of beggars, with an estimated 700,000 nationwide and about 40,000 in Dhaka alone (BSS News 2024). Begging often functions as an informal labour system, with associations (*samiti*) organising activities, while extreme poverty and trafficking push many children into this practice (Jackman 2022). Many child beggars in Dhaka's slums are pushed into this practice by extreme poverty, parental coercion, peer pressure, or trafficking (BSS News 2024). To address the issue, Bangladesh long relied on the Bengal Vagrancy Act of 1943, introduced during the famine to rehabilitate beggars and persons with disabilities (Ray 2013; Begg 2000). Although replaced by the Vagrant and Shelterless Persons (Rehabilitation) Act of 2011, the new law retains broad powers to arrest and detain those labelled as "vagrants," allowing confinement for up to two years and criminalising escape. Despite its rehabilitative framing, it preserves punitive elements reminiscent of colonial efforts to remove visible poverty from public spaces (Institute of Commonwealth Studies 2024). Despite reforms, the 2011 Vagrant and Shelterless Persons (Rehabilitation) Act retains punitive elements, showing continuity with colonial efforts to remove visible poverty.

Kenya. Following independence, many African States retained colonial era vagrancy laws, which, though originally designed for labour control, are now primarily used to manage urbanisation. In Kenya, British colonial rule introduced the 1902 Vagrancy Act to control African labour and remove "undesirables" from urban centres like Nairobi. This law enabled punitive measures and redirected youth to rural reserves, later evolving into institutional mechanisms such as youth camps by the 1930s (Ocobock 2006).

The 1925 Vagrancy (Amendment) Ordinance further restricted African movement after 6 p.m. without a registered address (Muendo 2017). Post independence, Kenya's 1968 Vagrancy Act shows the criminalization of prostitution, initially framed as vagrancy and later entrenched through police raids and abuses, served less to address social conditions than to stigmatize, control, and violate the rights of poor and marginalized women while consolidating state power (Mulei 1981; KESWA 2019).. Although repealed in 1997 through the Statute Law (Repeals and Miscellaneous Amendments) Act, the legacy of these colonialera laws continues to shape contemporary legal and policing practices.

Pakistan. Persistent poverty in Pakistan has fuelled both domestic and transnational begging networks, with reports of individuals being sent to countries such as Saudi Arabia, Iran, and Iraq to solicit alms. In 2024, the Government responded by blocking the passports of over 2,000 identified beggars and their agents to protect its international image (The Economic Times 2024). Since independence in 1947, Pakistan has retained colonialera laws on vagrancy under its federal system, with provinces enacting their own legislation in the absence of a national statute.

Generational begging, particularly among large families, remains widespread, with children often forced into street solicitation. NGOs have stepped in to address welfare gaps amid limited state resources and dependence on foreign aid (Laila et al. 2020). Despite being illegal since 1958, begging has become a lucrative, organised trade involving criminal networks and, in some areas, entire communities. In response, Punjab amended its vagrancy law to make employing beggars a nonbailable offence (The Express Tribune 2024), and in 2025, Pakistan revised its Prevention of Trafficking in Persons Act to criminalise "organised beggary" following international complaints (Yusuf 2025).

Singapore. Despite its compact size and advanced economy, Singapore continues to grapple with homelessness. A 2019 nationwide count recorded between 921 and 1,050 rough sleepers, declining to 530 by 2023, largely due to a 90 percent homeownership rate supported by tiered housing grants and the Public Rental Scheme (Ng 2019; Ministry of Social and Family Development 2023). While Singapore lacks a legal definition of homelessness, the Destitute Persons Act of 1989 allows for the institutionalisation of "destitute" individuals, framing them as public nuisances and reinforcing stigma, exclusion, and defensive urban design. The Destitute Persons Act exemplifies how colonial categories were repurposed into welfare-framed but still coercive regimes, combining rehabilitation rhetoric with detention powers.

Vagrancy is penalised under the Miscellaneous Offences (Public Order and Nuisance) Act (Chapter 184), which criminalises behaviours linked to "rogues and vagabonds," including prostitution and fortune-telling. These laws reflect colonial-era views that equated poverty with disorder, and Singapore's response – through surveillance and housing policies – continues to pursue inclusion via regulation and control (Chioffi 2025). Yet, Singapore's approach also illustrates how punitive laws can be masked by technocratic governance and welfare provision.

United States. In 2024, the homeless population in the United States rose to 771,400, with Hispanic, Black, Native Hawaiian/Pacific Islander, Native American, and male individuals disproportionately represented relative to their share of the population (McKay and Cowles 2025). Across the country, laws rooted in England's Poor Laws continue to criminalise survival behaviours such as panhandling, loitering, and food sharing, disproportionately affecting unhoused individuals and often suppressing free speech while obscuring poverty (Dholakia 2023; Hershkoff and Conner 1993).

Nearly every state in the United States adopted some form of English vagrancy legislation, except West Virginia, which recognised vagrancy only at common law (Maher and Williams 1970). A national study found that 34 percent of cities prohibit public camping, 18 percent ban public sleeping citywide, 24 percent ban begging, and 76 percent criminalise food sharing with homeless individuals (Carr 2015). While the United States Supreme Court declared a vagrancy ordinance unconstitutional in *Papachristou v. City of Jacksonville* (1972), a 2024 ruling in *City of Grants Pass, Oregon v. Johnson* upheld fines against a homeless individual for occupying public space, rejecting claims of cruel and unusual punishment.

Across these jurisdictions, the enduring influence of colonial vagrancy laws underscores a global pattern: the use of legal instruments to manage poverty through exclusion rather than inclusion. While some countries have undertaken reforms, these often retain the punitive ethos of their colonial predecessors. A comparative analysis reveals that despite differences in political systems and economic development, former British territories and the United States continue to grapple with reconciling public order with human dignity. Integrating postcolonial legal theory and humanrights frameworks into domestic law remains essential to dismantling these legacies and advance social justice.

Together, these cases demonstrate how colonial vagrancy laws were adapted across diverse contexts, retaining punitive elements even when framed as welfare or rehabilitation, and reinforcing the global challenge of reconciling public order with human dignity.

6. International human rights framework on extreme poverty

Extreme poverty is recognised in international human rights law not only as an economic condition but as a violation of dignity and equality. In 2012, the UN Human Rights Council adopted the Guiding Principles on Extreme Poverty and Human Rights, designed to help States apply human rights standards in poverty-eradication efforts. These principles emphasise foundational values such as dignity, equality, participation, transparency, and accountability, ensuring that policies reach the poorest and respect their rights despite structural obstacles. They highlight the equal enjoyment of rights by persons living in poverty, gender equality, the rights of the child, and the agency and autonomy of those affected. To implement the principles, States are required to adopt comprehensive national strategies, prioritise persons living in extreme poverty, and guarantee that essential services are accessible, affordable, and of good quality. Finally, governments must ensure policy coherence so that anti-poverty measures are consistent across all sectors and levels of governance (UNHR-OHCHR 2012).

The UN Special Rapporteur on extreme poverty and human rights (UNSR), established in 1998, has consistently emphasised that poverty must be addressed through rights-based approaches rather than punitive measures. In his 2026 report to the United Nations, Olivier De Schutter argued that poverty is "manufactured" through political and economic choices that prioritise growth over rights, entrenching exclusion and inequality (UN General Assembly 2026). He subsequently launched the Global Roadmap for Eradicating Poverty Beyond Growth, developed through consultations with over 400 stakeholders to rethink poverty eradication beyond reliance on economic growth. The Roadmap advances a rights-based "human rights economy" by moving past the traditional "grow-tax-transfer" model and combining redistribution with in-market reforms and pre-market social investment (OHCHR 2026).

Beyond the Guiding Principles and the UNSR mandate, the Committee on Economic, Social and Cultural Rights (CESCR) has issued authoritative interpretations of International Covenant on Economic, Social and

Cultural Rights (ICESCR) (1966) obligations that directly address poverty. General Comment No. 4 highlights homelessness and inadequate housing as disturbing forms of deprivation, requiring States to guarantee minimum essential levels of housing as enforceable rights (CESCR 1991). General Comment No. 7 underscores that forced evictions gravely violate the right to housing, disproportionately harming the poor and demanding legal safeguards and remedies (CESCR 1997). General Comment No. 20 links poverty to systemic discrimination, requiring proactive measures to ensure equal access to housing, health, education, and social security for marginalised groups (CESCR 2009).

These General Comments frame poverty as a multidimensional rights violation, reinforcing the global shift from punitive control toward rights-based approaches. Taken together, the Guiding Principles, UNSR reports, and CESCR General Comments establish a normative baseline: poverty is recognised as a structural injustice and a violation of human rights, requiring States to adopt proactive, rights-based reforms. Building on the UNSR's mandate, the Guiding Principles, and the CESCR General Comments, the following chapter traces how international and regional human rights instruments have reinforced this shift, moving global poverty governance away from punitive control and toward a rightsbased approach. This framework sets the standards and principles, while the following chapter examines how tribunals, UN bodies, and global institutions are enforcing them in practice.

7. The global shift from punitive control toward a human rights approach to poverty

The universal recognition of the fundamental rights and inherent dignity of all human beings was formally enshrined in the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly (UNGA) in 1948 in response to the atrocities of the Second World War. The UDHR affirms every individual's rights, beginning with the foundational guarantee of equality and freedom (Article 1), which underpins the protection from torture (Article 5) and the right to an adequate standard of living (Article 25)." To ensure that countries uphold these civil, political, socio-economic, and cultural rights, the UN General Assembly adopted two binding treaties in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR.

However, the lofty ideals embodied in the UDHR, ICCPR, and ICESCR often stand in stark contrast to the persistent realities of global poverty and its devastating effects. As of 2024, nearly a billion people remain trapped in extreme poverty, with progress stalled due to the lingering impacts of COVID-19, sluggish economic growth, and increasing fragility in many regions (World Bank 2024). The United Nations further reports that over 1.6 billion people lack adequate housing worldwide, including 1.12 billion living in informal settlements and slums, and at least 330 million experiencing absolute homelessness (UN-Habitat 2024).

As many countries continue to wield criminal statutes and punitive measures to target the poor –particularly those who roam the streets in search of scraps – international tribunals have emerged as key defenders of fundamental rights. In the landmark case *De Wilde, Ooms and Versyp v. Belgium*, the European Court of Human Rights (ECtHR) examined the detention of three Belgian nationals under vagrancy laws. While the ECtHR upheld the legality of their initial detention under national law and Article 5(1)(e) of the European Convention on Human Rights (ECHR), it found Belgium in violation of Article 5(4) for failing to provide an effective legal mechanism to challenge the lawfulness of that detention, delivering a rebuke of arbitrary confinement and affirming the right to judicial review for society's vulnerable.

In *Lăcătuș v. Switzerland*, the ECtHR examined the criminalisation of public begging after Lăcătuș, a Romanian national, was repeatedly fined and imprisoned under Geneva's local law. Swiss courts upheld the penalties despite her inability to pay, leading to her eventual imprisonment in 2015. The ECtHR acknowledged that the Swiss Government's interference with the right to private life under Article 8 had legitimate aims, such as maintaining public order and protecting others' rights. However, it ruled that the blanket ban on begging required stronger justification and closer scrutiny due to its broad impact on individual freedoms.

In an advisory opinion requested by the Pan African Lawyers Union (PALU), the African Court on Human and Peoples' Rights examined whether vagrancy laws – which criminalised poverty-related conditions in several African Union countries – are compatible with key human rights treaties. These include the African Charter on Human and Peoples' Rights (African Charter), the Charter on the Rights and Welfare of the Child, and the Protocol on the Rights of Women in Africa. The Court concluded that vagrancy laws violate fundamental rights such as dignity, equality, and freedom from discrimination, and urged governments to repeal or reform these laws to comply with their human rights commitments.

In *Advocaid Ltd v. Republic of Sierra Leone*, the ECOWAS Court (Community Court of Justice of the Economic Community of West African States) heard a challenge to outdated loitering laws that Advocaid argued violated rights to non-discrimination, equality, and freedom of movement under the African Charter. The government defended the laws as crime prevention measures, but the Court found them discriminatory and prone to arbitrary enforcement due to vague language. It ordered Sierra Leone to amend, modify, or repeal the laws to meet its human rights obligations.

The Office of the High Commissioner for Human Rights (OHCHR) has underscored the urgency of addressing homelessness as a human rights issue. In its guidance, the Special Rapporteur states that "States, including their judiciaries, must ensure that the right to adequate housing is recognised and enforceable as a fundamental human right through applicable constitutional and legislative provisions or through interpretations of interdependent rights such as the right to life." This principle is captured in Guideline No. 1, which calls on governments to guarantee housing as a fundamental right intrinsically linked to human dignity and the right to life (UN Human Rights Council 2020, Guideline No. 1) According to Report A/HRC/56/61/Add.3, criminalising poverty and homelessness violates human rights and deepens social exclusion, discrimination, and inequality (2024). Such punitive measures not only erode human dignity but also place costly burdens on the state – resources that could be more effectively used to implement rights-based strategies aimed at reducing poverty and ending homelessness (OHCHR 2024).

This global jurisprudential and institutional turn underscores the incompatibility of punitive laws with human rights and sets the stage for examining how these tensions play out in national contexts, including the persistence of antimendicancy measures in the Philippines.

8. Conclusion

This article returns to its central question: why do liberal democracies and advanced economies persist in criminalising poverty despite constitutional guarantees and international human rights commitments? From mediaeval England's vagrancy statutes to contemporary antiloitering and antibegging ordinances, legal frameworks have long treated poverty not as a structural condition requiring reform, but as a public nuisance to be suppressed. The endurance of such laws across diverse political systems – including former British colonies like Kenya, Bangladesh, and Singapore, as well as the United States – reveals a global pattern of exclusionary governance. Although the Philippines was not a British colony, its adoption of United Statesinfluenced vagrancy laws illustrates the transnational legacy of punitive approaches to poverty.

By combining doctrinal analysis of Philippine statutes, historical tracing of poor laws and vagrancy regimes, and comparative policy review across jurisdictions, this article demonstrates how punitive traditions persist even in contexts that profess commitments to social justice. The literature shows that these laws are not neutral instruments of public order but mechanisms of social control that reproduce colonial hierarchies and moralistic distinctions between the "deserving" and "undeserving" poor.

Amid this persistence, a growing international movement rooted in human rights offers a transformative path forward. The Guiding Principles on Extreme Poverty and Human Rights (2012), successive reports of the UN Special Rapporteur on extreme poverty, and jurisprudence from the European Court of Human Rights, the African Court on Human and Peoples' Rights, and the ECOWAS Court have increasingly challenged the legitimacy of laws that penalise poverty. These institutions affirm that housing, social protection, and access to basic services are not privileges but enforceable rights.

This article's findings also affirm the relevance of a TWAIL lens: colonial legal legacies continue to shape contemporary governance of poverty, embedding hierarchies of exclusion that disproportionately affect the Global South. By foregrounding TWAIL's critique of international law's colonial continuities, the analysis underscores that dismantling punitive vagrancy regimes is not only a domestic reform imperative but also part of a broader struggle to decolonise legal frameworks and advance human rights globally.

To truly advance social justice, States must abandon punitive control and embrace structural reforms that address the root causes of poverty. This requires dismantling colonial legal legacies, strengthening welfare systems, and embedding rightsbased frameworks into domestic law. Only through such a shift can governments credibly uphold the ideals they profess and ensure that social justice becomes a lived reality for all.

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Lucia Mokrá and Clarissa do Nascimento Tabosa. "Access to housing and healthcare under temporary protection: The case of the integration of Ukrainians in Slovakia" (2025) 9 103–114 *Global Campus Human Rights Journal* https://doi.org/10.25330/3231

Access to housing and healthcare under temporary protection: The case of the integration of Ukrainians in Slovakia

Lucia Mokrá and Clarissa do Nascimento Tabosa***

Abstract: *This article examines policy frameworks for integrating Ukrainian refugees in Slovakia, using the human rights-based approach, with a focus on housing and health sectors, major pillars of effective refugee integration. It analyses the relevant legal landscape, including Slovakia's transposition of the EU's Temporary Protection Directive, alongside secondary data on policy implementation, to assess rights provision and assistance. The study suggests critical gaps and practical challenges in these processes, and provides evidence-based insights to develop more effective rights-based strategies in Slovakia.*

Keywords: *human rights-based approach; integration policies; temporary protection; Ukrainians in Slovakia*

*Lucia Mokrá, professor of International and European Law, Faculty of Social and Economic Sciences, Comenius University Bratislava, Slovakia, lucia.mokra@uniba.sk

**Clarissa do Nascimento Tabosa, assistant professor, Faculty of Social and Economic Sciences, Comenius University Bratislava, Slovakia, clarissa.tabosa@fses.uniba.sk

This paper reflects the views of the authors, drawing on prior research and experience in the areas of expertise and data collected within the project APVV-22-0526: The Economic and Fiscal Effects of Migration in Slovakia: An Integrated Modeling Approach.

1. Introduction

The large-scale displacement of Ukrainians following the 2022 Russian invasion of Ukraine required a rapid and comprehensive policy response across the European Union (EU). Data from the UNHCR (UNHCR 2026) points out that in April 2026, there are more than 5.2 million forced displaced Ukrainians in Europe. In Slovakia, measures, such as the Act No. 55/2022 Coll. on Certain Measures in Connection with the Situation in Ukraine, were taken even a few days before the activation of the EU's Temporary Protection Directive (TPD) (European Union 2001). The TPD provides a unique legal instrument open way to access a broad range of protection to those fleeing the war. This legislative action established clear legal entitlements, positioning the issue of Ukrainian integration not on the question of status (as in traditional asylum systems), but on the efficacy of implementation and the extent of the rights granted based on national policies. The TPD established the framework to provide access to core rights after granting temporary protection, particularly in access to the labour market, education, healthcare, and social housing.

The provided study addresses the positive obligation of Slovakia as a duty-bearer under TPD, particularly by analysing how Slovakia addresses two core rights under TPD – housing and healthcare, as a precondition to the implementation of other social rights, such as access to the labour market for adult Ukrainians and access to education for children fleeing the war in Ukraine. Access to education is particularly important, as out of 6.5 million displaced people receiving temporary protection in the EU (UNHCR 2024), 40 percent are children (European Parliamentary Research Centre 2025). Even after more than three years of the war in Ukraine, 50 percent of children who left Ukraine because of the war have still to be enrolled in their host countries' education systems. 60 percent of children enrolled take online classes broadcast from Ukraine, in parallel with classes in regular school (Styslavska-Doliwa 2025).

The analysis draws on a systematic review of the EU TPD and Slovakia's legislation on the respective areas. These are complemented by secondary data sources, including policy reports, academic literature, and institutional assessments from organisations like the United Nations High Commissioner for Refugees and the International Organization for Migration.

The human rights-based approach (HRBA) serves as the analytical framework, evaluating the extent to which rights obligations, particularly in the housing and health sectors, are translated into accessible and effective entitlements for Ukrainian under TPD. HRBA is underpinned by five key working principles to advance human rights for all. Principles are known as "PANEL" and enshrine participation, accountability, non-discrimination and equality, empowerment and legality (ENNHRI n.d.).

HRBA requires putting the human rights of everyone at the centre of their policies and strategies and making them actionable. By applying these principles, HRBA identifies States and their institutions as duty-bearers, those accountable for respecting, protecting, and fulfilling human rights. It also addresses individuals as rights-holders, empowering them to know, claim, and enjoy their rights (European Union 2021).

The study focuses specifically on Slovakia as a case study given its position as a frontline EU member receiving Ukrainians fleeing war especially after 2022. We argue that the access to housing and healthcare is precondition of the effective integration of Ukrainian children into the Slovak educational system and may contribute to mitigating integration barriers, while allowing access to all core rights under the TPD.

2. Integration barriers

The integration of migrants constitutes a complex, two-way, process characterised by mutual adaptation between newcomers and the receiving society. Although integration is commonly conceptualised as participation across key dimensions such as employment, education, and civic engagement (MIPEX 2025), its success fundamentally depends on equitable access to essential public services such as healthcare and education (Gil-González et al. 2015). These services not only facilitate migrants' well-being but also serve as crucial platforms for interaction, socialisation, and development of cultural and social capital necessary for full integration in society.

Extensive research addresses a broad spectrum of challenges that hinder the integration process. Structural and systemic inequalities are prominent, including restrictive legal frameworks that limit migrants' rights and opportunities (Federico and Baglioni 2021), financial burdens associated with accessing services or securing stable employment (Constant and Zimmermann 2011), and intricate bureaucratic procedures that discourage or exclude migrants from resources (Belabas and Gerrits 2017). Moreover, when it comes to health and education, in particular, a recent study has showed that housing quality acts as a central determinant of physical and psychological well-being, particularly for immigrant populations, especially the most vulnerable - refugees. This connection is not merely one-way; the literature highlights a cyclical dynamic where inadequate living conditions degrade health, and compromised health can subsequently lead to further housing instability. Crucially, vulnerable immigrant groups, such as refugees and asylum-seekers, are shown to face a significantly elevated risk of encountering substandard housing situations (Towle and Newbold 2025).

Beyond these institutional barriers, socio-cultural factors play a significant role. Language proficiency remains a critical obstacle, often interacting with experiences of discrimination and insufficient cultural competency within public institutions, which collectively reduce migrants' ability to navigate and benefit fully from available services (Joppke 2012; Asgary and Segar 2011). Together, these challenges demonstrate that integration is not simply about participation in societal structures but also requires the dismantling of barriers that prevent equitable access and meaningful inclusion.

3. Lack of access to housing for Ukrainians in Slovakia

The central role of housing for accessing other rights and services and for the ability to make use of one's full potential is also reflected in the international human rights framework. The Universal Declaration of Human Rights of 1948 thus stipulates that all individuals have the right to an adequate standard of living (Kraler et al. 2022). The right to adequate housing is also incorporated in the UN Covenant on Economic, Social and Cultural Rights (1966), which the Slovak Republic ratified in 1976 (MZVEZ n.d.).

According to Biffl et al. (2016) and Asselin et al. (2006), the housing and settlement of migrants have been identified as an important field of action for integration. One of the topics addressed in research refers to the unequal distribution of newly arrived migrants on the one hand and asylum seekers on the other. While newly arrived migrants tend to settle in urban areas with a large pool of jobs and social infrastructure, asylum seekers tend to be distributed by the nation States according to reception centres at hand, often in rural and less developed regions. Initially, the case of Ukrainians fleeing the war and arriving to Slovakia, this model did not apply. Most of them were provided housing in the cities, due lack of the social housing in Slovakia in general. For example, in the capital city Bratislava, there are only 978 city rental apartments, considering there are approximately another thousand under the management of city districts (Bratislav 2025). Such an approach presented another obstacle: access to education, as Slovakia has limited educational capacities in the urban areas (Jahanpour et al. 2023), underlying the gap in capacities of schools in cities in Slovakia. According to UNESCO, the majority of Ukrainian children in Slovakia were not enrolled in schools, and only 39 percent of Ukrainian refugee children were enrolled in school, while 55 percent used the all-Ukrainian online school platform at the end of 2023. Anchoring compulsory education, full-time and physically (Ministry of Education of the SR 2026), for children fleeing the war in Ukraine from September 2025 promotes their integration into society. The other enablers equally important for the enhanced integration alongside education can be access to housing and healthcare.

The lack of housing capacities in Slovakia led to different support for housing needs, by providing an accommodation allowance. The so-called

"Lex Ukraine" (Slovakia 2022) provides access to an accommodation allowance to all Ukrainians granted temporary protection status. Holders of temporary protection can find accommodation themselves directly through property owners or real estate agencies, through their family or friends, or accommodation can be arranged by staff at assistance centres, non-governmental organisations, any municipal or city office, or specialised websites offering accommodation. All new arrivals from Ukraine who have been granted temporary refuge can apply for accommodation in facilities of the Migration Office of the Ministry of the Interior of the Slovak Republic; however, the accommodation capacities are limited (Migration Office of the Slovak Republic 2019) According to the law, refugees who are considered vulnerable persons may be accommodated in an asylum facility for a maximum of six months, even repeatedly, based on a written request submitted to the Ministry of the Interior of the Slovak Republic (Slovakia 2022). In order to ensure the long-term sustainability and targeting of accommodation support for refugees from Ukraine who came to Slovakia as a result of the war, an amendment to Act No. 480/2002 Coll. on asylum and on amendments to certain acts came into force on 1 July 2024. This amendment introduces new conditions for the provision of accommodation allowances, which affect both refugees and accommodation providers. The amendment to the Act was adopted in a shortened legislative procedure. From 1 July 2024, the allowance is only be provided for the accommodation of refugees for 120 days from the first provision of temporary shelter in the territory of the Slovak Republic. After this period, the allowance is only to be provided for the accommodation of vulnerable persons (Slovakia 2024). For refugees, it requires fulfilling several conditions simultaneously, to have either the status of temporary protection, asylum seeker, or refugee, to fulfil one of the conditions defined within the social legislation (Slovakia 2024, Section 36a(2)): being 1) a member of a household that is a recipient of material need assistance; 2) a person with a severe disability who receives a subsidy to support humanitarian assistance for persons with severe disabilities pursuant to a special regulation; 3) a person who has reached the age of 65; 4) a parent caring for a child under five years of age or a natural person who personally cares for a child under five years of age pursuant to a court decision; 5) a child under five years of age.

The highly competitive real estate market, which exists mainly in urban and metropolitan areas, makes it difficult for Ukrainians in Slovakia to enter the private housing market (Aqqad 2022; Pisarevskaya and Scholten 2022). Different studies point to institutional and structural barriers and discriminatory practices by landlords and housing companies that hinder access to housing for refugees; in so doing, their actions affect the movement and settlement of refugees (Pisarevskaya and Scholten 2022). The comparative study by Galera et al. (2018) looked at the role of the location of refugee accommodation for social integration. Accommodations' availability that are in remote rural areas or on the periphery of municipalities, with limited accessibility to public transportation, might constrain opportunities for social interaction and integration to the labour market, which are key for social integration (see also Veselková and Hábel 2023).

The urgency for access to housing in Slovakia is imminent, with the length of the war in Ukraine, but also in the geopolitical context. Non-availability of accessible housing in Slovakia for people fleeing the war in Ukraine may lead them to seek a favourable living environment in different countries. That would increase the migration within the EU, when the securitisation of migration is on the increase in Europe (Bello 2022). Geopolitically, it may increase the risk of its abuse as a tool of hybrid war, seen in different EU Member States, particularly before national elections (Ciekanowski et al. 2026).

However, the newly adopted National Strategy of the Slovak Republic for Asylum and Migration Management did not address the need for access to housing for refugees, nor in general, but rather provides for the construction of a multi-purpose facility near the external border (Ministry of Interior 2025). The topic of accommodation and social implications for the effective implementation of other core rights under the TPD or for refugees in general is not addressed at all.

4. Access to healthcare for Ukrainians in Slovakia under TPD and beyond

Access to healthcare is one of the most important aspects for the successful integration of migrants. Unaddressed health issues can significantly impede an individual's ability to integrate into a new society and participate effectively in the labour market (Slootjes 2021). The COVID-19 pandemic was a test situation that illuminated this relationship between access to healthcare and integration. The pandemic acted as a magnifying aspect that exposed pre-existing gaps in migrant health policies and deepened health disparities that formed direct barriers to migrant integration, according to Slootjes (2021). Indeed, health problems and labour market participation are mutually reinforcing: poor health prevents migrants from completing integration and language courses, negatively affects wages and working hours, and may prevent some individuals from working altogether. The pandemic also revealed the significant cost of inaction, as research has demonstrated that denying migrants access to primary care leads to delayed treatment, more serious conditions, and substantially higher long-term treatment costs (Slootjes 2021).

Article 13(2) of TPD states that Member States must ensure that individuals benefiting from temporary protection have access to necessary support related to social welfare and basic living needs if they lack adequate resources. Additionally, States must provide medical care, which, at a *minimum*, includes emergency treatment and essential healthcare. The adoption is upon each particular Member State, but since the triggering of the TPD, in March 2022, the EU has encouraged Member States to grant Ukrainians broad access to healthcare and sick benefits and to create the means for Ukrainians under temporary protection to be integrated into the national healthcare system (European Union 2022).

After the activation of the TPD Slovakia started ensuring that individuals who have obtained the status of temporary protection within its territory are entitled to comprehensive healthcare services.[1] Nowadays, this entitlement guarantees that those under temporary protection receive medical care on equal terms with Slovak citizens, reflecting Slovakia's commitment to providing inclusive support and access to essential health services for displaced persons (IOM 2025). However, this was not a fast and straight forward process.

Slovakia's approach to providing healthcare for temporary protection (TP) holders fleeing the war against Ukraine underwent significant changes. Initially, access was restricted, offering only urgent emergency services, which was later improved to include "necessary" care. This intermediate policy created confusion due to its ambiguous definition, resulting in disparities in how medical services were delivered and paid for across various healthcare entities. Responding to pressure from international and non-governmental organisations, the Government incrementally expanded coverage. First, in January 2023, children under 18 with TP were granted the same health benefits as permanent resident children. Crucially, by September 2023, this near-equivalent level of access was extended to all adult TP holders (excluding specialised spa treatments), with the public insurance company, Všeobecná zdravotná poisťovňa, overseeing a dedicated financial system for this broadened coverage, in accordance with Act No. 577/2004 Coll. on the Scope of Health Care Covered by Public Health Insurance (Ministry of Health 2025; IOM 2025).

According to a recent study conducted in 2025 with over 400 Ukrainians living in Slovakia (IOM 2025), most Ukrainians have access to health care providers – 76 percent of adults are registered at a general doctor, and 90 percent of children are registered. On the other hand, healthcare services appear as the second most pressing need for Ukrainians (32 percent), only behind financial support in general. Among the top three most common challenges faced by Ukrainians in Slovakia when accessing to healthcare system are long queues, language barrier, and perceived costs.

Overall, the trajectory of Slovakia's policy regarding healthcare provision for Ukrainians who are TP holders ultimately demonstrates

1 In fact, even prior to getting the status, the Ukrainian nationals have access to emergency care for the first thirty days upon entering Slovakia.

a fair fulfilment, and eventual supersession, of the minimum provisions set forth by TPD. The initial phase, characterised by the restriction to emergency care and "necessary" care, highlighted significant friction points between legislative recommendations and practical implementation. In practice, the unclear definition of "necessary" care led to inconsistent decisions among healthcare providers, meaning that access to care varied depending on the region or facility (as reported often by media outlets, see Topky.sk 2022). However, the comprehensive policy shift, culminating in the extension of near-equivalent healthcare entitlements to all TP holders by September 2023, underscores Slovakia's commitment to the application of the TPD and integration of Ukrainians into the Slovak healthcare system.

Therefore, we can conclude that the only significant access barrier uniquely attributable to the TP population is the linguistic impediment. The other difficulties encountered by Ukrainian who are TP holders when accessing the Slovak healthcare system are largely not unique to the displaced population but rather reflect pre-existing systemic challenges that affect the wider public. Specifically, issues such as extended waiting times or long queues for appointments and specialised care, along with concerns over perceived costs, are common grievances experienced by Slovak citizens (STVR 2025) and by migrants elsewhere (Spencer and Hughes 2015; Timkova et al. 2026) utilizing the public healthcare infrastructure. This indicates that while the legal entitlement to care has been established on an equal basis, the practical delivery of services is constrained by domestic capacity issues within the system.

Moreover, in June 2025, Slovakia adopted the National Strategy for the Governance of Asylum and Migration (2025–2030), whose integration goals for the next five years align closely with the core pillars outlined in the Migrant Integration Policy Index (MIPEX). According to the strategy, integration measures should foster coordinated and interconnected tools and initiatives that enable foreigners to access the labour market, master the State language, and gain entry to education, healthcare, social services, housing, and participation in civic and political life, ultimately paving the way for the granting of Slovak citizenship (Ministry of Interior 2025).

The Strategy is the framework document to comprehensively and systematically address Ukrainians in Slovakia and to address contemporary challenges, including demographic shifts, labour shortages, irregular migration, the integration of individuals granted international protection, and the consequences of the war in Ukraine. It outlines concrete measures for managing both legal and irregular migration, enhancing asylum procedures, and strengthening border and security mechanisms, with significant emphasis on migrant integration (Ministry of Interior 2025). That outlines particularly Slovakia's approach to the biggest migration group of Ukrainians fleeing the country due to war and their integration into society, to which access to integration policies is key alongside safeguarding their human rights.

5. Conclusion

The HRBA emphasises the duty of States and duty-bearers to enhance the ability of rights-holders to understand, claim, and enjoy their rights. Our initial assessment confirmed that one of the core rights under TPD, access to housing, is not structurally addressed nor implied in law and policies in Slovakia regarding Ukrainians fleeing the war. Access to healthcare is fairly fulfilled and even surpasses the minimum provisions set forth by TPD, although not without problems. Additionally, we outline the difference between the legal commitment and positive obligation regarding the implementation of access to healthcare. Our study goes in line with what was suggested by Pisarevskaya and Scholten (2022), who stressed that developing a more sustainable strategy for healthcare integration requires allocating effort and resources not just to regulating healthcare access, but also to improving intercultural competencies and ensuring adequate information provision.

Lack of a HRBA, whose objective is that all interventions, policies, and technical assistance should advance the realisation of human rights, might contribute to low levels of social inclusion of Ukrainians in Slovakia. A more structured approach, focusing on enablers of access to housing, and more effective implementation of provided healthcare can contribute to advancing of other two core rights under TPD in a more holistic manner – access to labour markets and access to education. As provided in the previous studies, the housing environment has a significant impact on our lifestyle and, accordingly, on health (Schneider and Mohnen 2016). Both of them we consider as essential for the long-term solutions and integration in areas of labour market and education.

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Charu Bhatt and Tanvi Yadav. "Criminal responsibility and mental illness in India: A human rights critique of the insanity defence and fitness to stand trial" (2025) 9 115–131 *Global Campus Human Rights Journal*
https://doi.org/10.25330/3230

Criminal responsibility and mental illness in India: A human rights critique of the insanity defence and fitness to stand trial

Charu Bhatt and Dr. Tanvi Yadav***

Abstract: *Criminal responsibility, a cornerstone of criminal law, is predicated on the assumption that individuals possess the mental capacity to understand the nature and consequences of their actions. However, this premise becomes complex when mental illness affects an individual's cognitive or volitional faculties. This study undertakes an analysis of the interface between mental illness and criminal responsibility within the Indian legal framework, with particular focus on the insanity defence and the role of forensic psychiatry. Drawing on statutory law, judicial interpretation, and emerging human rights perspectives, it critically evaluates how Indian criminal law addresses mentally ill offenders and assesses the adequacy of existing legal standards and institutional mechanisms. The study further explores the challenges posed by unstructured psychiatric assessments and the absence of formalised protocols, with selective reference to international practices to contextualise the Indian framework. The research concludes with recommendations to harmonise Indian criminal law with evolving psychiatric knowledge and international human rights obligations. It proposes a set of reforms aimed at enhancing the doctrinal coherence, clinical accuracy, and constitutional validity of India's approach to criminal responsibility in cases involving mental illness.*

Keywords: *criminal responsibility; insanity defence; forensic psychiatry; fitness to stand trial*

*Ph.D. Scholar NFSU; charu.phdlaw2386@nfsu.ac.in.

** Assistant Professor, NFSU.

1. Introduction

The intersection of mental health and criminal responsibility is a nuanced and consequential issue that lies at the nexus of legal and psychological disciplines. This multifaceted domain delves into the intricate relationship between mental illness and culpability within the criminal justice system, raising fundamental questions about the principles of justice, fairness, and individual rights. Understanding this interplay is paramount, particularly in India, where the legal landscape is shaped by a blend of cultural heritage, historical legacies, and modern legal principles. The intersection needs to be considered in terms of human rights as well, specifically with references to constitutional guarantees of equality, dignity, and personal liberty. The issue of whether a criminal is responsible in cases of mental illness is not just a matter of law but directly concerns the accused's right to a fair trial, their effective involvement in the legal proceedings, as well as the right against arbitrary deprivation of liberty. In the event of mental incapacity being poorly evaluated or misconstrued, it does not just mean wrongful conviction but also unjust and prolonged institutionalisation, which becomes a grave concern given Article 21 of the Constitution of India(Mani, n.d.).This makes a human rights-based approach the necessary measure to determine whether current legal norms have any significant protection of the procedural and substantive rights of mentally ill individuals in the criminal justice system.

A foundational concept in this discourse is fitness to stand trial, which determines whether an accused person possesses the mental competence to understand and meaningfully participate in legal proceedings. The concept of competency to stand trial originated in United States jurisprudence, particularly in the landmark case of *Dusky v. United States, 362 U.S. 402 (1960)* where the Supreme Court held that a defendant must possess "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him" to be deemed fit to stand trial (Gay et al. 2017).

India inherited this legal construct through its common law framework and codified it in the Criminal Procedure Code (CrPC) (1973)(*THE CODE OF CRIMINAL PROCEDURE, 1973 _________ ARRANGEMENT OF SECTIONS*, n.d.), specifically under Sections 328 and 329. These provisions empowered courts to order medical evaluations first by a civil surgeon, and subsequently by a qualified psychiatrist or psychologist, when there is reason to believe the accused is mentally unfit to participate in their defence. Although Indian statutes do not explicitly refer to the term fitness to stand trial, the judiciary has consistently treated it as distinct from the insanity defence outlined in Section 22 of the Bharatiya Nyaya Sanhita (BNS)(*MINISTRY OF LAW AND JUSTICE (Legislative Department)*, n.d.). While the insanity defence concerns the mental state at the time of the offence, fitness to stand trial focuses on the accused's present ability to understand and participate in legal proceedings (Arrigo and Bardwell 2000; Cruise and Rogers 1998).

The Bharatiya Nagarik Suraksha Sanhita (BNSS) (2023) built upon this framework under Chapter XXVII (Sections 367–378), updating procedural mechanisms such as mandatory psychiatric evaluations, postponement of proceedings, and conditional resumption once the accused is declared mentally fit. This statutory transition reflects a continuity with earlier principles while introducing structural reforms aimed at procedural clarity and therapeutic justice.

Despite such legislative advancements, there are significant concerns. Many people with mental disorders may still be prosecuted and imprisoned unfairly, often for relatively minor offences, leading to prisons effectively becoming *de facto* mental hospitals (Kathane et al. 2022). This highlights a troubling gap between the occurrence and treatment of mental disorders, with reports indicating that approximately 76–85 percent of individuals with severe mental disorders in low-and middle-income countries (LMICs) receive no treatment(*Convention on the Rights of Persons with Disabilities (CRPD) | Division for Inclusive Social Development (DISD)*, n.d.). The current legislative frameworks often fall short in adequately addressing the complexities of mental health issues among offenders, underscoring the need for continuous review and updating of legislation, especially in LMICs, to ensure the maximal utilisation of scarce resources.

This paper aims to investigate and analyse the legal standards governing mental illness in the context of criminal law in India, while briefly referring to international practices where relevant. It will explore the statutory provisions, judicial interpretations, and practical challenges associated with assessing mental capacity and criminal responsibility and delve into the criminological aspects of mentally ill offenders. The study ultimately seeks to provide insights into effective intervention and rehabilitation strategies, highlighting the importance of compassionate and informed approaches to address mental health issues within the criminal justice system. In doing so, the paper situates the doctrines of insanity defence and fitness to stand trial within a broader human rights framework, interrogating whether the Indian legal system adequately reconciles principles of culpability with the rights of mentally ill accused persons. It further examines whether existing procedural safeguards effectively uphold fair trial guarantees or whether structural and institutional deficiencies continue to undermine these protections in practice. This paper builds on existing scholarship while identifying gaps in the integration of criminal law doctrine, forensic psychiatric practice, and human rights frameworks.

2. Research methodology

This study adopts a doctrinal research methodology, relying on the analysis of primary and secondary legal sources. Primary sources include statutory frameworks such as the BNS(*MINISTRY OF LAW AND JUSTICE (Legislative Department)*, n.d.), the BNSS(Vlk/Kkj.k MINISTRY OF LAW AND JUSTICE (Legislative Department), n.d.), and (*Mental Healthcare Act, 2017*, 2017) along with relevant judicial decisions interpreting the insanity defence and fitness to stand trial. Secondary sources include scholarly literature in criminal law, forensic psychiatry, and human rights law. The study also employs a selective comparative analytical approach by examining legal and forensic practices in jurisdictions such as the United States, the United Kingdom, and Canada. The research is qualitative in nature and is limited by its reliance on doctrinal and literature-based analysis without empirical field data.

3. Review of literature and conceptual framework

The nexus of mental illness and criminal responsibility has been explored within a variety of disciplinary practices, such as criminal law, forensic psychiatry, and human rights law. Classical legal theory has paid much attention to the doctrinal constraints of the insanity defence, especially its continued reference to M'Naghten rules, which emphasise cognitive inability but mostly omit volitional defects (Morse 2011). This has resulted in consistent criticism that the legal test is not reflective of modern psychiatric knowledge of mental disorders.

In line with this, the forensic psychiatric literature has discussed the issues related to the determination of competency and criminal responsibility. Grisso (2006) discusses the significance of well-constructed evaluation instruments and standardised procedures to assess fitness to stand trial, as lack of such systems usually results in the lack of consistency in expert testimony and judicial verdicts. On the same note, Appelbaum (2007) points to the clinical and ethical issues of determining mental capacity, especially in a legal adversarial context where the subjectivity of diagnosis could pose a threat to the reliability of evidentiary practice.

Human rights-wise, there has been an increasing trend of focusing on the implications of mental illness in the criminal justice system. One target of this discussion has been the United Nations Convention on the Rights of Persons with Disabilities (CRPD), especially regarding Article 12, which recognises the equal legal capacity of persons with disabilities. Scholars, including Dhanda (2007) and Minkowitz (2007), believe that the insanity defence and other aspects of the conventional law can be inconsistent with the focus of the CRPD on autonomy and non-discrimination; thus, a reassessment of the conceptualisation of capacity and responsibility of the legal framework is necessary.

Nevertheless, current literature tends to consider these areas, namely the criminal law doctrine, the forensic psychiatric practice, and the human rights norms, as analytically separate ones. Appreciable absence of factual scholarship that critically looks at how these constructs have harmonised to formulate how mentally ill accused persons are treated in legal systems, especially in the Indian context. This paper aims to fill this gap by placing the insanity defence and fitness to stand trial within a single analytic framework that integrates the legal, clinical, and human rights approaches to the issue. Against this backdrop, the following sections examine the Indian legal framework governing criminal responsibility and mental illness.

4. Legal framework on mental illness and criminal responsibility in India

India's legal approach to mental illness and criminal responsibility is deeply rooted in English common law principles. A foundational tenet of criminal jurisprudence – *actus non facit reum nisi mens sit rea* "an act does not make a person guilty unless done with a guilty mind" – serves as the basis for assessing culpability in cases involving mental illness (Morse 2011).

4.1. Evolution of the insanity defence in Indian law

The legal treatment of mental illness in India has undergone a significant transformation from its colonial origins. The Lunacy Acts of 1858 and later the Indian Lunacy Act of 1912 were primarily custodial in nature, aimed at segregating mentally ill individuals for public safety. These early statutes focused more on institutionalisation than treatment or rights. A paradigm shift occurred with the (*Mental Healthcare Act, 2017*, 2017), which attempted to frame mental illness in more humane terms by promoting care and treatment. However, it was still criticised for emphasising legal procedures over mental healthcare delivery and lacking adequate provisions for protecting patient rights. The introduction of the MHCA marked a transformative moment in Indian mental health law (Kaur and Dangwal 2024). The MHCA adopts a rights-based approach, aligning with international human rights standards. It expands the definition of mental illness, strengthens patient autonomy and rights, and notably decriminalises suicide under Section 115, presuming that anyone attempting suicide is suffering from severe stress and thus requires care, not punishment.

4.2 Section 22 of the BNS and the M'Naghten Rule

Section 22 of the BNS provides the principal legal basis for the insanity defence as it states:

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

This provision is largely derived from the M'Naghten Rules, established in England in 1843, which emphasise the accused's cognitive incapacity at the time of the act. The test assesses whether the accused understood the nature and consequences of the act or recognised that it was wrong. Importantly, this legal standard does not account for volitional impairment or irresistible impulse. The presumption in law is that every person of sound discretion is considered sane, and thus, the burden lies on the accused to establish insanity (Asokan 2014).

4.3. *Judicial interpretation and key case law*

The Indian judiciary has played a crucial role in interpreting and applying the insanity defence, drawing a clear line between legal insanity and medical insanity. A psychiatric diagnosis alone does not absolve criminal responsibility; the court requires evidence that the accused was legally insane at the time of the crime, i.e., incapable of understanding the nature or wrongfulness of the act.

Regarded as a foundational case in Indian criminal jurisprudence on mental illness, the Supreme Court in *Dahyabhai Chhaganbha Thakker v. State of Gujarat*, held that the defence must prove unsoundness of mind on a preponderance of probabilities, not beyond a reasonable doubt. This standard was reaffirmed in *Surendra Mishra v. State of Jharkhand* where the Court emphasised that a history of mental illness alone is insufficient; it must be shown that the accused was mentally impaired at the time of the offence.

In *Shrikant Anandrao Bhosale v. State of Maharashtra*, the Court reiterated the necessity of corroborative behavioural and medical evidence to support claims of insanity.

A key precedent was set in *Devidas Loka Rathod v. The State of Maharashtra*, where the Supreme Court ruled that investigators have a duty to ensure immediate medical examination of an accused, with a known history of mental illness. Failing to do so undermines the credibility of the prosecution's case.

4.4. *Fitness to stand trial under Chapter XXVII of the BNSS*

The concept of fitness to stand trial, also referred to as competency to stand trial or fitness to plead, is a crucial intersection of psychology and law, determining whether an accused individual possesses the mental capacity to comprehend legal proceedings and participate meaningfully in their defence (Appelbaum 2007). Across jurisdictions, legal systems require that an accused person must understand the nature, purpose, and potential outcomes of the proceedings and be able to effectively communicate with legal counsel to ensure a fair trial. The notion of fitness to stand trial is inseparable in human rights consideration with the right to a fair trial and due process. An accused who is unable to comprehend proceedings or hire counsel is virtually deprived of meaningful involvement in their own defence. This not only compromises procedural fairness but also has constitutional implications with regard to Article 21, which affirms the right to life and personal liberty, including fair and just legal procedure. In this regard, fitness tests play a vital role in preventing miscarriages of justice because only when the accused has the necessary level of mental competence, the criminal trials may be undertaken. For instance, the widely used *Dusky* standard in the United States defines competency as the accused's ability to consult with a lawyer with a reasonable degree of rational understanding, as well as a rational and factual grasp of the legal process (Pillay 2014).

In India, the framework for determining fitness to stand trial is laid out under Sections 367 to 379 of the BNSS which provide procedural safeguards when an accused is suspected to be mentally unfit. These provisions include mandatory medical evaluations, the postponement of trials, hospitalisation for treatment, and specific criteria for resuming proceedings once the individual is deemed mentally fit. If a *prima facie* case is established and the accused shows signs of mental illness, they are referred to a district surgeon, who in turn directs them to a qualified psychiatrist or psychologist. The accused is then admitted to a psychiatric facility for treatment until they are fit to participate in the trial. Consistent with international practice, criminal proceedings are generally suspended until fitness is restored (Chadda 2013).

Despite the existence of these legal provisions, the implementation of fitness to stand trial assessments in India faces several challenges. These include insufficient infrastructure for forensic psychiatric evaluation, a lack of coordination between legal and medical systems, and delays arising from the absence of legally mandated timelines for conducting forensic psychiatric assessments (Pillay 2014). There is also no standardised or uniform method for evaluating mental capacity across jurisdictions in India, further complicating the process (Asokan 2014). In some countries, such as South Africa, the indeterminate duration of psychiatric hospitalisation for individuals found unfit to stand trial has raised ethical concerns, as some individuals risk being detained indefinitely within the mental health system without a clear legal or therapeutic resolution (Houidi et al. 2018).

Although Indian case law specifically addressing fitness to stand trial implementation is limited, judicial interpretations reinforce the necessity of thorough medical evaluation and procedural diligence in cases involving mental illness. Courts have emphasised that the accused's right to a fair trial includes proper assessment and treatment where needed. The case of

Devidas Loka Rathod v. the State of Maharashtra exemplifies the judiciary's growing awareness of this issue, affirming the investigator's duty to ensure timely psychiatric evaluation where a history of mental illness is apparent. This approach underscores the importance of a multidisciplinary, systematic framework, particularly in complex cases involving multiple mental health conditions, to uphold justice and procedural fairness.

5. Role of forensic psychiatry and expert evidence: Comparative insights and the Indian context

Having examined the statutory and judicial framework governing criminal responsibility, it becomes necessary to consider the role of forensic psychiatry in operationalising these legal standards within the criminal justice process. Forensic psychiatry occupies a critical interface between law and mental health, applying clinical and scientific expertise to resolve complex legal questions across criminal, civil, correctional, and legislative contexts (Naik and Damodharan 2021). In the criminal justice system, it plays a foundational role in determining the mental state of accused individuals at various procedural stages, most notably, criminal responsibility, fitness to stand trial, and appropriate therapeutic disposition. In India, forensic psychiatric evaluations are conducted under Sections 367–368 of the BNSS, wherein court-ordered assessments assist in deciding whether an accused person possesses adequate cognitive ability to engage meaningfully in legal proceedings or to be held criminally accountable.

Evaluations in India typically assess the accused's understanding of the nature and consequences of the charges, familiarity with courtroom procedures, and ability to consult with legal counsel. Importantly, hospitalisation is not mandatory, and outpatient forensic psychiatric assessments are increasingly utilised for their cost-effectiveness and alignment with liberty-preserving principles (Nambi et al. 2016). A multidisciplinary team, often comprising psychiatrists, psychologists, social workers, and mental health nurses, may be involved, and their findings may be presented through expert testimony, generally admissible under Section 39 of the (*THE BHARATIYA SAKSHYA ADHINIYAM, 2023*, n.d.) which governs expert evidence in matters requiring specialised knowledge.

However, systemic challenges persist. The subjectivity inherent in psychiatric diagnosis, compounded by divergent clinical interpretations, theoretical orientations, and uneven interviewing styles, can lead to inconsistencies in expert findings. This variability is particularly problematic in high-stakes determinations such as legal insanity or unfitness to stand trial, where cross-examination often exposes diagnostic ambiguity. The lack of standardised diagnostic protocols in Indian forensic practice further complicates the reliability of such assessments (Chadda 2013).

The expert psychiatric evidence in Indian courts, however, is not evenly represented. Although courts have the privilege of admitting expert opinion when it comes to legal insanity or fitness to stand trial, it is not regarded as conclusive and can be questioned by the courts. The lack of standardised forensic assessment procedures also adds to the weight given to such testimony since different clinical views can be reached on similar cases. This non-uniformity is not only a problem that impacts the uniformity of the results of the judicial process, but it also puts the mentally ill accused on the losing end, especially in cases where the onus of proving insanity is on the accused. Enhancing the reliability and institutional credibility of forensic psychiatric evidence is thus crucial to the attainment of both evidentiary fairness and substantive justice.

5.1 Comparative insights: Learning from international practice

To address these challenges, several jurisdictions have adopted structured assessment tools and institutional models that strengthen the credibility, consistency, and legal utility of forensic psychiatric evidence.

In the United States, for example, the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) is widely employed to assess a defendant's competence to stand trial. This standardised instrument evaluates cognitive and decisional capacities such as understanding, reasoning, and appreciation, providing courts with objective data to supplement clinical opinion. The United States also emphasises structured documentation, courtroom training for forensic experts, and interdisciplinary collaboration across mental health and legal domains (Wood et al. 2017).

The United Kingdom, while still guided by the traditional M'Naghten Rules for insanity, incorporates medical experts frequently under Section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and provides for psychiatric diversion where possible. The UK legal system allows for court-appointed experts and encourages joint expert reports in contested psychiatric issues. Furthermore, the UK makes use of structured assessment tools such as the HCR-20 (Historical, Clinical, Risk Management–20) for violence risk evaluation, used extensively in forensic hospitals and parole settings (Dolan and Campbell 1994).

Canada, under Section 16 of its Criminal Code, utilises the not criminally responsible due to mental disorder (NCRMD) standard. Canadian forensic psychiatry is deeply embedded in the legal process, with Review Boards playing a quasi-judicial role in overseeing both fitness to stand trial and long-term dispositions post-acquittal (O'Shaughnessy 2007). Canadian forensic institutions apply structured assessment protocols and emphasise ethical transparency, procedural fairness, and public safety, making expert evidence both influential and accountable (Chaimowitz et al. 2022).

While this paper does not undertake a full comparative legal analysis, references to international practices serve a limited but important function in contextualising the Indian framework. Jurisdictions such as the United States, the United Kingdom, and Canada have developed more structured approaches to forensic psychiatric evaluation and competency assessment, reflecting a greater degree of institutional integration between law and mental health systems. These comparative insights highlight potential pathways for reform but are used here primarily to illuminate gaps within the Indian system rather than to provide an exhaustive comparative study.

6. Rights-based analysis and institutional gaps

Beyond doctrinal and procedural considerations, the treatment of mentally ill accused persons raises significant human rights concerns that extend to issues of dignity, equality, and access to justice. The evolution of mental health legislation in India, particularly with the enactment of the MHCA of 2017, signals a growing commitment to human rights and alignment with international norms. Replacing the MHA of 1987, the MHCA represents a major shift toward a rights-based framework, emphasising autonomy, dignity, and access to care. It broadens the definition of mental illness to include substance use disorders and other conditions that significantly impair judgment, behaviour, or perception of reality (Duffy and Kelly 2019). This rights-based orientation is reflected not only in the broader framework of the Act but also in specific provisions that directly impact the treatment of individuals within the criminal justice system. One of its most progressive features is Section 115, which decriminalises suicide attempts by presuming severe stress in such cases unless proven otherwise, thereby adopting a compassionate public health perspective. The Act also enables the transfer of prisoners with mental illness to mental health establishments (MHCA 2017, Section 102), ensures access to rehabilitation, regulates neurosurgical interventions, and allows individuals to draft advance directives expressing their preferences for treatment during future mental health crises. Importantly, it restricts involuntary admissions to specific circumstances, subject to oversight by Mental Health Review Boards (MHRBs), further safeguarding individual rights (Raveesh et al. 2019).

India's ratification of the CRPD in 2008 reinforced the obligation to reform mental health laws in line with its human rights principles (Raveesh et al. 2019). The CRPD adopts a transformative approach to disability, including mental illness, by recognising legal capacity, equality, and the right to support in decision-making. Article 12 is particularly significant, affirming that all individuals possess full legal capacity and must not be denied their rights based on mental capacity assessments. While the CRPD does not explicitly prohibit involuntary treatment, it urges Member States to implement safeguards against its misuse and encourages supportive, rights-respecting alternatives. Nonetheless, there are normative complexities in the implementation of the CRPD framework into the criminal law.

Although Article 12 recognises the equal legal capacity of persons with disabilities (including mentally ill) the conservative criminal law principles like the insanity defence assume that some persons are not capable of the necessary capacity to commit a crime. This creates a normative tension between recognising individual autonomy and acknowledging diminished criminal culpability. A human rights-based approach thus demands a sensitive balancing of these principles so as not to deny people unfairly the right to legal agency, but at the same time not to leave them unfairly liable to criminal responsibility due to defective mental capacity. The lack of a defined doctrinal convergence between these stances is a significant gap in the Indian legal framework.

While the statutory framework reflects a progressive rights-based orientation, its effectiveness ultimately depends on institutional implementation. While these legislative advancements signal a progressive shift in principle, their effectiveness remains contingent upon institutional implementation. Many States have failed to establish Mental Health Authorities or MHRBs and have not issued the necessary regulatory guidelines for mental health institutions, preventing individuals from exercising their rights under the MHCA. Inadequate budgetary allocations have led to a shortage of trained professionals and poorly equipped facilities. Furthermore, although the Act recognises the right to community living under Section 19, progress toward developing community-based services has been negligible. In the absence of adequate community-based and institutional support systems, these legal guarantees often fail in practice. The absence of such infrastructure has effectively turned prisons into substitute mental health institutions, where a significant portion of the incarcerated population suffers from untreated mental illness. Overcrowding, solitary confinement, and a lack of psychiatric care worsen mental health conditions and increase the risk of recidivism, with long-term consequences extending beyond imprisonment (Philip et al. 2022).

Judicial interpretation further reflects these inconsistencies. The case of *Mahendra K. C. v. The State of Karnataka* exemplifies the judicial system's occasional insensitivity to mental health issues. In this case, the Supreme Court criticised the High Court for labelling the deceased as a "weakling" without properly evaluating the mental health context, cautioning against the application of rigid and simplistic standards to such complex matters. This highlights a broader issue of stigma and bias within the criminal justice system (Gu and Ding 2025). This is not an isolated concern but reflects a broader systemic pattern. People with mental illness often face discriminatory treatment at the hands of law enforcement, prosecutors, and even judges, which can result in unjust outcomes. These individuals are overrepresented in the criminal justice system due to structural factors such as poverty, homelessness, and limited access to mental health services. The continued presence of societal stigma further marginalises them, reinforcing cycles of disadvantage and exclusion. While the MHCA sets an ambitious framework for the protection of mental health rights, its true impact depends on sustained institutional reform, resource allocation, and cultural change within both the mental health and criminal justice systems. Taken together, these legal, institutional, and social factors reveal a pattern of fragmented protection. This analysis highlights a critical gap between legal doctrine and its practical implementation, raising important questions about the adequacy of existing safeguards in protecting the rights of mentally ill accused persons, particularly in the context of criminal responsibility, the insanity defence, and the accused's ability to meaningfully participate in trial proceedings.

7. Reform proposals and comparative models

Rethinking criminal responsibility and the insanity defence in India necessitates a paradigm shift that harmonises legal principles with contemporary psychiatric knowledge and international human rights standards. A truly integrative approach must begin with capacity-building at both legal and medical-psychiatric levels. One of the most urgent legal reforms is to revise Section 22 of the BNS to broaden the current understanding of criminal incapacity beyond purely cognitive dysfunctions. By incorporating volitional impairments, as recognised in the American Law Institute Model Penal Code Test, Indian law can more accurately reflect the nuanced realities of mental illness and culpability.

India's legal framework currently lacks any explicit recognition of "diminished responsibility," a partial defence that permits judicial discretion in cases where mental illness does not meet the full threshold of legal insanity. This concept, long embedded in jurisdictions such as the United Kingdom through the (*Homicide Act 1957*, n.d.), allows courts to consider reduced culpability in sentencing, reflecting a more graduated and clinically informed model of criminal responsibility. The absence of such provisions in the BNS represents a significant gap in aligning Indian law with contemporary forensic psychiatric principles.

From a forensic systems perspective, India's forensic psychiatric evaluations currently rely heavily on unstructured clinical judgment, interviews, and observational assessments, which, while important, lack the objectivity and reproducibility of structured diagnostic frameworks. Although international tools such as the MacCAT-CA and the DR.SED paradigm offer robust models (Wood et al. 2017), their wholesale adoption may not suit the Indian legal and clinical ecosystem without context-specific adaptation. There is an urgent need to develop India-specific forensic assessment protocols, integrated with guidelines tailored to Indian jurisprudence, socio-cultural realities, and resource constraints.

Equally important is training judicial officers and legal counsel in the interpretation and limits of psychiatric evidence, thereby fostering mutual respect and interdisciplinary competence between the legal and mental health systems. The Indian judiciary would particularly benefit from mandatory, specialised training in forensic psychiatry, especially for trial court judges, prosecutors, and court-appointed medical officers. A lack of familiarity with psychiatric diagnoses, treatment trajectories, and the clinical criteria for unfitness to stand trial can undermine both judicial accuracy and procedural fairness.

Institutional investment is also critical. India currently lacks dedicated forensic psychiatric hospitals, resulting in ad hoc treatment within general hospitals or prisons that are often ill-equipped to handle complex mental health cases. The establishment of dedicated forensic psychiatry units, the peer review of expert reports, and the codification of standards for psychiatric testimony would enhance both the probative value and ethical soundness of expert evidence in Indian courts. Additionally, the creation of national codes of practice and interdisciplinary review panels to resolve conflicting expert opinions would strengthen the evidentiary integrity of psychiatric inputs in legal proceedings.

Another critical area requiring reform is post-acquittal and post-release rehabilitation. The absence of structured halfway homes, supervised community placements, and psychosocial reintegration services leaves mentally ill offenders at risk of institutional cycling, relapse, and long-term marginalisation. A continuum of care, spanning custodial treatment to supported community living, is essential for promoting therapeutic recovery and upholding constitutional commitments to dignity and non-discrimination.

Comparative international practices provide instructive models for reform. In the United States, competency to stand trial is assessed using the *Dusky* standard, while the Insanity Defence Reform Act of 1984 narrowed the federal insanity defence and introduced greater procedural rigor. Several States in the United States have adopted “guilty but mentally ill” verdicts, permitting simultaneous incarceration and psychiatric care, thus balancing accountability and treatment (Fentiman 1985). In Canada, Section 16 of the Criminal Code employs the NCRMD standard, where Review Boards oversee individualised treatment plans and public safety conditions. Canadian law also provides clear procedures for determining temporary or permanent unfitness to stand trial, ensuring due process while accommodating mental incapacity (Chaimowitz et al. 2022).

India can also draw valuable lessons from mental health courts and diversion programmes in jurisdictions such as the United States, Canada, and Australia. These courts redirect eligible mentally ill offenders away from punitive systems into community-based care, applying therapeutic jurisprudence through individualised treatment planning, regular judicial monitoring, and cross-sector collaboration. Empirical studies show that such programmes significantly reduce recidivism, psychiatric relapse, and the burden on penal institutions, while enhancing therapeutic and social outcomes.

Adopting such reforms in India could transform the treatment of mentally ill offenders – shifting from a custodial, deficit-based model to a rights-based, recovery-oriented framework. By aligning legal reforms with psychiatric expertise and international best practices, India can ensure that its criminal justice system becomes more constitutionally compliant, clinically sound, and ethically defensible. Ultimately, these changes are essential to uphold the principles of justice, fairness, and human dignity at the intersection of criminal law and mental health.

The above discussion shows that criminal responsibility, mental illness, insanity defence, the test of fitness to stand trial, and human rights are not independent areas of legal consideration but highly related aspects of the criminal justice system. Although the law is aimed at balancing culpability and protection, its existing structure does not always sufficiently incorporate psychiatric realities with constitutional and human rights guarantees. This disengagement is reflected in the inconsistent application of the judicial process, inadequate procedural protection, and institutional failures, all of which lead to the lack of fairness and justice. To resolve these problems, the reform of doctrines is not only necessary but also a more consistent, rights-based approach to the treatment of mental illness in the realm of criminal law.

8. Conclusion

The intricate interplay between mental health and criminal responsibility presents profound challenges for justice systems worldwide, including India. This paper has examined the multifaceted realities that people with mental illness face within the criminal justice process, highlighting the interplay between legal frameworks, judicial interpretation, the role of forensic psychiatry, and the institutional deficiencies that persist. While foundational legal instruments such as Section 22 of the BNS and the MHCA offer a structured approach to addressing mental illness in legal contexts, their implementation frequently falls short of achieving a compassionate and just response. The continued judicial debate around distinguishing legal from medical insanity, the evidentiary burden placed on the accused, and the difficulty of reliably assessing mental capacity reveal the legal system's ongoing struggle to keep pace with psychiatric complexities. Forensic psychiatric expertise plays a pivotal role in informing courts, yet issues around diagnostic reliability, credibility of testimony, and the limited psychiatric literacy within the legal profession remain serious concerns.

The adoption of a rights-based approach, aligned with the CRPD and embedded in the MHCA , marks an important shift toward safeguarding the dignity and well-being of those with mental illness. The decriminalisation of suicide attempts represents a particularly progressive step, recognising the need for care over punishment. However, systemic shortcomings, including inadequate mental health infrastructure, limited funding, and the continued use of prisons as de facto mental health institutions, undermine the realisation of these rights and obstruct meaningful rehabilitation. Addressing these shortcomings requires comprehensive reforms that not only amend existing laws to expand the understanding of mental impairment beyond cognitive dimensions to include volitional and emotional aspects but also involve significant investment in forensic psychiatry infrastructure and the specialised training of legal and mental health professionals. The development of mental health courts and diversion programmes can offer alternatives to incarceration, emphasising treatment and community reintegration over punitive responses. Equally important is the establishment of robust post-release care systems to support individuals with mental illness, reduce recidivism, and promote social reintegration.

Ultimately, creating a more humane, effective, and equitable criminal justice system demands an integrated and multidisciplinary approach grounded in evidence-based practices and a sustained commitment to justice and human rights. By acknowledging and addressing the nuanced realities of mental illness, India can work toward a legal framework that ensures not only accountability but also compassion, support, and the opportunity for genuine rehabilitation. This ongoing process will require continued dialogue, empirical research, and progressive policymaking to ensure that legal responses meaningfully reflect the complexities of mental health within the realm of criminal responsibility.

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Erin Davis. "Global accountability to human rights in healthcare" (2025) 9 132–148 *Global Campus Human Rights Journal* https://doi.org/10.25330/3229

Global accountability to human rights in healthcare

*Erin E. Davis**

Abstract: *Human rights are fundamental rights that are inherently essential, with accountability being a crucial element in protecting individuals' rights when they have been infringed. Human rights accountability has encountered many challenges, including apertures and lack of clarity across regional and State measures, with innumerable differences throughout the various bodies of international law and legal jurisprudence. The right to health is a fundamental human right that is guaranteed through most international instruments, but oftentimes lacks the necessary protections at the State level due to lack of global health governance, health inequalities and distinctions in the application of health laws across judicial systems. This article discusses: (1) healthcare as a fundamental human right guaranteed under international instruments; (2) States as duty-bearers within regional mechanisms to uphold the right to healthcare; (3) an approach to accountability, through an examination of legal jurisprudence within the regional human rights mechanisms of the Inter-American System of Human Rights, European Court of Human Rights, and the African Court on Human and Peoples' Rights; and (4) the role of non-State actors in complying with human rights standards. Additionally, this article seeks to examine the concept of human rights accountability of states, as primary duty-bearers, and the role of non-State actors in conjunction with global health governance, which unconsciously denotes the inequalities in healthcare protections within certain societies. Further, the article notes the disconnect in human rights protection in healthcare and the experiential crises that exist therein.*

Keywords: *human rights; healthcare; regional mechanisms; accountability; right to health*

* Erin Davis is an Attorney in the United States holding a Bachelor of Arts degree in Political Science, Juris Doctor and an LL.M in International Human Rights and Humanitarian Law. Her areas of legal experience include immigration, human rights and e-discovery law.

1. Introduction

The protection of human rights is inherently essential in order to promote life and health within a society. Having access to healthcare is crucial for an individual to have the opportunity to experience an effective and abundant life. States, as duty-bearers, are under an obligation to protect the human rights of rights-holders, the individual. This duty is violated when an individual suffers an infringement on a right and the State does not protect the individual. While the duties of non-State actors are more limited than States, non-State actors do have a level of accountability to comply with human rights standards. The question then becomes, how can duty-bearers be held accountable when oftentimes, there can be a gap in the procedure of accountability?

A remedy-centric approach to human rights protections can be successful in holding duty-bearers accountable through the application of providing remedies to rights-holders. Remedies as a form of accountability can be effective as applied to all human rights, including the right to health, which is an essential right for the individual to have the opportunity to achieve a full life and be a productive member of society. Remedies can be applied in cases of healthcare violations in several ways: through direct compensation, reparations, and ensuring the continued accessibility of legal avenues of due process for the harmed individual (CESCR 2016, 1).

While the justiciability of socio-economic rights continues to be an ongoing analyse, the gaps that exist in accountability through international law and specifically between State versus non-State actors is evolving through more recognition and discourse. This evolution and continued dialogue are essential in bridging the gap that exists in international law and across international instruments and regional mechanisms. As healthcare advances globally, the right to health is reinforced as a right that is essential to the life of an individual, and thus if it is not protected, it would have a direct negative impact on other fundamental human rights (IACtHR 2021, para. 124). This paper primarily focuses on the State as the primary duty-bearer to individual rights-holders.

2. The right to health

The right to health is a fundamental right recognised internationally through various systems, including international instruments and through numerous case law within regional mechanisms. It is a right that is consummately debased through the lack of accountability of State actors that fail to uphold and protect the right. States, as duty-bearers, have the duty to uphold the right to health and that can be accomplished through a remedy-centric approach to accountability. International instruments serve as governing guidance on the right to health as a fundamental human right and they provide direction as to the ways in which the right is to be protected.

2.1. International instruments

2.1.1. Universal Declaration of Human Rights

Article 25 of the Universal Declaration of Human Rights (UDHR) (1948) recognises the right to health for all persons, declaring that every person has a "right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care..." (UDHR 1948, Article 25). The intent of the United Nations (UN) General Assembly can be assumed to be that of recognising the importance of health and by virtue, access to healthcare, with its declaration that it is a right that is encompassed within other rights. Similar to the UDHR, the UN would adopt further measures to recognise and protect the right to health through various international documents, treaties, and commentary, which are protected by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

2.1.2. International Covenant on Economic, Social and Cultural Rights

The UN General Assembly further fortified the right to health as an internationally recognised human right within the International Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty that was first adopted and ratified in 1966 and entered into force in 1976 (ICESCR 1966, Article 12). Article 12 declares that all State Parties to the ICESCR "recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (ICESCR 1966, Article 12). It further provides certain steps for State Parties to ensure the promotion and protection of the right, outlining clear safeguards that distinguish State Parties as duty-bearers (ICESCR 1966, Article 12).

2.1.3. General Comment No. 14 of the ICESCR

In furtherance of Article 12 of the ICESCR, the OHCHR adopted General Comment No. 14 in 2000, which expands the dialogue surrounding the right to health (CESCR 2000, para. 2). Specifically, General Comment No. 14 acknowledges the gaps that exist within the right, stating in paragraph 5:

> "The Committee is aware that, for millions of people throughout the world, the full enjoyment of the right to health still remains a distant goal. Moreover, in many cases, especially for those living in poverty, this goal is becoming increasingly remote. The Committee recognises the formidable structural and other obstacles resulting from international and other factors beyond the control of States that impede the full realisation of article 12 in many States parties" (CESCR 2000, para. 5).

The Committee's acknowledgement that the right to health is still an evolving process due to the inequities and disparities that exist within certain societies, is an important addendum because it understands that the right to health is oftentimes dependent upon other socioeconomic factors. For instance, General Comment No. 22 recognises the right to sexual and reproductive health as an essential right encompassed within the right to health (CESCR 2016, para. 1).

2.1.4. Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) is another international treaty that was adopted by the UN in 2006 that explicitly declares the right to health. (CRPD 2006). The CRPD discusses the right to health under Article 25, specifically identifying the importance of the protection of the right to health for persons with disabilities and that such persons are to be afforded equal health rights as individuals without disabilities (CRPD 2006, Article 25(a)). This affirmation exemplifies the importance of health rights and the UN's commitment to ensuring all persons are afforded the right.

2.1.5. World Health Organization

The World Health Organisation (WHO) declares the right to health as a basic human right as set forth in its Constitution. Article 1 of the WHO's Constitution declares that persons have the right to the highest possible level of health (WHO 1946, Article 1(1)). To achieve this purpose, WHO acts as the direct authority on all forms of work within health at the international level, as well as seeks to foster support within the UN and other various governmental bodies and agencies (among other objectives) (WHO 1946, Article 2(a)(b)). The creation of WHO demonstrates the importance of recognising health as a fundamental human right and the collaboration necessary amongst international forums to achieve the purpose set forth within the various international instruments.

3. States as duty-bearers – regional mechanisms

3.1. African System of Human and Peoples' Rights

3.1.1. African Charter on Human and Peoples' Rights

The right to health is an established right within the African system of human rights noted in multiple instruments and within case law. In Article 16 of the African Charter on Human and Peoples' Rights (ACHPR), the right to health is an explicitly guaranteed right, with State Parties under a duty and obligation to protect the health of their citizens, specifically, in the ability to access medical care when needed (ACHPR 1981, Article 16(2)).

3.1.2. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa

Article 17 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities declares the right to health for all persons with disabilities on an equal basis, expressly by ordering State Parties to take the appropriate measures to ensure all persons with disabilities are provided with the same level of healthcare as persons without disabilities (Protocol to the African Charter 2014, Article 17(2)(a)). States must also comply by ensuring that all health services are provided on a free basis and "providing persons with disabilities with health-care in the community" (Protocol to the African Charter 2014, Article 17(2)(d) and (e)). The ACHPR's explicit declaration of the right to health is an acknowledgment of the importance of protecting the health rights of all persons and the importance of all persons receiving equal access to care.

3.1.3. African Court on Human and Peoples' Rights

Centre for Human Rights and Others v. United Republic of Tanzania

In its recent February 2025 ruling, the African Court on Human and Peoples' Rights (AfCHPR), explicitly recognised the right to health. In this case, the applicants were persons with albinism (PWA) and, among several claims, asserted that the respondent State violated their right to the "enjoyment of the highest attainable standard of health" (AfCHPR 2025, 1). The applicants contended that many PWA die of skin cancer between the ages of 30 and 40 years old, in part due to the condition of albinism, but that their predisposition is increased by the State's classification and negative treatment of them within society (AfCHPR 2025, para. 327). In turn, this forces them to take lower paying jobs, and thus they are unable to afford the proper healthcare treatment for their condition (AfCHPR 2025, para. 327).

In citing the Persons with Disabilities Act, the State counterargued that it enacted Section 26(1) specifically in regards to the health of persons with disabilities, "which provides for reasonable standard of health care services for all the population, without discrimination" (AfCHPR 2025, para. 328). The amici in the matter further contended that the right to health is an essential right to the enjoyment of all other human rights (AfCHPR 2025, para. 331). The AfCHPR defined the right to health in this case to include "availability, accessibility, acceptability and quality" (AfCHPR 2025, para. 339). The burden of proof is on the State to prove that it has made available adequate resources to ensure the right to health for all persons (AfCHPR 2025, para. 342).

Specifically addressing accessibility and availability, the AfCHPR ruled that due to their treatment within society because of their condition, those with albinism are often denied treatment on a discriminatory basis, which violates the right to health (AfCHPR 2025, para. 350). In its decision, the AfCHPR found that the State violated the applicants' right to health, specifically in violation of Article 16 of the African Charter on Human and Peoples' Rights, amongst others (AfCHPR 2025, para 355).

The AfCHPR's reliance on the Persons with Disabilities Act in its finding that the State violated the applicant's right to health is significant because it provides an extenuation of the right to health to include *all* persons, including those with disabilities. The Court's application of the Act provides an extra layer of protection for individuals and extends the obligation of a State Party, subject to the jurisdiction under the ACHPR, to protect the health rights of all.

3.2. Inter-American system of human rights

3.2.1. American Convention on Human Rights

The most notable international instrument used to protect basic fundamental human rights within the Inter-American System, is the American Convention on Human Rights (ACHR). Adopted in 1969 and entered into force in 1978, the ACHR remarkably does not contain an explicit guarantee to the right to health in its original form. However, the right to health can be implied through several of the other explicitly guaranteed rights, including the right to life (Article 4) and the right to humane treatment (Article 5) (ACHR 1969, 1). Additionally, Article 26 of the ACHR provides for the protection of progression development, which the ACHR conditions State Parties must take measures to protect all of the "rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organisation of American States" (ACHR 1969, Article 26). A legitimate argument can be made that the right to health can be implied as a protection under Article 26 of the ACHR. We do not see an explicit guarantee to the right to health under the ACHR until the adoption of its Additional Protocol, which was entered into force in 1999.

3.2.2. Additional Protocol to the American Convention on Human Rights

While the ACHR does not account for an explicit affirmation of the right to health, the Additional Protocol to the Convention does recognise the right to health as a basic fundamental right that State Parties to the ACHR are bound to protect (Additional Protocol 1999, Article 1). Article 10 specifically addresses the right to health, which encompasses the ability to enjoy the highest level of well-being, and asserts the criteria necessary to uphold the protection of the right (Additional Protocol 1999, Article 10(1)). The Additional Protocol recognises the right to health to include, "universal immunization against principal infectious diseases, prevention and treatment of endemic, occupation and other diseases, and education of the population on the prevention and treatment of health problems" (Additional Protocol 1999, Article 10(2)(c), (d), and (e)). This extension of the ACHR to include a specific definition of the right to health of all persons subject to their State Party jurisdiction, exemplifies the importance of health rights within society. Article 11 also includes the right to a healthy environment with "access to basic public services", an additional measure to protect the health rights of the individual (Additional Protocol 1999, Article 11(1)).

3.2.3. Inter-American Court of Human Rights

Vera Rojas et al. v. Chile

The case of *Vera Rojas et al. v. Chile* is a recent landmark case that was heard before the Inter-American Court (IACtHR) in 2021 after the Inter-American Commission ("IACHR") found that Chile committed certain human rights violations of the applicant, including the right to health (amongst others), for its failure to provide adequate regulation and monitoring of a health insurer whom discontinued home hospitalisation that the IACHR deemed "essential for the survival of Martina Rebeca Vera Rojas, a child diagnosed with Leigh syndrome" (IACtHR 2021, para. 1).

Most notable in the State's initial preliminary argument is that the IACtHR lacked jurisdiction to hear any alleged violations of the State under Article 26 of the ACHR, arguing that it contains an overarching broad obligation to protect progressive development, and not an explicit right to health (IACtHR 2021, para. 29). The IACtHR ultimately determined that the right to health is an enumerated right protected under Article 26 of the ACHR due to the IACtHR's ability to rely on other laws and treaties to interpret the State's duties and obligations under the ACHR (IACtHR 2021, para. 34).

Martina Vera Rojas (Vera Rojas or applicant) was a child that was diagnosed with Leigh Syndrome and suffered many neurological and muscular symptoms that significantly impacted her overall health (IACtHR 2021, para. 51). Essential to her ability to live with her condition, she was provided with "home health hospitalisation" through her private insurance company, which provided a multitude of care and treatment, similar to that of being in a physical hospital (IACtHR 2021, para 52). After almost three years of home health hospitalization services, Vera Rojas' insurance company informed her parents that they would be discontinuing the services for her, stating that her condition is a chronic disease that is not covered under the standard home heath hospitalisation (IACtHR 2021, para. 53). The insurance provider also asserted that if Vera Rojas suffered a medical issue that required hospitalisation, the local hospital is responsible for her care (IACtHR 2021, para. 53). The parents of Martina Vera Rojas filed various motions for protection and appeals throughout the Chilean courts system, but were denied protections, which led to Vera Rojas not receiving the adequate care she required for her condition (IACtHR 2021, paras. 56–58).

Amongst recognising the rights of the child and social security, the IACtHR acknowledged that the right to health was at issue in this case, notably, whether or not the State upheld its obligations to protect these rights for the applicant (IACtHR 2021, para. 72). The IACtHR held that even though the applicant was under the care of a private health care company, the State is still under an obligation to "regulate, monitor and supervise the provision of private healthcare" (IACtHR 2021, paras. 81 and 86). Expounding upon this determination that States have a duty to uphold an individual's health rights even when they are under private insurance, the IACtHR ruled that "given that health is a public good whose protection is the States's responsibility, the State has an obligation to prevent third parties from unduly interfering in the exercise of the rights to life and personal integrity" (IACtHR 2021, para. 89). Further, States are under an obligation to regulate health care within its jurisdiction, regardless of public or private insurance, and this protection is to include *all* healthcare institutions, not just public hospitals (IACtHR 2021, para. 89).

The determination made by the IACtHR in the *Vera Rojas* case that there is no distinction between public versus private health care when determining the State's obligation to protect the health rights of an individual is noteworthy, as it shrinks the gap of any prospect of an individual's health rights being infringed upon based on their insurance classification. The IACtHR has set an important precedent in this matter, determining that despite a person's health insurance classification, the duty remains on the State to protect the health rights of the individual, noting that "given that health is a public good that States are responsible for protecting, States have an obligation to prevent undue third party interference in the enjoyment of the rights of life, personal integrity, health, and social security" (IACtHR 2021, para. 124). This statement by the IACtHR makes clear that the right to health is a fundamental human right and it further supports the argument that failure to protect the right to health of an individual can also lead to the interference of other fundamental human rights.

3.3. European human rights system

3.3.1. European Convention on Human Rights

Similar to the ACHR, the European Convention on Human Rights (ECHR), which entered into force in 1953, does not contain an explicit distinction of the right to health until the implementation of the Revised European Social Charter. However, as with the ACHR, it can be argued and assumed that the right to health is implicitly protected through various other rights, including but not limited to, the right to life (Article 2) and the prohibition of degrading treatment (as defined under Article 3 – prohibition against torture). The European Court of Human Rights (ECtHR) has also confirmed the implicit guarantee of health rights through other human rights through its legal jurisprudence.

3.3.2. Revised European Social Charter

Adopted by the Council of Europe in 1996, the right to health is explicitly recognised under Article 11 of the Revised European Social Charter (RESC), declaring that State Parties to the Charter must provide educational institutions that promote health and implement measures to prevent diseases and epidemics. Further, the RESC declares the right to social and medical assistance under Article 13. Specifically, Article 13 declares that State Parties subject to the jurisdiction of the RESC must "ensure that any person who is without adequate resources…be granted adequate assistance, and in case of sickness, the care necessitated by his condition" (RESC 1996, Article 13(1)).

3.3.3. Charter of the Fundamental Rights of the European Union

The European Union further expanded the recognition of the right to health in Article 35 of the Charter of the Fundamental Rights of the European Union (CFR), which entered into force in 2009 under the Treaty of Lisbon and became legally binding to all European Union Member States (European Union 2012, art. 35). Article 35 of the CFR states that "Everyone has the right of access to preventative health care and the right to benefit from medical treatment under the conditions established by national laws and practices". This further extenuation of the right to health within the European human rights system is most notable due to its legally binding status upon all EU Member States and it serves as a further expansion of the protection of health rights of the individual.

3.3.4. European Court of Human Rights

Kaprykowski v. Poland

In the case of *Kaprykowski v. Poland*, heard by the ECtHR in 2009, the applicant had a long history of suffering from epilepsy, daily seizures and neurological disorders and argued that he was not given adequate medical treatment for his health issues while in prison (ECtHR 2009, 1). Various experts in the fields of psychology, psychiatry and neurology, appointed by a Poland regional court, determined that the applicant's seizures, dementia and other neurological conditions rendered him incapable of being able to perform basic undertakings, such as bathing, dressing and using the bathroom and he would require permanent care and daily assistance (ECtHR 2009, para. 33). The applicant asserted that he did not receive adequate medical care, specifically, that he was given a generic medication to treat his epilepsy instead of the drug that doctors had determined was the most effective for his condition (ECtHR 2009, para. 35). Additionally, he contended that his right to the prohibition of inhumane and degrading treatment was violated under Article 3 of the ECHR, because he was not provided daily assistance that medical experts had previously determined he would need (ECtHR 2009, para. 49).

The State of Poland argued that the applicant had been provided with adequate medical care as required by his condition and he had been detained with other inmates who were aware of his health conditions, all of whom were knowledgeable on how to respond should he suffer from an epileptic seizure (ECtHR 2009, para. 66). The State also asserted that, when necessary, the petitioner was transported to the hospital to receive additional medical care and that at the time he was provided with the generic epilepsy medication, he was under direct supervision of doctors at the local hospital (ECtHR 2009, paras. 66–67).

The ECtHR determined that the applicant "had at least three serious medical conditions which required regular medical care" (ECtHR 2009, para. 71). The ECtHR also relied on the determinations previously made by various medical experts that he required daily specialised medical care, and without such would pose serious risks (ECtHR 2009, para. 72). Furthermore, the ECtHR expressed its contempt to the State's assertion that the applicant was detained with other inmates whom were knowledgeable on how to proceed should the petitioner have a seizure – noting that the applicant should not have to rely on the assistance of his fellow inmates and was often not treated by a doctor immediately (ECtHR 2009, para. 73).

Decidedly, the ECtHR held that the State Party of Poland violated the applicant's right to health due to its failure to provide adequate medical assistance by (1) providing him with the generic epilepsy drug instead of the medication most beneficial to his condition, which in turn, increased his epileptic seizures; and (2) the prison's reliance on the applicant's fellow cellmates to provide him with care, should he have a seizure (ECtHR 2009, paras. 75–76). The ECtHR ruled that the State violated the applicant's right to be free from inhumane and degrading treatment due to its failure to provide him with adequate medical care and continued detention without such care (ECtHR 2009, para. 77).

The ECtHR's ruling that the State violated the applicant's right to be free from inhumane and degrading treatment by its failure to provide adequate medical assistance is one of several cases in which the Court has implicitly recognised the right to health, despite the ECHR's failure to explicitly define such right. The ECtHR's interpretation of Article 3 of the ECHR to include health rights as a fundamental human right due to its relation and subsequent overlap of other guaranteed rights is similar to that of the IACtHR's interpretation in *Vera Rojas*.

It is clear that the Courts within the regional mechanisms that do not have an explicit guarantee to the right to health defined within their original controlling treaties (i.e., ACHR and the ECHR, respectively) are willing to recognise the intersection between other explicitly defined rights and implicitly interpret health rights encompassed within those rights.

4. Non-State actors

States are primary duty-bearers in protecting the human rights of the individual and historically, most international legal instruments were intended to apply to States. However, as international law has progressed, non-State actors (NSAs) also have a role in human rights accountability. Acting independently of the State, an NSA may hold a certain amount of power that is relative to State power (Berger 2025, 72). Examples of NSAs include, non-governmental organisations (NGOs) and corporations. While international law primarily applies to the State, a State can choose to hold an NSA accountable for violation of an individual's rights or even further, international law may apply to NSAs based on their level of power. For example, if an NSA exercises certain enumerated powers primarily reserved for the State, such as territorial control, international law may apply in holding an NSA accountable for violating an individual's rights (Ronen 2013, 28).

In its 2017 thematic report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment outlined the responsibility of NSAs. While the report primarily focuses on the role of States, particularly in armed conflict, it also provides consideration beyond armed conflict and as it applies to NSAs, declaring:

> "Most notably, under international humanitarian law, both States and non-State actors are absolutely prohibited from resorting to torture and other cruel, inhuman or degrading treatment or punishment for reasons related to an armed conflict. Moreover, any person resorting to torture or other cruel, inhuman or degrading treatment or punishment amounting to a war crime, a crime against humanity, or even genocide is subject to prosecution under international criminal law. Arguably, the universal prohibition of torture and other cruel, inhuman or degrading treatment or punishment can also be based on a general principle of law, namely what the International Court of Justice referred to as 'elementary considerations of humanity'" (United Nations 2017, para. 48).

Additionally, the Special Rapporteur further asserts:

> "Throughout his tenure, the Special Rapporteur will therefore aim to contribute to closing the protection gap for victims of torture and other cruel, inhuman or degrading treatment or punishment at the hands of non-State actors, including by advocating for the mutual reinforcement of human rights and international humanitarian law obligations" (United Nations 2017, para. 48).

The Special Rapporteur's report clearly acknowledges its primary goal of protecting individuals from cruel, inhuman or degrading treatment. An argument can be made that healthcare rights can be causally linked to other rights (as noted in Section 3), such as the right to be protected from cruel, inhuman or other degrading treatment. Denying medical care and lack of adequate care are forms of cruel, inhuman and degrading treatment, and thus, the Special Rapporteur's analysis can justifiably extend to the right to healthcare, specifically holding NSAs accountable.

Thus, while international law primarily applies to the State as the primary duty-bearer, NSAs may be held accountable in certain contexts. The nature to which an NSA has control or power will determine its level of accountability. As international law continues to develop and norms are challenged, the evolution of accountability will continue to further progress as it applies to NSAs.

5. Evolving global recognition and accountability

The three cases examined in Section 3 are noteworthy, as they provide a central recognition of the right to health, as determined by their respective courts, in recognising the right applies to *all* persons, including but not limited to persons with disabilities (*Centre for Human Rights and Others*), children (*Vera Rojas*) and incarcerated persons (*Kaprykowski*). Further, these three cases each provide an example of how courts use their authority under the law to make reasonable interpretations to acknowledge the right to health through the application of other protected rights.

Holding State actors accountable for the dereliction of its duty to protect the right to health of the individual is essential to ensure other human rights are not infringed. One such way to hold State actors accountable is through a remedy-centric approach, a key component in rectifying those violations.

In *Centre for Human Rights and Others*, the AfCHPR issued reparations against the State for its violation of the right to health against persons with albinism. Amongst these reparations, the AfCHPR ordered the State to provide direct remedies in the form of adequate housing for those with albinism that were displaced from their homes due to unprovoked attacks based on their condition (AfCHPR 2025, para. 361(v)). In addition to direct remedies, the AfCHPR also implemented reparations in the form of additional training, educational training, and to develop a national strategy to eliminate discrimination (AfCHPR 2025, para. 361(i)(vi)(ix)).

The IACtHR issued reparations in *Vera Rojas*, ordering the State to reinstate the home health hospitalisation services for both her current medical issues and any future medical needs, through oversight of Vera Rojas' private health insurer (IACtHR 2021, paras. 164–166). Additionally, the IACtHR ordered that the State provide Vera Rojas with a neurological wheelchair, noting it was necessary in the event she needed to travel to the hospital for additional treatments (IACtHR 2021, para. 164). Further, the State is to provide medical, psychological, and psychiatric treatment for the parents of Vera Rojas – free of charge – for the anxiety, post-traumatic stress and the visual impairment her father suffered that prevented his ability to work and financially provide for his family due to the extreme stress he suffered in response to the violations their family experienced (IACtHR 2021, para. 164).

It is important to note the IACtHR's findings of liability of the State for the violation of the personal integrity of the applicant's parents, and ordered that they are entitled to specific reparations as well, including medical, psychological and psychiatric treatment (IACtHR 2021, paras. 164–165). The IACtHR's recognition and protection of the mental, physical and emotional health of the applicant's parents is insightful because it holds the State party liable for the indirect violation of the health rights of individuals.

At the time of the ECtHR's ruling in *Kaprykowski,* the applicant was no longer incarcerated, having been released from prison at the conclusion of his sentence (ECtHR 2009, para. 24). The ECtHR issued reparations in the form of non-pecuniary damages in the amount of 3,000 EUR to be paid by the State to the applicant (ECtHR 2009, para. 86).

Each of the three cases outlined in Section 3 vary in terms of the level in which their respective Courts issued restitution to the applicants. However, it is essential to note that while gaps may exist in some of the legally-binding treaties that the various regional mechanisms use in their original form, supplemental international instruments and additional protocols have assisted in bridging those gaps within those treaties that did not contain an explicit guarantee to the right to health. The adoption and ratification of additional protocols within the regional systems have helped to expand the definitions and guarantees of additional basic fundamental rights. As society changes, it is crucial to implement additional protections and guarantees to ensure that the basic and fundamental human rights of the individual are protected. Where the right to health is not explicitly stated in original treaties within some of the regional systems, each of the three courts have shown an individual's health rights oftentimes can be violated by the violation of other rights and thereby the implicit right is noted in courts' legal jurisprudence.

6. Recommendations and challenges

While international instruments identify and recognise the right to health, additional steps must be taken to protect the health rights of the individual and to ensure that States comply with this right. First, States must take a proactive approach in providing safe healthcare. Second, States must make healthcare accessible to all regardless of socioeconomic status. Third, States must identify any gaps or barriers to access and utilise a proactive methodology to bridging those gaps. Lastly, States must protect other basic human rights to ensure that an infringement upon other rights does not cause it to fail to fulfil its right to protect health. Ensuring the protection of other basic human rights set forth by international law, for example, the right to life, is crucial because the dereliction of other basic human rights can unjustly affect the right to health.

However, there are potential challenges to protecting the right to health that go beyond simply complying with international law, particularly in regard to the economic inequities that exist within a country's infrastructure. Notably, less developed countries are oftentimes unable to meet the needs of the individual in terms of healthcare, simply because they lack the available resources. In his article, *The Human Right to Health: Fundamentals of a Complex Right*, Michael Krennerich notes:

> "In particular, many developing countries have significant difficulties when it comes to ensuring a comprehensive provision of medical care and overcoming the partly serious defects in the healthcare system… This does not though relieve developing countries of their obligation to take measures to realise the right to health progressively based on their available resources" (Krennerich 2017, 42).

Thus, while the availability of resources will be a country-by-country differential when it comes to providing for the healthcare of the individual, with those needs often not met due to lack of resources, it is still the State's obligation under international law to protect the right to health (Krennerich 2017, 42). There will no doubt be gaps in protections within healthcare systems globally, however the State must take a practical approach to utilise its available resources to proactively protect the health rights of the individual rather than take a reactive stance.

In *Interpreting the International Right to Health in a Human Rights-Based Approach to Health*, Paul Hunt discusses the need for development assistance in low-and middle-income countries in implementing health policies and programmes (Hunt 2016, 116). Specifically, he denotes that "the international right to health encompasses progressive realisation, maximum available resources, and international assistance and cooperation" (Hunt 2016, 116). This interpretation is useful in acknowledging the empirical importance of international intervention and global support needed to assist low-and middle-income countries that lack the necessary resources on their own to protect the health rights of their individuals. The challenge with reliance on international assistance from other countries is inexplicably complicated, but nonetheless imperative in serving as a key component in the evolution of global health progression and accountability across nations.

General Comment No. 3 of the ICESCR (Article 2(1)) first defines the concept of progressive realisation and "acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect" (United Nations 1966, Article 2(1)). In outlining State obligations, the ICESCR further denotes that two of the most important obligations of the State are "the 'undertaking to guarantee' that the relevant rights 'will be exercised without discrimination'" (United Nations 1966, Article 2(1)). As noted in the paragraph above, not all States are equal when it comes to available resources, thus, the question remains – how can States, as primary duty-bearers, undertake to guarantee that the right to health is protected without discrimination if the State lacks the necessary resources to implement health programmes and adequate healthcare?

As Amrei Müller asserts in *The Minimum Core Approach to the Right to Health: Progress and Remaining Challenges*, there have been arguments for both "state-specific minimum cores" and "absolute international minimum cores"; the former argued to recognise that not all States are economically equal and thus cannot be expected to be measured on the same level internationally; while the latter is argued to put even low-income countries in the same position as other countries (Müller 2017, 60). Nonetheless, until there is global consensus as to the methodology of adequately measuring the minimum level of care required in protecting the right to health, the State bears the primary duty of care in protecting the healthcare rights of the individual.

7. Conclusion

Access to safe and basic healthcare plays a vital role in an individual's life and his or her ability to live a full and successful life. If an individual does not have access to basic healthcare, it becomes an impediment to their ability to lead a life that is healthy and it hinders his or her ability to be a productive member of society. Local, national and international societies have a duty to protect the individual's right to health care through providing avenues to access to basic healthcare, as well as a duty to provide remedies to an individual when their right to healthcare is infringed upon. Failing to protect an individual's right to health can also lead to infringement of other basic human rights, such as the right to life and the right to humane treatment. Protecting the right to health is a crucial fundamental factor in the function of society because when individuals have access to health care, they can have the opportunity to lead a full life and be productive members of society.

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Dominika Kuna. "Can the rights of the child be a justification for human rights violations?" (2025) 9 148–163 *Global Campus Human Rights Journal* https://doi.org/10.25330/3228

Can the rights of the child be a justification for human rights violations?

Dominika Kuna[*]

Abstract: *This article examines how Hungarian law restricts the rights of media creators, focusing on the delicate balance between protecting children's rights and preserving fundamental freedoms. The research method involves a thorough analysis of case law from the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR), alongside a review of legal doctrine and relevant interdisciplinary studies. The Hungarian government has implemented legal measures that justify restricting media content under the guise of child protection, particularly in areas related to gender, sexuality, and family values. The article critically assesses whether such laws, which restrict the freedom of expression of media creators, can be legitimately justified by the need to protect children. By analysing the jurisprudence of the CJEU and ECtHR, the study highlights the tension between the protection of minors and the infringement on the rights of media creators. It explores how these legal frameworks have dealt with similar issues, assessing the balance between child protection and freedom of expression in both the European and international contexts. Ultimately, the article raises key questions about the limits of justifiable legal restrictions, arguing for a careful reconsideration of the relationship between protecting children and upholding fundamental human rights.*

Keywords: *children's rights; media freedom; freedom of expression; populism; EU values; dignity; democracy; Hungary*

[*] PhD candidate at the SWPS University. Graduate of the Faculty of Law and Administration, Faculty of Philosophy at the Warsaw University and the British School of Law. She is an Assistant at the Faculty of Law in Warsaw at SWPS University, in the Department of Human Rights and the Rule of Law. She is an expert to the Family Law Codification Commission in Poland and an assistant to a judge at the Court of Appeal in Warsaw. Her academic interests focus on the legal protection of children, family law, and the prevention of violence against minors. She is the author of publications and educational materials devoted to children's rights and legal aspects of working with minors. Contact: dkuna@swps.edu.pl.

1. Introduction

"If parents buy their children under eighteen a youth novel on LGBTQI[1] persons or let them watch a film featuring LGBTQI characters, they violate the law." This quotation is from the Venice Commission Opinion (2021) on the legislation introduced in Hungary to enhance child protection – Act LXXIX of 2021 on taking more severe action against paedophile offenders and amending certain acts for the protection of children. The legal changes introduced in Hungary became the subject not only of the Venice Commission's opinion, but also of a vociferous public debate that was widely reported in the media (Bayer 2021; Reuters 2021; Verfassungsblog 2021). Indeed, the issue is multifaceted, touching on not only human rights protection but also particularly on children's rights, European Union (EU) values, and a State's implementation of treaty regulations. This law implicates the way of thinking about the global mechanisms for the legal protection of children's rights, diversity, and non-discrimination in public sphere.

The legal changes introduced in Hungary prohibit the portrayal or discussion of multiple gender identities and sexual orientations in the public sphere, including in schools and the media, by *inter alia* restricting access to content that "promotes or depicts a divergence from self-identification corresponding to sex at birth, gender reassignment or homosexuality" for persons under 18 years (Venice Commission Opinion 2021, 7). Hungary's state authorities justified the implementation of such regulations as protecting of children and preventing paedophilia (Bayer 2021). In other words, the stated aim of the proposed legislation was to impose "harsher sentencing for paedophile criminal offences and a criminal registry for perpetrators of such offences". The draft was submitted to the Hungarian Parliament by two members on 25 May 2021. Although Hungary's stated aim was to counteract and explicitly prohibit content that promotes paedophilia, Hungary's action was not received positively by international bodies, as it is seen as contrary to fundamental rights, international law, and EU law. A case challenging the law is currently pending in the Court of Justice of the European Union (CJEU) (Deutsche Welle 2024). The case operates in the context of the values, as enshrined in Article 2 of the Treaty on European Union (TEU) (see also *Hungary v. Parliament and Council*, paras. 127 and 232),[2] and the role of the EU and its institutions, including the CJEU.

1 *The manuscript uses both 'LGBTQ+' and 'LGBTQI' intentionally. 'LGBTQI' is retained when referring to sources or legal documents that use this specific acronym, while 'LGBTQ+' is used as the general umbrella term throughout the text.*

2 It is apparent from the case law that certain provisions of the Charter and of the TFEU specify the scope of the values enshrined in Article 2 TEU, since those provisions may, where appropriate, be the subject of infringement proceedings, but not under Article 2 TEU itself. Article 2 TEU is not merely a statement of political guidelines or intentions, but contains values which fall within the very identity of the EU as a common legal order.

One of the recent challenges for the EU Member States and non-EU Member States is to find solutions to the challenges posed by the populism of contemporary democracy (Vidmar 2020). The analysis is narrowed to examine the case in terms of children's rights and to identify the relevant legal regulations. In the context of international law, this case is related not only to the violation of the fundamental rights of the child, but also to the violation of the freedom of expression. The purpose of this article is to consider the impact of Hungary's new regulations on children's rights and to answer the question whether the law is discriminatory and incompatible with the fundamental principles of EU law.

2. The perspective of the Venice Commission

First, it is necessary to specify how the 2021 legislation implements legal changes. Act LXXIX of 2021 consists of 12 provisions, 11 of which are amendments to different Acts. These are mainly: Amendment to Act XXXI of 1997 on the protection of children and guardianship (Child Protection Act), Amendment to Act XLVIII of 2008 on the basic conditions of and certain restrictions on economic advertising activities (Advertisement Act), Amendment to Act CLXXXV of 2010 on media services and mass communication (Media Act), Amendment to Act CCXI of 2011 on the protection of families (Family Protection Act), and Amendment to Act CXC of 2011 on national public upbringing (National Public Education Act). As the Venice Commission rightly indicated, the amendments to the Child Protection Act have a much broader scope of application and also apply to parents and other legal guardians. The Family Protection Act contains no restrictions on its scope, so its provisions go even further and apply to all individuals, public bodies, and private entities in Hungary (Venice Commission Opinion 2021, 5). The main stated aim of the regulations is to ensure the protection of minors and identify measures that can be implemented to this effect. However, the content of education and other information must be adapted to the age and emotional development of children to minimise the risks to the development of minors. What is more, programmes which could harm the physical, mental, and moral development of children are not to be transmitted where it is likely, due to the timing of the broadcast and reception, that children will watch them.

The Venice Commission assessed the introduced changes from the perspective of international standards. A comprehensive analysis was performed of the non-recognition of gender identity, the protection of the right to privacy, the prohibition of discrimination, and the prohibition of the propagation and portrayal of divergence from self-identity corresponding to sex at birth, sex change, or homosexuality in the context of the freedom of expression and the prohibition of discrimination. EU law also regulates these issues in secondary law legal sources: Directive 2000/3, Directive 2006/123, Directive 2010/13, Directive 2011/93, Directive 2015/1535, as well as the General Data Protection Regulation

(GDPR). In other words, Hungary's law comes within the scope of EU law, vis-a-vis various provisions dealing with the free movement of services in the present case, namely Articles 2, 3(1), 6a(1) and 9(1)(c)(ii) of Directive 2010/13, Article 3(2) of Directive 2000/31, Articles 16 and 19 of Directive 2006/123, and Article 56 TFEU. Furthermore, in accordance with Article 4 of the European Convention on Transfrontier Television, States shall ensure freedom of expression and information in accordance with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and they shall guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this Convention.

As the opinion of the Venice Commission clearly states, Hungary's law is incompatible with human rights standards and European Court of Human Rights (ECtHR) cases, and there is no doubt about the dangers of such laws (Venice Commission Opinion 2021, 23). According to the ECtHR, there is "no scientific evidence or sociological data suggesting that the mere mention of homosexuality or an open public debate on the social status of sexual minorities would harm children... On the contrary, society can only position itself on such complex issues...through a fair and public debate... It would also dispel common misunderstandings, such as whether heterosexuality and homosexuality can arise from education or incitement and whether or not to be homosexual" (*Alekseyev v. Russia* 2010, para. 86). Over and above that, the ECtHR emphasised that gender identity and sexual orientation form part of the identity of the individual and thus concern an intrinsic part of the individual personality and existence (*Bayev and Others v. Russia* 2017, para. 69). Insofar as minors who witness protests in favour of LGBTQ+ rights are exposed to the ideas of diversity, equality, and tolerance, the adoption of those opinions could help to promote social cohesion (*Macatė v. Lithuania* 2023, para. 210). These ECtHR rulings are also important because of the process in the CJEU. As the CJEU held, the EU legal order undeniably seeks to ensure respect for human dignity as a general principle of law (*Omega Spielhallen- und Automatenaufstellungs-GmbH v. Oberbürgermeisterin der Bundesstadt Bonn* 2004, para. 4). In another judgment, the Court confirmed that none of the rights enshrined in the Charter of Fundamental Rights of the European Union (the Charter) may be used to undermine the dignity of others and it cannot be prejudiced, even in the event of a limitation of a right (*Netherlands v. Parliament and Council* 2001, paras. 70–77).

The Venice Commission analysed specific points of the regulation, such as the provisions that it was "necessary in a democratic society" for "the protection of health or morals" and "for the protection of the rights of others". As a result, from the perspective of human rights law, the Venice Commission has provided detailed guidelines which – in general – are limited to protecting the purpose of the Commission, which is to ensure the democratic and smooth functioning of institutions and the protection of human rights.

3. The meaning of children's rights protection in the context of fundamental rights

The wider context of the Hungary case is worthy of attention, as the problems it addresses affect a number of institutions. The assessment of these issues by international courts will be important in shaping the future of international society and rule of law. By enacting these legal changes, Hungary built a legislative system that operates outside of the values of EU law (i.e., tolerance, pluralism, non-discrimination, solidarity, justice, and equality), human rights norms, and children's rights. What remains to be addressed is the problem of invoking more expansive protection of fundamental rights than that provided for by EU law. Otherwise, Hungary's law will continue stigmatising groups of persons based on sexual orientation and/or gender identity. Hungary should respect the fundamental rights guaranteed by the Charter. As scholar Eszter Mihály said: "The Propaganda Law has created a cloud of fear and limited access to information, particularly for young people. Fear from sanctions have resulted in a chilling effect [Ploska 2024] that is preventing people from imparting, seeking and receiving information about sexual orientation and gender identity. The Propaganda Law has also contributed to negative stereotypes and discriminatory attitudes towards LGBTI people" (Amnesty International 2024).[3]

The tension created by Hungary's regulations and the backdrop of international commitments shows that the State's objective is not always consistent with EU values, which calls into question the stability and internal cohesion of the EU community. Nevertheless, a State could justify national measures which it considers necessary for the protection of a public interest, but only insofar as it complies with the fundamental rights protected in the EU legal order (*Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn* 2004, para. 35). As the CJEU's judgments clearly confirm, even if a Member State invokes its constitutional identity as an overriding reason in the public interest under Article 4(2) of the TEU, the State still must demonstrate that its national restriction is justified, proportionate, and compatible with fundamental rights (*Las Anton Las v. PSA Antwerp NV* CHECK YEAR). This understanding of Article 4(2) Treaty on the Functioning of the European Union is supported also by the Opinion of CJEU Advocate General Emiliou in *Cilevičs and Others* (2022), which mainly clarified the reasons why Article 4 of the TEU cannot be regarded as a provision through which the EU legislature intended to derogate from Article 2 of the TEU. In addition, the principle set out in Articles 11(1)

3 Amnesty International's findings indicate that the law is unduly restricting people's right to freedom of expression, including children's right to access information, in a manner that is neither provided by law, nor necessary or proportionate. The law has no legitimate aim and is therefore inconsistent with international human rights law and standards.

and (2) of the Charter supports the principle of pluralism in the EU (*Sky Österreich* 2013). Consequently, it seems that the regulations introduced by Hungary may violate this principle.

On the other hand, every Member State is allowed to determine the level of protection of rights closely connected with its national identity (Opinion of Advocate General Anthony Collins, *OP v Commune d'Ans* 2023). Nonetheless, it seems doubtful that the protection of children's rights, the right of parents to raise their children freely, and the right to make decisions regarding education and teaching, would justify such a broad infringement of an individual's fundamental rights, which encroach on dignity, sexual identity, and gender identity. Above all, it should be noted that the general principles of EU law, such as the principles of non-discrimination and proportionality, are expressed in broad terms and then often expounded in other provisions of primary or secondary law, without being devoid of binding effect or clarity. The necessary proportionality test is justified by the rights of parents to ensure that their children are educated and taught in accordance with their religious, philosophical, and pedagogical convictions (Charter, Articles 14(3) and 24(2)).

The legislative amendments introduced in Hungary give rise to doubts as to Hungary's respect of human rights in the context of the protection of human dignity and fundamental rights. However, one would have to wonder about the necessity and proportionality of the legislation. In other words, the primary concern of the legislators ought to be whether these provisions protect minors from negative impacts on their health and development. Therefore, an examination of whether content promoting personal identity, gender reassignment, or homosexuality, resulting from commercial content or messages, may violate the children's rights would need to occur (Global Initiative on Justice with Children and Child Friendly Justice European Network 2022).

In addition, attention should be drawn to emerging threats in the context of freedom of expression (ECHR, Article 10) – one of the basic foundations of a democratic society and one of the fundamental conditions for its development, but also a precursor for the participation of individuals. Accordingly, any attempt to destroy freedom of expression in society by preventing pluralism, tolerance, and openness – core values of a democratic society (*P.I. v. Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos* 2023) – must be critically analysed. The ECtHR jurisprudence makes it clear that Article 10 ensures freedom of expression and information not only as regards the creation of informational content, but also as concerns the means of communication. Restrictions on the establishment of informational content and on the means of distribution also affect the reception of this content, which implies a violation of the right to receive and impart information (*Republic of Poland v. European Parliament and Council of the European Union* 2022).

It is important to note that the rights guaranteed by the ECHR must also be respected in the decision-making process by the CJEU. This means that the rights protecting the individual in Article 8(1) of the ECHR must be the determinant of protection for the CJEU, although the CJEU also retains its autonomy. More broadly, this is also a question of the primacy and correlation of Article 52(1) with human rights from the ECHR, and how the obligation to respect children's rights and the right to privacy affects the understanding of law as a social function and the protection of the general interest (*Staatssecretaris van Justitie en Veiligheid* 2022).

Finally, the Hungary case is also an important step in the process of strengthening respect for human rights, in particular children's rights, freedom of expression, dignity, EU values, and the protection of these values in the context of establishing a community based on a common democratic identity. The judgment in this case will certainly provide new directions and benchmarks in the interpretation of EU values and fundamental rights. Undoubtedly, this case is also an opportunity for the CJEU to revisit the conception of Member States' national identities in the procedure of national legislation as well as the role of EU institutions in controlling and promoting EU values. The problem of LGBTQ+ rights is present in the EU. Forms of discrimination often appear in various forms. LGBTQ+ rights differ from one Member State to another. Such discrimination affects these community members in the workplace, family relationships, health services, and more (De Groot 2022).

The changes in education law are also significant in the context of children's rights. As the Venice Commission underlines: "In fact, it seems that it will no longer be possible for parents to teach their children to accept gay, lesbian or transgender people, or even help their children to accept their own" (Venice Commission Opinion 2021, 22). The assessment of the changes made is certainly reflected in the words of Dunja Mijatović, the Council of Europe's Commissioner for Human Rights. In a comment on comprehensive sexuality education, she stated: "By providing factual, non-stigmatizing information on sexual orientation and gender identity as one aspect of human development, comprehensive sexuality education can help save lives. It can contribute to combating homophobia and transphobia, at school and beyond, and to creating a safer and more inclusive learning environment for all" (Commissioner for Human Rights 2020).

It is also worth noting that there are serious concerns about the adoption procedure of Hungary's act as regards the essence of a democratic society. As the Secretary General of the United Nations stressed, meaningful participation in decision-making is a human right that must be defended in the face of pushback (Secretary General of the United Nations 2020). In other words, Hungary's omission of public consultations raises doubts as to the standards and quality of the legislative process. Further, this is not the first case in which Hungary is accused of violating the principles of proper implementation of legislation (CDL-AD(2021)034; CDL-AD (2021)036; CDL-AD (2021)039). In this case, the process was quite fast, as after the draft was submitted on 25 May 2021 and a series of amendments were submitted on 10 June 2021 by the Legislative Committee of Parliament, the document was adopted by Parliament on 15 June 2021 and came into force on 8 July 2021(Venice Commission Opinion 2021, 3–5).

4. Is it still the rights of the child or rather a violation of individual rights?

The tension between human rights and children's rights arises from differing interpretations of autonomy, protection, and cultural norms. While both frameworks aim to safeguard dignity and well-being, they sometimes conflict in implementation. International agreements like the United Nations Convention on the Rights of the Child (CRC 1989) aim to harmonise children's rights with broader human rights frameworks. However, the implementation of these rights can be inconsistent, with some governments prioritising national sovereignty or economic considerations over children's rights. This inconsistency can lead to situations where children's rights are not fully realised, despite international commitments (Strauss and Powell 2015; Tisdall 2015). While human rights and children's rights share common goals of dignity and equality, their application can diverge due to differences in emphasis on autonomy, protection, cultural norms, and policy priorities. Addressing these tensions requires a nuanced approach that respects both individual rights and the specific needs of children.

Exposing an individual to the deprivation of the right to share and receive information is not only a violation of children's and individual rights, but also a violation of the rights of LGBTQ+ children. This consideration broadens the context of the case and threatens the potentially far-reaching stigmatisation not only of LGBTQ+ adults, but also of LGBTQ+ children. "In recent months, lesbian, gay, bisexual, and transgender (LGBT) rights have faced significant setbacks in many countries, with populist and authoritarian governments passing draconian laws curtailing LGBT rights" (Thoreson 2024).

The Hungary case is an opportunity to emphasise the importance of protecting the rights of LGBTQ+ children, including children who identify as lesbian, gay, bisexual, transgender, and intersex. These children are particularly vulnerable to human rights violations and are often victims of discrimination, harassment, and violence. It is not only Hungary that has introduced similar legal regimes, but also countries such as Uganda, Ghana, Iraq, Russia (Thoreson 2015), and the United States.

An analysis of children's rights case law leads to the notion of over-protective laws, as well as issues such as "public morals" and "well-being" and the observation that Hungary violates Articles 13 and 17 of the CRC: the right to "receive and impart information and ideas of all kinds" (Article 13) and the right of "access to information" (Article 17) (Thoreson 2015). Member States should ensure access to appropriate goods, services, and information as clarified in Committee on the Rights of the Child General Comment No. 4 on Adolescent Health and Development (2003). Thoreson has correctly stated that "Laws prohibiting gay propaganda hamper the rights of not only LGBTQ+ persons, but also of children themselves. By recognizing that fact, it becomes evident that such laws do not really protect children at all" (2015, 1343). The conception of the right to receive comprehensive sexuality education as a right of children is confirmed by international human rights bodies, based on existing international standards.

However, a critique of the CRC in the context of queer children's rights exists in the literature, as does an emphasis on the importance of sex education. This was validated in 2010 by the UN Special Rapporteur on the Right to Education in a report on sexuality education, which stressed that "sexual education should be considered a right in itself and should be clearly linked with other rights in accordance with the principle of the interdependence and indivisibility of human rights... States must ensure that they respect, protect and implement the human right to comprehensive sexual education, by acting with due diligence and taking all measures necessary to ensure its effective enjoyment, without discrimination, from the early stages of life. The absence of planned, democratic and pluralist sexual education constitutes, in practice, a model of sexual education (by omission) which has particularly negative consequences for people's lives and which uncritically reproduces patriarchal practices, ideas, values and attitudes that are a source of many forms of discrimination" (para. 76). Furthermore, the requirement for sexuality education is also acknowledged in the 2030 Agenda for Sustainable Development of the United Nations, where it is viewed as necessary to achieve several of the goals in the agenda.

To conclude the above, nothing more accurately defines the significance of sexuality education than the statement "Sex-ed is not about opinions. It's about evidence, human rights and gender equality" (Action Canada for Sexual Health & Rights 2024). Not only the CRC, but also the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Elimination of Discrimination Against Women (1979) recognise comprehensive sex education as a human right. The right to comprehensive sexuality education is protected by global human rights laws and recognised by major international organisations, such as the World Health Organization (WHO), United Nations Educational, Scientific and

Cultural Organization (UNESCO), Joint United Nations Programme on HIV/AIDS (UNAIDS), and the United Nations Population Fund (UNFPA). Comprehensive sexuality education (CSE) is essential for promoting public health, gender equality, and overall well-being, but most crucially, CSE helps young people gain the knowledge and skills to make informed decisions about their bodies, relationships, and sexual health. UNESCO's research highlights that embedding sexual and reproductive health and rights education into a structured, written school curriculum is one of the most effective ways to ensure equal access to high-quality, comprehensive information for all young people.

Although we live in a period when children's rights are increasingly respected and young people are increasingly active in the social sphere, there are still failures to ensure that children and young people have the right to receive reliable, science-based, and comprehensive information about sex and sexuality. What is more, unfortunately, there is a renewed resistance to sexuality education in countries including Poland, Italy, and Spain (Commissioner for Human Rights 2020). An analysis of the construction of childhood and gender and sexuality issues as well as restrictions in this area leads to the conclusion that the CRC still insufficiently protects queer children (Joosten 2024). Similar issues are raised in the context of protecting children of same-sex parents (Gerber and Timoshanko 2021).

The issue of discrimination based on media freedom was the subject of the Lanzarote Convention (2007). Indeed, the preamble states that the welfare and best interests of children are fundamental values shared by all Member States and must be promoted without any discrimination. This framework is affirmed in Article 2, which states that "The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status." The Convention also draws attention to the participation of the media in this protection.

However, the Convention explicitly states that "Each Party shall encourage the media to provide appropriate information concerning all aspects of the sexual exploitation and sexual abuse of children, with due respect for the independence of the media and freedom of the press." However, in Hungary, Orbán's government has transformed the media to establish control over the country's judiciary (Gera 2023).

To answer the question of whether this is still the rights of the child or rather a violation of individual rights, the answer is both. In the current legal situation in Hungary, the child is no longer a participant in the public sphere, just as media creators are not citizens of the State (Bruselius-Jensen, Tisdall, and Pitti 2021). Moreover, this notion also applies to LGBTQ+ people because their rights are limited by negative propaganda and a lack of political pluralism. In other words, the objectivity of media is not possible under the current legal framework. It is difficult to posit which direction to shift the vector of rights violations – whether this can be conceived of as more a violation of children's rights or individual rights in the form of restrictions on freedom of expression. It should be noted that the actions of Hungarian authorities are considered autocratic, most recently since Orbán's government took office in 2010. However, controlling women's, children's, and LGBTQ+ people's sexuality has been part of exercising State power in different political regimes. Regulated control enacted by law is another mechanism enabling State control of children and adolescents' sexuality through educational content, government communication about childhood and sexuality, and restricting children and adolescents' access to information about sexuality (Rédai 2024).

The problem of children's rights against the background of the political and social situation in Hungary is related to the populist rhetoric pursued by Prime Minister Viktor Orbán. The Orbán government shapes the political debate and anti- LGBTQ+ campaign (Gera 2023, 104–29; Mole 2011). Since 2010, populism has been considered not as a marginal political style but as an established ideology (Scheiring and Szombati 2020) and a way of understanding sovereignty and presenting its opposition when communicating with the public (Gera 2023, 105). This is aptly described by Laclau: "There is no populism without the discursive construction of an enemy: the ancient regime, the oligarchy, the Establishment, or whatever" (Laclau 2005, 39; Huddy 2001, Bos et al. 2020; Bosia 2014). Children are also actors in this dialogue, participants in the debate, and holders of the values implicated. They play a special role in this politics of antagonism (Rakusa-Suszczewski 2021, 71) as there is always a kind of space in the child's relationship with society. In other words, "the close relationship between the child and the world of politics and culture has always been part of the universal process of socialization" (Rakusa-Suszczewski 2021, 68). The role of the parent and parental authority has evolved over the years as perceptions of family relationships have changed. Nevertheless, the history of childhood and its extensive legal, psychological, and sociological studies analysis demonstrate that childhood has always been treated as a common good (Rakusa-Suszczewski 2021, 69). This notion is also clear in the Hungarian case, as children are used as an object around which antagonism is created. Although this strategy is carried out indirectly, one can see the place of children in the construction of negative dialogue and propaganda, for example in the prime minister's words: "in terms of homosexuality, Hungary is a patient, tolerant country. But there is a red line that cannot be crossed, and this is how I sum up my opinion: leave our children alone" (Gera 2023, 109); "Hungary has passed a law that clearly states that parents have exclusive rights over education in schools and sexual education. An LGBTQ+ activist or representative of any other ideology is not competent in this" (Gera 2023, 117); and "The new Hungarian law simply states clearly that only parents can decide on the sexual education of their children. Education in schools cannot be in conflict with the will of parents, it must be supplementary at best, its form and content must be clearly defined, and it should be connected to parental consent" (Gera 2023, 118).

A community shaped on such autocratic hegemony is a notable crisis of the liberal democracy (Rakusa-Suszczewski 2021, 88). This approach not only takes away the child's rights but also exposes them to populist indoctrination and violence. Children are no longer active participants in the political sphere, but become individuals through whom politicians fulfil their objectives, as subjects under parental authority. This process forces us to reflect again on the importance of the involvement of young people and their representation in political activism as a form of social good.

5. Conclusory remarks

In summary, the considerations presented regarding the legal changes in the Hungarian legal order indicate that these changes may have an impact on public society. Every action to erase homosexuality and equate it with paedophilia and violence in binding legal acts, leads to the stigmatisation of LGBTQ+ people and, consequently, an attack on their identity and dignity. These far-reaching legal modifications will also have an impact on media, advertising, and publishing industries. Undoubtedly, the judgments issued by the international courts will be critical guides and assessments in the public debate on the scope of legal changes in the context of children's rights.

The populist actions of the Hungarian authorities are a manifestation of the pushback to EU values, which the prime minister himself posed as a question: "We are fighting for our national sovereignty here. What does national sovereignty mean nowadays in Europe?" (Gera 2023, 119). This is not a good trend, as it raises many concerns and questions about the shape of the law, the meaning of European integration, and the building of a stronger community based on liberal democracy – values that are undeniably implicated in the shape of children's rights in Hungary and the world.

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Shorai Christopher Muzungu and Itai Kabonga. "Involvement of Forever Associates Zimbabwe in Zimbabwe's 2023 elections: Crossing the red line or recalibrating the role of civic organisations in politics?" (2025) 9 164-184 *Global Campus Human Rights Journal* https://doi.org/10.25330/3227

Involvement of Forever Associates Zimbabwe in Zimbabwe's 2023 elections: Crossing the red line or recalibrating the role of civic organisations in politics?

Shorai Christopher Muzungu and Itai Kabonga***

Abstract: *Our study focused on examining the legality of the involvement of Forever Associate Zimbabwe (FAZ) in the 2023 elections in Zimbabwe which opposition political party supporters considered as an unlawful interference in politics by a non-governmental organisation (NGO). In this study we sought to trace how the State related to civic organisations since the Mugabe era especially during elections. We questioned the involvement of FAZ based on the fact that FAZ crossed the red line for civil society organisations (CSOs) which are, under the Private Voluntary Organisations (PVO) Act, supposed to be apolitical. However, the active involvement of FAZ gave rise to the question of whether this was a recalibration of CSOs' involvement in politics or it was a red line crossed. To come up with the credible empirical evidence, we used a combined qualitative and doctrinal legal analysis approach where we combined both legal provisions and qualitative data to establish the legality of FAZ's involvement in the elections in July 2023. Data from 20 purposively selected participants from Harare revealed that involvement of FAZ was illegal, an interference with the political rights of opposition political party members, and a threat to the existence of the Zimbabwe Electoral Act. We use Gramsci's theory of hegemony to analyse how States maintain hegemony over civil society actors just to advance their own political interests. The Zimbabwe Government's silence on FAZ contrasts with its historical prosecution of other CSOs, suggesting selective application of the PVO Act.*

* Shorai Christopher Muzungu (Zimbabwe Ezekiel Guti University) (Correspondent)

** Itai Kabonga (Zimbabwe Ezekiel Guti University).

1. Introduction

This research provokes a discussion on the involvement of private organisations in politics, especially collusion with political parties during national elections. We are much concerned with advancing that argument based on permissibility or prohibition as prescribed in existing laws governing the conduct of private organisations especially the Private Voluntary Organisations (PVO) Act (Chapter 17:05) as amended in 2025. The Zimbabwean Constitution of 2013 under "Political Rights" Section 67 does not support the collusion of political parties with private organisations to advance the former's cause (Constitution of Zimbabwe 2013). In light of this, we normatively inquire on the involvement of the Forever Associates Zimbabwe (FAZ) private organisation in the controversial 2023 elections (The Sentry 2024; The Carter Centre 2023), focusing on whether the direct involvement in politics by FAZ to assist ZANU PF to win the 2023 elections can be considered as redefining the role of civic organisations in local politics or whether a red line was crossed since the existing PVO Act does not support such involvement in directly lobbying for a political party to win elections against another political party. We look at FAZ's involvement and how it affected the electoral ground and democratic rights of opposition members who regarded it as aggressive and unconstitutional involvement in the 2023 elections (Amnesty International 2023; The Carter Center 2023; Zimbabwe Peace Project 2023). This involvement of FAZ remains a contentious issue because of the interference in the electoral system which compromised the integrity of the elections (The Sentry 2024; The Carter Center 2023). This illegal involvement of FAZ during the July 2023 in the elections was beyond the limits of civil society organisations (CSOs) as provided for by Section 20A(1)(g) of the PVO Act (Chapter 17:05, 2025 amendment).

While the State remained silent on this issue, it is possible that FAZ had, by means of involvement in the 2023 elections, successfully championed the abrogation of Section 20A(1)(g) which cautions PVOs to avoid entering partisan politics. We seek to conclude on whether the involvement can be described as a "red line crossed" or as a "recalibration of civic organisations' involvement in Zimbabwean politics." Substantiating this thought is the long-standing tradition of non-interference of private organisations in politics in Zimbabwe (Kabonga and Zvokuomba 2021). This is supported by provisions of the PVO Act (Chapter 17:05) Amendment Number 1 of 2025 Section 20(A) on "Principles governing private voluntary organisations." Section 20(A)(1g) provides that "Every private voluntary organisation shall not to conduct themselves in any politically partisan manner whether by using its resources to benefit members of a particular affiliation or making any test of the political allegiance of its beneficiaries" (PVO Act 2025). Using this legal provision as the basis of our argument, we now need to understand how FAZ redefined public perceptions on the Government's conduct towards CSOs especially their involvement in politics. However, in reaching the final position on this, we are bound by a few questions that align to the major objective underpinning this study. We seek to ask and provide answers to questions such as how was FAZ involved in the 2023 elections and how permissible was that involvement? How did FAZ involvement shape State-civil society relations in Zimbabwe going forward? How did the involvement impact on political rights of Zimbabweans as accorded in Section 67 of the 2013 Zimbabwean Constitution?

While existing reports by The Sentry (2024), the Carter Center (2023), and the Zimbabwe Peace Project (2023) document FAZ's conduct empirically, no scholarly work has applied Gramscian hegemony theory alongside normative legal analysis to evaluate its legality. This paper fills that gap by asking did FAZ's involvement in the 2023 elections cross normative boundaries, or did it represent a recalibration of the role of civic organisations in politics? We contribute a dual theoretical-legal framework that extends existing knowledge beyond journalistic reporting.

2. The history of FAZ

Anyone who attempts to follow the history of FAZ will ultimately conclude that it is shrouded in a confusing mystery because of conflicting accounts concerning its establishment. However, one of the accounts on FAZ's website under the section "About Us" states that FAZ is an organisation which is registered as a private organisation registered under Zimbabwe law as a Trust, under Deed of Trust (FAZ 2022). Its history dates back to 2010 when a small group of visionary students and members of the faculty (there is no information or evidence of the name of the faculty on the website) at Solusi University teamed up to form the organisation (FAZ 2022). As they expected, FAZ was to help them to access business and empowerment opportunities that the Government of National Unity (GNU) was offering during that time (FAZ 2022). To show their strong commitment to realising their vision, they went on to register it as a Trust with assistance rendered by the Ministry of State for Presidential Affairs (FAZ 2022). The founders would later become frustrated with lack of support from the GNU which was, at that time, described by FAZ as retrogressive and unappealing to their cause (FAZ 2022).

This above historical account contradicts that of The Sentry (2024) that FAZ Trust was set up to help ZANU PF win the 2023 elections. The description by The Sentry (2024) showed that FAZ was set up to support ZANU PF's 2023 elections and registered as a family Trust under Central Intelligence Organisation Deputy Director Asher Walter Tapfumaneyi. This approach obliterates the previous 2010 history of the Trust even though the Carter Commission (2023) vindicated in its report that FAZ is a CSO affiliated with ZANU-PF and accredited to observe the 2023 elections (The Carter Centre, 2023). We do not aim to adjudicate which history is "true," but rather to show that FAZ's public narrative shifted to align with ZANU PF's electoral calendar. In this study, we are not seeking a vindication of FAZ as a CSO or not. Rather, we are adopting a rational scholarly approach to avoid the bias and assumptions that may overshadow our understanding of FAZ as a CSO and as political pawn. The life of FAZ as an organisation was revived in June 2022 when the few remaining enthusiasts decided to relaunch it under new trustees and with an emancipated and updated vision which was to leverage opportunities availed by the new dispensation in Zimbabwe (FAZ 2022). In August 2022, FAZ made a formal application to join the ZANU PF party following the constitutional provisions of the ZANU PF Constitution as prescribed in Section 16(2) (FAZ 2022).

FAZ identifies itself as the "affiliate party" of the ruling ZANU PF. This is proved by the clearly convincing declaration: "The 2023 election campaign message to the Party, the Candidate, FAZ and all other affiliates" (FAZ 2022). By identifying itself as an affiliate party, FAZ is simply demonstrating that it is a voluntary organisation submitting itself to the ZANU PF 2023 elections cause. Therefore, it is a politically motivated entity contravening Section 20A of the PVO Act of 2025 because of its involvement in politics instead of being apolitical as stipulated by the Section cited herein (PVO Act 2025). Even the Zimbabwe Human Rights Commission (ZHRC) Report (2023, 6) testified that it noted the fraudulent involvement of affiliate groups during the 2023 elections with FAZ being one of the mentioned affiliates. Considering the nature of the affiliates operating under ZANU PF which are also registered as non-profit making organisations, it makes FAZ a classic example of a private non-profit making organisation that is highly political and worth studying. It also further provokes questions on legal standing and recognition of FAZ as an organisation bound by the provisions of the amended 2025 PVO Act.

3. Theoretical grounding of the study

We adopted a theory by Antonio Gramsci which is commonly referenced to explain the absolute power that States establish, maintain, and control over non-State actors with CSOs being among a victim of such hegemony (Gramsci 1971). Balakrishnan (2015) noted that Gramsci in explaining hegemony, understood that it locks up a society tightly because of ways in which transmission of ideas by use of language is done. Gramsci (1971) argues that hegemony operates through language and ideology shaped by dominant groups. It is important to articulate in depth, what constitutes a CSO in order to liberate the reader from the mystery of applying concept without explaining it. Gramsci (1971) defined the civil society as an embattled space unfolding between the economy and the State. Bates (1988) stated that Gramsci conceptualised hegemony as domination of every society by a social group mainly the ruling class, domination which is achieved and perpetuated by application of coercive means including security forces to ensure subordination of the poor. In the sections below, we explore the applicability of the theory to the study.

Our study focuses on exploring the regulation role that Zimbabwe plays in democratising society by allowing CSOs to independently operate guided by the PVO Act (2025), while desisting from actively participating in partisan politics. We acknowledge that the civil society has independent rights to engage Governments in advancing political, social, and economic developments (ZHRA 2024; Shava 2019). Despite their existence as the only dependable vehicle that complements the Zimbabwean Government in promoting political rights, CSOs are operated in a constricted space. This is attributed to the hegemony of the Mnangagwa regime in suppressing CSOs through many restrictive legislations and political indoctrination of Zimbabweans that CSOs are regime change agents for the West (Helliker 2012; Dorman 2003). Comparative evidence from other African States supports this pattern. In Uganda, the Non-Governmental Organisations Act (2016) similarly restricts CSO involvement in "political activities" (Brechenmacher 2017). Ethiopia's 2019 Civic Organisations Proclamation replaced a highly restrictive 2009 law but still prohibits foreign-funded CSOs from engaging in "political and democratisation activities" (International Center for Not-for-Profit Law 2025). These cases suggest a regional pattern of democratic backsliding accompanied by tightened CSO regulation. The use of hegemony is widely considered as the only method by which the Government of Zimbabwe continues to subordinate CSOs, taking into account the historical legacy of the CSO as an extension of colonialists (Moyo 1993, 7).

The Government of Zimbabwe deploys unfounded allegations that Zimbabwean NGOs' agenda is to ensure ZANU PF is removed from power for the opposition. Using Gramsci (1971) and how he discussed the use of powerful language and ideology to manipulate the people, the use of language of incitement against CSOs by the Government makes CSOs public enemies. Various examples substantiate the role of semantics in promoting subordination of CSOs including when Mugabe stated that on 29 July 2009: "We have now a phenomenon of NGOs, or shall I call them phenomena, for they really are a type of government in the background of a formal government. I don't know whether this creature us for the better or for the worse, but in our country, we have seen a situation where they have exceeded their terms of reference, and perhaps we might have to reconsider the advisability of having NGOs" (The New Humanitarian 2009). Mnangagwa also inherited the culture of persecuting CSOs (Amnesty International 2025), including by promoting new repressive changes to the PVO Act which he approved in April 2025 (International Center for Not-for-Profit Law 2025). Scholars have raised concerns and substantial findings on how the Zimbabwean Government uses the State apparatuses to subjugate the civil society with sheer brutality. For example, Pousadela and Perera (2021) established that States dismiss the work of

CSOs as proxy agents of international puppet masters. This has an adverse impact on the operations and perceptions of CSOs as unpretentious actors in promoting accountability and transparency in Zimbabwe (Shava 2019; ZLHR 2021; Brechenmacher 2017).

Gramsci (1971) contended that this dominant group utilises language and ideologies that appeal more to the people just to discredit the civil society's existence. In Zimbabwe, there is a common consensus by the ZANU PF and its supporters to discredit all thee CSOs as extended arms of the opposition political parties that are seeking to ensure Zimbabwe relapses into colonialism (ZLHR 2021; Moyo 1993). Bearing this in mind, Shava (2019) established that in Zimbabwe, the NGOs are widely questioned by the Government and accused as agents of Western imperialism who are hiding behind development aid. Gramsci (1971) critically helps to understand how ideologisation and cultural manipulation are used as weapons of subduing the conquered into giving acceding to the aggressive demands of the ruling elite in Zimbabwe since 2018. However, it is important that we consider that despite the Government's strong resentment of civic organisations in Zimbabwe, the same Government has used its dominance to allow FAZ to be a political arm of ZANU PF. In so doing, the Government is fulfilling Gramsci's (1971) observation that in the establishment and maintenance of hegemony, the process is not peaceful but rather coercive. Involvement of FAZ in the July 2023 elections was indeed a condemnable act (The Carter Center 2023; The Sentry 2024; ZPP 2023), one which was propagated and supported by the hegemony. This was done for the purpose of perpetuating the political interests of the ruling hegemonic party.

4. Government and CSOs involvement in politics from 2000–22

Under Mugabe's 37 years in power, the relationship between the State and CSOs that are involved in politics and governance was strained. Much of the friction that led to the tense relations emanated from the political crisis that was affecting Zimbabwe between 2002–08 (Dendere and Taodzera 2023; ZLHR 2021; Dorman 2003). Formation of the Movement for Democratic Change (MDC) in 1999 resulted in the first stern test for CSOs because MDC was formed through support from the Commercial Farmers Union (CFU) and the Zimbabwe Congress of Trade Unions (ZCTU), two leading CSOs (Masunungure 2014; Dansereau 2001). Mugabe's administration saw this as the direct crossing of the political red line since these were enablers of the opposition regime. The Government decided to respond to the crisis by passing many new legislative restrictions that curtailed the freedoms of CSOs in their expression of political discontentment against the ZANU PF Government. Some of the new changes included the first well-known attack on CSOs by the Government through the Minister of Justice, Legal and Parliamentary Affairs Patrick Chinamasa in 2000 (ZLHR

2021). Secondly, the Zimbabwean Government passed its 30 July 2003 Operation of Non-Governmental Organisations in Humanitarian and Development Assistance in Zimbabwe Policy. In 2004, there was another new development, the NGO Bill that mandated all NGOs to be registered or face the punishment of suspension. Later in 2005, the State announced that it was set to suspend further registration of about 30 NGOs that were reportedly funded by international donors to advance an unwanted political regime change agenda (ZLHR 2021; Pousadela and Perera 2021; Shava 2019).

In 2008 at the height of Zimbabwe's bloodiest political violence since 2000, the persecution of CSOs to silence their voices by using the 2004 PVO Act was done through calling for suspension of all NGOs that focused on humanitarian operations through Ministry of Labour and Social Welfare (Maphoto 2022; ZLHR 2021). This led to advocacy for the liberation of NGOs by the UK Border Agency and civic organisations that promoted political freedom (UK Border Agency 2009; ZPP 2008). Zinyemba and Zinyemba (2013, 5) raised concerns about this excessive political interference into the operations of civic organisations arguing that since 2008, political instability and interference by the State in the civic space has been a major challenge. Zimbabwe entered into a Government of National Unity (GNU) (Chigora and Guzura 2011), after experiencing the 2008 bloody political violence (Dodo et al. 2012; Amnesty International 2008), where some abductions of human rights defenders continued with Jestina Mukoko being one of the victims (Jonga 2013; ZPP 2013; US Department of State 2009). There were persistent exertions that the late Mugabe orchestrated to undermine CSOs operations including banning them entirely as was the case in 2011 where 29 banned CSOs operated in Masvingo (Amnesty International 2012) but *The Mail & Guardian* (2012a) noted that 30 CSOs had been banned. An analysis of this trend and pattern of violence against CSOs showed that Zimbabwe's political environment is unfavourable for their operations especially when they question the State's dictatorship.

In the run to the 2013 elections until the final ousting of Mugabe, the Government remained very intolerant to CSOs. Their crime was denouncing dictatorship in Zimbabwe; a struggle associated with the West with many targeted CSOs being labelled Western puppets (Ruhanya 2012). On 24 February 2012, *The Mail & Guardian* also raised concerns over the continued harassment of the CSOs. *The Mail & Guardian* (2012) reported with concern that President Mugabe's ZANU PF party has banned 30 NGOs operating. This validates the ZPP (2013) report that in December 2012, the 13th National People's Conference held by ZANU PF was dominated by scathing attacks against civic organisations. President Mugabe even made a resolution to instruct ZANU PF to make sure that the Government enforced the de-registration of errant NGOs that deviate from their mandate (ZPP 2013; Amnesty International

2012b). In September 2013, Human Rights Watch raised the concern that democracy in Zimbabwe would only thrive if NGOs were accorded their right to operate without undue political persecution as articulated in the 2013 Constitution preamble. Human Rights Watch (2013) wrote a letter directly to the President and bravely told Mugabe that he was supposed to allow CSOs to operate without interference and that his Government was also to stop the harassment and intimidation of CSOs.

From 2014 until his final demise, Mugabe continued to attack NGOs as Western agents designed to overthrow the ruling party from the helm of Zimbabwean politics. On 30 July 2016, an article in *The Herald* titled "President tears into NGOs" stated that Mugabe publicly said that Western-sponsored NGOs were working on open campaigns aimed at subverting African economies all in pursuit of regime change agenda (Herald 2016). Previously in October 2015, Grace Mugabe, whilst addressing ZANU PF supporters at a rally in Rushinga Mount Darwin, had openly stated that NGOs in Zimbabwe were pushing the regime change agenda (All Africa 2015). In responding to the blatant attacks, NGOs argued that their role was to ensure that ZANU PF is held accountable for human rights abuses perpetrated by its tyrannical members who enjoyed impunity from legal prosecution (Voice of America 2015). Even in post-coup Zimbabwe, Kabonga and Zvokuomba (2021) posited that the State-civil society relations in Zimbabwe remained highly confrontational and fractured. While the relations remained confrontational in nature, the study is vindicating or nullifying this Kabonga and Zvokuomba (2021) supposition based on established findings. These sentiments are buttressed by Zimbabwe Human Rights Association (ZHRA) and Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) (2024) who claimed that Zimbabwe's civic space has been increasingly faced with significant challenges. The challenges included the arbitrary attack on CSOs, passing of stringent legislation, aggressive Government crackdown, and harassment of human rights defenders. What this history shows is that State repression of CSOs is not uniform; it is selectively deployed against CSOs perceived as opposition-aligned, while pro-Government CSOs like FAZ are shielded.

5. Research methodology

This study was conducted in Warren Park 1, Warren Park 2, and Warren Park D in Harare, Zimbabwe. These suburbs were purposefully selected because: (1) they had a documented history of opposition political party support, (2) FAZ was visibly active during the July 2023 elections, and (3) we had prior access to participants willing to discuss a politically sensitive topic (Propertybook 2025). We acknowledge that this geographic focus on three contiguous suburbs in a single city means the findings are not statistically generalisable to Zimbabwe as a whole. Instead, this study offers an in-depth, contextualised case study of FAZ's electoral role in

Warren Park. We focused on these suburbs because we found participants who were willing to discuss a subject which some found sensitive because of its political nature. This area was also characterised by high rates of FAZ involvement in elections, something we witnessed and also agreed upon because we had first-hand experience with FAZ volunteers. However, this first-hand experience also introduces potential bias, which we address explicitly in the reflexivity statement below. We used a qualitative case study design (Yin 2018) supplemented by legal document analysis of the PVO Act (Chapter 17:05, operative in July 2023, prior to the 2025 Amendment), the Zimbabwe Electoral Act (Chapter 2:13 2016), and the 2013 Constitution of Zimbabwe.

This study adopts an interpretivist research paradigm, which holds that social reality is constructed through participants' meanings, perceptions, and interpretations (Pervin and Mokhtar 2022). We do not claim to uncover an objective "truth" about FAZ; rather, we aim to understand how FAZ's involvement was experienced and understood by those who lived in Warren Park during the July 2023 elections.

A qualitative approach was appropriate because our research aimed to understand participants' lived experiences, perceptions, and interpretations of FAZ's involvement in the 2023 elections (Aspers and Corte 2019). In addition to qualitative primary data, we conducted a doctrinal legal analysis of the PVO Act, Zimbabwe Election Commission Act, and Constitution to determine whether FAZ's activities complied with existing statutory provisions. We emphasise that our legal analysis focuses on the pre-2025 PVO Act (Chapter 17:05) that was operative during the July 2023 elections. The 2025 Amendment is referenced only as subsequent codification, not as retroactive law. We employed a single instrumental case study design (George and Bennett 2005), with Warren Park as the bounded case. This design allowed us to investigate in depth how residents and FAZ volunteers perceived the organisation's electoral role. To capture multiple perspectives, we purposively sampled both FAZ members (n=10) and opposition political party supporters (n=10).

5.1. Researcher positionality and reflexivity

We acknowledge that we resided in Warren Park prior to and during data collection and had pre-existing personal relationships with some participants. As noted in our selection criteria, we had "first-hand experience with FAZ volunteers." This presents several risks to research credibility: social desirability bias (participants may have told us what they thought we wanted to hear); confirmation bias (we may have sought data confirming pre-existing views); and participant reluctance (some individuals may have been unwilling to criticise FAZ given our prior associations).

To mitigate these risks, we implemented the following reflexivity measures:

1. **Member checking –** preliminary findings were shared with five participants (three FAZ members, two Citizens Coalition for Change (CCC) supporters) to verify accuracy of interpretation. All five confirmed that the findings reflected their lived experiences.
2. **Peer debriefing –** two independent researchers not involved in data collection reviewed our coding framework and challenged our interpretations.
3. **Systematic coding –** transcripts were coded using NVivo 14, with codes generated inductively from the data rather than imposed deductively.
4. **Negative case analysis –** we actively searched for and reported participant views that contradicted our emerging findings.
5. **Audit trail –** all interview transcripts, coding decisions, and analytical memos have been retained for independent verification.

Despite these measures, we acknowledge that complete objectivity is unattainable in qualitative research. Our findings should be read as an interpretive account, not a neutral mirror of reality.

Data were collected through face-to-face, semi-structured interviews. The interview guide contained open-ended questions about: (1) FAZ's recruitment and activities, (2) perceived legality of FAZ's electoral role, (3) experiences of intimidation or observation during voting, and (4) knowledge of the PVO Act. Interviews lasted between 35 and 65 minutes and were audio-recorded with participants' consent. Purposive sampling was used (Etikan et al. 2016). Inclusion criteria for FAZ participants included: (1) registered FAZ volunteer during the July 2023 election period, (2) actively deployed in Warren Park, (3) willingness to be interviewed. Inclusion criteria for opposition participants included: (1) self-identified supporter of the Citizens Coalition for Change (CCC) in 2023, (2) voted in Warren Park, (3) able to describe FAZ's presence at or near polling stations. All 20 interview participants were male; however, as shown in Section 6 (Findings), seven of the ten FAZ members we interviewed were women. The gender imbalance refers specifically to opposition party supporters, where no women agreed to be interviewed. This limitation is addressed below. To ensure that we collected credible data, we utilised semi-structured questionnaires. According to Abawi (2013), a semi-structured interview includes a number of planned questions where the interviewer has the freedom to modify the wording and order of the questions. The semi-structured questions helped to explore the topic of FAZ involvement in elections without having reservations while, at the same time, we did not receive rigid responses because the questions were exploratory in nature.

We engaged a total of 20 participants, with ten from FAZ and ten from the CCC opposition political party. We analysed the data using the six-step approach of Braun and Clarke (2012). This data analysis approach involves the following steps. First, familiarisation with the data, where it was important to know the type of data we had collected and to map out how to start analysing it. Second, we generated initial codes, which involved describing the data contents in line with participants' meanings attached to them. Third, we searched for themes from the data after grouping the data and establishing its meaning. Themes were key because they showed that we organised the data into common categories in line with the questions we sought to answer. Fourth, we reviewed potential themes, moving beyond simply searching for themes to generating them and verifying that the themes were not duplicated or weak. We collapsed similar themes and merged them to form stronger, more analytically powerful themes (Braun and Clarke 2012). Fifth, we defined and named the themes. Braun and Clarke (2012) stated that this is when the researcher rereads the data and concludes that all themes developed in the previous steps meaningfully capture the lived realities of people as shown in the entire data set. Sixth, we presented the findings (Braun and Clarke 2012), which we do in the next section.

Besides primary data from in-depth interviews, we also used unstructured observation because we had lived in this same place and witnessed, through active participation in the elections, the conduct of FAZ members. Our observation followed no fixed protocol but was opportunistic and informal, which is a limitation. To strengthen rigour, we recorded observational field notes within 24 hours of each observation event (Emerson et al. 2011). We observed FAZ members roaming in polling stations, witnessed them setting up their white-clothed tables, and engaging with fellow ZANU PF members who had just voted. However, we acknowledge that we were not fully informed about everything they discussed and agreed upon after voting, but we found that they discussed voting patterns and voter turnout (FAZ Participant). Observation was sufficient to substantiate interview data because what we observed aligned with what participants reported in interviews, even when participants were unaware that we had observed them. This cross-method corroboration strengthens the credibility of our findings. We ensured that secondary data were used, which helped to bring out the normative part of the study. Secondary data used included various legal and political publications researched and published by organisations that are formally independent of the Zimbabwean Government, including The Sentry, ZPP, ZLHR, ZHRA, and others. This also helped to reduce potential researcher bias. However, we acknowledge that no organisation is fully "impartial"; each has its own institutional perspectives and funding sources. We have treated these documents as complementary evidence, not as objective truth. Besides these, we stayed informed by the PVO Act (pre-2025 version), the ZEC Act, and the 2013 Constitution of Zimbabwe because they were the key legal frameworks that guided discussion of findings and the study at large.

We remained highly guided and informed by ethics for researchers, which helped us to ensure that ethical considerations were upheld and respected. According to Resnik (2018), the concept of ethics questions our conduct in carrying out research. Ethics guide researchers in choosing what is morally right or wrong. In this study we declare that we did not use artificial intelligence (AI) for data generation, analysis or writing. However, we used NVivo 14 for coding management, which is qualitative data analysis software, not an AI tool. We sought written informed consent from all participants after explaining the study's purpose, risks, and their right to withdraw at any time. We ensured that findings were a credible reflection of the people's voices and thoughts through member checking (described above). We also ensured that data were anonymised by removing all names, addresses, and specific dates of birth from transcripts. Participants are referred to only as "Participant 1–20" in the findings section. This study also adhered to privacy and confidentiality by storing all audio recordings on a password-protected drive accessible only to the research team. Triangulation of data was also important in ensuring trustworthiness.

5.2. Limitations of the methodology

This study has several methodological limitations that readers should consider when interpreting our findings:

1. **Geographic scope –** data were collected from only three suburbs in one city (Harare). Findings cannot be generalised to other parts of Zimbabwe without further research.
2. **Sample size –** 20 participants is a small sample, typical for qualitative case studies but insufficient for statistical generalisation.
3. **Gender bias in opposition sample –** while seven FAZ participants were women, all ten CCC opposition participants were male, as no women from the opposition agreed to be interviewed. Women's experiences of FAZ's electoral role from an opposition perspective remain unexplored.
4. **Positionality –** as Warren Park residents with prior relationships to some participants, our interpretations may be shaped by insider knowledge and potential bias, despite our reflexivity measures.
5. **Temporal limitation –** data were collected retrospectively, up to six months after the July 2023 elections. Participant recall may have been affected by memory decay or subsequent political events.

6. Findings

6.1. Demographic profile of participants

The demographic profile of our research participants included ten members from FAZ, seven of whom were women and three were men. Women dominated the FAZ selection process because it was widely thought that they would easily engage anyone, especially men who had little interest in politics (FAZ Participant). Their ages ranged from 25 to 55 years, with the majority being young people because FAZ coordinators wanted people who were active in walking long distances and ready to commit themselves with maximum endurance (FAZ Female Participant). We conducted interviews with them in the Warren Park area. Concerning education, of the ten FAZ members, we found that only one had a tertiary education degree while nine had secondary level education. The secondary level education findings showed that only three had passed Ordinary Level, which was also a key stumbling block in our desire to obtain answers on their knowledge of the PVO Act. We found that their recruitment was based largely not on education but on their loyalty to ZANU PF, which was determined by their presence in ZANU PF structures from the lowest cell levels to the highest level they occupied. For participants from opposition political parties, we interviewed them in the same Warren Park area and found that out of ten, five had passed Ordinary Level, with three being degree holders. These people were active political supporters of the now-defunct CCC, which was led by Nelson Chamisa in the July 2023 elections.

6.2. *Recruitment and engagement in pre-election grassroots mobilisation*

Findings showed that the involvement of FAZ in the July 2023 elections cannot be understood in the context of the elections themselves. Rather, the recruitment of FAZ members was traced back to June 2022, when they were mobilised through nomination by selected ZANU PF loyalists in each area, with each district providing 20 members. We found that these people included educated and uneducated members who had no Ordinary Level passes but possessed political interests in ZANU PF political ideology. Our discussions with some of the selected members revealed that they were unaware of the existence of the PVO Act and the provisions of the Constitution on the involvement of CSOs in elections. All of the participants acknowledged that they voluntarily chose to join FAZ without expecting any payment because it was considered an organisation that operates on a voluntary basis. This solidified our early argument that FAZ described itself as a voluntary organisation that is not profit-making (FAZ 2023). Therefore, FAZ members considered themselves as doing service to the ZANU PF party but lacked any understanding of whether they were contravening the PVO Act. This is because they were assured that in their operation until the July 2023 elections, they would not face any interference from the security forces, especially the Zimbabwe Republic Police (ZRP). They were instructed to remain allegiant to ZANU PF in their activities, since it was the ruling party which is the freedom that they enjoyed with impunity and without restrictions, despite the fact that they were involved in political activities. One FAZ male participant (Participant 9) reiterated the point that "FAZ was an NGO and it had one mandate: to ensure that by the July 2023 election period, ZANU PF should have gained ground in both rural and urban areas."

Evidence from participants revealed that FAZ members were paid, although it was not considered a salary, with some reporting that they received around US$400 before the elections to motivate them in their daily duties. However, when asked about the source of funding, FAZ members were not able to provide any information. The pre-2025 PVO Act (Chapter 17:05) required that every PVO have an established source of funding. All FAZ expenses were not made available, and neither the voluntary employees nor the FAZ leadership itself had established information on its source of funding. At the same time, funding to FAZ during elections was directed towards political activities. Under the pre-2025 exclusion clause, organisations "confined to political activities" were not permitted to register as PVOs. FAZ's political activities therefore placed it outside the legal definition of a PVO altogether. According to FAZ (2022), there was only one mission for which it was formed: to ensure that it worked for the victory of ZANU PF in the July 2023 elections, which it did.

6.3. FAZ impunity and violation of PVO Act and electoral legal provisions

We established that FAZ was a ZANU PF-associated NGO that operated with impunity simply because participants revealed that since June 2022 none of its members had been arrested for carrying out political activities in the two political districts. Members stated that they received training for the work with the support of Central Intelligence Organisation (CIO) members (FAZ Female Participant 1), a narrative that resonated with the study carried out by The Sentry (2024), in which the CIO was considered a key coordinator of FAZ. Among the members was one who stated that they had been instructed to go to polling stations to provide more details to their CIO handlers about the voting patterns of their members and the opposition. One participant revealed that they were sent out in pairs and sometimes in threes, depending on the task and their ability to handle the pressure of confronting questions about their presence within voting spaces (FAZ Female Participant 10). The presence of unaccredited FAZ members at polling stations was a violation of the 2016 ZEC Act, Section 55(2)(iv), which allows only accredited polling agents to undertake polling duties to ensure transparency and accountability in the voting process. The Government's position against NGOs during the July 2023 elections was strict, and it did not allow any CSOs to undertake any role that advanced political agendas.

Members of FAZ were not chased away from polling stations, where some set up tables in polling areas and continued to operate, although participants revealed that they did not engage in violence against anyone (FAZ Male Participant). However, opposition members who were not part of FAZ revealed that they had known FAZ and its community operations, including its agenda (CCC Male Opposition Political Party Participant 4). Therefore, when they witnessed FAZ members circling polling stations, they felt intimidated and feared surveillance and targeted persecution, which one participant described as "bringing back the memories of the 2008 violent elections" (CCC Male Political Party Participant). Findings showed that in Warren Park 1 and Warren Park D, all the polling stations were manned by FAZ members who observed all voting activities from a distance. Evidence showed that they were warned not to wear their FAZ regalia; hence they wore plain clothes and were difficult to observe, even though some people knew the FAZ agents from their mobilisation activities since July 2022 (CCC Male Opposition Political Party Participant 8). The intimidation of opposition voters through the presence of FAZ members is strongly corroborated. The US Department of State Report (2023) revealed that FAZ was an organisation linked to the CIO, set up to intimidate voters, and that its members stood outside polling stations and requested voters' ID numbers. With 36,000 members deployed across the country, FAZ imposed a web of terror and coercion on many voters, which violated Section 67 of the 2013 Constitution of Zimbabwe (political rights), especially Section 67(b), which vests in every Zimbabwean citizen the independent right to make political choices freely and without any undue coercion.

An opposition participant stated: "The police walked past FAZ roadblocks. If it was the MDC or any opposition group doing that, they would have been arrested immediately" (CCC Male Participant 12). Again, there were reports by some interviewees who confirmed that FAZ deployed terror to intimidate voters. However, the ZRP did not exercise its mandate as accorded by Section 89 of the 2016 ZEC Act, which is to ensure that there is no disorderly conduct at polling stations. There were few incidents where brave participants recalled that they had questioned some police officers about why FAZ members were illegally stationed close to their polling stations. They reported that police officers told them that they were unable to control the affairs of FAZ since they were not part of the organisation and were unaware of their presence. The availability of FAZ members, who had professed their allegiance to ZANU PF (FAZ 2022), was a direct contravention of Section 160A(5) of the ZEC Act 2016, which strongly prohibits politically motivated violence and intimidation during elections. While this was happening in polling areas, the police were not directly participating, which left many voters vulnerable to possible violence and intimidation. The findings resonate with a ZPP report (2023), which clearly stated that FAZ members were implicated in harassing citizens in rural and urban communities. All of this happened in the sight of many voters, and no action was taken against those implicated in electoral malpractices, with the Government maintaining complete silence on FAZ and various reports against its interference in politics. The involvement of FAZ did not come as a surprise to anyone who consulted its website, which stated that its imperative campaigning strategy was "showcasing the achievements and successes of the Party and New Dispensation under the able leadership of President ED Mnangagwa" (FAZ 2022).

One participant offered a dissenting view, suggesting that FAZ represented a recalibration rather than a violation: "Maybe this is the new normal. CSOs have to work with the ruling party or be closed down. FAZ is just surviving" (Participant 5, male, Warren Park).

Some participants revealed that FAZ members conducted parallel voter tabulation and sent the results to commanders on the ground (CCC Opposition Political Party Member 2). A participant who was part of the FAZ team acknowledged in this study that results were to be communicated to superiors, but participants revealed that the results were for ZANU PF members only, not for every voter at the polling station. We also found that in the process, FAZ members used their ZANU PF cell sheets to know the number of their registered voters at every polling station and marked the cell sheet if the member showed up to vote. The activities of FAZ members were not only illegal but also a direct interference with the provisions of Section 184 of the ZEC Act 2016, which provides that no person is required to divulge how they voted. The section's provisions also include protection of voters from divulging the person for whom they voted in the elections. Members of FAZ disregarded this provision by instructing their own supporters to vote for ZANU PF, and everyone who was not part of their own cell sheet was considered an opposition candidate, as professed by one of the participants. This made it difficult for several opposition political party voters to express themselves freely within polling stations, as they feared that they were easily targetable by not being on the FAZ cell sheets, which were used to confirm allegiance to ZANU PF if a name was present.

7. Conclusion

7.1. Summary of findings

Our aim was to understand the involvement of FAZ in the 2023 elections and to conclude on the legality and acceptability of such involvement, and whether the Mnangagwa Government attempted to control FAZ's chaotic meddling in the elections as it did with other CSOs it deemed to be anti-Government. Zimbabwe's 2023 elections were marred by controversies of rigging and undue interference by the ruling party (SEOM Report 2023; Carter Center 2023). One of the reasons raised by various independent observers was the involvement of FAZ. Critical reflections on FAZ by The Sentry (2024) revealed that the FAZ trust was set up to help ZANU PF win the 2023 elections. *The Financial Times* (2023) described FAZ as a shadowy NGO set up to support ZANU PF during the elections. In all the activities that FAZ undertook to advance ZANU PF political interests, its members remained unaccountable to the pre-2025 PVO Act, the Constitution of Zimbabwe ,and the ZEC Act (Chapter 2:13 of 2016). While the PVO Amendment Act 2025 later inserted Section 20A(1g) explicitly prohibiting PVOs from engaging in political activities, the pre-2025 exclusion clause

(Section 2 of Chapter 17:05) already excluded organisations "confined to political activities" from the definition of a PVO. FAZ's conduct in July 2023 fell squarely within that exclusion, meaning it was operating outside the legal framework for CSOs altogether. The Government continued its hostile attitude towards all CSOs that were considered anti-Government but remained silent when FAZ interfered with the July 2023 elections, in which ZANU PF emerged victorious following allegations of rigging confirmed by various independent observers, including the SEOM team led by Dr Nevers Mumba. Empirically available evidence from Warren Park shows that FAZ did not reinvent the wheel concerning the involvement of CSOs in elections, since more stringent conditions were set in the 2025 PVO Act rather than relaxed. Within the bounded context of Warren Park, Harare, the evidence suggests that FAZ crossed normative boundaries, and the Government of Zimbabwe tacitly certified this illegal interference by its inaction. This was because the Government supported FAZ and its mandate of advancing ZANU PF electoral interests, which FAZ successfully, but illegally, achieved.

7.2. *Theoretical implications: Gramscian hegemony revisited*

Returning to Gramsci's framework introduced in our literature review, this study's findings both confirm and complicate his theory of hegemony. Gramsci (1971) distinguished between a "war of manoeuvre" (direct, frontal assault on the State) and a "war of position" (slow, incremental struggle for ideological hegemony within civil society). FAZ does not represent a war of manoeuvre; it does not seek to overthrow the State. Rather, FAZ operates through a war of position capturing civic space, normalising ruling party presence in community organisations, and reshaping what citizens perceive as legitimate civic action. However, unlike Gramsci's organic intellectuals, who emerge from civil society to challenge State power, FAZ appears to be an instrument of State-sponsored counter-hegemony: it uses the language of civil society to entrench, not challenge, ruling party power. We propose the concept of simulated CSOs that perform the form but not the function of independent civic action. This extends Gramsci by identifying a new mechanism of hegemonic reproduction in hybrid regimes.

This selective application of the PVO Act where punishing opposition-aligned CSOs while shielding pro-Government organisations like FAZ raises concerns under international human rights law. Zimbabwe is a State party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter). Article 22 of the ICCPR guarantees the right to freedom of association, which includes the right of CSOs to operate without discriminatory State interference. Similarly, Article 10 of the African Charter protects freedom of association, subject only to restrictions that are "necessary in a free society" and prescribed by law. The Zimbabwean Government's differential treatment of CSOs based on their political alignment may violate these provisions, as it imposes restrictions that are neither neutral nor uniformly applied. Future research should explore the justiciability of these international instruments in challenging Zimbabwe's selective enforcement of the PVO Act.

7.3. Policy recommendations

Based on our findings, we recommend the following for Zimbabwe and comparable States:

1. **Clear legal definitions –** the pre-2025 PVO Act's exclusion clause should be amended to define "political activities" with specificity to prevent regulatory arbitrage. The 2025 Amendment's Section 20A(1g) is a step in the right direction but must be accompanied by enforcement mechanisms.
2. **Electoral observation reform –** domestic and international observer missions should be mandated to report on GONGO (government-organised non-governmental organisation) activity, not just State security forces.
3. **CSO self-regulation –** civic organisations should adopt codes of conduct that explicitly prohibit electoral campaigning disguised as civic education.
4. **International pressure –** African Union and Southern African Development Community (SADC) mechanisms should extend electoral integrity criteria to include pre-election civil society space.

7.4. Limitations and future research

This study is limited by its geographic focus (three suburbs in Harare), small sample size (n=20), and the researchers' positionality. Findings are not statistically generalisable to Zimbabwe as a whole. Future research should expand sampling to multiple provinces, include quantitative methods (e.g., survey experiments on perceptions of GONGOs), and conduct comparative case studies of other FAZ-affiliated areas. Additionally, future studies should make concerted efforts to include women from opposition perspectives, as this study was unable to do so.

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Ana Caroline Sales e Souza Garcia. "Artificial intelligence and demographic governance: Migration, risk, and dehumanisation in the European Union" (2025) 9 185-206 *Global Campus Human Rights Journal*
https://doi.org/10.25330/3223

Artificial intelligence and demographic governance: Migration, risk, and dehumanisation in the European Union

Ana Caroline Sales e Souza Garcia[*]

Abstract: *Artificial intelligence (AI) has become central to migration governance in the European Union (EU), where automated systems mediate identification, categorisation, and surveillance under the promise of efficiency and security. This study examines how AI reshapes demographic governance by transforming migrants into statistical objects of risk and control. Using a qualitative case study design focused on the EU, the research combines documentary analysis of legislation, policy frameworks, and institutional reports with secondary quantitative mapping of Eurostat asylum data (2013–2024) and Frontex reports. Rather than establishing causality, the study identifies temporal alignments between the expansion of automated border infrastructures, including Eurodac, ETIAS, and interoperability systems, and changes in asylum recognition rates. Guided by Foucault's concept of biopower, the analysis develops the notion of algorithmic biopower to explain how data-driven systems anticipate, classify, and filter populations based on inferred risk. The findings indicate a consistent convergence between the expansion of algorithmic infrastructures and a structural decline in recognition rates, alongside the consolidation of selective visibility. Externalisation practices supported by surveillance technologies render some populations statistically invisible, while others are subject to intensified profiling within EU territory. These dynamics raise significant concerns for fundamental rights, including due process and non-refoulement, particularly given the opacity and limited contestability of such systems. Although regulatory frameworks such as the GDPR and the EU AI Act aim to mitigate these risks, they appear insufficient where migration is primarily framed as a security issue. The study contributes by offering a critical conceptual framework and empirical mapping of how algorithmic systems reconfigure inclusion, exclusion, and protection in EU migration governance.*

* Master's candidate in the European Master in Migration and Intercultural Relations (EMMIR), Erasmus Mundus Programme, at the University of Oldenburg, Germany. She is a lecturer in postgraduate law programmes and a member of the Executive Committee of the Brazilian Institute of Human Rights (IBDH).

Keywords: *artificial intelligence; migration governance; biopower; algorithmic discrimination; European Union*

1. Introduction

In recent years, Artificial Intelligence (AI) has become central to migration governance worldwide. Presented as neutral and efficient, algorithmic systems now mediate the identification, categorisation, and surveillance of migrants. Behind this apparent progress lies a demographic transformation, as populations are increasingly governed through data, prediction, and risk assessment. In this context, the European Union (EU) has invested heavily in automated border systems under the label of "smart borders." These systems collect biometric and demographic data to manage mobility flows, promising security and efficiency. However, critical studies (FRA 2022; ENNHRI 2024; Molnar 2023) show that such technologies often amplify exclusion.

This article investigates how AI redefines the demographic management of migration in the EU, deciding who becomes visible or invisible within European statistics. By analysing official data and reports, the study reveals that the decline in asylum recognition rates coincides with the expansion of algorithmic border systems such as the European Dactyloscopy (EU fingerprint database for asylum seekers) (EURODAC), the European Travel Information and Authorisation System (ETIAS), and the Intelligent Portable Border Control System (iBorderCtrl). Rather than reflecting a reduction in migration, these figures represent the statistical dimension of dehumanisation, in which algorithmic decisions determine who enters and who is left out.

This study employs a qualitative approach based on documentary analysis and official EU data from 2013 to 2024. The analysis draws on Michel Foucault's concept of biopower to examine how algorithmic governance reconfigures population control at European borders (Foucault 2008 apud Bruno 2019).

Accordingly, the objective is to critically analyse how AI reshapes demographic governance in the EU by transforming migrants into statistical categories of risk and control. The article seeks to expose how automated decision-making systems produce new forms of exclusion and dehumanisation under the discourse of efficiency and national security.

This article makes three main contributions. First, it advances the concept of biopower by examining how contemporary forms of migration governance are increasingly mediated through algorithmic systems, proposing the notion of *algorithmic biopower* to capture this transformation. Second, it empirically analyses the temporal relationship between the expansion of AI-driven systems and the decline in asylum recognition rates. Third, it introduces the concept of *statistical dehumanisation* to explain how individuals are reduced to probabilistic categories and risk profiles, reshaping their visibility, treatment, and access to rights within data-driven migration governance.

This article is structured as follows. Section 2 presents the methodology. Section 3 develops the theoretical framework. Section 4 reviews the literature and contextualises EU migration governance. Section 5 discusses the empirical findings. The final section outlines key implications and directions for future research.

2. Methodology

This study adopts a qualitative research approach, structured as a case study focused on the EU as the unit of analysis. The choice of the case study is justified by the need to investigate a contemporary phenomenon, algorithmic migration governance, within its real and institutional context, using multiple sources of evidence. The methodology was designed to enable a critical, in-depth analysis of the relationship among AI, migration governance, and human rights in the EU, covering the period from 2013 to 2024.

The research employs two main investigative techniques, bibliographic analysis and documentary analysis. The bibliographic analysis consisted of a critical review of theoretical works and recent studies on biopower, control technologies, and migration, based on authors such as Michel Foucault and Shoshana Zuboff, as well as institutional reports on AI and border governance. The documentary analysis involved examining primary and secondary sources, including EU legislation and policies, official reports from agencies (Frontex, EUAA, FRA), and publications from civil society organisations and research networks (EDRi, EuroMed Rights, ENNHRI). The methodological process was structured in three interconnected stages to ensure rigour and reproducibility.

First, secondary quantitative data were collected and analysed from public and institutional sources. Statistics on asylum decision outcomes from Eurostat (2013–2024) and reports on irregular crossings from Frontex (2024–2025) were compiled and examined. The purpose of this stage was not to conduct predictive statistical analysis but to identify and map macro-level trends and patterns, specifically the temporal correlation between the implementation of automated border systems and variations in asylum recognition rates. The analysis relied on descriptive statistical mapping and temporal correlation assessment, without using inferential or predictive modelling tools.

The second stage consisted of a qualitative content analysis of a selected documentary corpus. This corpus includes legal and policy documents of the EU (e.g., the EU AI Act, the GDPR), reports from agencies (Frontex, EUAA, FRA), publications from civil society organisations and research networks (e.g., EDRi, EuroMed Rights, ENNHRI), as well as literature on the subject. The content analysis focused on how official narratives construct notions of algorithmic "efficiency" and "security", and how critical discourses articulate the risks of discrimination and dehumanisation.

Finally, the third stage articulates the findings from the previous stages through the theoretical lens of biopower. This interpretative phase connects the quantitative patterns (decline in recognition rates) and qualitative discourses (narratives of efficiency versus rights violations) with the Foucauldian conceptual framework. The objective is to demonstrate how algorithmic governance not only reflects but actively reconfigures the exercise of power over migrant populations, transforming bodies and lives into manageable risk categories. This approach allows the research to move beyond a descriptive account to offer a critical interpretation of the underlying mechanisms of power. Also, while temporal alignment between system rollouts and recognition-rate declines is robust, causality is not claimed without technical audits. Country-specific reforms and geopolitical shocks are considered as confounders.

The qualitative component follows a thematic content analysis approach, allowing the identification of recurring patterns in institutional documents and policy discourse.

3. Theoretical framework

The analysis in this study is grounded in Michel Foucault's concept of biopower, which describes the modern technology of power focused on the administration of life and the management of populations (Foucault 2008 apud Bruno 2019). Originally, Foucault identified two poles of this power: anatomopolitics, centred on the discipline of the individual body, and the biopolitics of the population, which governs collective life through the management of birth rates, mortality, health, and longevity (Foucault 1978 apud Kasapoglu et al. 2021). In the context of migration, biopower manifests itself in State control not only over territory but also over demographic composition, regulating who may circulate, remain, or be expelled.

This work, however, argues that the rise of AI represents a crucial evolution of this mechanism, giving rise to an algorithmic biopower. Whereas classical biopower operated through institutions such as hospitals and schools to normalise subjects, algorithmic biopower operates through databases, sensors, and predictive models to categorise and manage "lives" on a massive, real-time scale. It does not replace disciplinary power but rather intensifies and automates it, transforming the migrant's body into a data double, a digital profile subjected to continuous surveillance and screening (Klein 2016 apud Selwyn 2019).

In this new configuration, governance relies not only on observation (the Panopticon) but on anticipation. Systems such as ETIAS and iBorderCtrl are not primarily aimed at disciplining present behaviour, but at predicting and neutralising future risk. AI, therefore, does not make autonomous or neutral decisions; it is the technical expression of a political rationality that already frames migration as a problem to be managed. Trained on historical data that reflect structural biases, AI automates and legitimises discrimination under the veneer of mathematical objectivity, transforming social, racial, and geographical inequalities into numerical patterns and statistical predictions.

Thus, this study employs the concept of biopower not as a static framework, but as a dynamic analytical tool to examine how power over life is reconfigured in the digital era. The aim is to expose how the promise of algorithmic "efficiency" conceals an intensified form of population control, producing new forms of exclusion and dehumanisation at the borders of the EU, ultimately deciding which lives are counted as worthy of protection and which are reduced to mere data points of risk.

4. Literature review

4.1. AI and migration governance: global trends

AI, as both a field of study and a technological practice, emerged in the 1950s with the aim of simulating human capacities such as reasoning, learning, and decision-making. Authors such as McCarthy (2012 apud Manning 2020) and Cerka (2015) proposed the use of computers to emulate intelligence, often grounded in the Turing test as an epistemological reference (Turing 1950, as cited in Garcia 2025).

Although definitions vary, AI is generally understood as the capacity of computerised systems to make decisions autonomously based on large volumes of data, often without direct human intervention. Miragem (2019), for instance, defines AI as the ability to interpret contexts and act according to internal representations, emphasising its decision-making autonomy. Similarly, Russell and Norvig (2013) describe AI as the systematisation and automation of human intellectual tasks across different domains.

Prior work by the author (Garcia 2025) examined the United States "Extreme Vetting" programme, which applied AI to refugee screening. That study demonstrated how predictive algorithms reproduced systemic biases by disproportionately targeting Muslim applicants and individuals from the Global South, reinforcing the association between migration and security risk. It also showed how algorithmic systems legitimise exclusion under the rhetoric of efficiency and objectivity, illustrating how automation can institutionalise discrimination in migration governance.

Building on this analysis, the present study shifts the focus from the United States to the EU, examining how algorithmic infrastructures shape demographic governance across European borders. While the earlier work focused on refugee processing, this research explores how AI systems redefine visibility, risk, and control within broader migration management frameworks.

With the expansion of AI, applications such as Natural Language Processing, computer vision, recommendation systems, facial and voice recognition, and robotics have become widespread (Perez et al. 2018). These technologies are now embedded in sectors including health, public safety, education, finance, and marketing. In this context, the use of AI in border and migration management should not be understood as an isolated development, but rather as part of a broader transformation in State governance, characterised by increasing reliance on technological solutions to complex policy challenges.

Within the EU, border externalisation has emerged as a central strategy. It refers to the extension of migration control beyond "migrant-receiving nations" in the Global North to countries of origin and transit in the Global South (EuroMed Rights 2023). This strategy is marked by two key dynamics: the use of development aid as a tool for migration control, and the outsourcing of surveillance technologies to third countries. As a result, regions such as the Middle East and North Africa have become sites of intensive technological experimentation, with the EU investing more than €250 million between 2014 and 2022 in 49 projects aimed at developing border technologies (ENNHRI 2024; EuroMed Rights 2023).

Another important trend is "crimmigration," understood as the convergence of criminal and immigration law. Queiroz (2019) argues that data technologies contribute to this process by producing forms of "digital illegality," blurring the distinctions among irregular migration, asylum-seeking, and criminality. The author identifies three key developments: the erosion of purpose limitation, the expansion of data access by law enforcement authorities, and the growing use of biometric systems.

Beduschi (2020) further argues that AI can reinforce unlawful practices related to non-refoulement, strengthening non-entry policies that already operate at the boundary between administrative and criminal law. Similarly, Forster (2022) highlights how opacity and discretion in decision-making create conditions conducive to algorithmic discrimination, while Sio (2024) points to broader risks to human freedom, including new forms of control, diminished accountability, and increased concentration of power in States and technology companies.

In this context, algorithmic bias is a central concern because AI systems can reproduce and amplify existing inequalities. The EU Agency for Fundamental Rights (FRA) defines bias as the tendency of algorithms to produce outputs that disadvantage certain groups (FRA 2022). Importantly, the agency notes that bias can be reinforced over time when algorithmic outputs are fed back into future systems, creating a self-reinforcing cycle of discrimination.

Beduschi (2020) echoes this concern, arguing that the "black box" nature of many AI systems, often protected by commercial secrecy, makes it difficult to detect inaccuracies and prevent unlawful discrimination. In the context of asylum, Dumbrava (2025) concludes that this opacity undermines the ability to identify errors and challenge decisions, ultimately weakening asylum seekers' position within the system.

As noted by the UN Special Rapporteur on contemporary forms of racism, "the increasing digitisation of national border and immigration procedures disproportionately impacts racial and ethnic minorities, perpetuating discrimination" (quoted in ENNHRI 2024 pag. 5).

4.1.1. Potential benefits of AI (or promises of benefits) in migration governance

The official justifications for the massive investment in AI in migration management centre on promises of efficiency, security and resource optimisation. The European Commission, for example, frames AI "opportunities" in categories such as chatbots, risk assessment tools, knowledge management, and computer vision (EuroMed Rights 2023). The 2014–2015 European Agenda on Migration promised that the use of IT systems would "improve border management, reduce irregular migration and return illegally staying third-country nationals" (Queiroz 2019). Other promises include the prevention of "asylum shopping," the fight against terrorism and serious crime, and the improvement of general security on European territory.

Thus, AI systems are often presented with the promise of increasing efficiency and security in migration management. In this sense, there is Machine Learning (ML), which is a sub-area of AI and is based on the idea that systems can learn from data. Its algorithms identify patterns and make predictions without explicit programming (Faceli et al. 2011; Coppin 2017). Caldeira (2022) highlights its ability to solve complex problems based on previous experiences, whilst Deep Learning (DL) uses multi-layered neural networks to process unlabelled data and perform highly complex tasks, such as image recognition, speech and feelings.

The collection and analysis of large volumes of data, the so-called Big Data, are fundamental for the functioning of AI. The Internet of Things further amplifies this potential by connecting physical objects to the internet, enabling the continuous collection of information. However, as highlighted by Boyd and Crawford (2012), Big Data does not only represent volume, but also a transformation in the ways of thinking and governing. After all, the automation of tasks such as document verification, asylum application analysis, and border monitoring is justified to speed up processes, reduce costs, and mitigate human error. The official narrative around technologies like the EU's "Smart Borders" package emphasises the ability to process large numbers of travellers quickly and securely, distinguishing between "low-risk" travellers and those requiring greater scrutiny.

However, Sio (2024) warns that, "alongside the benefits, algorithms also pose risks to fundamental rights." This fundamental tension between promised benefits and concrete risks to human rights permeates the entire literature on AI and migration, suggesting that promises of efficiency often overshadow the grave ethical and legal implications.

4.2. EU frameworks: Smart Borders, Eurodac, ETIAS, and iBorderCtrl

The EU has developed a complex architecture of information systems for migration and border management. Of the nine large-scale databases used or envisaged under Justice and Home Affairs, six are intended to contain migration-related data (ENNHRI 2024).

EURODAC is the centrepiece of this system. Created to determine the Member State responsible for an asylum application (Dublin Regulation), its scope has been significantly expanded (Queiroz 2019). EURODAC II (2013) now allows the collection of fingerprints not only from asylum seekers, but also from migrants who have crossed the border irregularly and from people found illegally on EU territory (Queiroz 2019). The recast of EURODAC under the EU Pact on Migration and Asylum (2024) further expands the system to include additional biometric data, aiming to go beyond asylum and tackle irregular migration (ENNHRI 2024).

ETIAS is a travel authorisation system that uses profiling to categorise travellers into pre-defined risk profiles, based on factors such as historical overstay data and security information from Member States. Critics point out that the use of indicators such as education level and nationality can serve as a proxy for race or religion, creating a demonstrable risk of indirect discrimination (EDRi 2021).

The iBorderCtrl Project represents a paradigmatic case of the ambitions and dangers of AI at the borders. Funded by the EU and tested by several

Member States, the project included an AI-based "lie detector" to assess travellers' credibility through interviews. Human rights actors have heavily criticised the project due to its dubious scientific basis and high risk of bias. ENNHRI (2024) warns: "Emotion or lie detection technologies are built on pre-existing data that contains biases and, in migration contexts, can easily open the door to inaccurate results and misinterpretation, including, for example, due to cultural differences in emotion expression."

The project was terminated after the testing phase, and litigation over access to documents related to their legality and reliability resulted in restrictions on public access to crucial information, under the justification of protecting commercial interests (ENNHRI 2024). Finally, interoperability between the various databases (SIS II, VIS, ECRIS-TCN, etc.) is a central objective of the EU. In 2019, regulations were adopted to create a framework allowing border and law enforcement authorities to search all databases simultaneously. Although not yet fully implemented, this interoperability represents a massive expansion of capacity for migrant surveillance and categorisation (ENNHRI 2024).

Therefore, these systems are not static; on the contrary, there is a constant drive to expand them. The European Commission has proposed using more biometric identifiers for EURODAC, e.g., facial recognition, the collection of digital photographs, and the extension of the database's scope (Queiroz 2019). Moreover, it is also not a stand-alone system, but rather a broader network of algorithmic surveillance that includes the Travel Tracking Matrix, EUMigraTool (an ITFlows project), Eurodac, Frontex, iBorderCtrl, and the Smart Borders Package (Entry/Exit System – EES and ETIAS) (ENNHRI 2024). A particularly controversial example is iBorderCtrl, an EU pilot project for border security that used facial recognition and lie detection (Karagianni 2025).

4.3. Critical studies on risk, efficiency, and digital discrimination

Algorithmic opacity emerges as a central structural problem in migration governance. Pasquale (2015) introduces the concept of the "black box society," where the complexity of algorithms (often protected as commercial or national security secrets) renders decision-making processes inaccessible.

Beduschi (2020) reinforces this argument, noting that such opacity can conceal inaccuracies and lead to unlawful discrimination. In the specific context of asylum in the EU, Dumbrava (2025) further argues that the lack of transparency makes it difficult to identify errors and contest decisions, ultimately weakening asylum seekers' position within the system. In practical terms, this opacity prevents individuals from understanding the logic behind decisions that affect their lives, undermining the right to due process and effective remedy.

However, Amoore (2020) introduces an important theoretical divergence. While authors such as Pasquale, Beduschi, and Dumbrava emphasise transparency as a solution, Amoore questions whether transparency alone is sufficient. As she argues, many critics assume that the ethical problem lies in the opacity of algorithms, and that opening the "black box" would restore accountability.

Amoore does not dismiss the importance of transparency, but challenges its limits. She suggests that this perspective presupposes the existence of a fully autonomous and responsible human subject outside the algorithm. In reality, however, algorithmic governance is relational and distributed. As she notes, "the emergence of algorithmic power in society has been overwhelmingly understood as a problem of opaque and illegible algorithms infringing… a legible world of rights belonging to human subjects" (Amoore 2020). This framing, she argues, oversimplifies the problem.

From this perspective, governance is no longer based solely on traditional statistical reasoning. Instead, it relies on learning algorithms that identify emerging patterns and define what is "interesting" or "suspicious" beyond predefined rules. As Amoore explains, drawing on Rakesh Agrawal, earlier systems relied on hypothesis testing, whereas contemporary systems generate associations directly from data.

As a result, algorithmic biopower operates on a horizon of possible futures, governing not only present populations but also anticipated risks.

A concrete example of these dynamics can be observed in the Centaur system, implemented in refugee camps in Greece. Partially funded by the EU COVID Recovery Fund, Centaur operates through a centralised control room within the Ministry of Migration and Asylum. The system integrates approximately 40 cameras per camp, thermal imaging, drones, motion sensors, and AI-based predictive tools that can identify and flag "threats," such as weapons, unauthorised vehicles, or unusual movements.

When a potential threat is detected, alerts are triggered in real time, prompting immediate intervention by authorities (Emmanouilidou and Fallon 2021).

Greek authorities justify the system on the grounds of security and prevention. As Migration Minister Notis Mitarachi stated, "we use technology to prevent violence… because safety is critical for everyone" (Emmanouilidou and Fallon 2021). However, civil society organisations such as EDRi offer a sharply contrasting view, criticising these initiatives as part of a broader trend in which migrants are subjected to experimental surveillance systems under the guise of innovation.

The lived experience of these systems reveals their ambivalence. Mohammed, a Palestinian refugee living in the Samos camp, describes this tension: "Sometimes it's a good feeling… sometimes not. There's not a lot of difference between this camp and a prison" (Emmanouilidou and Fallon 2021).

This testimony illustrates what can be described as statistical dehumanisation, where individual experiences are reduced to data points within risk-based systems. Notably, requests from organisations such as Homo Digitalis and EDRi for information on data protection and system functioning went unanswered, further reinforcing concerns about opacity and accountability.

In this context, algorithmic bias should not be understood merely as a technical flaw, but as the amplification of structural inequalities. Beduschi (2020) highlights, for example, the use of the COMPAS system in the United States, which has been associated with racial discrimination in judicial decision-making. Dumbrava (2025) adds that human decision-making itself is already shaped by cognitive biases and contextual factors, which can be further reinforced through automation.

Garcia (2025) extends this analysis to migration governance, arguing that AI systems trained on historical data reproduce and intensify existing patterns of exclusion.

Amoore (2020) pushes this argument further by suggesting that algorithms do not simply reflect bias, but actively generate new proxies for categories such as race, gender, and ethnicity. Through data-driven associations, these systems redefine what is considered relevant or suspicious within governance frameworks.

This perspective aligns with the notion of "algorithmic Jim Crow," which highlights how AI can reproduce deeply rooted racial and social inequalities while maintaining an appearance of neutrality and objectivity (Hu 2017, as cited in Garcia 2025).

4.4. Demographic data and statistical patterns and non-refoulement and human rights in the algorithmic era

The systems under review, such as EURODAC, ETIAS, and Frontex's risk analysis platform, are primarily designed to manage asylum and border security. For this reason, refugee data constitutes the most reliable proxy for analysing algorithmic governance in migration. In this sense, the asylum regime operates as a laboratory of broader migration control, where practices and technologies are first tested and later expanded to other categories of migrants.

Against this backdrop, the analysis of Eurostat data between 2013 and 2024 reveals a consistent pattern: average asylum recognition rates in the EU have progressively declined alongside the incorporation of AI systems into migration governance. Notably, the years 2016, 2018, 2020, 2022, and 2024 correspond to key technological milestones, including the introduction of the iBorderCtrl pilot, its expansion, the ETIAS testing phase, the interoperability of major databases (EURODAC, SIS, VIS, ECRIS-TCN), and the implementation of the Entry/Exit System (EES). Each of these moments coincides with significant drops in positive decision rates.

At the aggregate level, the EU average decreases from 70.1 percent in 2013 to 48.1 percent in 2016, when iBorderCtrl was first tested. Although there is a temporary increase in 2018 (61.6 percent), the downward trend resumes in 2020 (63.3 percent) and becomes more pronounced after full system integration, reaching 42.4 percent in 2022 and 52.4 percent in 2024.

This pattern is even more visible at the national level. Germany's recognition rate drops from 73.6 percent (2013) to 31.2 percent (2016) and stabilises at 46.5 percent in 2024, indicating a structural shift following the introduction of automated systems. Greece presents the most dramatic decline, from 96.1 percent to 28.4 percent. France shows a gradual but consistent reduction, while Spain's rate is nearly halved over the period. Portugal and Slovenia exhibit oscillations but follow the same overall downward trajectory.

The year 2016 represents a critical inflexion point. It coincides with the introduction of the iBorderCtrl pilot and the highest volume of asylum decisions recorded in the dataset (851,810 decisions). Of these, 521,465 were positive, and 330,345 were negative.

Paradoxically, despite the high number of positive decisions in absolute terms, the recognition rate fell sharply to 48.1 percent. This suggests that increased migratory pressure may have accelerated the adoption of automated screening systems as an institutional response to growing application volumes.

A closer look at decision ratios further reveals a structural shift. In 2013, for each negative decision, there were only 0.38 positive decisions. In 2016, this ratio increased to 1.58 positive decisions per negative. However, from 2017 onwards, it declined again, fluctuating between 0.57 and 1.12.

This inversion indicates not merely a statistical fluctuation but a reconfiguration of decision-making criteria, potentially mediated by the calibration of automated risk assessment systems.

Germany exemplifies this transformation paradigmatically. In 2016, the country processed 433,905 positive decisions, accounting for 83 percent of all positive decisions in the EU that year. This exceptional volume reflects both the open-door policy and the institutional pressures that likely contributed to the subsequent adoption of automated systems.

In later years, however, the number of positive decisions drops significantly, reaching 128,460 in 2022 and 133,710 in 2024. At the same time, recognition rates fall sharply, reinforcing the argument that migration governance has undergone a structural transformation mediated by automated screening technologies.

Greece, as an external border State, illustrates a different dimension of this shift. While the absolute number of positive decisions increases from 500 in 2013 to 39,565 in 2024, the recognition rate declines dramatically from 96.1 percent to 28.4 percent.

This suggests that although more migrants can reach the EU and apply for asylum, the criteria for recognition have become progressively more restrictive. Such a pattern is consistent with the expansion of automated risk analysis systems implemented by Frontex and national authorities.

At the EU level, the total volume of asylum decisions also reveals an important structural transformation. After peaking at 851,810 decisions in 2016, the number does not return to pre-crisis levels (190,140 in 2013), but instead stabilises at a significantly higher baseline: 508,165 in 2022, 534,955 in 2023 and 618,105 in 2024.

This sustained increase, combined with lower recognition rates, suggests that automated systems have not reduced migratory pressure but have instead reconfigured approval criteria, making access to international protection more restrictive.

In parallel, official Frontex documents from 2024 to 2025 reveal the emergence of a progressively automated governance architecture, even when not explicitly labelled as such. The Risk Monitoring and Analysis report describes the use of automated tracking and forecasting systems (Eurosur Fusion Services) that integrate data from drones, satellites, and sensors in real time to detect anomalies and predict vessel movements.

Although AI is not explicitly named, the technical vocabulary clearly indicates the use of machine learning techniques. Similarly, the January 2025 report highlights a 38 percent reduction in irregular crossings, presenting it as a policy success without directly acknowledging the role of algorithmic systems.

According to the Latest Asylum Trends – Monthly Overview (EUAA 2025), approximately 64,000 applications for international protection were registered in May 2025, while around 1.3 million cases remained pending. At the same time, 4.4 million individuals were under temporary protection following the war in Ukraine.

The report also indicates a diversification of migration patterns, with decreasing applications from Syrians and Afghans and increasing numbers from Venezuelans, Haitians, and Guineans.

Beyond these figures, the report reveals the depth of automation embedded in contemporary migration governance. Data collection increasingly relies on systems such as the Early Warning and Preparedness System, which aggregates national datasets to generate real-time alerts and predictive assessments of migratory "pressure."

In addition, tools such as the Survey of Asylum-related Migrants use self-administered digital questionnaires accessible via smartphones, enabling large-scale and continuous monitoring of migrant populations.

Finally, the declining recognition rates for specific nationalities, such as Syrians (from 90 percent to 25 percent) and Turks (from 40 percent to 11 percent), illustrate how migration governance operates through data-driven hierarchies of credibility, reinforcing differentiated access to protection.

4.4.1. Non-refoulement and human rights in the algorithmic era

The principle of non-refoulement, a cornerstone of international refugee law, faces new challenges in the algorithmic era. Forster (2022) warns that AI systems may lead to significant harm if they contribute to the wrongful return of asylum seekers to unsafe countries where they may face persecution or serious human rights violations.

Beduschi (2020) reinforces this concern, arguing that AI technologies can be used to strengthen practices that violate Article 33 of the Refugee Convention. Similarly, Dumbrava (2025) highlights that inaccurate or biased algorithms may result in the rejection of asylum applications and the subsequent return of individuals in need of protection.

The statistical analysis presented above reveals a strong temporal correlation between the implementation of smart border systems and the decline in asylum recognition rates. While a full technical audit would be required to establish direct causality, the convergence between empirical data and these theoretical warnings suggests that AI may be contributing to violations of the principle of non-refoulement.

For instance, the sharp decline in Greece's recognition rate, from 96.1 percent to 28.4 percent, occurred during the same period when the Centaur surveillance system was introduced, and the use of Frontex risk-analysis technologies intensified.

AI does not operate in a vacuum. Rather, it functions as the technical expression and accelerator of a pre-existing political rationality that frames migration as a risk to be managed. In this sense, AI should not be understood as an isolated cause, but as a determining factor that intensifies and automates exclusion.

By increasing the efficiency of refusal decisions, these systems also risk legitimising them under a veneer of technological objectivity.

As Amoore (2020) observes, predictive algorithms govern populations within a "horizon of possible futures," intervening before risks materialise. In practice, this means that asylum seekers may be classified as "high risk" not on the basis of their individual circumstances, but through statistical patterns derived from nationality, migratory routes, or demographic characteristics.

These classifications are produced by opaque systems operating beyond meaningful public scrutiny. The use of surveillance technologies to deter or prevent migrant arrivals raises additional concerns. Since most European States require physical presence in order to lodge an asylum claim, such practices may undermine both the principle of non-refoulement and the right to seek international protection (ENNHRI 2024).

Border externalisation, supported by these technologies, creates a more fundamental form of invisibility: individuals who are prevented from reaching European territory simply do not appear in official statistics (EuroMed Rights 2023). This statistical absence does not indicate a lack of protection needs, but rather reflects an algorithmically mediated denial of access to asylum.

Garcia (2025) argues that AI systems trained on historical data reinforce systemic biases and deepen the marginalisation of vulnerable groups. The analysis of EUAA (2025) data supports this claim. The significant decline in recognition rates for certain nationalities, such as Syrians (from 90 percent to 25 percent) and Turks (from 40 percent to 11 percent), suggests that algorithmic systems may be reproducing data-driven hierarchies of credibility, in which nationality functions as a proxy for risk.

Such practices undermine the principle of individualised assessment, a core requirement of international refugee law, and contribute to the institutionalisation of structural discrimination. Taken together, the convergence between empirical findings and theoretical critiques cannot be overlooked. The systematic decline in recognition rates, coinciding with the expansion of algorithmic systems, raises serious concerns about the relationship between efficiency and rights protection.

The central issue, therefore, is not whether AI makes borders more efficient, but whether such efficiency, when detached from principles of justice and humanity, is transforming the European asylum system into a mechanism of automated exclusion.

4.5. Regulatory frameworks and the limits of accountability

Although regulatory frameworks, such as the EU's GDPR and the UK's AI audit systems (Garcia 2025), seek to ensure transparency and accountability, the persistent decline in asylum recognition rates suggests these measures are insufficient. Beduschi (2020) proposes that "to overcome these issues, Citron proposed the concept of 'technological due process', which encompasses guarantees of accountability, fairness and transparency." Dumbrava (2025) observes that "high-risk AI systems are subject to strict regulatory requirements, such as mandatory risk management processes, transparency measures, human oversight and fundamental rights impact assessments." However, he also warns that "these exceptions and loopholes include limited transparency (the registration of AI systems must be in a secure and non-public database) and more relaxed human oversight requirements."

Garcia (2025) concludes that "consequently, the study concludes that stronger regulation and state oversight are crucial to mitigate algorithmic biases." Amoore (2020), however, diverges by questioning the very premise of accountability based on a "responsible human subject," arguing that "in such a framing, there is an exterior to the algorithm, a responsible human subject who is the locus of responsibility, the source of a code of conduct with which algorithms must comply." After all, the technical regulation of AI does not address the underlying political rationality that frames migration as a threat. The solution, therefore, lies not only in algorithmic audits, but in questioning and transforming the very logic of securitisation that sustains these systems of population control.

While existing literature highlights issues such as bias, opacity, and discrimination in AI systems, this study advances the debate by situating these dynamics within the broader context of demographic governance and their implications for visibility and rights in the EU.

5. Discussion and results

This section presents and discusses the study's main findings.

5.1. Visibility, risk, and the data-making of populations

The findings indicate that the relevance of ML, DL, and Big Data to the analysis of AI in migration regimes is central, as these technologies form the basis of algorithmic surveillance, screening, and automated decision-making systems applied to migrants and refugees. The promise of efficiency, however, obscures the inherent risks of discrimination and exclusion within these systems. In the field of migration, sensors, drones, and biometric databases feed algorithmic systems that, under the argument of efficiency, classify, monitor, and exclude individuals based on historical data often marked by structural inequalities.

The way AI redefines the demographic management of migration is intrinsically linked to how data are collected, categorised, and interpreted, determining who becomes visible or invisible within statistics. The strategy of border externalisation, supported by surveillance technologies, creates the most basic form of invisibility, as people prevented from reaching European territory simply do not appear in EU asylum or migration statistics (EuroMed Rights 2023). For those who manage to arrive, visibility is selective and discriminatory. Database systems such as EURODAC create multiple categories of visibility (asylum seeker, irregular migrant), each with distinct legal implications, while profiling systems such as ETIAS create discriminatory visibility by categorising individuals as “legitimate” or “suspicious” based on risk profiles.

5.2. Algorithmic biopower and statistical dehumanisation

It is here that the concept of algorithmic biopower becomes crucial. AI is not simply “failing” or being “biased,” as noted by the FRA (2022) analysis. On the contrary, it functions exactly as programmed within a political rationality that already conflates migration with criminality (Queiroz 2019). Algorithms are the technical materialisation of this pre-existing suspicion, transforming the migrant’s body into a “data double” (Selwyn 2019), a risk profile to be managed. This process generates what may be called *statistical dehumanisation*, a condition in which an individual’s life and history are abstracted into data points, and decisions about their future are outsourced to a system that operates on probabilities rather than rights.

The FRA (2022) analysis is fundamental, as it demonstrates that the official demographic data used to train algorithms is already biased. Crime statistics, for example, do not reflect the reality of crime but rather patterns of policing and reporting, which are influenced by racial and socioeconomic biases. AI, when trained on such data, does not merely replicate but amplifies these distortions, making certain demographic groups disproportionately more “visible” to the control system. This confirms that algorithmic biopower operates in an anticipatory way; its purpose is not only to manage existing populations but to filter future ones, neutralising "risk" before it even materialises.

5.3. Externalisation and statistical invisibility

Recent UNHCR/Eurostat data (2025) show that in May 2025, 64,000 asylum applications were received, with a sharp drop in applications from Syrians following the regime change in their country. While these figures show the visibility of those who have been able to apply for asylum, they raise the fundamental question of invisibility: how many potential asylum seekers have been prevented from reaching European territory through externalisation measures and technological surveillance, thus remaining absent from official statistics?

AI not only processes demographic data, but actively participates in its creation, deciding who is counted, how they are categorised, and what meaning is assigned to that counting. It is important to emphasise that the reduction in irregular border crossings may not represent a decline in migration itself, but rather an increasing invisibilisation of migrants, resulting from predictive filtering and automated surveillance systems. Within this logic, the algorithm decides, even before arrival, who will be detectable and who will be disposable. Subsequently, the creation of the EBCG FADO consolidates this structure by defining harmonised digital image standards for identity authentication, that is, standardised training datasets for future facial recognition systems.

5.4. Transnational evidence and the global dimension of algorithmic exclusion

It should be noted that this pattern is not exclusive to the EU. In Canada, Molnar and Gill (2018) documented that automated decision-making systems in immigration disproportionately flagged individuals from African and Muslim-majority countries as high risk, leading to unjust refusals and further marginalisation of vulnerable populations. These cases demonstrate that algorithmic discrimination is a transnational phenomenon, rooted in global power structures that AI reproduces and amplifies. This demonstrates that automated exclusion is not only technical but also geopolitical, as certain States use technology to control populations and reshape existing forms of biopower. This is reinforced by another concept, that of Richmond (1994), who describes global apartheid as a system in which wealthy nations use political, economic, and technological means to preserve their resources and security at the expense of vulnerable populations. In this sense, AI systems such as ETIAS and EURODAC are contemporary expressions of this apartheid, creating digital borders that reproduce and intensify racialised global inequalities.

Furthermore, Hu (2017) refers to this phenomenon as algorithmic Jim Crow, arguing that the supposed neutrality of AI conceals deeply rooted racial and religious prejudices, making algorithmic discrimination even more insidious because it is presented as objective and scientific. In this sense, AI systems automate and legitimise discrimination under the veneer of mathematical objectivity, transforming social, racial, and geographical inequalities into numerical patterns and statistical predictions. This interpretation reinforces the view that algorithmic bias is not a technical flaw but an automated reflection of historical hierarchies (Garcia 2025).

5.5. Regulatory frameworks and the limits of accountability

Moreover, the massive collection of biometric data, such as fingerprints and facial recognition, not only transforms migrants into digital profiles but also exposes them to heightened risks of privacy violations and continuous surveillance. Therefore, this mandatory submission of personal data intensifies the vulnerability of already marginalised populations, creating a permanent state of invisibility directed towards State control (Garcia 2025).

Although there are regulatory frameworks such as the EU's GDPR and the United Kingdom's AI auditing systems (UK Information Commissioner's Office 2021, as cited in Garcia 2025), which seek to ensure transparency and accountability, the persistent decline in asylum recognition rates suggests that such measures are insufficient. After all, the technical regulation of AI does not address the underlying political rationality that frames migration as a threat. The solution, therefore, lies not only in algorithmic audits but in questioning and transforming the very logic of securitisation that underpins these systems of population control (Garcia 2025).

6. Conclusion

AI-driven migration systems are not merely technical tools, but mechanisms that shape how populations are classified, monitored, and governed. While often presented as instruments of efficiency, they operate through data infrastructures that reproduce and amplify existing inequalities. In this context, AI does not simply process demographic data; it actively shapes systems of visibility and exclusion, determining who is counted, how they are categorised, and under what conditions they are granted or denied protection.

From a practical perspective, these findings also point to structural limitations in existing accountability mechanisms within EU migration governance. While recent regulatory developments, such as the EU AI Act, introduce formal safeguards for individuals affected by high-risk systems, their effective implementation remains uncertain, particularly in complex decision-making environments such as border control.

In this context, strengthening institutional oversight is essential, particularly through mechanisms that can review and contest decisions involving high-risk AI systems. This could include developing specialised review mechanisms to ensure transparency, enable meaningful contestation, and reinforce procedural guarantees. Such measures would not eliminate the structural dynamics identified in this study, but they could help reduce opacity and limit the risk of unchecked algorithmic decision-making in migration governance.

In theoretical terms, this study contributes to advancing existing understandings of power and governance in the digital age. By extending the concept of biopower into the realm of algorithmic systems, it proposes the notion of *algorithmic biopower* to capture how data-driven infrastructures reconfigure the management of populations. In addition, the concept of *statistical dehumanisation* offers a lens to understand how individuals are reduced to probabilistic categories and risk profiles, reshaping their visibility, treatment, and access to rights within migration governance.

However, this article also highlights a critical gap in the existing literature. While current research, including the present study, has predominantly focused on the structural and systemic dimensions of AI-driven migration governance, there remains a limited understanding of how these systems operate in practice, particularly at the level of decision-making.

Future research should therefore examine how algorithmic classifications are implemented in concrete contexts, such as border control and asylum procedures, where decisions are effectively made and experienced. This would contribute to a more precise understanding of how AI-driven governance shapes migrants' access to rights in practice.

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Leah Durst-Lee. "Building the digital wall: CBP One, algorithmic bias, and the controllability of difference in United States asylum policy" (2025) 9 207-223 *Global Campus Human Rights Journal*
https://doi.org/10.25330/3222

Building the digital wall: CBP One, algorithmic bias, and the controllability of difference in United States asylum policy

Leah Durst-Lee[*]

Abstract: *Within migration studies, citizenship is commonly used to delineate national membership and corresponding rights. However, more critical approaches to citizenship examine how States structure access to membership through processes of inclusion and exclusion. This article focuses on differential exclusion as a mechanism through which States manage difference, examining the Customs and Border Patrol One Mobile Application (CBP One) as a contemporary digital bordering infrastructure. Between May 2023 and January 2025, CBP One was used by United States immigration officials to schedule asylum appointments at the United States-Mexico border, replacing in-person access to asylum procedures with a mobile application. Rather than functioning as a purely neutral administrative tool, CBP One is analysed as a socio-technical system embedded within broader legal and political conditions that advocates and researchers have associated with differential access outcomes, particularly for asylum seekers lacking reliable internet access, dominant-language proficiency, lighter skin tones, or freedom from disability-related barriers. Building on scholarship on digital migration governance and non-entrée, this article conceptualises CBP One as part of a broader infrastructure of "controlling difference," whereby digital systems mediate access to asylum. It further situates CBP One within a broader trajectory of United States bordering policies in which access to asylum is increasingly mediated through both physical and virtual border walls.*

Keywords: *citizenship; biopolitics; asylum seekers; United States; immigration; CBP One*

* The author is a PhD candidate in Human Rights at the University of Coimbra, Portugal and a Foundation for Science and Technology scholar. Her research explores securitisation and asylum rights, with a focus on race and colonialism. She holds M.A.s in International Law and Migration Studies; leahdurstlee@ces.uc.pt

1. Introduction

Arriving at the United States-Mexico border to seek asylum at the end of the Biden presidency looked very different than before. Previously, asylum seekers could arrive at the border and request asylum from a border official. Their personal information would be collected and, depending on capacity and preliminary screening decisions, might be scheduled for an initial interview with an asylum officer or processed without one. If an asylum seeker proceeded through screening and an officer determined there was a credible possibility of persecution, they could be allowed entry into the United States and receive a notice to appear before an immigration court. Beginning in 2023, however, this process changed significantly when a physical person was no longer the gatekeeper to an appointment with an asylum officer, but rather the Customs and Border Protection One Mobile Application (CBP One).

This article examines how CBP One functioned, between 2023 and its discontinuation in early 2025, as a digital migration infrastructure shaping access to asylum appointments at the United States-Mexico border. This analysis adopts a qualitative, critical socio-legal approach drawing on scholarship on migration infrastructures and digital bordering to answer the question: how is access to asylum mediated through digital migration infrastructures, as evidenced in accounts of CBP One? The study engages with policy documents, legal and academic literature, as well as advocacy and investigative reports concerning CBP One and related migration governance technologies. The analysis explores how CBP One is represented in these sources as shaping access to asylum in uneven ways, without attributing causal intent or technical determinism. It focuses on how these sources describe understandings of access, exclusion, and inequality in digital migration governance. This article's contribution lies in conceptualising CBP One as a form of digital border infrastructure that, according to the literature, is associated with differential access to asylum through its procedural and technological features.

This article proceeds in four sections. The first, "Citizenship and the controllability of difference," questions the concept of citizenship within immigration policy and States' attempts to control difference. The second section, "Encoded discrimination," explores the dangers of digital decision-making in migration governance. The third, "Building the wall," locates the CBP One app within its larger context in United States immigration policies. The final section, "Preventing monstrous citizens," analyses how digital asylum systems can function as mechanisms of differential exclusion by shaping who is able to reach formal asylum procedures.

2. Citizenship and the controllability of difference

Citizenship is a concept that shifts meaning across different contexts and debates. Often, it is seen as the rights owed to individuals by the State.

Within the field of migration and international law, citizenship is often considered part and parcel of the modern nation-State system, where State sovereignty gives States territorial integrity "to regulate the movement of persons within and across their borders" (UN Charter, Article 2(4)). Citizenship marks membership within the nation-State system, and determines one's civil, political, and social rights. Thus, nation-States often view migration as "inherently problematic" as people on the move "cross from one sovereign jurisdiction to another… In this sense, international migration is intrinsically political and is almost inevitably an imagined or real challenge to state sovereignty" (Castles et al. 2014, 312–13). If viewing citizenship as a question of rights, it is not difficult to understand why States worry that "the boundaries of the nation-state are being eroded" (Castles and Davidson 2000, vii).

Citizenship may also be considered a series of cultural ties that connect us to a larger national community. But such ties are imagined, as political scientist Benedict Anderson argues that nation-States are imagined communities only as strong as its people's common belief in them "because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the imagine of their communion" (Anderson 1991, 6). Political philosopher Slavoj Žižek complements Anderson's work that a nation only exists "as long as members of the community believe in it: it is literally an effect of this belief in itself" (Žižek 1990, 53). Citizens of a nation, the "imagined community," bind themselves together in nationalism through the shared belief of a "national Thing," that shared national identity that is created, rehearsed and reinforced through its communal belief and defence against an "Other" or people deemed not belonging to "Us" (Žižek 1990). "Us" as a nation is a people group that shares a sense of identity, bound together through practices and beliefs, such as holidays, stories, or foods, or sources of knowledge and values, such as proverbs, fables, or religions (Žižek 1990). These shared practices and beliefs are the national "way of life," presumed to be threatened when immigration brings diversity. Citizens are defined in contrast to foreigners, with migrants viewed through cultural lenses as foreigners who don't meet the national norms and values (Bigo 2002). Thus, migration is perceived as a threat to national homogeneity (Bigo 2002).

Within immigration debates, walls often function as a means to protect citizenship and the "national Thing." Wendy Brown (2010) argues that walls not only serve as borders, but also to invent the societies they outline. Out of concern for the waning relevance of sovereignty in today's global order, States construct walls as theatrical demonstrations of sovereign control and as protection of perceived national homogeneity (Brown 2010). Migrants are then constructed as "monstrous" threats, for which the State needs "to be eugenically preserved from hordes of aliens that, like a mortal disease, have to be eradicated from the healthy corpus of European nations" (Giuliani 2016, 4). This framing reflects a biopolitical logic in which the State defines itself as a living body that must be protected from contamination, authorising interventions that sort, discipline, and exclude undesirable lives in the name of collective survival (Foucault 1978; Agamben 1998; Giuliani 2016). Gaia Giuliani (2016) identifies two types of "monsters": the internal abject, migrants who have settled in Europe, but will never fully be seen as integrated, and the external threat, migrants arriving at national borders. The first, the internal abject, are the residents and citizens of Western states who, despite their residency cards or passports as Western citizens, forever remain non-citizens because they will always remain Other in relation to the imagined community of the West. They will be promised integration and citizenship, but can never quite attain it to the same extent as their non-immigrant fellow citizens. Giuliani explains: "The good abject, ontologically alien, must remain trustful and reliable for it to be deemed possible for her/him to integrate (though never fully). The domestication of the alien needs to be continuously reinstated, and nonetheless depicted as not fully controllable" (2016, 5).

Out of fear for their imagined community and its cultural/ethnic/racial national Thing, States have increasingly attempted to regulate mobility hierarchies. Castles and Davidson's concept of the "controllability of difference" explains that, fearing both internal and external non-citizens/immigrants, States have sought to manage social and cultural difference through either rapid assimilation of internal immigrants or differential exclusion of external immigrants, a process that this article conceptualises as the management of differential inclusion and exclusion across policy and technological infrastructures. For the first control, rapid assimilation, States try to train the internal immigrant to adopt their culture, cuisine, language, and religious practices. However, for many internal immigrants who cannot pass as members of the majority, these efforts often prove futile. Discriminatory structures and practices will continue to label the internal immigrant, no matter how assimilated, as a minority Other. Despite learning the language/culture/religion of the majority, and even full legal citizenship, the internal immigrant will continue to be denied the rights and cultural belonging of full citizenship through designating them as the immigrant minority Other, subject to discrimination and racialisation (Castles and Davidson 2000, 69).

Within this grey zone, "the notion of citizenship is being pushed and stretched to include demands that had been previously left out," moving past citizenship as our nationality to include more nuanced approaches, including multiculturality, sexual orientation, and gender identity (Santos 2023a, 7). Due in large part to feminist and queer studies, citizenship studies have grown in nuance and inclusion, thereby "shifting the original focus of citizenship on participation and rights to spheres previously excluded from the relation between individuals and the state, highlighting how political the personal was" (Santos 2023b, 84). Within this stretched zone of citizenship, Ana Cristina Santos forwards the concept of "monstrous citizenship" for those whose bodies and political existences had been disenfranchised by the State – those who had been labelled as dangerous, non-conforming others – those who had been made monstrous by the broader power structures and their "sexism, homophobia, transphobia, biphobia, ableism, racism, ageism and fatphobia – the list goes on" (Santos 2023b, 94). These "nonconforming bodies as untamed monsters" (Santos 2023b, 91) are not deemed worthy by the State to be fully functioning, "good" citizens. It is these different bodies that the State seeks to regulate. This framework is particularly relevant to LGBTQ+ asylum seekers, whose claims often hinge upon recognition of gender identity and sexual orientation as protected grounds, yet whose credibility and documentation are frequently assessed through discretionary and technologically mediated processes.

To return to the controllability of difference, Castles and Davidson state the second control as "differential exclusion": that States accept "immigrants only within strict functional and temporal limits: they were welcome as workers, but not as settlers; as individuals, but not as families or communities; as temporary sojourners, but not as long-term residents" (2000, 61). That is, when States admit an immigrant Other onto their territory, it is highly selective and they are not to participate as full rights-holding, cultural citizens. Inherent in differential exclusion is the active and passive selection of immigrants, meaning those who States actively grant access to their territory and those who, as a result, are not granted access. History is filled with examples of selective border practices, notably in the United States. Reece Jones, author of *White Borders*, asserts:

"[US] immigration laws are about racial exclusion…created in the nineteenth century to protect an imaginary version of the United States as a white country…they continue to be used through the present day for racial purposes. They have racial impacts on who can enter the country, and they are enforced through racial profiling by immigration agents who track down, arrest, and deport people based on their skin color and place of birth…Immigration restrictions are a mechanism for protecting the numerically small but politically powerful white population and culture of the United States" (Jones 2021, 5).

Since the first ship of enslaved persons arrived in 1619, what is now known as the United States has had two separate immigration queues: "open immigration for whites from Europe and racial exclusion of slaves from Africa, Native Americans, and, eventually, immigrants from other parts of the world" (Jones 2021, 5). Immigration quotas based upon race and ethnicity heavily favoured white, European immigrants to the United States until 1965 (Castles and Davidson 2000). E. Tendayi Achiume calls modern borders "racial borders," stating that "contemporary national borders of the international order, a neocolonial order, are inherently racial. That is, the default manner in which they enforce exclusion and inclusion is racially disparate" (2022, 448).

Despite the absence of formal quotas, United States immigration has continued to shape patterns of inclusion through selective admissions that privilege certain forms of perceived compatibility. In this process of differential exclusion, preference has historically been associated with migrants perceived as more readily assimilable, including white, European, and Christian immigrants. Conversely, those constructed as less compatible with dominant national norms are more likely to be excluded, namely, asylum seekers who are racialised, disabled, non-English, Spanish, or Haitian Creole speaking, or traveling as family units. Increasingly, these logics of selection and differential exclusion are being operationalised through digital migration infrastructures, in which shape how access to asylum is organised.

3. Encoded discrimination

Despite technology's reputation as impartial and fair, human values, for good and for bad, are coded into the data we use, such as racism, sexism, and meritocracy. Safiya Umoja Noble explores how, in our seemingly unbiased web searches, "traditional misrepresentations in old media are made real once again online and situated in an authoritative mechanism that is trusted by the public" (Umoja Noble 2018, 32). People and their bodies are depicted in derogatory racist, sexist, and classist manners without consideration for their "broader social, political, and historical significance" (Umoja Noble 2018, 32). The result has been "technological redlining," or how algorithms "reinforce oppressive social relationships and enact new modes of racial profiling" (Umoja Noble 2018, 1). These concerns extend to contemporary digital migration infrastructures, where similar logics of classification and sorting inform how access to mobility is organised. As recent scholarship on digital migration governance has argued, these systems should not be understood as opaque "black boxes" with unknown effects, but technologies situated within specific socio-political systems embedded within contexts that shape ongoing power relations (Godin et al. 2025).

Building upon this distinction, States increasingly employ such systems to streamline processing times on immigration claim determinations and assist with management and administrative tasks. Scholars and advocates have raised concerns about the ethical and human rights implications of digital substitutes for human judgment in consequential decisions such as granting asylum (Molnar and Gill 2018; Durst-Lee et al. 2022). First, such systems use algorithms designed to analyse data, predict risks, and flag potential fraud. A key issue is algorithmic bias, which emerges at both the level of input and output. Input bias reflects the prejudices, assumptions, and values of the programmer which are then built into the programming through the type, quality, and amount of input data (Cossins 2018). As these systems often rely on prior decision-making trends, they may inadvertently reproduce racial or gender stereotypes. Output bias occurs when algorithmic recommendations disproportionately affect certain groups, leading to forms of discrimination, such as when the United States Immigration and Customs Enforcement Agency's "Risk Classification Assessment" was altered to automatically recommend detention over release of asylum seekers awaiting legal proceedings (Oberhaus 2018). These biases may also intersect with LGBTQ+ asylum claims, particularly where identity verification systems rely on binary gender assumptions or fail to accommodate non-normative gender presentation and documentation histories.

Second, immigration officials have discretion over individual immigration petitions, including the nuanced and complex issues of asylum. Reassigning such cases to automated decision systems risks human rights considerations that may be misunderstood or missed entirely, since it is ill-equipped to determine credibility and truthfulness (Molnar 2020). Even when the technology is used as an aid in addition to human review, issues may arise considering automation bias, whereby officials still defer to the system's assessment and recommendations (Hadavas 2020). Ahmad (2021) develops the concept of "algorithmic humanitarianism" to describe how humanitarian governance is increasingly mediated through algorithmic systems that regulate those seeking protection, running the risk that asylum decisions lack the appropriate ethical and moral rigor.

Third, it is inevitable when dealing with technology that system or technical errors will occur. For example, some facial technologies have been found to be less effective in analysing women or individuals with darker skin complexions (Molnar 2019). In some cases, errors occur for unexplained reasons. Given the sensitive circumstances and the nature of asylum claims, a system that malfunctions, lacks oversight, and could potentially lead to arbitrary denials of immigration petitions is bound to have serious implications on human rights (Molnar and Gill 2018).

In the United States, the use of automated and biometric technologies in immigration governance expanded after 9/11 in an effort to support national security and reduce potential terrorism. Implemented systems included lie detection technology that analysed changes in individuals' voice, body language, and biometric screenings of behavioural and physiological data, such as fingerprints, ear shape, and gait (Daniels 2018; Khan and Efthymiou 2021). Officials then used data to verify identity and predict whether an individual posed a threat to the country and was likely to commit a crime. This technology led to a travel ban on seven Muslim-majority countries, as well as the creation of the "Extreme Vetting Initiative" which, now ended due to public backlash, tracked individuals on social media throughout their stay in the United States to identify them for deportation and justify visa denials (Brennan Center for Justice 2018).

Surveillance in migration governance is not limited to centralised or high-tech systems, but is distributed across heterogeneous infrastructures that include state databases, screening tools, and migrants' own devices. As Austin Kocher shows, smartphones are central to migration journeys, enabling individuals to store documents, communicate across borders, access services, and gather evidence in support of asylum claims (2023, 3). Within this infrastructural landscape, mobile devices have become integrated into the organisation of access to asylum procedures, extending border governance into digital space and effectively turning the smartphone into a site of border control (Kocher 2023).

4. Building the wall: Contextualising CBP One within United States bordering policies

CBP One was announced on 23 February 2023, which required asylum seekers at the border to use the mobile app to upload proof of identity and to request an appointment with an asylum officer to state their asylum claim (American Immigration Council 2025). However, to fully contextualise CBP One, this section must begin a few years earlier, as public support for and government action towards closing the United States border to asylum seekers grew, laying the groundwork to evaluate CBP One as a broader challenge to the right to seek asylum in the United States.

For the last several decades, immigration has been a highly contentious issue in the United States, as migrants have been seen as a "cultural threat" (Castles et al. 2014, 200) against whom politicians vie to protect the American "national Thing," its presumed homogenous culture, values, religion, and whiteness. Politicians leverage fear of the Other migrants and asylum seekers into votes; rallying calls such as "America First" and "Build the Wall" of President Trump mobilise an anti-immigrant rhetoric amongst voters that migrants and refugees are a challenge to their cultural status quo. Trump placed immigration front and centre in his political career, stating in his candidacy announcement: "The US has become a dumping ground for everybody else's problems...When Mexico sends its people...They're bringing drugs. They're bringing crime. They're rapists" (Phillips 2017). Trump made good on his campaign promises and "attacked both the letter and the spirit of the 1980 Refugee Act" (Schoenholtz et al. 2021, 31) to enact securitisation policies, thereby reducing the admission of migrants, asylum seekers, and refugees through travel bans, reduced resettlement ceilings, and non-entrée policies. Negative portrayals of increased mixed migration flows to the United States Southern border have only increased anti-immigrant sentiment, building public and political support for policies to slow, and even close, the border.

The Trump administration tried different ways to close the borders to asylum seekers and immigrants. Measures included: metering, where border officials either told asylum seekers to take a number and come back later or that "the United States is not giving asylum anymore" (Schoenholtz et al. 2021, 56); child separation, where asylum seeking families were forcibly separated from their children as a deterrent; Migrant Protection Protocols, when at least 69,000 asylum seekers were forced to remain in Mexico during their asylum legal proceedings, resulting in many receiving deportation orders *in absentia* because they could not attend their hearings in person or virtually (Schoenholtz et al. 2021, 65); and the Third Country Transit Bar, which barred asylum seekers from lodging an application in the United States if they have transited through "safe" third countries and not applied for asylum there, which in effect made all Central Americans ineligible for asylum in the United States (Schoenholtz et al. 2021, 67). In 2019, Trump advisor Stephen Miller argued without effect to unearth a little used United States public health code, Title 42. Miller claimed that migrants were carrying illness into the United States, and attempted to use Title 42 to shut the borders in 2019 due to mumps, then later to a flu outbreak amongst border guards (Dickerson and Shear 2020).

It was no surprise, then, that in March 2020, the Trump administration used the COVID-19 pandemic context to justify closing United States borders under Title 42. Proponents cited concerns for the contagious virus spreading within crowded immigration holding facilities; critics argued that it was a deterrent against immigration, especially since Trump advisor Miller attempted to implement Title 42 in 2019, well before the 2020 pandemic. Regardless of intent, a policy developed to be a public health measure against the spread of COVID-19 by closing United States borders resulted in the summary expulsion of migrants and asylum seekers *en masse*. Throughout the Trump administration, the number of asylum seekers awaiting processing at the United States-Mexico border mounted, and this backlog of cases was inherited by President Biden in 2021.

Despite its common reference as a "Trump-era" immigration policy, and then-candidate Biden's promise to rebuild the right to seek asylum, President Biden actively continued the use of Title 42 for the first two years of his administration as part of his public health policies during the COVID-19 pandemic, and consistently appealed the court decisions ordering the end of Title 42 (Sherman-Stokes and Harris 2021). Biden's preference towards Title 42 led immigration experts to state: "Despite promises, Biden looks a lot like Trump on border issues" (Sherman-Stokes and Harris 2021). Once in office, Biden terminated the Migrant Protection Protocols, but was confronted by the challenge of how to parole these asylum seekers during Title 42.

In February 2021, the Biden administration announced that approved humanitarian organisations could register asylum seekers using CBP One, then a little known government app which, since October 2020, had been used to "record the entry and exit of certain non-citizens, and allow cargo inspections to be scheduled in advance" – never before used for asylum seekers (Kocher 2023, 5). Then when Title 42 ended in May 2023, fearing a backlog of asylum petitions, the Biden administration announced that all asylum seekers would use CBP One to request an appointment with an asylum officer. To cross the United States border to request asylum, individuals must first be granted an appointment through a lengthy application on CBP One, which required personal identity information, a real-time selfie, and geolocation data that located the user in northern Mexico (Kocher 2023). For families, personal identifying information must be entered for each parent and child. Despite asylum seekers arriving from around the world, CBP One was released in only English and Spanish, and was soon translated into Haitian Creole, which advocates have stated is poorly translated (Deck 2023).

Users stated that in addition to CBP One's confusing interface, the app is riddled with glitches and programming errors, and applicants often lose their progress part way through (Reynolds et al. 2024). There were not enough appointment slots to meet the demands of those able to complete a request or families with several children. Therefore, appointments went to those with reliable internet access and could fill out the application and upload photos and identity documents the fastest (Haiti Justice Partnership et al. 2023). Geolocation data sometimes incorrectly places the user far from the United States-Mexico border, therefore making the app unusable (Kocher 2023). Asylum seekers with darker complexions have found that CBP One does not identify their faces to upload the mandatory selfie. Dávila et al. (2024) argue that the facial recognition of CBP One was so inaccurate for older black, Asian, and other dark-skinned individuals that it should be considered discriminatory on the basis of race, colour, and sex. Advocates reported that the app was inaccessible for disabled asylum seekers, including those who are deaf or blind or have mobility or intellectual disabilities (Bohra 2024). The use of CBP One was met with overwhelming criticism by human rights activists, experts, and United States immigration lawyers for all but ending access to asylum and increasing risk of *refoulement* to less affluent asylum seekers who may not have a phone, internet connection, literacy, proficiency in English, Spanish, or Haitian Creole, disabilities, or light skin complexions which are recognised by United States facial recognition technology (Haiti Justice Partnership et al. 2023).

In May 2023, the CBP One appointment scheduling changed from first-come, first-served to a lottery system in which appointments were randomly assigned at the end of the day after all asylum seekers have had a chance to submit a request in the app. While this change removed a significant barrier, issues such as language access, accessibility, and complexion in facial recognition remained, highlighting how, in the words of Austin Kocher, “the ability to modulate who gets asylum by tweaking the software behind an app succinctly evinces dystopian anxieties portended by digital borders” (2023, 9).

In January 2025, on his first day back in office, President Trump ended the use of the CBP One app for asylum seekers and cancelled existing appointments that were scheduled under the Biden administration, leaving tens of thousands of pending immigration appointments null and void (Graham 2025). The Trump administration then rebranded and relaunched the app in March 2025 as “CBP Home,” a tool designed to support intent to depart or selfdeportation (American Immigration Council 2025; The White House 2025). In a promotional video posted to the White House website on 18 March 2025, accompanied by an upbeat soundtrack, Trump announced the launch of the CBP Home app:

“People in our country illegally can self deport the easy way or get deported the hard way…The Biden administration exploited the CBP One app to allow more than 1 million aliens to illegally enter the United States. Now my administration is launching the CBP Home app to give people in our country illegally an easy way to leave now and self deport voluntarily. If they do, they could potentially have the opportunity to return legally at some point in the future but if they do not avail themselves of this opportunity then they will be found, they will be deported, and they will never be admitted again to the United States ever, ever again – you’re never coming in. Using the CBP Home app to leave the united states voluntarily is the safest option for illegal aliens…” (The White House 2025).

In conjunction with the rebranding of CBP One into CBP Home, the Department of Homeland Security began terminating humanitarian parole and work authorisations for many migrants who entered the United States via CBP One appointments (Associated Press 2025). Individuals admitted through CBP One received notices stating that it was “time for you to leave the United States,” and warning that associated work authorisation and protections would be revoked (Associated Press 2025). Under this policy shift between administrations, the stated purpose of the CBP One app changed from increasing pathways to United States asylum processing to effectuating self-deportations. This reversal underscores the fragility of contemporary United States immigration politics and the profound consequences for the status, mobility, and safety of asylum seekers.

President Trump did not ultimately realise his goal of building a physical wall along the United States-Mexico border. However, the development and use of CBP One under both the Trump and Biden administrations effectively created a virtual wall that illustrates how bordering practices increasingly operate through digital infrastructures that can restrict access to asylum in less visible but highly consequential ways. Under the Biden administration, CBP One was used to schedule asylum appointments and, according to multiple reports, access to these appointments was shaped by uneven digital conditions, including differences in connectivity, language access, and device capabilities. In January 2025, the Trump administration dismantled the app's asylum functionality and cancelled pending appointments. It was subsequently rebranded as CBP Home, shifting its function from facilitating access to asylum procedures toward encouraging voluntary departure. This shift underscores how digital migration infrastructures are politically reversible; a system designed to manage access can be reconfigured to restrict or withdraw it. Such infrastructure thus illustrates how asylum governance increasingly operates through adaptable digital mechanisms that shape, condition, and at times revoke access to protection across changing political administrations.

5. Preventing monstrous citizens: The controllability of difference via CBP One

States have been closing their borders or pushing back migrants and asylum seekers since before the right was codified in the Refugee Convention (Jones 2021, Achiume 2022). Through building its virtual and physical walls, States seek to block out an external "them" while at the same time block in an internal "we" (Brown 2010). The United States in particular has a long history of virtual and physical walls, which have been used to construct its "white borders" (Jones 2021). When directed as asylum seekers, these walls are what legal expert James Hathaway (1992) calls *non-entrée*: whereas refugee law is rooted in *non-refoulement* to persecution or torture, *non-entrée* is the commitment to not allow refugees to reach a State's jurisdiction where they would then be entitled to their rights under refugee law (Gammeltoft-Hansen and Hathaway 2015). States have employed *non-entrée* policies around the world via air, land, and sea, such as intercepting migrants in the Mediterranean, holding migrants in offshore jails outside of Australia, or implementing strict air carrier sanctions to prevent particular migrants from traveling. Through these restrictive policies, States seek to regulate differential access for those who arrive at their borders, granting entry to a select few. This selection process can function to filter out those the State does not deem eligible for admission, namely those "monstrous citizens" (Santos 2023b), used here as an analytical category for socially constructed non-conforming subjects. The use of CBP One as a gatekeeper to determine who is able to access asylum is one more form of *non-entrée*. This section examines CBP One as a digital migration infrastructure embedded within broader socio-technical and legal conditions that shape differential access to asylum in ways that reproduce and reflect documented inequalities in migration governance.

The differential access outcomes associated with CBP One, discussed in advocacy reports and academic literature, reflect broader concerns about how digital migration infrastructures can unevenly shape who is able to access asylum procedures. Technical glitches and programming errors should be understood within broader patterns of unequal access associated with digital migration infrastructures. In addition to how States seek to avoid their obligations to uphold the rights to seek asylum and *non-refoulement* through *non-entrée* policies, there is much research on how States attempt to control immigration at large. States influence migrant infrastructures, or the myriad of "socio-technical platforms for mobility" which extend far beyond what are the most obvious infrastructure of roads and airplanes to include internet signals and visa preferences (Lin et al. 2017, 1). Such infrastructures "are always already inscribed with planning power, which dictate who gets or does not get to benefit from their socio-material arrangements. Naturalised as taken-for-granted systems, infrastructures can and do perform politics in their daily use" (Lin et al. 2017, 4). By granting, restricting, or unevenly structuring access, migration infrastructures can function as tools through which States manage differential inclusion and exclusion at the border. Such infrastructures, and indeed CBP One, call into serious concern the mobility justice (Sheller 2018) of "who is free to move; who is forced to move; when they can or must move; how they ought to move; and who cannot move" (Lin et al. 2017, 4).

Multiple documented features of CBP One have been linked to differential access outcomes of reaching United States jurisdiction. The shift from in-person appointment access to a mobile application may have advantaged asylum seekers with reliable access to smartphones, internet connectivity, and digital literacy. Reported difficulties with CBP One's facial recognition functionality suggest that lighter skin tones were more reliably processed than darker skin tones, raising concerns about how biometric systems may reproduce broader patterns of racialised exclusion within migration governance (Jones 2021, Achiume 2022). CBP One disadvantaged many as it was only available in three languages (English, Spanish, and Haitian Creole). Meanwhile, the absence of accessible formats may create additional barriers for asylum seekers who are deaf or blind or have mobility or intellectual disabilities.

Some of the other technological errors may be dismissed as only a glitch, but this can obscure the realities of migrant infrastructures when used to control difference. Austin Kocher warns of the "politics of the glitch," explaining that "representing technological barriers to asylum as 'glitches' displaces political discussions about the right to asylum with depoliticized discussions about patching software problems" (Kocher 2023, 2). Such offhanded discussion of "glitches" minimises the "political implications of technologies of migration control" (Kocher 2023, 10). CBP One on its own may not signal concerns for an unjust migrant infrastructure, but when analysed as one within a broader context of United States policies to build physical and virtual walls through *non-entrée* policies, then "CBP One's emergence as an asylum tool is inseparable from policies that aim to limit access to asylum, and any so-called bugs with the app, are likely to exacerbate the plight of asylum seekers" (Kocher 2023, 10). Within this larger context, these "glitches" may produce effects that cannot be easily separated from broader governance choices shaping system design and deployment. "Glitches" can easily be solved by software updates, while *non-entrée* policies can only be confronted through a "fundamental reevaluation of the policy posture of the administration" (Kocher 2023, 10).

CBP One therefore illustrates how contemporary bordering practices may operate through digital migration infrastructures that condition access to asylum unevenly across different groups of asylum seekers. Examined through the framework of the controllability of difference, the app functioned not simply as an administrative tool, but as part of a broader socio-technical system through which access to protection was structured, mediated, and restricted. This is not to suggest that CBP One was intentionally designed to control difference. Rather, this article has examined how documented accessibility barriers, infrastructural constraints, and reported technological limitations may contribute to uneven access outcomes within digital asylum systems. As States increasingly incorporate digital technologies into migration governance, CBP One serves as a cautionary example of how shifting asylum access from direct human interaction into technologically mediated procedures may reproduce existing inequalities and create new barriers to protection for already vulnerable populations. In this sense, digital migration infrastructures do not simply manage mobility, but can also participate in structuring the boundaries of belonging, exclusion, and protection.

6. Conclusion

The CBP One mobile application was introduced to facilitate the scheduling of asylum interviews at the United States-Mexico border following the suspension of in-person processing during the COVID-19 pandemic. However, reports from advocacy organisations and users indicate that the application produced uneven conditions of access, particularly for asylum seekers facing barriers related to skin colour, language, disability, and digital connectivity. Rather than a neutral administrative tool, CBP One became embedded within a wider infrastructure that shaped who could meaningfully access their right to seek asylum. These outcomes should not be understood as isolated technical failures. They are better situated within broader migration governance frameworks in which access to asylum is increasingly structured through infrastructures that operationalise *non-entrée* in digital form. In this sense, CBP One functioned less as a singular border wall than as a virtual wall that unevenly structured access across applicants, reproducing and reinforcing existing inequalities within migration systems. This article also highlights the need for further research into how asylum governance is being reconfigured through digital infrastructures that are both adaptable and politically reversible. This includes greater scrutiny of transparency in system design, accessibility standards, and the regulatory frameworks through which digital tools are introduced into contexts involving fundamental rights and protection.

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Nooda Badghisi. "From hashtags to handcuffs: The Taliban's digital image versus lived and legal realities" (2025) 9 224-243 *Global Campus Human Rights Journal* https://doi.org/10.25330/3221

From hashtags to handcuffs: The Taliban's digital image versus lived and legal realities

Nooda Badghisi*

Abstract: *This study investigates the Taliban's digital image-building strategies and their interaction with international legal accountability mechanisms. Through an analysis of 788 posts published on the official X account of Taliban spokesperson Zabihullah Mujahid between February and August 2025, the research identifies key thematic patterns, including international relations, economic narratives, religious justifications, and deflection tactics. These digital practices are situated within the broader context of ongoing human rights violations, particularly gender persecution and allegations of gender apartheid, currently under review by the International Criminal Court and the International Court of Justice and already recognised by the European Court of Justice. The study further examines how digital counter-narratives, emerging through resistance movements, indoor protests, and coordinated hashtag campaigns, actively challenge Taliban messaging, often at significant personal risk to activists and dissenters. Methodologically, the research combines qualitative content analysis with doctrinal analysis of international criminal and human rights law, supported by secondary sources, while acknowledging limitations due to restricted access to earlier Taliban digital content and archives. Findings demonstrate that the Taliban's digital image is deliberately constructed to project legitimacy, stability, and moderation while systematically avoiding accountability for human rights violations. However, these efforts are undermined by international legal scrutiny, judicial findings, and documented evidence that clearly contradict official narratives. The study concludes that sustained documentation, systematic archiving of digital propaganda, and stronger linkages between online activism, legal advocacy, and international policy mechanisms are essential to counter disinformation, prevent normalisation, and advance justice for Afghan women and other affected groups.*

* Nooda Badghisi is a PhD candidate in Education Studies at the University of Warwick. She holds a master's degree in Human Rights and Democratisation from the Caucasus branch of the Global Campus of Human Rights and coordinates educational programmes supporting Afghan women's access to higher education under Taliban restrictions.

Keywords: *Taliban; social media strategy; ICC; ICJ; gender persecution; gender apartheid; online activism*

1. Introduction

In the mid-1990s, when the Taliban first took power in Afghanistan, the country had extremely limited telecommunications infrastructure and almost no access to the internet. Guided by a strict Deobandi interpretation of Islam, the Taliban banned photography, television, music, and all forms of entertainment (Gohari 2000). In early 2001, they also prohibited the use of the internet, while computers and satellite dishes were allowed only for government-approved purposes (ibid). As a result, Afghanistan had virtually no domestic digital sphere. Public understanding of the government was shaped mainly by everyday lived experience, state-controlled Radio Shariat, and religious sermons delivered in mosques.

At the time, the Taliban framed these restrictions as moral regulation. Foreign Minister Mawlavi Wakil Ahmad Muttawakil stated, "We want to establish a system in Afghanistan through which we can control all those things that are wrong, obscene, immoral, and against Islam" (CNN 2001). However, this rejection of modern media did not remain constant. After the United States-led intervention in 2001, the Taliban's strategy gradually shifted. Beginning around 2003, they expanded their online presence as part of a broader insurgent communication strategy (Mehran 2021). They launched a radio station known as Voice of Sharia and created the website *Al Emarah*, which served as their official online platform despite repeated attempts to block it (Bodetti 2016). Through this site, the Taliban shared battlefield updates, videos, and official statements, as well as online magazines published in multiple languages to reach diverse audiences.

During peace negotiations in December 2018, Taliban spokesperson Zabihullah Mujahid publicly attempted to distance the movement from its earlier image. He claimed that if peace were achieved, the Taliban's return would not resemble their harsh rule of the 1990s and promised there would be no mass retaliation following the withdrawal of United States forces (Sediqi and Ahmad 2018). Social media became a central tool in the Taliban's final push to seize power. Platforms such as Facebook and WhatsApp were used to coordinate operations and weaken opponents (Timberg 2021), while on X, Taliban accounts flooded the platform with victory narratives to create a sense of inevitability (Kann 2021). When they entered Kabul on 15 August 2021, smartphones were as important as weapons, allowing fighters to document and circulate images of the takeover in real time. However, they faced the challenge of legitimising their rule under intense international scrutiny. At their first press conference on 17 August 2021, Mujahid promised respect for women's rights, international cooperation, and a general amnesty (Reuters 2021). These assurances were echoed by other Taliban representatives and widely reported as signs of moderation. In practice, however, the Taliban quickly reimposed strict media controls.

This disconnect between the Taliban's moderated digital persona and its restrictive domestic reality forms the central problem investigated in this study. Despite the movement's sophisticated use of social media to project an image of a reformed and legitimate state, there is a significant gap between these digital narratives and the escalating human rights violations documented on the ground. This article aims to analyse the thematic evolution of the Taliban's digital image-building strategies, specifically examining how they utilise platforms like X to navigate and deflect international legal accountability. By evaluating these digital practices alongside the ongoing proceedings at the International Criminal Court (ICC) and International Court of Justice (ICJ), this research seeks to determine how the Taliban's propaganda functions as a tool to bypass international scrutiny and resist allegations of gender apartheid. Ultimately, this paper aims to underscore the necessity of integrating digital archiving with international legal advocacy to counter state-led disinformation and advance justice for Afghan citizens.

2. Digital platforms utilised by the Taliban

Today, the Taliban rely on a wide range of digital platforms to distribute their messages, with X playing a particularly central role. Senior figures such as spokesperson Suhail Shaheen have more than 700,000 followers, while Zabihullah Mujahid has over one million followers on the platform (Timberg 2021). In addition, the official Taliban website operates in five languages: Pashto, Persian, Arabic, Urdu, and English. This exceeds Afghanistan's two national languages and suggests that much of the content is aimed at international and diaspora audiences (ibid.). The Taliban also maintained a presence on Facebook and Instagram, but in 2021 Meta removed many Taliban-linked pages, including those associated with Islamic Emirate of Afghanistan (IEA) ministries and state media outlets (Frenkel 2021).

Following these bans, Afghan activists called for similar restrictions on X through the hashtag #BanTaliban, which gained significant attention in July 2022 (Business Standard 2022). The campaign trended in several countries, including Afghanistan, Pakistan, India, Germany, the United Arab Emirates (UAE), and the United States (KabulNow 2023). In response, Taliban supporters launched the hashtag #AfghansSupportTaliban, which was shared more than 130,000 times and quickly became a trending topic in Pakistan (ibid).

Encrypted messaging platforms have also been important tools. Taliban officials have long used WhatsApp and Telegram to coordinate internally and communicate with the public. At one point, they even established a public WhatsApp hotline for reporting incidents, although Facebook later removed it after labelling the Taliban a dangerous organisation (Timberg 2021). YouTube and TikTok are used to circulate highly produced videos that promote themes of order, development, and security, often featuring drone footage and carefully staged visuals (ibid). These materials are shared widely through coordinated networks of pro-Taliban accounts that amplify official narratives (Frenkel and Decker 2021).

Across platforms, the Taliban carefully avoid content that could violate platform rules, such as explicit violence or hate speech. Instead, they emphasise nation-building, stability, and Islamic values, allowing their accounts to remain active (Timberg 2021). Since changes to X's verification system under Elon Musk, several Taliban officials have obtained paid verification, further expanding their reach (KabulNow 2023). Through strategic platform use and rule compliance, the Taliban have been able to project a controlled and modern image internationally, despite continuing to restrict media freedom within Afghanistan.

3. Narrative construction and messaging strategies

To analyse the Taliban's narrative construction strategy, this study conducted a manual content analysis of 788 posts published on X by Zabihullah Mujahid (@Zabehulah_M33), the Taliban's spokesperson, between 28 February and 15 August 2025. Each post was closely reviewed and categorised into thematic groups based on existing literature on Taliban propaganda, as well as patterns identified during the analysis process. By adopting this "bottom-up" approach, the research identifies patterns based on the frequency and context of the messaging rather than over-imposing external theoretical frameworks. When identical content was published separately in different languages, such as Persian, Pashto, and English, each version was counted as a separate post. This repetition was treated as meaningful, as it reflects the selective targeting of domestic and international audiences. In contrast, multi-part threads were counted as single posts when they clearly formed a continuous and numbered sequence.

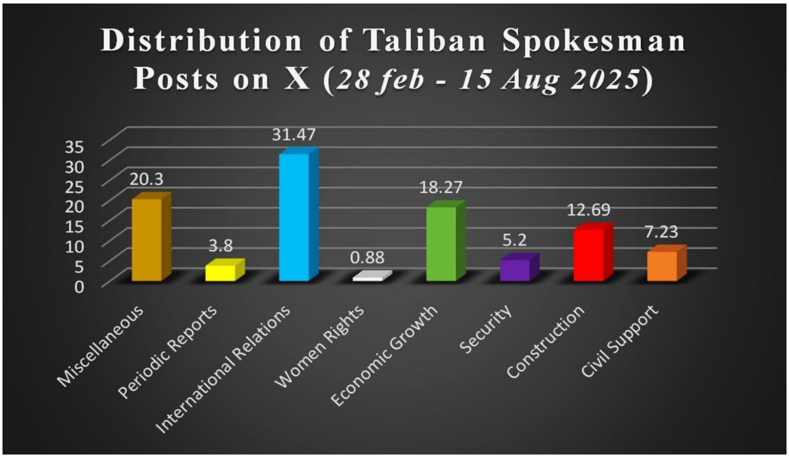

Figure 1. *Distribution of posts across categories (N=788). Source: Author's content analysis of Mujahid's X account. [The bar chart shows percentage distribution across eight categories; international relations is the highest (31.47%), and women is the lowest (0.88%).]*

Analysing Mujahid's account goes beyond observing a single social media profile. With approximately 1.1 million followers, he functions as the most prominent digital voice of the IEA. His selective posting and reposting practices reveal how the Taliban shape their primary narrative. By amplifying content from specific ministries, universities, loyal media outlets, and other Taliban figures, Mujahid's account appears to act as a gatekeeping platform that elevates particular messages from the broader Taliban media ecosystem. The analysis of 788 posts over 169 days reveals clear and consistent narrative patterns.

Overall, the Taliban prioritise themes that promote governance, legitimacy, and international engagement, while reducing attention to topics that could generate criticism. The largest category is international relations, accounting for 31.47 percent of posts. These include diplomatic meetings, foreign investments, international conferences, and bilateral engagements (e.g., arg_1880 2025a). During the study period, Mujahid referenced relations with 16 states, including Tatarstan, China, Azerbaijan, Turkmenistan, Uzbekistan, Kazakhstan, Russia, Malaysia, Iran, Qatar, Pakistan, the UAE, the USA, Oman, Norway, and India (e.g., mofa_afg 2025). The diplomatic framing and frequent use of English suggest that these messages are partly directed at external audiences and aim to present the IEA as a legitimate and stable international actor.

The miscellaneous category, which represents 20.30 percent of posts, includes topics such as sports, environmental projects, administrative announcements, and national meetings (e.g., Fitrathamd 2025a). This category serves as a repository for topics that, while appearing as individual posts, did not recur with enough frequency to warrant standalone categories or fall within the specific political and legal scope of this study. Although not overtly political, this content helps normalise Taliban rule by portraying everyday governance. Economic growth is the third-largest category at 18.27 percent and includes posts on investments, factory reopenings, job creation, and trade developments (e.g., fdpm_afg 2025a). Construction projects account for 12.69 percent of posts and highlight infrastructure such as roads, universities, and dams (e.g., fdpm_afg 2025b). While many of these projects were planned under previous governments and delayed due to security challenges, their promotion signals governance capacity and development.

Smaller categories include civil support at 7.23 percent, security at 5.20 percent, and periodic reports at 3.80 percent. Civil support posts portray charitable assistance and aid distribution as evidence of social responsibility (e.g., Fitrathamd 2025b). Security posts emphasise order and threat prevention (e.g., abozobir5 2025), while periodic reports present the IEA as organised and accountable through regular administrative updates (e.g., arg_1880 2025b).

The most notable category concerns women, which accounts for only 0.88 percent of posts. While other niche topics were subsumed under "miscellaneous" due to their low frequency, the topic of women was intentionally isolated as a primary variable. Given the global attention to Afghan women's rights, this absence is striking, particularly as the analysis was conducted shortly after the ICC prosecutor's application for arrest warrants against Taliban leaders. In the few posts that mention women, narratives are reframed to align with Taliban ideology. For example, on International Women's Day, Mujahid published a six-thread series that limited women's rights to the Taliban's interpretation of Islam, claimed psychological well-being despite evidence to the contrary (Mohammadi et al. 2024), asserted a decline in violence against women (USIP 2025), and avoided discussion of education while framing restrictions as cultural rather than universal rights issues (Zabehulah_M33 2025a).

This selective narrative construction is also evident in the Taliban's response to United Nations (UN) Resolution A/79/L.100 (UN GA 2025). While the resolution raised serious concerns about women's exclusion from education, employment, and public life, Mujahid's social media response highlighted only points related to opium eradication and regional cooperation, dismissing human rights concerns as politically motivated claims (Qaharbalkhi 2025). Notably, this response appeared only in Pashto, indicating a domestic target audience.

In conclusion, the analysis demonstrates that the Taliban's digital narrative is carefully managed rather than spontaneous. By emphasising international relations, development, and governance, while marginalising or reframing sensitive issues such as women's rights, the IEA seeks to project stability and legitimacy. This controlled storytelling shapes how the Taliban wish to be perceived and reflects a strategic effort to manage scrutiny through digital media.

4. Criminal law and human rights duties of the Taliban as a non-state actor

Crimes against humanity constitute systematic and large-scale violations of human rights that fundamentally undermine human dignity and social justice. Article 7 of the Rome Statute (Statute) defines crimes against humanity as acts such as murder, torture, rape, and persecution when committed as part of a widespread or systematic attack directed against a civilian population (Statute 1998, Article 7). The Taliban have breached this provision through the persecution of Afghan girls and women and individuals perceived as their allies, as recognised by the ICC (ICC 2025a). These acts are not isolated incidents but form part of an institutionalised policy framework that has reshaped nearly all aspects of women's public and private lives since August 2021.

International criminal law (ICL) establishes individual criminal responsibility irrespective of official capacity or state recognition. Article 27 of the Statute explicitly removes immunity based on official position and confirms that responsibility attaches to individuals rather than offices (Statute 1998, Article 27). This principle of individual criminal responsibility focuses on who committed or enabled the crime, not on whether the perpetrator acted on behalf of a recognised government (Adjei 2020; Parlett 2011). It underpins the ongoing proceedings against senior Taliban leaders. In parallel, the International Law Commission's Draft Articles on State Responsibility recognise that conduct carried out by entities exercising governmental authority may be attributed to the state (ILC 2001, Article 9). UN human rights bodies further confirm that international human rights obligations apply to authorities exercising effective control, regardless of recognition (UNAMA and OHCHR 2024).

The decisive role of effective control has been clarified in ICC practice. In its 2014 decision on the purported Article 12(3) declaration regarding Egypt, the ICC Office of the Prosecutor emphasised that only authorities exercising effective territorial control, habitual obedience of the population, and a degree of permanence can bind a state under international law (ICC Prosecutor 2014). Since August 2021, the Taliban have exercised full control over Afghanistan's territory, population, and institutions, including ministries, courts, police, and education systems. This establishes them as the de facto authority of the country and triggers corresponding legal responsibilities.

Afghanistan acceded to the Statute on 10 February 2003. Accordingly, crimes committed on Afghan territory or by Afghan nationals after that date fall within the ICC's jurisdiction (ICC nd; Statute 1998, Articles 12 and 13). Under the doctrine of command responsibility, Article 28 of the Statute holds superiors criminally liable where a superiorsubordinate relationship exists, effective control is exercised, and reasonable measures to prevent or punish crimes are not taken. Senior Taliban leaders meet these criteria, as restrictive policies are centrally issued, enforced nationwide, and accompanied by penalties for non-compliance. ICC practice further confirms jurisdiction over non-state actors and rebel leaders. Arrest warrants and convictions against Joseph Kony (2005), Thomas Lubanga Dyilo (2012), and Dominic Ongwen (2021) demonstrate that individuals exercising effective control over territory and forces can be prosecuted for crimes against humanity and war crimes, regardless of their non-state status. These precedents are directly relevant to the Taliban leadership.

Having established jurisdiction and responsibility, the analysis now turns to the merits of the case, particularly the Taliban's obligations under international human rights law. Even though the Taliban regime lacks international recognition, it inherits Afghanistan's human rights commitments by virtue of effective control. Under international law, authorities that govern territory and population assume the obligations attached to that territory, whether they are de jure or de facto (Veerakatty 2024, 68–98; Vovec 2024). The UN Human Rights Committee, in General Comment No. 26 (1997), affirmed the continuity of treaty obligations despite changes in government. The Taliban therefore function as the successor authority to previous Afghan governments and remain bound by Afghanistan's treaty commitments (Schoiswohl 2003). This principle is reinforced by Article 27 of the Vienna Convention on the Law of Treaties (VCLT 1969), which confirms that changes in government or leadership do not affect treaty obligations. Although Afghanistan is not a party to the VCLT, this rule is widely recognised as customary international law and thus binding (International Law Commission 1966, 213–15; ICJ Statute 1945, Article 38(1)(b)).

The Taliban's obligations are particularly clear in relation to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Afghanistan ratified without reservations. Since August 2021, Taliban policies have restricted girls' education beyond the sixth grade, excluded women from employment, banned access to public spaces, closed beauty salons, and severely limited freedom of movement. These measures collectively establish a system of gender apartheid (Samim 2025). Such practices violate multiple CEDAW provisions, including Articles 2, 5, 7, 10, 11, 12, 13, and 14, which address discrimination, education, employment, public participation, health, and rural women's rights.

The scale and consistency of these violations prompted ICC Prosecutor Karim Khan, in January 2025, to request arrest warrants for Supreme Leader Hibatullah Akhundzada and Chief Justice Abdul Hakim Haqqani, citing the systematic erasure of Afghan women from public life (ICC 2025a). The United States Institute of Peace documented 137 Taliban decrees affecting women between 2021 and 2025 (USIP 2025).

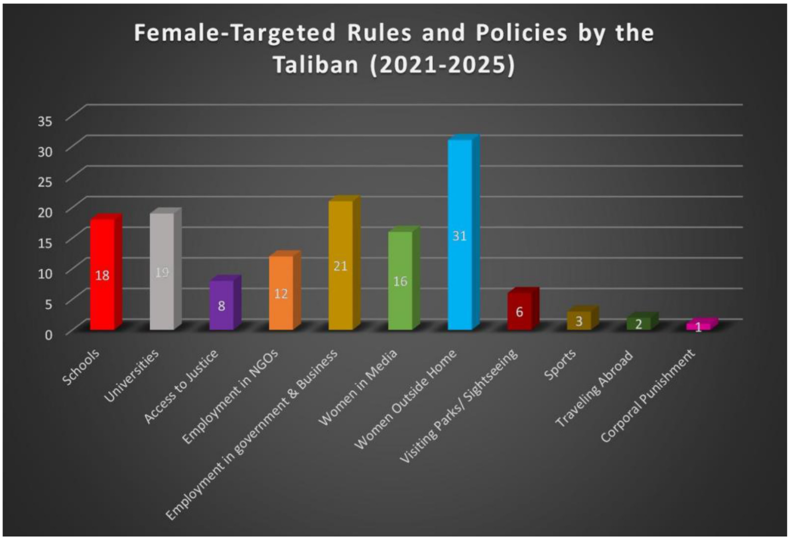

Figure 2. *Female-targeted rules and policies by the Taliban, 2021–2025. Source: The United States Institute of Peace.*
[The bar chart shows 137 policies across eleven categories, with most targeting women outside the home (31) and fewest on corporal punishments (1).]

In conclusion, ICL and international human rights law jointly establish a robust legal basis for holding Taliban leaders accountable. Afghanistan's ICC membership, the principles of individual and command responsibility, the effective control doctrine, and the continuity of human rights obligations confirm that the Taliban, as Afghanistan's de facto authority, bear responsibility for crimes against humanity and systematic gender persecution. The ICC's actions are legally grounded and consistent with international norms, affirming that the Taliban can and are being held accountable for their actions.

5. The ICC's proceedings against Taliban leaders

During their first regime from 1996 to 2001, the Taliban enforced an extremist ideology through intimidation and the systematic exclusion of women from public life (U.S. 2001). Following their return to power in August 2021, the international community closely monitored whether the group had changed after two decades. Initially, the Taliban projected a more moderate image, yet over time they reintroduced restrictive policies through an incremental strategy that gradually expanded limitations to minimise backlash and scrutiny (Lindblom 1959).

The ICC's jurisdiction over crimes committed in Afghanistan has been clear since the Appeals Chamber confirmed in 2020 that all crimes committed since May 2003 fall within the Court's mandate (ICC 2025b). Although investigations were temporarily paused, they resumed in October

2022 due to Afghanistan's failure to genuinely address past and ongoing violations (ibid). In November 2024, six ICC member states, including Chile, Spain, France, and Mexico, formally submitted new allegations concerning Taliban crimes, expanding the scope of the investigation (Chile et al. 2024).

On 23 January 2025, ICC Prosecutor Karim Khan applied for arrest warrants against Supreme Leader Hibatullah Akhundzada and Chief Justice Abdul Hakim Haqqani for gender-based persecution (ICC 2025c). These warrants were issued by Pre-Trial Chamber II on 8 July 2025, identifying persecution against protected groups, particularly women and girls, as crimes against humanity (ICC 2025a). The decision was welcomed by human rights organisations, while parallel international responses included a UN resolution condemning abuses and an European Union court ruling recognising Taliban gender persecution as grounds for refugee protection (van den Berg 2025; UN News 2025).

The Taliban rejected the ICC's authority and framed the warrants as politically motivated invoking Sharia and deflecting attention to global crises such as Gaza (Fitrathamd 2025c). However, ICL holds individuals accountable regardless of recognition or rejection (Talbert 2008). Afghanistan's continued ICC membership and the Taliban's effective control preserve the Court's jurisdiction (Statute 1998, Articles 7 and 127). The systematic exclusion of women from education, employment, and public life since 2021 meets the Statute's definition of persecution as a crime against humanity (UN News 2022).

In conclusion, the ICC has taken a very important step by classifying the violation of Afghan women's rights as a crime against humanity. The Taliban leaders, by breaching Afghanistan's international commitments through gender persecution and committing injustice in Afghanistan, are subjected to prosecution by the ICC and must bear individual criminal responsibility. The court's arrest warrants against Akhundzada and Haqqani highlight that the leaders are criminally liable irrespective of official recognition of their government. The Taliban cannot protect their public image through disinformation and propaganda, as the world witnesses Afghanistan's ongoing trajectory and international courts are taking legal actions against them.

6. The ICJ and allegations of gender apartheid

Alongside the ICC proceedings, a group of states has initiated legal action against the Taliban under the international human rights law framework. In September 2024, Canada's Foreign Minister, together with counterparts from Australia, Germany, and the Netherlands, announced their intention to invoke the dispute settlement mechanism of CEDAW to challenge the Taliban's policies (Guardian 2024). These states, later joined by Chile, Malawi, and South Korea, identified the Taliban as Afghanistan's *de facto* authorities, emphasising that they remain responsible for the state's international treaty obligations despite the absence of formal recognition (OSJI 2024). The resulting case, formally titled *Canada and the other applicant states v. Afghanistan*, alleges systematic violations of CEDAW and constitutes the first case before the ICJ to focus explicitly on gender discrimination (Guardian 2024).

Afghanistan ratified CEDAW in 2003 without entering a reservation to Article 29(1), which establishes the convention's dispute settlement procedure and permits referral to the ICJ in cases of unresolved disagreement (Abbasi 2024). Substantively, CEDAW obliges states to eliminate discrimination and ensure women's equality in education, employment, and public life (Johnson 2024). The applicants argue that the Taliban's policies violate Article 10 on equal access to education and Article 11 on equal employment opportunities (Abbasi 2024). These widespread and systematic restrictions have also been described as "gender apartheid", a term increasingly used by UN experts to capture the large-scale institutionalised oppression of women, even though it is not formally codified as a distinct international crime (Johnson 2024). The ICJ case seeks to advance legal recognition of this concept within the CEDAW framework.

Procedurally, Article 29(1) requires prior negotiation and, if necessary, arbitration before recourse to the ICJ. If these steps fail within six months, the Court may hear the case (CEDAW 1979, Article 29(1)). During proceedings, the ICJ may order binding provisional measures under Article 41 of its Statute to prevent irreparable harm to Afghan women's rights (Statute of the ICJ 1945, Article 41; ICJ 2001). A final judgement finding Afghanistan in breach of CEDAW would be legally binding under Article 94 of the UN Charter (UN Charter 1945).

Despite the strong legal basis, enforcement remains uncertain due to the Taliban's non-recognition and geopolitical constraints, including likely Security Council vetoes (UN GA 2025). Nonetheless, the case represents a significant assertion of international legal accountability and reinforces the ICJ's role in shaping the Taliban's global legitimacy and reputation.

7. Recognition of gender persecution by the European Court of Justice

The examination of the Taliban's international legal exposure extends beyond proceedings before the ICC and ICJ. While the ICC case remains at the pre-trial stage and the ICJ case in the negotiation phase, the European Court of Justice (ECJ) has already issued a landmark judgement with direct and immediate consequences for Afghan women seeking protection in Europe. Delivered in 2024, the ruling recognises gender-based persecution of Afghan women under Taliban rule as an independent ground for refugee status. Crucially, it removes the requirement for applicants to demonstrate individualised targeting, establishing that Afghan women qualify for international protection solely on the basis of their gender and nationality. In doing so, the judgement not only strengthens protection for Afghan women but also undermines the Taliban's carefully cultivated image of moderation.

The case arose from the asylum applications of two Afghan women (C-608/22 and C-609/22) whose initial claims had been rejected by Austrian authorities prior to the Taliban's return to power. At that time, the applicants were found not to face a sufficiently individualised risk of persecution upon return (ECJ 2025). Following the Taliban's takeover in 2021, both women argued that Afghan women as a group were now subject to systemic persecution. Their appeals reached Austria's highest administrative court, which referred the matter to the ECJ for a preliminary ruling. The national court asked whether the cumulative effect of discriminatory measures against women could amount to an "act of persecution" under Article 9(1)(b) of Directive 2011/95/EU and whether authorities were still required to conduct an individualised risk assessment beyond gender and nationality (ibid.).

The ECJ answered both questions affirmatively in favour of the applicants. Relying on the Charter of Fundamental Rights, particularly Article 1 on human dignity, and the EU Qualification Directive, the Court held that persecution includes acts that, by their nature or repetition, constitute a severe violation of fundamental rights. It further emphasised that membership in a "particular social group" under Article 10 may be defined by gender (ECJ 2025). The ECJ explicitly stated that "all women in Afghanistan must be regarded as members of a social group" who are, by virtue of their gender alone, exposed to persecution (ECJ 2025, para. 57).

Moreover, the ECJ recognised that the accumulation of discriminatory measures imposed on Afghan women, examined in light of UN reporting, meets the threshold of persecution due to its structural, state-imposed, and degrading character (ECJ 2025, para. 31; USIP 2025). By rejecting the Taliban's justification of these policies as protective under Sharia (Zabehullah_M33 2025c), the ECJ affirms that women's systemic exclusion from public life constitutes persecution. Unlike the ongoing ICC and ICJ proceedings, this judgement is immediately binding and directly reshapes asylum practice across the EU, offering tangible protection to Afghan women as a persecuted social group.

8. Online resistance and the efficacy of digital campaigns

Over the past four years, as human rights violations in Afghanistan reached unprecedented levels in the recent decades, Afghan civil society has increasingly turned to digital spaces to sustain silenced voices and collective resistance. Many civil society organisations were forced to shut down, relocate abroad, or operate clandestinely to avoid Taliban attacks, frozen bank accounts, and bans on female staff (Tapesh 2023). With street protests violently suppressed, media outlets censored, and Taliban intelligence agents embedded within society (ibid.), activists quickly recognised that physical gatherings had become extremely dangerous. As a result, social media emerged as one of the few remaining platforms through which dissent could be expressed, documented, and communicated beyond Afghanistan's borders.

One of the most visible manifestations of this shift has been Afghan women's indoor protests. Drawing inspiration from Iran's "Bread, justice, work" movement, women hold protest signs inside their homes and circulate images and videos online to document resistance (Chandran and Hakimi 2023). Similarly, the Purple Saturdays Movement, after dozens of its members were arrested, transitioned to symbolic indoor demonstrations shared digitally. Despite this adaptation, participants continued to face online harassment, threats, and warnings from Taliban supporters (ibid.). Between March and June 2023, nearly 100 such protests were documented, with verification support from platforms like Afghan Witness, which relied on open-source investigative techniques such as geolocation and chronolocation to authenticate citizen-submitted evidence of abuses (ibid.).

Digital activism has also played a vital role in preserving cultural identity and dignity. In response to Taliban-imposed dress codes, Afghan women shared images of traditional, colourful clothing under the hashtag #DoNotTouchMyClothes as an act of cultural resistance (Najjar 2021). A report in March 2022 found that around 17,000 X users used main educational slogans such as #ReopenGirlsSchools, #EducationForAll, and #LetAfghanGirlsLearn, which resulted in millions of mentions. Civil society activists also used different languages for the hashtags to connect with national and global audiences, for example, #LetAfghanGirlsLearn, # مکاتب_دختران_را_باز_کنید, #د_افغان_نجونو_د_ښوونځی_دروازې_پرانیزئ (CIR 2024). After the October 2022 attacks on Hazara worshippers in Kabul, the hashtag #StopHazaraGenocide was restarted by Hazaras in the diaspora and was posted over 10 million times in just 12 days, which later surpassed 11 million posts (Hussaini 2024).

Despite their visibility, online campaigns rarely translate into structural change within a closed and repressive system. Taliban surveillance of digital communication has resulted in intimidation, arrests, and home raids by the General Directorate of Intelligence, often targeting activists' families as well (CIVICUS 2025). Moreover, digital spaces remain contested, as pro-Taliban actors deploy counter-hashtags and propaganda campaigns to distort narratives and sow division (Yousafzai 2022). Still, pro-women's rights hashtags continue to gain stronger international traction than pro-Taliban narratives (Bouvier and Machin 2023).

Overall, digital platforms have enabled documentation, coordination, and symbolic resistance when physical protest is impossible. While hashtag activism alone cannot dismantle entrenched repression, it preserves civic space and international visibility. To increase effectiveness, digital resistance must be paired with secure organising, international legal advocacy, and sustained political pressure to protect activists and translate online solidarity into tangible outcomes (SCA 2025).

9. Contrasting the Taliban's digital image with legal and ground realities

The image of Afghanistan presented through the de facto authorities' social media is highly attractive. If an outsider, without consulting ICC arrest warrants or reports by international organisations, learns about Afghanistan only through Taliban-linked platforms, they are likely to conclude that the country is peaceful, stable, and steadily developing, with content and satisfied citizens (fdpm_afg 2025a). After visiting Afghanistan and interacting with friendly Taliban members (AntMack Goes 2025, 00:21; Arab 2024, 15:13), such visitors often echo the belief that "we got propaganda in the west, but nothing like we see here" (bnapashto 2025). Yet careful observation raises a critical question: why are women almost entirely absent from public life (Matt and Julia 2025, 22:48)?

Since returning to power, the Taliban have systematically reduced women's roles across social, educational, economic, and political spheres. Despite the severity of this exclusion, women's rights appear absent from the IEA's reform agenda. Instead, official online content emphasises economic activity and political order while avoiding the consequences of policies imposed on women. This selective visibility forms the core of their digital image strategy: highlight what is labelled as progress and conceal violations. The goal appears to be to erase memories of past violence and portray the Taliban as moderate, capable, and morally legitimate. While initially promising to reopen girls' schools (Gul 2023), the Taliban gradually reframed their bans as compliance with Sharia law, revealing the continuity of their ideology.

The IEA also presents itself as a protector of women, referring to them as mothers, sisters, and daughters whose dignity is safeguarded (Zabehulah_M33 2025b). Officials claim they protect women from forced marriage, domestic violence, loss of inheritance, and the practice of bad (Zabehulah_M33 2025c). This narrative suggests that Afghan women are secure and content under Taliban rule, despite Islam having long been practised in Afghanistan without such restrictions.

However, international legal actions directly challenge this image. Taliban leaders face accountability for gender persecution, undermining claims that women's rights are respected. Online, users increasingly contest Taliban narratives; for instance, responses to claims of preventing domestic violence demanded disclosure of how many women were denied education or confined to their homes (ibid.). In March 2025, amid heightened scrutiny following Karim Khan's arrest warrant application, the Taliban spokesperson asserted that Afghan women live in "complete physical and psychological security" (Zabehulah_M33 2025d). This claim sharply contradicts evidence. A 2024 survey of 426 girls banned from education found that 87% showed symptoms of depression and nearly half reported suicidal thoughts (Mohammadi et al. 2024). Conditions have worsened as restrictions deepen (Gluck 2024).

Despite official claims that all violence against women has been prevented and that no one can "destroy women's rights" (Zabihullah 2025e), Afghan women have lacked self-determination for four consecutive years. Education, employment, mobility, and personal autonomy are tightly controlled. Under Article 7(1)(h) of the Statute, Taliban leaders are accused of gender persecution, acts recognised as crimes against humanity when carried out as part of a widespread and systematic attack (Statute 1998, Article 7(1)(h)).

Today, two images of the Taliban coexist: the curated digital portrayal of moderation and protection and the legal and factual record affirmed by courts, reports, and lived experiences. The contrast exposes a simple truth: behind polished online messaging stands an unchanged extremist ideology. While arrests may remain difficult, legal processes matter. They create public records, shape global narratives, and sustain political pressure. Ultimately, the Taliban's digital image collapses when confronted with law, evidence, and the enduring struggle of Afghan women for dignity and justice.

10. Conclusion

This research examined how the Taliban use digital platforms to construct a public image of moderation, protection, and legitimacy, and how this image collides with lived realities and international legal accountability. By analysing hundreds of social media posts, user reactions, and ongoing legal cases before the ICC, the ICJ, and the ECJ, the study demonstrates a sharp contrast between the Taliban's manufactured digital narrative and the legal frameworks that document and expose their abuses. While digital platforms allow the Taliban to promote a carefully curated image, this strategy proves fragile when tested against evidence, court proceedings, and international scrutiny.

The results highlight three interconnected insights. First, contemporary propaganda is not limited to imagery alone; it also involves strategic platform use to appear modern, restrained, and politically reasonable. The Taliban's deliberate avoidance of overt violence online distinguishes them from other extremist groups and helps them maintain global visibility. Second, international law functions as a critical counterweight. Although it may not immediately halt abuses, it preserves a factual and legal record that outlasts shifting online narratives. Third, despite being silenced within Afghanistan, Afghan women's experiences continue to reach international audiences through research, surveys, and advocacy, consistently undermining Taliban claims of protection and dignity.

Importantly, Taliban digital campaigns should not be dismissed as mere rhetoric. Their online statements and posts are used to justify, normalise, or minimise policies that systematically strip women of their rights and can and should be analysed as evidence of intent and coordinated persecution. Future ICC or ICJ proceedings would benefit from integrating digital propaganda analysis alongside documentation of physical restrictions and abuses. At the same time, accountability efforts must centre Afghan women's daily realities, including the psychological toll of isolation, forced dependency caused by education bans, and the loss of professional futures. Highlighting these harms strengthens the legal case for gender persecution and gender apartheid.

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Agostina Dasso Boonman [et al]. "Artificial intelligence expansion and the right to a clean, healthy, and sustainable environment: A comparative regional analysis" (2025) 9 245-265 *Global Campus Human Rights Journal* https://doi.org/10.25330/3220

Artificial intelligence expansion and the right to a clean, healthy, and sustainable environment: A comparative regional analysis

Agostina Dasso Boonman[*], *Bakyt Dzhenyshpekova*[**] *Laila Nukiry*[***] *and Violet Munasinyungwe*[****]

Abstract: *Artificial intelligence (AI), particularly generative AI, is rapidly transforming global economies and societies while raising significant concerns about its environmental impact on the realisation of the human right to a clean, healthy, and sustainable environment. This article examines the tension between AI's transformative potential and its substantial environmental costs, including energy consumption, water usage, and electronic waste generation.*

Through legal analysis and desk research, this study maps AI-related environmental harms against the human right to a healthy environment, as recognised by the UN General Assembly in 2022 and elaborated in the work of the UN Special Rapporteurs on the human right to a clean, healthy, and sustainable

[*] Agostina Dasso Boonman studied law at University of Buenos Aires and recently graduated as Magister in Human Rights and Democratisation in Latin American and the Caribbean (University of San Martin). She is auxiliary professor at Human Rights Law, International Public Law and Criminal Law courses at UBA. Her research interest focuses on new technologies and gender from a Latin American perspective.

[**] Bakyt Dzhenyshpekova holds an MA in Human Rights and Sustainability from the OSCE Academy in Bishkek, Kyrgyzstan. With a background in journalism, her research interests include gender rights, media, artificial intelligence, and sustainability.

[***] Laila Nukiry is a researcher, human rights activist, and Master's student in Mediterranean Cooperation and Security at LUISS University. She holds a Master's degree in Democratisation and Human Rights in the Arab World. Her research focuses on migration, women's rights, and child rights.

[****] Violet Munasinyungwe holds an LLM in Human Rights and Democratisation in Africa from the University of Pretoria in South Africa. As a Legal Practitioner, she is specialised in Environmental, Constitutional and Human Rights Law. Her research interest focuses on access to justice for victims of corporate environmental harm in Africa, Particularly from a Zambian perspective.

environment and on the human rights to safe drinking water and sanitation, and surveys regulatory and policy approaches to these harms across four regions, with sustained doctrinal analysis of the European Union's Artificial Intelligence Act. Ultimately, it argues that addressing AI's environmental footprint requires moving beyond voluntary corporate commitments toward binding international standards that recognise environmental protection as integral to responsible AI development. Reconciling AI innovation with environmental rights demands that States, international organisations, and technology companies prioritise human rights obligations, ensuring AI development serves rather than undermines global sustainability for present and future generations.

Keywords: *AI; environmental impact; healthy environment; human rights*

1. Introduction

Artificial intelligence (AI) is a rapidly developing technology that is bringing changes to different sectors such as transportation, communication, healthcare, finance, and many more areas of life. It is transforming economies and societies worldwide with its ability to automate complex tasks, process large amounts of data, and generate novel solutions (McKinsey Global Institute 2017, 2). AI promises various benefits starting from autonomous vehicles to smart cities and optimised supply chains.

Among various types of AI, generative AI (GenAI), capable of creating new content such as text, images, or code, is gaining momentum today. Various GenAI models are being widely used for different purposes: from helping with writing and creative projects, generating realistic images or videos, and automating software coding, to assisting with customer service with personalised interactions and to even helping in drug development (Bubeck et al. 2023).

GenAI usage has surged since mid-2024, with ChatGPT traffic growing by 113 percent to 4.5 billion monthly visits (Liu et al. 2025, 2). AI's potential to innovate and accelerate knowledge creation is well-recognised (Singh et al. 2024; Aldulaijan and Almalky 2025), with AI technology also increasingly being seen as a tool to advance sustainability through optimisation of energy systems by improving resource efficiency and climate monitoring (Rolnick et al. 2022).

At the same time, expansion and deployment of AI carries environmental implications. For example, training OpenAI's GPT-3 emitted around 552,000 kg of CO2 equivalent and required 1,287 megawatt hours of electricity (Patterson et al. 2021). According to the International Energy Agency report (IEA 2025, Executive Summary), electricity demand from data centres that host AI training worldwide is expected to more than double by 2030 to around 945 terawatt-hours, slightly more than the entire electricity consumption of Japan today. Data centres worldwide use substantial water for cooling – training GPT-3 alone consumed around 700,000 litres of fresh water (Li et al. 2025). Additionally, the demand for AI hardware has intensified the extraction of rare earth elements (REEs) needed for production of components such as microchips and high-performance computing devices. The mining and processing of REEs comes with environmental risks and generation of toxic waste, including radioactive byproducts, which can contaminate soil, water, and air (Zapp et al. 2022). The AI expansion also complicates the current e-waste situation: according to the most recent Global E-waste Monitor, the world generated a record 62 billion kg of electronic waste in 2022, of which only 22.3 percent was formally collected and recycled in an environmentally sound manner (Baldé et al. 2024, 12). This data reveals a puzzle: while the development and deployment of AI are advancing at a rapid pace, efforts to address the resulting environmental costs are lagging behind. Despite the fact that tech giants, like Amazon, Microsoft, and OpenAI, started renewable energy sourcing and efficiency improvements such as investments in wind, solar, battery storage, nuclear and hydrogen, these efforts remain voluntary and fragmented (World Economic Forum 2025).

This raises concerns about the impact of AI on the realisation of the human right to a clean, healthy, and sustainable environment, recognised by the United Nations (UN) as a universal human right in 2022. The existing literature on the topic of AI and human rights focus on ethical and social implications of AI including matters like privacy issues, bias, and misinformation (see Romero Moreno 2024). The studies on the topic of AI and sustainability focus on, e.g. AI's impact on realisation of the UN Sustainable Development Goals (Goralski and Tan 2020; Vinuesa et al. 2020). A third, more directly relevant strand has only recently begun to connect digital technologies specifically to environmental law and to business-and-human-rights obligations. A recent scoping review of environmental law and digital technology scholarship finds this literature to be markedly siloed, with little sustained cross-citation between environmental lawyers and technology scholars (Holley et al. 2025), a gap this article's analysis is intended to help narrow for the specific case of GenAI. Within that emerging strand, recent commentary has also begun to frame the environmental risks of data-centre infrastructure, water and energy demand, and mineral extraction in explicitly business and human rights and environmental criminal law terms, arguing that such risks properly fall within corporations' human rights due diligence obligations under the UN Guiding Principles on Business and Human Rights (UN 2011) rather than being treated purely as a sustainability concern (Di Donato 2026). While the number of research on the topic grows, relatively few studies examine how AI's environmental implications threaten the human right to a clean, healthy, and sustainable environment or how these impacts are managed or neglected across different regions of the world. Therefore, this article seeks to explore the following research questions:

(1) What are the direct and indirect environmental impacts of AI development and deployment? How do these environmental impacts threaten the enjoyment of the human right to a healthy, clean, and sustainable environment?

(2) Are there regional differences in the regulation or mitigation of AI-related environmental harms?

(3) How do businesses, Governments, and international organisations address – or fail to address – the environmental implications of AI within the scope of human rights obligations? What lessons can be drawn globally to reconcile AI development with the protection of environmental rights?

To answer these questions, this study combines desk research with doctrinal legal analysis. Desk research was used to compile empirical evidence on AI's environmental footprint, spanning energy, water, and material use, from technical, scientific, and policy sources; legal analysis proper was then applied to identify the relevant State and corporate obligations under the substantive and procedural framework set out in section 2.1 and to assess how far existing regulatory instruments in each region give effect to them.

The four regions examined, the European Union (EU), Asia, Africa, and Latin America, were selected on three grounds. First, taken together they capture the principal current poles of AI infrastructure investment, so that regulatory responses in these regions bear most directly on where the underlying environmental harms actually occur. Second, they offer a genuinely comparative spread of regulatory posture, from the EU's binding, instrument-based model to the predominantly principle-based or human-rights-derived approaches found in Asia, Africa, and Latin America, allowing the analysis to test whether binding regulation produces materially different outcomes from softer governance. Third, each region furnishes at least one primary legal or quasi-legal instrument, whether legislative (the EU Artificial Intelligence Act (AI Act)), continental strategy (the African Union's Continental AI Strategy) or jurisprudential (the Inter-American Court of Human Rights Advisory Opinion 32), against which the obligations identified in section 2.1 can be tested directly, rather than relying on regulatory intention alone.

Priority was given throughout to primary legal instruments, statutes, regulations, treaty-body jurisprudence, and Special Rapporteurs' reports, where these were available. Secondary and grey literature, policy commentary, law-firm client alerts, and journalistic sources were used to establish factual and technical context and to fill evidentiary gaps where primary sources on AI-specific environmental regulation do not yet exist, reflecting the nascent state of this field of law; such sources are treated as illustrative rather than authoritative. This limitation is most acute for Asia, Africa, and Latin America, where the analysis is necessarily closer to a policy survey than to the sustained doctrinal treatment afforded to the EU, an asymmetry that reflects the current state of AI-specific environmental regulation across these regions rather than an analytical choice, and against which the article's regional findings should be read. The paper is structured as follows: the following section introduces the right to a clean, healthy, and sustainable environment, and clarifies what is meant by AI, particularly GenAI. The next section explores the direct and indirect environmental impacts of AI, from energy use to e-waste, and examines how these impacts can compromise human rights. After that, the regional analysis considers how AI-related environmental harms can manifest differently across regions and what lessons can be drawn from diverse regulatory and policy approaches. The following section examines how various actors – AI companies, States, and international organisations – are addressing or neglecting these challenges and evaluates possible governance mechanisms or technological innovations. The conclusion reflects on the broader implications of AI's environmental footprint for human rights and sustainability and suggests ways to align AI development with global environmental and human rights obligations.

2. Mapping the field

2.1. The right to a clean, healthy, and sustainable environment – what does it entail?

The right to a safe, clean, healthy, and sustainable environment (or more simply: the right to a healthy environment) has been slowly incorporated in the framework of international human rights framework as well as domestic legislations. In 2021, the UN Human Rights Council adopted a resolution, recognising the right and committing the UN General Assembly to do the same (UN Human Rights Council 2021), which happened a year later (UN General Assembly 2022). This right has been granted legal protections in more than 100 countries and is recognised in regional conventions, case law, or legislation in more than 150 States (UN Special Rapporteur on the human right to a clean, healthy and sustainable environment 2022, para. 24; Knox 2019). These recent recognitions, while very significant, do not mean that the right has been only recently "discovered." Human rights law has been applied to environmental issues for years preceding these official statements, especially in the context of the right to life and health (UN Special Rapporteur on the human right to a clean, healthy and sustainable environment 2018a, para. 12; African Commission on Human and Peoples' Rights 2001, para. 52; Inter-American Court of Human Rights 2017). Broadly speaking, the right to a healthy environment includes clean air, safe and sufficient water, healthy and sustainably produced food, a safe climate, healthy ecosystems and biodiversity, and toxic-free environments where people can live, work, study, and play (UN

Special Rapporteur on the human right to a clean, healthy and sustainable environment 2018b). It could be conceptualised as having a bundle of rights, with different components, which include substantive and procedural elements (Preston 2024). Stakeholders are obliged to protect people against environmental harm that interferes with the enjoyment of human rights overall. As environmental harm may threaten a variety of rights, substantive obligations will depend on the content of their duties with respect to the rights threatened by the harm (UN Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment 2013, para. 44). With regard to that, the Independent Expert has identified several categories of obligations : the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment 2013), including the obligation to adopt and implement legal framework that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights; obligations to protect against environmental harm from private actors (see United Nations 2011); and obligations relating to transboundary environmental harm as well as obligations with respect to groups particularly vulnerable to environmental harm. As for the procedural component, this includes duties to assess environmental impacts and make information public, to facilitate public participation in environmental decision-making (by protecting freedom of expression and freedom of association), and to provide access to remedies for harm (UN Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment 2013; UN Special Rapporteur on human rights and the environment 2018b).

2.2. *Artificial intelligence*

While AI technology has become an ever-present aspect of our societies, there is no consensus on its definition, with various degrees of preciseness applied in different definitions. The UN Special Rapporteur on the right to privacy has referred to the taxonomy introduced by Russel and Norvig (UN Special Rapporteur on the right to privacy 2023, para. 7), where they identified constituent elements of AI systems: systems that think like humans, systems that act like human beings, systems that think rationally, and systems that act rationally (Russell and Norvig 2009). Further, existing legal frameworks potentially draw from the definition introduced by the OECD (adopted in 2019 and revised in 2023), which defines an AI system as "a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments," and notes that "different AI systems vary in their levels of autonomy and adaptiveness after deployment" (OECD 2024, 4).

While the development of rudimentary AI has been observed for decades, it was the recent development of general-purpose AI, specifically

GenAI, that brought heightened attention to this technology, including its impact on human rights (see Peñalvo and Ingelmo 2023). This development was notably facilitated by the advances in computing power and the growth and significance of data, crucial for training AI. Broadly speaking, general-purpose AI systems have the capability to competently perform a wide range of distinct tasks, such as content generation, calculation, and programming. Large GenAI models are among the most recognised examples of general-purpose AI. They may produce new, previously unseen information dependent on the data on which they were trained (Peñalvo and Ingelmo 2023, 7). In principle, the AI research community reserves the term "generative" for complex models that can create high-quality, human-like material (Peñalvo and Ingelmo 2023, 8). The development of generative adversarial networks marked an important milestone in GenAI – a type of machine-learning algorithm using competing neural networks (Chakraborty et al. 2024). Later, large language models (LLMs) emerged as another form of GenAI capable of performing language processing tasks through Natural Language Processing. LLMs can generate content such as text, translations, and code, with some advanced multimodal models also capable of processing images or converting text to speech.

As indicated, AI, specifically GenAI and LLMs, is able to operate as effectively as it does nowadays thanks to the huge amount of data that it is trained on. Processing these datasets requires thousands of specialised processors running continuously for weeks or months, consuming energy equivalent to hundreds of households annually. This training cycle, repeated each time models are updated or improved, creates a substantial environmental footprint.

3. Environmental impacts of GenAI technology

When we talk about the emergence of AI, in the field of promises we are told about positive impacts such as decarbonisation, the revolution in connectivity and inclusion, and the way society interacts, learns, and perceives reality. The potential implications of increased demand for critical minerals, REEs, and water resources to meet new data centre needs require careful consideration (UNEP and International Science Council 2024, 31).

Before examining these environmental costs, it is important to acknowledge the technology's potential contributions to environmental sustainability. AI can detect patterns in data and use historical information to help predict future outcomes, potentially supporting climate change mitigation and adaptation efforts. The technology can also be used to tackle climate change through tracking air emissions and promoting environmental monitoring and management procedures. Measurements for air emissions, supply chains, and waste management can be collected and analysed through innovative AI solutions, with AI system governance ensured through frameworks such as ISO 42001 (ISO 2023). In this regard, for example, the UN Environment Programme (UNEP) uses AI to detect when oil and gas facilities vent methane (a greenhouse gas that drives climate change) (UNEP and International Science Council 2024, 31). Other mitigation opportunities include AI applications in sustainable agriculture, which adopt AI tools as part of environmental solutions and present potential mechanisms by which AI can contribute to sustainable farming activities. For instance, AI-powered smart irrigation systems provide optimised water supply and fertiliser distribution, replacing traditional or seasonal use of agricultural water resources in response to climate change challenges.

While AI can address environmental emergencies, the physical infrastructure required for AI systems also carries significant environmental costs (UNEP 2025). Research is carried out on the effects of AI on the environment, however there is little concrete and disaggregated information available on the subject. In the words of Golestan (Sally) Radwan, director of digital transformation at the UNEP, "We have a reasonable idea of what the environmental impacts might be ... However, it is impossible to predict how AI-based applications will affect the planet" (UNEP 2025). Behind the major productions of GenAI language models lie vast physical infrastructures that support their operation and have a significant impact on the environment. The infrastructure involved can lead to various problems. On the one hand, data centres, facilities that house the infrastructure needed to deploy and deliver AI applications and services, host large-scale AI deployments including those operated by cloud service providers. These centres require large, non-overcrowded infrastructure to operate. Unlike traditional data centres, those dedicated to AI require high-performance graphics processing units (GPUs), as well as advanced storage, networking, power, and cooling capabilities, and a larger footprint. The production of GPU chips and other electronic components, with their brief useful life of under five years, depends heavily on minerals extracted from Africa. The continent's reserves of cobalt, tantalum, and gold make African mining operations essential to AI system manufacturing. These kinds of practices in the region have frequently led to resource exploitation without sustainable benefits for local communities, ecological devastation, and have adversely affected the quality of life for local communities (AUDA-NEPAD 2024). Furthermore, the "cloud," contrary to what its name suggests, refers to a vast network of interconnected internet servers used to store, distribute, and manage data. These server networks are located in giant data centres or warehouses distributed around the world and connected by approximately 450 submarine internet cables, as well as thousands of giant terrestrial structures hosted in various countries.

In addition, data centres generate significant environmental challenges through electrical and electronic waste (e-waste), water consumption, and energy usage. E-waste from data centres often contains hazardous substances such as mercury and lead, and includes discarded or broken electronic devices like computers, smartphones, chargers, cables, and server systems (Schwaller 2024). Relatedly, GenAI intensifies this problem, since it depends on rapid improvements in hardware infrastructure and chip technology that generate more electronic waste as hardware is upgraded or replaced (Schwaller 2024). Recently, experts estimated that e-waste could reach 1.2 and 5.0 million metric tons by 2030, which is about 1,000 times more e-waste than the amount produced in 2023 (Schwaller 2024). This projection is consistent with the UN's fourth Global E-Waste Monitor, which found that in 2022, a record of 62 billion kg of e-waste was generated globally and only 22.3 percent of this e-waste mass was documented as formally collected and recycled in an environmentally sound manner (Baldé et al. 2024, 12).

Furthermore, data centres consume water both during construction and during operation, where it is used to cool electrical components and prevent overheating. The scale of this water consumption, illustrated above by the GPT-3 training example, is staggering when extrapolated across the industry as a whole. According to UNEP, global AI infrastructure could consume six times more water than a country of six million people like Denmark, in a context where a quarter of the world's population currently lacks access to clean water and sanitation (UNEP 2025). Other sources (e.g. Water Usage Effectiveness) point out that water use by data centres could double by 2030 (Pais Circular 2025). This could lead to local droughts. According to one of the recent reports of the Special Rapporteur on the human rights to safe drinking water and sanitation, the proliferation, often in the name of economic progress, of data centres happened in opaque circumstances, with a lack of transparency, participation, access to information and accountability, and that lack of transparency causes difficulties to access up-to-date information and to assess the sector's water consumption at the national or regional level (UN Special Rapporteur on the human rights to safe drinking water and sanitation 2025, paras. 45 and 47). Moreover, the Special Rapporteur on the human rights to safe drinking water and sanitation points out that "water demands are being proposed as demands to be satisfied as a priority, in opaque agreements with large corporations. Such a priority undoubtedly entails serious risks for other uses, such as irrigation or even drinking water supplies, during periods of drought" (UN Special Rapporteur on the human rights to safe drinking water and sanitation 2025, para. 47).

The final point to consider is energy usage, which depends largely on the policies of both the companies operating data centres and the States where they are located. In most cases, the vast majority of required energy still comes from burning fossil fuels such as gas and coal, ultimately contributing to the greenhouse effect. Relatedly, the UN Special Rapporteur on the human rights to safe drinking water and sanitation observed that:

"exponential growth in energy demand generates intense pressure to revive the construction of large hydroelectric dams – which would have a corresponding impact on riverine communities and freshwater ecosystems – and thermal and nuclear power plants, even at the cost of accelerating climate change and increasing the risks of water pollution. In fact, corporations, such as Amazon, Google, Meta and Microsoft, are developing strategic alliances with the hydrocarbon industry and even plan to build nuclear power plants to meet their explosive energy demands." (UN Special Rapporteur on the human rights to safe drinking water and sanitation 2025, para. 49)

The Special Rapporteur adds that water and energy equity are endangered not only by these dynamics but also because the priority given to large technology companies, and the preferential energy rates from which they benefit produce unfair asymmetries with respect to other, more labour-intensive sectors of the economy (UN Special Rapporteur on the human rights to safe drinking water and sanitation 2025, para. 55).

The geographic distribution of AI infrastructure also reveals certain disparities. The data centres of various leading companies that pursue the development of GenAI are spread across several countries, primarily concentrated in the United States, the EU, and China (New York Times 2025). This not only suggests a gap in digital sovereignty and the ability to leverage the benefits of AI compared to regions such as Latin America and Africa but also provides an indication of the underlying environmental impacts. Nevertheless, data centres that power the development of AI are also noticeable in other parts of the world, often generating local environmental concerns. Recent examples include Malaysia, where environmental groups have called for stricter regulations requiring new AI data centres to operate solely on renewable energy (Hicks 2025). Furthermore, the uneven distribution of AI's environmental impacts remains an issue (Ren and Wierman 2024). The adverse effects may particularly be a burden to already vulnerable regions and communities. Notably, water-consumption of data centres will be disproportionately higher in drought-stricken areas, precisely where water is scarcest. For this reason, AI's environmental inequity has been raised as an important matter (Li et al. 2024). Li et al. (2024) found that geographical load balancing algorithms, which route computing workloads to data centres across different regions, create environmental inequity by disproportionately burdening certain locations with higher carbon and water footprints, even while minimising total environmental costs.

Read against the substantive and procedural obligations mapped in section 2.1, these harms are not merely descriptive data points but indicators of specific State and corporate duties left unmet. The obligation to protect against environmental harm from private actors is engaged directly by the opaque, unregulated water-allocation agreements between data-centre operators and host States documented by the Special

Rapporteur on the human rights to safe drinking water and sanitation; the procedural duties to assess environmental impact and to make information public are precisely what such opacity denies to affected communities, from Querétaro to rural Malaysia. The obligation relating to transboundary environmental harm is engaged by the geographically concentrated extraction of REEs and cobalt in Africa to supply AI hardware consumed predominantly elsewhere, while the obligation to protect groups particularly vulnerable to environmental harm is engaged by the disproportionate siting of water-intensive infrastructure in already drought-prone regions, as the geographical load-balancing evidence above illustrates. Framed this way, the environmental footprint of GenAI is not simply an efficiency problem to be optimised away, but a pattern of largely unaddressed human rights obligations.

4. Regional nuances

The growth of AI has contributed to an exponential increase in data centres globally, from 500,000 in 2012 to over eight million today (Correia et al. 2025). The previous section has laid down the global scope of the environmental burden of data centres necessary for the development of GenAI, however, it must be acknowledged that environmental impacts vary across continents, shaped by distinct geographical, climatic, and infrastructural conditions. While data centres globally consume substantial energy and water resources, the volume of e.g. water usage is highly dependent on location, with mechanical cooling required in hot climates and data centres located in areas already experiencing water scarcity. Against this backdrop, the following section examines how different regions have developed regulatory frameworks to address these impacts and protect the right to a healthy, clean, and sustainable environment.

In the EU, AI technology is increasingly regulated through a combination of legislative and policy measures that integrate energy efficiency, transparency, and sustainability into AI governance. According to the International Energy Agency, by 2026 the AI sector's energy demand could increase tenfold compared to 2023, with EU data centres alone expected to consume 30 percent more electricity (Hickman et al. 2025). To mitigate these harms, the EU has adopted the AI Act (Regulation (EU) 2024/1689) on 13 June 2024 (European Union 2024). The regulation integrates environmental protection into its broader governance framework for AI, recognising sustainability as an essential component of trustworthy technology. From the outset, Article 1(1) establishes environmental protection alongside health, safety, and fundamental rights as one of the Regulation's overarching objectives. This foundational principle is reinforced by Recital 4, which explicitly acknowledges AI's potential to advance resource and energy efficiency, environmental monitoring, and climate change mitigation and adaptation. Together, these provisions elevate environmental stewardship to a guiding regulatory value rather than a peripheral policy concern.

On the operational level, the EU AI Act introduces targeted transparency and accountability measures to mitigate AI's ecological footprint. Article 53, in conjunction with Annex XI, obliges providers of general-purpose AI models to document and disclose the energy consumption associated with model training and use – either through direct measurement or credible estimation. This represents a landmark step toward quantifying the environmental cost of large-scale AI models, ensuring that sustainability becomes part of compliance documentation. Likewise, Article 51 and Annex XIII(2)(c) link high energy consumption during training to the classification of a model as having systemic risk, thereby embedding environmental performance into risk assessment and oversight mechanisms. These obligations encourage developers to prioritise energy-efficient architectures and transparent reporting, aligning AI innovation with the EU's Green Deal objectives (European Commission, 2019). Further, Recital 130 introduces an emergency exemption mechanism allowing national authorities to authorise AI systems for environmental protection or a climate crisis response even before full conformity assessment – demonstrating that environmental imperatives can justify accelerated regulatory flexibility when necessary for urgent ecological action.

Nevertheless, while these articles represent significant progress, the Act stops short of imposing substantive sustainability standards or quantitative emission limits. Environmental accountability remains primarily procedural – focused on transparency, documentation, and classification rather than enforceable environmental performance thresholds. The absence of a mandatory environmental impact assessment for AI systems or a requirement to use renewable energy sources during training highlights a regulatory gap. Thus, although the AI Act symbolically aligns AI governance with Europe's environmental commitments, its provisions remain cautious and technocratic, leaving much of the environmental burden to be addressed through subsequent delegated acts or complementary green policies.

In Asia, while there is no overarching regulation akin to the EU's AI Act specifically addressing the environmental impact of AI, several countries and regional initiatives are beginning to incorporate environmental considerations into AI governance.

For example, in the Asia Pacific at least 16 jurisdictions are either exploring or implementing frameworks to regulate AI (Correia et al. 2025). These approaches can be broadly categorised into four types. China follows a mandatory, State-driven model, implementing binding, technology-specific measures to steer AI toward developmental goals. In contrast, South Korea and Japan rely on market-oriented policies aimed at supporting local innovation. Malaysia and Singapore have adopted non-binding principles and codes of conduct, while Vietnam and Thailand apply risk-based regulations, varying in strictness depending on the context and type of AI application.

Despite this regulatory activity, few countries have taken decisive steps to address the environmental impacts of AI or to embed climate considerations into mandatory AI regulations. For instance, AI's resource intensity is only lightly referenced in the ASEAN Guide on AI Governance and Ethics (ASEAN 2024). A notable exception is the Philippines, where the Philippine Development Plan 2023–2028 and the National Innovation Agenda and Strategy Document 2023–2032 position AI as a tool for sustainable development. Sector-specific initiatives incorporate AI into crop mapping, disaster resilience, and water and grid efficiency, supported by a regulatory environment that promotes AI-driven upskilling, green technology, sustainable mobility, and environment, social, and governance compliance.

Given the rapid pace of AI development and the pressing environmental challenges in the Asia Pacific, a more ambitious, coordinated, and targeted approach is required to fully align digital innovation with sustainability goals. The African continent currently has no single, comprehensive and legally binding law dedicated to mitigating the environmental impact of AI across the continent. Instead, environmental mitigation is currently addressed through some of the existing fundamental human rights law and regional policy frameworks that mandate environmental protection. For instance, the primary legal basis for environmental protection against any technology, including AI, comes from the African Charter on Human and Peoples' Rights (the African Charter 1981) which guarantees the right to a clean environment in Article 24, establishing a legally enforceable right that any AI activity in a Member State must respect. In case of any AI projects that cause environmental harm, such harm can be challenged as a violation of this right. In addition, the African Union's Continental AI Strategy of 2024 embeds environmental protection as fundamental both in its guiding philosophy and its concrete action plans. The principle of peace and prosperity calls for the creation of a prosperous Africa where the natural environment is actively preserved and protected (African Union 2024), setting environmental stewardship as a non-negotiable condition for AI development. This is complemented by the local first or people-centred principle, which directs AI development to tackle Africa's unique environmental challenges, such as managing water resources and building resilience against climate-induced disasters like droughts and floods (African Union 2024). These ideas are then translated into specific, actionable policies. Under the strategic focus of minimising AI risks, the strategy identifies the need to mitigate threats to a sustainable environment, acknowledging that AI itself must be developed responsibly to avoid causing ecological harm (African Union 2024, 51).

As for Latin America, some sources consider the existence of a "data centre boom in Latin America" which implies an accelerating infrastructure investment in some countries (Menski et al. 2024). The data centre sector in Latin America is growing fast, and so are investments. In this sense, the countries that stand out are Brazil, México, and Chile with Colombia, Peru, Costa Rica, and Panama as emerging centres for investments (Menski et al. 2024). Recently, OpenAI and Sur Energy announced the signing of a Letter of Intent to develop a large-scale data centre in Argentina's Patagonia (OpenAI 2024). These projects are attractive to Latin American Governments because they position countries as exporters of computational capacity, enabling them to provide processing services to companies and nations lacking the necessary infrastructure.

According to experts from the Inter-American Development Bank, data centres in Latin America generate environmental impacts that extend beyond aggregate measures to affect local communities directly. In Querétaro, Mexico, for example, the water demand for data centres competes with the needs of local farmers, creating conflicts in a region already facing water scarcity. Farmers depend on this water for their crops and livelihoods, making the competition for resources particularly acute (Aguirre et al. 2025). Despite this, Latin American countries have an embryonic domestic regulation on AI, and they do not have an environmental regulation on a regional level in light of AI development. Nevertheless, international human rights law is still binding for countries in the region. The environmental human right law principally emanates from the Inter-American Human Rights System, with Inter-American Court of Human Rights (IACtHR) consolidated jurisprudence on environmental protection which is binding for State Parties. The recent IACtHR's Advisory Opinion 32 of 2025 recognises the current situation as a climate emergency and acknowledges States' obligations to face it (Inter-American Court of Human Rights 2025). The IACtHR has stated that nature is a human right subject; the obligation to not cause irreversible damages to nature is a peremptory norm of general international law; and States must mitigate greenhouse gas emissions, regulate the activities of businesses, assess the climate impact of them, and actively protect ecosystems.

Separately, under the XLII Meeting of High-Level Authorities on Human Rights, MERCOSUR[1] has issued a statement of principles, where they recognise that AI implementation has environmental effects and the AI development must promote its protection (Reunión de Altas Autoridades sobre Derechos Humanos del MERCOSUR 2023).

Despite the above-mentioned legal progress, most of the specific regulations concerning GenAI and the environment remain non-binding or

1 MERCOSUR is a regional integration process whose States Parties are Argentina, Brazil, Paraguay and Uruguay; Bolivia and Venezuela (currently suspended) joined later (see MERCOSUR 2025).

are limited to regional frameworks that do not fully address environmental human rights considerations. In this context, it becomes crucial to question the role of AI development amid the climate emergency – especially given the lack of precise data on its overall environmental impact, and in regions like Latin America, which contribute less than 10–15 percent of global emissions yet possess some of the highest levels of biodiversity on the planet (UNEP 2018).

5. AI's environmental footprint: existing measures and the case for binding standards

Addressing AI's environmental impacts requires a multi-faceted approach encompassing technological innovation, strategic infrastructure planning, and corporate sustainability commitments. UNEP's foresight report acknowledges that while AI and digital transformation can bring benefits, there are significant environmental implications, which need addressing (UNEP and International Science Council 2024). Some of the current solutions range from optimising existing operations to reimagining the geographical distribution of AI computing infrastructure. Ultimately, there is a lot more to be done, both with regard to viable options to reconcile AI development with the protection of the right to a healthy, clean, and sustainable environment, and with regard to binding regulations in this context.

Technological optimization and the strategic deployment of AI systems represent key approaches to mitigating environmental impacts. For instance, Google partnered with DeepMind, that developed a framework which led to the reduction of energy used for data centre cooling by 40 percent (Evans and Gao 2016). Complimenting efficiency gains like this, major technology businesses may also integrate renewable energy solutions in the existing infrastructures of their data centres. Collectively, Amazon, Microsoft, Google, and Meta represent the largest corporate purchasers of renewable energy globally, each having procured multiple gigawatts through long-term power purchase agreements (de Hoop Scheffer 2025). These initiatives can, however, face criticism for potentially diverting renewable energy from other users and delaying broader clean energy transitions.

Furthermore, a considerable solution with regard to mitigating the impacts of AI data centres could be locating them in cold-climate regions, where natural cooling could reduce energy and water consumption while enabling waste heat reuse for nearby communities. However, this can involve significant trade-offs – for instance, higher infrastructure costs in remote areas or connectivity and latency challenges.

Beyond location decisions, equity-aware geographical load balancing proposes dynamically distributing AI computing across dispersed data centres to minimise environmental impacts on disadvantaged regions by routing workloads based on regional carbon and water footprints (Li et al. 2024). This can address the environmental justice concerns by preventing the concentration of AI's burdens in already environmentally vulnerable areas.

These solutions represent important progress, yet remain insufficient without binding regulatory frameworks that extend beyond voluntary commitments to ensure AI development respects the right to a healthy, clean, and sustainable environment globally.

Concretely, three elements would give this call for binding standards operational content. First, the mandatory energy and water disclosure obligations that the EU AI Act currently applies only to general-purpose models (Article 53 and Annex XI) could be extended, through a dedicated protocol or amendment, into binding quantitative thresholds tied to environmental permitting, rather than disclosure alone, along the lines already used for industrial installations under EU environmental law. Second, the transparency and public-participation duties identified by the Special Rapporteur on the human rights to safe drinking water and sanitation, and mapped onto AI-related water use in section 3 above, could be codified into a standing requirement that data-centre operators publish the terms of water- and energy-allocation agreements with host States, enforceable through national environmental-impact-assessment regimes. Third, given the absence of a single global forum with a mandate over AI's environmental footprint, the UN Human Rights Council could extend the mandate of the Special Rapporteur on the human right to a clean, healthy and sustainable environment to include a dedicated reporting stream on digital infrastructure, building on the mapping exercise already conducted by the Special Rapporteur on the human rights to safe drinking water and sanitation, with a view to negotiating a framework instrument akin to the Guiding Principles on Business and Human Rights but tailored to the AI sector. None of these steps requires a new treaty; each builds on existing institutional mandates and could plausibly be pursued within the next reporting cycle.

6. Conclusions

This article has examined the complex relationship between AI expansion, particularly GenAI, and the realisation of the human right to a clean, healthy, and sustainable environment. The analysis reveals a significant tension: while AI promises transformative benefits across sectors and potential contributions to climate solutions, its physical infrastructure demands, including energy consumption, water usage or electronic waste generation, pose threats to environmental sustainability and human rights.

The environmental impacts of AI are neither uniform nor equitable. Training a single LLM like GPT-3 consumes 700,000 litres of fresh water and emits around 552,000 kg of CO2 equivalent, while projections suggest AI-related e-waste could reach up to five million metric tons by 2030. These burdens fall disproportionately on already vulnerable regions, particularly those experiencing water scarcity or dependent on fossil fuel-based energy grids.

Regulatory responses vary dramatically across regions. The EU's AI Act represents the most comprehensive attempt to integrate environmental considerations into AI governance through transparency requirements and energy consumption disclosure, though it stops short of imposing mandatory sustainability standards. In contrast, Africa, Latin America, and parts of Asia rely primarily on existing human rights frameworks and non-binding principles, leaving significant regulatory gaps.

Addressing AI's environmental footprint requires moving beyond voluntary corporate commitments toward binding international standards that recognise environmental protection as integral to responsible AI development. Ultimately, reconciling AI innovation with environmental rights demands that States, international organisations, and technology companies prioritise human rights obligations over unchecked technological expansion, ensuring that AI development serves rather than undermines global sustainability and the right to a healthy environment for present and future generations.

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Tarik Hodzic [et al]. "AI warfare and human rights: Accountability and global implications in armed conflicts" (2025) 9 266-287 Global *Campus Human Rights Journal* https://doi.org/10.25330/3219

AI warfare and human rights: Accountability and global implications in armed conflicts

Tarik Hodzic[*], *Sai Khun Min (Arthur)*[**], *Zai Aurangzaib*[***], *Euloge Koffi*[****], *Rachel Cantlow*[*****], *and Abdulrahman Subih*[******]

Abstract: *This paper examines the accelerating integration of artificial intelligence (AI) systems into contemporary warfare and its implications for international humanitarian law (IHL), human rights, and corporate accountability. The analysis traces how AI systems have rapidly shifted from experimental tools to central components of global military operations, developing from tools of surveillance into tools of autonomous killing. Despite their growing influence, military applications of AI remain exempt from major regulatory frameworks, one of them being the European Union Artificial*

[*] Tarik Hodzic is an alumnus of the University of Auckland, Massey University, and the Global Campus in South-East Europe (ERMA). He currently works for the German Agency for International Development in Sarajevo, Bosnia and Herzegovina, helping sustain independent media in the Western Balkans.

[**] Arthur is an LGBTQIA+ rights researcher from Myanmar. He came from an international relations background and worked on cultural diplomacy for over a decade. His current research projects focus on LGBTQIA+ discrimination and acceptance, systemic sexism, intersection of religion and gender, and anti-gender movements in the Southeast Asia region.

[***] Zai Aurangzaib is an alum of the Master of Arts in Human Rights and Democratisation in Asia Pacific (GC APMA) and the United States Department of State. They are the co-founder of Trans Masc Alliance Pakistan, a community-led organisation advancing SOGIESC inclusion and gender diversity across South Asia.

[****] Euloge Koffi holds a LLM in Human Rights and Democratisation in Africa and serves the African Commission on Human and Peoples' Rights as a Legal Associate.

[*****] Rachel Cantlow is an alumna of the OSCE Academy in Bishkek, where she earned a Master of Arts in Human Rights and Sustainability. She previously served as Liberation and Campaigns Assistant at Leeds University Union and has worked to advance human rights, inclusion, and community engagement.

[******] Dr. Abdulrahman Subih is an international law scholar and Ph.D. graduate from Dr. Babasaheb Ambedkar Marathwada University. His research focuses on the international laws of technology transfer, human rights, and positive psychology. He writes about how global legal frameworks, new technologies like AI, and ethics impact people worldwide.

Intelligence Act, creating a legal vacuum in which States and private companies develop and deploy high-risk systems without binding oversight. By taking a regional approach, drawing on case studies from Europe, the Middle East, Southeast Asia, South Asia and Africa, the paper highlights the increasing privatisation of warfare, where technology corporations, including Google, Microsoft, Palantir, Huawei, and regional actors, including the US, Russia, China, Israel, supply data infrastructure, targeting software, and autonomous capabilities that blur traditional boundaries of responsibility. The Ukrainian conflict demonstrates how AI-driven drones, decision-support software, and public–private collaboration has transformed battlefield logistics and targeting while eroding meaningful human control. In Gaza, Israeli systems such as Lavender, the Gospel, and Where's Daddy? illustrate how algorithmic target generation, often with minimal human verification, raises acute concerns regarding distinction, proportionality, and precaution under IHL. Meanwhile, conflicts in Myanmar and across Southeast Asia, and South Asia show how AI-enabled surveillance and weapons proliferate through opaque defence partnerships involving China, Turkey, and Russia. Across these contexts, the paper argues that AI systems magnify existing accountability gaps by distributing decision-making across programmers, corporations, and military actors, making attribution for unlawful harm increasingly difficult. The study concludes that without robust regulation addressing both State and corporate obligations, AI-driven warfare risks normalising systemic violations of human rights and accelerating the erosion of established norms governing the use of force.

Keywords: *AI systems; human rights; business accountability; automation; conflict*

1. Introduction

In 2020, during the final months of Libya's civil war, reports emerged of what is now considered the first instance of an artificial intelligence (AI) system autonomously engaging human targets. According to a United Nations (UN) panel of experts, a Turkish-made Kargu-2 drone operated without direct connectivity to a human controller, attacking retreating forces of the Libyan National Army and inflicting casualties. This drone was publicly marketed as a "combat proven" and cost-effective weapon by STM, a private company created by the Presidency of Defence Industry of the Republic of Turkiye. The incident marked a pivotal shift in the conduct of warfare, foreshadowing a transition from human-directed combat to conflict driven by algorithm-based weapons and technology, evident in the conduct of modern conflicts across the globe. At the heart of this transformation lies the intersection of State military ambitions, international legal obligations, and the profit-oriented motives of private and State-owned defence and technology industries.

In the years since Libya, a rapidly expanding war-tech industry has transformed AI systems from a theoretical tool of efficiency into an integral component of the global war industry. What began as experimental automation in logistics and reconnaissance has evolved into a multibillion-dollar sector linking governments, private weapons manufacturers, and major technology companies. By processing vast quantities of data, AI systems now underpin surveillance, intelligence gathering, and increasingly, decision-making in the use of weapons ranging from drones to missiles.

The growth of this unregulated military and corporate partnership illustrates the ever-growing privatisation of the war industry. Governments now depend heavily on private companies for AI system development, deployment, and maintenance. Major technology firms such as Google, Amazon, Microsoft, Palantir Technologies, and OpenAI have signed multi-billion-dollar contracts to supply military grade AI infrastructure. Under Israel's Project Nimbus, for example, Google and Amazon provide cloud computing and AI services used in military operations in Gaza. Similar collaborations involve Dell, Cisco, and IBM's Red Hat, which furnish data processing infrastructure and analytical tools to defence networks. These commercial partnerships enable States to outsource both innovation and accountability, creating a diffuse system of shared responsibility in which no single actor bears full legal or moral liability for the consequences of AI-assisted warfare. As *Time* reports, the changing nature of warfare stands to give private technology companies greater power as independent actors than at any time period before, emphasising that those companies willing to move fastest without ethical or regulatory norms stand to gain the most out of the current war industry ecosystem (Serhan 2024).

The European Union's Artificial Intelligence Act (2024) defines AI systems as "machine-based systems designed to operate with varying levels of autonomy," capable of learning from data to produce outputs, such as "predictions, recommendations, or decisions", that influence physical or virtual environments. Yet the same regulation explicitly excludes military, defence, and national security applications from its scope (Recital 24), regardless of whether such systems are developed by public or private entities. This exemption has created a legal vacuum in which the defence sector, precisely the field where the stakes are highest, remains outside the reach of civilian oversight. It allows AI technologies originally designed for civilian purposes to be repurposed for combat without any binding obligations of transparency, ethical review, or explicit accountability under international law.

From a human rights standpoint, this evolution raises serious concerns. Algorithmic surveillance, predictive targeting, and automated strike decisions bring into question accountability with long standing tenants of international law. For instance, misindentification between combatants and civilians due to a flawed recognition system could lead to violation of the principle of distinction (Additional Protocol I, Article 48), whereas AI systems may also fail to assess whether expected civilian harm outweighs the anticipated military advantage, breaching the principle of proportionality (Additional Protocol I, Article 57) (Kallenborn 2021). Moreover, when AI systems are trained on data reflecting social or political biases, they may systematically discriminate against particular ethnic, religious, or social groups, violating the right to equality before the law (ICCPR, Article 26), while further decisions making without human approval could lead to circumstances where lethal force is not strictly necessary, violating the right to life (ICCPR, Article 6). The fear of such events taking place in the future led UN Secretary-General António Guterres to warn in 2025, "machines that have the power and discretion to take human lives without human control should be prohibited by international law. We cannot delegate life-or-death decisions to machines."

Legally, the situation remains precarious. As the International Committee of the Red Cross (ICRC) notes, autonomous weapons and AI systems are not explicitly regulated by existing treaties. Responsibility for compliance with international humanitarian law (IHL) rests with human commanders and operators, who must maintain "meaningful human control" over targeting decisions. As AI systems grow increasingly complex, however, the chain of accountability becomes difficult to trace. Programmers, corporate developers, and military decision-makers each play roles in systems that can act faster and less predictably than any human operator.

The Convention on Certain Conventional Weapons (CCW) continues to debate these issues through its Group of Governmental Experts on Lethal Autonomous Weapons Systems (LAWS). Despite years of discussion, no consensus exists on definitions, yet alone limits. According to Michal Onderco (2025), while countries in the Global South have pushed for the development of binding international norms, leading powers such as China, Russia, and the United States remain sceptical of regulation and have repeatedly hindered progress in creating enforceable legal rules. Onderco (2025) further notes that we are currently in a state of "latency," where States possess all the technological elements necessary to build fully autonomous weapons systems but have not yet made the political decision to deploy them. In other words, the capability already exists, but the threshold decision simply has not yet been taken.

Meanwhile, commercial actors expand development at a pace that outstrips diplomacy. Analysts predict that within ten years, AI will become the dominant "military vector," shaping both strategy and battlefield conduct (De Vynck 2023). The result is a widening regulatory gap between the ethics of warfare and the economics of war, with no outright responsibility or obligation explicitly present in the doings of private companies and the business side of the equation which holds power in the production and dissemination of this technology to emerging war parties. The emergence of these technologies, and their subsequent engagement in a conflict zone, brings questions of responsibility and accountability, especially in the context of human rights violations. The following writing will address these concepts with the goal of identifying evident patterns of use of AI systems in warfare around the globe, aiming to illustrate the ever-increasing need for recognition of the relationship between business, Governments, and their joint responsibility towards human rights obligations, or the lack thereof. This will be done through the prism of international conflicts, from the Russian invasion of Ukraine, various conflicts in Africa and Southeast Asia, to the ongoing genocide Israel is perpetrating in Gaza.

2. European context

February 2022 saw a pivotal event for Europe, and for the dawn of integration of AI technology into the war industry. What started off as an attempt by Russia to quickly invade and control the key points of Ukraine including Kiyev, quickly became a war of attrition akin to the Western Front of World War 1. From a war marked by quick movement of soldiers and equipment, the current state of relations in Ukraine are dominated by technology, and in particular AI driven drones. David Kirichenko (2025), a specialist on warfare, specifies that currently drones constitute upwards of 80 percent of casualties on the Ukrainian front, whereas human and other equipment account for less than 20 percent. In the hundreds of thousands, drones and other AI based technology flood the fields of Eastern Ukraine, constructing a nexus of interwoven actors, from Government agencies and their procurements, to companies and startups filling the needed technological gaps in order to produce the adequate answer to Russian aggression. Although fully autonomous weapons have not yet appeared on the battlefield, current demonstration and intent expressed by high ranking military officials point toward increased automation and a reduced role for human oversight. The Ukraine war, therefore, acts not only as a geopolitical confrontation, but a live experiment in the militarisation of AI and the privatisation of warfare.

The information gathered by drones employs AI systems to process vast amounts of data, subsequently pipelined in a way that enables easier identifying of enemy positions, mapping of movements, and launching coordinated responses by the Ukrainian Armed Forces. Though this does not present an intrinsic violation of human rights, the integration of AI systems into unmanned aerial vehicles (UAVs) has been particularly transformative. The Receptor AI, a product of company Quantum Systems, enables Vector drones to lock onto a target and fly autonomously for the rest of the mission (Quantum System 2024). These drones are only starting to unlock their potential, as they are being repurposed from reconnaissance tools into strike platforms (Mamediieva 2025). This, however, is only the precursor to the plans of current military heads. As Ukraine's Minister of Digital Transformation, Mykhailo Fedorov, explained, the country is deliberately pursuing what he calls a "tech war," striving for "full autonomy." According to Fedorov, Ukrainian developers are "training models to recognise targets and understand target prioritisation," with humans still intervening where necessary but "developing different scenarios for taking autonomy further." He further revealed that "some autonomous drones, which we have not announced, have a high degree of autonomy and can potentially combine themselves into swarms," signalling Ukraine's commitment to pushing the technological frontier towards automatisation of warfare (Boffey 2025).

On the Russian side, similar innovations are emerging. Russian military experts have publicised the use of the Lancet-3 loitering munition, produced by ZALA Aero Group, which employs convolutional neural networks to analyse video content during flight, autonomously detecting and classifying enemy targets before transmitting coordinates to attack drones (Pardo de Santayana 2024). Moreover, recent reports by Ukrainian intelligence detail the implementation of AI systems in the V2U Russian drone capable of autonomous decision making. As Beskrestnov explains, "(V2U) navigates autonomously and attacks the target autonomously" (Maksymiv 2025). This integration of neural networks into battlefield operations demonstrates that both sides are relying on AI systems to accelerate combat decisions and reduce human response times.

With extensive United States assistance, Ukraine has become a laboratory for testing emerging AI systems under real combat conditions (Flournoy 2023). Boffey (2025) describes the conflict as being "at the forefront of the global AI and drone revolution." This has created a form of asymmetric innovation, where necessity and resource constraints drive the rapid adaptation of commercial technologies for military use, without much care for the rules and regulations which may guide it toward human rights and responsible business regulation.

From the outset, much of Ukraine's AI innovation was driven by volunteer networks and start-ups rather than State institutions. Firms such as Looksery, Respeecher, and Augmented Pixels initially spearheaded AI-driven solutions before government agencies began building their own capabilities (Bondar 2024). The State later institutionalised this collaboration through initiatives like the Brave1 platform, which provides grants of up to $30 million USD to over 1,500 technology firms engaged in AI and defence production (Kuzio 2025). This ecosystem fosters an unprecedented degree of public-private partnership, enabling rapid prototyping and deployment of military technologies. The Ministry of Digital Transformation has explicitly refrained from regulating AI in the defence sector, arguing that flexibility and speed are essential for wartime adaptation (Bondar 2024). Consequently, more than 500 private defence companies now operate independently of direct State control, producing a range of AI-driven drones and automated systems. The defence company Swarmer, for example, has developed software that allows drones to autonomously prioritise targets, while DevDroid produces AI-assisted machine guns that detect and track human movement, though automatic firing remains disabled due to friendly-fire concerns (Bondar 2024; Abdurasulov 2025).

At the same time, foreign technology firms play a critical role. American companies such as Palantir Technologies, Google, Amazon, and Microsoft have all provided AI infrastructure to the Ukrainian military. Palantir's data integration software, for instance, enables battlefield commanders to visualise and predict enemy activity based on aggregated intelligence inputs (Bergengruen 2024). These partnerships have blurred the boundaries between commercial and military enterprise, granting private actors unprecedented influence over the conduct of warfare, with Bergengruen (2024) noting, "those willing to move fast and flout legal, ethical, or regulatory norms could make the biggest breakthrough."

Multiple actors are implicated in the deployment of autonomous systems, including programmers, software developers, hardware manufacturers, military commanders, and operational soldiers. Each of these actors contributes to the functioning of the system, yet no single entity can be held fully responsible when an autonomous system malfunctions or makes erroneous targeting decisions (Pardo de Santayana 2024; Abudrasulov 2024). This creates a responsibility gap in which violations of IHL, such as breaches of the principles of distinction, proportionality, or necessity, may occur without a clearly identifiable accountable party.

Accountability, thus, is blurred and beyond recognition. State parties and private actors are interwoven, there is no regulation which guides the production and implementation of these systems, other than the ever-collapsing international human rights framework. Although Ukraine maintains a "human-in-the-loop" approach requiring human approval for lethal decisions, the speed and autonomy of these systems increasingly erode meaningful human control. As scholars have observed, when operators merely press a button to approve strikes recommended by AI, their involvement becomes largely reflexive, leaving limited room for ethical judgment (Onderco 2025). Private-sector involvement further complicates accountability. Ukrainian and foreign technology firms provide critical infrastructure, AI models, and data analytics for military operations, yet they are often insulated from legal responsibility under both domestic and international law (Bergengruen 2024; Kuzio 2025). For example, Palantir Technologies provides software that predicts enemy movements, and companies like Swarmer and DevDroid develop autonomous targeting systems. While these firms facilitate military effectiveness, their status as commercial entities operating in collaboration with the State blurs traditional boundaries between civilian and military responsibility (Bondar 2024).

As De Vynck (2023) notes, AI is poised to become the dominant military vector within the coming decade putting an emphasis on the growing centrality of software, data processing, and algorithmic optimisation in modern warfare. The conflict also demonstrates the evolving nature of military-industrial collaboration. Ukraine's AI systems benefit from a combination of volunteer initiatives, start-ups, and State-supported platforms which facilitate rapid prototyping, testing, and deployment (Kuzio 2025). This model accelerates technological development but simultaneously introduces new risks, as private actors gain outsized influence over operational capabilities and strategic decision-making. As the proportion of AI-enabled drones continues to rise, projected to reach 90 percent by the end of 2025, the distinction between algorithmic recommendation and autonomous action becomes increasingly blurred (Kuzio 2025; Kirichenko 2025).

3. Middle East context

The emergence of the Middle East as a primary AI conflict lab has created a regulatory challenge for the lawmakers. This challenge allowed more deployment of advanced military AI-based technology. The best examples are the Israeli AI supported systems such as Lavender and Gospel which serve as important case studies that show the lack of accountability. Lavender is an automated system made to identify the targets by increasing the speed of operation, make it difficult to hold the violator responsible and scatter the accountability between private developers and the State.

3.1. AI-driven targeting vis-a-vis accountability

After October 2023, the Israeli army deployed the AI-driven systems to target individuals in Gaza which does not align with IHL principles, in particular, principles of distinction and precaution.

On one hand, Lavender and Gospel function by creating a list of individual targets in a short time lacking sufficient human verification. Israeli forces totally rely on AI-generated lists to execute their missions bypassing the principle of precaution behind where humans do the meaningful verification.

On the other hand, the principle of distinction, which is heavily human in nature, is entirely given to a machine algorithm to distinguish between what is a target and what is not. This shift makes holding a specific actor accountable in case of legal violation, i.e., State, private actor, developer, and mission operators.

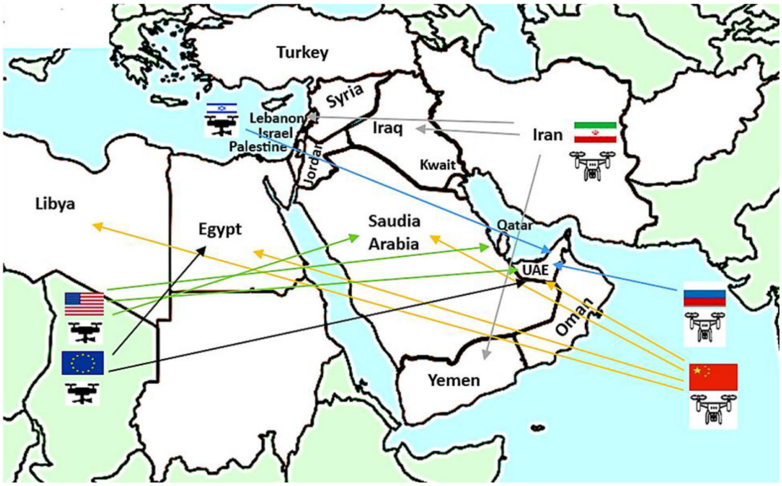

Figure. 1: *Defense based AI and ML trade transaction in the Middle East (Traders & Customers). Source: Authors' own creation.*

3.2. The use of AI decision-support systems by Israel

With the development of AI, the defence sector is likely to see a new kind of arms race for the dominance of these technologies that inevitably change warfare tactics and norms (Garcia 2019). the role and use of AI systems in the war in Gaza played a significant role in the unfolding genocide, with some scholars identifying this as the "first AI-powered genocide" (Fazi 2024). Key Artificial Intelligence Decision-Support Systems (AI-DSS) have been used in a number of ways and have enabled the Israeli Defence Forces (IDF) to substantially increase the scale of its operations and thus, the scale of civilian death and destruction (Dorsey and Moffett 2025).

The main AI systems under examination are Lavender, The Gospel, and Where's Daddy? The Lavender system is an AI-driven database designed to identify suspected members of Hamas by conducting its own analysis of surveillance data to generate targets (Andersin 2025). The Gospel system focuses on operational targeting by rapidly generating recommendations for buildings and structures where militants might be active, suggesting appropriate munitions based on previous target categorisations (Abraham 2024). Lastly, Where's Daddy? uses phone-tracking technology to monitor militants' movements, especially targeting them when they return to their homes, which is a tactic that supposedly confirms their presence and identity (Cvetkovič 2025).

These AI-DSS have significantly accelerated target production beyond human capability (Dorsey and Moffett 2025), aiding faster military responses on a scale that was never seen by human Israeli intelligence services in previous conflicts (Abraham 2023). More broadly, it has been found that within the use of AI-DSS, there is often very little human intervention or verification (Holland 2024; Abraham 2023), resulting in a lack of certainty as to whether the AI system is analysing the data and identifying legitimate targets accurately (Dorsey and Moffett 2025). It has been reported that the only "check" of these AI generated target lists is a determination of whether the target is male (Serhan 2024).

Furthermore, the use of these systems represents a level of automation in warfare that poses serious ethical and legal challenges, with concerns over precision, civilian casualty and the risk to civilian infrastructure such as hospitals, residential buildings and schools, largely due to the speed at which AI-DSS produce targets, the data they use to do so, and the bias that they possess (Dorsey and Moffett 2025).

4. Southeast Asian context

With AI, the militaries around the world have transformed the way they think as well as how they operate, including the countries in South Asia and Southeast Asia region. Powered by AI, unmanned military systems can lower operational costs and political threshold therefore, the use of AI in the defence sector becomes inevitable for most countries (Rahman 2026). Due to being one of the leaders in AI technology as well as its geopolitical influences, China and Chinese tech companies have become the major exporter of AI in the defence sector in the Southeast Asia region.

Countries in the Southeast Asian region are at various levels of technological advancement and economic development. Despite this uneven playing field, the Association of Southeast Asian Nations (ASEAN) has its own policies and guidance on the use of AI, such as the ASEAN guide on AI governance and ethics, working group on AI governance, and ASEAN AI responsible roadmap (2025–2030). ASEAN defence ministers also note the incorporation of AI technologies in the defence sector of its Member States as well as accountability and responsibility in accordance with international laws (Ministry of Defense 2025). Plans for accountability for the use of AI are positive news; however, it is impractical due to its reference to existing international law and the existing gap in international law on the ethical use of AI in the defence industry. One key point that has been mentioned multiple times in ASEAN AI policies is urging the government to support AI start up on both national level and regional levels (ASEAN 2024a; ASEAN 2024b). In other words, ASEAN is trying to promote the role of private actors within the integration of AI in ASEAN.

The use of AI in the defence sector can be seen in two different ways in the southeast Asian region, in the form of lethal autonomous weapons and non-combat functions such as surveillance. Although there are no definitive proof of the use and the existence of AI-powered autonomous weapons within the region, the Philippines has the human resources to further develop AI systems that can be used in autonomous weapons, and Singapore is the leader in the development of AI within the region (Austero and Savage n.d.). For example, starting from August 2025, Singaporean soldiers received training on the use of AI-powered drones (Rahman 2026). In terms of Thailand, the Royal Thai Army initiated the process of integration of AI into defence; however, it is still in the early stages (Bunnag 2022).

The use of AI in non-combat situations as well as the influence of China can be seen in the conflict in Myanmar. The coup in 2021 rekindled multiple decade-long civil wars between ethnic groups and the military (Chambers and Cheesman 2024). The Myanmar military has had long-standing relations with China, especially in the form of technological support. There are three main companies currently supplying military equipment and technology to the junta. Norinco, a State-owned defence corporation from China, has been working with Myanmar's military as early as 2017, with the goal of expanding defence cooperation in Myanmar. Wanbao, which is a subsidiary of Norinco, also supplied 5 to 10 million dollars' worth of goods to the junta in the years 2021 and 2022 as well (Irrawaddy 2025). China is supplying the junta not only with weapons such as drones, missiles, and even fighter jets but also training military officers in arms manufacturing as well (Thura 2025; Aye 2024). The third group of Chinese companies supplying AI power technologies for surveillance and Internet censorship includes Huawei, Danhua, and Hikvision. They are not directly communicating with the Junta, but through two local tech companies called Fisca and Naung Yoe. Danhua and Huawei are mainly providing CCTV cameras to ten different cities in Myanmar, and technology from Hikvision has been used in control rooms (Potkin 2022).

The main usage of AI in the Myanmar conflict is through AI-powered facial recognition and surveillance systems. Although Myanmar received fighter jets and UAVs from China, such as the FTC-2000G and CH-3 and CH-4, most of them are not fully autonomous (Matamis 2025). AI-powered surveillance systems have been used in Myanmar in order to track and identify the opposition (Köckritz 2025). It has also been used for internet and social media censorship as well as location tracking through mobile networks (Graceffo 2025). The companies that are responsible for internet surveillance in Myanmar are Mascots Group from Myanmar as a broker and Tiangou Secure Gateway and Geedge Networks from China (Myanmar n.d.). From AAPP's database (Assistance Association for Political Prisoners), among 2,812 recorded cases, a minimum of five cases were arrested due to something they posted on social media (AAPP 2025).

The use of AI in the defence sector in the ASEAN region is highly privatised. The use of AI in autonomous weapons or non-combat situations is carried out or procured through private companies mainly due to the lack of human resources as well as knowledge to create AI models within the region. With the push through ASEAN AI policies, the role of private actors is going to be increased in the future.

While the ASEAN region is distinguished by the expanding role of private actors in AI-enabled defence, South Asia demonstrates how AI is already altering interstate military conflict.

4.1. South Asia, India-Pakistan conflict

India and Pakistan, the two nuclear States, have the most recent technologically advanced conflict in war history that has the most profound impact on South Asia and world politics. India launched a cross-border strike into Pakistani territory, named Operation Sindoor, on 7 May 2025, and used AI extensively to help target nine locations in Pakistan. During the operation, the Indian military combined real-time sensor data with 26 years of historical military records using roughly 23 locally built AI-driven applications to achieve a 94 percent accuracy rate (Sareen 2025).

After Pakistan shot down French Rafale planes imported by India, Rafale's stock reportedly fell, while Chinese defence manufacturer AVIC Chengdu Aircrafts' stocks rose up to 36 percent (Singh 2025). Both States deployed drones, loitering munitions, and surveillance platforms, aided by AI, marking this episode as one of the most technologically advanced conflicts in South Asia's history.

During the conflict, India claimed it used Israeli defence and aerospace UAVs, like Searcher and Heron, and Harop loitering munitions. It is also adding General Atomics Aeronautical Systems, Inc U.S.-made AI systems with the coming MQ-9B Predator. India has also used home-grown Aeronautical Development Establishment (ADE) UAVs, Dornier Rustom2, and Nagastra1. Pakistani drones were mainly from Turkish Aerospace Industries (TAI) and Chinese defence manufacturer AVIC Chengdu, like Bayraktar and Wing Loong II (Sareen 2025). Songar drones, reportedly used in May, further highlight China as a rival to European, Israeli, and United States private companies' military tech. AI-driven multisensor systems let operators quickly collect and rank targets with high strike success, according to military officials who confirmed AI use after the conflict (Philip 2025). This level of automation is unprecedented in the region and marks a trend toward algorithmic warfare, in which machines, not humans, influence life-and-death choices.

The use of AI and semi-autonomous systems also makes accountability harder (Shahzad 2024), since most targeting software and hardware comes from defence firms like Chinese defence manufacturer AVIC Chengdu, Israeli defence and aerospace, French Rafale, Turkish Aerospace Industries (TAI), and the General Atomics Aeronautical Systems, Inc U.S.

India's reliance on Israel and United States private corporations, and Pakistan's strategic military alliance with China and Turkey, have made this entire India-Pakistan conflict a foreign defence private company weapon exhibition with stock market reaction. The comparison between Rafael and Chinese defence manufacturer AVIC Chengdu during this conflict not only highlights China's advancements in technology and defence weaponry, but it also shows China's ability to compete with private European, Israeli, and United States defence corporations.

5. African context

The global discourse surrounding AI in warfare frequently centres on highly developed geopolitical arenas, yet the African continent provides an indispensable analytical frame for examining the legal, ethical, and accountability dimensions of these emerging technologies. These challenges include fragile State investigative capacities, opaque transnational military supply chains, the operational proliferation of non-State armed groups, complex external State interventions, and corporate opacity.

The operational landscapes of the Democratic Republic of Congo (DRC) and Sudan illustrate how advanced remote platforms interact with existing structural instability. In the DRC, the ongoing conflict mainly involves the Congolese national army and its aligned militias fighting the March 23 Movement (M23) rebel group (Armed Conflict Location & Event Data Project, ACLED 2026). The DRC Government accused Rwanda of declaring war after supporting the rebels with troops, leading to a peace agreement in June 2025 calling for the withdrawal of Rwandan troops and the cessation of support for rebel factions. But Rwanda still denies any support given to the M23 and nothing is yet effective from this peace agreement (Nantulya, Paul, 2026). This backdrop of disputed attribution and cross-border tension directly feeds into the broader accountability gaps surrounding drone procurement and deployment in the region.

The conflict in Sudan began in April 2023 as a power struggle between the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF). The fighting devastated the capital Khartoum, the Darfur region, and other areas, causing a severe humanitarian crisis. With the involvement of international actors such as Iran and the UAE, the RSF has been accused of committing atrocities, including ethnic cleansing (Human Rights Council 2025, 11). The SAF regained control of key territories, including Khartoum in early 2025, but the war continued without a lasting ceasefire. The roots of the conflict lie in Sudan's history of instability, military coups and unresolved tensions following the 2021 coup, and disputes between the SAF and RSF forces over integration (Ayferam 2023).

Analysing the deployment of AI in Africa requires addressing a fundamental connectivity paradox. The continent remains less digitalized than other global regions, with internet penetration in conflict-affected spaces like Sudan falling below 20 percent (Allen and Okpali 2022). This limited digital infrastructure directly impacts the accountability landscape. Low internet penetration severely restricts the capacity of local populations to access early-warning systems, hinders civil society from documenting IHL violations in real-time, limits access to digital evidence repositories, and obstructs the tracking of automated military assets. Despite these infrastructure constraints, AI-assisted weapons and remotely piloted systems are actively deployed in both theatres, but there is no public, well-documented evidence of the deployment of fully autonomous weapons. Instead, these conflicts rely on drones and AI tools that enhance human decision-making, support surveillance, and streamline logistics, while human operators retain control of targeting and engagement (Kuele 2015; Rahmtall 2025).

The risk of lethal consequences and human rights violations from AI-assisted or autonomous elements, even if not fully autonomous, remains a major concern. Sensor misreads, falsified GPS data, or software glitches can lead to erroneous targeting decisions or unintended escalations, thereby undermining IHL's requirements of precaution, distinction, and proportionality ((UN General Assembly 2024, 3). Indeed, for the African Union, IHL applies to all forms of warfare and to all kinds of weapons (Helal 2024, para. 47). While IHL functions as the primary *lex specialis* during active hostilities, IHRL remains concurrently applicable, especially Articles 1, 4, 5, 6, 16, and 18 of the African Charter on Human and Peoples' Rights (African Charter), the 2023 Resolution of the African Commission on Human and Peoples' Rights on Business and Human Rights (ACHPRBHR), and the United Nations Guiding Principles on Business and Human Rights (Guiding Principles).

Field evidence from both the DRC and Sudan demonstrates that the rapid acquisition of drone technology by State and non-State actors has resulted in widespread civilian casualties. Reports indicate that between 2023 and 2024, the DRC acquired nine CH-4 drones capable of launching bombs, and in 2025, Wing Loong II combat drones from Catic, a Chinese company (Mmilitär Aktuell 2025). In 2024, the local militia group Wazalendos, a militia Group used "suicide drones" carrying improvised explosive devices to launch attacks against United Nations peacekeepers (Bah 2024, 3). More recently, on 25 January 2024, around 20 civilians were killed in the town of Mweso, but the M23 and the Government army accused each other of launching the strike (Reuters 2024).

In Sudan, fleets of drones including Turkish TB2s and other platforms are operated by crews and command centres on the ground. Sudan has built a Kamin-25 loitering munition drone (Africa Defense Forum 2025, 13) and on 11 October 2025, the RSF launched a drone strike on a displacement shelter at Dar al-Arqam, killing at least 57 people, including 22 women and 17 children. According to the World Health Organisation Chief, a drone attack on a hospital in Sudan's North Darfur region killed more than 70 people in January 2025 (Reuters 2024). Moreover, the United Nations Children's Agency documented the killing of 11 children by a drone strike on a mosque during prayers (Arab News 2025). Yet, manufacturers and financiers of drone systems supplied to the DRC and Sudan have conducted minimal public due diligence, with little transparency regarding risk assessments or mitigation of potential violations (Verbrugge et al., 16; Turkish Minute 2025).

The deployment of AI warfare in Africa underscores the volatile intersection between advanced military technologies and significant accountability gaps. Addressing this divide requires leveraging international legal frameworks such as the African Charter and the policy organs of the African Union to rigorously enforce transparency across corporate supply chains as part of a broader transitional justice process. Unless the legal responsibilities of manufacturers, brokers, and financial actors are clearly defined and bound to enforceable remedy mechanisms, the integration of automated military technologies will continue to exacerbate civilian suffering in armed conflicts.

6. International law and accountability for private actors

The rapid growth of AI and the involvement of private actors such as tech companies can be seen in every region around the world. This raises a question of who would be the responsible party for the hallucinations or mistakes caused by the AI system. As AI systems evolve toward self-directed operation, it becomes unclear who should be held liable when autonomous systems make errors: the programmer, the manufacturer, or the military user. One of the most relevant international laws for the use of AI in the defence sector would be IHL. The basic principles of IHL include precaution, distinction, and proportionality (UN General Assembly 2024, 3) which has been undermined by the use of AI in the defence sector.

The sole reliance on the AI outputs would not meet the distinction or precaution criteria under IHL. Distinction refers to the principle that "it is necessary to distinguish clearly and objectively the combatants from civilians" (Garcia 2019, 6), whilst precaution is the principle that "before any attack, the parties to the conflict must verify and ensure that the target is neither a civilian one nor subject to special protection" (ibid.). The examples of failure to adhere to the principles of distinction and precaution can be seen both in European context as well as the middle east context.

Due to the lethal consequences of AI-assisted systems, even if not fully autonomous, it remains a major concern. Sensor misreads, falsified GPS data, or software glitches can lead to erroneous targeting decisions or unintended escalations. Automated misidentification between combatants and civilians, algorithmic bias, or errors in predictive targeting could violate both IHL and human rights law, without clear avenues for redress. Furthermore, the ICRC continues to emphasise "meaningful human control," but this principle lacks concrete legal enforcement mechanisms.

In terms of regional mechanisms, it varies based on region by region. For the African Union, IHL applies to all forms of warfare and to all kinds of weapons (Helal 2024, para. 47). While IHL functions as the primary *lex specialis* during active hostilities, international human rights law remains concurrently applicable, especially Articles 1, 4, 5, 6, 16, and 18 of the African Charter, the ACHPRBHR, and the Guiding Principles.

The Guiding Principles have several loopholes for accountability. Similar to the rest of the international laws, it puts the responsibility on States in order to create domestic legal mechanisms that require enterprises to respect human rights. Furthermore, international or transnational enterprises are not a party to international treaties, therefore, they are not legally bound by the international laws. Existing international legal mechanisms are not designed for the businesses. Moreover, domestic legal mechanisms are still lacking in the countries where AI has been incorporated in the defence sector. Neither Ukraine nor Russia has established a domestic legal framework governing the military use of AI, leaving a regulatory vacuum that allows experimentation with minimal oversight (Oliinyk 2025).

7. Conclusion

The increasing integration of AI systems into warfare marks a transformative moment in the conduct, ethics, and accountability of armed conflict. Moreover, it provides for new implications in the involvement of both private and State-owned business in the production and dissemination of this technology across the globe. From Gaza and Ukraine to Sudan and South Asia, the deployment of AI systems illustrates how the intersection of military ambition, private enterprise, and weak legal oversight has reshaped the global security-business nexus. While the scale and sophistication of AI use differ between the aforementioned contexts, the underlying issues of accountability, transparency, and human rights violations remain the same in each and every context.

In Europe and the Middle East, AI has become both an economic and political instrument. Ukraine's "tech war" demonstrates how a State can mobilise private firms and foreign partners to develop autonomous systems that offset conventional war disadvantages. Yet, this development signposts the erosion of meaningful human control in warfare, with AI systems increasingly substituting human judgement in targeting and combat operations. Similarly, Israel's use of Lavender, amongst others, illustrates the dangers of AI-driven targeting when deployed without ethical or legal oversight. The result is indiscriminate and disproportionate killing of civilians in Gaza to the degree of genocide. The cost of modernisation of the defence industry through these systems is felt mostly by civilian populations signifying to us that AI's military utility and potential, without legal and ethical regulations, will supersede humanitarian restraints.

By contrast, conflict in Southeast Asia and Africa reveal a more indirect yet equally troubling pattern where AI systems are utilised for its potential to control, surveil, and suppress masses. In Myanmar, Chinese-supplied AI systems intended for facial recognition and digital tracking have facilitated systematic human rights abuses, but ones revolving around rights to privacy and freedom of expression. A similar development is present in the DRC and Sudan, where Chinese and Turkish made drones and AI systems technology are being deployed on battlefields and in civilian areas by both State and non-State actors. Though the automatisation of AI technology has not reached levels present in Europe and the Middle East, the use of AI systems in Africa and South Asia increasingly underpin the logistical execution of warfare and societal control. These applications, though less overtly militarised than AI-driven drones or targeting systems, underscore that AI's integration in the defence industry risks extending beyond warfare to encompass State surveillance and digital authoritarianism.

Despite contextual variations, the same major powers, China, Russia, and the United States, dominate the development, supply, and export of AI based military systems. Through State-owned, and State-supported private contractors/companies, each contributes to an expanding global market projected to double in valuation, jumping from around USD 9.3 billion to USD 19.2 billion in the period 2025-2030 (Grand View Research 2024). Companies such as Lockheed Martin and Palantir in the US, CASIC and Danhua in China, as well as Rostec and Kalashnikov Concern in Russia, contribute to this expansive economical underpinning of development and incorporation of AI systems into warfare, increasingly prioritising profit over ethics and long-standing pillars of international law (Losey 2025).

To avoid such violations of IHL, it is first recommended that States engaging with AI systems as part of their military tactics adhere to key principles of transparency, accountability and civilian harm mitigation, remembering that these principles are still applicable to AI and are mandatory for legal warfare (Dorsey and Moffett 2025). Meanwhile, the ICRC (2024, 7–8) specifies that further steps should be taken to establish binding legal frameworks that:

- Restrict AI targeting to lawful military objectives,
- Limit operational scope and duration to ensure human supervision
- Prohibit deployment in civilian areas
- Guarantee real time human control and ability to intervene

When considering responsible AI use and accountability from technology companies, conversations have been ongoing regarding the prioritisation of "beneficial intelligence" and "value alignment" within AI use through the Asilomar principles (Garcia 2019). Firstly, to ensure that creators of AI systems have a moral responsibility in their design, use, and actions. Secondly, autonomous systems that are developed will share the same values and goals that drive human behaviour. As such, "the design of such systems must be compatible with human dignity, rights, and freedoms" (Garcia 2019, 3). Such value alignment would apply customary law to the decision-making and actions of such systems. Given the use of AI systems by Israel's military and the observed violations of IHL, it is crucial now more than ever to implement these ideas. The ICRC has issued a stark warning, emphasising that "if algorithms are trained in overly permissive targeting rules, the result will be death and destruction among civilians at greater speed and on a larger scale" (ICRC 2024: 7–8), highlighting the urgent need for careful oversight and strict compliance to protect civilian life.

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Ba Alagie Conteh [et al]. "Bridging global standards and local voices: Aligning the Extractive Industries Transparency Initiative and community-led monitoring to enhance environmental, social, and governance frameworks in mining" (2025) 9 288-312 *Global Campus Human Rights Journal* https://doi.org/10.25330/3218

Bridging global standards and local voices: Aligning the Extractive Industries Transparency Initiative and community-led monitoring to enhance environmental, social, and governance frameworks in mining

Ba Alagie Conteh, Fortunate Chilenje,** Alejandra Valle,*** Mariyam Laiza,**** Adel Ramdani,***** and Navruz Erkaev*******

* Ba Alagie Conteh is from The Gambia. He holds a Bachelor's Degree in Law (LLB) from the University of The Gambia and a BL from the Gambia Law School. He also holds a Master's Degree in International Development Policy and Governance from China Agricultural University, and Human Rights and Democratization from Yerevan State University. Currently working as a Regional Legal Officer, Gambia National Human Rights Commission (NHRC). email: baalagieconteh@gmail.com.

** Fortunate Chilenje is a Zimbabwean environmental human rights lawyer and LL. D candidate at the University of Pretoria, where she also earned her LL.M in Human Rights and Democratization in Africa. Holding an LL. B from Great Zimbabwe University, she has more than six years' experience working within civil society organizations. email: fortunatechilenje18@gmail.com.

*** Alejandra Valle is an international relations professional with +five years of experience in international cooperation development projects focused on human rights, gender, and humanitarian assistance and protection to populations in vulnerable situations, collaborating with the United Nations, international organizations, and civil society. email: alejandravallee.014@gmail.com.

**** Mariyam Laiza is a PhD candidate in Human Rights and Peace Studies at Mahidol University, Thailand. She holds Master's Degrees in Human Rights and Democratisation, and in Education, as well as a Bachelor of Education. She has over 25 years' experience in teaching, curriculum development, training, and development work across Government, UN agencies, and civil society in the Maldives. Email: mlaizaa@gmail.com.

***** Adel Ramdani is from Algeria and has a background in human rights and international relations. He is a climate philanthropy professional based in Geneva. He also serves as co-chair of the advisory board of Radical Ecology in the U.K. email: adelramdani.eu@gmail.com.

****** Navruz Erkaev, Human Rights and Sustainability student at the OSCE Academy in Bishkek. He is originally from Central Asia. Navruz holds a Bachelor's Degree in International Relations and Economy from Almaty Management University in Kazakhstan. Navruz serves as vice-chair for student affairs at PRME Chapter Eurasia. email: n.erkaev@osce-academy.net.

Abstract: *Amongst transnational industries, the extractive sector presents unique challenges, arising from its socio-political and environmental dimensions. Considering the major involvement of these industries in world economies, countries that sit on most of the natural resources often struggle with a lack of transparency and weak governing bodies. This has resulted in the resource curse in which communities meant to benefit from the natural resources face several mining induced challenges like economic stagnation, and severe violations of their human and environmental rights including the right to safe and clean water, right to a healthy environment, and right to food. Reviewing key legal frameworks at the global level, including the Extractive Industries Transparency Initiative (EITI) and the United Nations Guiding Principles on Business and Human Rights, the paper demonstrates that transparency remains deficient across the board. In reality, accountability within the extractive sector continues to follow a top-down framework, contrasting with the need for a tailored community-led approach centred on environmental, social, and governance principles. In this context, this paper argues for an alternative type of monitoring which prioritises the people affected by the extractive industries. Turning to community-led monitoring (CLM) in addition to existing frameworks like EITI, this research illustrates the complexity and the realities of accountability and transparency in mining. In order to make this case, this paper uses qualitative desk research to explore the interactions between community-led processes and EITI, particularly looking at transparency initiatives, participatory governance, and resource justice. It further illustrates that although EITI is essential to ensure transparency through disclosures of revenues, contracts, and beneficial ownership it cannot enforce compliance or manage the highly localised social and environmental factors unique to specific mining sites. Therefore, CLM helps address the gaps left by a standalone EITI approach and suggest pathways for integrating CLM into EITI as a complementary framework that take into consideration the lived experiences of communities to influence decision making. Taking a more critical approach to community-led practices, the research also points out some limitations of this approach including lack of capacity, shrinking civic spaces, and power asymmetries between corporations, Governments, and local actors*.

Keywords: *community-led monitoring; extractive industries transparency initiative, transparency; environmental social governance; corporate accountability*

1. Introduction

Over 50 countries rely on oil, gas, and solid minerals as their primary sources of Government and export revenues (Transparency and Accountability Initiative 2011; Hailu and Kipgen 2017). Extractive industries transform natural resources into products that contribute to sustaining the modern lifestyle of countless people across the globe, with the majority being based in a handful of countries (Schaffartzik and Pichler 2017). Hence, in today's global economic system, extractive industries play a vital role both in the lives of people and in fuelling global food and energy systems. Nevertheless, it also has profound and multifaceted risks to both people and the environment, especially if there is a lack of proper regulations to monitor the transparency and accountability of transnational corporations (Acosta 2010; Besada et al. 2015). The process and outcome of the extractive industries and their operations have proved to cause severe environmental damage that affects peasant communities, rural women, and workers, amongst others. Environmental and social damages include contamination of water and the overuse of water leading to water scarcity, land degeneration and instability, as well as waste generation leading to air and land pollution while the negative effects to vulnerable communities includes loss of lands and livelihoods and human rights violations (Anaf et al. 2019). In addition to this, factors such as overharvesting, unsustainable utilization of resources, and weak regulations can harm the biodiversity and environmental balance (Kippenberg 2024).

These risks are particularly acute in developing countries, where many mines operate in contexts marked by weak regulatory systems, poor living conditions, and limited social protections (Schaffartzik and Pichler 2017). According to UNCAC (2022), although the extraction of natural resources is closely connected to environmental degradation, the linkage is often overlooked and the lack of accountability and transparency in the extractive industries has a higher cost. Hence, strong governance, sustainable practices, and compliance with international safety standards are needed in order to benefit from the industry while reducing its risks. To mitigate the risk of increased corruption in countries with natural resources, social and environmental harms, transparency, civic participation, and public accountability is required (Open Government Partnership 2025).

In response to these governance challenges, global accountability frameworks have emerged. One of the prominent global standards for promoting transparency and accountability by publishing detailed reports is the Extractive Industry Transparency Initiative (EITI). Other accountability mechanisms, including the United Nations Guiding Principles on Business and Human Rights (UNGPs), also provide important guidance for responsible business conduct. However, although global standards and initiatives are important frameworks for accountability it may not reflect all the aspects faced by the communities living near mining sites, such as social, environmental, and governance challenges. Hence, it is important to explore the potential of adopting a community-led monitoring (CLM) approach, as this allows community members to have a say in the decisions that directly affect them and increases the accountability of actors involved in the extractive industries.

1.1. Problem statement

Despite the presence of global mechanisms such as the UNGPs and the EITI, accountability and transparency in the extractive sector are still mainly controlled by top-down reporting and compliance systems (Faanu et al. 2026). These approaches have helped improve transparency, but they stop short at addressing the actual challenges that communities living in close proximity to mining sites face. It is important to explore CLM as a key approach in order to ensure local voices are included, strengthen accountability, and reduce risk of corruption and social exclusion (Oloba and Makuya 2026). However, there is a dearth of research on the effectiveness of these approaches in connection with global initiatives like EITI to improve environmental, social, and governance (ESG) compliance. This paper contributes to that by designing a pathway for institutionalising community monitoring within EITI validation and accountability processes.

1.2. Research questions

The study seeks to answer the following questions to address these gaps:

1. How does CLM enhance transparency and accountability in the extractive sector?
2. What limitations does the EITI face in promoting effective ESG accountability from the perspective of affected communities?
3. How can CLM and the EITI be integrated to strengthen ESG accountability in the extractive sector?

1.3. Significance of the study

This study adds to the existing knowledge on participatory governance and justice of resources by examining how community monitoring works to improve corporate accountability with the use of EITI reporting as well as the challenges the communities face. The study also identifies the best practices of the local and the global systems that support inclusive governance, anti-corruption efforts, and sustainable resource management.

1.4. Methodology

This study adopts a qualitative doctrinal research design based on documentary analysis of primary and secondary sources. Primary sources include international and regional legal instruments, policy documents, official reports, and publications from institutions such as the United Nations, the World Bank, and the EITI. Secondary sources comprise peer-reviewed journal articles, books, and book chapters retrieved from electronic databases, including Web of Science, using keywords such as CLM, extractive industries, EITI, transparency, accountability, and ESG. The collected materials are subjected to critical doctrinal analysis to examine the interaction between ESG principles and the EITI, with particular emphasis on the role of CLM in promoting transparency, accountability, sustainable resource governance, and equitable benefit-sharing. Given the study's global scope, literature published from 2015 onwards is prioritised to capture recent developments in ESG and extractive governance, while earlier sources are included where necessary to provide historical, legal, and conceptual context.

2. Literature review

2.1. ESG compliance in mining industries

Recent literature on ESG compliance in the mining industry highlights an important evolution from voluntary corporate practices to increasingly mandatory legal frameworks. Historically, mining companies relied on voluntary sustainability initiatives, industry standards, or corporate social responsibility commitments to demonstrate compliance (Duho 2024). However, regulatory developments in recent years have begun to introduce enforceable obligations. The European Union's Corporate Sustainability Due Diligence Directive and the Corporate Sustainability Reporting Directive establish clear duties for companies to identify and mitigate adverse human rights and environmental impacts across their operations and supply chains (European Commission 2025). Similar developments include Canada's Extractive Sector Transparency Measures Act and proposed climate disclosure rules by the United States Securities and Exchange Commission. These frameworks underscore a growing recognition that voluntary commitments alone are insufficient to protect rights and the environment (Bueno et al. 2024). Nevertheless, jurisdictional fragmentation and weak enforcement mechanisms continue to limit their effectiveness, particularly in regions with limited governance capacity and heavy dependence on mineral revenues (Amoakoh et al. 2026).

2.2. EITI

A great number of resource-rich countries rely on mineral resources to boost economic growth, yet local people are often deprived of the benefits of natural resources due to corruption and mismanagement leading to the resource curse (Narh 2025). Recognising the negative effects of the resource curse and the lack of transparency and accountability in resource-rich countries, the EITI was established in 2003 (EITI 2024; Sequeira et al. 2016). A coalition of stakeholders, including Governments, corporations, investment institutions, and civil society, came together to establish 12 principles as standards for proper resource management, transparency, accountability, revenue disclosure, and public engagement (Sovacool and Andrews 2015, 185). The EITI establishes a reporting mechanism that requires corporations and State Parties to disclose information regarding resource management, including revenues, mining contracts, beneficial ownership in corporations, production, export, and social and environmental impacts of industrial activities. The initiative is designed to assist stakeholders such as civil society, corporations and Governments to promote and improve corporate governance and resource accountability and make available necessary data for informed policy making (EITI 2025).

The State Parties establish an independent Multistakeholder Group (MSG) that fairly represents key stakeholders, including Government, private sector, and civil society organisations. The MSG monitors EITI implementation and assess compliance of State Parties with the transparency standards through a validation process. Active stakeholder engagement, especially the participation of civil society is fundamental in the evaluation process (Kinda and Thiombiano 2023). A crucial aspect of the validation process includes assessment of civil society involvement and press freedom, fostering community empowerment to scrutinise action of the Government, address mismanagement of resources, and ensure transparency in extractive industries (Sequeira et al. 2016, 5).

However, the voluntary nature of enforcement of EITI principles raises questions on the reason for resource-rich countries to join the EITI. It is argued that resource-rich countries join the initiative to improve their reputation internationally and attract foreign direct investment (Fraser 2022). Foreign investors demand greater transparency as a motivation, which influences their investment decisions (Kolstad and Wiig 2025). Countries with lower transparency levels risk losing investment, so they are compelled by the "transparency incentive" to join EITI and attract investment. The benefits of joining the EITI is highlighted by Svocool and Andrews (2015), illustrating that EITI stimulate access to information to enable citizens to analyse Government revenues and expenditure; improved governance through transparency and accountability for corrupt practices; create a level playing field for companies by minimising unhealthy competition; decreasing political risk such as coup d'etats through strengthening transparency and creating an enabling environment for foreign investment; and fostering interaction with and participation of the community and civil society members.

The main goal of EITI is to promote transparency and open dialogue about resource use for public benefit (Malden 2017, 2). Rustard et al. (2017, 153) categorised the goals of EITI into three groups: institutional, operational, and development goals. Their study finds that implementing EITI successfully met its institutional goals and some operational goals as a global framework, establishing transparency as an international norm and supporting an independent multistakeholder organisational structure at the national level. Although EITI falls short of achieving public engagement and participation, it promotes transparency by allowing corporations and Governments to report resource revenues and encouraging civil society participation.

Meanwhile, the EITI achieved successful outcomes in implementing its standards across continents. The Progress Report 2024 highlights that implementing countries have made significant progress and improvements in transparency and stakeholder engagement. For example, Armenia increased disclosure of mining contracts and beneficial ownership, Ghana and Cameroon expanded public access to information about the extractive sector, Indonesia improved transparency of revenues and licenses, and the Philippines advanced civil society engagement and resource governance (EITI 2024, 10–11). However, the initiative faces limitations beyond those previously noted by Rustard et al. (2016) and Malden (2016). The EITI's scope and implementation are limited, mainly focusing on transparency and revenue disclosure by Governments and corporations. While transparency is vital for better resource management and Government accountability, it does not guarantee good environmental practices or protect the human rights of communities that benefit from their resources (Sequeira et al. 2016, 5). As the focus on corporate ESG performance grows, the EITI is expanding its requirements to include corporate accountability and social responsibility (EITI 2024).

2.3. CLM and ESG monitoring

Industrial activities, especially in the mining sector, cause destructive impacts on the cultures and livelihoods of indigenous communities (Oxfam 2025). Mining operations cause significant damage to the community ecosystem with extensive social and environmental effects, including pollution, biodiversity loss, deforestation, and soil degradation, which lead to migration, urbanisation, and displacement of community members (Joseph 2025). Increasing concern over how to counter and mitigate such consequences and the need to assert community rights over resource extraction give rise to the concept of CLM to promote good ESG performance in extractive industries. In most cases, environmental trends and data on resource management are scarcely available to the policy makers. Danielsen et al. (2022) emphasise that policy formulation and decision-making based on environmental assessment through a top-down interventionist approach are often misguided or inadequate due to data scarcity or lack of information. It is usually difficult for policymakers to understand what is happening on the ground or whether environmental standards are being followed by corporations without a holistic and rigorous monitoring framework involving community members.

CLM is distinguished from other types of engagement or monitoring approaches from two main perspectives. First, it is described based on the idea underlying community engagement, involving empowering community members with the capacity to participate and influence decision-making. Second, the methods used in collecting data use indigenous knowledge, which, although distinct from scientific methods, may involve collaboration with scientists and researchers, utilizing technology and advanced equipment to monitor environmental changes. For Reed et al. (2020), community monitoring is simply the participation of indigenous people in environmental resource management and governance. Community members, together with civil society and grassroot activists, observing, tracking, collecting data, and identifying environmental change and social consequences of the extractive industries (Reed et al. 2020). Community participation in decision-making through a democratic process encourages better environmental practices, good governance, and social well-being, giving indigenous people a voice in resource governance, upholding human rights, and promoting transparency and accountability (Danielsen et al. 2022, 640–42).

Beyond participation in monitoring processes, meaningful community engagement in extractive governance is increasingly linked to the principle of free, prior and informed consent (FPIC). FPIC requires that indigenous people and affected communities are provided with timely and accessible information and have the opportunity to participate in decisions concerning projects that may affect their lands, resources, cultures, and livelihoods (Yakovleva et al. 2023). Unlike consultation-based approaches, FPIC emphasises meaningful participation and consent as a basis for legitimate decision-making. In the context of extractive industries, FPIC provides an important normative framework for addressing power asymmetries between mining companies, Governments, and local communities (Ombella 2021). Integrating FPIC principles into CLM approaches can strengthen the ability of communities not only to observe and report environmental and social impacts but also to influence decisions throughout the mining lifecycle. The Inter American Court of Human Rights (IACtHR) illustrates a similar principle in *Saramaka People v. Suriname* (2007), stating that land rights of indigenous people would be “meaningless” without recognising the right to natural resources. Similarly, a more recent judgment of the Kenyan court in *Save Lamu & 5 others v. National Environmental Management Authority and Amu Power Co. Ltd*, upholding that indigenous community members have rights to participate in resources governance and are entitled to prior consultation (MacInnes et al. 2017).

From the initial stage, community involvement in monitoring environmental performance was limited to data collection on environmental phenomena that are affecting or influencing decision-making. As public awareness of the environmental impact of extractive industries grows, scientists and civil society advocate for greater participation of the community in the policy domain as an important stakeholder for addressing the impacts of resource extraction and promoting transparency and accountability of Government and corporations (Danielsen et al. 2022). The advent of technologies such as the internet and intensified training of local communities on scientific methods stimulates improved data collection and reporting on the environmental performance of extractive industries (Khair et al. 2021, 6–8). Reed et al. (2020, 1279–82) noted that community monitoring has significance in mitigating negative impact and stimulating good environmental performance of extractive industries, including strengthening oversight and early discovery. Community monitoring has been successful in capturing temporal changes in environmental trends, thereby supplementing the failure of the top-down interventionist approach that fails to integrate indigenous knowledge in environmental policy (Buckland-Nicks 2016).

Notably, unsanctioned, non-restrictive, and unchecked operation of extractive industries not only damages the environment but results in far-reaching social implications. For example, the increased attention on energy transition to tackle climate change depends extensively on natural resources, the extraction of which results in environmental harms while the economic benefits are often transferred abroad. However, the framework proved ineffective in the mining sector, considering the nature of the extraction and potential irreparable social and environmental damage that may result from their operation. Spiller et al. (2025, 2–5) illustrated that equitable and meaningful engagement, participation, and monitoring of local people can reduce environmental and financial risk associated with extraction. CLM of extractive industries from pre-exploration stage to post-extraction fosters access to real-time critical information and enhances transparency regarding social and environmental impacts of mining operations, while promoting ESG compliance and ensuring accountability (Yu et al. 2024).

2.4. Gaps and synergies between CLM and EITI

The potential synergies between CLM and the EITI emerge most clearly in relation to transparency, accountability, and participation. The EITI operates largely at the national level, producing structured disclosures of revenues, contracts, and fiscal arrangements. CLM operates at the project level, providing localised and detailed data on environmental and social impacts. When considered together, the two mechanisms can generate a more comprehensive picture of mining sector governance. Community-generated evidence can make EITI disclosures meaningful at the local level, while EITI's reporting framework can provide national and international visibility that amplifies community findings. Both approaches reflect a rights-based commitment to access to information and participation in governance. The EITI's multi-stakeholder groups offer institutional forums where communities can escalate concerns, while community monitoring provides bottom-up data that validates or challenges official disclosures.

While existing scholarship has examined EITI and community monitoring as separate accountability mechanisms, limited attention has been given to the institutional pathways through which community-generated evidence can be incorporated into formal extractive governance frameworks. This study contributes to the literature by developing a conceptual model for integrating CLM into EITI processes, demonstrating how local-level evidence can strengthen validation, stakeholder engagement, and accountability beyond disclosure-based transparency. The most fundamental limitation is the lack of enforcement power in both mechanisms. Community monitors often document violations, but their findings do not necessarily compel regulatory or judicial action. Similarly, the EITI is primarily a transparency mechanism that cannot directly sanction non-compliant companies or Governments. Another challenge is the mismatch of scale. EITI disclosures are produced at the national or sectoral level, while community concerns are highly localized. This limits the direct usefulness of EITI reports for communities facing immediate impacts from mining projects (Li et al. 2025). Civic space is also a major concern. Community activists frequently face intimidation, harassment, and even violence when challenging extractive industries. Although EITI formally guarantees civil society participation, it struggles to protect civic freedoms in countries with authoritarian tendencies or entrenched resource dependence. Finally, empirical studies raise concerns that EITI may contribute to reputational benefits without substantive change in corporate behaviour, creating a risk of greenwashing rather than genuine ESG compliance.

2.5. Identification of the research gap

Despite the growing recognition of CLM and the EITI as mechanisms to improve transparency and accountability in the mining sector, existing literature largely examines them in isolation. CLM generates detailed, project-level data on environmental and social impacts, while EITI provides national-level transparency on revenues and contracts. However, there is little analysis of how these mechanisms can interact to enforce ESG compliance effectively. Transparency alone does not ensure compliance, and community-generated data often lacks formal channels to influence regulatory or corporate behaviour. Consequently, a critical gap exists in understanding how the alignment of CLM and EITI can transform information disclosure into enforceable ESG accountability. This research addresses that gap by examining their combined role in enforcing ESG standards within a human rights-based legal framework, offering insights into bridging the divide between soft governance mechanisms and binding compliance obligations in the extractive industries.

3. Conceptual framework

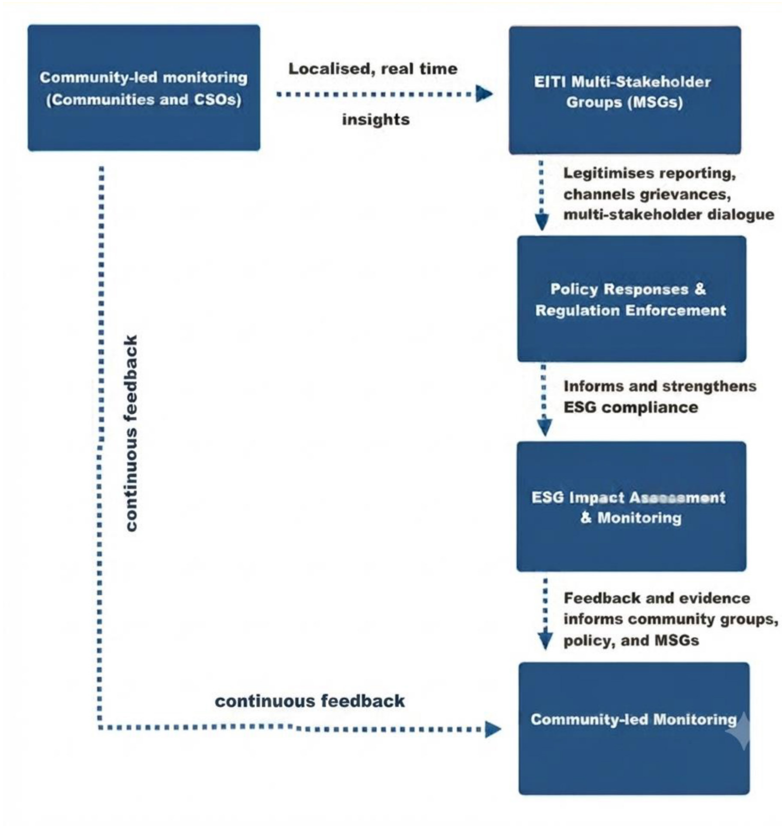

Diagram 1: *Conceptual diagram describing the interaction pathways between community led monitoring and the EITI framework.*

3.1. Explanation of transparency and accountability pathways

Transparency and accountability in extractive industries, especially in the mining industry are increasingly recognised as critical to ensuring responsible management of natural resources. Transparency is achieved through the systematic disclosure of contracts, payments, income, and ESG reports data from both companies and Governments. The EITI is a global benchmark in this area requiring participating countries to publish reliable industry data including production volumes and revenue streams (EITI 2025).

By making such information open and accessible, transparency initiatives reduce information inequality which previously often played into the hands of companies and create the basis for more equitable resource management. On the other hand, CLM initiatives and local reporting mechanisms enhance transparency opportunities by bringing data related to specific mining sites to public discussion. These mechanisms make it possible not only to verify that companies have fulfilled their obligations, but also to identify environmental and social impacts that may not be present in official data. Transparent reporting at the field level facilitates constructive dialogue between companies and communities, allowing timely identification of complaints, risks, or gaps in compliance. Such a participatory process builds trust and ensures that the local impacts of mining are not lost in large-scale national or international reporting systems (EITI 2025).

Accountability is based on transparency, providing mechanisms through which disclosed information can be analysed and serve as a basis for action. EITI's national multi-stakeholder groups which bring together Government, company, and civil society representatives review published data, investigate inconsistencies, and propose necessary reforms (Siyobi 2021). At the community level, monitoring committees and civil society networks ensure control over both the fulfilment of corporate obligations and the activities of regulatory authorities, whether in the field of royalty revenue distribution, access to land, or environmental rehabilitation. Through such mechanisms, affected parties have the opportunity to demand compliance with promises and seek to correct violations. Effective implementation of these interrelated paths of transparency and accountability helps align extractive sector activities with international human rights standards, ESG criteria, and the UN Sustainable Development Goals. They reduce corruption, protect the livelihoods of local communities, and ensure that wealth from natural resources benefits both the local population and the national economy. It is important that such mechanisms shift resource management from closed decision-making structures to a more inclusive framework where power is shared with stakeholders. This approach strengthens trust between communities, companies, and the State and transforms the extractive sector from a source of conflict and inequality into a tool for long-term and equitable and sustainable development).

4. Analysis and discussion

4.1. CLM, transparency, and accountability

Extractive industries are often reluctant to disclose the full scope and impacts of mining operations posing a challenge to transparency and accountability efforts. However, CLM improves transparency and accountability in extractive sectors. The lack of transparency and accountability arises from the inefficiency of top-down monitoring systems (Danielsen et al. 2022). As discussed so far, the existing set of regulations is comprehensive but lacks implementation. Mining companies often bribe authorities and fund political activities, giving them the power to underreport or hide environmental damage, revenue, mining agreements, and even obscure ownership details (Sequeira et al. 2016).

However, effective engagement of the community through the CLM framework strengthens transparency and accountability by building the capacity of local people and empowering them with the know-how and the tools required to monitor mining activities and track changes in the environment (Spiller et al. 2025). A concrete case reported by Pareja et al. (2019, 30) is that of Participatory Environmental Monitoring in Chilibre, Panama of the CEMEX Mining Company. The community members protested against the company for the noise and air pollution caused by their mining activities. The company was compelled to monitor and communicate results on air quality and vibration, and noise, and take appropriate measures, such as rescheduling blasting time to reduce the impact of noise (Pareja et al. 2019). While CLM has successful stories, it encounters numerous obstacles. Governments often lack the political will to safeguard the well-being of the community and guarantee genuine participation in resource management due to corruption, lack of transparency and accountability, insufficient capacity, and a strong desire for national economic growth. Communities are mostly disadvantaged by resource and capacity constraints to effect any meaningful change or oppose unsustainable extraction of resources. Community leaders are vulnerable to co-optation by corporations, pursuing personal interests at the expense of the public. Additionally, mining companies and corporations use strategic lawsuits against public participation (SLAPP) actions as a tactic to undermine, intimidate, or silence domestic activists and indigenous leaders. For example, the mining law of Indonesia that punishes any that oppose or obstruct the operations of the mining companies that have permits to legally operate in that country (Jong 2022).

Moldalieva (2021) shows that notwithstanding the challenges, CLM strengthens oversight over resource extraction. It creates an efficient communication network for community members, strengthening surveillance over mining operations, thereby improving revenue transparency. Communities observe, track, collect data, and report on social and environmental impacts caused by mining companies, such as land degradation, water contamination, and pollution, identifying local health risks, influencing Government responses through lobbying, protests, and petitions, and holding mining industries accountable for their social and environmental responsibilities (Moldalieva 2021). In Nepal, for instance, the Business and Human Rights Resource Center (2025) reported that more than 650 households filed complaints over the Nagdhunga Tunnel Construction Project funded by the Japan International Cooperation Agency (JICA), which resulted in the collapse of the irrigation system and affected natural water sources, requesting JICA to seek a solution and provide remedies, including compensation for damages, providing alternative water resource and employment for affected residents. In Kenya, a CLM group, Save Lamu, in collaboration with other civil society groups won a civil suit against the Kenyan National Environmental Management Agency for issuing a license to Amu Power to extract coal without proper community participation (Kenya Law 2019). As illustrated by Spiller et al. (2025), the CLM framework fosters both top-down and bottom-up accountability, with communities holding Governments and corporations accountable and the Government exercising effective oversight over extractive industries (Spiller et al. 2025). Combining or adopting a dual approach, integrating CLM and EITI, provides a potent framework that takes into existing power dynamics while empowering the community to actively participate in resource governance.

4.2. EITI reporting and power dynamics

EITI provides a comprehensive framework that aims to bring Governments, corporations, and civil society on an equal footing to promote the sustainable development of critical minerals, while also standardising reporting requirements and ensuring accountability. However, the success of such a multi-stakeholder approach has been limited (Institute for Human Rights and Business 2015). It has been demonstrated that although EITI is a promising framework, it fails to account for existing power dynamics that exist between, on the one hand, corporate and governmental stakeholders and, on the other hand, indigenous peoples and local communities (IPLC-led groups), who often suffer the consequences of mineral extraction (Tang et al. 2025).

EITI rightly points out that there is an increasing need to mobilise indigenous peoples and communities living around mining areas so they can benefit from their abundant mineral resources, should they choose to do so. Despite the intention to create an inclusive environment, research demonstrated that Governments and corporations command great power and influence at the board level within the EITI framework, while representatives of indigenous communities are mostly disadvantaged. This grants influential actors not just a seat at the table, but significant authority to shape the rules of the game (Tang et al. 2025). The EITI relies heavily on the willingness of countries to access and provide data and on the openness of companies to support such an approach, which is not always the case, given that the overall sector is among the most involved in foreign bribery cases (Transparency International 2025).

In Guyana, for instance, the Government has attempted to appoint its own convenor as the representative of the civil society in the MSG of the Guyana Extractive Industries Transparency Initiative, which was described as a violation of EITI rules requiring the sector to select its own representatives. Despite intervention from the EITI International Secretariat, the Government's persistent efforts highlight the fragility of formal guarantees of independence (Kaieteur News 2025). Moreover, In

Tajikistan, EITI's universal system and voluntary approach proved ineffective in less democratic countries due to weak fundamental challenges, such as weak State capacity and insufficient civil society engagement, which have led to repeated suspensions. Its membership has been described as playing a "window-dressing role" without solving challenges of sustainable resource management and development (Maxudova and Kaoru 2026).

While many Southern African Development Community countries have committed to promoting value addition to minerals prior to export, it is crucial to seize the current global demand and high prices for minerals essential to the energy transition. However, several concerns persist. First, questions remain about Africa's capacity to move up the value chain in green technologies. Second, there is a lack of transparency in agreements being signed with external powers such as the European Union and the United States. These deals often lack clarity on the economic benefits and specific initiatives beyond battery plants, while excluding civil society and host communities from the conversation. Third, Governments continue to repeat the mistake of sidelining communities in resource governance. Lastly, there appears to be little attention from both Governments and companies to the ESG impacts of mining activities (Ndubuisi et al. 2025).

It is shown that a framework based on the voluntary commitment of Government and corporation is vulnerable to the realities of power dynamics (Robinson 2023). Powerful nations and large corporations can bribe Government agents to forestall and undermine disclosures and accountability. The lack of trust and tension reveals realities of power dynamics and limits of EITI framework, calling for the need to mainstream and integrate CLM into resource governance.

4.3. Interaction of CLM and EITI to enhance ESG compliance

As discussed above, EITI has made significant improvements in corporate governance, particularly in corporate disclosure, such as in Armenia, Ghana, and Cameroon. As demonstrated in literature, EITI implementation improves transparency but does not guarantee any real accountability of corporations for environmental harms caused to the mining communities (Rustard et al. 2017; Dashwood et al. 2022). Many resource-rich and corrupt countries participate in the EITI initiative to attract foreign aid or investment by improving their international reputation without genuine commitment to accountability, and the EITI reports often lack detailed accounts of local realities (Rustard et al. 2017). For instance, East (2023) concludes that implementation of EITI fails to improve accountability in Zambia due to information deficiency and a power imbalance between mining companies and local communities.

Combining CLM with the EITI initiative guarantees good ESG performance of extractive industries through a comprehensive framework to promote greater transparency and accountability. Active and direct community participation in resource management allows local people and civil society to monitor mining activities using indigenous tools and knowledge to gather information and track the social and environmental impacts of resource extraction, thereby improving transparency and accountability of companies and Governments (Reed et al. 2020). CLM also has limitations exacerbated by scientific knowledge gaps and Government corruption. This includes constraints concerning capacity, and inadequate access to information about the full impact of extractive activities (Reed et al. 2020). As Dashwood et al. (2022) highlight, the community's ability to hold entities accountable heavily depends on having access to actionable information about mining activities and the power to influence decision-making. Previous studies, as discussed, show that CLM successfully influenced Government and corporate policies in Panama, leading to a change in the extraction schedule (Pareja et al. 2019). A similar outcome was reported by the Business and Human Rights Resource Center (2025) in Nepal.

While the CLM framework and EITI initiative have limitations, they complement each other to facilitate ESG performance of extractive industries. On the one hand, the EITI framework obliged States and corporations to report and disclose resource revenue, payments, and beneficial interest in resource extraction, filling the information gap and allowing community members access to critical information about who to hold accountable. For instance, Dashwood et al. (2022) noted in Ghana that disclosure of royalty payments by mining companies to the district authority in the Ashanti region empowered the community members to demand greater transparency and accountability, requesting the Government to direct resources to community use. On the other hand, CLM provides ground-level and real-time data that support the enforcement of EITI standards by holding Governments and companies accountable. To ensure progress towards meeting EITI standards, Myanmar established numerous CLM bodies with a committee to monitor open-pit mining and report violations of mining laws and regulations and negotiate compensation for the violation of the rights of the affected community. For instance, violation of human rights was reported by the mining committee in Heinda and Bawapin mining areas regarding concession overlapping community land, the use of toxic chemicals in open-pit mines, and severe pollution, leading the Government to investigate and subsequently denied renewal of license to the company responsible (Van Der Broek 2019). Despite weaknesses in both CLM and EITI considered separately, their interaction enhances ESG accountability and oversight. CLM, through mechanisms such as protest and petition based on grassroot level data, enhances social and environmental accountability and influences decision making, while EITI implementation stimulates transparency through disclosure, thereby improving corporate governance. The integration of CLM with broader rights-based approaches, including FPIC, can further strengthen accountability by ensuring that communities are not merely sources of monitoring data but active participants in decisions affecting their rights and resources (Ombella 2021). Consequently, aligning CLM and EITI as a dual but complementary framework provides a best practice to ensure ESG compliance through transparency and accountability.

4.4. Institutional pathways for integrating CLM into EITI processes

Having examined the complementary nature and pitfalls of CLM and EITI, the study will now explore pathways to integrating the framework. The first pathway is to give formal recognition to communities as producers of knowledge for resource governance. Conventional extractive governance often relies on technical assessments produced by companies, consultants, or State agencies, while community observations are treated as anecdotal or informal (Iqbal et al. 2026). However, research on participatory environmental monitoring demonstrates that local communities can generate reliable and context-specific information, particularly regarding environmental changes, livelihood impacts, and ecosystem degradation (Rickard and Oliveira 2018). Under this framework, CLM would function as an early-warning and evidence-generation mechanism within extractive governance. Community monitoring data could include water quality observations, biodiversity changes, rehabilitation failures, social impacts, and compliance with community agreements (Damonte et al. 2026). The originality of this pathway lies not simply in recognising community participation, but in recognising community-generated data as a legitimate input into formal accountability systems.

The second pathway concerns the institutional location of community evidence within EITI governance structures, particularly the MSG. The MSG is the central institution responsible for overseeing EITI implementation and includes representatives from Government, companies, and civil society (EITI 2022). However, existing literature has raised concerns that MSG participation does not always cater for power dynamics because technically and politically powerful actors may dominate decision-making processes (Mubita et al. 2017). Integrating CLM into MSG processes would require moving beyond general civil society participation towards structured representation of affected communities and community monitoring organisations. This could include dedicated community seats within MSGs, recognition of community monitoring reports as agenda-setting documents, and requirements that MSG deliberations respond to documented community concerns (Wilson 2016). Such an approach would transform communities from consulted stakeholders into institutional participants in extractive governance.

The third pathway concerns EITI validation. Validation currently evaluates whether implementing countries have fulfilled EITI requirements, including disclosure obligations, stakeholder engagement, and governance outcomes (EITI 2025). However, validation largely assesses whether transparency mechanisms exist rather than whether disclosed information reflects realities experienced by communities affected by extraction (Wilson et al. 2021). Incorporating community monitoring evidence into validation would allow EITI to assess not only procedural compliance but also practical outcomes. Community-generated reports could provide evidence regarding whether companies comply with environmental obligations, whether consultation processes are meaningful, and whether disclosed information corresponds with local realities (Kaonda and Neil 2026). This would require the EITI International Board and national MSGs to develop criteria for assessing the credibility, verification, and relevance of community-generated evidence (Kinda and Thiombiano 2023).

The fourth pathway connects community monitoring with corporate accountability mechanisms. Existing ESG frameworks increasingly require companies to establish grievance mechanisms, including under the UNGPs (United Nations Human Security Unit 2023). However, grievance mechanisms frequently fail where communities lack information, distrust corporate processes, or fear retaliation. CLM can strengthen these mechanisms by generating independent evidence that supports complaints, facilitates dialogue, and monitors whether agreed remedies are implemented (Harrison and Wielga 2023). Rather than replacing corporate grievance systems, CLM can provide an independent community-based verification mechanism capable of assessing whether corporate commitments are fulfilled (Harrison et al. 2024).

The final pathway concerns the conversion of transparency into enforceable accountability. Both EITI and CLM face limitations because neither mechanism independently possesses sanctioning authority (Murombo 2021). Disclosure without consequences risks becoming symbolic compliance, while community monitoring without institutional recognition may produce evidence without remedy. Therefore, CLM–EITI integration should create referral pathways linking community evidence to environmental regulators, human rights institutions, parliamentary oversight bodies, and judicial mechanisms (Farah and Junker 2022). Through these channels, information generated at the community level can trigger investigations, compliance actions, and remediation processes. This pathway addresses the central weakness of transparency initiatives which is the gap between knowing about harm and responding effectively to it.

5. Conclusion and recommendations

This paper has argued that EITI has established itself as a global benchmark for transparency and disclosure in extractive governance, requiring the reporting of revenues, contracts, ownership, and environmental and social impacts. EITI has also fostered multi-stakeholder dialogue, offering civil society channels and mechanisms to oversee and report Government and corporate practices. However, its voluntary nature means compliance is often motivated by reputational and investment incentives rather than genuine commitments to equitable governance, limiting its ability to move from disclosure to enforceable accountability and structural reform. As a result, EITI risks becoming a tool for reputational gains and greenwashing instead of ensuring real accountability and protection for affected communities. Despite its comprehensive framework, EITI has limited impact on addressing entrenched power imbalances between corporations, Governments, and IPLC-led groups. Without binding accountability and genuine community inclusion, EITI risks reinforcing existing inequalities rather than promoting sustainable and just resource governance. In this context, CLM complements EITI by bringing local-level data on social and environmental impacts to national disclosure processes. Yet, the lack of enforcement power, fragile civic spaces, and risk faced by community actors severely undermine its effectiveness. Therefore, neither EITI nor CLM is capable of ensuring effective ESG accountability when operating in isolation.

Following from the above, these recommendations seek to strengthen the complementary operation of both EITI and CLM and address the gaps identified throughout this study. It is proposed firstly to create or invite different organisations with legal authority to independently monitor mining activities, ensure compliance with environmental and social standards, and openly share their findings with the public. By promoting transparency and encouraging active participation from citizens – especially from IPLC-led groups – this approach helps prevent powerful interests from taking control, while supporting accountability and sustainable practices.

Secondly, It is important to create local, multilingual and low-cost but efficient community complaint mechanisms, such as phone lines, apps, or in person safe spaces with clear pathways for investigation, remedy, and sanctions in order to ensure that affected communities can report concerns easily. This strengthens accountability and promotes timely and effective responses to human rights violations. To safeguard local voices and community monitors, it is proposed to establish and consider protocols that protect activists and community monitors. This must include physical protection, measures against intimidation, and secure channels for reporting human rights violations. Also, strong legal safeguards are essential to ensure that those defending rights and monitoring projects can operate without fear, reinforcing transparency and the rule of law.

It is recommended to implement formal channels for community monitoring data – such as reports, evidence, geolocation, and photos – to be validated and referenced in national EITI reports. Regional pilot programmes should enable multistakeholder groups to include community representatives with technical access and dedicated budgets.

This approach strengthens transparency, ensures that local knowledge informs national reporting, and promotes meaningful participation and oversight of mining and extractive activities. Lastly, extractive governance frameworks should incorporate FPIC principles and establish mechanisms that protect meaningful community participation.

6. Limitations and areas of further study

This study has three main limitations. First, as a desk-based qualitative study, it relies on existing literature and documentary sources and does not capture the lived experiences of communities, companies, and State actors directly involved in extractive governance. Future empirical research involving community-based fieldwork could provide deeper insights into the practical realities of CLM implementation.

Second, due to the global nature of the collaborative authorship, the study adopts a broad comparative approach across different extractive contexts, which limits its ability to account fully for country-specific legal, political, and socio-economic factors. Further research focusing on specific jurisdictions or mining projects could examine how EITI and CLM operate within particular governance environments.

Third, while the study examines transparency, accountability, and ESG compliance, it does not extensively explore the role of binding legal mechanisms and remedies for corporate violations. Future studies could investigate how community-generated evidence and EITI disclosures can be integrated into regulatory, judicial, and grievance mechanisms to strengthen enforceable accountability.

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Chryssa-Danae Geranastassis and Adel Ramdani. "Rethinking human rights education through radicality in the twenty-first century polycrisis" (2025) 9 313-323 *Global Campus Human Rights Journal*
https://doi.org/10.25330/3217

Rethinking human rights education through radicality in the twenty-first century polycrisis

Chryssa-Danae Geranastassis and Adel Ramdani***

Abstract: *The paper aims to assess the meaning of "radicality" in the context of human rights, and consider how this concept can be applied to human rights education. Concerned about multiple crises currently unfolding, the authors argue that the voices of young people should be amplified while supporting their ability to critically assess the issues of current systems and their negative effects on the rights of groups disadvantaged by oppressive systems. This includes the importance of dismantling Eurocentric approaches to human rights within the university context and the willingness to allow discussions around decolonial, courageous and radical thinking and action. Beginning with a brief analysis of the notion of radicality within the human rights framework, the paper then explores its importance in various forms of advocacy. Finally, the findings are translated into an educational context to offer educators food for thought.*

Keywords: *human rights education; radicality; decoloniality; activism; solidarity; multilateralism; polycrisis*

Disclosure: AI-assisted language editing using DeepL Write was employed to improve grammar and style. The tool did not influence the scientific content or conclusions.

* Chryssa-Danae Geranastassis is a Berlin-based legal trainee. Previously, she worked on EU foreign policy in Brussels, as well as for NGOs in Germany and Greece. She has focused her work on a wide range of human rights issues, including Europe's asylum policies.

** Adel Ramdani is from Algeria and has a background in human rights and international relations. He is a climate philanthropy professional based in Geneva. Adel also serves as co-chair of the advisory board of Radical Ecology in the United Kingdom.

1. Introduction: A historical perspective to radicality

Given the concerning developments that are currently unfolding, it seems particularly relevant and timely to ask: could radicalising human rights education contribute to maintaining the human rights framework's relevance in an increasingly extreme world? As much as human rights are supposed to function as a moral compass that everyone agrees on, reality draws a different picture. We are currently witnessing the biggest attacks on human rights and the multilateral system as a whole, including international humanitarian law, since its creation in the aftermath of World War II (Amnesty International 2025; ICJ 2025; United Nations 2025; ICRC 2024; Siddiqui 2025). The international multilateral system appears to be prone to a deep existential crisis (Wilson 2020).

Before approaching the multifaceted term of "radicality" (Poole 2015), it is important to situate the global context of human rights. Starting with a quick discussion around systemic risks, also referred to as "the polycrisis," helps in situating and making the case for further radical approaches to human rights education. The modern world's polycrisis, including climate change as well as several armed conflicts, and its effects on multilateralism's credibility has led many observers and experts to wonder about how the late stage of capitalism will unravel (Işikara 2022; Harris 2021). Mack Penner (2022, 152) comments on the polycrisis by arguing that the crisis of capitalism is the result of industrial humanity's "deformed relationship with the natural world." It has been argued that the systemic and existential threats developing all over the world cannot be addressed simply by taking a technical approach, but rather necessitate to first and foremost look at the "deep-structural dysfunction lodged at the very heart of our form of life" (Fraser and Jaeggi 2018, 2). Samuel Moyn (2018, 236) concluded that the emergence of the human rights system in parallel with the "death of socialism" was no coincidence. He highlighted that human rights are invaluable for fighting for a basic minimum living standard, yet they have failed to achieve equality. He then linked this to phenomena such as the incorrectly labelled "refugee crisis" and stated that ignorance toward equality results in harmful dynamics, including populist movements. In line with these arguments, there has been an increasing number of conversations around the need to link human rights education with the deep rooted elements that sustain the current capitalist model, namely colonialism, extractivism, and extreme wealth accumulation. For instance Gruber and Scherling (2020) argue that it is essential to "combine the question of genuine decolonization of human rights education and peace education with a critical examination of the neoliberal paradigm."

Having established that the human rights framework is embedded in the neoliberal order, it seems particularly important to have a conversation around the need to revive its radicality. This is a rather disappointing development considering that the establishment of human rights as a universal moral framework was once considered radical in itself as it asserts moral imperatives over State sovereignty (Lamb 2018). Nowadays, even States that might be prone to frequent human rights violations would only rarely admit that they disregard the international human rights system. However, this has not significantly improved the global human rights situation. Instead, we are witnessing a status quo that almost passively accepts grave violations of the framework. The global backlash on human rights is something dangerous for everyone, including future generations. At the same time, it might offer a window of opportunity. Because only a flawed system can be dismissed so easily, which demonstrates the need for reform and safeguards. So, where is the best place to discuss improving the multilateral system? It is unlikely to be among the same people who have promoted it for decades without acknowledging its flaws and it is unlikely to be among those who have ignored the injustices perpetuated by the current systems. We argue that a crucial part of the discussion should be taking place in universities. By young people and eventually for young people as this generation will have to live with the consequences of inaction – the consequences of a world in which a genocide can take place without accountability, people seeking safety drown right in front of our eyes, and a waste of resources for conferences that address such issues only painfully slowly, if at all. We need to use the current momentum that shows what exactly is not working and use it to create something better.

The following paper is divided into three parts. First, we discuss what radicality means in the context of human rights. Second, we assess how we can advocate for human rights, in a radical manner. And lastly, we use the findings to assess what this means for human rights education. Throughout this paper with normative character, we analyse the idea that human rights education globally is not radical enough. As human rights professionals with academic backgrounds in political science, international relations, and law, we aim to highlight some of the topics that were missing from our human rights education. Although we recognise that our own academic experiences may not reflect the entirety of the human rights academic field, we use it as the basis for our analysis in the hope of sparking a debate that will encourage educators to allow more radical approaches to human rights advocacy in their teaching.

2. Assessing and defining radicality

The need to inject more radicality into human rights education refers to the reality that most human rights advocates still establish their normative frameworks from within the Western liberal order (Berger 2023). The Overton window for human rights advocates remains largely influenced by what is commonly accepted from a Western point of view (Woldeyes and Offord 2018). Radical refers to the need to take a look at what is "pertaining to roots," which implies that a political use of "radical" requires to reach down to the very roots of the topic of discussion (Poole 2015). To think and act radically today is to swerve preexisting conventions tactfully. It is, in a word, "to disidentify with the dominant discourse and power." T. J. Demos (2021, 23) describes radicality as "the desire for fundamental societal transformation." This definition will be the basis used in this paper when referring to "radicality." In this context, power appears to be a key variable in situating radicality, particularly with regard to who is given power and why.

In today's world, defenders of human rights are globally discredited, attacked, or prosecuted by those who hold the power to do so. As previously mentioned, human rights, the idea that each and every one of us are born with the same rights and a concept initially created to function as a common ground between all nations, is questioned; making it, unfortunately, once again a radical concept in itself in today's twenty-first century.

Nevertheless, it remains challenging to provide an objective definition of what exactly is "radical" or what "radicality" represents in a human rights context. What is perceived as radical largely depends on the stakeholders involved, the geographical context as well as the political reality that is shaping a particular situation. However, it is possible to assess the normative framework that currently surrounds the creation of human rights knowledge, and what approaches and tactics are underrepresented when educating the next generation of human rights professionals. A key trigger to the development of this topic is the emergence of a new world order where the human rights normative framework, which is largely Western-led, is being openly challenged by emerging nations that operate under different paradigms. This is where the notion of "radicality" emerges. In this context, it does seem crucial that human rights professionals must embrace a decolonial process to move away from a mainly Western-centric approach to its interpretation and operationalisation. In other words, what place is left for radicality in a human rights normative framework which is largely Western-led?

This comprehensive system of laws, principles, and institutions that define, promote, and protect human rights is largely produced in the Global Minority, or if based in the Global Majority, acting as an entry point for "Western" interpretation as opposed to a grounded, locally-led and owned outlook on human rights. Speaking of human rights as an institutionalised framework of ideas, values, and principles implies to look at the historical circumstances under which it came into existence. Many of the components that make the Universal Declaration of Human Rights very much predate the establishment of the Declaration itself and subsequent legal frameworks and institutions. Recognising that human rights is not a Western liberal idea, but rather finds roots across cultures and geographies, opens the door to a broader debate looking at the extent to which human rights can be tapped into to resist Western-led colonialism and extractivism, as well as imagine and promote a world beyond Bretton Woods institutions. Taking away the perceived centrality of Western human rights allows for educators to free themselves that human rights can only be fully fulfilled as part of a liberal Western society.

3. What is radical human rights advocacy?

It is not sufficient to merely promote or discuss radical ideas when teaching human rights, we must also discuss how to translate them into practical action and positive results. There are two main approaches to human rights advocacy. The first approach is advocacy from within the system, in which civil society organisations participate in international human rights mechanisms such as the Universal Periodic Review, or meet with decision-makers. The second approach is advocacy from the outside: protests, strikes, boycotts and other forms of activism that come from the people. System-conform advocacy is not radical, but foreseen. Even when conducted by a movement such as Amnesty International, it is in line with the system created to uphold human rights. Pressure imposed from the outside, however, has the potential to be radical. The question is, what makes certain forms of activism radical and are they ultimately more successful than advocacy from within.

We have already assessed that radicalism can be defined as opposing the status quo. However, this does not necessarily mean that "radicals" have to opt for radical means to promote their ideas. According to Bötticher (2017, 75), this is one aspect that distinguishes a radical from an extremist– radicals do not have to be violent, but according to her definition, they are often open to rational argumentation. At the same time, as mentioned earlier in this paper, radicalism is context-dependent. Thus, a radical form of action in one context can be entirely "normal" in another (Bee and Chrona 2023, 722). In a nutshell, it is difficult to determine when an action can be described as radical. However, it is necessary to discuss, also in a university context, which (radical) means might be necessary to achieve change when the tools provided by the international framework seem insufficient.

Therefore, in the following paragraph, we will briefly discuss the necessity of human rights advocacy outside of established systems. We will divide this advocacy into four typical forms of activism and invite the reader to discuss its potential further, including in a university context.

1. Social media activism

The undeniable importance of social media in human rights advocacy is clear. For smaller non-governmental organisations, social media is crucial for fundraising. For large institutions such as the United Nations or the European Union, it bridges the gap with society by highlighting their importance and successes. For individuals, social media is often performative; it is supposed to show that one cares. We most likely all vividly remember the AI-generated "All Eyes on Rafah" picture that went viral in 2024. More than 47 million people have shared it (Davies and BBC Arabic 2024) – at a time when the outrage over Israel's military actions in Gaza had already reached the mainstream. The mere sharing of the post has little to do with radical activism. However, it is interesting to consider whether the judgement would be different for social media engagement that sparked an entire movement.

Noelle-Neumann (1977) has coined the term "Spiral of Silence" to describe the phenomenon that people tend to adapt to the opinion they assume is prevalent in their surroundings and keep their, possibly differing, opinion for themselves in order not to risk isolation. Consequently, it is the fearless that are capable of initiating change of the public opinion and eventually related policies (Noelle-Neumann 1993, cited in Đurđević 2025, 92). Đurđević (2025) has applied the theory on one of the most successful online campaigns of our generation, the #MeToo movement, which eventually left the mere online sphere and had tangible results on the lives of women globally. The same applies for the Black Lives Matter movement, which also started on social media and eventually became a global mass protest (Maqbool 2020). Of course, the movement could not overnight change the issue of systemic racism. But it led to people questioning themselves and their beliefs. It led to people educating themselves and reflecting on their own problematic behaviour. Radical was not sharing the black square on Instagram, but what happened afterwards: Something shifted in the core beliefs of the majority. We tried to unlearn. And unlearning, as well as means to promote the process of unlearning, should find its way in the curricula of human rights courses.

2. Collective activism

Collective activism can take up different forms, including but not limited to protests, strikes and boycotts. Whereas not every collective action can be described as "radical," we argue that there is a decisive factor that qualifies certain collective actions as radical, which is the question if we are dealing with an act of solidarity that leads to a power-shift towards the local level. Kapczynski (2018) used the example of HIV/AIDS activists to describe how solidarity can be built at the local level, while still using international human rights institutions. Radical activism does not mean that institutional action becomes obsolete – instead the aim should be that both complement each other. Kapczynski rightly concludes the necessity of shifting our idea regarding where the human rights movement takes place. It should not be limited to Geneva, Brussels, and New York, but also be present on the streets when people come together because they perceive a situation as unjust and eventually decide to stand up against it in solidarity.

Evidently, not every action taken is effective. Collective action can be disruptive but should be targeted and useful. And universities could be one of many places to discuss how action can be created in an inclusive, non-performative, and consequent manner. Human rights education should include discussions about what every single one of us can do to strengthen human rights. And how this can be achieved in a collective manner, as the individual rarely holds the power to initiate change (Bee and Chrona 2024, 729).

3. Civil disobedience

Civil disobedience is partly defined by the "use of illegal actions" (de Gaia 2012), and is therefore likely to be perceived as radical by the majority. Indeed, acting against a State's existing legal framework falls under the definition of radicality assessed at the beginning of this paper. In Germany, civil disobedience has found its place in law school curricula, as Gustav Radbruch's formula (1946, 107) – developed in the aftermath of the country's crimes under the Nazi regime – is widely discussed. Radbruch argued that positive law generally deserves priority, but can be disregarded if it goes against the principle of justice to an unbearable extent. Mégret expanded the threshold for civil disobedience to include not only international crimes as defined by the International Criminal Court, but also systematic human rights violations and the undermining of democratic systems (Mégret 2008, 29). He also highlights civil society's growing use of civil disobedience in violation of domestic law to fight for rights enshrined in international legal frameworks (Mégret 2008, 3). A good example is the Extinction Rebellion movement, which states in their declaration of rebellion (2019): "to secure the solutions needed to avert catastrophe and protect the future. It becomes not only our right, it becomes our sacred duty to rebel." Eventually, discussions around legitimacy, usefulness and necessity of non-violent civil disobedience are highly relevant in today's context of multiple crises and therefore merit a multidisciplinary discussion in universities that assesses not only historic success stories, but also questions of legitimacy and (unjust) criminal liability.

4. Violence

Beyond non-violent civil disobedience lies the question of whether violent means can ever be legitimate when confronted with extreme injustice. Given the highly controversial nature of this topic, the widespread belief among human rights advocates that harmful means cannot be justified, and the potential incentive that discussions around this topic might offer, debates about the legitimate use of violence are rarely touched upon in university and non-university contexts. This paper does not argue for the necessity of violence for the sake of human rights. However, it argues that violent means should be discussed in an academic context to understand why some people perceive it as their last resort and how to prevent this. This question is particularly relevant when discussing the right to self-determination. Freeman thoroughly analysed the issues underlying the right to self-determination, including the presumption that the Western-model of a nation-State functions as a "universal recipe for stability and justice" (Freeman 1999, 358). He furthermore highlights the international community's reluctance to argue in favour of a right of secession, which potentially promotes the use of violence instead of preventing it (Freeman 1999, 369). Human rights education should address these issues, with the aim to promote peace and security while recognising systemic injustices and the oppression of peoples globally. Palestinians are currently receiving the most attention when discussing the right to self-determination, also due to the horrific events unfolding in Gaza for many years, and in particular since October 2023. Nevertheless, an interview Abu Moghli (2020, 18) conducted with a Palestinian student in 2014 captures what the disregard of the rights of a people can mean for their perception of human rights: "It does not matter what methods we use to resist, we will always be dehumanized and called terrorists." Abu Moghli (2020, 18) then suggests that human rights education becomes meaningless if it fails to establish a connection to lived oppression. Therefore, educators should aim to provide practical pathways to human rights advocacy that take into account people's lived experiences. By doing so, they can offer alternatives to violence while expanding traditional means of advocacy. Ultimately, the goal must be to comply with the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, which specifically asks for peaceful means to promote human rights (UN General Assembly 1998). Nevertheless, it is necessary to discuss why people opt for violence instead and how this can be prevented.

5. Conclusion and implications for human rights education

System-aligned human right advocacy often misses radicality and the willingness to give up power and/or privileges. It is therefore our responsibility to act in solidarity with those who are not protected by a system that is still deeply embedded in differentiations on the grounds of skin colour, passports, financial backgrounds, and other characteristics that perpetuate privileges for some and disadvantages for others. In order to disturb this dynamic, we need both radical thinking and radical action. And as discussed in this paper, traditional human rights education in universities is one of the most important avenues for transformative change.

Nevertheless, some aspects need to be kept in mind. First of all, universities remain places that are not open for everyone. Access to education is still a privilege and discussions about human rights, including its radicality, should be accessible for all. People with lived experiences of human rights issues are more likely to bring greater diversity to debates than people for whom such issues remain theoretical. Besides universities, non-formal human rights education should not be disregarded and can represent an important tool to ensure that the majority of people do not feel alienated by human rights discourses and have access to them if they wish so.

Human rights education should be bold. It should aim to distance itself from Eurocentric perspectives, strive to be sensitive in its language, and open to discuss decolonial theories. Keet and Rafaely (2025, 470) thoroughly assess the correlation of human rights and decolonisation and suggest that the discourse around the latter can be particularly more critical in comparison, because it has not been as institutionalised as human rights yet. Nevertheless, we should aim to show the same level of courage when it comes to educating on human rights.

We would like to conclude this paper by suggesting a couple of recommendations that universities could adopt to enable more radicality throughout their curricula:

1. **Enable** students to critically analyse existing legal frameworks and question their inherent biases.
2. **Elevate** the stories of those who are least represented in conversations about human rights and recognise their legitimacy as sources of knowledge.
3. **Encourage** greater access to knowledge production centres in the global majority, moving beyond the usual centres (e.g. Brussels, Geneva, New York).
4. **Expand** the range of people and countries studied to include contexts that are often overlooked.
5. **Establish** greater legitimacy for non-formal advocacy methods (e.g. civil disobedience) free from assumptions and prejudices.

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Global Campus Human Rights Journal https://doi.org/10.25330/3216

Re-reading the world: Critical pedagogy as a tool of transitional justice

*Quoc Khai Bui**

Abstract: *Paulo Freire (1921–77) was undoubtedly one of the most influential pedagogical theorists of the twentieth century, inaugurating an entirely new direction for education worldwide. He also served as a special consultant for the World Council of Churches, where he championed democracy and the rights of marginalised communities throughout Latin America. Most importantly, after the end of authoritarian rule in Brazil, he returned to the country and participated in its transitional justice (TJ) process as the Secretary of Education in São Paolo. Given these strong synergies between his critical approaches to This paper thus seeks to explain the causes of this research gap using bibliometrics. education and the aims of TJ, it comes as a surprise that thus far there have been no attempts to evaluate the potential of Freirean pedagogy within a transitional context. It will also provide a preliminary analysis of the applicability of Freirean methods to TJ based on an existing account of a literacy class in El Salvador. Its findings are that the lack of attention for Paulo Freire was attributable to the unwillingness of many TJ scholars to go beyond the established "toolkit" and the dominance of English as a language of publication in the field (Freire wrote exclusively in Portuguese, although many of his works have been translated into English). It also found that Freirean pedagogical methods can contribute to TJ process through its use of generative themes which commemorate past atrocities at a grassroots community level and its open-ended curriculum which encourages learners to critically examine their current situation and formulate plans for future actions.*

Keywords: *Paulo Freire; critical pedagogy; transitional justice; commemoration; social transformation; generative themes*

*Quoc Khai Bui is currently an undergraduate student majoring in international relations at Tokyo International University. His research interests are political polarisation in democratic contexts, transnational extremist movements, and the role of pedagogy in deradicalisation.quockhai082004@gmail.com.

1. Introduction

Paulo Freire was without doubt among the most influential educators of the twentieth century: his book *Pedagogy of the Oppressed* in 1968 was an instant bestseller in both its Portuguese original and English translation. More than high volume of sales, his innovative reconceptualisation of education as revolutionary dialogue helped create the field of critical pedagogy in particular and contributed to the development of critical theory in general. Nonetheless, Freire's impact 50 years on in academia seems much more constrained than his image in popular consciousness. More specifically, critical educators (see interviews near the end of Freire 2018) have consistently warned against the "domestication" of his ideas and their incorporation into neoliberal educational theory, devoid of the original context which made his writings so revolutionary. Perhaps even worse than domestication is complete silence: outside of certain pedagogical and literary theory circles, Freire seemed all but forgotten, even when his thinking should be most relevant, such as in the field of transitional justice (TJ).

There are two main research questions which this paper will address: 1) why have Paulo Freire and other authors within the critical pedagogy space been largely ignored by the field of TJ as a whole, despite their prominence within social justice movements throughout the world? and 2) how can we harmonise critical adult education programmes with larger TJ efforts? For the former, bibliometric research is used to show that TJ, due to the way research has been organised and classified by indexers such as Web of Science and Scopus, unwittingly reproduces neoliberal and Anglocentric assumptions, thus hindering wider appreciation for Freire who himself did not write in English. For the latter, a previous Freirean-based adult education initiative in El Salvador (as reported by Purcell-Gates and Waterman 2000) will be critically analysed according to the criteria laid out by Murphy's (2017) theory of TJ to reveal how such initiatives can be integrated into larger TJ efforts in general.

This paper is organised as follows: first, the background section will briefly introduce Paulo Freire and his contributions to social (and transitional) justice throughout Latin America; second, the literature review will summarise the ongoing debate between "orthodox" and "transformative" TJ scholars and its impact on the inclusion of various mechanisms within the TJ "toolkit"; third, mixed-method bibliometrics and thematic review will be used to show the current under-appreciation of adult education as a TJ tool; fourth, based mainly on a close reading of Purcell-Gates and Waterman's auto-ethnography of their experience leading a Freirean-based literacy class in rural El Salvador (2000), there will be a speculative discussion on the principles of integrating adult education into wider TJ efforts; lastly, the conclusion will summarise the foregoing and offer direction for future praxis.

2. Background

2.1. A brief biography of Paolo Freire (1921–97)

1962, Recife. A group of Brazilian sugarcane workers gathered for an extraordinary experiment. Paulo Freire, who had by then spent decades refining his pedagogical approach, would teach them how to read and write the word; and in turn, they would teach him how to read and write the world. This first Freirean literacy class (which he termed "cultural circle"), whose goals were achieved in an unprecedented 45 days, proved beyond doubt the effectiveness of his revolutionary methods over the traditional methods of literacy education (Oxman 2017). The implications for the whole of Brazil were enormous: a literacy test was then in use to prevent many illiterate adults from exercising their democratic right to vote (Martínez Fritscher et al. 2010). Many Catholic and progressive groups thus sought to replicate the Freirean cultural circle on a nationwide scale with the support of then-President João Goulart in order to permanently move the country's political landscape in a more equitable direction. However, this plan never materialised due to a military coup in 1964, whose leaders immediately exiled Freire and his associates from the country in fear of the threat this humble teacher posed to the old order (Freire 2018, original foreword by Shaull).

Undeterred, Freire remained active in his capacity as a special consultant for the Geneva-based World Council of Churches and brought his methods to marginalised peasant and Indigenous communities throughout Latin America. In 1968, he compiled his reflections on educational philosophy in *Pedagogy of the Oppressed*, which was swiftly banned by the authoritarian regimes of the region. An instant classic, progressive educators around the world found much valuable insights from such ideas as the banking method, conscientisation, teacher-student dialogue, and reading the world. With Brazil starting the slow return to democracy, in 1980 Freire returned to the country to resume his interrupted work once again. In 1988, he became the Secretary of Education in São Paolo, and was instrumental in the city's implementation of TJ through his educational reforms. Even so, Freire continued to travel around the world to showcase his revolutionary pedagogy to teachers worldwide until his death in 1997 (Pace 1997).

2.2. Principles of Freirean pedagogy

His voluminous work and tireless advocacy have made a significant impact on the field of education. Adult education in particular was shaped by his work: his philosophy has been successfully applied not only to teaching the economically marginalised, but also those who were socially excluded due to their race, gender, or religion, as evidenced by the voluminous praise in the series of interviews with many veteran educators near the end of the fiftieth anniversary edition of *Pedagogy of the Oppressed* (Freire 2018). His central contention runs thus: in a truly democratic classroom, it is the students who take the lead in posing practical problems as class material. Teachers and students then join in discussion to research the issue and analyse its relationships to the greater social structures controlling their lives before finally finding ways to transform their current situations (Freire 2018). In this way, the students have the initiative to shape the curriculum around their lived experience instead of having the curriculum imposed upon them by educational (and political) authorities.

It must be noted that a Freirean education is explicitly political: for him, reading the word is not an apolitical activity wherein the readers let themselves be filled up with knowledge from truthful sources but rather a constant conflict in which readers use their own pre-existing knowledge of the world to critically evaluate the written word before arriving at a synthesis which would allow them to objectively recognise and potentially overcome the contradictions in their lives (which he termed "limit-situations"), whether imposed upon them or by them on others (Pouwels 2019). Indeed, Freire (2018) went so far as to declare domination a "fundamental theme" of the modern world and liberation (or "humanisation") the objective of all progressives. From this first pair of themes flows the other "generative themes" so central to his educational methods: these are certain words, phrases, or pictures which highlight an unequal aspect of the students' lives that can then be used to inspire discussion and reflection. Therefore, in a Freirean-based class the students not only learn how to read and write the word but also to analyse and transform the world around them.

Such an approach has clear synergies with TJ initiatives. Indeed, a recurring theme throughout the latter has been the difficulty of making moral and legal judgments "stick": from Hungary (Kovács 2008) to East Timor (Kent 2011) and Rwanda (Waldorf 2020), there seems to be an eagerness from many sectors of society, especially those who had benefited and continue to benefit from past repression, to simply move on and forget once the truth commissions and the special courts have completed their mandates. In these contexts, what is needed is not expansive monuments or elaborate rites (see Salemink 2022) but rather community-level initiatives which bring people together to critically reflect on the generative themes of the past and thus arrive at the blueprint for a more hopeful future. However, until now education, not to mention critical education, has only been integrated into TJ in an ad hoc manner, bolted onto recommendations wherever convenient. To understand this reluctance to expand the "toolkit" of TJ, it is necessary to first review the ongoing debate between orthodox and transformative TJ scholars.

3. Literature review

This literature review section aims to compare and contrast orthodox and transformative approaches to TJ through reviewing their accounts of fundamental areas of research: the goals of TJ and the acceptable "toolkit" for practical application. The aim here is to show how orthodox TJ usually fails to consider almost any mechanisms that fall outside the usual package of trials, truth commissions, lustration and vetting programmes, reparations, and amnesties; meanwhile, transformative TJ is still in a relatively early stage of development, which means that the implications of its approach are not yet fully comprehended.

3.1. Accountability or transformation? The conflicting goals and tools of transitional justice

One of the most common refrains made by TJ scholars is this: TJ is Janus-faced, the Roman god who can simultaneously look forward and backward (Teitel 2003; Murphy 2017). This statement is meant to signify the twofold goals commonly associated with TJ: accountability for past crimes and reconciliation for a better future. Such a dual purpose has also been echoed by Kofi Annan's official United Nations report: TJ is "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" (2004, 4). Indeed, many working for international organisations such as the United Nations and the European Union or various human rights non-governmental organisations (NGOs) would go further in making the point that reconciliation is impossible without criminal accountability (Salvioli 2023) or at least acknowledgement and apology for abuses prior to political transition (Zalaquett 1991). However, this perception of the complementarity of peace and justice arose largely in the 2000s: indeed, one of the academic controversies which spurred the development of early TJ scholarship in the 1980s and 1990s from the Aspen Institute conference to the New York Charter 77 Foundation conference is how States should navigate the seemingly unresolvable contradiction between the two (Leebaw 2008).

In many regards, no single TJ mechanism can address the two above goals by themselves, which is why at present TJ efforts usually combine several different mechanisms in the hopes of maximising impact. Nonetheless, Leebaw (2008) made a convincing case that the residual tensions between these two goals should not simply be ignored. For example, the goal of countering impulse for violent revenge, which is strongest at the beginning stages of transition, is complicated by the need to observe due process throughout prosecution processes which will most likely not finish until the end of the transition period, not to mention the risk of guilty individuals being released due to lack of evidence. The lesson is clear: trade-offs between peace and justice can be minimised through well-designed TJ mechanisms, but never completely eliminated.

Faced with such an impasse, scholars tend to place more emphasis on the one goal, though rarely to the exclusion of the other. On the transformative side, Murphy insists that both accountability and reconciliation are necessary in her formula of the "just pursuit of societal transformation" (2017, 112). However, her discussion of short- and medium-term "just pursuit" clearly emphasises only those TJ designs which support the other goals of long-term "societal transformation," namely strengthening the rule of law, restoring institutional and interpersonal trust, and empowering citizens; meanwhile, such emphasis is lacking in her discussion of the latter's relationship to the former. A prominent critique of Murphy (2017) from an orthodox perspective was more open in its priorities. Walker (2018) made the point that transformative scholars have long criticised, and orthodox theorists long valued, the conventional TJ "toolkit" of trials, truth commissions, lustration and vetting, and reparations precisely because they are designed to achieve accountability by punishing perpetrators and compensating victims with no consideration for societal transformation. More concerningly, Millar and Lecy (2016) have observed a tendency for scholars in these two camps to severely limit their communication with the other camp and instead respond only to voices from their own side.

In relation to these two prominent stances, Freirean pedagogy leans decisively towards the forward-looking transformational approach. Nonetheless, Freire (2018) emphasised that prior to any revolutionary action, both the teachers and the students must first fully understand the mechanisms of social control that dominate their lives through attending to the history of past abuses. Only when they have held social forces responsible for entrapping them within these "limit-situations" can teachers and students actively engineer and conduct revolutionary 'limit-acts' which would allow them to break through to fuller humanity.

3.2. *Legal or socio-economic? The contested tools of transitional justice*

In light of this troubled history, the recent consensus which has coalesced around the conventional TJ "toolkit" as defined by UN Secretary-General Kofi Annan (2004) in his report should not be taken for granted. Indeed, recent research has cast doubt on the ability of these "orthodox" TJ measures to fully address the needs of the present in relation to both the past and future. Firstly, criminal prosecutions, even if limited to only "the most responsible," are extremely costly with ambiguous impacts (Kerr 2020). Even decades after the war in Yugoslavia ended and the International Criminal Tribunal for the former Yugoslavia finished its mandate, there is still a great reluctance from most participants to acknowledge the harm done to "other" groups although such truths have already been definitively established by prior fact-finding commissions (Pavlaković 2019).

Horne (2014) has also shown that lustration and vetting programmes in European post-Communist countries actually undermined trust on an interpersonal level, which would certainly impact the prospects of social reconciliation and healing in the future. Furthermore, long been held in esteem since Hayner's (2011) trailblazing work, the ability of truth commissions to actually reveal the truth and lay the foundation for future criminal accountability may also have been overstated as the sobering accounts by Kent (2011) and Teló et al. (2021) revealed. Finally, reparations delivered in a way insensitive to the recipient's culture and sense of identity as a victim, something virtually guaranteed to happen given the reduced State capacity in most transitional contexts, can risk revictimisation and invite social ostracisation (Schulz 2018).

In place of the patchwork of measures which characterised the orthodox approach to TJ, scholars advocating for social transformation have been more receptive to opening up the field. This more welcoming stance is due in large part to the more goal-oriented approach adopted by the transformative side in the debate. As such, it is important to once again briefly review the goals of transformative social justice as outlined by Murphy (2017): social transformation achieved through just means. From these twin goals, she successfully developed a complete theoretical account of the unique demands of TJ without any attempts at categorising the existing tools in the field. Such an omission was unsurprising, as she, and many other transformative TJ scholars, recognised the ambiguous results of the current "toolkit" and as such wished to leave the space open for new tools to be introduced into the field should they meet the criteria set out by her theory.

Naturally, this invitation has been eagerly accepted by scholars working in adjacent fields such as cultural anthropology, memory politics, and art theory, leading to important interdisciplinary work. These new contributions range from debt forgiveness (Gray 2007) and construction of local memorial spaces (Willard 2022) to performative art (Drexler 2022). The recent work on integrating education, and Freirean education, into TJ will be discussed in greater detail in the bibliometric analysis below.

4. Bibliometric analysis

4.1. Overview of bibliometrics

Statistical bibliography first emerged as a method of research in the 1920s with the work of E. Wyndham Hulme at Cambridge University (Lawani 1981). However, the true impetus for growth of this form of research came only with Pritchard (1969) who renamed the method to bibliometrics to avoid confusion with the bibliography of statistics, by then another established field. Since then, this method has experienced enormous development alongside the other two commonly used methods of meta-analysis and systematic literature review (Donthu et al. 2021).

Bibliometrics can be defined as the application of quantitative methods to bibliographic data (citations, author name, publications, etc.)

to discover systematic patterns or relationships within a given body of literature (Donthu et al. 2021). This method has been widely adopted for use throughout the sciences and humanities, ranging from healthcare (Guo et al. 2020) and business economics (Donthu et al. 2021) to chemistry (Yilmaz 2020) and adult education (Nylander et al. 2020) due to its ability to swiftly analyse vast numbers of papers while avoiding the potential biases a human reviewer usually has.

Despite its popularity in many other fields, bibliometric analysis was only recently applied to the study of TJ and peacebuilding (see Millar and Lecy 2016). A possible reason for this is that the field itself only developed recently and as such the amount of research remains manageable for a human reviewer employing the other two techniques mentioned earlier. However, as Millar and Lecy (2016) has shown in their identification of the two major disconnected strands of literature emphasising accountability and reconciliation, this technique has enormous potential to aid scholars in identifying clusters of research and potential gaps in the existing literature.

Following Nylander et al. (2020), this paper will first briefly review how indexation affects the ability of non-Anglophone scholars to participate in the field. After this basic overview has been established, citations will be explored in greater detail through a thematic exploration of TJ papers which referenced Freire, all of which unfortunately remained rather unengaged with Freirean philosophy of education, preferring instead to borrow only certain concepts from his approach to bolster their own. Finally, there will be a few speculative comments on the reason why the field of TJ has not accepted Freire as a member of their academic community.

4.2. The current state of transitional justice

Larsson (2009) posited that there now exists an "economy of publications and citations," essentially the measures used by outside authorities such as Governments and international organisations to efficiently judge the output of an academic or an institution and allocate their limited resources accordingly (funding mainly but also official recognition and prestige). Such judgement is far from impartial, however, and the prioritisation of citations, number of publications, and impact factor can create perverse incentives. As Fire and Guestrin (2019) have observed, each of these metrics has been compromised: authors are citing themselves more than ever, the average number of authors for a paper has greatly increased, and the papers themselves are becoming shorter. However, alongside such misuse of bibliometrics for grant funding, authors are also developing new critical ways to utilise this method to uncover hidden power relations within academia.

A prime example of this dynamic can be seen in the practice of indexation. Originally developed to help organise and classify research, major indexation authorities such as Web of Science and Scopus have now acquired authority as "gatekeepers," with the ability to decide what type of scientific research is 'high-quality' (Nylander et al. 2020). This paper will mainly rely on Scopus as that is the only database the author has access to.

Up to 2025, only one TJ journal has been indexed in Scopus, the *International Journal of Transitional Justice* (IJTJ). However, TJ's closely related sister-field, peacebuilding, has significantly more representation on the platform with four journals: *Peacebuilding* (PB), *Journal of Peacebuilding and Development* (JPD), *African Conflict and Peacebuilding Review* (ACPR), and *Asian Journal of Peacebuilding* (AJP). Further expanding the search query to all "peace"-related journals produced 25 results; nonetheless, many of these journals are irrelevant to the present topic as they are focused on nuclear disarmament. As such, the rest of this analysis will be solely focused on the TJ and peacebuilding journals.

The first noteworthy detail about this small collection of journals is how they are classified by Scopus. Despite all being focused on similar topics, these five journals are classified under four different fields: Law (IJTJ); Political Science and International Relations (PB; JPD); Cultural Studies (ACPR); and Arts and Humanities (miscellaneous) (AJP). On the one hand, such a fragmented base of knowledge seems to confirm Millar and Lecy (2016)'s claim that the two fields are currently drifting apart from each other into law-dominated and psychocultural theory-dominated halves. On the other hand, it is possible that the managers of Scopus simply have issues categorising such inherently interdisciplinary fields as TJ and peacebuilding. In the final analysis, even if such categorisations are not important to active researchers in the field, it can skew the perception of outsiders, for example those coming from a critical pedagogy background, who wished to contribute to the ongoing academic conversation.

In contrast to the prior fragmentation in terms of subject areas, the language of publication is unsurprisingly uniform: all five journals accept only submissions made in English. That English has become the lingua franca of the academic world in recent years is not a new discovery (see Nylander et al. 2020); Larsson (2009), commenting on this issue, raised the point that the hegemony of English (and American-English as specified by AJP, a journal based in Seoul) risks isolating non-Anglophone research communities and obscuring their contributions from the greater research world. Furthermore, this hegemonic status of English also has troubling implications for the ongoing top-down v. bottom-up controversy in both fields. Although there have been calls to incorporate more "voices from below" into the field (Lundy and McGovern 2008), the fact remains that outside of researchers, aid workers, and their interpreters, most TJ participants are not proficient in English. As such, the latter's comments require translation before they can be incorporated into publishable TJ research (see, for example, the many interpreters named by Hayner (2011) in her acknowledgements). In this process, Anglophone scholars require only one round of translation from the local language to English, but non-Anglophone scholars may require several rounds if they have not conducted the initial fieldwork in English. This adds further complexity to their research should they choose to submit their work to one of the indexed journals listed above.

The language barrier which divided Anglophone TJ scholars and those who are part of TJ processes on the ground also separated the former from non-Anglophone research. Indeed, the reception of the Portuguese-speaking Freire in the academic world is most likely impacted by this dominance for two reasons. Firstly, even though the basic principles of his theory were already expressed in *Pedagogy of the Oppressed*, Freire continued to develop and modify his methods in response to critiques from other pedagogy scholars, such as feminists and critical race theorists, throughout his lifetime (Freire and Macedo 1995). Although parts of this later body of works have been translated into English, much remains available only in Portuguese. Secondly, the contributions of other non-Anglophone authors to Freirean pedagogy also risk being overlooked if they are not already translated into English. Without sufficient engagement with both the English and non-English portions of this body of literature, there is the risk that insights from critical pedagogy will be "watered down" to fit with pre-existing TJ theories, as explored in the next section.

4.3. *Current engagement with Freire in the transitional justice literature*

The analysis will now move on to evaluate Freire's impact, if any, on the study of TJ as a whole. Firstly, the intersection between TJ and education is a relatively new development. Cole (2007), writing in the very first issue of IJTJ, claimed that until then educational reforms have been conspicuously absent from TJ scholarship. She thus provided a starting point for discussion by reflecting on how history education can play a central role in democratic consolidation using the case studies of Germany and Japan. Since then, there has only been modest development in this subfield which remained largely centred on history education (see Bentrovato 2017; Davies 2017). In fact, Bellino et al. (2017) made the case in their systematic literature review that despite strong synergies between education and TJ, the research volume explicitly linking the two fields remains low. As explored below, the connections between critical approaches to education and TJ are even more sparse.

Searching Google Scholar using the key words "transitional justice" and "Freire" yields disappointing results: only two papers with significant numbers of citations, both firmly in the transformative TJ camp, have included Freire in their bibliography. First, Gready and Robins (2014) invoked Freire's notion of conscientisation as similar to the transformation of victims into independent agents which in their view should be the proper end goal of TJ efforts. Second, Shefik (2018), in his analysis of participatory art as a source of valuable information for TJ measures, mentioned the Freire-inspired theatre form developed by Augusto Boal (2008), *Theatre of the Oppressed*. In the first case, as Bellino et al. (2017) have observed, we see once again the instrumentalisation of Freire: his theory did not form the starting point for reflection but rather parts of it were carefully selected to support the author's desired end results. The second case was more faithful to Freire as the author emphasised how Freirean democratic principles can be applied throughout the entire collaborative process of making a play; nonetheless, he did not stress the point as the paper was focused on participatory art rather than pedagogy. There is thus a need for a complete account of how Freirean pedagogy can be applied to TJ contexts as part of broader transformative efforts.

5. Synergies between a Freirean-based curriculum and transitional justice

The analysis in this section will be based largely on the work of Purcell-Gates and Waterman (2000) in the rural El Salvador village of Papaturro in the aftermath of the 13-year long civil war there (1979–92). The village itself was a former plantation which had been abandoned during the war and resettled afterwards by refugees from various regions, who collectively purchased the land with their reparations money and converted the whole area into a farming cooperative. In this respect, the story of Papaturro shared many parallels with Willard's (2022) account of the indigenous Maya Mam village in Guatemala.

Although some of the men in the village had already acquired basic literacy skills during their time as refugees, most women remained illiterate and were thus unable to fully participate in communal spiritual activities and governance duties. Learning of their circumstances and their desire to learn how to read and write, Robin Waterman, a United States-based instructor, volunteered to lead an all-female literacy class in the village as part of the larger literacy programme *El Movimiento de las Mujeres de Custlacan* and to send regular reports throughout an 18-month period to Victoria Purcell-Gates who then authored the book. The two main lessons for TJ gained from this critical look into a Freirean-based class are as follows: open-ended curriculum and commemoration through generative themes.

5.1. Open-ended curriculum

Perhaps one of the most important features of Freire's education philosophy is the emphasis he places on democratic equality of students and teachers. Indeed, the entirety of chapter 4 from *Pedagogy of the Oppressed* (Freire 2018) is dedicated to the various ways in which the banking model has stripped the learner of their dignity and perpetuated the domination of the haves over the have-nots. In contrast to this, Freire (2018) stressed the importance of a critical teacher's genuine engagement with the people and the necessity of organising any classes around themes which are relevant to the learners' lives.

Purcell-Gates and Waterman (2000) echoed this dedication in their own discussion of how to design a Freirean-based curriculum. Firstly, Waterman herself moved to Papaturro to live in a small adobe similar to the rest of the villagers. She then actively participated in the everyday life of community members, assisting women learners in their domestic chores while actively recording any major events in their lives, such as their struggles to read drug prescriptions from the local pharmacy or reactions to the installation of a water pump. Such events are then transformed into the generative theme with which she starts each literacy class, at least in the beginning. The women would then be asked to speak on the theme and listen to their classmates' thoughts before writing a short extract related to the day's theme. In later stages of the class, where the women learners had already acquired a rudimentary knowledge of reading and writing, the teacher would often ask them to choose generative themes for the class themselves and lead the discussion. Such a participatory approach to learning ensures that the learners can freely choose to learn topics and words which are most relevant to their lives.

Although this approach is indeed resource-intensive in the beginning due to the low student-to-teacher ratio (as Purcell-Gates and Waterman (2000) frequently lamented), it has strong potential to become self-sustaining over time as the authors themselves noted that many women learners were eager to teach one another outside of class or even volunteer in the literacy programme as assistant teachers themselves. This is entirely in accordance with Freire's (2018) vision of a community of independent learner-teachers supporting one another's quest for humanisation long after the end of official support. Such an open-ended and learner-directed curriculum has strong potential in many TJ contexts which have long suffered from insufficient sensitivity to local customs and traditions (Schulz 2018).

5.2. Commemoration through generative themes

Generative themes do not only serve as a tool to engender mutual literacy; they can also hold potential for commemoration of past atrocities. This fact has seemingly been overlooked by both TJ researchers and Freirean educators. This is surprising as Freirean principles have already been successfully transplanted to the participatory art field as a form of memorial practice (Shefik 2018). However, a close reading of chapter 2 from Purcell-Gates and Waterman (2000) shows the great effectiveness of this approach.

In chapter 2 (which is chronologically close to the end of the literacy class), Waterman asked her learners and other men in the village to narrate to her the story of the founding of Papaturro. Interestingly, the authors seemed to have intended the section as no more than historical context for the book; however, the resultant stories, as collectively told by the villagers, revealed a strong desire to commemorate the event. The narrative started before the war with the poverty and political exclusion of the *campesino* (peasants), then moved on to their victimisation by both government forces and leftist insurgents throughout the conflict, climaxing with the infamous massacre at Lempa River in which the army killed 250 unarmed refugees. Afterwards, the story turned to the villagers' experience in a Honduras refugee camp where some were inspired to teach themselves how to read and write so as to avoid similar victimisation in the future. Unfortunately, the story ended prematurely (due to late hours) before reaching the actual construction of the village, which would have provided strong comparative material with Willard (2022)'s account.

Throughout the session, it is striking how closely aligned the storytellers' experiences are to what Murphy (2017) has described as the social circumstances which called for TJ: pervasive structural inequality (limited access to education and healthcare); normalised political and collective wrongdoing (pre-war landlord-tenant relations and the Lempa River massacre); serious existential insecurity (fear that peace agreement which ended the war will eventually fail); and fundamental uncertainty about authority (the need for the *campesino* to self-organise to become independent from the Sstate). Like Murphy (2017), they also consciously link these disparate experiences of oppression and precarity together with various generative themes, including *miseria* (extreme poverty) and *operativas* (scorched-earth operations by the army). This unintentional harmony in knowledge between TJ theory and Freirean practices revealed the great potential of generative themes as a means of commemoration in the aftermath of widespread abuses, possibly deployed together with more traditional mechanisms in the TJ toolkit such as truth commissions.

6. Conclusion

This brief linking of Purcell-Gates and Waterman's ethnography (2000) to the greater TJ literature has hopefully been sufficient to convince practicing scholars and social workers of the enormous potential Freirean education holds for transitional contexts. It is unfortunate that Freire had not received greater recognition and acceptance from the field, a situation due in large part to the continued Anglophone dominance over the field's fragmented research. Indeed, Freirean educational philosophy, as have been reviewed near the beginning, not only had great synergies with transformative approaches to TJ but had also been applied to a Brazil undergoing democratic transition by Freire himself in his capacity as São Paolo's Secretary of Education. Unfortunately, the author cannot provide an analysis of Freire's programme at this critical juncture due to lack of proficiency in Portuguese; nonetheless, this forgotten history of early TJ practices certainly holds much promise for future research.

Another avenue of research is through expanding the scope of analysis through collecting new evidence. Due to the paucity of evidence, this paper is mainly focused on only one well-detailed instance of a Freirean literacy class. However, Purcell-Gates and Waterman (2000) themselves stress the necessity for Freirean educators to adapt to their learners' needs. As such, currently active Freirean programmes worldwide provide another potential window for insights into how his educational methods can support TJ initiatives.

Finally, Freirean pedagogy is not the only school of critical pedagogy. TJ scholars should also turn to the work of other prominent educators in this field, such as bell hooks, for potential lessons on the construction of power relations prior to and during transitional contexts. TJ as a field of study has long benefited from basing their analyses on theories from other fields such as ethics, law, international relations, political science, and more recently cultural and art studies. Further fruitful interdisciplinary exchanges should thus be encouraged in order to help scholars better understand how to achieve the ultimate goal of transformation, namely the creation of a society where everyone has the chance to become fully human.

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Eunjeong Lee. "The "Spring Revolution" beyond borders: Transnational education and political activism among CDM students in Mae Sot" (2025) 9 341-355 *Global Campus Human Rights Journal*
https://doi.org/10.25330/3215

The "Spring Revolution" beyond borders: Transnational education and political activism among CDM students in Mae Sot

Eunjeong Lee[*]

Abstract: *This article examines the political, educational, and everyday practices of Myanmar Civil Disobedience Movement (CDM) students who relocated to Mae Sot, Thailand, after the 2021 military coup. While existing scholarship has focused on professional CDM actors or formal organisations, this study centres on student activists whose contributions have often been marginalised. Drawing on ethnographic fieldwork and interviews in Mae Sot, the article shows that students' political engagements did not end with displacement but were reconfigured across borders. The article argues that CDM students emerge as active political actors engaged in protest participation, medical support, financial redistribution, educational labour, and bureaucratic work within exile political structures. Through cases such as Amelia, Kinlay, and Pho Cho Lay, it illustrates how students navigate overlapping roles as resistance members, educators, caregivers, workers, and aspiring international students. These practices reveal exile not as political suspension but as a site of continuous mobilisation. A central contribution lies in rethinking partial citizenship in Mae Sot. Rather than treating it as a fixed legal status defined by documents such as pink cards, the article shows how partial citizenship is actively constituted through everyday political, educational, and care-based practices. By teaching, providing medical support, redistributing resources, and participating in exile governance, CDM students transform legal precarity into a basis for transnational political practice.*

[*] Eunjeong Lee is a PhD candidate in the Department of Anthropology at Seoul National University. Her research focuses on migration, political exile, citizenship, and transnational activism with particular attention to Myanmar political exiles along the Thai–Myanmar border. She is currently conducting doctoral fieldwork in Mae Sot, Thailand. Email: lele0327@snu.ac.kr.

This study forms part of my doctoral dissertation and received approval from the Institutional Review Board of Seoul National University (IRB No. 2510/004-020). All interlocutors provided informed consent for their interviews to be used in this publication. To ensure confidentiality and reduce risks, all names and identifying characteristics have been anonymised.

Keywords: *Civil Disobedience Movement; student activism; partial citizenship; political exile; transnational practices; Mae Sot*

1. Introduction

On 1 February 2021, following the Myanmar military's declaration of a coup, citizens resisting the regime began to carry out the "Spring Revolution" through various forms of action, including protests and demonstrations, the Civil Disobedience Movement (CDM), and participation in the People's Defense Forces (PDF). As the military arrested, detained, tortured, and killed resisting civilians, many have increasingly crossed borders to escape violence. This study focuses on the transnational education and political activism of CDM students who have migrated to Mae Sot, Thailand.

In Myanmar's history, student political participation has played a significant role, and Mae Sot has long functioned as a site of political exile (Lintner 1989, 196; Lintner 1999, 356; Katsiaficas 2012, 141). Nevertheless, since the 2021 coup, large numbers of students have participated in the CDM, and as the political crisis has continued for more than five years, its patterns have become increasingly complex. In particular, the conscription law introduced in 2024 has led to a growing number of students migrating to Mae Sot. Accordingly, there is an increasing need to analyse this expanding population of Myanmar student exiles.

Existing studies on transnationalism have largely focused on economic migrants with relatively stable legal status, while cases concerning education and political activism within transnational practices remain somewhat limited. Even when compared with recent cases of transnational student movements in other countries, Myanmar CDM students in Mae Sot occupy a distinctive position due to their precarious legal status alongside their engagement in transnational education and political activism. Because most previous studies have primarily emphasised political activism, there has been little discussion of how these student activists continue their education after migration. Whereas existing transnationalism literature tends to focus on transnational practices emerging after migration, this paper also explores how transnational practices formed prior to migration influence their migration, education, and political activism, as well as the interactions among these processes.

The primary research participants are 12 CDM students who migrated to Mae Sot, Thailand, following the 2021 Myanmar coup. Their main characteristics are as follows: eight are female and four are male, with female students comprising the majority; at the time of the coup, nine were university students, two were high school students, and one was a diploma student; seven are in their twenties, four in their teens, and one in their thirties, and all had participated in the CDM. At the time of the coup, eight resided in Yangon, one in Mandalay, two in Magway, and one in Bago.

The research methods consist of in-depth interviews and participant observation conducted between October 2025 and April 2026. For the interviews, Korean–Myanmar interpretation was provided when necessary, or interviews were conducted in English. The researcher transcribed the Korean- and English-language portions of the recordings and cited key interview materials in this study. All research participants are identified using pseudonyms to ensure safety and protect personal information. Participant observation was conducted, to the extent possible, in everyday settings such as participants' homes, activist organisations, hospitals, markets, restaurants, and teashops.

The main research questions are as follows. First, why and how did Myanmar CDM students migrate to Mae Sot? Second, how did they enact transnational education and political activism before and during migration? Third, how are their transnational political practices connected to and reconfigured across the home country, host country, and third countries? Based on these questions, this study examines how Myanmar CDM students sustain the transnational everyday lives, education, and political activism they had already developed prior to migrating to Mae Sot. In doing so, this study aims to contribute to discussions on transnationalism and student political movements.

2. Literature review and theoretical framework

2.1. Student-led transnational political movements

"Transnationalism" refers to the ties and interactions that connect people and institutions across national borders (Vertovec 2009, 2). Existing studies on transnationalism have primarily focused on the economic, political, and cultural activities that migrants engage in toward their home countries after migration (Glick Schiller et al. 1995, 54–59; Glick Schiller and Fouron 2001, 356; Robertson 2021). Even when political activism has been examined, most studies have centred on limited forms of rights-based struggles, such as demands for voting rights in the home country or resistance to racial discrimination encountered in host countries (Robertson 2013; Noh 2021).

The subjects of transnational practices have also largely been migrants with relatively stable legal status, including permanent residents, citizens, and international students who migrated primarily for economic reasons. However, transnational migrants with increasingly diverse legal statuses are becoming more common (Alvarez et al. 2016; Campbell 2018; Chae 2014; De Genova 2005; Lee 2016; Phattharathanasut 2024; Robertson 2021). Nevertheless, there has been little research on the political activism of exiles or migrants with precarious legal status, making further investigation necessary.

Discussions of students as agents of transnational practice have also been relatively limited. In particular, students have often been portrayed primarily as elites pursuing economic advancement (Castles and Miller 2009, 161–62). More recent scholarship, however, has begun to highlight students as actors in transnational political movements (Chachavalpongpun 2025; Nielsen and Luescher 2026; Phattharathanasut 2024). Most of these studies focus on international students with stable student status who engage in political activism through connections to developed countries. Yet emerging forms of connection between developing countries also deserve attention as a new transnational dynamic.

In most cases of student-led transnational political movements, education itself tends not to be considered part of political activism. Education and political activism are often discussed separately, or political activism is emphasised while educational practices are largely overlooked (Chachavalpongpun 2025; Nielsen and Luescher 2026; Phattharathanasut 2024; Robertson 2013). However, education can itself function as a form of transnational political activism, and in this process, transnational solidarities and practices may be strengthened and reconfigured. This aspect therefore deserves closer attention.

Whereas discussions of transnationalism and transnational political activism have largely focused on practices emerging after migration, this study examines transnational political activism among Myanmar students beginning before and during migration itself. Most of these students are exiles who fled for political reasons, continue political activism while hoping to return to their homeland, and thus constitute political subjects shaped by exile (Coser 1984, 3; Edinger 1956, vii; Shain 1999, 389–94). Moreover, even before crossing borders and throughout the migration process, they maintained connections with the host country through various networks, and they have tended to continue their political activism after migrating to Mae Sot. In addition, because their educational practices function as a form of resistance against the state, this study also explores education as a component of transnational political activism.

2.2. *The "Spring Revolution" and the transnational practices of CDM students*

In the history of political movements in Myanmar, students have consistently emerged as key political actors (Hong and Kim 2019, 209; Lintner 1989). During the current "Spring Revolution," many students also took leading roles in political activism and, as a result, migrated across borders to escape military violence. Historical records indicate that many students who led the 1988 Uprising and the Saffron Revolution migrated to ethnic minority autonomous areas near the border and to Mae Sot, Thailand (Lintner 1989, 196-198; 1999, 50). However, there are few records concerning their lives after migration to Mae Sot. Existing studies have mainly focused on the transnational activism that unfolded after these exiles migrated onward to third countries via Thailand (Banki 2006; Hong and Kim 2019, 213–14; Kim 2018), or on political activism conducted after their eventual return to Myanmar (Ryu 2017).

Although most studies on Mae Sot have focused either on migrant workers in general or on the Karen population (Campbell 2018; Decobert 2016; Lee 2016), some studies provide clues regarding the political activism of exiles. One example is the story of Cynthia Maung, a Karen doctor from the 88 Generation who founded the Mae Tao Clinic (Decobert 2016; Lee 2016). Nevertheless, there is little documentation of how the majority of Burman exiles themselves carried out transnational political activism centred on their homeland while living in exile.

Research on political activism following the 2021 coup has also largely focused on developments within Myanmar itself (Hong 2022; Jordt et al. 2021; Maber and Ei Thin Zar 2025), while some studies have provided limited examples of transnational political activism conducted from host countries through connections with both the home country and third countries (Lee 2022; Lee 2024a; Lee 2024b). However, such cases inevitably differ in both scale and character from the forms of transnational political activism centred in Mae Sot. Even studies that introduce transnational political activism and everyday life in Mae Sot tend to focus broadly on exiles in general, the CDM as a whole, or teachers in particular (Banki 2025; Jirattikorn 2023; Kim et al. 2024). As a result, there has been little sustained attention to the youth who have actually led the movement. Even when youth are discussed, the focus has largely remained on young people inside Myanmar rather than those in exile (Hong 2022).

Furthermore, previous studies have rarely examined how education can function as a tool of resistance for students whose studies have been disrupted. Some scholars have mentioned the need to explore the "pedagogical" significance of Myanmar's student political movements (Hong and Kim 2019; Maber and Ei Thin Zar 2025), yet detailed analyses remain limited. Accordingly, this study traces the process through which educational activities carried out by CDM students after migrating to Mae Sot come to be understood and practiced as forms of resistance.

In conclusion, this study focuses on the transnational political activism of Myanmar CDM students beginning even before and during their movement to Mae Sot. After arriving in Mae Sot and securing relatively more stable legal status, their educational and political activities expand through connections spanning the home country, host country, and third countries. In particular, this study examines how education, which had been interrupted by the coup, is resumed in Mae Sot and reconfigured as part of resistance.

3. The "Spring Revolution" and transnational political activism

3.1. Transnational political activism originating in the home country

Immediately following the declaration of the coup, students experienced intense feelings of anger and shock and began to participate actively in the "Spring Revolution." The coup, abruptly declared amid the wave of political and economic reforms that had begun in 2011 and became more visible under the Aung San Suu Kyi-led government after 2016, pushed many people into political activism. The immediate disruptions caused by the coup – including internet shutdowns and electricity cuts – made people physically experience the reality of the coup and intensified a profound sense of having "lost their future."

The case of Win Soe illustrates how a university student became involved in political activism after the coup and eventually migrated to Mae Sot as a result.

"I was university student, and a member of student union... Before the coup, our country has the future plans and education systems collaborating with other countries for better future... We don't like the military because they never good to the public and they looked only themselves. I participate strike and motivated and encouraged to participate other teachers in the CDM movement...I want to complete my education so I was willing to participate to continue the planning of the education for the CDM students, so support them as soon as possible... University council said 'You should go to the Maesot for establishing transitional university ***' because inside the Myanmar, Internet cut-off and safety for data and then..." (Win Soe, 4 November 2025)

During the course of political activism, Win Soe became connected with the National Unity Government (NUG) and sought information from people who had already arrived in Mae Sot, receiving assistance throughout the migration process. Even after arriving in Mae Sot, he continued supporting CDM students and professors inside Myanmar while maintaining close ties with the political community in Mae Sot. His determination not to abandon education after the coup expanded into supporting others, demonstrating how education itself could become part of resistance.

For some students, participation in political activism after the coup involved relocating to liberated areas, where they developed opportunities to build transnational networks. In Nadi's case, connections formed with resistance groups in liberated areas continued to shape her life even after crossing the border into Mae Sot.

"I'm trying to participate in the protests, it create a demonstration but it's difficult for me to get out of my house but for my parents are worry about me, for my safety. So that's why I think the best thing I could be able to do is like going into the liberated area. My services at that base for almost one year I think... At that time 2021 it's difficult for us to get the internet connection at that place at that area, it's hard for us to get the updated news... When I came to Maesot, I was introduced of the the leaders of the area *** (the revolutionary army) introduced... We were having mobile clinic activity supported by some organisation with the former *** member knowing by friends... I currently work for an (humanitarian aid) organisation and the head of the organisation is also a member of ***." (Nadi, 15 November 2025)

As a striking medical student, Nadi provided medical support within the resistance movement. She used medical knowledge acquired in Myanmar to support the revolution by training medics and transporting patients. Once she decided to cross the border and migrate to Mae Sot, the network centred around the resistance group began to function more actively. Through these networks, she gathered information during the border-crossing process and later participated in "mobile clinic" activities supporting medical care inside Myanmar through connections linked to the resistance army. She also gained access to information about her current humanitarian aid organisation through these same networks.

Shoon, who had been enrolled in a diploma programme, also relocated to a liberated area. While active in the PDF, she spent ten months in an ethnic minority region working as a medic.

"I attended a diploma course in ** University, and was also a manger in a company. After waiting for 72 hours, I joined the protests... All of the jobs and attending university stopped, and I participated in the revolution. I was a leader in the protest team, and one of the team member head shotted and passed away on the street in April, 2021... One of my friends made an arrangement to move to *** (the revolutionary army). I joined the training and started to work as medic." (Shoon, 8 January 2026)

Even after relocating to Mae Sot due to health problems, Shoon's political activism continued in modified forms, such as participating in civil society activities supporting local communities and later working for the NUG. Indirectly, her earlier involvement with the resistance army appears to have contributed to the development of her career within the provisional government. These forms of transnational political activism, initially formed in borderland regions, continue to shape the political activities of migrants in Mae Sot in diverse ways.

Whereas existing studies of transnationalism have paid relatively little attention to transnational practices prior to migration, the cases of Myanmar CDM students demonstrate how transnational political activism can emerge within the home country even before migration occurs. Furthermore, the identity of these individuals as students at the time of the coup reveals that their education was not simply interrupted or resumed after the coup. Rather, education itself was reconfigured through participation in political activism and transformed into part of the broader resistance movement. The following section examines how their political activism was further transformed after being reconstituted in Mae Sot.

3.2. Transnational political activism toward the community

Some CDM students began to engage more actively in transnational political activism directed toward Myanmar after arriving in Mae Sot. In the process of gradually acquiring semi-legal forms of residence status, they reconstructed new forms of political activism. One notable feature is that the political activism emerging in Mae Sot became deeply connected to the local exile community itself. The case of Khine, who works in resistance media, illustrates this clearly.

"Before the coup, I was a normal university student and all the this happened when the military coup started. I involved with my school and protest, but my dad actively involved as a CDM leader in the government office, and got 505(a). We have to move to liberated zone first, and later arrived at Maesot… I was like illegal here, so don't really go out a lot (for the first time). Later I started to going around like attending workshop, training, I got a chance to learn journalism, and they made new media in border area. I had an internship for three months, and got offer from presenting at a media." (Khine, 3 April 2026)

Khine now works as a broadcaster delivering news about Myanmar and international affairs. Through this process, audiences in the home country, host country, and third countries receive information in real time through media networks. Beyond media work itself, Khine also contributes to the community by participating in workshops and conferences, maintaining close communication with youth organisations, and helping operate educational programmes. In this sense, "political remittances" are not directed solely toward the home country but also actively shape the host-country community.

Like Khine, many CDM students who initiated transnational political activism connecting the home country and third countries after arriving in Mae Sot relied upon networks formed during both the coup period and the migration process. May is another example of a student who began engaging actively in transnational political activism after arriving in Mae Sot.

"I suggested by a teacher from my university, and started to work with NUG office when I arrive in Maesot. I assisted technical problems from them, and I worked with officers located in Korea one time... From that connection, I started to know more people in Maesot too." (May, 18 January 2026)

The CDM professor with whom May had remained in contact after joining the movement connected her to work with the NUG. Technical skills she had acquired through her university major before the coup became useful within the NUG, allowing her to support NUG members located in Korea and elsewhere around the world. In this way, skills developed during the reform and opening period prior to the coup became resources for carrying out the "Spring Revolution" after the coup.

Thus, the transnational political activism developed by CDM students after arriving in Mae Sot takes shape through media organisations, educational programmes, workshops, and conferences grounded in the exile community and its diverse actors. In this process, transnational political activism does not simply connect the home country, host country, and third countries; it also functions as a form of political engagement directed toward the host-country community itself. Particularly notable is that these political practices emerge through students' efforts to continue and reconstruct the education that had been interrupted in Myanmar.

4. Education as transnational political activism

4.1. "Education" as a means of resistance

Most CDM students resumed their education in various ways after arriving in Mae Sot in order to continue the studies disrupted by the military coup. In many cases, students who were unable to enter university or complete their university education enrolled in GED(General Educational Development) programmes through informal learning centres in Mae Sot or through online platforms.

Kyaw Kyaw and Ko Htun, respectively a CDM university student and high school student, arrived in Mae Sot due to their own and their families' involvement in political activism. The two met while studying in a GED programme at a learning centre and, after completing their examinations, eventually began working as GED teachers following a suggestion from an acquaintance they met by chance.

"When coup happened, I participated protesting. We held shields made out of town, in front of the citizens at protests. I went out daily and we share our lunch, dinner on the street. The military started shooting, and it was scary. I was teenager, and the adults prioritise us the teenagers first to escape. 'Go first, you should go.' They shouted us.... I didn't fully graduate my school because I was going to take my matriculation exam...the military raided our house with trucks over 60 soldiers... We chose to go to liberated area first, and moved to Maesot after a year when the situation getting worse... After arriving in Maesot, I joined a learning centre and finished GED there. One day I was in a beauty salon here, and a teacher from a learning centre suggested me to join her school. I also suggested to Ko Htun to teach together." (Kyaw Kyaw, 24 March 2026)

The two now team-teach GED subjects in a small school established within a church. Most of their students, including Karen and Burman students alike, migrated to Mae Sot after the coup. The GED knowledge and English skills that Kyaw Kyaw and Ko Htun acquired both in Myanmar and later through learning centres in Mae Sot are now being passed on directly to other students. Their educational activities are therefore not limited to their own acquisition of knowledge but are transmitted to other displaced students who migrated to Mae Sot because of the coup.

In Ko Htun's case, after completing the GED programme, he went on to finish a university degree online and is currently preparing to study abroad.

"After the coup, I protested with my friends. The military started shooting and killing the people after three months. I stopped protesting and made a digital strike online with colleagues from majoring computer science. We should do for the military to stop that. It was Facebook page, and we post news. When people read it, we can donate the money to children in refugee camp... The military tried to find me, and I moved to Maesot with the information from a friend... I finished pre-GED, and GED course from learning centre, and had a chance to finish my bachelor in online environment. After that, I decided to apply master course abroad." (Ko Htun, 27 March 2026)

Although Ko Htun was unable to complete his university studies in Myanmar because of the coup, the computer skills he had developed there became useful during his political activism. The GED scores and online university degree he obtained after arriving in Mae Sot are now being used not only for his own future but also to support the education of other students displaced by the coup. In this way, CDM students' pursuit of education is deeply intertwined with post-coup political activism.

Cece, another CDM university student, has also continued teaching students and participating in educational activities after arriving in Mae Sot.

"Before the coup, I was a university union member. I heard the news that Daw Aung San Suu Kyi has detained, and I started to cry. I started to participate in protests, and one day I witnessed a student shooted by the gun in the university compound. I cannot protest anymore after that time... I had to move to forest and stay there for a while as a PDF member. When I arrived in Maesot, I started to teach online for English for children and youth as a member of youth organisation. Some of students are in Myanmar and also in Maesot. We also made children's library in our organisation." (Cece, 20 January 2026)

After arriving in Mae Sot, Cece continued her studies by taking GED courses while also participating in activities supporting the education of children and youth within the local community. In many cases, the political activism and educational activities of CDM students cannot be clearly separated, as they are deeply interconnected. At the same time, some educational activities remain linked to people inside Myanmar, thereby further facilitating transnational political activism.

4.2. Remigration and the continuation of political activism

Some CDM students, after obtaining GED qualifications or completing certain educational programmes, begin planning to relocate either to other regions within Thailand or to third countries in pursuit of better educational opportunities and improved living conditions. Nadi, for example, works for a civil society organisation in Mae Sot while simultaneously completing university courses online. Once she secures the necessary legal status, she plans to migrate to a third country in order to complete her education.

"I have been participating in the civil disobedience movement, and I had to stop my study in my university. So knowledge is limited and try to move to other places because I want to contribute more... I moved to Maesot then I try to take some online classes from university in Germany... But the extension for two years, so I was stuck in that stage... I try to move to Germany." (Nadi, 15 November 2025)

After arriving in Mae Sot, Nadi balanced both study and activism while attempting to resolve issues related to legal residency, including visas and passports. This was neither an easy nor simple process, requiring considerable money, time, and energy. Yet just as the coup and subsequent migration to Mae Sot did not extinguish her commitment to political activism and education, the process of planning and preparation continues.

Susu, who had been a CDM university student, moved to Phuket after resolving her residency status while making a living by teaching Korean in Mae Sot. Her purpose was to save money for future study in Korea. Because Phuket is a major tourist destination compared to Mae Sot, some exiles relocate there in order to earn higher incomes.

"After Covid pandemic, I attended online Korean class when the school stopped. when coup happened, I felt my dream became so dark. I started to dream about studying and working in Korea when learning Korean, I did CDM, and participated the protest right away. I also volunteered for coordinating free riding for protestors. I did what I can do at that time... One day, the police visited my home to capture me. My bank account already freezed but I kept sending money to PDF at that time. I should escaped the country and arrived Maesot after staying at liberated zone a couple of days... I started to teach Korean at an organisation in Maesot." (Susu, 13 November 2025)

The organisation where Susu taught Korean in Mae Sot provided free classes in various subjects to youth and members of the exile community. During her time in Mae Sot, Susu shared the foreign language skills she had developed in Myanmar with other members of the exile community. In doing so, she simultaneously supported students preparing for onward migration to Korea through Korean-language education while also preparing for her own future. This process lays the foundation for transnational political networks that may continue in third countries if both she and her students later migrate abroad.

5. Conclusion

Myanmar CDM students largely suspended their studies and became fully involved in political activism immediately following the military coup in 2021. Their participation was accompanied by intense anger and frustration over the collapse of the reform and opening process that had begun in 2011. The military's application of collective punishment against family members also influenced their migration, while networks formed within Myanmar and across borders played an important role in providing the information necessary for migration to Mae Sot.

Most students arrived in Mae Sot through brokers without passports or visas and, after arrival, gained access to forms of "partial citizenship" (Pongsawat 2007) that had previously been associated mainly with migrant workers. In the process of acquiring legal status, they resumed educational opportunities that had been interrupted by the military regime. Through learning centres and online programmes, they pursued degrees while simultaneously engaging in political activism by transmitting the skills and knowledge they had acquired to members of the exile community. Throughout this process, networks connecting the home country, host country, and third countries became actively mobilised.

Cases of transnational political activism in Mae Sot also reveal close engagement with the exile community. Some students work for resistance media organisations in Mae Sot, broadcasting news back to Myanmar, while others share language skills and technical knowledge with youth within the community. These forms of "political remittances" are based in the host country but remain simultaneously connected to the home country and third countries.

Students also tend to migrate gradually to other regions within Thailand or onward to third countries, and during this preparation process they often continue engaging in transnational educational and political activities. These practices anticipate and facilitate future remigration and political activism. If remigration occurs, their transnational political activism is likely to continue through networks connected to both Mae Sot and Myanmar.

The significance of this study lies in its contribution to existing discussions of transnationalism and the political activism of Myanmar migrants. In particular, this study highlights students' transnational everyday lives and political activism as they emerge prior to migration and throughout the migration process, while being mediated through education and connected across the home country, host country, and third countries. One limitation of this study is that it does not examine cases of transnational political activism that continue after remigration. Future research will seek to address this limitation.

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