What's new in human rights doctoral research

A collection of critical literature reviews

edited by

Pietro de Perini, Marco Mascia

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Indice

Introduction

Pietro de Perini and Marco Mascia

The majority of the global social, political, economic and security predicaments that the world is currently facing – from growing poverty and development needs to migration, terrorism and organised crime – have glaring human rights implications. Research on human rights is thus a privileged tool to better understand and explain the complex set of trends and phenomena that are increasingly threatening the respect of human dignity throughout the globe. Research on these matters could also be key to find solutions or ideas to help building a better environment where human dignity is respected and social and international peace is achieved. However, the application of the human rights paradigm, within which most of research on these matters is necessarily grounded, is continuously affected and put to the test by both theoretical and methodological challenges on one hand, and by the evolving social, economic, political, cultural and technological milieu on the other. To fulfil its expected mission, therefore, human rights research must increasingly develop and apply creative and original approaches that keep universal human rights at their roots and take into the utmost consideration their multi-dimensional and multi-sectoral facets and the pace at which these are changing. Developing this approach to human rights research is an impending necessity, which, as mentioned, is both heuristic and grounded in daily reality.

Human rights knowledge nowadays disposes of an impressive production of both substantive and methodological works which attest its capacity to theorise the complex evolutionary reality of the, increasingly globalised, system of politics. Such knowledge represents the 'compass' whose ability to orientate is in the correct scale with the order of magnitude of the management needs of multi-level governance in the global space.

We believe that it is the task of science to make emerge the rich and fertile potential which is implicit in the international legal recognition of human rights, elaborating new theoretical schemes, redefining conceptual

categories and legal institutes, indicating strategies for further development of law and politics at the local, national and international level.

A fundamental phase during which the bases for such relevant human rights research outcomes have to be built is certainly doctoral training. In a concerted effort to address the afore-mentioned need, in 2015 the University of Padova Human Rights Centre, together with the Faculty of Law of the University of Zagreb, Panteion University of Athens and Western Sydney University (later joined by the University of Nicosia) established the Joint International Ph.D. Programme in 'Human Rights, Society, and Multi-level Governance'. This doctoral programme aims to provide the future generation of human rights researchers with high-level theoretical, methodological and practical skills on the multi-disciplinary and multi-sectoral aspects characterising human rights-related issues. The expected outcome is a generation of young researchers who possess the skills to correctly understand the causes and implications of current global challenges to human dignity and of their change and to help public authorities and private organisations to tackle these working from both an academic perspective and a practice- and policy-oriented one.

Conceived within such a wide frame, this book collects critical state-of-the-art analyses of a series of relevant topics for human rights research prepared by doctoral students enrolled in said joint Ph.D. programme. While maintaining a strong focus on the prospective implications of their respective research projects in terms of practical human rights enjoyment, each of the following chapters also brings the specific perspectives and contributions of different disciplinary backgrounds and approaches to human rights research to the broader debate: from law and development studies, to political science, international relations, sociology and pedagogy.

This book has thus been conceived as a laboratory, as an open construction site where doctoral students can develop and put their analytical and critical skills about human rights topics to the test, and are able to reflect on the advantages and limits of different disciplinary approaches to answering human rights research questions. Students have been encouraged to identify the missing links and the 'under-researched' elements within their human rights-related topics while considering the implications of their research on both the heuristic dimension of human rights and their application in daily reality.

In particular, Ph.D. students were asked to critically focus on the existing scholarly debates within which they have positioned and developed their research goals and hypotheses and to underline where they expect to bring original theoretical, methodological and empirical contributions through their heuristic effort. While their elective topics are broadly different from one another in terms of general scope, unit of analysis, practical relevance

and geographical area, all their work unquestionably share a commitment to put their research at the service of an improved state of health for universal human rights from a multi-level and multi-disciplinary perspective.

The first contribution is by Meskerem Geset Techane. In her chapter, Geset Techane critically approaches the literature on economic, social and cultural rights with a particular interest in the specific roles played by National Human Rights Institutions (NHRIs) in that context. After highlighting and discussing the main claims and discussions existing in both theoretical and empirical literatures on these matters, Techane identifies the need for a new research agenda that examines the issue of budget analysis for NHRIs in economic, social and cultural rights-based budget work in conjunction with the sustainability of NHRIs' mandate for this matter. Embracing such a research agenda, Techane argues, would also help assessing the role of NHRIs in advancing the accountability of economic, social and cultural rights.

The second chapter is authored by Cristina Yasmin Ghanem. The paper sheds light on the vast but often disconnected literature regarding integration models, Muslim women's agency and the future of European Islam. Ghanem divides her literature review according to the three main thematic blocks under which, according to her analysis, scholarship on the matter has developed: the constructive narrative of Muslim women, the relation between Multiculturalism and Muslim women's human rights, and the gender perspective to civic integration. She argues that there is an important research gap concerning the relations between existing policies of integration and the agency of Muslim women. Closing this gap would allow scholars to understand whether existing integration courses and programmes in European countries provide women with the tools to achieve empowerment or they are another form of identity oppression.

The third chapter, by Ling Han, moves the focus to China and critically addresses the long-standing issue of child trafficking in the country. This review is intended as propaedeutic to a systematic research on this issue from a human rights perspective. In particular, Han's aim is to deconstruct and discuss existing academic literature on human trafficking with a special focus on the definition and root causes of child trafficking. A section is indeed devoted to the analysis of the differences and incompatibilities between the international and the Chinese definitions of trafficking in human beings. The last part of Han's literature review moves the focus on the solution side and deals critically with the principles and paradigms that have been advanced by international mechanisms to respond to the serious challenge of human and child trafficking in a global perspective.

The fourth and final chapter is authored by Matteo Tracchi. In this contribution, Tracchi approaches a very strategic issue for wider human

rights enjoyment locally to globally, that of human rights education. Tracchi tries to keep the legal and normative dimension of this topic together, advancing an understanding of human rights education as both content and process. From this perspective, he critically addresses the debate on the international and European standards on human rights and citizenship education and provides a critical discussion of the different approaches and theoretical models that have been developed in the pertinent pedagogic literature to theorising the emergence, conceptualisation and implementation of human rights education across the globe. Keeping both legal and normative dimensions in research on this topic is fundamental, as Tracchi concludes, to allow human rights education to live up to its ultimate goal of empowering persons to contribute in building and promoting a universal culture of human rights.

Economic and Social Rights Based Budget Monitoring and the Role of National Human Rights Institutions: A Literature Review

Meskerem Geset Techane

Abstract

It is notable that a rich body of academic literature on the subject of economic and social rights (ESR) has emerged. Respectively, recent decades have also seen flourishing scholarship on national human rights institutions (NHRIs). While acknowledging the number of important academic works on the origin, evolution, nature, legitimacy, limitations, etc. of ESR as well as of NHRIs, the focus of this review is narrowed to ESR monitoring and the distinct role of NHRIs with a particular emphasis on ESR based budget monitoring.

The review aims to provide an overall account of the available literature on budget oriented ESR monitoring and the role of NHRIs in this context; also to highlight the underpinning issues as well as the theoretical and empirical dimensions presented in that literature.

The growing interest on ESR budgeting has originated relevant, still limited, literature analysing ESR obligations from a budget perspective and reviewing relevant budget monitoring works done. Noting the increasing volume of scholarship on NHRIs, the review reveals the existence of less work assessing their role in advancing ESR accountability. One must recognize the promising development towards linking ESR and NHRIs in some works; yet they remain to be either general or narrow in scope and objective. What appears to be even grossly lacking is treatise specifically dealing with ESR budget monitoring by NHRIs. Literature linking ESR budgeting and NHRIs' work, or situating and assessing the mandatemand function of NHRIs in ESR based budget analysis seems to be a rare find.

Key words: Economic and social rights, monitoring, budgets, National Human Rights Institutions

Introduction

A rich bulk of academic literature on the subject of economic and social rights (ESR) has emerged over the years. While acknowledging the number of important such works on the historical accounts about the origin and evolution of ESR as well as on the nature, legitimacy and justiciability of these rights, the focus of this review is not to explore that.

The past two decades have also seen flourishing scholarship on national human rights institutions (NHRIs). The proliferation of these institutions, and their increasing role and recognition within the national and international human rights system attracted the attention of several scholars and practitioners. The focus of this review is narrowly delineated on NHRIs human rights monitoring role with a particular emphasis on ESR monitoring leaving much of the robust literature on the creation, evolution and legitimacy, institutional architecture, etc. of NHRIs outside the scope.

The central purpose of this review is to provide an overview of the available literature on budget dimensions of ESR monitoring and the particular role of NHRIs in context, and to highlight the underpinning issues and discussions in that literature. The review aims to present an overall account of the theoretical and empirical perspectives offered in existing literature.

1. ESR Obligations and Budgets – The Normative Discourse

It is important to point out that the obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) range from *programmatc duties* relating to processes for ESR decision-making to substantive and procedural duties relating to the enjoyment of the rights. These obligations are extensively elaborated by soft laws such as the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1987) and the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997); and the work of the Committee on Economic, Social and Cultural Rights (CESCR) in the form of General Comments and Concluding Observations. The *Reporting Guidelines* set out by CESCR (2008) also offer additional, more of indirect, interpretative guidance on the substantive content of the rights and the corresponding obligations under the Covenant.[1]

[1] One should not also neglect the complementary work of regional mechanisms; also that of UN treaty bodies that dealt with ESR in the context of different groups (children, women, persons with disabilities, etc.). Other relevant sources include the work of the UN Special Procedures with specific ESR-related mandates such as housing, education, health, etc.

Following the pioneering work of the CESCR (*General Comment No. 3* (2008)) in expounding the nature of state parties' obligations under the ICESCR, the various aspects of 'Article 2(1) obligations'[2] have been the subject of extensive academic discourse over the years.[3] The early work of Alston and Quinn (1987) unpacks the nature and scope of ESR obligations under the ICESCR through extensive analysis of the words and phrases used in Article 2(1). The authors paid particular attention to elaborating the key terms used in the provision i.e. 'undertakes to takes steps'; 'by all appropriate means'; 'achieve progressively'; and 'to the maximum of its available resources'. The book by Sepúlveda (2003) is another vital resource which no study on ESR obligations affords to overlook. Her outstanding contribution clarifies the normative content of the ICESCR with incomparable in-depth and comprehensive analysis of the obligations therein.

Two important themes that dominate the discourse on ESR obligations are 'progressive realisation' and 'the use of maximum of available resources'. Both concepts undeniably have enjoyed a considerable degree of scholarship. There seems to be a consensus that the *obligation of progressive realisation* does not simply require an increase in resources over periods. Eide (2000, 126) elaborates that progressive realisation entails an increasingly effective use of the resources that must be optimally prioritised to fulfil the rights in ICESCR. Fredman (2008, 83) also elucidate that this obligation contains an *immediate duty* to put in place a clear and detailed plan with goals and time tables subject to continuous monitoring. Such pivotal contributions are useful to apprehend ESR obligations in light of resource prioritisation and the respective monitoring needed. Resources are obviously critical to the realisation of ESR. Resources are obviously critical to the realisation of ESR and resource decision-makings have an equally vital role to play. Measuring ESR compliance thus entails resource monitoring (including budgets); whether the right resources are allocated and whether appropriate use of such resources is employed to the realisation of the rights. More precisely, given the Covenant (Art 2(1)) established a requirement that the full realisation of ESR is to be achieved through using the maximum of available resources, budget monitoring based on the ICESCR is relevant for measuring compliance with Covenant obligations.

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[2] Article 2(1) of the ICESCR reads: '*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures*'.

[3] See, e.g Ramcharan (2005); Sepúlveda (2003); Chapman and Russell (2002); Alston and Quinn (1987); Robertson (1994); and Young (2008).

Though a number of writings cover the content and scope of the *obligation to use the maximum of available resources*, a few clearly link it with budget. This gap that 'only limited consideration has been given to the budget-specific obligations that are imposed by Article 2(1)' has already been highlighted by Nolan and Dutsche (2010) who elaborate on the budget dimensions of ICESCR obligations. The analysis by Blyberg and Hofbauer (2014) brings additional deliberations on Article 2 and budgets. These works offer remarkable insights into the budget-related obligations inherent in Article 2(1) of the Covenant and the manner in which such obligations can be achieved by states. Another relevant study by Harvey et al. (2010) also spelled out ICESCR-based resource obligations in greater detail with proposals as to how to define the ESR obligations imposed on the State from a budget perspective. Beyond identifying the broader human rights issues relevant to the development of rights-based budget review, it details the various analytical frameworks used by the CESCR to categorise ESR obligations and linking those to budgetary decisions and processes. This important contribution serves as a vital resource for analysing budget decision-making using the international ESR framework.

The obligations embedded in ICESCR are commonly analysed in terms of the so called tripartite approach wherein state's obligations are categorised in three layers - the obligations to *respect*, *protect* and *fulfil* ESR.[4] O'Connel et al. (2014) and Harvey et al. (2010) connect these obligations with budget dimensions. The latter establish that this typology '... allows for an analysis of the more precise obligations on the State [...] points to the actions the State has to take or has to refrain from taking in order to comply with ICESCR' (Harvery et al. 2010, 14). They further argue that this type of *obligations analysis* is useful for linking ESR and budgets considering that each action identified has to be resourced. The obligation to *fulfill* has normally enjoyed particular attention in relation to resources and budgets. On the other hand, the ESR obligations under the ICESCR are described in terms of obligations of conduct and result. Relying on the Maastricht Guidelines[5] Harvery et al. (2010) illuminate tthe clear relationship between the '*conduct-result*' framework of duties and the *tripartite typology* of obligations which is also relevant for conceptualising the 'ESR budgeting' web of obligations.

Conceptual clarity as to what ESR based budgeting entails and as to what exactly to be monitored is an important aspect. Welling (2008, 948) asserts that before setting out to measure a government's level of compliance with

[4] See Sepúlveda (2003).

[5] It must be noted that the Maastricht Guidelines establish that 'the obligations to respect, protect and fulfill each contain elements of obligation of conduct and obligation of result' (para .7).

its ESR obligations, what is to be measured must be clear. The conceptual challenges in budget analysis are discussed by some scholars such as Blyberg (2014), Harvey et al. (2010), Nolan (2013 and 2014) and O'Connel et al. (2014) who attempted to address the underpinning conceptual issues in their seminal contributions. Harvey et al. (2010, 11) underline that this conceptual delineation should comprise two keys steps: '[f]irst, the substantive content of the particular right (ESR) under analysis must be established'; and '[s]econd, the legal duties that are imposed by the right must be defined'. They emphasise on outlining the precise definition of the scope and content of the right through reference to the interpretations by (primarily) the CESCR and also other implementation bodies, courts and academics.

Review of the work of the CESCR offers some conceptual clarity as to what 'maximum of available resources' entails. The CESCR (2007) asserted that 'maximum of available resources' refers to 'both the resources exist within a state as well as those available from the international community through international cooperation and assistance'. The CESCR also used some pointers for looking into a government's compliance with this obligation:

- Comparing ESR related expenditures with expenditures for non-ESR related areas;
- Comparing expenditures in a specific ESR with expenditures in the same area by countries at a comparable level of development;
- Comparing allocations and expenditures against existing international indicators.

The above indicators, though notably focus only on government expenditures (do not cover revenue and other fiscal issues), they render a pragmatic guidance for framing a budget focused ESR review.

2. ESR Based Budget Analysis - Emerging Trends and Perspectives

Budgets falling within the broader subject matter of resources, budget analysis thus forms an essential component of ESR based resource monitoring aiming to inspect whether budget challenges for ESR fulfilment result from actual resource limitations, or from a failure to prioritise available resources in a human rights complaint manner. Illuminating the importance of budget analysis as a 'systematic study of budgets from an [ESR] perspective that fundamentally seeks to advance these rights', the newest article by Manion et al. (2017, 4) elaborates the content of ESR budget analysis:

> Budget analysis compares government revenue and spending in light of key provisions of the International Covenant on Economic, Social, and Cultural Rights, including: (1) progressive realization; (2) maximum available resources; (3) minimum core; and (4) principles of non-retrogression, as well as foundational principles of "non-discrimination" among others.

The study is of great relevance in identifying, defining and examining three key approaches to budget analysis: revenue-focused analysis, budget allocation analysis, and budget expenditure analysis. It offers practical insights for practitioners, outlining how each approach can be used. Bringing together expert opinions, academic texts, and reviews of budget analysis work, it attempts to spot the strengths and weaknesses of budget analysis. The practical template presented therein is particularly useful in guiding how core legal obligations can be located and measured within a budget. This piece complements earlier reflections by Bylberg (2009) and Nolan (2014) in expounding what budget analysis is actually about. Budget analysis is inevitably intertwined with the issue of available financial resources. The study by Balakrishnan et al. (2011) examines the different avenues through which governments can access financial resources in order to fulfil their obligation to use 'maximum available resources'. Drawing on a rich expertise of economists and human rights experts, it engages in amplifying the practical aspects of the concept of maximum available resources and how states can apply it in practice. This outstanding work presents the 'The Maximum Available Resources (MAR) Star' with five key components: (1) government expenditure; (2) government revenue; (3) development assistance; (4) debt and deficit financing; and (5) monetary policy and financial regulation. A framework of this kind is important for grasping a holistic picture of financial resources and to understand budgetary policy structures. The expenditure aspect in particular is highly linked to how spending is prioritised in the budget to ensure resources for ESR which is instrumental for budget analysis. Another innovative source the review noted is that of the International Budget Partnership (2010) which explains the Budget Cycle – a template for understanding budget process (formulation, approval, execution, and oversight). This is crucial for any research on budget analysis as it highlights each aspect of budget decision-making.

With the growing focus devoted to the question of how to measure state compliance with obligations under ICESCR Article 2(1), recent work has concentrated on the development of quantitative approaches.[6] A proper evaluation of the obligation to use the maximum resources (especially budgets) inescapably calls for quantitative engagement in rights monitoring.

[6] See for example, Welling (2008); OHCHR (2008); and Hunt (2006).

de Beco (2011), Corkery and Way (2012), Felner (2008), and Langford and Fukuda-Par (2013) emphasise on the influential role,of quantitative measurement tools in ESR/human rights monitoring work and on how to integrate these tools. In support of the move towards 'quantifying eights', Langford and Fukuda-Par (2013, 223) arge that' [s]trategically, quantified data is a powerful tool of communication. It offers clear, comprehensible and simple snapshots of complex situations'.

Owing proper recognition to the importance of budgetary decisions for achieving the realisation of ESR, a strong tendency has developed towards evaluating budgets from an ESR perspective; specifically, from that of Article 2(1). Review of available empirical literature indeed reveals the rise of innovative efforts that employ ESR based budget work for advancing ESR. Blyberg (2009) , O'Connel et al. (2014) and Robinson (2008) present some account of initiatives from different regions, highlighting strategies for utilising ESR framework in budget work, and identifying challenges and ways to overcome. The collected volume of the Queen University Belfast Budget Analysis Project (QUB Project) (2010) examines selected case studies and guidance drawn from the budget analysis work done by different actors on a range of thematic ESR issues and in different jurisdictions. of thematic ESR issues and in different jurisdictions. Fundar's flagship 'Approach to Human Rights Budgeting' that developed a link between budget analysis and human rights relating to national social programmes is worth a note. Two important publications stemming from this project are particularly relevant: Promises To Keep (Schultz 2002) and Dignity Counts (Fundar et al. 2004) that outline how to undertake budget analysis work as a tool for evaluating national compliance with human rights obligations. Other interesting efforts that link budgets and obligations imposed by specific ESR have also been gradually developing. For example, the International Budget Partnership (2010) offered a relevant contribution using budget analysis to promote the right to education. The QUB Project (2010) also looked into budgeting for social housing in the context of Northern Ireland. Hofbauer and Garza (2009) examined the use of budget work as a tool to hold governments accountable for maternal mortality reduction. Matthews and McLaren (2016) alluded an approach for understanding budget analysis in the framework of the South African Constitution, and reviewed selected initiatives of South African civil scoiety organisations in different ESR areas (education, housing, water and sanitation, etc). At the UN level, the Food and Agriculture Organization of the United Nations (FAO) (2009), presented a guidance for employing budget work, for advancing the right to food; whereas the work of the Special Rapporteur on the Right to Adequate Housing (2007) offers some perspectives for a deliberation on budgetary allocations in relation to adequate housing. A constant theme that runs

through these empirical materials is using budgets to hold governments accountable for ESR implementation. The available resource, however, is relatively more dominated by the practice of NGOs. On the other hand, it is noted that the recent budget analysis trend might have a potential to incline, to a certain extent, towards budget cuts and retrogressive measures shaped by the global economic crisis.[7]

The review noted pertinent texts highlighting two important solid frameworks for ESR monitoring and particularly relevant to budget analysis. Corkery and Way (2012) expound the so called '*OPERA Framework*' developed by the Center for Economic and Social Rights (CESR) which provides an outstanding four-step process (outcomes, policy efforts, resources, and assessment) integrating both qualitative and quantitative tools to monitor the obligation to fulfil ESR.[8] Allen et al. (2016) highlight another framework – 'the SER Monitoring Tool' – developed by the Studies in Poverty and Inequality Institute (SPII).[9] This framework proposes a three-step method involving policy analysis, budget analysis, and the development of socio-economic indicators. These contributions introduce and elaborate the currently available innovative frameworks for ESR monitoring.

The important contribution by Kuosmanen (2016) brings a different dimension to the discourse. It rather focuses on the design of public institutions in the context of public budgeting. More precisely, it introduces essential institutional features pertinent for formulating 'human rights compatible budgets' which can be useful in evaluating the performance of government departments in relation to their budget-related obligation. Though this may not be directly applied as ESR budget analysis tool, it outlines the elements to be considered in assessing *process legitmacy* – whether a budget proces is human rights compatible.

3. NHRIs and ESR Monitoring

Most literatures generally agree that NHRIs – as state based independent non-judicial mechanisms – occupy a central position in the domestic implementation of human rights norms. Dickson (2000) and Smith (2006) illuminate the unique place NHRIs have in a national human right

[7] See for example Human Rights Watch's report 'Shattered Dreams, Impact of Spain's Housing Crisis on Vulnerable Groups' (HRW 2014) wherein the Spanish federal budget was analysed in order to draw evidence-based deductions about the state's violations of its obligations in relation to the right to housing. The work exclusively focused on austerity measures adopted by Spain that resulted in insufficient spending on affordable housing.

[8] The full framewrok available in CESR (2012).

[9] See details in 'The Socio-Economic Rights (SER) Monitoring Tool' (http://spii. org.za/index.php/ser-monitoring-tool/).

system. The large collection by Hossain et al. (2000) presenting national experiences throughout the globe has shown that NHRIs have become strategic instruments for the protection and promotion of human rights at national level. The early work of Hatchard et al.(2004) established the relevance of NHRIs in advancing states' human rights accountability with a particular focus on commonwealth states. The edited voulume 'Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions' by Goodman and Pegram (2012) offers a broader insight into NHRIs' role in ensuring state compliance with international human rights norms. Carver (2010) as well as Pegram (2015a, 2015 b) looked into the increasing role NHRIs play as intermediaries that bridge between the international and domestic human rights systems which forms part of the discussion on their distinct position and role. Pegram (2015 a), in particular, building on the theory of orchestration, examines the implications of NHRIs' intermediary role for global human rights governance. Sidoti (2012) also explores the relationship between NHRIs and the international human rights system, emphasising on their role as mechanisms of international norm diffusion into the domestic system. Cardenas' recent contribution renders a comprehensive overview of NHRIs covering relevant issues such as motivation for creating, institutional design, effectiveness parameters, ensuring state accountability, etc. (Cardenas 2014). Smith (2006) attempts to draw a more refined understanding of independence and accountability of NHRIs, and explores the opportunities and challenges facing such institutions using different country examples. These works form important contributions to the general NHRIs literature; on role, establishment, independence, effectiveness, and impact in different national and international context. Even though these literatures indicate that a range of factors (legal, political, financial, etc.) may affect NHRIs' operation, their crucial role andpposition within the national and international human rights monitoring architecture has been featured unequivocally.

The human rights movement having been litigation oriented towards human rights enforcement, there is an ample collection of academic work discussing the role of the judiciary in the enforcement of ESR. A number of scholars like Gargarella et al. (2006), Guari and Brinks (2009), Langford (2008), Michelman (2011), Ramcharan (2005) and Young (2010), among others , have examined the institutional relevance and practice of courts in adjudicating ESR.[10]

[10] Notably, one also finds numerous writings particularly focusing on the South African courts. For example: Christiansen (2008), Davies 2011), Liebenberg (2008), Mbazira (2007), Pieterse (2004), etc. This is due, not only to the justiciable status of ESR in the South African Constitution, but also, to the leading ESR jusrisprudence that has emerged from South African Courts.

Criticising the human rights movement that traditionally focused on judicial enforcement of human rights, Gomez (1995) argued that 'the very nature of socioeconomic rights demands that models for their realisation should not be confined to a complaints-based model such as court process'. Leaving aside the legitmacy debate around the judicialisation of ESR, Gomez (1995) further highlights the limitations of the judicial process, that the role of courts is confined to complaints brought before them and hence their success depend on active litigation. According to Kumar (2006), NHRIs are well positioned to undertake human rights assessment on government policies, which, he argues, is of particular importance in dealing with ESR violations attributed to failures in government policies. Building on the nature of NHRIs as state based institutions; he further establishes the assumption that governments will be more open to NHRIs' assessments than those of civil society groups. Such literatures are important in laying down the conceptual frame on the key role of these non-judicial institutions in complementing the role of the judiciary in ESR enforcement.

The role of NHRIs conventionally being conceptualised in the context of monitoring civil and political rights, there is generally limited literature on their role in ESR enforcement. Kumar (2006) accurately described this tendency a 'misperception' of NHRIs' mandate that they can only deal with violations of civil and political rights. The ICESCR Committee (1998) echoed the 'neglect' or 'low priority' towards ESR in the role of NHRIs and further highlighted activities they may undertake in the promotion and protection of ESR. This is a preliminary source for locating NHRIs role in relation to the ICESCR.

The seminal anthology by Brems et al. (2013) draws on insights and experiences from the globe on the actual and potential role of NHRIs in the promotion and protection of ESR. Being the first of its kind, it constitutes a significant resource attempting to provide historical, theoretical, and practical insights on the role of NHRIs in ESR enforcement; and further analysing country specific experiences from different regions of the world. de Beco (2013) lays important arguments for NHRIs' role in ESR while Lindholt (2013) analyses their position as independent human rights actors in relation to ESR, offering a framework for understanding their place under existing instruments dealing with NHRIs and ESR. Corkery and Wilson (2014) also explored, with reasonable detail, the institutional relevance and the functions of NHRIs in light of ESR; and raised pertinent issues of effectiveness as well. von Tigerstrom's (2001) assessment is another contribution shedding light on the roles and challenges of NHRIs in the implementation of ESR integral part of NHRIs' mandate (even without a formal authority) by virtue of their monitoring compliance with

international obligations under the ICESCR. Nowosad (2005) also joins this standpoint arguing that the broader mandate of NHRIs needs to incorporate all categories of rights without the necessity for express legal authority.

The geographic variety of NHRIs literature is diverse though very few deal with ESR work of a specific NHRI.[11]There is a relatively good amount of literature assessing the ESR - related work of the South African Human Rights Commission (SAHRC), keeping in mind that the ESR mandate of the Commission is expressly laid down in the Constitution (Section 184(4)). This includes, but not limited to, the work of Heyns (1999), Liebenberg (2001) and Newman (2003) that devoted attention to SAHRC's role in monitoring the implementation of ESR in light of the Constitutional mandate. Brems et al. (2013) incorporated contributions from different scholars assessing ESR -related mandate and work of several NHRIs including that of Australia, Bolivia, Ethiopia, Ghana, India, the Netherlands, and the UK. Notwithstanding the wealth of information availed, not all of these narratives are necessarily grounded on concrete empirical findings concerning the NHRIs' practice on ESR. In this regard, Beredugo's essay is of particular relevance presenting a more specific and empirically supported analysis on NHRIs' role and effectiveness in advancing ESR (Beredugo 2015). Limited in scope to Sub-Sahara Africa, it provides a comparative and comprehensive assessment of three African NHRIs from the different sub-regions: Nigeria, South Africa, and Uganda.

Generally as to what NHRIs' roles and mandates should be, most publications dealing with these institutions rely on the *Paris Principles* (1993). The thorough commentary published by de Beco and Murray (2015) form an essential interpretive source for the Paris Principles.[12] When it comes to specific guiding instruments on mandates and roles of NHRIs in relation to ESR, the UN *Handbook on Monitoring Economic Social and Cultural Rights* serves as a very resourceful material (OHCHR 2011). The great importance of this material lies not only in detailing practical aspects

[11] For example; de Beco (2007), and Wouters and Meuwissen (2013) draw comparative perspectives on European NHRIs. Some writers such as Hatchard (1999), Carver and Hunt (2012), Okafor (2012), Peter (2009), and Murray (2007) shed light on the state and work of African NHRIs. With respect to the Asia-Pacific Region, the works of Burdekin (2007), Cardenas (2004), and Renshaw and Fitzpatrick (2012) are worth noting. Dalton and Mehyar (2012) wrote on NHRIs in the Middle East and North Africa. Treatise by Pegram (2012), Reif (2012), and Cole and Ramirez (2013) deal with particular NHRIs in the Latin America region. All these, though cover a range of important issues,do not discuss ESR work done by the NHRIs under consideration.

[12] The UN handbook on NHRIs (OHCHR 2011) also covers the Paris Principles and more (the UN system, the International Coordinating Committee for NHRIs, human rights promotion and protection, etc.).

of ESR monitoring processes and addressing issues in ESR monitoring, but also in charting specific guidance on budget monitoring and on utilising budget information for ESR. Though this material, primarily targeting to guide the UN human rights field officers, does not directly offer tools for NHRIs; it touches upon NHRIs' roles indirectly and embodies adaptable information, tools and strategies. Defending Dignity, a manual designed by the Asia Pacific Forum of NHRIs and the Center for Economic and Social Rights (2015) presents a more specific and more useful guide for NHRIs on ESR monitoring.

Capacity and independence questions, and related effectiveness issues are key aspects in assessing the performance of NHRIs as human rights monitoring mechanisms. Early contributions such as that of Hucker (2002), Kumar (2003), Livingstone and Murray (2004), Mulgan (1993), and Reif (2001) that look into the effectiveness of NHRIs focused much on formal factors using the yardistics in the Paris Principles.[13] On the other hand, Murray's examination (Murray 2007) establishes that the Paris Principles are not that much instrumental when it comes to effectiveness, as they were designed to measure compliance with standards related to the establishment of NHRIs rather than their operation. Her work provides a set of important recommendations on the criteria for assessing the performance and impact of NHRIs. Other scholars like Okafor (2012) and Pegram (2012) seem to agree that the formal architecture conception of the Paris Principles does not necessarily guarantee effectiveness in the performance of NHRIs. Reif (2012) also, in a later work , highlighted that the formal normative framework has become less important due to other factors becoming more influential in the domestic implementation of human rights. In a relatively recent article on effectiveness, Lions and Pegram (2015) interrogate what institutional features make NHRIs effective. They go further to analyse the casual link between the formal rules and institutional behaviour and practice, and to find no such forceful bond between form and performance. It is also relevant to note two seminal studies by the International Council on Human Rights Policy (2005 and 2004). The first examines ways in which NHRIs might improve their effectiveness by using benchmarks and indicators to assess their work; while the second presents comprehensive information on operational performance and legitimacy, including issues related to accessibility, interaction with other institutions and positive impact, drawing on experiences from all over the world. One of the early publications on NHRIs by Lindsnæs et al (2000) also fairly

[13] The Paris Principles establish six standards relevant to effectivenessof NHRIs: broad mandate and competence; autonomy from government; constitutional or statutory guarantee of independence; pluralism in composition; adequate resources; and sufficient powers of investigation.

covered issues of effectiveness and independence, among others which also include perspectives from different regions of the world. None of these works give particular attention to NHRIs' effectiveness in the context of ESR monitoring. Corkery and Wilson (2014) attempted to analyse the effectiveness of NHRIs in relation to ESR work by considering some of the formal factors in the Paris Principles. On the contrary, Beredugo (2015) pondered extensively on effectiveness of NHRIs in advancing domestic implementation of ESR, yet without clearly defining what effectiveness entails or providing any parameter for evaluating effectiveness.

4. NHRIs and Budget Analysis – The Void

NHRIs, as bodies mandated to assess a government's compliance with its human rights obligations, they are expected to strategically monitor ESR. It logically follows that this mandate should include monitoring the budget in order to evaluate compliance with the resource dimensions of ESR obligations. Arguably, NHRIs would have more roles, if not unique, in monitoring the obligation to fulfil ESR which would attract a great deal of resource/budget monitoring work for NHRIs.

While there is a promising body of literature emerging on the cumulative topic of ESR and NHRIs, there is hardly a disourse on the mandate and function of NHRIs in ESR based budget monitoring. The contributions discussed in the foregoing section being undeniably very important, they do not fill the literature gap on ESR budget work. Beredugo (2015) touches on budget analysis work done by the Ugandan Commission but not in detail, and not in a systematic manner linking ESR obligations and budget issues. His work presents a rather descriptive approach than an in-depth analysis of the budget monitoring framework. Blyberg's work for the Scottish Human Rights Commission (SHRC) (Blyberg 2015) fairly covers relevant issues of human rights based budgeting and budget analysis. The focus is limited to Scotland and is intended to guide the SHRC. It also contains a slim section on the role of NHRIs which disappointingly spared just a few lines to merely emphasise that NHRIs' human rights monitoring mandate should include evaluating the public budget.

The publications by the Kenyan National Commission on Human Rights (KNCHR) forms empirical source for looking into NHRIs work on budget analysis. The Living Large Analysis (2008) critically examines budget expenditures by the Kenyan government departments on non-ESR items (purchase of government vehicles) in comparison with the budget gap for the fulfilment of specific ESR such as the right to health and the right to education. It represents an example of a NHRI work in

employing quantitative tools for budget analysis, in particular, to show how the budget expenditures negatively impacted the fulfilment of the rights under consideration. Though the report provides information on a ground-breaking work by a NHRI in relation to budget analysis, it must be noted that the scope is limited to budget expenditure. The *Mental Health Audit* (2011) presents an accounts of KNCHR's approach to human rights based audit of the mental health sector in Kenya. The budget analysis established the allocation for mental health was insignificant portion of the health budget and had not increased in five years despite the prevalence of the problem in the country (grounded on data that Kenya has high mental illness rate). Unlike the first one, this work dealt with budget allocation rather than expenditure.

Maximum of available resources being an important qualification of the obligation to take steps to realise economic and social rights, states frequently attribute their failure to fulfil ESR to lack of resources. It is thus necessary for NHRIs to interrogate such a claim. The *Defending Dignity Manual* (2015) – the guidebook for NHRIs on ESR monitoring – forms a rich source of information for understanding how NHRIs can engage in ESR monitoring. Most importantly, it provides relevant details on targeted approaches in assessing resources, covering also the particular topic of public budget analysis. This is so far the comprehensive material linking the role of NHRIs and resource/budget analysis.

Conclusions

The increasing body of scholarship on NHRIs is robust and diverse though a majority focuses on assessing the mandate and role of NHRIs in a more general manner. The review of available literature reveals that there is still less scholarship studying the role of NHRIs in advancing ESR accountability. This is due to the greater focus given to the role of courts on the domestic enforcement of ESR. There is indeed a promising volume of literature accumulating that links ESR and NHRIs, but remains to be either quite general or narrow in scope and objective. In spite of the encouraging developments in NHRIs scholarship focusing on ESR, what appears to be grossly lacking is reference material specific to ESR based budget monitoring by NHRIs. Considering that budget monitoring is a relatively new area for ESR scholars and practitioners, an encouraging portion of literature has recently emerged which still needs to be furthered. Yet, articles that consider links between ESR budgeting and NHRIs' work, or that situate and assess the mandate and function of NHRIs in ESR based budget work are almost non-existent. An agenda for future research is thus

to examine the role and practice of NHRIs in ESR based budget monitoring. The relevance of budget analysis for NHRIs' ESR monitoring work on the one hand, and the suitability of NHRIs' mandate for budget analysis on the other hand, should be critically assessed in forthcoming literatures.

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Muslim Women and Integration in Europe: A Literature Review

Cristina Yasmin Ghanem

Abstract

This literature review focuses on illustrating the existing research on the topic of integration of Muslim women in the Western European context. From the debate regarding the Western orientalist narrative of Muslim Women, portrayed as submissive and disempowered, to the contested relation between Multiculturalism and women's rights, this article will spread some light on the vast but often disconnected literature regarding integration models, Muslim women's agency and the future of European Islam. Starting from the work on piety and agency, with a particular focus on the use of religious symbols and the *Hijab* debate, continuing with the long lasting discussion regarding the incompatibility between multicultural policies and women's empowerment and ending with the literature that applies a gender perspective to civic integration measures and universalistic approaches to social inclusion, this review will cover the most relevant existing literature on the subject.

Key-words: Integration policies, Multiculturalism, Muslim women, women's agency.

Introduction

Scholars have for long focused their work on the issues related to the integration of Muslim communities in Western Europe. From literature focusing on integration measures and policy implementation (see for instance Roy, 2007; Moodod, 2007; Koopmans et al., 2005; Joppke, 2004; Kostakopoulou, 2010; Guild, Groenendijk and Carrera, 2009; Burns, 2011; Doomernik, 2005; Fekete, 2006; Michalowski, 2007; Tebble, 2006) to sociological research on the constant development of European Islam (see for instance Cesari, 2003; Roy, 2007; Kaya, 2009), the work conducted to understand the situation of Muslims in Western Europe is copious. When it comes to research that implements a gender perspective to the issue of Integration of Muslims in Europe, however, the scale of interest from the academic community seems to decrease. Scholars have divided themselves on three large thematic blocks of research which I will briefly discuss and analyse in this paper. The first thematic block focuses on the constructed image of Muslim women crafted by European orientalist politics and by the media. This consists in a static representation of Muslim women as submissive, uneducated, disempowered and subjected to patriarchal violence and domain of the men in their families (El Guindi, 1999; Steet, 2000). Within this block we can find the work of scholars who focused primarily on the misconceptions regarding the use of religious symbols, such as the *Hijab* or the *Niquab*, work focused on the relation between religious identity and women's agency, studies on Islamic Feminism in the West and the relation between piety and "liberal" understandings of agency and self-worth and work of scholars wondering whether Muslim women really need to be "liberated". The second thematic block focuses on the alleged incompatibility of multicultural policies and women's rights. Based on the vast literature accusing Multiculturalism to be the cause of female segregation in Muslim communities and the persistence of traditional and discriminatory gender norms and practices, various scholars suggest a counterargument to the accusations made regarding the failure of pluralistic integration model. Finally, a more recent and less popular field of research focuses on uncovering the problematic rhetoric surrounding civic integration policies, especially when targeting Muslim women with the purpose of educating Islamic mothers on the theme of motherhood.

1. First Thematic Block - The Constructed Narrative of Muslim Women

The first and most numerically relevant field of research on the topic of Muslim women and integration is that encompassing a vast range of topics,

all connected to the misconceptions and stereotyping of Muslim women in the West.

Colonialism coincided in history with the prevalence of racial ideologies and ethnic categorisation in Western societies and this phenomenon lead to the rising belief among people of European origins to be culturally superior and free to disregard other traditions, institutions and values (Alvi and Al-Roubaie, 2011; Evans, 2010). According to Said (1978), Academia played an important role in enforcing the colonial rhetoric when speaking about different cultures. The Islamic religion has been demonised by Western scholars to the point of radically changing its image in a global scale. The writings of scholars such as Manfred Halpern (1962), Stephen Schwartz (2002), Daniel Pipes (2002), Graham Fuller (2003), and Bernard Lewis (2004) define Islam as a religion equal to totalitarian ideologies, based on violence, anti-modernism, irrational believes and furthermore incapable of respecting human rights, democracy and tolerance. Mohammad Waseem (2005: 3–5) criticises his colleagues who write about Islam through an orientalist lens, claiming that they contribute to enforcing essentialist and selective boundaries between the West and Islam. As Khan (1998) states, Muslim women are constantly portrayed as static and submissive beings, subject to the patriarchy of a religion which, in colonial and orientalist narrative, was deprived of its internal historical differences or ethnic-cultural particularities and displayed as a fixed "backward other" in relation to the liberal and modern values of Western societies. Many scholars working on Muslim women (Alexander, 2006; Gurel, 2009; Mahmood, 2005; Mahmood and Hirschkind, 2002; Maira, 2009; Razakh, 2008, Volpp, 2011) argue that this orientalist mentality and the belief of superiority made it easy to translate feminist sentiments into support for the imperialist project. Muslim women's image is the product of years of colonialism and neo-imperialism, when women from former colonies in North Africa and the Levant were on one hand seen as a prohibited fruit of desire, therefore needed to be un-veiled, and on the other they symbolised a tangible and visible representation of the inferiority of the Islamic world to the progressive lifestyle of the Western colonial powers. This orientalist narrative of Muslim women, and more in general of Islam, lead the conversation in the post-colonial Western world and this rhetoric remains still a dominant topic of discussion of today's political discourse (Khan, 1998). Nowadays, the debate regarding the integration of Islamic communities is strongly politicised. The vastly spread belief that Islamic life style and Western values are incompatible continues to be a relevant issue for the public opinion, especially after 9/11 and the following terrorist attacks in the name of Islamic fundamentalism (Salih, 2004; Salvatore, 2007; Read, 2007). The clash between western believes and Islam finds

its visual representation in the religious covering of Muslim women, often perceived as a threat to liberal values and gender equality (Bowen, 2007; Caincar, 2009). The commonly mention "*Hijab* controversy" has attracted various scholars and generated a copious literature on the meaning of religious covering and whether its prohibition is compatible with human rights. Scholars have, for instance, criticised the assimilationist measures of Republican France to prohibit the use of religious symbols in public spaces.

The debate which started following certain countries' denial of Muslim women's head covering in the public space, a prohibition which was formalised in secular France and silently normalised in other EU contexts, finds justification on three general principles: secularity, neutrality and gender equality (Amnesty International, 2012). The concept of universality through ethnic blindness on which France and Turkey find the legal right to deny Muslim women's the choice to wear their religious covering in the public sphere takes the name of secularity. Neutrality is a justification often used by private entities and employers, as well as state institutions, to prevent Muslim women from wearing religious symbols in the place of work, stating that they should promote a religious neutral image of the enterprise (Mohamed, 2001). Last but not least, the principle of gender equality is one of the most cited reasons to deny these women their right to religious expression. Due to the belief that all women wearing the hijab, or other head coverings, are subject to the dominant and patriarchal power of the men in their family, states often fall into the Orientalist narrative of liberating Muslim women from oppression and patronisingly position themselves as the savers. Superiority of western secular values compared to the constructed image of Islam is a rhetoric used to justified repression of religious freedoms.

Bowen (2007) claims that the principal reason to ban the *Hijab* is the fear of female discrimination, extremism and communalism, which would create fragmentations based on ethnic and religious identities and eventually impoverish the universal understanding of Republican values. Furthermore, Scott (2007) rejects the common belief that the *Hijab* is a symbol of submission to male power because, in her view, religious coverings for women are not a practice limited to the Muslim world and therefore patriarchy and Islam can't be understood as synonyms. In contrast with Liberal Feminist movements, such as the French Women's Liberation Movement, various activists for women's rights, like Nussbaum (2010, 2012), supported the decision of Muslim women to wear the *Hijab* claiming that is against liberal values to deny someone's freedom of expression, of conscience, of religion and belief (Zimmerman, 2015). Scholars have identified a general discomfort felt by Muslim women in secular nations, such as Turkey and France, due to their inability to wear a symbol which is

part of their identity and consequentially feeling like second class citizens, unaccepted by the society in which they live due to their religious believes. Secularism, in addition, seems to target primarily Muslim women for the purpose of liberating them from the dominance of the men in their communities. This tendency ironically puts women in the position of being told what to wear from two fronts; the Islamist movements on the one hand and western secular democracies on the other (Seggie and Austin, 2010).

The vast literature focusing on the *Hijab* debate analyses the issue also from a public policy perspective, underling how secular policies in countries like France are today often perceived as institutionalised Islamophobia (Baubérot, 2012; Laachir, 2008; Ramadan, 2004; Roy, 2007) and the limitations to the wearing of religious covering as a form of integration strategy to enforce the principle of gender equality contributes to denying women access to employment and education (Chamblee, 2004: 1073; Bleiberg, 2005: 129; Rebouche, 2009). Legislatures that regulate the wearing of religious symbols in the public space and face coverings can be found in different European countries. In France two laws limit the use of religious clothing in the public sphere, the 2001 ban on face coverings which denies the use of *Burqas* and *Niquabs* and the 2004 law regarding religious attire for public employees and for kids in primary and secondary public schools (Howard, 2012; Mahony, 2010). In Germany, in relation to the Federal Court decision to allow states to ban the wearing of the *Hijab* in schools, various states have decided to implement such law. In addition some German states have considered to ban civil servants from wearing the *Burqua* (Impey and Mara, 2011). In Belgium, in addition to the 2011 law that prohibits the face coverings there have been some attempts at following the French decision regarding the *Hijab* and other religious symbols in public schools (Vrielink et al., 2011; Fadil, 2011). The argument supported by parliamentary debates in France is clearly painting religious clothing as incompatible with gender equality. In March 2010 the Conseil d'Etat conducted a 'study of possible grounds for banning the full veil' in which it stated that the full veil 'testifies to a profoundly inegalitarian conception of the relationship between men and women' (Conseil d'Etat, 2010: 8). Sarkozy went a step further by calling the *Niqab* 'a sign of debasement and subservience' (Gilligan, 2011).

Other scholars have concentrated primarily on the meaning of religious symbols such as the *Hijab* in the Muslim world (see El Guindi, 1999; Mernissi, 1985; Steet, 2000), and especially for women of second and further generations of the Muslim Diaspora. While some scholars, such as Joppke (2009: 12), Lister et al. (2007: 99) and Killian (2003: 572), argue that many teenage girls in Europe wearing the *Hijab* have been primarily

motivated by parental pressure, Read (2007) claims that Muslim women often choose to wear the veil despite their parental advice to not publically display their religiosity. This decision is taken in order to find a belonging and an identity while feeling marginalised by the majority in society. Killian (2003: 572), also suggests that young Muslim women were more likely to adopt the veil as a way to proudly expose their ethnic and religious identity. Other times the *Hijab* is worn in order to avoid internal conflict within families or as a way to negotiate their position in the community (Read, 2007, Moore, 2007; Dwyer, 1999; Siraj, 2011; Droogsma, 2007; Ruby, 2006). Head covering can also become a form of moral and religious authority and it can grant a certain degree of freedom from parental restrictions (Dwyer, 1999; Read and Bartkowski, 2000; Williams and Vashi, 2007). Amina (2004) argues that religious coverings, for young educated Muslim women in France, becomes a symbol of intellectual religiosity that affirms both their religious identity as well as their modern and feminist believes. Ahmed (2011) illustrates the different meanings of the veil for young Arab women in the United Sates, where religious head coverings are often used as political statement for causes such as human rights, justice and the fight against islamophobia. Just as Muslims apply different meanings to the *Hijab* and other forms of head coverings, non-Muslims may too interpret the symbol differently but often with scepticism and fear, as a sign of inequality, fundamentalism and non-willingness to integrate (Haddad, 2007; Williamson and Khiabany, 2010).

Literature on the stigmatisation of Muslim women does not, however, focus solely on the *Hijab* debate. A large amount of research has been conducted to clarify the connection between Muslim women's religious identity and their personal agency (Laird, Marrais, and Barnes, 2007). Scholars have argued that while liberal Feminism has for long pinned religiosity has inherently challenging for women's rights and female empowerment, piety can be a source of strength and self-worth for Muslim women, or else a source of agency (Mahmood, 2005; Jacobsen, 2011; Jouili, 2011).

Religious motivated choices, according to Mahmood (2005, 34), are hardly taken into consideration by the rhetoric of liberal feminism as efficient tools of agency due to the fact that they are in contrast to the framework of secular liberalism and fit rather in the pious understanding of modesty and submission. Contrary to the common belief that religiosity and female empowerment are at odds, recent studies show that piety and agency may be more interconnected than one may think (Rinaldo, 2014). Agency, in fact, should be understood as the capacity to negotiate choices within the structure of power in which one is living (Kabeer, 2001).

According to Jonker (2003), the situation of Muslim female congregations in Europe is various, with some organizations of younger pious women that engage in reinterpretation of the sacred scripture outside the context of mosque and traditional religious centres, and more formal congregation of women associated with clerical religious authority. The newer generations of Muslim women tend to question traditional religious authority and have a more individualised form of Islam, therefore are more likely to be part of organizations that are not affiliated to mosques but rather grass-roots women's organizations that work as mediators between the host society and the Muslim communities (Cesari, 2003).

Research on the phenomenon of Islamic Feminism (Ahmadi, 2006; Badran, 2006) shows that the entire concept of feminism is not marginal to the secular tradition, but that the fight for women's rights can find inspiration on sacred scriptures and religious believes. Badran (2006) claims that Islamic Feminism is based in the Quaran and preaches gender equality, which according to pious Muslim women has nothing to do with traditional gender roles (Jouili and Amir-Moazami, 2006). Scholars of Islamic Feminism support the idea that the condition of women's rights in various Islamic countries is caused by patriarchy rather than Islam itself (Mashhour, 2005, Shah, 2006). As Singh (2007) points out in her work, the Western conception of equality between men and women is not reflective of the reality of women in developing country or in contexts of minorities in developed countries. Various authors underlined the inability of Western feminism to understand the will of Muslim women and the impossibility to simply apply the Western understanding of gender equality to Islamic gender roles (Abu-Lughod, 1986; Ahmed, 1992; Gole, 1996; Deeb, 2006). Abu-Lughod (1992, in her famous piece 'Do Muslim Women need Saving?', explains that the way in which the Afghan woman has been portrayed by the Bush administration as a victim in need of liberation from the West misses to account for the historical context and cultural traditions of the entire region. Abu-Lughod argues that the *Burqua*, and more generally the choice of women to 'cover' in the presence of certain men, is a tradition of modesty and piety that would not change with a change of regime in Afghanistan, as it stand on the individual conscience of Muslim women. Jacobsen (2011) illustrates that the 'willed submission to Allah' uses the paradigms of autonomy and agency of liberal feminism, as women interviewed in her research often stressed the importance of choosing the ways in which they wanted to conduct their spiritual life. Conscious and chosen piety was portrayed as a much cleaner and purer form of religiosity, while blind obedience to parental will or to the Imam's words was seen as a form of cultural ignorance. Amir-Moazami and Jouili (2006) research the ways in which religious knowledge for Muslim women in Europe becomes

a source of agency. The authors identify religious education, general education and motherhood as three interconnected sources of strength and self-realisation for Muslim women. Religious education serves as an empowering tool to be able to combat patriarchal tradition within the family and in the broader Muslim community. Young Muslim women who acquire a greater knowledge of Islamic tradition are more aware of what is a true religious practice and what is, instead, a cultural misinterpretation of religious teachings. This allows women to negotiate and bargain their role in the public space and their rights with parents and other members of their communities. Religious knowledge is the basis on which Islamic Feminism is founded and, therefore, it represents a way for women to take control over their lives while being true to their religious identities and believes. General education is also often referred to as a source of agency for Muslim women. On the contrary of other studies, this research reports education as one of the tools for empowerment cited by Muslim women themselves. Education, however, is rarely seen as a way to achieve a personal career but rather as a self-improvement mechanism to become a more educated member of the community and primarily a more educated mother. Having an education allows women to become useful for the community and at the same time to have the require skills to follow the upbringing of the new members of the '*umma*', their children. Motherhood, in fact, is often referred to as a source of agency. Motherhood in the Muslim word has to be understood as 'political motherhood' (Werbner,1999), in the sense that is a public responsibility exercised in the private domain. Mothers are considered as the prime educators of the community and bear the responsibility of the future of the Muslim world. The role of mothers is not underestimated in the Islamic tradition and Muslim women in Europe often see motherhood as a way to achieve not only a personal goal but also a publicly recognised position of relevance within the community. Because of this some Muslim women were recorded saying that, compared to Western models of gender equality, the Islamic tradition recognises the worth of women in their role of mothers, which is equally valuable as that of men, without requiring women to take on two jobs in order to reach the same level of social relevance of their male counterparts (Predelli, 2004).

In addition women engage in various forms of voluntary work aimed at improving the general conditions of the community and at teaching the sacred scriptures (*da'was*) (Jonker, 2003). In a study of two women groups in South Africa showed that these forms of voluntary-based action for the collective good gave women a sense of self-worth and it allowed them to gain a space in the public sphere that was justified through their religiously motivated choice to give something back to the community. Some of the women who were interviewed for the study spoke about the importance

to have a good religious education prior to take part in this community oriented kind of work, in order to found their participation on a solid ground and to negotiate their right to conduct these activities with the male members of their families. These ground-roots organizations' work did not only contribute to increase women's self-esteem as Muslims and pious individuals, but also their identity and image in the public domain. This form of religiously justified voluntary work was fruitful for these women's empowerment, by providing them with new skills, knowledge, public recognition and a renewed sense of worth. Despite some initial scepticism from their fathers, brothers and husbands, the Muslim women who took part in these programmes were able to finally change these men's minds by proving the importance of their work both in functional and religious terms (Zarina, 2008).

Furthermore, Oliver Roy (2007, 89) makes an interesting consideration regarding the stigmatisation of Muslim women as victims in Western society. By portraying them as submissive and victims of patriarchal traditions the only choice left to them by the discourse of emancipation is a total break with the existing family structure. According to Roy, this shows little understanding of the actual needs and conditions of Muslim women and Muslim families. The majority of social problems in the *banlieues*, in fact, is primarily caused by the disintegration of families rather than by the persisting pressure of family structure. If we taking into consideration for instance the so called arranged marriages, too often defined as 'forced' by the media and political class, we notice that young women would prefer to negotiate their choices with parents rather than to lose profitable arrangements and their honour. Roy (2007, 89) claims: 'The discourse of women's liberation here comes up against the reality experienced by these young women, which is far from being one of systematic enslavement.'

Scholars have therefore focused on the misconceptions of the public opinion in the West regarding the image of Muslim women. From the perceived threat posed by head coverings to the liberal conceptualisation of gender equality to the alleged incompatibility of Islam with female empowerment and women's rights, the literature mentioned in this section of the paper has tackled assumptions and orientalist discourses by dismembering the binary understanding of agency as opposed to piety and religious obedience. The research mentioned above has relevance when talking about Muslim women and integration because it spreads light on the debate regarding policies of assimilation in states that reject cultural and religious identification in the public space in the name of secularity and universality. France assimilationist restrictions on the use of head coverings in the public domain, for instance, tend to ignore the role played by religious identities for the self-realisation and agency of Muslim

women. Integration policies that differ from the pluralistic or multicultural model adopted by Canada, Australia and to a certain degree the United States and the United Kingdom, are less likely to be representative of the effective needs of Muslim women and will continue to silence their voices by maintaining the dominant discourse focused on the constructed and orientalist image of women within Islam as victims of patriarchy and communitarian oppression. This literature however misses to link existing public policies oriented towards migrant women with Muslim backgrounds to the questions of agency and religious identity. Further research is needed in order to fill the gap and critically analyse policies in the field of integration which work with the intersectional dimensions of gender and diversity.

2. Second Thematic Block - Multiculturalism and Women's Human Rights

When it comes to research on integration that applies a gender lens, the question of whether Multiculturalism is bad for women is often at the center of scholars' attention. Multiculturalism has been defined as a model of integration that accommodates the cultural and religious needs of minorities within the national context, whether these minorities are immigrant groups, national minorities or indigenous people (Banthing and Kymlicka, 2013). The Multiculturalist model, following the terrorist attacks of 9/11 and the following violent events in various world capitals, has suffered from large criticism and many scholars have claimed a backlash of Multiculturalism with a consequential return of assimilationist types of integration policies (Joppke, 2004; Kofman, 2005). The debate regarding the failure of Multiculturalism has been largely politicised and the arguments of those claiming it have often circled around the same three topics; the segregation and ghettoization of closed ethnic and religious communities, the rise of Islamism and fundamentalism, the threat posed to women's rights and gender equality. This last point often argued against policies of Multiculturalism is strongly connected to the discussion on religious symbols, the use of head coverings and women's agency through religious knowledge and religious motivated choices. Prins (2000) argues that at the centre of the debate regarding Muslim women and emancipation there are two important assumptions to deconstruct; the first being that Muslim women are victims of their backwards culture and religious believe, and the second that this condition of submission make them the perfect target of emancipating integration practices imposed on them by civilising western states. One of the main authors speaking about the repercussion that Multiculturalism could have on women's rights and gender equality

is feminist Susan Moller Okins in her famous text 'Is Multiculturalism Bad for Women' of 1998. Okins claims that Kymlicka's conception of Multiculturalism would protect communities and therefore the patriarchy of Islamic groups, leaving little agency to women who would eventually be victims of barbaric gender practices and norms such as forced marriages, polygamy, child marriage, house segregation and female genital mutilation. Okins has been strongly criticised for her failure in the analysis of culture, seen by her as static and essentialist, rather than dynamic and multi-faced (Honing, 1997; Bhabha, 1997). Culture has been defined by Greetz (1973) as a semiotic concept which is in constant mutation and transformation due to its interaction with elements of different social realities. Okins argument has also been accused of paternalism and ethnocentrism, stressing on the rhetoric of othering, of 'us' vs 'them', which maintains strong and alive the narrative of western superiority associated with the orientalist or neo-imperialist philosophical and political tradition (Al-Hibri,1997; Gilman, 1997; Parekh, 1997). In doing so, Okin silently supports Samuel Huntington's theory of the 'clash of civilizations', published a year prior to Okin's text in 1997. The question on whether Multiculturalism is bad for women has been addressed by Modood and Phillips, along with other scholars. Tariq Modood (2008), in his 'Is Multiculturalism Dead?', explains that basic human rights and gender equality are not in conflict with his understanding of the multicultural model. Phillips (2006) in her manuscript 'Multiculturalism without culture', on the other hand, suggests that both feminist theories and Multiculturalism aim at challenging inequalities and therefore could find common ground and work as supporting frames of thought. Theorists of Multiculturalism have never explicitly stated that they support the accommodation of groups at the disadvantage of women's individual rights despite this being one of the principle points of debate for which they've been criticised (Malik, 2010). On the contrary, Malik claims that rather than the hard and constructed conception of Multiculturalism portrayed by critics and the public opinion, progressive Multiculturalism is the model various scholars refer to when speaking about diversity management. Progressive Multiculturalism is described as a model of integration that aims at protecting minorities cultural and religious needs without however undermining individual rights and the value of gender equality. Liberal Political theory has been criticised for not being able to recognise the similarity between Multiculturalism and Feminist movements and, on the contrary, for comparing them as opposite faces of the same coin (Kymlicka, 1995). Progressive Multiculturalism aims at listening to the actual claims of a social group, in this case minorities, at translating them into policies. What is increasingly being requested by cultural and religious minorities is that states would abandon the rhetoric

of mere tolerance and adopt policies of recognition in the public sphere. Claims made by theorists of Multiculturalism are therefore comparable to those of the liberal feminist movement, as both try to translate into policy the desire of a minority groups to have their 'difference' recognised in the public sphere (Malik, 2010). In her study regarding the characterisation of Muslim women in the Netherlands and the discourse on Multiculturalism, Bracke (2011) identifies three different models of pious and educated Muslim women's responses to the public narrative regarding emancipation, sexual liberation and secularism. The first response tends to be a form of criticism of the patronising liberal feminist belief that Muslim women need to be somehow 'liberated', questioning the authority of white women to define emancipation and to claim it on people belonging to different cultural, religious and ethnic backgrounds. The second response, on the other hand, indulges the public discourse on Muslim women and emancipation and agrees to not be emancipated but that, for them, 'it's not so important'. The last response given by Muslim women was to ignore the public discourse as a whole and to strengthen instead the work of grass-root women's organizations. A fourth non-response is often, Bracke claims, silence caused by the fear of stigmatisation.

Diversity and identity policies, despite the alleged backlash of Multiculturalism and the turn towards assimilation policies of civic integration (Joppke, 2007), remain a large portion of the integration package in various Western European countries. The Multicultural Policy Index developed by Queen's University, suggests a series of indicators to define the level of multicultural institutionalisation of a country. Some of the fixed indicators used by the MCP, other than policies to prevent discrimination, can be state founding of ethnic or religious schools, founding for the education of mother-tongue language, exemption to dress codes, institutionalisation of Multiculturalism, accommodation of religious or ethnic organizations and media representation (Banthing and Kymlica, 2013). Scholars however haven't yet researched the ways in which policies of diversity can promote Muslim women's agency. As this review previously showed currently literature focuses mostly on policies of assimilation and on the negative effects of hard Multiculturalism, a form of Multiculturalism derived from public assumptions rather than on actual theories of diversity management. Further research is therefore needed in order to assess whether integration policies developed within the Multiculturalism framework can promote Muslim women's agency through a strengthening of religious education and religious identity.

3. Third Thematic Block - A Gender Perspective to Civic Integration

Due to the increased number of violent terrorist attacks of the early 2000 in Western European and American cities, Multiculturalism received strong criticism by the media and political parties and it was accused to cause a rise in radicalisation, segregation and women's submission (Mullally, 2013). Following the alleged backlash of Multiculturalism, traditional national models of integration began to standardise to a common European approach shared among the Member States. Two were the directions taken by this process of standardisation; first of all there was an implementation of civic integration courses for newly arrived migrants and on the other hand states focused on measures to combat xenophobia and discrimination so that migrant communities could maintain a small margin of diversity (Joppke, 2007).

Civic integration measures first appeared in the Netherlands in the 1990s (Entzinger, 2003; Modood, 2003; Joppke, 2004; Kofman, 2005) and became quickly a model of integration for Europe as a whole (Michalowski, 2004). These courses target primarily newcomers and the format of their protocols varies greatly from country to country based on whether the classes were conceptualised by policy makes as instruments to acculturate migrants and assimilate them to the values and life styles of the receiving society, or whether they are meant to provide new arrivals with the linguistic tools and the infrastructural knowledge to fully integrate into the receiving society (Corbett, 2006; Etzioni, 2007; Jacobs and Rea, 2007; Joppke, 2008). In order to analyse whether civic integration courses are more or less assimilationist it is necessary to take a look at the curriculum of integration classes, to see whether participation is mandatory, if there are financial repercussion or restricted access to residential benefits and citizenship rights if the class is not attended. Sara Goodman developed a Civic Integration Index (2010), called CIVIX, which shows the ways in which civic integration programmes limits the access to full membership of the host society. Some civic integration courses, such as those in the Netherlands and France, tend to take an assimilationist approach by imposing on the migrant a Western life-style. Other curricula, however, are softer and provide the newcomers merely with useful information and core constitutional values. Civic integration courses, therefore, can be considered an assimilationist policy depending on the way in which it's drafted and conceived.

An author that analyses with a strong gender perspective the civic integration requirements for immigrant women of non-European countries is Sara Farris (2016), in her article 'Dispossessing the Private Sphere? Civic Integration Policies and Colonial Legacies'. Farris' analysis of integration

policies for immigrant (Muslim) women in France and in the Netherlands underlines the controversial goal of civic integration courses, which aim at teaching gender equality and emancipation but at the same time target primarily women *qua* mothers and therefore educators of future generations. Farris points out that some of the components of the civic integration material in the Netherlands focuses primarily at promoting a sexually liberated Dutch woman, by presenting images of topless ladies at the beach or mundane dress codes. The introductory videos also show images of men cooking and the narrator stresses the important value of gender equality and shared responsibilities. However, when focusing on the section regarding parenting, Farris points out that the images and pronouns used by the narration show primarily women taking care of the family and children. She argues that the message is quite confusing, portraying women as both emancipated beings and at the same time targeting Muslim women primarily for their roles of mothers. The French civic integration system falls into the same controversial rhetoric. Gender equality is stressed as the main value of the secular Republic, as if the fight for equality is no longer between classes and races but primarily sexes. Therefore, just like in the Netherlands, Muslim women are conceptualised as submissive victims of patriarchy and violence and need liberation from traditional gender roles through a civic integration course that frames them solely as migrant mothers.

Another author who focuses on civic integration policy from a gender perspective is Shelby (2011). Though a study conducted with Muslim women in the Parisian *banlieue*, the neighbourhood of Petit Nanterre, she claims that the narrative of secularism, which was strengthen after the 2003 Jacques Chirac-mandated Stasi Commission Report, and the strong presence of feminist organization such Femmes Solidaires in the development of integration classes, causes misunderstandings and assumptions of what Muslim women really need in poor suburbs of the French capital due to the constant belief that their primary focus is emancipation from a condition of subordination and violence. Through various activities, such as amateur theatre sessions and guest speakers, Femmes Solidares strongly influenced the activities of the government's integration courses mainly directed towards Muslim women in that neighbourhood. Shelby argues that the women who attended these French classes were uninterested in the proposed activities which aimed at promoting secularism. Rather than engaging with the speakers in conversation regarding religious practices and male oppression, they brought up different issues and structural needs such as housing, health cover and citizenship. Institutions and organizations promoting the universal values of secularism and gender equality failed to understand the needs of Muslim women in their specific economic

and cultural context. As self-proclaimed guarantor of Muslim women's liberation from gender roles and male oppression, the Republic continues to promote top down policies that silence Muslim women's voices.

Conclusion

As this literature review has shown there is a large amount of research on the topic of Muslim women and integration in Europe. The existing literature, however, follows three large thematical blocks, the first encompassing all the social phenomenon and public policies which contribute to generate a constructed and orientalist image of Muslim women. The second focuses on the relation between Multiculturalism and the politics of identity with Muslim women's integration and the third briefly examines the new flow of civic integration policies from a gendered perspective. The research gap which would require more attention seems to be the relation between existing policies of integration, whether formulated within the multicultural framework or the principle of *laicitè*, and the agency of Muslim women in order to understand whether integration courses and programmes provide women with the tools to achieve empowerment or whether they are simply another form of identity oppression.

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Child Trafficking within China: Literature Review

Ling Han

Abstract

Child trafficking violates the fundamental human rights of children and is a heinous crime that has concerned the Chinese authority and international community for a long time. As a preparation for a systematic research on the child trafficking within China from a human rights perspective, this review analyses literature, official documents and other relevant publications related to child trafficking and trafficking in persons, with a special focus on the definition and root causes of the issue, the principle and paradigm applicable when confront the crime. After a comparison of a series of national and international legal documents, reports and literature, the review identifies some differences and incompatibilities of the definition of child trafficking in the Chinese and international legal framework. There are several approaches to identify and classify factors that cause and encourage human trafficking. However, most of the studies are about causal factors of international trafficking in women and children, while only a small part of literature focuses on child trafficking or domestic trafficking in persons. There is a series of interacting principles that guide the international and national anti-trafficking policies and actions in all the sectors and every aspect of an anti-trafficking response, and human rights is among the most important principles. States and international mechanisms combat child trafficking based on the paradigm for combating trafficking in persons consisting of four pillars of intervention: prevention, persecution, protection and partnership (cooperation and coordination).

Key- words: child trafficking, trafficking in persons, human rights

Introduction

This literature review is a preparation for a systematic research on child trafficking within China. The purpose of the review is to deconstruct and analyse literature on human trafficking, with a special focus on the definition and root causes of child trafficking, as well as the principles and paradigms to deal with the issue. It focuses on available publications in English and in Chinese from 1979 to present, including national official documents, international instruments, guidelines, reports and academic research materials.

Child trafficking is a heinous crime that concerned the Chinese authority and international community. However, because of the covert nature of trafficking and other related exploitation, it remains unknown how many children are trafficked annually (Laczko and Gozdziak, 2005, 9). Therefore, it is necessary to conduct scientific research on the issue. This review does not consider the quantitative research on the number of victims in China or around the word, but research that concentrates on questions related to how the issue is perceived and regulated in legal framework, why it happens and how to confront the crime.

The review is composed of three parts. The first paragraph is to clarify how 'child trafficking' is defined in the relevant international instruments and in the Chinese legislation. The second paragraph discusses several approaches to identify factors that cause and encourage the trafficking of children or trafficking in persons in general. The last part is dedicated to principles and paradigms for responding to the challenge of trafficking in persons, at international, regional and national levels.

1. Definition of Child Trafficking

Despite years of work and debates, there remains a lack of international agreed-up definition on what constitutes child trafficking. Is it merely a sub-category of trafficking in persons as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime of 2000 (Palermo Protocol) or should it be adjusted according to particular patterns of trafficking in children?

First of all, trafficking in persons (TIP) was defined for the first time recently in the Palermo Protocol in the Article 3 (UN General Assembly, 2000, Art.3):

> (a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use

> of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
> (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
> (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;
> (d) 'Child' shall mean any person under eighteen years of age.

In 2010, Anne T. Gallagher presented a first-ever comprehensive and in-depth analysis of the international law of human trafficking, in which a detailed interpretation on the international legal definition of trafficking in persons was elaborated. The definition contains three separate elements relate to action, means and purpose respectively (Gallagher, 2012, 29-41).

The first element '*action*' can be fulfilled by a series of activities including, but not limited to, 'recruitment, transportation, transfer, harbouring or receipt of persons'. This extensive range of actions establishes that the definition covers not only the formal process (recruitment, transportation and transfer) but also the end situation of trafficking (harbouring and receipt) (Gallagher, 2012, 29-30). In other words, trafficking in persons is not limited to 'traffic' in its narrow sense; it also includes actions of buying or taking possession provided that the action is taken through any stipulated means for purposes of exploitation. It demonstrates the drafters' intentions to make punishable every perpetrator in the whole process of human trafficking, from recruiter, trafficker to final buyer. The other part of the *actus reus* of trafficking is the '*means*' element (force, coercion, abduction, fraud, deception, abuse of power or position of vulnerability and giving or receiving of payment or benefit to achieve the consent of a person having control over another person), and it is irrelevant to trafficking in children (Gallagher, 2012, 31). The paragraph (c) of this article sets forth that in case of trafficking in children, it is sufficient to prove the presence of 'action' for the purpose of exploitation. The '*purpose*' element introduces the *mens rea* requirement into the definition of trafficking in persons. The phrase 'for the purpose of' requires that the perpetrator *intended* to take certain action through a prohibited means (only in the case involving adult victims) so as to exploit the victims, which means that the intention must be specified or special (*dolus specialis*). The fulfilment of the purpose element does not

require the achievement of the specified intention; it is sufficient that the perpetrator had that aim when committing any of the stipulated acts of the offence, namely recruitment, transportation, transfer, harbouring, or receipt (Gallagher, 2012, 34). However, as Gallagher highlighted, the Palermo Protocol failed to define 'exploitation'. Instead, it provides an open-ended list including, *at a minimum*, 'the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.' (Gallagher, 2012, 35)

Therefore, the trafficking in children in the international definition refers to 'the recruitment, transportation, transfer, harbouring or receipt of persons under eighteen years of age, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'. To sum up, the key points from the Palermo Protocol on child trafficking consists in a series of prohibited *action* taken of the *purpose* of exploitation.

The question of whether illegal o undesirable adoption practises fall within the definition of trafficking was raised at this point. According to legal interpretation making reference to the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Supplementary Slavery Convention), if the illegal adoption practice is not exploitative it cannot be defined as trafficking, irrespective of other factors. As noted Gallagher, this interpretation is not universally accepted. Many countries and leading international organizations consider illegal adoption and sale of children as a typical form of trafficking (Gallagher, 2012, 41).

The landmark Convention on the Rights of the Child (CRC) of 1989 raised the issue and the term of 'traffic in children' in the Article 35, but without further elaboration on what 'traffic' entails and the phrase 'for any purpose or in any form' suggests (UN General Assembly, 1989, Art.35):

> States Parties [to] take all appropriate, national bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form.

The Article 2 of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (CRC-OPSC) further defined the 'sale of children', but at the same time it creates some confusion and overlaps between the term of 'child trafficking (or trafficking in children)' and that of 'sale of children' (UN General Assembly 2000, Art. 2). As interpreted the experts of UNICEF East Asia and Pacific Regional Office (UNICEF EAPRO), '*where a child is transferred by any person or*

group of persons to another for remuneration or any other consideration, for the purpose of exploitation, this constitutes "both child trafficking" and the "sale of children"'. However, this report failed to answer the question of whether illegal o undesirable adoption practises fall within the definition of trafficking. Instead, it reformed the question in a more concrete form: '*Is illegal adoption into loving families exploitative?'* (UNICEF EAPRO, 2009, 21-23).

The question comes back to the meaning of 'exploitative' and whether the practice of sale of children falls into the open list exploitation. Despite the strict legal interpretation with the reference to the 1956 Supplementary Slavery Convention excludes the non-exploitative adoption from trafficking; the commodification of children in the illegal adoption market is a form of trafficking for many legislators, experts and scholars. For instance, the experts of the Office of the United Nations High Commissioner for Human Rights (OHCHR) back in 1991 argued that the sale of children is one of the modern forms of slavery, because it generate large profits by trading children and cannot guarantee the protection of children's rights (OHCHR 1991, 2). Therefore, if sale of children is a form of slavery, it also falls into the open list of exploitation that composes the definition of the Palermo Protocol. David M. Smolin has supported this position and he argued that the buying and selling of human beings implies a form of ownership and it equivalents or analogous to slavery. Thus, any sale of a child would be a form of 'child trafficking' (Smolin, 2004, 287). However, Ugo Cedrangolo, expert of the UNICEF, took another position by arguing that the act of sale of children *per se* did not have an exploitative character, and the sale of children and trafficking coincide when the sale of child is made for the purpose of exploitation (Cedrangolo, 2009, 4).

A generally accepted definition is essential to combating effectively trafficking in persons at national and international level (Winterdyk et al., 2012, 12). However, for a long time the international community failed to develop an agreement on the 'major differences of opinion concerning the ultimate end result of trafficking, its constitutive acts, and their relative significance.' (Gallagher, 2012, 12) These differences are caused by different historical context in which the human trafficking has evolved, as well as different patterns of trafficking presented in each country.

The definition of 'trafficking' in the Chinese legal framework was formulated in its particular domestic environment, and then modified adapting to international standards and the broader global context. From the Penal Code of 1979 to the latest amendment in 2015, the penalty for crimes related to trafficking has become severer over the years; however, the range of victims was narrowed from 'persons' to 'women and children'. The majority of cases of human trafficking identified in China are internal

trafficking in persons, with two particular patterns: the trafficking of children for illegal adoption and the trafficking of women and girls for forced marriage. In this context, the Chinese legal definition of trafficking in persons includes illegal or involuntary adoption, complementing to certain extent the international definition. However, the Chinese definition manifests a series of limitations.

First of all, little literature has noted the differences in translation regarding the term of 'trafficking (in persons)', which is the first step to understand the Chinese legal definition of trafficking in persons. In Mandarin, the term that refers to 'trafficking' is '拐卖 (guǎi mài)'. Its literal meaning is 'abduction (guǎi) and sale (mài)', but the English translation is 'trafficking'; however, the official translation of 'trafficking' from English to Chinese used in international treaties or official documents is '贩运 (fàn yùn)', the literal meaning of which is 'traffic' in its narrow sense. Therefore, there is some incompatibility and confusion in the translation of the term 'trafficking' from English to Chinese, and vice versa.

The international definition of trafficking in persons is implemented by China's Criminal Law in different crimes stipulated in the Article 240 (crime of abducting and trafficking of women or children), the Article 241 (crime of buying trafficked women or children), the Article 244 (crime of forced labour), the Article 262 (crime of abducting children, and organising people with disabilities and children for begging or engaging in criminal activities), the Article 358 (crime of organising and forced prostitution) and the Article 359 (crime of luring others into prostitution) (National People's Congress, 1997).

States are not obligated to replicate verbatim the definition provided by the Article 3 of the Palermo Protocol; nevertheless, they are required to adopt legislative and other measures to criminalise the conduct set forth in Protocol. Therefore, it would not be problematic if the Chinese authority stipulates criminal sanctions based on the Chinese context and at the same time conforming to the international standards. However, the Chinese definition on trafficking in persons and the relevant legislation do not conform to the international standards.

First of all the Article 240 in the Criminal Law of the People's Republic of China prohibits abducting and trafficking women and children. Therefore, the object elements of the crime are women and children, not including men. Moreover, according to the latest judicial interpretation issued by the Supreme People's Court, 'child' in this article means any person less than *fourteen* years of age (Supreme People's Court of the People's Republic of China, 2016, Art. 9). Without any doubt, this reduction of the range of victims and the maximum age of children is contrary to the standards

established by the Palermo Protocol[1] and the CRC[2], and incompatible with fundamental principles of giving particular protection to children. Regarding the nationality of victims, in the case of trafficking in women, the law is applicable to women with Chinese or foreign nationality, as well as women without nationality (Supreme People's Court of the People's Republic of China, 2000, Art. 1). However, there is a lack of a similar interpretation on the case of trafficking in children.

The same article defines in its last paragraph 'abduction and trafficking in women and children' as 'any act of abducting, kidnapping, buying, selling, transporting, or transferring a woman or a child for the purpose of selling the victim' (National People's Congress, 1997, Art. 240). This definition contains two separate elements relate to action and purpose respectively.

The objective element can be fulfilled by any of the listed actions (abducting, kidnapping, buying, selling, transporting, or transferring). It includes actions that separate a victim from his or her family (abducting, kidnapping, and buying) and intermediate actions (selling, transporting and transferring). This division is mainly caused by the literal meaning of 'trafficking' in Mandarin ('abduction and trafficking'). Therefore, this definition covers two phases in human trafficking: firstly, the separation of victims from original families by violence or deception; secondly, the transport and transfer of victims to buyers and final destination, in which more than one intermediary may be involved. However, actions of receipt and harbouring of victims are not included.

Similar to the definition provided by the Palermo Protocol, the 'purpose' element introduces a special *mens rea*, but the purpose contained in the Chinese criminal law is 'to sell' the victims, instead of 'exploitation'. This element makes punishable each person responsible for any single ring of the whole criminal chain. In the process of trafficking, a kidnapper or recruiter is not necessarily aware of or interested in the purpose of a buyer, nor does a trafficker. This is especially true in the modern trafficking in persons in which multiple criminal organisations are involved. According to the criminal law, the final purpose of the trafficking chain (exploitation or not) is irrelevant to convicting those who are involved in the process before the exploitation. It is necessary to prove the intention of the perpetrator to sell the person when taking certain actions, but the fulfilment of this element does not require the achievement of the intention.

In the case of China's internal trafficking in children, the final purposes are usually to arrange victims in forced marriage, illegal adoption, or

[1] Article 3 paragraph (d) specifies that for the purpose of this protocol, 'child' means 'any person under eighteen years of age'.

[2] Art. 1 of the CRC: "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

engage them in forced prostitution, forced labour, begging or criminal activities. In the definition, the final exploitation is not considered as a phase of trafficking, however buyers are not always free from punishment. Relative crimes are set down in the same Article 240 in the paragraphs that stipulates conditions of aggravation and in Article 241.

The Article 240 prescribes a list of conditions in which the crime is aggravated. Such conditions are the following:

> (1) being a ringleader of a criminal group engaged in abducting and trafficking in women and children;
> (2) abducting and trafficking in three or more women and/or children;
> (3) raping the woman who is abducted and trafficked;
> (4) enticing or forcing the woman who is abducted and trafficked to engage in prostitution, or selling such woman to any other person who would force her to engage in prostitution;
> (5) kidnapping a woman or child by means of violence, coercion, or narcotics for the purpose of selling the victim;
> (6) stealing a baby or an infant for the purpose of selling the victim;
> (7) causing serious injury or death to the woman or child who is abducted and trafficked or to her or his relatives or any other serious consequences; or
> (8) selling a woman or a child out of the territory of China.

Although the definition does not include the final exploiter or buyer, the sub-paragraph (4) provides that those who exploit sexually the victims of trafficking or sell a trafficked person to a condition of possible sexual exploitation, are not only punishable but the penalty is aggravated. In this case, the sexual exploitation is not intent, but effectively happened. However, the exploitation includes only forced prostitution. Labour exploitation or slavery and practice similar to slavery are not considered as a condition of aggravation. Consequently, Article 240 cannot apply to those who force trafficked women or children to engage in exploitive hard labour.

The definition provided by Article 240 does not contain 'means' element, but the same article prescribes that the crime is aggravated when prohibited action is taken through certain means. According to the sub-paragraph (5) and (6), when victims and the guardian of the victims (in the case of children) did not present any form of consent to trafficker to take away and transfer a victim, that is when coercion, violence, narcotics and stealing are implied, the penalty is aggravated. Therefore, the consent of victims is irrelevant in whether a case is trafficking in persons, but it is relevant when determine the sentence.

When one or both of the parents of a child are involved in the trafficking or the sale of the child, the situation becomes more complicated. The Supreme People's Court issued the *Opinions on Legally Punishing the Crimes*

of Abducting and Trafficking in Women and Children in 2010, in which a detailed explanation was provided (Supreme People's Court of the People's Republic of China, 2010, para.17). The sale of one's own child, in the following four conditions, is considered as crime of trafficking in children:

> (1) using fertility as a means of profit and selling one's own children immediately after the parturition;
> (2) selling one's own child for the purpose of profit, knowing that the buyer has no intention of raising the child or not taking into consideration the intention of buyer;
> (3) 'sending' one's own children for obtaining the disproportionate large amount of money in the form of refund or compensation;
> (4) other actions the purpose of which can be proved as illegal economic gain.

The list is followed by one more specification, that is when parents give their child to others because of not having economic ability to raise him or her, or because of discrimination against female children, and if they receive only a small amount of compensation, the case is not child trafficking but 'civil adoption'. This specification, on the one hand, protect those who give up their children for extreme poverty, on the other hand, it encourages practices of gender discrimination. Moreover, it did not explain to what amount the compensation is small.

Another crime directly related to trafficking in children is stipulated in Article 241 – 'crime of buying trafficked women or children'. It has partially filled the blank left by the previous article, criminalising those who buy trafficked women or children, for purpose of exploitation or not. Different from the international definition, according to which the purpose of buyer is essential in defining the existence of trafficking, in Article 241 the crime of trafficking in persons pre-exists the crime of buying trafficked women or children and the penalties to trafficker and to buyer are very different. Buyers, who does not abuse the child victim and or not obstruct the trafficked woman from returning to her original place of residence according to her will, enjoyed impunity until 2015 (National People's Congress 2015, Art.15), when the article was amended as

> Where in buying an abducted or trafficked woman or child, the bought child is not abused and their rescue is not obstructed, a lighter punishment may be convicted; where it is in accordance with the woman's wishes, and her return to her residence was not obstructed, it may be given a lighter punishment, or punishment may be commuted.

There are some other crimes related to the international definition of trafficking in persons, for example the crime of forced labour (Art. 244), the crime of abducting children, and organising people with disabilities and children for begging or engaging in criminal activities (Art. 262), the

crime of organising and forced prostitution (Art. 358), and the crime of luring others into prostitution (Art. 359). According to Palermo Protocol, victims of aforementioned crime activities can be easily recognised also as victim of trafficking, while in the Chinese legal framework, only those who have been sold or bought are victims of trafficking, but the sanctions of aforementioned crimes can be cumulative with that of crime of trafficking.

2. Causing Factors of Child Trafficking

Child trafficking can be studied with different points of penetration, such as criminal patterns, forms of exploitation, causing factors, persecutors, victims, and so forth. It is essential to identify root causes of trafficking in children so as to develop adequate policies and programmes to prevent and eliminate the crime. Most of the studies are about causing factors of international trafficking in women and children, while only a small part of literature focuses on child trafficking or domestic trafficking in persons.

There is even less Chinese literature that analyses systematically the causing factors of domestic child trafficking. Liu holds that trafficking in women and children is rampant in China and hard to be curbed, the main causing elements are the followings: first, the existence of a huge demand for women and children; second, the lack of sense and knowledge of law, especially at local organisations; third, the slack law enforcement; fourth, weak and malfunctioning local governance; and finally, the dearth of education and information on human trafficking (Liu, 2000, 42-42). Liu has mentioned several times that the trafficking in women and children usually happens in remote rural areas. However, he failed to extract the root causes of trafficking, including poverty and undesirable customs. Yuan and Yang consider that the causes of trafficking in women in Yunnan Province are mainly in four aspects: poverty, low education level of victims, seeking colossal profits and imbalance of sex ratio (Yuan and Yang, 2001, 19-20). However, the research focused exclusively on trafficking in women, the causing factors of which are not exactly the same as child trafficking. In another assessment on the situation of trafficking in children and women in Yunnan Province, conducted by Yunnan Province Women's Federation for the ILO Mekong sub-regional project, experts have provided a list of push factors that drive the trade in women and children, and pull factors that make rural women and children especially vulnerable. Pushing factors include poverty, lack of opportunity, poor education, low awareness of risk, and family disharmony. Pull factors include high profitability, the existence of demand, weak response by local authorities, insufficient punishment of buyers, weaknesses in the legal framework, as well as the lack of funds,

facilities and human resource (ILO/IPEC, 2002, vii).

Experts of ILO are not the only ones that divide factors in two categories – pull and push. The United Nations Development Programme (UNDP) has adopted the same classification in a Guidance Note prepared for the RBEC (United Nations Development Programme Regional Bureau for Europe and CIS) region, specifying that push factors include oppressive conditions, lack of opportunities, gender disparities, corruption, etc. Pull factors consist of, among others, desire for better live and demand in the destination countries (UNDP, 2004, 8-9). Also Gallagher and Skrivankova have provided a short list to each factor without further elaboration. According to the authors, push factors are those what victims escape from, including poverty, unemployment, discrimination, all forms of violence, as well as conflicts and displacement. Pull factors are demand in destination countries, for cheap or unpaid labour, sex industry, organs, crime, etc. (Gallagher and Skrivankova, 2005, 9). This dichotomy between push and pull factors has several weaknesses. First of all, some elements may belong to both categories, but few paper has mentioned the same element as both factors. For instance, discrimination (against women, children or ethnic groups) is usually considered as push factors; while, it also falls into the pull factors as it lies on the base of sex industry and labour exploitation, as well as other pull factors of trafficking in persons. Similarly, poverty is a common push factor; however, in China it is also a pull factor for trafficking in women for forced marriage. Although push and pull factors are not mutual exclusive, the dichotomy may lead to omission of certain factors in one of the two categories, or artificial avoidance of the repetition of a same factor in both categories.

In some other literature, experts and scholars tried to figure out the root causes or causative factors of child trafficking or trafficking in women and children in a specific context, without categorise them as 'pull and push'. Radhika Coomaraswamy, the former Special Rapporteur on violence against women, took a human rights based approach in explaining the root causes of trafficking in women. As she mentioned in her report, the lack of rights and denial of freedom are the primary causes of trafficking. Gender based discrimination often intersects with discrimination based on other forms, including ethnicity, religion, economic status, forcing women into situations of extreme marginalisation. In most of the cases, the State fails to protect women's rights, and this failure leads women to sexual and economic exploitation. The discrimination against women happens within family unit, community, the State and the global market. Coomaraswamy further explained that the lack of rights and freedom afforded to women is exacerbated by some external factors including poverty, religious and customary practices, ever-widening gap between rich and poor,

globalisation, conflicts, and the absence of strong measures to protect and promote women's rights. The rights based approach put the State in the foreground, the failure of which in protecting and promoting women's right makes trafficking flourish (ECOSOC, 2000, 19-21).

Davis et al. also probed the factors that lead to trafficking of women and children in Indonesia. Acute poverty, the consequent lack of employment opportunities and the desire to improve one's living condition, are the main but not the only factors that make people vulnerable to trafficking. Other factors that facilitate and abet trafficking in children, according to the experts, include: lack of birth registry, illiteracy of girls, cultural context, gender biased policies and laws, and corruption (Davis et al., 2003, 119-145). The research conducted in another country – Togo, took a similar approach in introducing the causes of child trafficking. The experts of Human Rights Watch (HRW), like most of the scholars, consider poverty as a 'major and ubiquitous' causal factor behind child trafficking. Poverty leads to low enrolment rate of primary education, and the discriminatory tradition makes it even worse for girls. The study further underlined the link between child trafficking and HIV/AIDS, which is a growing cause of family disintegration. Other factors facilitating child trafficking in Togo include 'porous borders and lax regulatory environments, traditional migrant patterns, ethnic affinities, and inadequate information about trafficking and its risks.' (HRW, 2003, 9-13)

A handbook for Parliamentarians composed by the Inter-Parliamentary Union and (IPU) the UNICEF examined the child trafficking from a global perspective. It shared most of the factors previously mentioned, including poverty, low school enrolment, lack of birth registration, as well as traditions and cultural values. In addition, the experts have separated the inequality of women and girls from traditional practice or cultural value, stressing that both of them are causing factors of trafficking. The authors also mentioned the link between child trafficking and HIV/AIDS, as it has caused millions of orphans without caregivers. Similarly, humanitarian disasters and armed conflict also make children extremely vulnerable to trafficking, being left unaccompanied or involved directly in the conflict. In addition, demand for exploitation is considered as a factor that makes children vulnerable, thus it is 'inexorably linked' to child trafficking (IPU and UNICEF, 2005, 17-19).

Obi N.I. Ebbe explained the immediate causes of trafficking in women and children with sociological theories. Besides poverty, wars and disasters, traditional practice, family disintegration, Ebbe also raised some other such causal factors as globalisation, lack of law enforcement and corruption. The author asserted that the globalisation abets trafficking in children, because it makes very easy to cross international border. However, Ebbe did not mention other consequences of globalisation that may exacerbate

trafficking in some regions, such as widening gap between rich and poor, increased desire for better life, international criminal organisations, and so forth (Ebbe and Das, 2008, 33-37)

As many scholars already specified (Coomaraswamy, 2000; Rosenberg, 2003; HRW, 2003; Ebbe and Das, 2008), poverty is the most important but not the only causal factor of trafficking in children. Although most of the trafficking happened in relatively poor regions and countries, a great number of children living in poverty will not become victims of trafficking. To understand why certain children are vulnerable to trafficking, the simply piling up of possible causal factors is far from sufficient. It is necessary to identify the interaction between different factors. Cameron and Newman suggested that human trafficking should be studied in its broad social, economic and political context (structural factors), combining them to policy and governance issues (proximate factors). Structural factors help in understanding the causes of vulnerability that can lead to trafficking; these do not, however, constitute the entire causal paradigm of trafficking. 'It is this conjunction of the two factors will help to explain where and why vulnerability occurs.' According to Cameron and Newman, structural factors include economic, social, ideological and geopolitical factors, for instance, poverty, gender discrimination, cultural stereotypes, conflicts, and other broad contextual elements previously mentioned. Proximate factors include legal and policy aspects, rule of law, and inadequate partnership between civil society and state, such as corruption, poor law enforcement, low awareness among vulnerable communities, etc. Different from the theory of 'push and pull factors', the 'structural factors' and 'proximate factors' can apply to both source and destination countries; therefore, studies on the causes of human trafficking guided by this theory may be more comprehensive (Cameron and Newman, 2008, 1-18).

The experts of UNICEF EAPRO did a similar but more detailed classification of factors which render children vulnerable to trafficking, in the East Asia and South-East Asian regions. The pattern of child trafficking varies greatly according to the age of the victim, so does the role of the victim's family in the crime. According to the experts, the particular factors which render children vulnerable to trafficking vary between countries, as well as within communities; nevertheless, key common elements can be identified and classified in four categories: individual factors, family-related factors, social-economic factors, and demands (UNICEF EAPRO, 2009, 24-28). This approach considers child trafficking as a process more than abduction, transportation and selling of children; rather it includes the original family of the victim, the broad socio-economic context in which they live, and the great demand for exploitation. Comparing to other approaches, the classification of UNICEF EAPRO is more comprehensive

and structured. By introducing the individual and family related factors, which are key elements for the prevention of child trafficking, this approach may provide more information on the characteristics of potential victims so that the relative authority can distribute more resource on targeted preventive policies and measures.

3. Principles and Paradigms for Combating Human Trafficking

A number of international and regional instruments and mechanisms combat human trafficking from different points of view. Although their focal points may be different, there is a series of interacting principles that guide the anti-trafficking policies and actions in all the sectors and every aspect of an anti-trafficking response (UNODC, 2009, 8).

First of all, violations of human rights are both a cause and a consequence of trafficking in persons. Therefore, states and international agencies should take a human rights-based approach, making the human rights of victims of trafficking in persons at the centre of all efforts to prevent and combat human trafficking and making sure that the anti-trafficking measures do not adversely affect the human rights and dignity of persons, in particular the rights of the victims of trafficking. (ECOSOC, 2002, 3-6).

Secondly, anti-human trafficking measures require a gender and age-sensitive approach. Victims of trafficking in persons can be men, women, adults or children; while, it is important to acknowledge that gender-based violation is one of the root causes of trafficking in persons. Women and girls are more likely to be trafficked into gender-specific situations of exploitation and suffer gender-specific forms of harm and consequences of being trafficked. (OHCHR, 2010, 61). Therefore, it is essential to take e gender-sensitive approach, taking into account gender-based violence and promoting gender equality. For the same logic, patterns of child trafficking and forms of exploitating child victims may differ from trafficking of an adult person. Child victims and children at risk need special protection, which should in conformity with the principles set out by the CRC and it Optional Protocols. In all actions concerning children, the best interest of the child shall be the primary consideration. (UNODC, 2009, 8).

Some other important approaches are related to the international and interdisciplinary nature of trafficking in persons. To respond to this international challenge that involves almost every country of the world, it requires the cooperation of countries of origin, transition and destination. As a multidisciplinary problem, states shall take an interdisciplinary approach. They must ensure that all the relevant agencies involved in the activities of preventing and combating trafficking in persons and protecting victims of

trafficking, are well coordinated at national, regional and international level (UNODC 2009, 9).

Apart from the OHCHR and the UNODC, the aforementioned general international principles are also reflected in the regional anti-trafficking instruments, including the *EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings* (Council of the EU, 2005), the *Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children* adopted by the Euro-African Ministerial Conference on Migration and Development (Euro-African Ministerial Conference on Migration and Development, 2006), the *ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children* (ASEAN, 2015), which is not yet in force, as well as the *4th Sub-Regional Plan of Action of the Coordinated Mekong Ministerial Initiative Against Trafficking* (COMMIT, 2015), of which China is a State Party.

The 'human-centred' approach and the rights of women and children are also among the guiding principles of the two Chinese *National Plan of Action on Combating Trafficking in Women and Children* (State Council of China, 2007; State Council of China, 2013). The National Plan of Action also addressed the importance to strike the problem at its root, and it is in line with the recommended principles of the OHCHR.

Following the aforementioned principles, states and other stakeholders shall take concrete actions, based on the traditional paradigm for combating trafficking in persons consisting of three pillars of intervention (3Ps): *Prevention, Prosecution and Protection*[3] This paradigm has been further developed by relevant international agencies in their anti-trafficking strategies. The UNODC explained in detail the '3Ps' paradigm in a technical assistance tool for the effective implementation of the Palermo Protocol. The prevention of trafficking in persons requires a series of measures including to conduct systematic research on root causes of trafficking in persons, to develop measures to reduce the demand, to address the factors that increase vulnerability to trafficking, to strength national child protection system, to empower women and youth of working age, to promote lawful migration and regulate labour market, to increase the capacity of law enforcement officers for identifying possible victims and reacting quickly as well as to create a rapid response mechanism of abduction and trafficking in persons. To improve the prosecution efforts, states shall take measures to strengthen national legal framework in compliance with the Palermo Protocol and insure their implementation, to reinforce the national anti-human trafficking legislation, and to establish

[3] U.S. Department of State, 3Ps: Prosecution, Protection, and Prevention, https://www.state.gov/j/tip/3p/.

relevant institutions, such as specialised police units and judicial structures. The protection of trafficked persons is possible only when the victim has been identified. Besides strengthening the identification process, the authority shall adopt a comprehensive protection and assistance system capable to provide personalised supports to victims with different needs. It is also necessary to adopt measures to rehabilitate and empower victims and to prevent the re-victimisation. Moreover, states shall ensure the application of international standards as well as the rights-based and age-sensitive approach to victim protection irrespective of their cooperation with law enforcement (UNODC, 2009, 10-11).

To fight against the trafficking in persons, which is a global issue, the '3Ps' paradigm is insufficient. One more pillar has been added: 'coordination and cooperation' as named by the UNODC (UNODC, 2009, 11), or 'Partnership' as named by the UNICEF (ICAT, 2010, 24-26). It requires the involvement and active participation of national institutions of all sectors as well as organisations from civil society, which need to be coordinated in order to avoid inefficient use of resources, incoherent interventions or other forms of ineffectiveness. At the same time, it also requires the cooperation of stakeholders including states and regional and international organizations, the efforts of which must be coordinated by international mechanisms and structures (UNODC 2009, 12). The importance of coordination and cooperation has been generally accepted by all the stakeholders. For example, the European Commission defined the 'enhanced coordination and cooperation among key actors and policy coherence' as one of the five key priorities for Member States when addressing trafficking in human being (European Commission ,2012, 5). Cooperation and coordination are also among the key strategies of the COMMIT and its Member States. Similarly, a number of international organisations that operate in the field of trafficking in persons have established partnerships with national ministries, other international and regional organisations, NGOs and other organisations of civil society, including UNIFEM, UNCHR, IOM, UNDP, UNICEF, UNESCO, and so forth (ICAT, 2010, 6-34). The cooperation happens at both national and international level, and their work is coordinated by UNODC as well as other international and regional mechanisms. Similarly, the cooperation and coordination are among the strategic measures in the *Chinese Plan of Action for combating trafficking in women and children* (State Council of China, 2013).

Conclusion

As a preparation for a systematic research on child trafficking within China, this literature review has identified and synthesised different kinds of material related to child trafficking, sale of children, and trafficking in persons in general, including national official documents, international instruments, guidelines, reports and academic research materials. The purpose of this literature review is to make clear how the child trafficking is defined, how to study the root causes of child trafficking, and how to respond to the challenge.

The review is composed of three parts. The first part is to clarify how 'child trafficking' is defined in the relevant international instruments and in the Chinese legislation, as well as their consistency and differences. The second part discusses several approaches of classifying factors that causes and encourage the children trafficking or trafficking in persons in general. The last part is dedicated to the principles and paradigms that have been adopted to respond to the challenge of trafficking in persons, at international, regional and national levels.

Although there are plenty of literatures on the subject of trafficking in persons, resources focused on child trafficking and child trafficking within China are very limited. Because of such shortage, a major part of literature selected in this review is about human trafficking in general, but not specialised in child trafficking. Therefore, the findings are not directly applicable to the future research on child trafficking within China.

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Human Rights Education: a Literature Review between Legal and Normative Dimensions

Matteo Tracchi

Abstract

During the past three decades, human rights education (HRE) has emerged as an important component of the broader human rights movement, as well as a field of scholarship and practice on its own. While there are many approaches to and variants of HRE, the article aims to show that there is broad agreement about certain core components which include both content and process related to human rights. Indeed, the main argument of this article is that HRE has both legal and normative dimensions. The legal dimension deals with content about international human rights standards, treaties and covenants to which countries subscribe; the normative dimension looks at HRE as a cultural enterprise and a process intended to provide skills, knowledge and motivation to individuals to transform their own lives and realities so that they are more consistent with human rights norms and values (Tibbitts and Fernekes, 2011). Starting with a contextualisation of HRE within the United Nations (UN) human rights framework and a dedicated focus on the UN Declaration on Human Rights Education and Training, the article further explores the twofold dimension of HRE through a critical literature review, the analysis of HRE models (Tibbitts, 2002 and 2017) and some related criticisms (Keet, 2012 and 2015; Vlaardingerbroek, 2015). The article finally reiterates the importance of keeping together the legal and normative dimensions of HRE in order to live up to its ultimate goal: empowering persons to contribute to the building and promotion of a universal culture of human rights.

Key-words: human rights education, literature review, legal dimension, normative dimension, United Nations, human rights

Introduction

Over the last 20 years there has been growing consensus from the international community on the fundamental role of human rights education (HRE) in the realisation of human rights and on the importance of fully and effectively implementing the right to human rights education. HRE has been increasingly recognised not only as a human right in itself but also as a door opener for other human rights. This article begins with a contextualisation of HRE within the United Nations (UN) human rights framework, starting with the Universal Declaration of Human Rights of 1948 and the development of HRE as a branch of the right to education. The contextualisation also touches upon the main international treaties and other HRE-related outputs developed by the UN, and finally provides a dedicated section on the UN Declaration on Human Rights Education and Training.

In the second part of the article, acknowledging the dramatic expansion and institutionalisation of HRE within the broader human rights movement (Garnett Russell and Suarez, 2017) as well as the emergence of HRE on its own as a field of scholarship and practice (Mihr and Schmitz, 2007), I point out that there appear to be diverse perspectives on what exactly HRE is and entails. HRE is characterised by diverse approaches and has an interdisciplinary identity that can overlap with other educational studies and activities. While there are many variants of HRE and a single definition would undermine its open-endedness and creativity, through a critical literature review I show that there is broad agreement about certain core components of HRE. Most scholars and practitioners agree that HRE must include both content and process related to human rights (Tibbitts, 2002; Flowers, 2003; Reardon, 2009). For example, Flowers' empirical study among activists found agreement that HRE should: be grounded in the principles of human rights treaties; use methods which reflect the principles of respect for individuals and cultural diversity; address skills and attitudes as well as knowledge; and involve action at an individual, local or global level (Flowers, 2004). This is aligned with the argument of the article which embraces the theory that HRE has both legal and normative dimensions. Elaboration by the UN and other agencies has clarified that inherent in HRE are components of knowledge, skills and attitudes consistent with recognised human rights principles. The legal dimension deals with content about international human rights standards, treaties and covenants to which countries subscribe; the normative dimension looks at HRE as a cultural enterprise and a process intended to provide skills, knowledge and motivation to individuals to transform their own lives and realities so that they are more consistent with human rights norms

and values (Tibbitts and Fernekes, 2011). The aim of this article is to keep together these two dimensions of HRE, as this intertwined analysis reflects the healthy hybrid that HRE as a field has been in the process of developing over the past 20 years: a hybrid that incorporates basic legal knowledge (legal literacy) and the empowerment pedagogy of popular education (Tibbitts, 2015).

The third and last part of the article considers the first substantive exploration on HRE models developed by Tibbitts (2002), who identifies three emerging typologies: Values and Awareness Model, Accountability Model and Transformational Model. These models have recently been revisited by the same originator (Tibbitts, 2017) through the introduction of new elements that add descriptive complexity and strengthen their analytical power. This evolution is analysed in section 3.1. of the article before I review some criticisms raised in connection with the Values and Awareness Model (Keet, 2012 and 2015; Vlaardingerbroek 2015). I finally argue that the understanding of HRE as both content and process related to human rights, therefore having both legal and normative dimensions, provides some interesting insights to overcome the critique. In particular, the article underlines that the reduction of HRE to one side or the other, being legal or normative, would undermine its ultimate goal, which is to reduce human rights violations and empower persons to contribute to the building and promotion of a universal culture of human rights.

1. Situating Human Rights Education within the UN Human Rights Framework

The right to education has been formally recognised since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 (United Nations General Assembly, 1948). This has since been affirmed in numerous global human rights treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (UNESCO, 1960), the International Covenant on Economic, Social and Cultural Rights (United Nations General Assembly, 1966), the Convention on the Elimination of All Forms of Discrimination against Women (United Nations General Assembly, 1979), and the Convention on the Rights of the Child (United Nations General Assembly, 1989). These human rights instruments state both the entitlement to education as well as its direction, providing that education itself should be rights-respecting and leading to an increased emphasis on the importance of adopting a human rights-based approach to education (UNICEF/UNESCO, 2007). This elaboration embraces human rights education (HRE) within the understanding of the right to education. The right to education does not

only entail access to education but it also includes the right to receive an education of good quality. This means that education must be available and accessible but also acceptable and adaptable (Tomaševski, 2001). HRE is an integral part of the right to education in general and a key aspect of quality education in particular. The term has been coined to denote a 'specialized branch of education' (Tomaševski, 2001a) which has been flourishing over the last 20 years. HRE forms a goal and a part of the content of the education to which everyone has a right but HRE, understood as part of the right to education, has a limited group of addresses (Kirchschlaeger, 2017). Indeed, HRE is not only restricted to the formal context as the right to education is, but it also encompasses non-formal and informal sectors (I come back to this).

HRE is an international movement to promote awareness about the rights accorded by the UDHR and related human rights conventions, and the procedures that exist for the redress of violations of these rights (Amnesty International, 2005; Tibbitts, 1996; Reardon, 1995). The mandate for HRE is unequivocal: you have a human right to know your rights (Flowers, 2000). The Preamble to the UDHR exhorts 'every individual and every organ of society' to 'strive by teaching and education to promote respect for these rights and freedoms.' Beginning with the adoption of the UDHR, the UN and its specialised agencies formally recognised the right of citizens to be informed about the rights and freedoms contained in the documents ratified by their countries. Furthermore, Article 26 of the UDHR defines education itself as a right and states that education shall be directed towards 'the strengthening of respect for human rights and fundamental freedoms.' International instruments arising in the wake of the UDHR continue to affirm not just the right to education, but also education that is directed towards an understanding and promotion of human rights. The UN International Covenant on Economic, Social and Cultural Rights (ICESCR), which came into force in 1976, states in Article 13 that State Parties

> 'agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.'

In its General Comment No. 13, the UN Committee on Economic, Social and Cultural Rights (the body in charge of monitoring the implementation of the ICESCR) clarified that 'education is both a human right in itself and an indispensable means of realising other human rights' and further

explained that education in all its forms and at all levels shall exhibit the following interrelated and essential features: availability; accessibility; acceptability; and adaptability (United Nations Committee on Economic, Social and Cultural Rights, 1999).

Although acclaimed in the UDHR and following human rights treaties, HRE as a global movement gained momentum only after the end of the Cold War, when it was actually put on the international policy agenda with the Vienna Declaration of 1993. The Vienna Declaration and Programme of Action (United Nations General Assembly, 1993) considered 'human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.' It also had an extensive subsection on HRE and, largely as a response to pressures from non-governmental organizations (NGOs), issued a call for a UN Decade for Human Rights Education (1995-2004) that brought policymakers, government officials, activists, and educators into more sustained deliberation and action (Bajaj et al. 2016). In proclaiming the UN Decade for Human Rights Education, the General Assembly defined HRE as 'a life-long process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies.' Since 1995 the UN Decade for Human Rights Education has urged all UN members to promote 'training, dissemination and information efforts aimed at the building of a universal culture of human rights' (United Nations General Assembly, 1996). Subsequently, the work of the UN Decade for Human Rights Education became institutionalised in the World Programme for Human Rights Education (WPHRE) (United Nations General Assembly, 2004), established in 2005 and globally coordinated by the Office of the High Commissioner for Human Rights (OHCHR). The World Programme is structured in consecutive phases, in order to further focus national HRE efforts on specific sectors/issues. The first phase (2005-2009) focused on HRE in the primary and secondary school systems, and the second phase (2010-2014) on HRE for higher education and on human rights training programmes for teachers and educators, civil servants, law enforcement officials and military personnel. The third phase (2015-2019) focuses on strengthening the implementation of the first two phases and promoting human rights training for media professionals and journalists[1].

[1] Retrieved from: http://www.ohchr.org/EN/Issues/Education/Training/Pages/Programme.aspx. Date: 10 February 2017.

1.1 The UN Declaration on Human Rights Education and Training

Despite numerous policy documents have referenced HRE since the adoption of the UDHR, HRE has remained, until recently, something of an undefined creature. It has been described by Gerber, a leading legal scholar in the field, as 'a slogan in search of a definition' (Gerber, 2008). At its most basic level, HRE concerns 'the provision and development of awareness about fundamental rights, freedoms and responsibilities' (Gearon, 2003), but this formulation is clearly too simplistic and neglects important additional elements. A more comprehensive definition states that HRE 'refers to education at all age, status, and occupation appropriate levels, both formal and informal, academic and non-academic, aimed at communicating to all society the knowledge of human rights and calling for individual and collective action aimed at respect for, and protection of, human rights' (Condé, 2004).

An official definition of HRE within the UN legal framework has only been developed in 2011 when, on 19 December, the General Assembly adopted by resolution 66/137 the UN Declaration on Human Rights Education and Training (UNDHRET). The UNDHRET is the first instrument in which international standards for HRE are officially identified and proclaimed by the UN. The Declaration is motivated by 'the desire to send a strong signal to the international community to strengthen all efforts in human rights education and training through a collective commitment by all stakeholders' (United Nations General Assembly, 2011). Therefore, its adoption has reflected the increasing commitment of the international community to HRE. Furthermore, in an attempt to address the absence of an explicit and authoritative definition of the term 'human rights education' which, according to some authors, has been one of the obstacles to widespread HRE (Gerber, 2010), Article 2 of the Declaration states that:

> '1. Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing, inter alia, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights. (and further clarifies that) 2. Human rights education and training encompasses: (a) Education about human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection; (b) Education through human rights, which includes learning and teaching in a way that respects the rights of both educators and learners; (c) Education for human rights, which includes empowering

> persons to enjoy and exercise their rights and to respect and uphold the rights of others.'

The first paragraph of Article 2 reaffirms the UN's long-standing definition that HRE has a place in all forms of education and training, including the formal, non-formal and informal sectors. Article 2(2) of the Declaration clearly contains and articulates the most recent, and arguably the most definitive, definition of the key components necessary for the provision of holistic HRE – education about, through and for human rights (Struthers, 2015).

The UNDHRET is far from being a perfect document and could have definitely been drafted in a stronger way. Among its weaknesses there are its non-legally binding nature, an unclear path for implementation, and the fact that it stops short of recognising a 'human right to human rights education' – language that was lost in the negotiation process between states at the Human Rights Council[2]. In fact, a concise formula like 'everyone has a right to human rights education' would have been much more appealing. However, the adoption of the UNDHRET is nevertheless significant and its very existence is one of its strengths. Even if it lacks any strictly binding legal effect on states, the Declaration still formulates obligations that states have agreed to and therefore has an undeniable moral force. The recognition and acceptance of such a document by a large number of states should not be underestimated in terms of its value (Kirchschlaeger, 2017). The ancient Chinese proverb that says: 'Better a diamond with a flaw than a pebble without one' has once been used by a scholar to argue that the 'Declaration is a diamond with flaws, but we are better off having this flawed instrument than no instrument at all' (Gerber, 2011). The UNDHRET recognises for the first time governments' specific commitments to promote HRE. The definition links HRE with the promotion of respect for all human rights and acknowledges the contributing role of HRE to the prevention of human rights violations and abuses. The Declaration also builds a strong argument to claim HRE at local, national, regional, and international levels, as well as provides an important tool for civil society to advocate for HRE and have an impact on related decision- and policy-making processes.

2. The Core Components of Interdisciplinary and Heterogeneous HRE

During the past three decades, HRE has emerged as an important component of the broader human rights movement, propelled by the work

[2] Retrieved from: http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Education/A-HRC-WG-9-1-CRP1-rev1_en.pdf. Date: 4 March 2017.

of the UN and its agencies, intergovernmental organizations, international and local NGOs, and broader social movements emphasising human rights. While the main aim of the human rights movement is the protection of the political, civil, social, cultural, and economic rights of individuals and marginalised groups, the prevention of human rights abuses and the promotion of an understanding of human rights through education have progressively become a central aspect of the broader human rights agenda. Building on prior work, Garnett Russell and Suarez suggest that the emergence and institutionalisation of the field of HRE is linked to three interrelated factors: globalisation, the expansion of mass education, and the consolidation of the global human rights movement (Ramirez et al., 2006). Applying world polity theory as theoretical frame for understanding the dramatic expansion and institutionalisation of HRE, the authors conclude that, while the initial efforts towards the promotion of international treaties and the protection of victims of abuse have not diminished, the prevention of abuses through education has become a new pillar of the human rights movement (Garnett Russell and Suarez, 2017). Other scholars and practitioners have noted the rise in educational strategies as part of larger human rights efforts and the emergence of HRE on its own as a field of scholarship and practice (Mihr and Schmitz, 2007), but at the same time there appear to be diverse perspectives on what exactly HRE is and entails. This means that HRE is characterised by diverse approaches and has an inherent identity that can overlap with other educational approaches. It shares goals and methodologies with many other forms of education in both the formal and informal sectors. Since the early nineties the emergent field of HRE has spawned a considerable body of educational theory, practice and research that often intersects with activities in other fields of educational study, such as citizenship education, peace education, anti-racism education, Holocaust/genocide education, education for sustainable development and education for intercultural understanding (Tibbitts and Kirchschlaeger, 2010). While this interdisciplinarity constitutes a strength in developing the theory and practices of HRE, it faces the problem of academic territoriality. Theorists, and to some degree practitioners as well, too often are reluctant to examine the core concepts and ideas from other subject fields, preferring to maintain contacts with scholars and teachers trained in the same academic background (Tibbitts and Fernekes, 2011).

While there are many variants of HRE, there is broad agreement about certain core components of human rights education. For example, most scholars and practitioners agree that HRE must include both content and process related to human rights (Tibbitts, 2002; Flowers, 2003; Reardon, 2009). However, since HRE has been adopted and elaborated upon by more and more educational stakeholders, it can no longer be characterised

as a singularly understood practice (Bajaj, 2011). Flowers' research has focused on whether there is an implicit theory in the practice of HRE which could be drawn out of practice but she argues, at the same time, that the open-endedness of HRE may contribute to its creativity. She suggests that a single definition of HRE may, in any case, be elusive and that different emphases and outcomes are stressed depending on the provenance of the definition. In 2003 she argued that the first problem for defining HRE is that there are too many definitions, not mutually exclusive, but subtly different in their formulation of goals and principles (Flowers, 2003). Acknowledging the heterogeneous nature of HRE, Flowers was able to show that there is considerable consensus among HRE activists as to what HRE entails. In 2004 she conducted an empirical study of over 50 HRE activists which resulted in the identification of four key areas encompassed by HRE. She found agreement that HRE should: be grounded in the principles of human rights treaties; use methods which reflect the principles of respect for individuals and cultural diversity; address skills and attitudes as well as knowledge; and involve action at an individual, local or global level (Flowers, 2004). Flowers' findings are aligned with the main argument of this article which embraces the theory that HRE has both legal and normative dimensions. Elaboration by the UN and other agencies has clarified that inherent in HRE are components of knowledge, skills and attitudes consistent with recognised human rights principles. The legal dimension deals with content about international human rights standards as embodied in the Universal Declaration of Human Rights and other treaties and covenants to which countries subscribe. At the same time, HRE is a normative and cultural enterprise. The process of HRE is intended to be one that provides skills, knowledge and motivation to individuals to transform their own lives and realities so that they are more consistent with human rights norms and values (Tibbitts and Fernekes, 2011). This twofold dimension of HRE becomes clearer in the next section discussing Tibbitts' models for human rights education.

3. Human Rights Education Models

The first substantive exploration on HRE models was presented by Tibbitts in her work on 'Emerging Models for Human Rights Education' (Tibbitts, 2002). She identifies three emerging typologies: Values and Awareness Model, Accountability Model and Transformational Model. HRE models provide productive schemas for theorising the emergence, conceptualisation, and implementation of HRE across the globe. Each model is associated with particular target groups, contents and strategies in relation to a human development and social change framework.

In the *Values and Awareness Model* the main focus of HRE is to transmit basic knowledge of human rights issues and to foster its integration into public values. Public education awareness campaigns and school-based curriculum typically fall within this model. While this model may support the development of a 'critical human rights consciousness', it focuses primarily on content knowledge and thinking skills, and does not directly relate to empowerment. A key challenge for this model is how human rights educators working in schools and other public awareness settings can avoid the 'banking'[3] model of education warned of by Freire, more precisely how they can manage the risk of offering a superficial exposure to the human rights field which, in the worst case, can be experienced as primarily ideological. Indeed, already in the seventies and eighties Freire's revolutionary pedagogy was changing the way both educators and activists thought about the nature of learning and social change, the power dynamic between teacher and learner, and the importance of consciousness and critical analysis of one's own reality (Freire, 1968 and 1973; Freire and Shor, 1987). Freire's thinking has profoundly influenced the academic discourse on HRE. However, despite the inspiration of his vision of learning as empowerment and his respect for the experience and knowledge of the learner, Freire's pedagogy alone has been regarded as insufficient to provide an adequate theoretical foundation for HRE (Flowers, 2004).

In Tibbitts' second model, the *Accountability Model*, learners are already expected to be directly or indirectly associated with the guarantee of human rights through their professional roles. In this group, HRE focuses on the ways in which professional responsibilities involve either (a) directly monitoring human rights violations and advocating with the necessary authorities; or (b) taking special care to protect the rights of people (especially vulnerable populations) for which they have some responsibility. Within this model, the assumption of all educational programming is that the learners will be directly involved in the protection of individual and group rights. Examples of programmes falling under the Accountability Model are the training of human rights and community activists on techniques for monitoring and documenting human rights abuses and procedures for registering grievances with appropriate national and international bodies. Within the Accountability Model, personal change is not an explicit goal, since it assumes that professional responsibility is sufficient for the individual having an interest in applying a human rights framework.

[3] Banking education is a term used by Paulo Freire to describe the traditional education system characterised by lack of critical thinking and knowledge ownership in students, which in turn reinforces oppression. "In the banking concept of education, knowledge is a gift bestowed by those who consider themselves knowledgeable upon those whom they consider to know nothing."

The *Transformational Model*, on the other hand, is focused on the empowerment of individuals and communities who may be victims of human rights violations. In this model, HRE programming is geared towards empowering the individual to both recognise human rights abuses and to commit to their prevention. The Transformational Model assumes that the learners have had personal experiences that can be seen as human rights violations (the programme may assist in this recognition) and therefore they are predisposed to become promoters of human rights. This model treats the individual more holistically, and thus is more challenging in its design and application. A formal focus on human rights is only one component of this model. The complete programme may also include leadership development, conflict-resolution training, vocational training, work, and informal fellowship. The Transformational Model can be found in programmes operating in refugee camps, in post-conflict societies, with victims of domestic abuse, and with groups serving the poor. In some cases, this model can be found in school settings, where an in-depth case study on a human rights violation can serve as an affective catalyst for examining human rights violations. However, all empowerment models are dependent upon sustained community supports of some kind (whether these supports are peers, family members or others), so links between school and family life have to be made in order to attempt a transformational model of HRE in schools (Tibbitts, 2002).

3.1. Evolution of Human Rights Education Models

The latest revision of the HRE models developed by Tibbitts in 2002 has been recently carried out by the same originator (Tibbitts, 2017). Indeed, in a 2017 publication she identifies new dimensions of the HRE models that add descriptive complexity and strengthen their analytical power. She revisits the original HRE models and critically applies new elements which include the teaching and learning practices, the learning context/ sponsoring organization and the learner. The original HRE models remain useful typologies for describing HRE practices and for critically analysing their design in promoting agency in learners to take action to reduce human rights violations. However, Tibbitts proposes amendments to the models including a stronger association of the Values and Awareness Model with socialization, the Accountability Model with professional development, and the Transformation[4] Model with activism. For this reason, she also

[4] In this 2017 article the author uses the term "transformation" rather than "transformational", a slight change from the original HRE models article (Tibitts, 2002), based solely on linguistic considerations.

decided to extend the titles of the models to: Values and Awareness/ Socialization Model; Accountability/Professional Development Model; Activism/Transformation Model. This last Model now includes any kind of HRE programming that cultivates activism (regardless of whether the learner is a member of a marginalised group). Within the Accountability/ Professional Development Model, sub-groups of adult learners are broken out (professional groups, such as law enforcement officials, civil servants, health and social workers, etc.; lawyers; secular and religious community leaders and journalists; educators), with implications for HRE programme goals, content and approaches. The Values and Awareness/Socialization model, if implemented in isolation and not as a first step towards more comprehensive HRE, continues to be problematic within HRE practice, as it is not designed to cultivate either learner agency or social transformation. Tibbitts finally concludes that the hope for the years to come, since a considerable amount of HRE scholarship and programming remains focused on the formal schooling sector, is that ongoing reflexive praxis will result in the reorienting of HRE programming currently falling within the Values and Awareness/Socialization category. Indeed, it is desirable for HRE methodologies to move away from didactic approaches towards those that foster empowerment and transformation. She also adds that the field of HRE will have staying power because of the international standards associated with it. However, these origins, the claim of universality, and the hierarchical nature of the government institutions sponsoring HRE mean that there will be an inevitable and ongoing struggle to keep HRE close to critical pedagogy, its original mother (Tibbitts, 2017). This concern is further expanded in the next section looking at some criticisms of HRE within the Values and Awareness Model.

3.2. Critique to the Values and Awareness Model

As part of the implications of a broader human rights critique, Keet argues that HRE has often been constructed as a declarationist[5], conservative, and uncritical framework that disallows the integration of human rights critiques into the overall HRE endeavour. Mainly as a result of obligations under the UN architecture, according to the scholar, the studies on HRE predominantly focus on the conversion of human rights

[5] This term was coined by Keet to refer to the almost dogmatic belief that all human rights truth are generated and consummated within human rights instruments such as declarations, conventions and covenants. Human Rights Education, according to this understanding, focuses on transmitting the provisions in these instruments. The associated tendency is called declarationism.

standards into pedagogical and educational concerns with the integration of HRE into education systems and practices as its main objective. He further argues that, pedagogically speaking, HRE does not have a dynamic, self-renewing, and critical orientation towards human rights. Instead of advancing criticality as a central purpose of education, HRE, as co-constructed within the agencies of the UN, became the uncritical legitimating arm of human rights universals. This is why he declares that the time for Critical Human Rights Education (CHRE) has arrived (Keet, 2012 and 2015). Keet's analysis requires to reiterate the argument of this article. Indeed, his criticism of HRE takes only one side of the coin into consideration. As I said before, HRE must include both content and process related to human rights (Tibbitts, 2002; Flowers, 2003; Reardon, 2009). HRE has a legal dimension, which deals with content about international human rights standards, but also has a normative dimension, which is intended to be a process that provides skills, knowledge and motivation to individuals to transform their own lives and realities so that they are more consistent with human rights norms and values (Tibbitts and Fernekes, 2011). The proposal that human rights values are universal is a contested one. If human rights norms are to be personally meaningful ones for learners, then they must be de-constructed and processed accordingly (Tibbitts, 2015). This understanding is already infused in HRE, as opposed to what Keet argues. The HRE literature is strongly associated with critical pedagogy which encourages learners to think critically on their situation, recognise connections between their individual problems and the social contexts, question power relationships and take action against oppression, discrimination and injustice. Critical pedagogy was and continues to be associated with the HRE Transformation Model and its participatory and transformative methodologies. This model is explicitly oriented towards a form of empowerment related to overcoming internalised oppression. Critical theory has been taken into education in a number of different ways, but most notably by Freire's 'Pedagogy of the Oppressed' (Freire, 1968). His work with oppressed minorities gave rise to the term critical pedagogy, meaning teaching-learning from within the principles of critical theory and this has profoundly influenced the academic discourse on HRE. Many scholars, each of them with his or her own specific focus, have deeply and critically investigated pedagogical practice associated with HRE, which won't be discussed in this paper due to space constraints (see for example: Tibbitts and Kirchschlaeger, 2010; Reardon, 2009; Al-Daraweesh and Snauwaert, 2015; Zembylas, 2008 and 2017).

In a recent article, Vlaardingerbroek (2015) has raised another criticism in connection with the international orientation targeting global human rights issues of the Values and Awareness Model as developed by Tibbitts.

He argues that 'to educate young people about their rights must surely take domestic and not international law as its starting point.' This is part of a broader and more general critique to what he called the global human rights education project based, according to his paper, on shaky legal foundations. Indeed, adopting a critical approach to HRE as a form of law education in schools, Vlaardingerbroek argues that HRE is strictly linked to social activism and a worldwide ideological movement, therefore being at risk of falling in the business of indoctrination rather than education. This is why he states that HRE is a form of social-transformative activism and is far from being a form of law education. He further elaborates that the basis of HRE's claim to legal legitimacy in international law is severely deficient and HRE appears to rely more on its own interpretations of international human rights law. If there is to be HRE in schools, he concludes, it should be as part of a holistic law education programme devised and delivered by professionals with academic qualifications in law. Finally, he asserts that school-based rights education should be within the context of a comprehensive curricular package of law education using students' domestic legal frameworks as the principal point of reference (Vlaardingerbroek, 2015). This article led to an interesting academic debate since Tibbitts has responded, quite eloquently I believe, to the many criticisms raised by Vlaardingerbroek. First, she states that HRE is a diverse field of practice, differing not only according to audiences and educational settings but also national contexts. There are already HRE programmes that are heavily oriented towards international law and national protection systems, especially those taking place in law schools or for adult learners in professions such as law enforcement, the military and civil servants. It is true that students ought to learn about the international legal framework of human rights as well as national protection systems that link up the international standards with the local context of the learner. However, according to Tibbitts, there are at least two main challenges to the law-oriented focus of HRE in schools suggested by Vlaardingerbroek. The first is that this seems to make HRE even less realistic for schools, as so few teachers are themselves familiar with the basics of the human rights system or the legal framework. If HRE is to be delivered by 'professionals with academic qualifications in law' only a very small number of students would receive HRE, rendering it even less frequent in schools than it is now. The second challenge, and even more important I would say, is that the reduction of HRE to teaching legal standards would undercut its potential to fulfil its ultimate goal, which is to reduce human rights violations. The most recent definition enshrined in the UN Declaration on Human Rights Education and Training affirms that HRE encompasses education about, through and for human rights. The third part includes 'empowering persons to enjoy and exercise their

rights and to respect and uphold the rights of others' (United Nations General Assembly, 2011). Schools can promote empowerment through knowledge, including knowledge of legal human rights frameworks at both national and international level. But classroom teaching can also facilitate empowerment through critical reflection processes, which might lead a learner to recognition that a personal experience of discrimination is shared by others or that his or her values are consistent with those in the international standards. As with human rights legal content, such teaching and learning processes require skilled educators. Regarding the criticism of the Values and Awareness Model, Tibbitts clarifies that her identification of that model was not meant as an endorsement, but as a descriptive critique. She also agrees with Vlaardingerbroek's concern about HRE that attempts to indoctrinate students but she highlights that we should be wary of any educational process that is ideological, although we know that schools do socialise learners every day, whether explicitly or implicitly, about acceptable norms and behaviours. She finally concludes that HRE as a field has been in the process of developing over the past 20 years a healthy hybrid that incorporates basic legal knowledge (legal literacy) and the empowerment pedagogy of popular education. She believes that HRE should be taught in schools and that the lack of teacher preparation and curriculum space are probably the greatest challenges to achieve this goal. A commitment from educational leaders for a wider curriculum space for HRE would automatically generate dialogue about the integration of critical reflection and the appropriate mixture of human rights-related law, values, history and current events at both domestic and international level (Tibbitts, 2015).

Conclusion

This article began with a contextualisation of HRE within the UN human rights framework and a dedicated focus on the UN Declaration on Human Rights Education and Training which contains, in Article 2, the most recent and holistic definition of HRE (Struthers, 2015). During the past three decades, the prevention of abuses through education has become a new pillar of the human rights movement and HRE has emerged as a central aspect of the broader human rights agenda (Garnett Russell and Suarez, 2017; Mihr and Schmitz, 2007). While there are many approaches to and variants of HRE, the article showed through a critical literature review that there are core components which include both content and process related to human rights. Indeed, the main argument of this article is that HRE has both legal and normative dimensions. The legal dimension

deals with content about international human rights standards, treaties and covenants to which countries subscribe; the normative dimension looks at HRE as a cultural enterprise and a process intended to provide skills, knowledge and motivation to individuals to transform their own lives and realities so that they are more consistent with human rights norms and values (Tibbitts and Fernekes, 2011). The article tried to keep together the legal and normative dimensions of HRE and this is reflected also in its structure: section 1 focused mostly on the legal dimension, section 2 looked at the interconnection between the two dimensions, and section 3 stressed the normative part of HRE through the analysis of HRE models and some criticisms. On the one hand HRE cannot be limited to a law-oriented focus as this would make HRE even less frequent in schools and undercut its potential to reduce human rights violations. But on the other hand, although HRE has moved beyond simply spreading information about international human rights law, reference to these instruments and related mechanisms remains central to any HRE programme and is the bedrock that distinguishes HRE from other fields of education such as peace education or global education (Tibbitts, 2002). Bearing in mind the twofold dimension of HRE, both legal and normative, is of extreme importance to live up to its ultimate goal, which is to empower persons to contribute to the building and promotion of a universal culture of human rights.

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