What's new in human rights doctoral research

A collection of critical literature reviews Vol. III

edited by

Pietro de Perini, Paolo De Stefani

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Introduction

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For the third time, the series 'What's New in Human Rights Doctoral Research' seeks to provide fresh insights into the topics, methods and perspectives that early doctoral researchers deem relevant in the increasingly wide and transdisciplinary field of human rights scholarship.

As in the previous editions, this book collects a set of critical literature reviews prepared at the end of their first year by doctoral students enrolled in the International Ph.D Programme in Human Rights, Society and Multi-level Governance (coordinated by the University of Padova Human Rights Centre 'Antonio Papisca' and managed jointly with the University of Zagreb – Faculty of Law, the University of Western Sydney and the University of Nicosia).

Having this general task, the five authors published in this volume primarily provide the larger frames within which their research, criticism and recommendations are to be set and developed and where findings are expected to fill some gaps left open from previous scholarship. Despite much of this early effort is substantially based on compiling and critically approaching a wealth of secondary sources, still these pieces provide an added value. They offer an additional and already original contribution to updating and systematising a set of ongoing scientific debates on human rights-related matters, helping in identifying existing weaknesses or under-researched aspects as well as new pathways for research. The latter could also be a significant asset for graduate students considering a research career in this field.

Overall, the book contributes to consolidate a multi-disciplinary approach to human rights research and dissemination. The five doctoral students come from very specific and diverse disciplinary backgrounds (law, politics, development economics, sociology). Nonetheless, they are challenged, by the transdisciplinary nature of human rights *in primis*, to mea-

sure themselves with approaches, methods and perspectives pertaining to other at times complementary and at times competing disciplines.

The above-mentioned doctoral programme does not provide early researchers with a pre-set overarching puzzle that their individual research projects are expected to contribute filling, or tackling. Accordingly, their topics are quite heterogeneous. Among the few aspects in common is an underlying interest in investigating the challenges and possibilities to empower people and protect human dignity from an inclusive and equitable perspective.

The heterogeneity of themes and approaches contained in this volume might provide a sense of disorientation in the reader. As it was in the previous editions of this series, the diversity among the following papers represents a mirror of the huge and truly heterogeneous and multi-disciplinary understanding of what human rights research can be about as well as of the many multiple aspects which could and should be taken into consideration to reason about how make people living their life in dignity. The subjects addressed also show how relevant a human rights perspective may be in addressing some crucial contemporary issues and 'wicked problems' – from irregular migrations to environmental mismanagement, from post-conflict constitutional rebuilding to women's agency in promoting development and peace. It is also noteworthy that new perspectives and syntheses, at the crossroad of normative and policy standards and practices, may emerge when relatively under-researched territories and societies come into the spotlight of human rights scholarship.

The opening chapter is by Jessica Merone. Merone's work focuses on the access to the right to health, or lack thereof, by irregular migrants. The focus is on two countries: the United States of America and Italy. More specifically, the literature review addresses undocumented migrants' access to health care by (i) comparing national laws, policies, and practices in the two countries, and (ii) discussing these in a wider framework of international human rights law, showing the distance between the two frameworks.

In chapter 2, Svetlana Chetaikina provides a background for research on constitutionalization of international election standards. Namely, this literature review is devoted to updating the state of the art on international electoral standards and their practical realization in the national constitutional legislation with specific regard to two regions: Western Balkans and Central Asia. Chetaikina's work seeks to explore how international norms are internalised by domestic governances in the two selected areas through the process of socialization.

The third chapter, by Sofia Sutera, is developed in the framework of the broader 'Women, Peace and Security Agenda' as depicted by United Nations Security Council Resolution 1235(2000). More specifically, Sutera's

literature review addresses the role played by women in peace and security processes, by looking specifically at which function they perform in the armed forces, especially in the context of peacekeeping operations. The work gives priority to three empirical settings: Sweden, Denmark and Italy.

Chapter 4 keeps, in fact, the focus on women's participation and empowerment although from a radically different thematic and disciplinary perspective. In this literature review Fenya Chen seeks to address a series of issues related to both the actual and potential contribution of women-targeted microfinance to empower rural women in China and the social efficiency of the latter. In particular, Chen's work reviews the determinants of microfinance performance and the impact of microfinance on social indicators and the relation between microfinance and women empowerment in the selected case-study.

The fifth and last chapter, by Huihui Wang, maintains a geographic focus on China. The subject dealt with by Wang explores the articulations of a comprehensive theory of environmental governance and in particular whether a human rights approach can contribute to shape such a frame. The proposed trajectory has its core in the conceptualisation of the human right to environment, as recognised and developed in a few international instruments and in constitutional and legislative provisions of many states. A special focus is made on the Chinese normative and policy frame. The literature review identifies the need to work on an inclusive concept of environmental governance and the potential contribution that may derive from a multi-level and multi-stakeholder perspective.

Irregular Migrants and their Access to Health Care – A Comparative Study between the United States and Italy

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Abstract: Regardless of our age, gender, socio-economic or ethnic background, health is considered a basic and essential asset to a life of dignity. International human rights law recognizes the enjoyment to the highest attainable standard of health as a fundamental human right of every individual, regardless of citizenship or migratory status. The literature review focuses on irregular migrants in the United States and Italy, who have been identified as a vulnerable population with little to no adequate access to health care. This paper will first illustrate how national level health care policies are often at odds with the rights stated in international human rights law. In addition, it further examines the barriers to health care for irregular migrants, which include bureaucratic obstacles, financial limitations, discrimination, and fear.

Keywords: immigration, irregular status, access to health care, state responsibility)

Introduction

Over the last decade, international migration has continued to rise despite the efforts of many countries to dissuade migrants from crossing their borders. According to the International Organization for Migration (IOM) in their annual World Migration Report 2018, current global estimates show that there are around 244 million migrants in the world in 2015, which compares to 3.3 percent of the global population (International Organization for Migration (IOM) 2017, 16). The efforts to discourage migration include the increase in border patrol, identity checks, detention

holdings, and deportation. These policies aimed at discouraging migration have now spread to health care policies, resulting in inequalities in health prevention and care among the population. Although the main motivation for migration is to pursue a better life, migrants experience numerous systemic challenges that affect their physical, mental, and social well-being. The challenges include separation from family members, unfamiliar social and cultural norms, language barriers, inadequate living standards, exploitative working conditions, and discriminatory access to health-related services. Due to the increase of the global movement of migrants it has become important to define the legal paraments to heath care access, for both migrants and host communities. Neglecting health inequities in the care, support, and prevention for migration population versus that of the host population, can be costly for all actors involved.

The process of migration poses severe health risks for certain groups of migrating persons. Irregular migrants, who have not been granted permission to enter or stay in their host country, are among the most vulnerable groups of migrants. Due to their lack of legal status irregular migrants can be disproportionately vulnerable to discrimination, exploitation, and marginalization. The Council of Europe has recognized that irregular migrants often fall 'outside the scope of existing health and social services' (Romero-Ortuno 2004, 250). This paper will concentrate on migration of third country nationals in Italy and the United States, especially those with irregular status. This literature review will first look at the current state of human rights international law concerning the right to health, then second look at some of the health problems confronted by migrants persons, and lastly special attention will be made to the current legal health systems in the United States and Italy. Moreover, this paper takes into consideration key principles of the right to health, such as non-discrimination and equality and their relation to the right of migrants to access adequate health care.

1. Migration Health and Protection Offered by International Law

The right to health is a fundamental part of our human rights and of our understanding of a life of dignity. International human rights recognize the enjoyment of the highest attainable standard of health as a fundamental human right of every individual, regardless of race, religion, political belief, economic or social condition, and immigration status (Pace 2009, vii). The right to the highest attainable standard of health is not exclusively to nationals or migrants in 'regular' status, but to all migrants. The right to the highest attainable standard of health has both national and international dimensions and States have an explicit duty to assist all individuals in their

jurisdiction. In addition, those in power and those that hold high-income positions have a human rights responsibility to provide international assistance and cooperation in health to developing countries (Pace 2009, vii). Health-related rights are recognized in numerous international instruments and many national constitutions and statutes. At the same time, there is no single comprehensive international instrument that establishes a legal framework governing the migration process or protecting the rights of all migrating persons. The rights of migrants and rules governing migration are recognized in several different instruments that are dispersed in different branches of international law, such as human rights law, labour law, refugee law, and international humanitarian law. Human rights international law is the core legislation for this protection and is used as the basis for norms and sources protecting migrants (Pace 2009, 1). Theo van Boven, director of the United Nations Human Rights Division in 1977 stated that the term 'the right to health' has been enshrined in the international instruments of human rights in three aspects: 1) the declaration of the right to health as a basic human right; 2) the prescription of standards aimed at meeting the health needs of specific groups of persons; 3) and the prescription of ways and means for implementing the right to health' (Pace 2009, 10).

A holistic and comprehensive approach to health must consider both mental and physical health, as well as social health. In addition, it recognises that the determinants of health include socio-economic, cultural, and environmental conditions, as well as biological and genetic features. A holistic approach to health includes effective and inclusive health systems of good quality. It addresses preventative, curative, and palliative efforts, as health care is a determinant of the health of the population it serves, including vulnerable groups. For the past fifty years, The World Health Organization (WHO), a specialized agency of the United Nations that is concerned with international public health, has recognized the enjoyment of the highest attainable standard of health as a fundamental human right of every human being in its constitution in 1946 (Hunt 2004, 2). The Preamble of the WHO Constitution defines health as a 'state of complete physical, mental, and social well-being and not merely the absences of disease of infirmity' (Pace 2009, 8). The WHO definition integrates two different concepts: one negative (absence of disease or infirmity) and one positive (promotion of human well-being) (Pace 2009, 8). By combining these two concepts, it demonstrates a connection and relevance between well-being and illness, that cannot be easily separated. Lastly, the Preamble of the WHO Constitution takes into consideration mental and physical health, addresses preventive and curative health efforts, and refers to the responsibility of States to promote health to those in their jurisdiction and territory in a non-discriminatory manner.

In 1948 the Universal Declaration of Human Rights also mentioned health as part of the right to an adequate started of living (art. 25) (World Health Organization and Office of the United Nations Health Commissioner for Human Rights 2008, 1). In 1966 the right to health became a central provision in the International Covenant on Economic, Social and Cultural Rights (art. 12), stating that 'the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (Hunt 2004, 1). The right to health is closely related to and dependent upon the realization of other human rights contained in the Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly, and movement (Office of the High Commissioner for Human Rights 2000, 2). These and other rights and freedoms are integral components to the right to health. Article 12(2) further states that each State party of the Covenant must take appropriate steps to achieve progressively the full realization of these rights, including the adoption of legislative measures. These terms clearly underline the importance of recognizing the right to health care, in addition to identifying the underlying preconditions for health. These preconditions include safe and potable water, adequate sanitation, appropriate supply of safe food, adequate nutrition and housing, access to health-related education, healthy occupational and environmental conditions, access to drugs, medical confidentiality, prevention and treatment of HIV/AIDS, and access to sexual productive health, and gender equality (World Health Organization and Office of the United Nations Health Commissioner for Human Rights 2008, 3).

The right to health contains freedoms, such as the right to be free from non-consensual medical treatment, such as medical experiments, research or forced sterilization, and torture and other cruel, inhuman or degrading treatment or punishment. The right to health in addition includes entitlements, such as the right to a system of health protection providing equality of opportunity to every human being; the right to prevention, treatment, and control of diseases; access to essential medicines; maternal, child, and productive health; equal and timely access to basic health services; the provision of health-related education and information; participation of the population in health-related decision making a the national and community levels (World Health Organization and Office of the United Nations Health Commissioner for Human Rights 2008, 4). These provisions are applicable to the entire community, including marginalized and vulnerable groups, such as women, ethnic and racial minorities, refugees, and people with disabilities.

The right to health is also recognised in several other international human rights treaties, to which several EU member States are party to. The International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iv) requires State parties to prohibit and eliminate racial discrimination in relation to the right to public health and medical care. The Convention on the Elimination of All Forms of Discrimination against Women art. 12 requires State parties to take all appropriate measures to eliminate discrimination against women in the field of health care. The Convention on the Rights of the Child art. 24 provides that states 'recognise that right of the child to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health' (O'Brien 2013, 205). Art 25 in The Convention on the Rights of Persons with Disabilities contains extensive provision on health matters, and The International Convention of the Protections of All Migrant Workers and Members of their Families (ICRMW) also recognize the right to health (O'Brien 2013, 205). All these instruments provide to the right to health without any discrimination of a person's nationality or legal status.

1.1. Prohibition of Non-discrimination

The principle of non-discrimination is a key concept and crucial to the enjoyment of the right to the highest attainable standard of health (World Health Organization and Office of the United Nations Health Commissioner for Human Rights 2008, 4). The principle of non-discrimination 'includes any distinction, exclusion, or restriction on various grounds, which occur in the recognition, enjoyment, or exercise of the rights and freedoms laid down in the instruments in question (Pace 2009, 12). The prohibition of discrimination does not exclude any differentiated treatment and measures taken to address the specific needs of migrants since differentiated treatment may be justified and required. However, the principle of non-discrimination requires that any differentiating in treatment must be based on objective and reasonable criteria that is intended to remedy an imbalance in society (Pace 2009, 12). According to the Committee on Economic, Social, and Cultural Rights General Comment No. 14, the principle of non-discrimination in relation to health prohibits 'discrimination in access to health care and underlying determinants of health, as well as to means and entitlements of their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status, sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health' (Office of the High Commissioner for Human Rights 2000, 7). Even

though an explicit probation of discrimination against migrants because of their legal status cannot be found in the international human rights law, the definition of non-discrimination in human rights is a progressive definition. For instance, the prohibition based on 'other status' can be interpreted to additionally cover the immigration status of migrants (e.g. Article 2 of the ICESCR; Article 2 and 26 of the ICCPR, and Articles 1 and 7 of the ICRMQ) (Pace 2009, 12). In conclusion, the enjoyment of the right to be free from discrimination is not only for the citizens of the state, but to all who are within the state's jurisdiction.

Migrating persons' have no general recognized right to enter a country. However, States must exercise their sovereign powers to deny entry or exclude migrating persons, in a way that is consistent with international law and human rights, including the principle of non-discrimination. The principle of non-discrimination requires States to not treat persons who intend to enter or reside in their territory differently solely due to their health status, unless there is a reasonable and objective basis to do so (Pace 2009, 16). Many countries justify their differential treatments on the grounds of protecting public health and excessive pressure on national health care resources. Many countries have put in place various regulations that prevent entry of residence to migrating persons with certain diseases or conditions, such as HIV infection/AIDS, physical or intellectual disorders, and psycho-social or cognitive impairments. These health-related questions are present in visa application forms, medical examinations by immigration officers, mandatory HIV tests before departure and upon arrival, and so forth. Therefore, mandatory testing can constitute as a barrier to the access of health services because it discourages migrants from accessing or stopping their treatment who have conditions or infections that will prevent them from acquiring permission to stay in the country. These cases include migrant persons taking medication or treatment for HIV/AIDS and mental health disorders. Not only does mandatory testing becomes a barrier to health services, it intentionally contravenes specific obligations found in international human rights instruments of States not limiting or denying health services for all (Pace 2009, 16).

To be in compliance with international human rights law, entry and residence restrictions based on health status should be applied on an individual basis, considering the effects of excluding the applicant and the treatment costs imposed on the host country (Pace 2009, 17). As stated previously, there are some rights that can be subject to derogation or limitation on the grounds of public health. Public health can be invoked as a ground for limiting certain rights, only when States are dealing with a serious threat to the health of the population or individual members of the population. These measures must be aimed at preventing disease or injury or providing care

to the sick and injured. Arguably, these decisions should be made objectively and reasonably, and not disproportionate and arbitrary as is prohibited under the Siracusa Principles (B). The Siracusa Principles are internationally accepted principles in understanding the provisions of limitations in human rights instruments. According to these principles, actions that aim at limited certain human rights should be prescribed by law, have legitimate objectives that cannot be reached through less intrusive and restrictive means, be based on the best scientific evidence available, not be imposed or written arbitrarily, be limited in time, and be subject to review (Pace 2009, 11). Therefore, when States use discretionary power to restrict admittance to their territory using disproportionate means among the migrant population, or discriminatory manners of health status or disability, then they are in violation or noncompliance with international law.

1.2. Obligations on States and Responsibilities of Others Towards the Right to Health

States have the primary obligation to protect and promote human rights. Through their ratification of human rights treaties, States parties are required to give effect to these rights within their jurisdictions. More specifically, article 2(1) of the International Covenant on Economic, Social, and Cultural Rights obliges States to progressively achieve the full realization of the rights under the Covenant (World Health Organization and Office of the United Nations High Commissioner for Human Rights 2008, 27). Therefore, the obligation to maximize the available health resources to all people means that all people have the right to receive preventive, curative, and palliate health care, in addition to the right to underlying preconditions of health. Although it is acknowledged that not all aspects of the rights under the Covenant can or may be realized immediately, but States must show that they are making every possible effort within their available resources to protect and promote the right to health.

The Committee on Economic, Social, and Cultural Rights has underlined that States should, at a minimum, adopt a national strategy based on human rights principles, to ensure the enjoyment of the right to health to all. With the respect to the right to health, the Committee has underlined these core minimum obligations to all State parties: 1) the right to access to health facilities, goods, and services on a non-discriminatory bases, especially for vulnerable or marginalized groups; 2) access to the minimum essential food which is nutritionally adequate and safe; 3) access to shelter, housing, and sanitation and an adequate supply of safe drinking water; 4) the provision of essential drugs; and 5) equitable distribution of all health facilities, goods, and services (World Health Organization and Office of the United Nations High Commissioner for Human Rights 2008, 29).

States must ensure that the following four elements are present throughout all health facilities, goods, and services in their jurisdiction: availability, accessibility, acceptability, and quality. Availability refers to the sufficient quantity of health facilities, goods, and services available within the State. Accessibility refers to the capacity of people to access health facilities, goods, and services. This concept has four components, which include: 1) physically accessible within safe reach of all populations, including children, adolescents, older persons, persons with disabilities, and vulnerable groups; 2) health services, goods, and services are based on a non-discrimination basis and available to everyone; 3) all services and goods be affordable to all; and 4) personal health data treated confidentially and accessible to all. Acceptability refers to facilities being respectful to medical ethics, culturally appropriate, and gender sensitive. Finally, quality refers to facilities, goods, and services being medically and culturally appropriate, referring to the skills of medical professions, scientific approve of drugs and hospital equipment, and adequate sanitation (Pace and Shapiro 2009, 8).

In addition, State obligations fall into three additional categories, namely the obligations to respect, protect, and fulfil. The obligation to respect requires States to refrain from interfering directly or indirectly in the right to health. For instances, States should refrain from denying or limiting access to health-care services; marketing unsafe drugs; introducing discriminatory practices; limiting access to contraceptives or other means of preserving sexual or reproductive health; mispresenting health information and treatment; and infringing on the right to privacy. The right to protect entails States to prevent third parties from interfering with the right to health. States are required to introduce legislation and other measures that prevent private actors from inferring with human rights principles when providing health care services, such as making sure that third parties do no limit people's access to health related information and services, make sure health professions provide appropriate care of persons with disabilities with their informed consent, and ensure appropriate medical equipment and medicines are available in health care facilities. The obligation to fulfil involves States to adopt 'appropriate legislative, administrative, budgetary, judicial, promotional, and other measures to full realize the right to health' (World Health Organization and Office of the United Nations High Commissioner for Human Rights 2008, 31). Within this obligation states must adopt a national health policy or a national health plan that covers all public and private sectors; ensures the provision on all health care, such as infectious diseases and immunization programmes; ensure equal access to all the underlying determinants of health; and provide information and counselling to health related issues, such as HIV/AIDs, domestic violence and domestic violence.

2. The Right of Health in the Context of Migration

The process of migration, in itself, is not a risk factor to health; but the process of migration can result in vulnerability to physical, social, and mental health problems (Pace and Shapiro 2009, 7). The right to health can be fulfilled at each stage of the migration process, which includes first the decision to move, then the journey itself, then the reception into the new community, and eventually the return. All phases of the migration process can affect migrant persons with communicable or infectious disease, in addition their country of origin or host country. Prior to migrating, the ability to access adequate health care and medical services might have been limited in their country of origin. Traumatic experiences prior to the migration process and even during, such as armed conflict, hunger, poverty, and physical and sexual abuse, can be a heavy burden on a migrant's mental well-being. Mental and psychosocial illness is a high concern in migrant persons, which include high rates of alcohol and drug abuse, depression, and anxiety (Pace and Shapiro 2009, 7). Once the migrant has arrived in their host country, many factors may affect their physical and mental wellbeing, which include unsuccessful integration, cultural differences, language barriers, racism, and unemployment. Literature has proven that migrant persons are more vulnerable due to their lower socio-economic status, and sometimes due to their traumatic migration experiences, and lack of adequate social support. While living in their new host country, many migrants, especially those with irregular status, often have limited access to services, live in a constant state of uncertainty, and fear of being deported. A migrant persons' legal status may determine access to health and social services in the country of destination (Pace 2009, 18). It is especially problematic for migrant persons with irregular status due to the fact that access to preventive, curative, and palliative health services are often denied or limited. More often than not, when accessing health services numerous other legal obstacles may be present, such as when health service providers are required by law to report to the authorities the presence of irregular migrants. Being held in custody can, and must commonly is, part of the migration process. Where migrants are detained, international standards should apply to help ensure that they are held in centres and conditions that do not violate their human rights, including their right to health. Lastly, the ultimate phase of return migration to the country of origin, may imply returning to an area where there is a higher presence of disease and inadequate access to health care. Like with entry and residence conditions, return conditions cannot breach international law. Therefore, persons with life-threatening medical conditions who cannot continue with their treatment in their country of origin may not return to their country of origin, at the risk of causing harm in distressed conditions and thus causing inhuman treatment.

Countries of destination benefit from migrants' presence in their territory in terms of diversified culture, new skills set, larger tax base, higher levels of entrepreneurship, and a younger demographic population. Addressing migration health is necessary not only for addressing the full realization of benefits for migrants, but also for both the host country and the country of origin. Those who are sick are more likely to become poor, and those who are already poor are more vulnerable to diseases and sickness. Good health is essential to escaping poverty and increasing the capabilities of the poor. Therefore, the right to health is vital for a country's development and combating against poverty. Those who are socially integrated and accepted contribute more to society than those who are exploited and socially excluded. Studying the health implications and consequences of migration requires going beyond residency and nationality. Health-related issues and migration-related economic and social factors continue even after permanent residence or nationality is attained. In addition, biological, genetic and behavioural determinants of health can extend over generations and affect multiple migrant persons. In the context of health and successful migration integration, the host country requires a comprehensive interpretation of migration health that goes beyond infectious disease control. This comprehensive approach should include preventive and curative efforts that are able to provide holistic approaches to health, healthy living conditions, and access to health services and facilities.

The comprehensive approach to migration should not only cover infectious disease, but also non-infectious diseases, chronic conditions, mental health, and sexual and reproductive health. Statistics show that half of today's migrants are women, and a high number of them are both victims of trafficking in persons and internally displaced migrants, therefore a special attention to sexual and reproductive health is essential. In addition, occupational health and safety among migrants is essential as studies show that a large portion of occupational health diseases and accidents are among migrant persons. Migrant workers, especially those who are irregular, poorly educated, and low-skilled, are at higher risks of occupational accidents and workplace injuries due to working in high-risk jobs with poor working conditions and poor supervision. These high-risk jobs include mining, construction, heavy manufacturing, and agriculture. Migrants worker in agriculture are prone to unprotected exposure to pesticides and other chemical products associated symptoms of depression, headaches, neurological disorders, in case of migrant women workers, miscarriage or other pregnancy complications. It is important the participation of migrant persons when setting procedures and priorities to overcome barriers of health and social services deliveries.

3. Barriers to Health Care for Undocumented Immigrants

With the unprecedented number of international migrations that continues to occur, policies that limit health care access have been prevalent. Immigrants have been identified as a vulnerable population, where a heterogeneity in the degree in which they are vulnerable to inadequate health care has been identified. Migrants have been identified as a vulnerable population due to their high risk of inadequate health care and poor psychical, psychological, and social health incomes. The factors that contribute to immigrants' vulnerability include socioeconomic background; immigration status; limited English proficiency; federal, state, and local policies on access to publicly funded health care; residential location; and stigma and marginalization (Hacker et al. 2015, 1258). Overall, it has been concluded that immigrants have lower access to health insurance, use less health care, and receive lower quality health care than native-born populations. In October 2015, a literature review was conducted to review the barriers to health care for undocumented immigrants and to identify strategies to help address these barriers. This paper reviewed published articles from the last 10 years in PubMed database, yielding 341 articles of which 66 met the study criteria (Hacker et al. 2015, 1257). Table 1 summaries the data collected in the from the article and illustrates the multiple levels where the barriers to health care for undocumented immigrants exist. These categories include barriers in the policy arena, in the health care system, and at the individual level (Hacker et al. 2015, 1257). The policy area focuses on issues related to law and policy, specifically looking at the access to insurance and the limitations to the type of health care undocumented immigrants can access. The health care system focuses on issues in regard to bureaucracy, capacity, and discriminatory practices. Lastly, the individual level focuses on issues such as fear, stigma, financial limitations, that create additional barriers for undocumented immigrants in health care.

Table 1: Barriers to Health Care experienced by undocumented immigrants

Category	Subcategory	Description
Policy arena	Law/insurance Need for documentation to get services/unauthorized parents	Legal barriers include barred access to insurance by law Requirements that individuals show documentation to get health care services, often leading unauthorized parents to avoid for authorized children.

Health system	External resources constraints Discrimination Bureaucracy	Constraints beyond individual's ability to pay for services including work conflicts, lack of transportation, and limited health care capacity (such as lack of translation services, cultural competency, and funding cuts) Discrimination on the basis of documentation status resulting in stigma experienced by undocumented immigrants Complex paperwork or systems required to gain access to health care
Individual level	Fear of deportation Communication ability Financial resources Shame/stigma Knowledge of the health care system	Concerns about being reported to authorities if they utilized services or provided their documentation Not speaking or understanding the dominant language to communicate with health care providers. Also cultural challenges to understanding the nuances of another culture and expressing one's problems so that they are understood and not ignored. Not wanting to be a burden to society or experiencing shame when seeking services and concerns about being stigmatized when seeking services. Little knowledge about how the 'system' works, what rights to health care exist, and how to navigate the health care system at all levels.

3.1. Policy

The most common cited barriers to health care for undocumented immigrants are national policies that exclude them from receiving health care. Article, 'Barriers to health care for undocumented immigrants: a literature review', found that three quarters of the articles utilized in their literature review described legal barriers that denied undocumented immigrants' access to health insurance. A common mechanism was laws that deliberately excluded undocumented immigrations from accessing any type of health insurance. In most situations' health insurance is the only means to accessing health care in general, therefore, excluding irregular migrants from health insurance prevents them from accessing any type of essential care. A second common health policy limitation are regulations that required certain

types of documentations to access health care. Most irregular migrants do not have the required documents needed to access health care and are unable to retrieve them. This in turn, also affects the children of irregular migrants, even though they might be citizens of the host country, because the inability of parents to provide documents for them as well. It is statistically proven that native-born children with noncitizen or naturalized parents have lower rates of health insurance than native-born children with native-born parents (Hacker et al. 2015, 1260). Another issue that commonly occurs is the active surveillance of health care providers that leads them to denying care to irregular migrants due to the fear of criminal charges or lose of medical license.

3.2. Health System

Health system barriers that irregular migrants face include external resource constraints, individual costs, discrimination, and high bureaucracy requirements. External resources constraints depicted in the literature review include work conflicts, such as health care offered only during work hours, and the fear of losing one's job while seeking care. Other constraints included lack of transportation and limited capacity at health care facilities, such as limited translation services, cultural competency, and funding cuts. Additionally, data has shown that mental health for undocumented migrants is very limiting and costly. Other restrictions include bureaucratic regulations that included extensive paperwork and requirements that were too complicated and costly to complete. A report conducted by three professors of medicine and public health, Kathryn Pitkin Derose, Jose J. Escarce, and Nicole Luri wrote an article titled, 'Immigrants and Health Care: Sources of Vulnerability', which examined the factors that affect immigrant's vulnerability to access adequate health care. In their article they have stated that public health systems that are facing recent influxes of immigrations are less well equipped to achieve high levels of performance to their patients (Hacker et al. 2015, 1264). Poor access to and the poor performance of the health care and public health systems have serious implications for the health of immigrants, their children, and overall the nation.

3.3. Individual

Individual barriers include fear of deportation, communication ability, financial resources, shame/stigma, and lack of knowledge of the health care systems. In a majority of the articles, fear of deportation was identified. Due to their fears of being reported to authorities, many undocumented immigrants avoid seeking healthcare services or wait until their health care issues are critical. A second common barrier noted in many of the ar-

ticles was communication and language barriers. These challenges include not only the inability of undocumented immigrants to be able to speak the dominant language, but additionally includes cultural discomfort because of not being understood by the dominate cultural. Cultural and ethnic reproductive and sexual health practices and norms of behaviour among certain migration groups may conflict with those of the host country, for example female genital mutilation. To recognise and manage these sexual and reproductive health issues health care providers to be culturally competent and sensitive (Pace and Shapiro 2009, 7). The training and understanding required to achieve this may not be part of my medical education programmes across the world. Immigrants with limited English proficiency and their children are less likely to have insurance, have fewer visits to a physician, and receive less preventive care than those who speak English (Hacker et al. 2015, 1260). Limited English capacity affects the quality of care immigrants receive, where immigrants with limited proficiency report lower satisfaction with their care and lower understanding of their medical issues. Issues with interpretations and quality of interpretation is an issue, where trained professional interpreters are rare in many settings (6 - 1261). Limited English proficiency additionally affects patient's safety, when miscommunication of medical conditions occurs and problems of understanding medical instructions, especially on usage of medication.

Immigrants' vulnerability can also be influenced by residential location, and whether the residence is a traditional or new destination for immigrants (Hacker et al. 2015, 1262). New destinations are less likely than established destinations to have well-established safety nets, culturally competent providers, and community-based organizations and immigration advocacy. Immigrants that live in areas with a small population of immigrants rely more on emergency departments for their care, than those who live in areas with a high number of immigrants. Additionally, physicians who work in communities with lower number of immigrant residents report higher difficulties with language barriers and problems communicating, when compared to physicians in major immigration communities (Hacker et al. 2015, 1262). Immigrants who live in new destination residencies have different social networks, compared to immigrants who live in traditional residents. In new destinations immigrants are less likely to know immigrants who have been long term resident, whom are able to provide assistance and knowledge regarding the health care system. A localities safety net, for example, community health centres and health-promoting capabilities and resources with immigrant communities, play a role in the frequency in which immigrants access healthcare services.

Factors related to stigma and marginalization additionally contribute to the vulnerability of immigrants. A variety of factors that contribute to

this include differences in appearance, language barriers, speaking with an accent, and skin tone. Many undocumented immigrants reported feeling stigmatized while accessing services, even in countries where health care services were available. Being part of a vulnerable and stigmatized group, undocumented immigrants are more reluctant to receive health care due to fears of poor treatment. If practitioners do not have the adequate skills, knowledge, or resources to serve their patients, then frustration occurs between both the patient and provider (Hacker et al. 2015, 1263).

The last individual barrier identified was the lack of knowledge of the healthcare system in itself. Many undocumented immigrants are not aware of the health care services available to them are or what their rights to health care are. Additionally, many did not understand how to utilize the health care system, navigate through the health care system bureaucracy, and obtain the essential documentations and requirements. Socioeconomic background, such as educational attainment, type of occupation, and earnings, directly and indirectly influence immigrants' access to health care resources (Hacker et al. 2015, 1259). Overall, immigrants are more likely than native-born populations to have not graduated from high school, live in poverty, and work in service occupation with low salary.

Roman Romero-Ortuno, an Associate Professor in Medical Gerontology at Trinity College in Dublin and a Consultant Physician at St. James's Hospital in Dublin, argues that the numerous barriers that impede access to health care are especially preventive in irregular migrants. In his article titled, 'Access to health care for illegal immigrants in EU: should we be concerned?', he considers the factors that impede irregular migrants from having effective health care access from both from the perspective of irregular migrants (the demand side) and from health care providers (supply-side) (Table 5). On the demand side, he states that irregular migrants continue not to use health care services because of the lack of knowledge of health care services in their new country. Although, many non-profit organizations (NGOs) try to fill in this information gap, irregular migrants continue to still not use public health care services due to fear. The consequences when irregular migrants do not attain the medical information, they need include high severity rates of disease and sickness in the community. Beside information availability, other limiting factors in the demand side include socio-economic and cultural barriers, such as illiteracy, language problems, lack of disposable time, and difficulty in completing the application process (Romero-Ortuno 2004, 265). On the supply-side, Romero-Ortuno highlights that often times health care managers and providers are unaware of current legislations concerning health care for migrants or are left with ambiguous defined legislations that can be subject to conflicting interpretations. Therefore, numerous times health care mangers do not provide

health care to irregular migrants, in which they are entitled to. Moreover, providers are often affected by the fact that new legal provisions are followed by poor implementation measures and insufficient funding. This sometimes includes complex, costly, time-consuming administrative reimbursement procedures, that are often being declined. Another vast obstacle is the negative attitudes of some health workers have towards their clients who have irregular status (11 page 265).

Table 5. Factors impeding IMs from having effective access to public health care

Demand-side factors	Supply-side factors
Lack of information	
Fear Lack of financial resources (co-payments)	Ambiguous legal definition of entitlements Lack of implementation provisions
Complicated administrative procedures	
Lack of time	The duty to denounce Discrimination
Cultural issues, language problems	

4. Entitlements and Access to Health Care for Undocumented Migrants in Italy and the United States

In December 2012 a research publication titled, 'Access to Health Care of Undocumented Migrants from a Human Rights Perspective: A Comparative Study of Denmark, Sweden, and the Netherlands', was published in the Health and Human Rights Journal, Volume 14 that focused on addressing undocumented immigrants' access to health care in Denmark, Sweden, and the Netherlands from a human rights perspective. The authors of the publication included, Dan Biswas, BSS, Student Research Scholar at the Danish Research Centre for Migration Ethnicity and Health at the University of Copenhagen, Denmark; Brigit Toebes, LMM, PhD, Lecture in the Department of International and Constitutional Law at the University of Groningen, Netherlands; Anders Hjern, Md, PhD, Adjunct Professor of Paediatric

Epidemiology at the Centre for Health Equity Studies at the University of Stockholm, Sweden; Henry Ascher, MD, PhD, Associate Professor in Public Health at the Nordic School of Public Health and Community Medicine; and Marie Norredam, MD, PhD Associate Professor at the Danish Research Centre for Migration, Ethnicity and Health, Department of health at the University of Copenhagen, Demark. Based on desk research the authors conducted in October 2011, they identified laws, policies, peer-review studies, and grey literature that concerned undocumented migrants' access to health care in the three corresponding countries (Biswas et al. 2012, 49). In addition, the author's methodology included identifying relevant international laws concerning the right to health and the right to different groups of undocumented migrants through treaties and related explanatory documents from the United Nations and the Council of Europe. The results yielded that undocumented migrants in Denmark have the right to emergency care, while additional care is restricted and subject to costly payments. In Sweden, undocumented migrants only have the right to emergency care only. The only exception made is to former asylum-seeking children, who are considered to have the same rights as Swedish citizens. Undocumented migrants in the Netherlands have access to primary, secondary, and tertiary care, but other determinantal factors and shortcomings in the health care system have been identified (Biswas et al. 2012, 49). Similar to this article, the purpose of my research project is: (1) to compare the current immigration health care laws and regulations being implemented in the United States and Italy, (2) depict the negative implications these policies have on immigrants' health and integration in society, and (3) to promote and highlight basic human rights all immigrants should be entitled to, regardless of their status. Unlike this publication, my research would include interviewing those are who are personally, socially, and physically affected by the broken immigration health care systems: immigrants whose voices continue to remain unheard and each country's healthcare providers who try to help them. My study will focus on two immigration populations; (1) Hispanic immigrants arriving in the United States, and (2) immigrants from Sub-Saharan Africa traveling to Italy.

In Demark, the health care system is tax-financed and universal health care is granted to all Danish residents. The Executive Order on the Right to Hospital treatment states that all non-residents have the right to emergency treatment in cases of sudden illness, delivery, or aggravation of chronic illness. The Danish Health Care Act states that all irregular migrants have access to emergency care, but doctors are not obligated to treat non-emergency care. The article additionally highlighted other obstacles that are similar to those highlighted in this literature review, which include: 1) the Danish Health Act does not clearly define when a condition is consider

emergency, therefor the decision lies on medical practitioners; 2) irregular migrants are able to access necessary care from Danish Immigration Services, but Immigration Services are obliged to notify policy of patients with irregular status; 3) nurses in Denmark have found that many irregular migrants do not seek treatment due to fear of being reported to police and lack of knowledge of the health care system; and 4) many irregular migrants receive health care access from trusted NGOs and health centres in their neighbourhood, like the Danish Red Cross (Biswas et al. 2012, 50). Sweden is also a tax-financed health care system and provides universal access to people with personal identification cards. Under Sweden health care laws, irregular migrants are only able to receive emergency care and Swedish health care centres are able to claim reimbursement of treatment at full cost. Additionally, also in Sweden many irregular migrants seek treatment at centres opened by NGOs and run by volunteer health professionals. In addition, since 2000 asylum-seeking children and undocumented former asylum-seeking children in Sweden have the same access to health care as Swedish children after the advocacy work of many Sweden NGOs. However, the article highlights other obstacles that still prevent former asylum-seeking children and irregular migrants from seeking health care, which include: 1) health care practitioners who are unaware of current immigration health care laws; 2) undocumented families who are unable to afford treatment and medical costs; and 3) lack of administrative support. In the Netherlands, the health care system requires that all residents purchase their own private health insurance. Since 1998, irregular migrants have been excluded from the country's health insurance but entitled to only 'medically necessary' health care (Biswas et al. 2012, 52). In addition to this, the literature also stated that irregular migrants avoid seek health care services due to the lack of information about the entitlements to health care and fear of payment costs.

For the past decade, 11 million undocumented immigrants have settled in the United States. The United States is the only industrialized country that does not provide universal health care. Instead, the health care system in the United States is considered to be a 'private-public hybrid', where residents are able to access both private and public health care insurances. Public government-funded programs that are subsided or paid entirely by public government include Medicaid, Medicare, and Children's Health Insurance (CHIP), and provide health care coverage to some vulnerable population groups that meet the eligibility requirements. The private health insurance is paid for in part or entirely by the individuals being covered. Private health insurance can be offered through an employer or can be purchased individually. In 2010, President Barack Obama introduced the Patient Protection and Affordable Care Act (PPAC0, also known as the Af-

fordable Care Act (ACA), in an attempt to improve health care coverage by requiring most individuals to secure health insurance, making health care cost less costly and easier to obtain, and contesting against abusive insurance policies (Pandey et al. 2009, 749). Despite attempts to expand health care coverage, irregular migrants are excluded from the insurance provisions of ACA and are ineligible for the federally funded public insurance programs mentioned previously. With few options available, those who seek regular access to care must either pay for services out-of-pocket or purchase prohibitively expensive private insurance. Due to the limited insurance options available to this group, undocumented immigrants are among the most likely to be uninsured. When irregular immigrants do access health care, it is primarily through one of the two ways: 1. Hospital Emergency Rooms. 2. Safety-net clinics (Ottersen et al. 2014, 247). Some states, such as New York, New Jersey, and California have granted exceptions allowing some undocumented immigrants, like children and pregnant women to enrol in Medicaid or CHIP.

The health care system in Italy is a regionally based national health service that provides universal coverage, free of charge at the point of service (Romero-Ortuno 2004, 259). The Italian National Health Plan determined the health care system to be based on several principles, which include: human dignity (equal rights for everyone regardless of personal or social characteristics), health need (everyone has the right to health care), and solidarity (especially those considering to be vulnerable people). Under the new immigration law No. 189 of 30 July 2002, irregular migrants in Italy have the right to receive the following health care: 1) urgent and essential primary and hospital care due to illness or accident, with guarantee of the principle of continuity of care (both definitions of urgent and essential care can be found in the provision); 2) pregnancy and maternity care; 3) full health care for everyone under the age of 18 years old; 4) vaccinations according to the rules and within the areas of interventions set by each region; 5) interventions of international prophylaxis; 6) diagnosis and treatment of infectious disease; and 7) prevention, treatment and rehabilitation of toxic dependencies (Romero-Ortuno 2004, 260). To receive these treatments irregular migrants, have to fill out an official form titled 'Dichiarazione di Indigenza', declaring that they lack sufficient economic resources to pay for treatment. An anonymous ID regional code, titled 'Codice SPT: Straniero Temporaneamente Presente', will then be assigned and be vailed for six months, and allow the irregular migrant to access all the health services mentioned previously. Additionally, the Unità Sanitaria Locale, the regional health authority will refund all providers of the expenses. Article 35(5) of the Legislative Decree No. 286, 1998 (Consolidate Act of Immigration) states that irregular migrants who access health care services shall not be reported to immigration authorities.

Conclusion

Undocumented migrants' access to health care varies across the world, where provisions to health care access is regulated by member States and ranges from full access (under certain requirements) to no-access to non-emergency care. Therefore, entitlements at the national level are often at odds with the rights stated in international human rights law, which acknowledges the right to health for all persons, regardless of their migratory status. International migration, especially migrants who enter into their host country with no documents or permission, are considered to be one of the most vulnerable migrant groups due to them being outside the scope of any political agenda. The legal status or health conditions of any individual is not a ground for an exception of the standards and principles that exist in international human rights law. As stated in international human rights law, all State members are accountable for the consequences of irregular migrants within their borders and have a legal obligation to fulfil their duty to provide a comprehensive health care for all people, which is in line with the basic human right of the highest attainable standard of health.

The aim of this article is to address undocumented migrants' access to health care by, (i) comparing national laws, policies, and practices in Italy and the United States, and (ii) discussing these in a wider framework of international human rights law. In the United States, President Donald Trump has made immigration a central matter throughout his presidency. Since 2017, President Donald Trump made major political shifts in U.S. immigration policies, which include policies at the border, increase in deportation and ICE raids, limiting the number of asylum-seekers, and so much more. Literature review and studies show that President Trump's right-wing policies have aggressively reshaped the legal immigration system creating an atmosphere of nativism, fear, and racism. His immigration policies are radically different from former-President Barack Obama and now with the 2020 presidential election healthcare and immigration have been recurring topics throughout the debates. Since 2018, Italy's far-right interior Minister Matteo Salvini began to make drastic changes in the Italian immigration policies with his new 'Security Degree'. The new laws have limited humanitarian protection from refugees, has doubled the maximum detention time for people in repartition centres, has cut funding for refugee centres, and much more. In both counties, these new political laws have affected the health care policies, how medical practitioners treat migrant patients, and affected the integration of migrants into their host society. This Ph.D. thesis will not only compare the current universal health care system that exists in Italy to the public-private hybrid health care system in United States, but also health care policies continue to change through the next

two years with the new right-wing political leaders and the new elections in both countries. In addition, the central theme of this research would be the principle of non-discrimination and state obligation in international human rights law and the right of all people to have the highest attainable health care possible.

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Constitutionalization of International Electoral Standards: Experiences of Central Asia and Western Balkans

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Abstract. This literature review is a background for the research on constitutionalization of international electoral standards. The research explores how international norms are internalized by domestic governments through the process of socialization. In this respect, it explores the role of different mechanisms in the internalization process. Two regions are selected for this research, where I intend to show that the constitutionalization of international electoral norms is contrasted in substance and in the process: Western Balkans region and Central Asia.

Keywords: constitutionalization, international electoral standards, democratic governance, elections, Western Balkans, Central Asia.

Introduction

'Were elections free and fair?' is a question that raises questions. In the academic sense it prompts an interdisciplinary inquiry: lawyers look at the respect of legal rules, political scientists examine turnouts, electoral systems, and patterns of support for parties, sociologists may be concerned with public moods and preferences, while economists may point to the (in)equality of resource distribution. Given the importance of elections, it is hardly possible to find an area that would be indifferent and directly or indirectly unaffected by this inquiry.

Even if a simple, monosemantic 'yes' or 'no' answer existed, it would not shed much light to systemic understanding of what makes elections free and fair. *International electoral standards* is an elaborated version of the 'free and fair' formula which is supposed to give more clarity to the inquiry.

But does it? What are these standards and who assesses their application? Can international standards help to make national elections more 'free and fair' and, if yes, how? This literature review is dedicated to the state of the art on international electoral standards and their practical realization in the national constitutional legislation. It consists of four main parts. The first part explores the current state of the art on what is regarded as international electoral standards and who takes part in their setting. The second part is dedicated to the review of literature related to implementation of these standards, including domestication of international law, implementation of judgments of human rights bodies, influence of international actors on these processes, and recent case studies related to these issues in different jurisdictions. The third part specifically covers the current state of affairs in the two regions selected for the research – Central Asia and Western Balkans. The fourth part consists of a brief overview of international election observation mission reports in selected jurisdictions and explains how the analysis of these reports contributes to the understanding of the meaning of international electoral standards and their domestic implementation.

1. International Dimension of Elections and International Electoral Standards

1.1 International Electoral Standards vs. Free and Fair Elections?

It has been argued that 'the process of standard setting in human rights is a struggle over the meaning of language and its implications on the conduct of states'. (Mutua 2007). While it has become habitual for the international electoral domain (Boda 2004, Avery and Carroll 2010), the notion of 'standards' is not, however, the usual term used by legal scholars (Schaefer 2004). The legal theory and jurisprudence, indeed, operate with the concepts of 'norms', 'rights', 'obligations', 'duties' that primarily have to do with the respect of legal rules, while 'standards' have in its core an evaluative implication. In fact, 'standards', as well as standard setting have been coming into play through the human rights language and often refer to international human rights instruments (e.g. Tolley 1989). The fact that such international instruments are regarded, first of all, by domestic actors as a benchmark for national legal systems explains the evaluative subtext of 'international standards', including electoral standards, and opens the door for different international actors to take part in standards settings and assessments.

While the academic literature mentions international electoral standards, it does not define them. Some attempts to clarify the meaning of

these standards were made by international governmental and non-governmental organizations active in electoral assistance and observation, such as Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), International Institute for Democracy and Electoral Assistance (IDEA), International Foundation for Electoral Systems (IFES), the Carter Center, United Nations Development Programme (UNDP), Council of Europe's Commission for Democracy through Law (Venice Commission) as well as some other actors that have interest in monitoring or analyzing elections. In many cases such actors develop handbooks that list various international instruments and documents such as conventions, declarations, codes of practices to serve as references on electoral issues and consolidate them under the title of 'international electoral standards' or 'standards for democratic elections' (e.g. Council of Europe 2016; International IDEA 2016; EODS 2016; OSCE/ODIHR 2010). At the same time, different international documents have different normative strength in international law, some of them have evolved through processes of implementation and interpretation while others have not? been used. The analysis of literature suggests that there is no standard approach to electoral standards which makes the inquiry about the basis for the assessment of elections even more important.

A wide practical usage of 'international electoral standards' prompted a number of theoretical questions including those on national elections becoming a matter of international concern and questions of legitimacy of internationals to evaluate domestic elections (Santa-Cruz 2005, Donno 2013, Norris 2017). Some authors link these ideas with the changing concept of state sovereignty, others explain it through human rights approach discussing a right to democratic governance (Franck 1992). An absence of theoretical foundation leads to different interpretations of what constitutes international electoral standards, who sets them and, most importantly, how far these actors can go.

While the practice develops rapidly, theoretical findings dedicated to international electoral standards and their scope are limited. For many years, issues related to how governments are born were not regarded as a concern of international society (Besson 2011; Cohen 2012; Sahin 2015). But this is changing. Already the mere linguistic formula 'international electoral standards' that puts together 'electoral' and 'international' components clearly suggests that national elections have become a matter of international concern. Research on this remains limited and attempts to relate 'standards' to newly emerging 'law' (Franck 1992, Donno 2013).

It is true that political rights and electoral rights in particular provide important links connecting constitutional and international orders. Human rights language became universal. Although cultural relativism is taken into

consideration, there is nothing more universal than the idea of human rights protection (Galanos 2010; Breau 2007). The idea of universality of human rights works as a bridge between constitutional and international level. It also simplifies the language: from the debate over notions of constitutionalism, democracy and other concepts which are contested and ambiguous the debate shifts to the entitlements. There are good reasons to believe that some structural components could be better protected if spelled out stronger through human rights (Mayerfeld 2016, Goldsmith and Levinson 2009).

Tomas Franck's idea on the right to emerging governance is perhaps the most global among human rights approaches to elections. His claim, that the emerging right to governance is a global standard, detaches this right from a mere state machine and make it international in nature. He wrote: '[t]his newly emerging 'law' - which requires democracy to validate governance - is not merely the law of a particular state that, like the United States under its Constitution, has imposed such a precondition on national governance. It is also becoming a requirement of international law, applicable to all and implemented through global standards, with the help of regional and international organizations' (Franck 1992). This idea is echoed recently by, inter alia, Daniela Donno: '[d]emocratic electoral norms are global in scope. These standards are used by international and domestic actors in all regions of the world as the benchmark against which to evaluate electoral conduct' (Donno 2010).

While such approaches look appealing and seem to be based on solid theoretical grounds, there is not enough evidence that the right to emerging governance or similar construction can 'survive' in reality. Practical implementation of political rights is still within margin of appreciation of states which suggests that in most cases the behavior of the sovereign states towards their citizens can hardly be explained through one uniform theoretical model. It explains why, while dealing with elections, most researchers apply a case study method as the main approach and, therefore limit their findings to certain countries or regions. It should not be taken for granted that sovereign states will open themselves to 'international electoral law'. Elections are at the core of a state's sovereignty. As it was sensibly pointed out by one commentator: '[e]lections are among the most sensitive political issues facing any country. They are at the crux of who holds power and who does not' (Eicher, 2009). At practical level it means that any international attempt to change rules of electoral games needs to be 'digested' by the constitutional system of sovereign state. Santa-Cruz traces the process by which national elections became international events or, more precisely, what the effects of this process have on state sovereignty (Santa-Cruz 2005). He finds that domestic elections are international affairs now and

places the emerges of international election observation in the heart of the process of internationalization of elections that leads him to the conclusion about transformation of the state sovereignity.

1.2 International Standards in the Realm of International Norms and their Implementation

While an election is one of the cornerstones of the state sovereignty protected and regulated by the constitutional law of the states, an international standing of the right to political participation is the first and one of the most important links between national and international dimensions of elections. According to some authors, the major human rights instruments does not precisely define the right to political participation – they are more inclined to spell them out through such terms such as 'genuine periodic elections' or 'guaranteeing the free expression of the will of the electors' (Franck 1992; Maogoto 2007). While these provisions were hardly adjudicated at the beginning 'until the wave of democratizations after the end of the Cold War' and there was little election observation efforts, this has been rapidly changing (Hyde 2011).

Many scholars (Franck 1992, Meron 1992; Buergenthal 1990) give credit to the 1990 CSCE Copenhagen Document in setting international standards for national elections. According to Meron, 'the language of Copenhagen goes far beyond any existing human rights instruments'. According to Buergenthal (1990), Copenhagen Document 'moves beyond the traditional catalog of human rights and embraces concerns relating to governmental structure.' Tomas Franck, the main advocate of the emerging right to democratic governance, described Copenhagen Document as 'detailed to an unprecedented degree, establishing a standard that the UN General Assembly might profitably emulate in a resolution'. It is important to mention that the Copenhagen Document is not a legally binding instrument. However, political commitments are regarded as obligatory for OSCE participating States. These authors argue that the OSCE human dimension process changes the human rights law shifting it away from legal positivism (Meron 1992).

Special nature of the Copenhagen Document is supplemented by special actors involved in electoral standards setting and their implementation. Being linked with assessment of elections or their components, application of international electoral standards goes beyond the traditional machinery of human rights protection and implies international mechanisms with special mandates such as international electoral observers. International election observation missions refer to 'international electoral standards' as to the background for making assessment of elections in different regions of the world. At the same time, international human rights bodies acknowl-

edge international electoral standards (Binder 2010; Binder and Pippan 2018; Arceneaux 2007; Donno 2012).

Explanations for the rapid increase in election observation in recent decades emphasize the role played by changing ideas about state sovereignty (Santa-Cruz 2005) as well as post–Cold War changes in the international distribution of power (Kelley 2008). Hyde (2010) argues that election observation became an international norm because the rise of democracy-contingent international benefits provided an incentive for leaders to signal their commitment to democracy by inviting in election observers. Donno explored how international actors, including election observers, contributed to electoral quality, including the potential harmful effect of their actions for governability (Donno 2012). The thesis that the difference between legal and political commitments is blurred serves as a very important link connecting the process of setting international standards with the activity of 'new' actors such as international electoral observers. The main focus of the literature dedicated to the role of the OSCE posits that the status of the OSCE and its election observers change the traditional views on the international law. (Meron 1992; Eicher 2009). This inquiry can also be reversed: do international election observers act within the field of public international law and, if not, what normative framework allows them to do what they do?

While election observation receives attention of scholars from time to time, the activity of other actors with regard to developing, implementing or in other ways dealing with international electoral standards is under-researched. Although the activity of human rights courts, and primarily European Court of Human Rights has been studied carefully, studies of the jurisprudence dedicated to the right to free elections (Article 3 of Protocol 1) reveal that the Court also takes part in electoral standard setting. This mandate to broad interpretation of the ECHR at times has been criticized. (Binder 2010).

The importance of the Venice Commission's role in constitutional matters has been noted (and promoted) in the literature (De Visser 2015; Buquicchio and Garrone 1998; Fasone and Piccirilli 2017). The basis for the Venice Commission's opinions is the 'European electoral heritage' set out in the Code of Good Practice on Electoral Matters. The reference to the European electoral heritage makes the Venice Commission's opinions authoritative in the eyes of the Council of Europe member states as it is indeed related to institutional realization of the features common to all states.

Anne-Marie Slaughter and William Burke-White (2006) researched the EU influence on the transformation of new members 'from inside out', illustrating how international actors can be involved in domestic affairs. They

also examined the potential danger of this situation. It should be noted that the scope of the actors and their impact differs depending on the position of a particular state, as well as many other factors and characteristics of states (Giandomenico 2015). I now turn to the current state of the art on how international norms find their ways to domestic legal systems and factors affecting these processes. The review of this literature is supplemented by a brief explanation of the choice of jurisdictions for research on constitutionalization of international electoral standards.

2. Penetration of International Norms into National Constitutional Legislation

Researchers tend to link the process of internationalization with a more general idea of modern challenges that go beyond state borders and, therefore, demanding new solutions from international systems (Slaughter and Burke-White 2006, Binder 2011). While some authors draw attention to the fact that the same process takes place in other legal areas, such as environmental, criminal and economic law (Binder 2011), it should be taken into consideration that electoral issues are very distinct in nature. Unlike with environmental or criminal challenges, electoral changes that might even seem minor at first sight, have a potential to change a state structure guarded by constitutional law. Structural changes at the highest level of national legislation are often needed in order to comply with international electoral standards.

Research on how international electoral standards find their way into national systems borders with other research areas, such as constitutionalization of international law in general and, importantly, international human rights law and its dialogue with constitutions. Examples of such links are judgments of the ECtHR with regard to voting rights, some of which still have not been implemented. One of the most illustrative examples of selected jurisdictions is the famous election-related judgment *Sejdić and Finci*, where the Court found discriminatory the rule according to which only persons belonging to so-called 'constituent people' (Serbs, Bosniacs and Croats) of Bosnia and Herzegovina could stand as candidates in presidential election (Applications no. 27996/06 and 34836/06).

It demonstrates that legal and practical changes at the highest level are not likely to happen upon the first request of the international actors but domestic institutions have to be ready to absorb demanded novelties. When it comes constitutionalization of international rules, an important work of Risse-Kappen and Sikkink (1999) tracked how international norms are internalized by domestic governments through the process of social-

ization. They offer three different mechanisms: 1) instrumental adaptation and strategic bargaining; 2) moral consciousness-raising, argumentation, dialogue, and persuasion; and 3) institutionalization and habitualization. As another important element of the process of constitutionaization, the authors explored 'under what conditions and by which mechanisms will actors – states, transnational corporations, other private actors – make the move from commitment to compliance'. They point out that the ways to compliance are different for fully functioning states and for those that they characterized as having 'limited statehood'. In these works the compliance is not simply a commitment but 'sustained behavior and domestic practices that conform to the international human rights norms', or 'rule-consistent behavior'. They claim that the way from commitment to compliance includes pressures 'from above' and 'from below' (see also, Brysk 1993). These ideas were picked up by researchers in different fields of international law and human rights and produced a few more specific results that overall correspond to the main model (Clarks 2012, Murdie and Davis 2012).

Works of Habermas (2001), Klabbers (2004), Peters (2006) and are illuminating sources describing how international law can be constitutionalized. At the same time, these authors give the notion different interpretations of 'constitutionalization'. For example, Anne Peters (2006) sees constitutionalization as 'reconstruction of the current evolution of international law'. Although, as it was noted above, such ideas that expand constitutional rules to the world order are challenged at the level of state sovereignty, Peters explains the challenges especially when it comes to establishing international organizations, setting standards and implementing them. Other authors argue that constitutionalization which is understood as an achievement of world's constitutionalizm is hardly possible due to the lack of global governance institutions that have political decision-making power (Dunoff and Trachman 2009). Meanwhile, most authors recognize that both essential questions, one of the internationalizations of constitutionalism and the other one -on the constitutionalization of the international law, require the answers on what the standards are and who sets them. In the words of Anne Peters 'the normative and practical power of international law does not depend on the use of the concepts of constitution and constitutionalism, but rather on concrete *institutions, principles, rules, and enforcement.*' (Peters 2006, emphasis added). This sets the agenda for my research in application to international electoral standards.

However, while international electoral standards include norms of international law (primarily international human rights law), they are still quite distinctive in nature and in scope from more established areas of international law. While contributions mentioned above reflect on several important problems, the notion of international electoral standards is now

taken for granted by some researchers and international actors. It prompts a situation where different authors refer to different instruments in their attempts to 'unpack' international electoral standards and attribute the existence of those to different actors and institutions.

3. Selected Jurisdictions

Two regions that have been selected for the research are Central Asia and Western Balkans. The choice of the jurisdictions is determined primarily by the fact that elections play an important yet arguably different role in both regions, while other political processes that happen in the regions depend on the quality of elections in terms of their compliance with international electoral standards. In the Western Balkans the respect of standards for democratic elections is one of the conditions for EU membership. This illustrates the idea that the impact of actors differs depending on the position of the states. In both regions elections have been observed and assessed by OSCE/ODIHR observers that make their reports an important point of reference and a source of practical information. In addition, the analysis of the elections and international electoral standards in these countries contributes to the wider research on pseudo-constitutionalism in Central Asia and transformative power of EU and EU conditionality in Western Balkans.

3.1 Central Asia

The interest in constitutional systems of independent Central Asian states is present. Recent studies analyse the constitutional systems of the Central Asian states 'in their cultural, historical, political, economic and social context' (Fierman 2014, Newton 2017). The issues related to current political regimes of the Central Asian states, including their comparison with other former Soviet regions, also attract attention of researchers (Bunstra 2012). While Central Asian presidents have, understandably, received much attention (Elgie and Moestrup 2016), studies have paid less attention to constitutional courts and electoral management bodies and their role in elections and the process of democratisation.

There are different approaches to studies of elections institutions of constitutional development and democratization. While some of them, including through suffrage rights or electoral systems, have been explored by lawyers and political scientists (Raabe 2015, Ezrow 2010), administration of elections has not received due attention from scholars. Attempts to set out a comprehensive framework for the analysis of electoral quality demonstrate the importance of election administration (Elkit and Reynolds

2014, Gallagner and Mitchell 2005). A few studies dedicated to election management bodies provide some insides into their activity in different regions (Pal 2016). However, in this respect, election-related studies on Central Asia have been more focused on the lack of respect of democratic norms or the use of pseudo-elections for authoritarian legitimacy in different countries of the region, leaving the bodies responsible for the effective exercise of elections largely under-researched. An examination of (pseudo) elections in countries of Central Asia is a necessary component of a wider analysis of (pseudo) constitutionalism in Central Asia and it requires understanding of the role of the EMBs in these processes (Beachan and Kevlihan 2015).

3.2 Western Balkans

In contrast with Central Asian studies, this region attracted greater attention of academics and practitioners. This is so mostly due to the (preparations for) EU integration processes in the region. These processes have an impact on the way in which Western Balkan countries regard international electoral standards and, more generally, the activity of international actors in their countries. This phenomenon in the literature is known today as EU membership conditionality (Haxhiu, Sadik, and Arben Sahiti 2018). The EU membership conditionality in Western Balkans context has a direct impact on the penetration of international vision of 'free and fair' elections into domestic legal systems. As many researchers emphasized, 'free and fair' elections is one of the main conditions for these states to move forward with the EU integration (Bengtsson 2005; Giandomenico 2015.).

While one would imagine that it provides an additional and a very strong incentive for the constituzionalization of international electoral standards, there is some evidence that domestic electoral stockholders are still reluctant to promote normative changes (Giandomenico 2015). Different researchers come up with different reasons why the imposed changes are not easily implemented. They point on the clientelistic structures of the Western Balkan countries and their political systems (Giandomenico 2015), problems with election administration bodies that become an obstacle functioning of countries in 'a free and fair way'(Bengtsson 2005). However, the authors did not look into what exactly is demanded form the countries by international actors, e.g. which electoral standards and at what political cost they are supposed to accommodate in order to comply with international standards. Electoral processes assessment is effectively 'outsourced' by the EU to OSCE/ODIHR and partially CoE, including the Venice Commission. In the Western Balkans, Europeanization is proceeding simultaneously with democratization. Importantly, while Europeanisation and

conditionality require holistic reform of institutions, ODIHR only offers a limited 'snapshot' of institutional performance.

4. Overview of the OSCE/ODIHR Election Reports for Selected Jurisdictions

The role of OSCE/ODIHR in the analysis of the elections as well as developing (if not setting) electoral standards was emphasized above. The majority of electoral studies consider reports of election observation missions as the main reference point for their conclusions. (e.g. Giandomenico 2015). Given the announced topic, research of OSCE/ODIHR election observation reports will constitute an empirical element for the research and will be critically assessed from a perspective of standards-setting and interpretation of the international rules.

Central Asian region is composed of five countries: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. In all five countries there is an election observation activity. OSCE/ODIHR so far has observed ten elections in Kazakhstan starting from 10 January 1999 presidential election and produced nine final reports containing more than 200 recommendations[1].The final report on the last presidential election in Kazakhstan is expected to be released later in 2019.

In Kyrgyzstan OSCE/ODIHR has observed 14 elections and one constitutional referendum and has released the same number of final reports with recommendations[2]. Six elections (from February 2000) were observed in Tajikistan[3], and the same number of elections in Turkmenistan, although election observation in Turkmenistan was very limited due to the political situation in the country[4]. Seven elections were observed in Uzbekistan and the next parliamentary elections will be held in December 2019[5].

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[1] OSCE/ODIHR Final Report 1999; OSCE/ODIHR Final Report 1999; OSCE/ODIHR Final Report 2004; OSCE/ODIHR Final Report 2005; OSCE/ODIHR Final Report 2007; OSCE/ODIHR Final Report 2011; OSCE/ODIHR Final Report 2012; OSCE/ODIHR Final Report 2015; OSCE/ODIHR Final Report 2016.

[2] OSCE/ODIHR Final Report 2000; OSCE/ODIHR Final Report 2000; OSCE/ODIHR Final Report 2005; OSCE/ODIHR Final Report 2005; OSCE/ODIHR/Final Report 2007; OSCE/ODIHR Final Report 2009; OSCE/ODIHR Final Report 2010; OSCE/ODIHR Final Report 2010; OSCE/ODIHR Final Report 2011; OSCE/ODIHR Final Report 2015; OSCE/ODIHR Final Report 2017.

[3] OSCE/ODIHR Final Report 2000; OSCE/ODIHR Final Report 2005; OSCE/ODIHR Final Report 2006; OSCE/ODIHR Final Report 2010; OSCE/ODIHR Final Report 2013; OSCE/ODIHR Final Report 2015.

[4] OSCE/ODIHR Final Report 2007; OSCE/ODIHR Final Report 2008; OSCE/ODIHR Final Report 2012; OSCE/ODIHR Final Report 2013; OSCE/ODIHR Final Report 2017; OSCE/ODIHR Final Report 2018.

[5] OSCE/ODIHR Final Report 1999; OSCE/ODIHR Final Report 2004; OSCE/ODIHR Final

The OSCE/ODIHR is very active in the region and overall observed many elections. Most of them (seventeen elections) were held in North Macedonia[6]. OSCE/ODIHR has also observed and produced a report on consultative referendum related to the change of the name of the country (OSCE/ODIHR Final Report 2018). Fourteen election observation missions were deployed in Albania with thirteen final reports produced those far[7], while sixteen – in Montenegro[8]. Croatia is a very particular case since it is the only country of the region that has the EU membership. Only nine elections were observed since 1997[9].

OSCE/ODIHR produces different types of reports: Needs Assessment Mission Reports, Interim Reports, Statements of Preliminary Findings and Conclusions and Final Reports. Final Reports are regarded for the purposes of the research as the most complete source of information since these reports are written at the very end of the electoral cycle when the election observation activities are concluded, and in addition to the assessment of elections against international electoral standards, consists of recommendation on improvement of the process. Comparative analysis of these recommendations will create a snapshot of what is regarded as international electoral standards and the further research will demonstrate whether this is being implemented or not, how and why. Inclusion of these reports in the analysis in combination with interviews of different domestic and interna-

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Report 2007; OSCE/ODIHR Final Report 2009; OSCE/ODIHR Final Report 2014; OSCE/ODIHR Final Report 2015; OSCE/ODIHR Final Report 2016.

[6] OSCE/ODIHR Final Report 1998; OSCE/ODIHR Final Report 1999; OSCE/ODIHR Final Report 2000; OSCE/ODIHR Final Report 2002; OSCE/ODIHR Final Report 2004; OSCE/ODIHR Final Report 2004; OSCE/ODIHR Final Report 2005; OSCE/ODIHR Final Report 2006; OSCE/ODIHR Final Report 2008; OSCE/ODIHR Final Report 2009; OSCE/ODIHR Final Report 2011; OSCE/ODIHR Final Report 2013; OSCE/ODIHR Final Report 2014; OSCE/ODIHR Final Report 2016; OSCE/ODIHR Final Report 2016; OSCE/ODIHR Final Report 2016; OSCE/ODIHR Final Report 2017; OSCE/ODIHR Final Report 2019.

[7] OSCE/ODIHR Final Report 1996; OSCE/ODIHR Final Report 1997; OSCE/ODIHR Final Report 1998; OSCE/ODIHR Final Report 2000; OSCE/ODIHR Final Report 2001; OSCE/ODIHR Final Report 2004; OSCE/ODIHR Final Report 2005; OSCE/ODIHR Final Report 2007; OSCE/ODIHR Final Report 2009; OSCE/ODIHR Final Report 2011; OSCE/ODIHR Final Report 2013; OSCE/ODIHR Final Report 2015; OSCE/ODIHR Final Report 2017.

[8] OSCE/ODIHR Final Report 1997; OSCE/ODIHR Final Report 1998; OSCE/ODIHR Final Report 2000; OSCE/ODIHR Final Report 2001; OSCE/ODIHR Final Report 2002; OSCE/ODIHR Final Report 2002; OSCE/ODIHR Final Report 2003; OSCE/ODIHR Final Report 2003; OSCE/ODIHR Final Report 2006; OSCE/ODIHR Final Report 2006; OSCE/ODIHR Final Report 2008; OSCE/ODIHR Final Report 2009; OSCE/ODIHR Final Report 2012; OSCE/ODIHR Final Report 2013; OSCE/ODIHR Final Report 2016; OSCE/ODIHR Final Report 2016; OSCE/ODIHR Final Report 2018.

[9] OSCE/ODIHR Final Report 1997; OSCE/ODIHR Final Report 1997; OSCE/ODIHR Final Report 2000; OSCE/ODIHR Final Report 2001; OSCE/ODIHR Final Report 2003; OSCE/ODIHR Final Report 2007; OSCE/ODIHR Final Report 2010; OSCE/ODIHR Final Report 2011; OSCE/ODIHR Final Report 2016.

tional stakeholders will engage the theoretical framework with real international and constitutional practice.

Conclusion

While the academic literature reveals the themes related to constitutionalization of international law from different perspectives and through the role of different actors, not much attention has been paid to the interaction of the constitutional and international dimensions in the electoral field. At the same time, electoral domain is essential for constitutional systems and protected from external influence by state sovereignty. All states cannot form governments by the same externally imposed rules, however, we would like to believe that there some democratic standards according to which democratic governments are built and function. These standards, when they touch upon the sovereign structure of the states, are not automatically rejected or accepted: they need to be tried by domestic systems and crystalized in these systems in order to produce desirable results. What are the standards and how they find their ways into national constitutional systems is the main theme of this research.

The review of the literature identifies several ways of how international rules can be internalized through the process of socialization and this finding works as a theoretical background that need to be tested in application to the international electoral standards. Gaps identified through the literature review contributed to the formulation of the research questions and pave the way to establish methodology of the research through a combination of theoretical approaches and their practical examination.

The main research question is: under which conditions (how and why) international electoral standards find their reflections in domestic constitutional systems? The main research question demands answers to a number of sub-questions:

(1) what are international electoral standards and why are they important?

(2) what is constitutionalization and how it manifests itself in national systems?

(3) who (which actors) take part in the processes of standards setting and their constitutionalzation? (4) what factors influence the process of constitutionalization and how they do it?

These questions will be explored in two regional case studies – Western Balkans and Central Asia. Of course, the countries inside these regions differ, at times even dramatically. A comparative analysis will also reveal

whether there is anything 'standard' in application of international electoral standards and whether differences between these countries determine the way of constitutionalization of electoral standards.

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Women's Leadership and Participation in Peace and Security Processes: which Role for the Armed Forces?

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Abstract: This critical literature review reflects on the role played by women in peace and security processes, by looking specifically at which function they perform in the armed forces, thus, mostly in the context of peacekeeping operations. Consequently, while this analysis focuses on women, it simultaneously directs its attention to the role played by the armed forces, necessary counterpart in this field. Starting with an overall vision of the broad framework of the Women, Peace and Security Agenda, in order to understand the main concepts which characterize it, this paper will observe three specific settings: Sweden, Denmark and Italy, three cases chosen because of their peculiar features, as outlined in this study. In this journey through the academic research which emerged step by step, becoming more intense at the turning point marked by the introduction of UNSCR 1325 in 2000, a beacon naturally appears on the horizon: feminism. While it is not really possible to talk of 'feminism' but rather of 'feminisms', as a range of social and political movements and ideologies, it is the curiosity about 'where are the women' in peace and security which will lead this analysis in a thorny but stimulating debate in the research. A debate which needs to be deepened since, how this review will show, it is still lacking an attempt to answer paramount questions.

Keywords: WPS Agenda, *Feminism*, *Peace and Security*, *Women's Human Rights*, *Peacekeeping Operations*

'peace is something far more than the 'absence of violence''
(Coomaraswamy 2015, 24)

1. Introduction: Women, Peace and Security

Peace is the necessary prerequisite to enjoy every human right, from the very and fundamental right to life. Indeed, the Charter of the United Nations, the constitution of the international community (Klabbers 2017, 94), opens by proclaiming: 'we the peoples of the united nations determined to save succeeding generations from the scourge of war'. Moreover, the 1948 Universal Declaration of Human Rights, the founding document of the overall human rights regime (Heupel 2018), stressed the essential connection between peace and human rights declaring that the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace'[10].

In order to reach peace[11], though, it is necessary an inclusive and equitable commitment, able to incorporate 'the capacities of half the world's population to resolve the complex challenges of global peace and security' (Coomaraswamy 2015, 194). Indeed, in 2000 the Security Council adopted the United Nations Security Council Resolution (UNSCR) 1325, which gives birth to the Women, Peace and Security (WPS) Agenda, based on the four pillars of prevention, participation, protection and peacebuilding and recovery.

Many scholars have argued that the systematic and representative inclusion of women in peace and security processes significantly increases the chances of attaining sustainable peace outcomes (Byrne 1996, Gizelis 2009), that an increment in their presence is connected with an increment in operational effectiveness - mainly in information gathering, operational credibility and enhanced force protection (D'Almeida et al. 2017, Dharmapuri 2011, Egnell et al. 2014, Penttinen 2012)- and that women's inclusion in peace and transition processes also translates to more responsive conflict prevention (O'Reilly et al. 2015, Paffenholz et al. 2016, Pruitt 2013)[12]. Yet, notwithstanding the long-awaited engagement of the United Nations,

[10] See also the first article of the 2016 UN Declaration on the Right to Peace stating: 'Everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized' and the 1984 UN Declaration on the Right of Peoples to Peace.

[11] Especially a holistic conceptualisation of peace incorporating aspects of economic and social justice, equality, and human rights (Swaine et al. 2019, 4).

[12] Similarly, numerous UN reports show that the participation of women in peace and security processes is directly connected to their operational effectiveness (Coomaraswamy 2015, UN Women 2012, 2014) and that the participation of women in peacekeeping is a critical component of the mission success (UN Women 2016, 2).

the integration of women in peace and security processes is still very modest (Bell 2015, Karim and Beardsley 2017, Kronsell 2012) [13].

Considering the major role played by the armed forces in the maintenance of international peace and security, mostly in peacekeeping operations (PKOs), this review will scrutinize the participation and leadership of women in this context. Indeed, despite the UN Charter makes no reference to peacekeeping in the way it is currently understood, characterized by using militaries to assist in achieving sustainable peace in post-conflict societies (Heathcote and Otto 2014), it has become a major constituent of collective security.

The focus of this investigation examines the Scandinavian countries, specifically Denmark and Sweden, considering their strong involvement in international peacekeeping and crises management and, simultaneously, in gender equality efforts. The Italian context, a country likewise increasingly involved in peace-support operations[14], will be analysed in comparison with these Nordic countries in order to observe potential differences and similarities between these two contexts.

2. Delimiting the Field

2.1 Area of study: The Women, Peace and Security Agenda

In 2000, the General Assembly reaffirmed the commitments made in the Beijing Declaration and Platform for Action of 1995, demanding the full participation of women at all levels of decision-making in peace processes, peacekeeping and peacebuilding. In the same year, the Security Council issued a presidential statement which recognised the connection between peace and women's rights and the Secretary-General solicited a Report of the Panel on the UN Peace Operations which identified the need for equal gender representation in peacekeeping missions, especially in positions of authority. The report led to the adoption of 'The Windhoek Declaration', demanding gender mainstreaming in PKOs, equal access and representation of women in peace processes and leadership positions (WILPF). Soon after, the Security Council approved UNSCR 1325, followed by eight other resolutions: 1820 (2009); 1888 (2009); 1889 (2010); 1960 (2011); 2106 (2013); 2122 (2013); 2242 (2015), and 2467 (2019).

[13] In 2016 UN military peacekeepers were composed of 97% male members (UN Women 2016).

[14] In 2017, Italy was the first troop contributor to UN PKOs from the 'Western European and Others Group' and ranked seventh as contributor to the UN peacekeeping budget for the period 2013–2015 (Foradori 2018, 502).

The UNSCR 1325 was 'welcomed by feminist scholars and activists alike, who described it as a 'landmark resolution' representing a 'new, daring, and ambitious strategy for anti-war feminists', a 'watershed political framework', and a 'significant success story' for gender mainstreaming' (Otto 2015, 4). Indeed, the Women's International League for Peace and Freedom (WILPF), founded in 1919 as result of the International Congress of Women held at The Hague in 1915, had a major role in 2000 in influencing the Security Council (remaining thereafter actively involved in the NGO Working Group on Women, Peace and Security which promotes the implementation of all the WPS resolutions).

On the other hand, considering that the implementation of WPS principles at national and international levels is increasingly focused on state responsibility and action (Kirby and Shepherd 2016, 383), the Security Council's WPS Agenda has been criticised for supporting the idea that securing international peace relies on military strength and securitized states (Otto 2015, 10).

Any debate about peacebuilding, collective security, gender and UNSCR 1325, necessarily comprehends the military and paramilitary as essential components (Heathcote and Otto 2014, 266)gender equality and collective security</title></titles><dates><year>2014</year></dates><publisher>Springer</publisher><isbn>1137400218</isbn><urls></urls></record></Cite></EndNote>, nevertheless

> 'for advocates of sustainable peace and security interlinked with development and human rights, the value of the women, peace and security agenda is its potential for transformation, rather than greater representation of women in existing paradigms of militarized response'(Coomaraswamy 2015, 135).

Women

'Where are the women?'(Enloe 1989), is the fundamental question of the feminist movement.

Even if 'gender' does not equal women (Kinsella 2017) and it is possible to do gender and political analysis without subscribing to the feminist project of societal change (Kantola and Lombardo 2017), feminism presents a specific gender sensitivity, not necessarily present in other constructivist or critical theoretical approaches (Kronsell and Svedberg 2012, 1-2). Moreover, considering that the UNSCR 1325 is an important example of how feminist activism has influenced the global security agenda, Kronsell (2012, 146) asserts that feminists need to get involved with it, because women 'can no longer represent peaceful and beautiful souls but must take responsibility for global relations in the field of war economy, militarism, and defense'.

While feminism has been defined as 'a cluster of contesting views on the gender problematic' (Verloo 2018, 22), gender can be defined as 'the social meaning given to the biological differences of sex' , as 'performative - a doing and constituting of the identity' (Cossman 2002, 281-282)[15]. Hence, 'the ways women and men 'perform' in the peace and security sphere is socially constructed, rather than biologically inherent' (Powell 2016, 275-276).

Notwithstanding the claim that 'feminists appear to distrust legal reforms because of the tendency of such reforms to tame radical impulses', while reproducing 'prevailing conservative or neoliberal ideologies, rather than challenge them' (Chamallas 2013, 409); contemporary feminist scholarship has deeply engaged itself with legal theory influencing the women's human rights movement.

While criticizing the liberalism underlying the conception of formal 'equality' in the UDHR and other international human rights instruments because of their androcentric construction of the same human rights and the perpetuation of the dichotomy between the public and private spheres, Zwingel highlights the importance of the human rights framework for what regards women's rights, because of their value in guiding state behaviour in reaching societal change (Zwingel 2016, 9). Indeed, at the 1993 World Conference on Human Rights in Vienna, women's organizations made reference to the new human rights language and called for 'women's rights as human rights' (Merry 2006), which underlines the notion that women's rights are an inalienable, integral and indivisible part of universal human rights, as stated in the Vienna Declaration and Programme of Action. Moreover, in the General Recommendation 19, the CEDAW Committee framed violence against women as a violation of human rights. Thus, discrimination against women and gender violence were recognized as human rights issues.

Peace and security

Some scholars do not consider peace as a human right and express the need to keep peace and human rights as two distinct concepts, because of the fact that peace is not currently recognized in international human rights law (Julio and Drumond 2017) or, as Donnelly (2006, 150) asserts, 'labelling peace as a human right is not going to bring us any closer to realizing a world without war. Conversely, redirecting our human rights resources to the struggle for peace, even if that might have a more peaceful world, would still leave unaddressed most of the very serious human rights problems'.

On the other hand, stating that 'the work for peace is essentially working for the most elementary human right: the right to security and freedom

[15] The action of gender 'requires a performance that is repeated. This repetition is at once a re-enactment and a reexperiencing of a set of meanings already socially established; and it is the mundane and ritualized form of their legitimation' (Butler 1988, 526).

from fear', Dag Hammarskjöld, second UN Secretary-General and Nobel Peace Prize winner, affirmed that the UN had a 'responsibility to assist governments in protecting this essential human right without them having to hide behind a shield of weapons' (Guillermet Fernandez and Fernández Puyana 2017, 287). Indeed, the reformulation of the right to peace in a human rights frame shifts the focus from the state to the individual.

Acknowledging how, regardless of the theoretical starting point, there is a necessary connection between peace and human rights, it is then required to observe that peace operations are rarely limited to one type of activity (Foradori 2018, 500). While, though, conflict prevention makes reference to the diplomatic measures aimed at keeping intra-state or inter-state tensions and disputes from escalating into violent conflict and includes early warning and information gathering (United Nations), the other phases are normally related to a conflict which is not just potential but already in act.

Peacemaking comprehends the different measures, such as diplomatic processes, initiated to get hostile parties to end or suspend war and lay the foundation for the reconstruction of political, legal, economic and social structures. It is usually followed by peacekeeping programs (Adjei 2019, 4).

Peacekeeping is aimed at keeping parties from fighting or harming each other and it usually requires the involvement of multinational military, police, civilian, and observer forces, often authorized to use weapons only in self-defence (Fortna 2008). PKOs are usually short-term measures directed at safeguarding physical security of local societies while efforts are made towards reconstruction and the resolution of underlying causes of the conflict (Adjei 2019). Peacekeeping was developed during the Cold War as a strategy to enable the otherwise deadlocked Security Council to act on the global scene (Heathcote and Otto 2014, 5), whereas *peace enforcement*, euphemistically described as 'robust' peacekeeping, was strictly prohibited during the Cold War. This last term refers to the Security Council's authorization of the use of force within a peacekeeping mandate in order to restore international peace and security in situations where the Security Council has decided to act in the face of a threat to the peace, breach of the peace or act of aggression (United Nations). The incorporation of authorized force, in addition to confusing the traditional boundaries of peacekeeping, has been criticised for the increasing militarization of peacekeeping (Heathcote and Otto 2014, 6).

Peacebuilding involves long-term efforts to reconstruct, reconcile and restore post-conflict communities directed at addressing physical and structural sources of conflict (Galtung 1976). It implies the development of PKOs in processes aimed at assisting in the implementation of negotiated peace-settlements, including long term support in establishing legal insti-

tutions, monitoring elections, training local police and military personnel and building democratic governmental structures and capacities (Heathcote and Otto 2014, 6). It comprises processes of *reform of the security sector (SSR)* and the *disarmament, demobilization and reintegration (DDR)* of ex-combatants, through which post conflict states stabilize the security situation to allow recovery and development (Coomaraswamy 2015, 177). In the context of peacebuilding activities, the field of *transitional justice* is included as well: a term which can be traced back to the Nuremberg Trials (Alam 2014). Transitional justice as restorative justice finds its theoretical justifications in an entirely different conception of justice, which rejects a necessary relationship between accountability and criminal law processes, but views justice as restoring broken relationships and communities (Bell and O'Rourke 2007, 40).

At the same time, peacekeeping is part of the broader concept of collective security, under the primary responsibility of the Security Council, in charge of the maintenance of international peace and security, according to Chapter VII of the UN Charter, a task translated so far mostly in military terms (Heathcote and Otto 2014). While, though, security studies were traditionally characterized by a focus on militaristic understanding of enemies, threats and risks, different approaches directed their attention to human beings: for instance, Critical Security Studies[16] started asking 'whose security' was at stake. Thus, the scope of international security, from primarily focusing on security of the nation state, started embracing the concept of *human security*.

In 2001, when the Commission on Human Security was created, Japanese national Sadako Ogata, former UN High Commissioner for Refugees, was named co-chair along with Nobel laureate Amartya Sen. In 2003 they presented to the United Nations Secretary-General Kofi Annan a report called 'Human Security Now', which, emphasising the role of economic, cultural and social rights stated that 'Human Security complements state security, strengthens human development and enhances human rights' (Basch 2004). Thus, even recognizing that in Security Council discourse, human security means in simple terms 'making certain aspects of human rights and humanitarian concerns relevant to the peace and security agenda' (Cohn et al. 2004, 135), this concept has great potential as 'an alternative and integrated framework for thinking about security—one that views peace, security, equality, human rights, and development as interrelated' (Bunch 2004, 30).

[16] These studies question the centrality of the state as a political actor while having an emancipatory element: for example they emphasize the caring humanitarian side of military duties, as in PKOs, and the increasing visibility of women and homosexuals in the military (Tickner 2004, 47).

Moreover, in the aftermath of the Cold War the Security Council started mentioning human rights and humanitarian concerns[17] as threats to international peace and security (Mills and Karp 2015, 234). Thus, rather than being considered in opposition, human rights were considered constitutive of state sovereignty and their violation was seen as a possible ground for the loss of legitimacy and immunity of a state from external intervention. This idea of *a right* (and a duty) *to protect* from gross violations of human rights was expressed in 2001 by the International Commission on Intervention and State Sovereignty in a report entitled 'The Responsibility to Protect' (Mills and Karp 2015, 235). Even if published one year and two months after UNSCR 1325 was adopted, this report made no explicit references to the wider WPS Agenda (Hultman and Johansson 2017, 134).

3. A Review of the Literature on the Women, Peace and Security Agenda

The literature examining women's participation in peace processes has a long history (Adjei 2019), however, since the passage of the UNSCR 1325 and the other WPS resolutions, a new wave of attention has been given to women's participation in peace processes (George and Shepherd 2016).

3.1 Beautiful Souls and Just Warriors

According to feminist scholars, the theory of political science has been developed through thinkers that justified the authority of men over women and public affairs, associating women with the private domestic sphere. Consequently, concepts such as politics, power, citizenship and the state have been conceptualized in androcentric ways, reflecting the experience, interests and values of male subjects (Kantola and Lombardo 2017, 9). Similarly, nations have been constructed according to essentialized gendered roles where women were depicted as mothers and biological reproducers of the nation, thus linked to the private sphere and men as the soldiers, leaders and protectors of the nation, linked to the public sphere (Kantola 2016, 925). Therefore, 'Just Warrior' (men) wages war[18] to protect the 'Beautiful Souls' (women) who are 'too good for this world yet absolutely necessary to it' (Elshtain 1987, 140).

While feminism traditionally identified itself with peace and nonviolence, treating war only in opposition (Sylvester 2010, 609), Enloe, motivat-

[17] Human rights and humanitarism are characterized by different perspectives on agency. Moreover, while human rights is a political project aimed at ensuring that all people have what they need to live in dignity, humanitarianism is about granting people the possibility to survive on a day-to-day basis (Mills and Karp 2015, 224).

[18] Considering 'the war system as the interrelated ways that societies organise themselves to participate in potential and actual wars'(Goldstein 2001, 3).

ed by a 'feminist curiosity' about the absence of women from mainstream discourses, developed a feminist methodology to investigate war, militarism[19] and militarization[20]. Thence, war has been interpreted as a masculinist project (Lokaneeta 2016, 1020), as a male-centred language which revolves around the assumption that men fight wars while women are irrelevant to the analysis of it (Shekhawat 2015, 2). The complete irrelevance of women to the war discourse, except when instrumentalized, is even more controversial when realizing that 'over time, women's mortality in war is as high as men's largely due to the long-term socio-economic effects of war' (Li and Wen 2005). According to Sjoberg, 'wars are not only fought 'for women' but also through them, on the (actual and represented) bodies' (Sjoberg 2013, 222).

3.2 The Military Institution

Kronsell and Svedberg (2012, 3-4) report how institutions and norms are an integral part in the construction of identities and meanings: norms are embedded in institutions but also are constructed and enacted when individuals engage with them, for example while doing peacekeeping or military exercises (Kronsell and Svedberg 2012). Indeed, 'the women-in-institutions approach' based on a liberal 'add-women and stir' plan of action has been criticized for 'the limitations of treating institutions as entirely exogenous to societal structures and immune to power hierarchies' (Montoya 2016, 372). On the other hand, 'to say that an institution is gendered, then is to recognize that construction of masculinity and femininity are intertwined in the daily culture of the institution rather than existing out in society or fixed within individuals which they then bring whole to the institution'(Kenney 1996, 456). Thus, in male-dominated institutions (created by and for men) different strategies are required to change internal power dynamics (Montoya 2016, 374).

While the tension between the 'let us in' and 'set us free' approach is endemic to most struggles for social change, it appears particularly thorny in the context of war and militarization (Ferguson and Naylor 2016). Since soldiering is so fully associated with masculinity[21], women soldiers represent a typical contradiction, they are 'at best anomalies, neither properly female nor credibly soldiers' (Shekhawat 2015, 17). In fact, one of the most debated topics so far has been the issue of the right of women to serve

[19] Militarism is defined by Kronsell (2012, 29) as the belief that hierarchy, obedience and the use of force are particularly effective in a dangerous world.

[20] As 'a step by step process by which a person or thing gradually comes to be controlled by the military or comes to depend for its well-being on militaristic ideas' (Enloe 2000, 3).

[21] Security, military and defence institutions have carried out their activities based on a norm of heterosexual masculinity (Kronsell 2012).

in combat position, a subject divisive for both feminist and military actors and indicative of specific viewpoints on the role of women. Rather than essentialist views based on the assumption that women's participation in the military will 'have a positive effect on the prevailing ethos of this institution', the equality argument seems more persuasive (Heathcote and Otto 2014, 274). Ultimately the dilemma remains if it is consistent with broader feminist goals to address the concern of gender equality within the military institutions without considering the characteristics of these institutions. The major question then is: 'do feminists want women to be included within the existing structures of power and opportunity, or do we want to subvert and transform those institutions in a more radical way?' (Ferguson and Naylor 2016, 509). And specifically, do we battle 'to improve the conditions for the women inside' or 'confront the practices of warfare itself'? (Segal 2008, 23)

3.3 Inclusive Security: Towards and Beyond the WPS Agenda

Feminist security studies (FFS) addressed the absence of women in international security studies, arguing against the representation of the state as protector of women in times of war and peace and the uncritical conjunction between women and peace. Furthermore, as Basu (2013, 456) asserts, 'feminist scholarships offers radical imaginings of security through the employment of gender'. Indeed, in the words of Reardon: 'A feminist world security system would attempt to include all peoples and all nations based on a notion of extended kinship including the entire human family[…], as the security of each is best assured by the security of all'(Reardon 1990, 139). Sjoberg (2011, 121) claims that feminist security theorizing is also sensitive to 'voices that are not normally heard in global politics', indeed this more inclusive approach is revealed by the constant exploration of the question of who can 'speak security' (Hansen 2000, 2012). Consequently, in general, feminists take a bottom-up approach when analysing the effects of armed conflict whereas conventional security studies rely on a top-down approach (McKay 2004, 160).

Looking at international humanitarian law, feminists scholars have pointed out that during armed conflict the protection of the civilian population is always understood as subsidiary to 'force protection', thus impacting the application of the principle of proportionality (Heathcote and Otto 2014, 272). In the context of international criminal law, Halley and her colleagues (Halley et al. 2006) have argued that the official acknowledgment of rape as a 'weapon of war' may paradoxically foster the use of rape in exactly that way.

Indeed, even the incorporation of feminist standpoints at the headquarters of world security can be problematic, Heathcote (2011) argues

that feminist ideas are being used by the Security Council to expand the legal justifications for the use of force (jus ad bellum), which she considers a profoundly anti-feminist project. Similarly, even the UNSCR 1325 has been object of various criticisms regarding, for instance, the lack of analysis of the structural roots of gender inequalities, such as established understandings of patriarchy, masculinity and militarized power (Barnes 2011), or of the basic causes of conflict (Porter 2007). One of the most debated issues is the equating of gender with women and femininity with peace, whereas men and male norms remain absent from the discourse (Shepherd 2013). Indeed, a danger of institutionalisation is 'the likelihood that the incorporation of a gender perspective is reduced to a technocratic tool in the hands of United Nations (UN) policymakers and peacekeeping personnel, seriously diluting SCR1325's critical political potential' (Otto 2015, 4). Sceptical about the character of 'governance feminism', Otto condemns the 'selective engagement with feminist ideas as they are instrumentalised to serve institutional purposes', the absence of strong accountability mechanism and 'the tendency for protective stereotypes of women to normatively re-emerge'(Otto 2010, 106). Similar arguments are presented by Hudson, according to her 'women's rights are not only presented in terms of the actual security needs of women in conflict, but also in terms of what women – and gender equality – contribute to lasting peace and security', thus promoting an essentialist and narrow view of women and supporting the return of women to traditional roles after the conflict (Hudson 2013, 3). Moreover, this essentialist view risks homogenising all women, as if their needs, interests and agency are the same because of their shared gender (Pratt and Richter-Devroe 2013, 2). Moreover, Hudson (2013) warns about the risk of formulating women's rights and gender equality as security issues, indeed any tendency 'to 'securitize' issues and to use women as instruments in military strategy must be consistently discouraged' (Coomaraswamy 2015, 15).

In her study 'From Gender Essentialism to Inclusive Security' in the WPS, Powell identifies democratic legitimacy as an approach which could surpass the shortcomings of the 'securitization approach', inculpated of reinforcing gender essentialism, by reframing the WPS debate 'as one concerning inclusive security-emphasizing that women's participation enhances the representativeness, democracy, and fairness of the process as a whole'(Powell 2016, 272).

3.4 Women's Participation in PKOs

Institutions, especially in the security sector, are gendered, while certain masculinities have power, femininities and other masculinities do not

(Karim and Beardsley 2017). Moreover, PKOs are mainly composed of members of specific institutions, the military and the police, which are accorded the authority to use force and are characterized by peculiar gender hierarchies, even if PKOs present more multidimensional roles and are characterised by a lesser 'warrior purpose'(Karim and Beardsley 2017).

The literature discussing the different roles played by women in PKOs is broadening, different scholars observe how women are expected to perform diversified and even discordant tasks through their participation in the missions: such as providing physical security, inspiring local women and preventing sexual violence and abuse by local men or male peacekeepers (DeGroot 2001, Gizelis 2009, Simić 2010, Stiehm 2001). Indeed, women and girls are at high risk of experiencing sexual violence, and mass sexual violence, by parties to armed conflict during warfare (Heineman 2011), including as a deliberate tactic by armed groups (Baaz and Stern 2013, Wood 2009). Moreover, violence against women and girls (VAWG), such as intimate partner violence, is expected to increase in both public and private contexts during wartime (Swaine 2015, Swaine et al. 2019). Additionally, 'women's experiences of insecurity do not end with the absence of war, but continues on even after conflicts have ceased as they disproportionately deal with the indirect consequences of war such as poverty and violence in their households' (True and Tanyag 2017, 46). Moreover, since the 1990s allegations of UN peacekeepers sexually exploiting or abusing the local population started to emerge (Kanetake 2010, Mudgway 2017, Oswald 2016), to which the UN responded with the adoption of the zero-tolerance policy[22].

Most of the discussion concerning the participation of women in PKOs focuses on the 'nature versus culture' debate about women's peaceful character (Shekhawat 2015, 2). For example Otto, looking at the texts of the different WPS resolutions, affirms that employing more women in peacekeeping is promoted instrumentally, to protect and empower local women and children against sexual violence, 'as if these are contributions which women are inherently predisposed to making' (Otto 2015, 5). The Department of Peacekeeping Operations (DPKO), now Department of Peace Operations (DPO), claimed that

> 'Women's presence improves access and support for local women; it makes male peacekeepers more reflective and responsible; and it broadens the repertoire of skills and styles available within the mission, often with the effect of reducing conflict and confrontation' (Simić 2010, 189-190).

[22] Additionally, the extraterritorial responsibility of troop-contributing states may be recognized for the human-rights violations perpetrated by military peacekeepers through acts of sexual exploitation and abuse (SEA), when the states fail to take reasonable measures to prevent, investigate and prosecute SEA (Burke 2014).

Valenius (2007) criticizes the essentialized representation of women either as victims or inherently peaceful in peace processes; indeed, this view limits the contribution that women can perform (Moser and Clark 2001), reinforces traditional gender roles and perpetuates gender stereotypes. Many scholars underline that the UNSCR 1325 represents women as more peaceful than men and that the resolution is built on this essentialist idea (Shepherd 2008, Sjoberg 2011).

Jansson and Eduards (2016) stress how the WPS resolutions are based on the idea of 'women's otherness', as well other scholars assert that local populations see military women as a sort of 'third gender' (Dyvik 2014) and thus do not distrust women to the same extent as men (Ortbals and Poloni-Staudinger 2018, 286) and report that women can 'soften operations'.

On the other hand, DeGroot (2001) states that the complexity of the activities peacekeepers engage in has led to an appreciation of the qualities women are stereotypically associated with. Thus, regardless of whether these attributes are natural or socially constructed, they are particularly valuable in peacekeeping. Concurrently, some scholars reflect on the opportunities of the WPS Agenda, Otto (2015) observes how peacekeeping is of intense interest, not only to feminist activists, because of the emancipatory potential it presents for women and other marginalised and disadvantaged groups. Shepherd (2016) similarly considers that an active participation of women in peacebuilding can lead to a possible change in power dynamics in post-conflict societies.

Moreover, according to Hudson (2005), there is evidence that the adoption of UNSCR 1325 has led to an increase in the number of women participants in PKOs. Karim and Beardsley (2013) similarly find that the number of female peacekeepers has gradually improved since 2000 but there is still a wide gender gap, which has led scholars such as Simić (2010) to argue that the peacekeeping world remains a 'hypermasculine' world dominated by men and affirm that these gender power imbalances restrict the participation of women in PKOs. Focusing only on participation targets, as a 'technocratic exercise' where women's involvement and empowerment represents a simple 'tick box' task (Cornwall and Whitehead 2007), without addressing the concrete dynamics of gendered power helps to reinforce essentialist ideas about women's pacific nature or their capacities for consensual problem-solving (Kirby and Shepherd 2016, 375).

3.5 Northern and Southern Perspectives in Europe

In 1987 the Norwegian political scientist Hernes reasoned that the Scandinavian welfare states had the potential to become 'woman-friendly' and 'state feminist' (Borchorst and Siim 2008, 208), 'which signifies that

women's political and social empowerment happens through the state and with the support of state social policy' and results in 'an optimistic acceptance of the state as an instrument of social change'(Kantola 2016, 917).

The Danish and Swedish militaries self-identify as 'forces for good'(Bergman Rosamond 2014, 36) and adopted 'a cosmopolitan-minded ethic on military obligation in the post-Cold-War and post-9/11 eras' focused on the implementation of the UNSCR 1325[23] (Bergman Rosamond and Kronsell 2018, 173).

In Sweden, characterized by a self-narrative and international reputation as a gender-progressive, cosmopolitan-minded nation (Aggestam and Bergman Rosamond 2016, Bergman Rosamond 2013, Kronsell 2012), different studies have been performed on the subject of women's performances and experiences in the military and the effect of women's participation in PKOs (Gustafsson 2006, 6). Indeed, women have participated in the Swedish Armed Forces (SAF) since the beginning of the 20th century in civil services and voluntary organisations (Andreasson 2016, 5). Even if it is only in 1989 that all restrictions on the access of women to military occupations were removed (Gustafsson 2006, 4). In addition, Sweden recently implemented, as second country in the world after Norway, a gender-neutral conscription system (Persson and Sundevall 2019, 2).

Still, 'the Swedish case is somewhat of a paradox' (Persson and Sundevall 2019, 13): Sweden has lead the way in gender equality in the military, yet the percentage of women in the military is modest compared to the NATO countries, and there are issues related to sexual harassment and a lack of adequate equipment for women (Persson and Sundevall 2019, 13). Looking at the presence of women in PKOs, Kronsell (2012), Eduards (2012) and Penttinen (2012) underline how the most important challenge for a post-national cosmopolitan military, esteeming democratic values and the rule of law, is to increase the number of women, for the few women present have difficulty in identifying themselves with and becoming a part of the organization. Moreover, because of their thin presence they are employed in specific tasks related to them being women rather than to their capacity as soldiers or peacekeepers. At the same time, Kronsell (2012) observes that values stereotypically correlated with women, such as caring and empathy, while previously considered an obstacle to their participation in the military, now are supposed to make them effective in peacekeeping practices, core of the new post-national defence. Egnell underlines that the introduction of a gender perspective can enhance military effectiveness (Egnell 2016), not only broadening the potential recruitment base, given

[23] Particularly significant is that Denmark and Sweden and the other Nordics set up the Nordic Centre for Gender in Military Operations in 2012 to advance the 'implementation of … 1325 on Women, Peace and Security' (Bergman Rosamond and Kronsell 2018, 175)

the small size of the SAF, but it can influence how the physical power of the organisation is applied in the field (Egnell et al. 2014, 72), with the potential to add new capabilities (Egnell 2016, 77). Still, the scholar recognizes that women can make substantial contributions to 'what is surely the most masculine and patriarchal world of all' (Egnell 2016, 81) even if 'women are not by definition gender aware, or promoters of gender equality. Indeed, few women have joined the military to become advocates of women's rights or gender equality' (Egnell 2016, 84).

Similarly, in Denmark women have been part of voluntary corps in the armed forces since the 1934 and in 1962 were allowed to join the Danish Armed Forces (DAF) on a voluntary basis, but they could not serve in combat units (NATO 2002), until in 1992 no more formal barriers remained (Schaub et al. 2012, 4). In 1993 the first action plan for diversity in the DAF was issued and efforts to increase female retention included regulations against sexual harassment, indeed, there is a conscious effort to diversify the Danish military by recruiting women and people of different ethnic backgrounds (Schaub et al. 2012). The official position is that women soldiers are 'role models for the local population' (Bergman Rosamond and Kronsell 2018, 178) and crucial to reach out to local people (Bergman Rosamond 2014, 35).

Yet, an analogous contradiction takes place in Denmark: despite being remarkably sensitive to issues of gender equality, it has been a quite hard task for the DAF to attract more women to the military profession. As Sand and Fasting (2012, 12) have argued:

> 'The focus on gender equality in society at large has also had an important influence on the three countries' Armed Forces. One noticeable example is that for almost three decades it has been an explicit political objective to increase the female representation [...] However, despite the long-lasting objectives, the Scandinavian countries have not been very successful in reaching a more balanced gender distribution in the Armed Forces'.

Looking at a quite different context, most of the research on the Italian Armed Forces (IAF) in international settings highlighted a peculiar 'Italian' style in PKOs, where the 'Italian military seems to be more humanitarian than others' (Farina 2014a, 354). Indeed, multilateralism, peace and humanitarianism are the common values on which support and justification for the deployment of Italian troops abroad are constructed (Foradori 2018, 508).

For what regards the inclusion of women in the armed forces, Italy is characterized by an environment where 'there are no studies on this topic' (Farina 2014a, 347). The reasons range from the relatively short history of Italian female recruitment (being Italy the last NATO country to open

military service for women in 2000) to a 'traditional structural distance between the armed forces and society, and little involvement of civil scholars in this field of study and research. Attention on this topic has paradoxically even waned since females began to be recruited' (Farina 2014a, 347). Moreover, gender integration in the IAF is distinguished by a spontaneous approach, with a low degree of formalization, which can be called a 'laissez-faire' strategy (Farina 2014a, 352). Indeed, Italy represents an exception in the lack of an internal discussion on gender relations, which could be due to a supposed cultural-relational flexibility of Italian people, less inclined to manage interpersonal relations with specific procedures and norms (Farina 2013).

On the other hand, though, this general lack of reflection on the topic, does not permit to see the difficulties and the resistances occurring in the military organization, whose identity-making foundations, in this case masculinity, are shaken and which needs to be able to manage diversity (Farina 2014b). Though, 'there seems to be no room for a party other than male in the Italian armed forces. Inside the military, so far, seems to be only room for homogeneity' (Farina 2014a, 360). Indeed, other scholars have underlined the difficulty in managing the female intrusion in an institution where the woman was just an external subject, not a comrade but a 'beautiful soul' to be protected or a pray to be conquered (Ricotta and Sola 2003). Thus, trying to avoid the risks of tokenism in the integration of women, more than assimilating women in the traditional military culture, it would be necessary to develop new representations of the military and the female and male roles connected to it, re-defining this organization towards more flexibility, complexity and multidimensionality (Ricotta and Sola 2003).

Conclusion: Towards a Reconceptualization of the Military?

In order to conclude this review of the literature, a final reflection will be on the role of the military and the influence that the presence of women could bring to it and the whole scenario of peace and security processes. Unquestionably, as Stiehm affirms 'the goal should not be to make war more humane but to eliminate it' (Stiehm 2010, 23)

While some feminists doubt the transformative ability of militaries, as masculinized institutions which cannot accommodate women's experiences (Eduards 2012), others claim that 'militaries have the capacity for change' by understanding differently the military practice itself (Duncanson and Woodward 2016, 10), Dexter and Gilmore (2006, 9) affirm that cosmopolitan militaries are less concerned with traditional military practices of war fighting and more with methods and tactics better suited to the protection of human security.

Ethics of care scholarship argues that women's moral reasoning depends upon actual social relations of care (Gilligan 1993, Robinson 1999). Moreover, Kronsell (2012, 147) argues that 'a feminist international security ethic based on the ethics of care and emphatic cooperation could be a way to guide the postnational defense', particularly when sensitivity to the local context is necessary, as for what regards PKOs. Considering these points, methods such as dialogic peacekeeping, a non-war-fighting cosmopolitan practice that rests on empathetic cooperation (Sjoberg 2006, 2013), seem to be quite promising as a normative platform which can promote the realisation of human rights. Indeed,

> 'the hope is that introducing gender perspectives into peacekeeping provides a niche for feminist efforts to reshape the broader collective security framework by disrupting militarist assumptions and stereotypes of gender that reinforce inequality and serve to legitimate military ways of thinking' (Heathcote and Otto 2014, 10),

In order to have the possibility of even exploring these potential scenarios, much more research need to be performed.

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Microfinance and Women's Empowerment in China: A Literature Review

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Abstract: This literature review aims at raising two research questions that provide an overview of microfinance and women's empowerment: 1) Does women-targeted microfinance empower rural women in China? 2) How can the social efficiency of women-targeted microfinance be improved in China? In order to answer these questions, this literature review collects the definition of empowerment and the explanation of women's empowerment. In addition, it examines the determinants of microfinance institution's (MFI) financial performance and the impact of microfinance on social indicators. Last but not least, it presents a situational review of microfinance and women's empowerment in China. Equality between women and men is a human rights and a prerequisite for social justice, development and peace. Women's empowerment is a positive step to eliminating gender inequality and protecting women's human rights. It has been proven that microfinance is an effective tool in eradicating poverty and empowering women in most developing countries. In order to provide financial service for poor people and to empower women, MFIs must be financially sustainable because financial performance significantly influences MFI's outreach and social efficiency. In China, even though microfinance has reached an achievement in poverty alleviation and women's empowerment, women's participation in microfinance is limited. Many microfinance programs have failed to provide assistance to the poorest women in rural regions. There are very few studies that have evaluated the impact of women-targeted microfinance on rural women, as well as presented suggestions for improving the social efficiency of women-targeted microfinance in China. This is the gap that the research based on this literature review is supposed to fill.

Keywords: microfinance, women empowerment, financial performance, impact evaluation, China

Introduction

Women are not only struggling to get out of poverty, but they also do so when experiencing different forms of discrimination and violence. Women and girls' empowerment are essential to expanding economic growth and to promoting social development (UN, SDG5). Empowerment involves challenging the forms of oppression and inequality, and the system that denies vulnerable group's basic human rights (Eade and Williams 1995). Empowerment programs must overcome the obstacles that deny agents the ability to make transformative choices or prevent agents from acting on their choices (Kabeer 1999). The process of empowerment aims at raising the performance of any economy, improving the quality of life for everyone, and promoting equality and fundamental rights for everyone (Raudeliuniene et al. 2014). Women's empowerment is about the process by which those who have been denied the ability to make strategic life choices acquire such an ability (Kabeer 1999). As stated by Wee and Shaheed (2008, 16) that women's empowerment is an increased ability to question, challenge and eventually transform unfavourable gendered power relations, often legitimized in the name of 'culture'. Women's empowerment is not about replacing men's rights with women's priority. Instead it should result in the liberation of men from false value systems and ideologies of oppression. It should lead to a situation that people can enjoy their rights as a human being regardless of gender and contribute their potential to a harmony society (Raudeliuniene et al. 2014).

The economic pathways of women's empowerment have potential to transform the lives of women and girls by addressing gender inequality on a wide variety of fronts (Kabeer 2011). Resources are fundamental to practicing empowerment. Access to resources enables women to exercise agency that allows women the capacity to control resources and make strategic choices about the use of such resources (Dolan and Scott 2009). Economic empowerment refers to women's access to saving and credit, what will provide them with a greater role in economic decision-making (Mayoux 2000). Microfinance is a collection of practices that providing small loans and accepting small saving deposit (Garmaise and Natividad 2010), it is a popular development strategy that engages market principles to achieve socially progressive objectives, such as promoting economic development of marginalized communities and empowering the poor (Shakya and Rankin 2008). The clients of MFIs are predominantly poor and are excluded from the formal banking sectors. The lending mechanism is typically based on joint liability, for example group lending to guarantee the repayment, and mostly targets on women borrowers (Baquero et al. 2018). Microfinance has the potential to empower women by providing them with self-reliance,

self-confidence, self-worth and decision-making power through interaction with the group members and the rest of the community (Herath et al. 2015). Scholars have reached a consensus that factors, such as capital structure, revenue diversification, institutional characteristics, lending methods and so on have significant influence on MFIs financial performance (see Ibrahim et al. 2018, Ayayi and Wijesiri 2018, Cull et al. 2007, Bogan 2012, Zamore 2018, Nasrin et al. 2018). However, current debates focus on if microfinance brings transformative impacts on poverty and other social indicators.

As in most developing countries, rural residents in China lack formal financial support (Zhou and Takeuchi 2010). Farmers are excluded from formal bank services since there is an absence of collateral for them. Microfinance was introduced into China in the mid-1990s as a part of the government's poverty alleviation strategies with various organizations involved, such as non-governmental organizations (NGO), governmental agencies and rural financial institutions (Li et al. 2011a). Meanwhile, a replication of Grameen Bank (GB) model was experimented on rural women in China in 1993 (Luo and Rahman 2010). Positive impact can be found in literature, from increasing farmer's income, promoting agriculture transformation, reducing rural poverty, to improving women's decision-making on household purchase, increasing women's freedom and legal awareness, and decreasing gender inequality (see Deng et al. 2018, Ding et al. 2018, Li et al. 2011a, Jia et al. 2013, Shuai et al. 2019). Despite the Chinese government recognizing the importance of microfinance in poverty reduction, the current regulatory framework and constraints hinder microfinance to develop into a sustainable and attractive industry (see Situ 2003, Dyar et al. 2006, Rahman and Luo 2012a, Zhang et al. 2010). As a result, women's participation in microcredit program is limited in China (Li et al. 2011b). Microfinance projects that target women insufficiently meet women's financial demands and fail to provide assistance to the poorest women (Dyar et al. 2006).

The scope of this literature review is to analyse the determinants of MFIs' financial performance from recent studies, as well as to present current debates on the impacts of microfinance on poverty and social indicators. At the same time, this study will be collecting the definition of empowerment and the explanation of women's empowerment and summarizing both positive and negative impacts of microfinance on women's empowerment from global experimental studies. Finally, a situational review of microfinance sector and women's empowerment in China shows the research gap and the potential research demand. The aim of this article is to form a theoretical foundation for a research to find out if women-targeted microfinance empowers rural women in China, and what are the strategies to improve the social efficiency of women-targeted microfinance. This literature review is divided into four sections. The first section introduces

what microfinance is, the factors that influence MFIs' performance significantly and currently debates on the impact of microfinance. The second section examines the concept of empowerment and the explanation of women's empowerment, with more attention paid to the impact of microfinance activities on women's empowerment. The third section presents an overview of microfinance sector and women's empowerment in China, analysing the weaknesses of regulatory framework and collecting recommendations for resolving the current problems. The last section concludes every part of this literature review and explores potential research needs for the future.

1. Introduction of Microfinance

1.1. Microfinance and Microfinance Providers

Microfinance is an innovative financial intermediation that engages market principles to achieve the aim of social progress by mostly promoting economic development of marginalized communities and by empowering the poor in third world countries. It emphasizes the substitution of formal collateral and the self-organizing ability of the poor (Shakya and Rankin 2008). Ibrahim, et al. (2018) define microfinance as a program that extends small-scale loans and financial services to the ultra-poor for their further self-employment that generates income, hence leading them and their families out of poverty. MFIs have both crucial similarities to and differences from traditional banks in products, sources of capital, organizational forms and client bases (Garmaise and Natividad 2010). Except for small loans, microfinance also provides other financial-related services to low-income entrepreneurs, at the same time limits the risks associated with serving low-income customers by adopting risk-reducing strategies, such as reducing information asymmetry and adopting short-term joint liability contract (Kendall 2008).

There are three modalities of microfinance delivery: the credit union approach, the non-governmental organization (NGO) approach, and the banking approach. The credit union is one of the oldest modalities of microfinance delivery. They are member-owned non-profit institutions, which provide financial services to members, such as saving, loans and in some cases, insurance. The provider outside the natural delivery mechanism of microfinance sector is NGO. As a product of the microcredit revolution, NGO-type microfinance has become quite significant scope and scale. Yet, there are still a lot of constraints, such as NGOs have restricted access to domestic and international capital markets and they cannot collect de-

posit legally in most countries. The modality of banking approach includes transformed microfinance NGOs, government owned development banks, reformed state banks and diversification into microfinance by existing commercial banks (Montgomery and Weiss 2006).

1.2. MFIs and Determinants of MFIs' Financial Performance

Different from traditional financial service providers, MFIs have dual missions: social obligation and financial sustainability. There is a low positive correlation between financial efficiency and social efficiency, MFIs have to be financially sound in order to achieve their social obligations, which are fighting poverty and empowering women (Gutiérrez-Nieto et al. 2009). In this part, several factors significantly influence the financial sustainability of MFIs, such as capital structure, revenue diversification, institutional characteristics, lending methods and so on, are extracted from previous studies.

Institutional characteristics are significantly associated with the financial performance of MFIs. Among the characteristics, charging of high interest rates and long existence in the market are two main factors positively affect MFI's financial performance. Except for characteristics mentioned above, external factors such as the economic development of the country that MFIs operate in, international and national networks are also related to MFI's financial viability (Ibrahim et al. 2018). Conversely, Ayayi and Wijesiri (2018) argue that new and young non-profit microfinance institutions (NMFIs) perform better than mature ones as new NMFIs are more able to respond to new challenges, while old NMFIs are more vulnerable in a changing environment, which is in line with finding from Cull et al. (2007), which suggests that older individual-based lenders do worse in terms of outreach measures, than younger ones.

Life cycle theory interprets that the transformation of MFIs is from NGOs with grants and donors to independent mature MFIs with flexible and broaden funding resources. Nevertheless, Bogan (2012) argues that the life cycle theory is not sufficient to explain the sustainability and outreach of MFIs, the size of a MFI's assets, and MFI's capital structure play a more significant role in the performance of MFIs. As a part of MFI's assets, grants decrease MFI's operational self-sufficiency because of the lack of competitive pressure from market funding. From this point of view, commercial orientation is needed for large MFIs. Revenue diversification is a crucial strategy to achieve the sustainability and profitability of MFIs. In order to serve low-income populations, MFIs should expand their revenue generating activities to achieve self-sustainable (Zamore 2018).

In addition to that, institution's lending method is related to profitability. Individual-based lenders who charge high interest rates are more prof-

itable than others within an interest rate threshold. In contrast, solidarity group lenders do not perform well in financial profitability (Cull et al. 2007). Similarly, D'Espallier et al. (2009) also state that MFIs who offer more personalized, individual-based services to their clients benefit more from focusing on women. Individual procedures tailored to women's needs are needed to reach high repayment rates. Meanwhile, coercive enforcement methods applied by MFIs also contribute to iincrease women's repayment rates.

In terms of outreach, depth and breadth of outreach are two main determinants of the financial performance of MFIs. In particular, average loan per borrower (depth of outreach) significantly determines the financial performance of MFIs. At the same time, number of active borrowers (breadth of outreach) is positively associated with MFI's portfolio yield and profit margins (Nasrin et al. 2018). They also state that the average saving and operational expense are two critical determining factors of financial performance. Tchakoute-Tchuigoua and Soumaré (2019) find that decentralizing loan approval decisions or allocating decision-making authority to the loan officer increases the outreach but does not change the loan portfolio quality of MFIs. Simultaneously, the incentive schemes and internal control system contribute to increase the outreach of MFIs by avoiding internal agency problems.

During the process of digital microfinance development, Information Communication Technology (ICT) may influence MFIs' lending strategy and operational performance in accordance with information accessibility. As mentioned by Baquero et al. (2018), MFIs with large number of borrowers and an advantage of information monopoly in concentrated markets tend to charge high rates. However, Garmaise and Natividad (2010) indicate that evaluation as an inexpensive mechanism to avoid asymmetric information and reduce financing costs, especially for MFIs who get financial resources from commercial lenders, is suggested.

1.3. Current Debates on the Impact of Microfinance in Social Indicators

Even though microfinance has been identified as one of the key instruments for poverty reduction and women's empowerment in most developing countries (Rahman and Luo 2012a), for example Augsburg et al. (2015) find that an increase in self-employment activity, business ownership, labor supply and a shift away from wage work have been found on clients who have access to microfinance. There are still a number of studies which argue that the transformative impacts on poverty and social indicators are less clear.

Microfinance is not able to substantially reduce poverty without additional interventions in the areas of education, health and infrastructure (Hermes and Lensink 2007). It has increased small business investment and profits of pre-existing business, but significant positive effects on consumption, health, education and women's empowerment have not been discovered (Odell 2010, Banerjee et al. 2014). Similarly, Crépon et al. (2014) state that microcredit has large impacts on assets and profits from self-employment activities, but no net impact on total labor income and consumption. Moreover, there is no clear evidence of improvement in socioeconomic indicators despite substantial increases in borrowing in treated areas, including output of income-generating activities, labor supply, child school attendance, women's empowerment, health and food adequacy (Tarozzi et al. 2015). Yet, significant impact on women's empowerment have been observed by Banerjee et al. (2015) even still not on household income, micro-entrepreneurial activity, composition of consumption and other social indicators. It was modest effect, rather than transformative impact has been found from microfinance intervention, it even caused harm to clients especially when charge high interest rates (Angelucci et al. 2014). In summation, microfinance does not lead to the miraculous social transformation as might be expected.

2. Microfinance and Women's Empowerment

2.1. The Definition of Women's Empowerment

Throughout the literature concerning microfinance and women's empowerment, researchers have not reached a general consensus for the definition of women's empowerment because the behaviours and attributes that mean empowerment in one context often have different meanings elsewhere (Al-shami et al. 2018). Social media, observation from experts, knowledge and informal discussions have all played a significant role in interpreting the definition of women's empowerment (Raudeliuniene et al. 2014). In order to understand the meaning of women's empowerment, it is imperative to first define empowerment.

Empowerment in its emancipatory meaning, is a serious word- one which brings up the question of personal agency rather than reliance on intermediaries, one that links action to needs, and one results in making crucial collective change. Additionally, in the context of this paper, empowerment is a process that should focus on adult women who suffer in subordinate positions and who have first-hand knowledge of this problem, and the transformation of these women is fundamental to breaking the integration

reproduction of patriarchal authority (Medel-Anonuevo 1995). Rowlands (1995) states that empowerment is a concept that emphasizes the idea of women as active agents in development strategies, instead of passive recipients. It is a bottom-up process and cannot be bestowed from the top down. The outcome of authentic empowerment is an intra-change, which cannot be controlled by outside influences.

It is essential to understand the core of empowerment 'power' in different ways. The terms of 'power over' refers to a zero-sum game of domination or subordination, in which when one gains power, another one loses power. 'Power to' relates to having decision-making authority, power to solve problems and can be creative and enabling. 'Power with' involves people working for a common goal or common understanding to achieve collective objectives. 'Power within' emphasizes intra-change, self-confidence, self-awareness and assertiveness. In the discourse of women's empowerment, the feminist movement has valued more on collective organization (power with) and the developing idea of 'power within' (Oxaal and Baden 1997). Young (1997, 89) identifies two primary meanings of empowerment. Firstly, for therapists and service providers, empowerment means the development of individual autonomy, self-control and confidence. For others, empowerment refers to the development of a sense of collective influence over the social conditions of one's life. The author suggests that the latter meaning is a condition of the former one because the latter includes both personal empowerment and collective empowerment.

Women's empowerment is about the process by which those who have been denied the ability to make strategic life choices acquire that ability. The ability to exercise choice incorporates three indivisible dimensions: resources, agency and achievements, which are collaborative in determining the meaning of an indicator and its validity as a measure of empowerment (Kabeer 1999). Consistently, Malhotra et al. (2002) states that options, choice, control and power are the key terms that included in defining empowerment. They are key to women's capability to make decisions and affect the outcomes of themselves and their families. The control over their own life and over resources is supposed to cultivate the ability to 'affect women's well-being' and 'make strategic life choices.' In addition, empowerment is a dynamic process. It is helpful to divide this process into components, such as enabling factors, agency and outcomes in identifying policy interventions and evaluating the impact of such interventions. Similarly, Ballon (2018) also defines empowerment as the decision-making ability of a woman regarding her strategic and non-strategic life choices.

Women's empowerment, on an individual level is a woman's sense of self-worth as a person in their own right, their ability to make strategic choices and to exercise their voice and influence in their interpersonal re-

lations. Collective forms of empowerment (women's agency as citizens), including the capacity to act collectively to protest injustice, to claim their rights and to work on equal terms with men to shape the society in which they lived (Kabeer 2011). In addition, women's empowerment is a complex and multidimensional concept, based on different aspects of life, including social status, financial situation, family relations, mental and physical health conditions (Raudeliuniene et al. 2014).

Empowerment is about participation. Women's participation in decision-making at all levels is a crucial vehicle for empowerment. Meanwhile, women's participation based on the existing of human rights, democracy and the rule of law (Porter 2013). The bottom-up characterization of empowerment approach is more associated with participatory forms of development. The main problem for third world women is insufficient participation in benevolent processes of growth and development. Hence, the UN's conferences have emphasized women's empowerment is central to development. It requires all people's full participation in formulation, implementation and evaluation of decisions determining the functioning and well-being of societies (World Conference on Women UN 1996).

As indicated by many scholars that not only women's participation, but also men's involvement in women's empowerment plays significant roles in realizing equal rights between women and men, and to abolishing the system that is causing inequality between them. Power is not necessarily dominated by some, while others are obedient or oppressed. Men also benefit from women's empowerment with the chance to live in a more equitable society and explore new roles (Oxaal and Baden 1997). Men play a significant role in shaping trajectories of women's empowerment. The involvement of both men and women is crucial for women's empowerment in the context of livelihoods and labour markets (Kabeer 2011). Men's involvement in gender training reduces relational frictions because both women and men must be involved in training to achieve more equity between the genders. Men need to understand the perspective of women and be willing to change, at the same time, women would need to be aware of their disadvantaged position and actively strive for more equity. Men's attitudes and behaviours need to be changed to achieve gender equality (Huis et al. 2019).

In regard to measurement of women empowerment, methods and indicators have been listed throughout the literature of the topic. The process-based method and the outcome-based method are the two frequently used methods for assessing the impact of women's empowerment. The process-based method focuses on the loan use process which is supposed to empower women with measuring indicators, such as accounting knowledge and managerial control over loans. It has been criticized

that process-based method generates unconvincing findings because of invalid proxy indicators of women's empowerment. In the outcome-based method, the operational measures of empowerment are direct measures developed based on the responses to the questionnaire reflected by female participants in rural areas, indicators normally include control over financial resources, mobility, capability to make independent purchase, and involvement in the main household decision-making (Li et al. 2011b). Yet, Kabeer (1999) argues that there are measurement and conceptual problems associated with capturing particular sorts of social change. Indicators of empowerment cannot provide an accurate measurement of changes in women's ability to make choices, and it is difficult to indicate the direction and meaning of change.

2.2. The Impacts of Microfinance on Women's Empowerment

Dimensions of women's empowerment range from economic empowerment and political empowerment to education empowerment. Microfinance empowers women mainly from an economic perspective. When women control decisions regarding savings and credit, they will optimize their own and their families' welfare. The investment in women's economic activities not only increases employment opportunities for women, but also has an impact on household and society (Mayoux 2000). The Feminist Empowerment Model assumes that women's empowerment is the result of overall changes in the structure of the society and a redefinition of gender roles at the macro level (Dyar et al. 2006).

Several reasons have been presented on why it is worth to empower women. As reported by the International Labor Organisation (ILO 2007), women are poorer among the poorest, seventy percent of the world's poor are women because of the restrictions to access to financial resources. While female lenders are higher repayment clients in comparison with their male counterparts, a large part of their income from microfinance activities goes to household expenses, such as children's nutrition and education, especially for girls. MFIs with higher proportions of female borrowers have a lower portfolio-at-risk. Women in general are better credit risks, focus on women clients enhances microfinance repayment (D'Espallier et al. 2009). Similarly, Arunachalam (2007) points out that women are great clients and borrowers with less credit risk, subsequently, working with women is a great entry point to work with the household. Women clients have saving potential that has a crucial influence on families' financial sustainability.

A number of articles throughout the literature have discussed the positive impacts of microfinance on women from different dimensions, including enhancing the women's well-being, reducing violence against women

and intimate partner violence (IPV), improving children's nutrition and education, increasing women's decision-making power and authority in household sector etc. Female-headed households who have access to microfinance have higher share of household assets, they also tend to invest in children's education equally for male and female children compared to other female-headed households without micro-credit who prefer to spend income on male children's education (Owusu-Danso 2015). Women's empowerment is significant to improve child nutritional outcomes. Composite empowerment model should be considered in all interventions to achieve sustainable improvements in child nutritional status (Jamal 2018).

Microfinance intervention would contribute to raising women's awareness of equality. For example, Grameen Bank (GB) transforms its participants from a passive recipient of credit to a well responsive and active agent in economic and non-economic aspects of life (Basher 2007). Self-help Groups (SHGs) as a form of informal microfinance significantly empowers women in economic condition, social roles, psychological health and political participation (Arunkumar et al. 2016). From the view of capitalism, researchers argue that MFIs are the spearhead of smart economics in the Global South, which bring women into formal markets, accumulate capitals and reinforce the gender relations in the Global South (Byatt 2018).

As an initial form of microfinance, microcredit has increased women's income. The income obtained from microcredit activities helps to improve the household's living standard and build up women's assets. In addition, microcredit has enhanced women's decision-making power on the issues that are related to both their practical and strategic gender needs (Fofana et al. 2015). The involvement in microcredit empowers women partially by providing women bargaining power and control over their lives, as well as potentially fosters gender equality through integrating household decision-making and overcome norm gendered cultural norms (Al-shami et al. 2018). The positive change from microfinance participation can be found not only in the IPV elimination and children's nutrition, but also in the number of people using contraceptives (Gichuru et al. 2019).

Investigations also have been conducted on marginalized women, such as women sex workers and transgender groups. Experimental evidence from a microfinance-based HIV prevention intervention shows that microfinance is acceptable and desirable among cisgender and transgender women sex workers (CWSWs and TWSWs) because most respondents are willing to receive alternative forms of income resources (Lall et al. 2017). In addition, microfinance has increased women sex worker's confidence in their ability of financial management, the willingness to pursue vocational goals, knowledge regarding to financial literacy and transition from sex work to alternative income generation (Tsai et al. 2011).

In addition to the positive impacts of microfinance lending, there are conditional empowerment and contradictory effects on women have been found from microfinance intervention. Microfinance offers a crucial and effective means to achieving change on a number of different perspectives. But without broader policies to promote economic growth in poor areas, equitable social development and democratic participation in collective forums of decision-making, microfinance may at most provide a safety net for the poor, instead of a ladder out of poverty. Meanwhile, microfinance does not automatically empower women if there is an absence of other interventions, such as education, political quotas that bring a radical structural transformation that true empowerment entails (Kabeer 2005). Access to microcredit or financial resources does not necessarily mean that women are empowered unless they exercise this empowerment and they play a significant role in strategic change (Al-shami et al. 2018). In comparison to men, Haase (2012) states that women benefit less from microcredit because they get smaller loans and they invest those loans in less lucrative businesses. Another reason is women often compromise their entrepreneurship for household responsibilities.

A cross-sectional study from Dalal et al. (2013) shows that microfinance is related to an increased exposure to IPV among women with formal education, especially women who are involved in household decision-making. Additionally, microfinance may increase the economic burden of female clients with entrepreneurial projects and multiple loans. Interestingly, Tsai et al. (2016) also find that micro-saving participation does not significantly reduce paying partner violence against women who engaged in sex work, instead it could increase women's risk for other violence, such as IPV, because the change in economic status and independence level increase threats to intimate partners. Experimental evidence shows that women who participated in a gender and entrepreneurship training program suffer more domestic abuse than women who are not involved in that program (Bulte and Lensink 2019). In addition, women might experience anxiety and a form of top-down 'power over' in the form of social control as microfinance grants them legitimate reasons to interact within communities and occupy new participatory spaces (Beck 2017). Capitalism has subjected women to a naturalized oppression both in the household and markets. Therefore, MFIs have been seen as a new agency of women's oppression because it increases women's suffering and aids the patriarchal structure of capitalism (Byatt 2018). Kabeer (2001) explores the reasons why there are conflicting conclusions on the empowerment potential of credit programs for rural women and summarizes that the primary source of the conflict lies in the very different understanding of intra-household power relations. The author suggests that different and more sustainable

routes to empower women are encouraged if greater efficiency and equity help to tackle other aspects of injustice in women's lives.

3. Microfinance and Women's Empowerment in China

3.1. Microfinance in China

Rural regions in China are underdeveloped compared to urban areas due to the disparity in wealth that was created during industrialization and caused a flow of wealth from the countryside to urban centres, this has subsequently led to seventy-five percent of the rural population with no access to banking services. The Chinese government has realized the wealth gap between urban and rural populations and believes that microfinance is a solution to bridge the gap and reduce the poverty in rural China (Kendall 2008). The basic concept of microfinance accepted in China includes elements of a means of economic development, targeting low-income clients and/or different segments of the poor, in line with poverty alleviation, balance between social and financial objectives (Situ 2003).

The process of development of the microfinance industry in China can be divided into three phases. The first experimental phase is from 1994 to 1998, with the support from international aids and other developed credit plans for specific social groups. The second phase is from 1999 to 2004, involved in the participation of formal financial institutions. The third phase is labelled as normalization and institutionalization phase of microfinance from 2005 onward. Legalization of microloan companies and rural financial reform were the main courses of action (Luo and Rahman 2010). Afterwards, the Chinese government considered microfinance based on international success stories. Most pilot projects in microfinance were supported by international donors and predominantly followed GB model (Situ 2003).

There are main three categories of microfinance service providers in China, microcredit by formal financial institutions, microcredit by NGOs and international organizations, and microcredit by government agencies. Formal financial institutions include Agricultural Development Bank of China (ADBC), Agricultural Bank of China (ABC), and Rural Credit Cooperatives (RCCs). ADBC and ABC are responsible for the poverty alleviation program with microcredit budget by cooperating with local governments. RCCs are the only formal financial institutions with operating capacity in microcredit program implementation in the rural area to support local agricultural and rural development. RCCs, despite their name, are lack of governance and shareholding by members, instead they are supervised by state banks. In fact, ABC and RCC are the main Chinese rural financial insti-

tutions providing loans to rural households under the administrative supervision of People's Bank of China (PBC). Other formal microcredit providers are Rural Commercial Bank, Rural Cooperative Bank, Rural Cooperative Foundations (RCFs), Postal Savings, Microcredit Companies (MCCs), Village/Township Banks (VTBs) etc. NGO-MFIs, international organizations and social organizations belong to the second category. There are about 300 project-based NGO-type microfinance service providers working with government department or agencies on poverty alleviation program in rural China, such as UNDP, Plan China, and Hong Kong Oxford. Moreover, In China, policy-led microfinance programs that aim to reduce poverty are operated jointly by government agencies and formal financial institutions, such as ABC and RCCs (see Situ 2003, Park and Ren 2001, Rahman and Luo 2012a, Park et al. 2003, Jia et al. 2016).

In terms of regulation, there are three ministerial agencies involved in regulatory framework and design regarding microfinance. The PBC is responsible for monetary policy and interest rates regulation for deposit and lending, and the formulating of guidelines on microcredit for RCCs. The China Banking Regulatory Commission (CBRC) is the prime authorized institute to maintain the rules and regulations of banking and MFI sectors. The Department of Financial Cooperatives (DCF) within CBRC plays a consultant role in regard to regulation of the rural financial sector. Other organizations involved in regulating and supervising are the Ministry of Finance, the Ministry of Agriculture, provincial and local governments, Village Committees and Village Credit Committees (see Situ 2003, Rahman and Luo 2012a).

The market access for microfinance providers in China has been increased in line with the trend of liberalized and commercialized economic environment. The NGO-type microfinance service provider in China has gradually achieved success with respect to loan quality, profitability, management efficiency, independent operation and sustainable growth (Rahman and Luo 2012b). Meanwhile, the government-sponsored microfinance projects have significantly increased the net income of the famers and reduced rural poverty in China (Ding et al. 2018). Microcredit has a positive and significant welfare impact on household's income and consumption. In China, the more involvement in the microfinance sector clients have, the more benefits the clients will gain (Li et al. 2011a). Jia et al. (2013) claim that access to microfinance significantly promoted rural households' engagement in self-employment through increasing farmers' time working on self-employment activities. NGO microfinance is effective in promoting agriculture transformation in rural China by linking to off-farm employment, and building up the entrepreneurs by promoting self-employment.

Despite the fact that several improvements have been made, there are still numerous problems microfinance faces in China. A number of constraints make it difficult to achieve sustainability for microfinance in China: such as strict entry barriers to establish financial institutions specialized in microfinance, ambiguous legal and institutional status of NGOs and illegality of their finance-related activities. The Chinese government showed its reluctance to take strong ownership in microfinance experimentation during the 90's. The government was less flexible in promoting multi-forms of organization for related institutional setup for MFIs, and strongly emphasized the prohibition of saving mobilization (Situ 2003). MFIs in China were not formally licensed and cannot take deposit. Moreover, interest rates control and deflation made the microcredit business less attractive (Dyar et al. 2006). Some small financial entities (such as MCCs, VTBs) in China were prohibited to collect public deposits and expand business beyond pre-defined geographical boundary. In addition, it was not allowed for Chinese NGO-MFIs to collect deposit and receive loans because there was a lack of legal authentication (Rahman and Luo 2012a).

In summation, there are four obstacles that hinder the non-governmental microcredit sector becoming a sustainable industry including: the lack of supportive policies and legal frameworks, low sustainability, the lack of management system, and the rigid Grameen style lending methodology (Zhang et al. 2010). Zhou and Takeuchi (2010) claim that China's rural finances face four key operational problems: asymmetric information, a lack of collateral, the unique structure of costs and risks, and the non-productive use of loans. Chia and Counts (2003) also conclude four regulation problems that microfinance faces in China, including (1) the lack of formal policies and regulations that govern microfinance institutions and activities, (2) the lack of a clear legal status for MFIs in China, (3) the lack of a supportive environment for mobilizing deposits and other funding sources, and (4) the lack of a supportive environment to implement demand-driven microfinance activity, such as the freedom to adjust interest rates in accordance with demands and costs.

According to previous studies, recommendations for solving the existing problems have been suggested by researchers. China is a highly regulated country that any microfinance initiatives will be likely subjected to heavy government intervention. They suggest that the banking approach is the best way to increase outreach of the microfinance sector in China (Montgomery and Weiss 2006). The very poor in China are credit-constrained from microcredit market because China's cooperative banking system has not fully endorsed the self-help group model and the notion of trust as a form of capital. They believe that a credit framework based on trust rather than assets can be applied to explain much of what is observed in micro-

credit lending in agriculture. The intensive needs of borrowing and fears of default on loans leads to high repayments of the rural poor. Therefore, they argue that Chinese policy should be more flexible to permit trust-based micro-lending to the poor, otherwise China's rural poor will remain in a persistent food-insecure poverty gap (Turvey and Kong 2008).

The key to create an effective rural finance system in China is promoting the cooperation relationship between formal and informal lenders, this is called the vertical cooperation model. In this model, the central government's role is turning a parallel competitive relationship between formal and informal lenders into a vertical cooperative one by supplying financial resources from formal lenders to informal lenders (Zhou and Takeuchi 2010). Other forms of support to build up the ability of loans use is needed before giving micro loans to the poor as there is no necessarily improvement in income if borrowers don't invest micro loans in income-generating activities. Moreover, a supportive regulatory environment is warranted to achieve sustainable development of microfinance in China (Li et al. 2011a). Importantly, greater flexibility in loan contract terms, especially repayment schedule is advocated as most microfinance clients locate in remote mountainous regions in China. Additionally, concerns about agency problems in government programs should be openly recognized, managerial incentives and independence for program managers is needed. In order to meet the needs of groups with different demand characteristics, it is necessary to create a competitive environment with a diversity of institutions that the Chinese rural financial sector can participate in, including microfinance service providers (Park and Ren 2001). As other authors also mentioned, releasing restrict of deposit collection is important to expand outreach for MFIs. Grassroots democracy and avoiding unnecessary administrative interventions is a sort of solution to improve the effectiveness of microfinance projects (Ding et al. 2018).

3.2. Women's Empowerment in China

There is a general agreement that women's empowerment is a contextual discourse, the impact of microfinance on women's empowerment is different from country to country due to particular political and social circumstance. In China, major microfinance programs targeting women were organized and implemented by All-China Women's Federation and its branches. The first experiment of microfinance targeting poor rural women in China was replicated from GB model in 1993 (Luo and Rahman 2010). In 2009, women's organizations implemented a small-loan program to encourage rural women to participate in rural development. Six million rural women started their own business through using the loans from this

program. The positive impacts on rural women are achieving greater autonomy and improving the decision-making in agricultural production. In addition, there was a short-term enthusiastic implementation of microfinance for women program by local authorities in China in 2012 because the relaxation of collateral requirements that shifted the risk of defaults away from implementers. However, the roots causes of the phenomenon were the policy's vagueness, institutional incentives, bureaucratic pressure and local organizations' interests (Deng et al. 2018).

Women's empowerment has a significant impact on the livelihood of farmer in China, particularly the empowerment of the younger female labour force has a more crucial effect on the livelihood of the family in comparison with the elderly female labour force. Moreover, farmer's psychological capital, such as confidence in improving the family's living standard and the satisfaction with the current economic status, contributes to improve their livelihood (Shuai et al. 2019). They claim that gap between rich and poor farmers can be narrowed by improving women's decision-making power in the household and their educational investment. Economic empowerment is the foundation of other forms of empowerment. The use of microcredit leads to greater control of women's financial assets, greater role of decision-making on household purchase, as well as enhancement of women's freedom and legal awareness.

However, women's participation in microcredit program is limited in China, poor women cannot benefit from microcredit program if they are not explicitly targeted (Li et al. 2011b). Similarly, Dyar et al. (2006) point out that women's empowerment from microfinance participation will ideally work to decrease gender inequality in China, but the microfinance initiatives are quite limited. Many programs failed to provide assistance to the poorest women. The Chinese government ought to consider microfinance as a part of equation of solutions instead of the sole answer when implementing policies toward decreasing gender inequality and helping poor women.

Conclusion

As indicated in this literature review, financial sustainability is undoubtedly significant for MFIs to achieve operational self-efficiency and therefore to fulfil their social obligations. Manager of MFIs should examine the factors that influence the financial performance that are in accordance with organization characters and then adapt a strategy that will improve profitability. Importantly, MFIs have to balance financial sustainability and social efficiency, avoiding the 'mission drift' in case the former drives far

away from the core value of microfinance - to drive people of out poverty towards prosperity by empowering clients. Otherwise, the problems of tending to be more commercial, extending larger loans to non-poor clients and lending less to women will be expanded and persistent in microfinance industry. For the next steps, new technology might be taken into account to adjust MFIs to the changing digital environment. Meanwhile, product design should be more clients centric, especially products that address women's special needs. Broadening outreach to reach people who are excluded, such as youth, refugees and elderly people is warranted. At the same time, attention should be paid to strengthen client protection.

Empowerment provides the skills to challenge and transform power relations. Women's empowerment refers to women challenging existing power structures that subordinate them. It is crucial to provide women who lack the ability or resources to empower themselves the conditions to create women's development agency. This in turn, will cultivate women's self-empowerment capacity. Microfinance has been identified as an effective tool to empower women mainly from economic perspective. A number of articles have discussed the significantly positive impact of microfinance on women's empowerment, yet negative impacts are visible, such as too much debt for women, women's psychological health problems (anxiety from interaction with group or community members), increasing other forms of violence against women as the change in economic status and independence level threaten the patriarchal status of men.

In order to eliminate the negative effects mentioned above, we should rethink the relationship between women's empowerment and gender equality. Closing gender gaps is imperative, but it cannot be realized if men do not understand the subordinate position of women and are not willing to change their attitudes and behaviours. Therefore, women's participation and men's involvement are the key elements in women's empowerment and gender equality. Women and men should be able to challenge structured power relations that cause inequality and suppress rights. Women, as the empowerment agents, must be aware of their disadvantages, and participate in all stages of policy development to express their needs and interests to make gender policy more women-friendly. More attention should be paid to the mainstreaming of women's needs and priorities in development, as well as a redefinition of development objectives in line with women's interests. It is crucial to point out how to transform the system that dominant social and economic structure to promote and secure women's basic human rights, including their economic rights.

The key obstacles that prevent the sustainable development of microfinance sector in China are ambiguous legal and institutional status of MFIs, prohibition of deposit collection and commercial funding seeking and inter-

est rates control. Therefore, the authority of Chinese government should release the policy of registering legally-licensed and grant eligible MFIs legal status. Additionally, MFIs should be allowed to collect deposits and seek commercial funding, this would be the fundamental solution to achieving financial sustainability for MFIs. Removing the restrictions on interest rates is an alternative way to encourage MFIs to expand their business coverage according to various client's demands. Last but not the least, the Chinese government should provide a supportive regulatory environment for MFIs to implement entrepreneurial activities and transformational training to help more poor populations to get out of poverty. Again, the importance of women empowerment is never overemphasized in the context of microfinance sector in China as women's participation in microfinance is limited, many microfinance programs failed to provide assistance to the poorest women. In order to find solutions to solve these problems, it is imperative to proceeding impact evaluation for the women-targeted microfinance projects that mainly implemented by All-China Women's Federation and its branches, and to estimating if empowering women contribute to close gender-based income gap in rural China, as well as to finding alternative economic pathways to improve the social efficiency of women-targeted microfinance in China.

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Environmental Governance and the Right to Environment: Introductory Remarks on the International and Chinese Legal Frames

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Abstract: As long-term accumulated environmental problems such as marine pollution and greenhouse gas emissions are far from being solved, new ones are emerging steadily. The hypothesis considered in this paper assumes that it is urgent to build a comprehensive and effective environmental governance in order to tackle such global and regional problems. The considered literature supports this stance, and describes a trajectory focused on the two concepts of environmental governance and environmental rights. In general terms, governance denotes a process where societal actors can wield power and authority, influence each other and enact policies and decisions concerning public affairs. In the field of environmental protection, a participatory, effective and interactive mechanism is expected to underpin environmental governance. Institutional, legislative and regulative efforts should sustain a dynamic environmental governance mechanism. A human rights-based approach may provide a suitable frame for environmental governance. A right to environment has been recognized in many national constitutions and in a few international instruments, while human rights underpin environmental governance policies in fundamental areas such as citizens' participation, transparent decision-making, access to relevant information, etc. Even though the right to environment has not been recognised in China, the government has realized the urgency of environmental protection. Also in China, environmental governance should be addressed holistically, going beyond the various single-ended measures to protect specific environmental factors.

Keywords: good governance, environmental governance, a human rights-based approach, the right to environment.

Introduction

Environmental protection has been occupying the foreground of many local, national, regional and international conferences since the 1970s. Conferences have produced a series of normative and policy-oriented documents, such as the Declaration of the United Nations (UN) Conference on the Human Environment held in Stockholm in 1972, the Rio Declaration on Environment and Development in 1992, the ASEAN (Association of Southeast Asian Nations) Agreement on Transboundary Haze Pollution in 2002. A similar process has unfolded at the domestic level. China, for example, has convened seven Environmental Protection Conferences since 1973 (Ministry of Ecology and Environment of China, 2012) to strengthen 'the overall coordination of ecological and environmental protection' (Ministry of Ecology and Environment of China, 2019). In order to tackle increasingly serious environmental problems, the international community, governments, and organizations in many fields and from different levels have been seeking effective environmental governance models. For example, a climate-neutral Europe by 2050 (European Commission, 2018) is a net-zero carbon emissions target set by the European Union (EU), which foresees a rapid path to full decarbonization for the continent. In China, the topic of environmental governance should undoubtedly be paid more attention, since environmental issues have been dramatically emerging in the last 20 years, accompanying its rapid economic growth (Wang and Qi 2015, 108-113). During the past decades, the economic development in China has been following the motto: 'pollution first, treatment later'. Nowadays, however, the increasing awareness of environmental protection is influencing the societal, economic and political developments in the country. The Chinese economic growth model is shifting from merely focusing on growth to relying on both environmental quality and efficiency (Economy and Finance, 2014). This transformation will make a major contribution to averting the negative impact of carbon emissions not only in China but worldwide.

These policies and practices are assumed to implement a theoretical frame that can be referred to as 'environmental governance'. Theory and practices in this area are interdependent and mutually premised. It is important to have a better and deeper understanding of the theory of environmental governance generally, and then incorporate it into practices. In addressing the case of China, some adaptations are necessary, to fit China's particular political/legal conditions and societal needs.

The literature review presented in this paper is about the concept of 'good governance' 'environmental governance' and 'the right to environment'. It is a part of an overall research project about environmental gov-

ernance and the practical paradigms in China. The elaboration of the right to environment will be illustrated as a practical path to improve environmental governance in the overall research project. In this regard, it has to be pointed out that most existing literature is about environmental factors such as air, sea and soil, while little has been written on 'environmental governance' from a comprehensive and holistic perspective. The missing part in the present literature so far is to put forward a set of theoretical principles that can lead a guiding role in the process of implementing environmental protection measures.

This literature review includes both scholarly materials and official documents issued by the UN and states. This article, by combining different domains of literature ('good governance', 'environmental governance' and 'the right to environment'), tries to show a trajectory leading to shape a concept of environmental governance. A special focus will be dedicated to China.

1. Defining Environmental Governance

1.1 What is (Good) Governance?

The role of good governance in the promotion of human rights has been discussed in myriads of UN resolutions, and a multitude of elements were proposed to define good governance (Commission on Human Rights 2013, 3). Generally speaking, we need to acknowledge the 'importance of a conducive environment, at both national and international levels, for the full enjoyment of all human rights and of the mutually reinforcing relationship between good governance and human rights' (Commission on Human Rights 2005, 2).

Definitions of 'good governance' have evolved noticeably (Commission on Human Rights 2013, 3), hindering the formulation of an accurate definition. Governance is theoretically global, but local in practice. Theoretically speaking, every human possesses equal rights, not only in terms of quantity but also in terms of quality, which means that good governance should point at homogeneous international standards (Asaduzzaman and Virtanen 2016, 22-30, Weiss 2000, 799 & Aguilera and Cazurra 2009, 377).

Practically speaking, the process of governance is influenced by context-related determinants, and can vary based on particular conditions within each region and state (Graham et al.2003, 2). The political system, among all these factors, is the most obvious one, because of the ubiquity of state intervention in all kinds of affairs (Weiss 2000, 804-805). Unfortunately, the regulatory institutions that assess growth *vs* environmental sustainability are politically weak (Huo, 2017). It is imperative to realize that

advocating for good governance is a way to mitigate the emergent effects of a veritable climate catastrophe.

Governance is a broad concept covering all social dimensions and connects dynamically any individuals with each other (Asaduzzaman and Virtanen 2016, 37-49). It indicates the process whereby social actors wield power and authority, influence and enact policies and decisions concerning public life and economic, social and cultural development (Bannister and Connolly 2012, 3-25). Bannister and Connolly realized that good governance cannot be separated from sound policies, effective partnerships and systematic inclusion of all walks of life, namely vulnerable and marginalized people.

The crucial characteristic of governance, in a people- and citizens-oriented version, is inclusion, that is internal and external solidarity as well as proximity of the institutional fabric to citizens (Godzimirski 2016, 2). A human rights-oriented articulation of the concept maintains that 'transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of people is the foundation on which good governance rests and that such a foundation is a sine qua non condition for the full realization of human rights' (Commission on Human Rights 2005, 2). An accountable government is accompanied by other principles, including the promotion of rule of law; the delivery of professional public services contributing to the realization of human rights, democratic institutions and participation; combating corruption in public and private sectors, including the judiciary; and international cooperation, bilateral and multilateral, in support of national good governance practices (Commission on Human Rights 2004, 2). UN documents set benchmarks for good governance that can be applied to all areas.

The World Bank has also set out its definition of governance, as the manner in which power is exercised in the management of a country's economic and social resources for development (IFAD 1999,1). More specifically, it identified three distinct aspects of governance:

> (a) the form of the political regime; (b) the process by which authority is exercised in the management of a country's economic and social resources for development; and (c) the capacity of governments to design, formulate and implement policies and discharge functions.

As the World Bank's mission is to promote sustainable development, it works on good governance mainly from the standpoint of poverty reduction. Accordingly, it offers a fruitful point of view on how to build good governance based on a specific purpose. Especially, the political players

should be paid more attention in the integration of social resources in this perspective (Winter 2006, 1-4).

Governance identifies the process of interaction and decision-making among the actors involved in a collective problem, leading to the creation and reinforcement of social norms and institutions (Bannister and Connolly 2012, 8-17). To stress the dynamic relationship in the process, Jessop (2002, 1) also delivers a more accurate definition of governance:

> The reflexive self-organization of independent actors involved in complex relations of reciprocal interdependence, with such self-organization being based on continuing dialogue and resource-sharing to develop mutually beneficial joint projects and to manage the contradictions and dilemmas inevitably involved in such situations.

According to Jessop, the value of partnerships among relevant actors must be acknowledged. Such partnerships are strengthened by communication and negotiation, like global cooperation on environmental governance. In order to mediate the conflicts among different actors while they exploit natural resources, each part should have the chance to make their voices heard (Stoett 2018, 24). Only by incorporating independent actors, favorable approaches can be found out to solve environmental issues (Talbott 2002, 9-10).

It can be concluded that governance refers to different social roles wielding power and influence in political and other matters. The governance actors (who wields power) is a various and heterogeneous body, including political parties, the government, enterprises, citizens and media. The governance object (what power is exercised on) covers politics, economics, culture, ecology..., that is to say, all the public areas and affairs. Governance capacity (how to exercise power) identifies adaptability to change: ability to reform the institutional mechanisms and construct new regulations to make all aspects of the system more efficient and effective. Finally, governance actors, objects and capacity are closely linked and coordinated dimensions. The governance mechanism includes not only the various components but also the dynamic relationships between these elements.

As it was pointed out before, good governance is here intended as people-centred, and it cannot be achieved without an efficient, accountable and transparent political system. In the process of good governance-building, it is important to improve the interactive system and keep all relevant actors involved. Environmental governance shall extract some environment-related factors to build its own narrative. To make it simple, this article presumes that environmental governance only exists in the category of good governance.

1.2 What is Environmental Governance?

Good governance is a general conceptualisation, covering all kinds of different areas. What is then good governance in the field of environmental protection?

Environment is a quite complicated and broad topic. Since human beings have stepped into almost every corner of the globe, and even into the infinite universe, virtually every inch of the Earth has been marked and transformed by humans. The 'environment' is therefore a natural and social concept: the environment we are now living in is designed by nature with the intervention of human beings[24]. Environmental governance is a theory interweaving 'physical' and 'social' dimensions and dynamics in the global ecosystem, and understanding environmental governance is also vital to ensure the protection of human rights.

As Fagan and Sircar (2015, 4) observed, the codes of environmental governance have become mainstream political priorities and a fundamental building block of societal transition. Environmental governance integrates critical environmental needs with the elements of general governance, thus creating a theoretical foundation for the implementation of environmental protection policies.

As mentioned, many scholars talk about environmental governance from some single perspectives, such as water pollution, solid waste, global warming and so on (Ronzoni 2019, 1-18; Hoornweg and Bhada-Tata 2012, 1-8; Li 2019, 1-6; Andersen et al. 2016, 51-68).

They describe features of environmental governance in a specific context, but most of them are not interested in elaborating principles suitable for other environmental fields. Thus, a systematic theoretical framework of environmental governance is still needed, including its definition, principles and paradigms. Like a scholar in Environmental Studies and Politics observed:

> [w]e need a substantial rethinking and reordering of systems of governance that increase public engagement and create the capacities for the foresight to avoid future crises and rapid response […] In the duress ahead, accountability, coordination, fairness and transparency will be more important than ever (Orr 2009, 40).

[24] Declaration of the United Nations Conference on the Human Environment (1972) proclaims that 'Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.'

To make an example of the current attitude, let's take a look at environmental governance in the field of extractive industries. Taillant and colleagues (2015, 64-96) wrote a very informative paper on the business of hydraulic fracking[25]. The paper introduces the status, working process, and the potential damage hydraulic fracking brings to the environment and basic human conditions. They also propose how to forge a more sustainable way using this technology through human rights lens. Furthermore, they explore the state duty, corporate responsibility and remedy options according to the UN Guiding Principles on Business and Human Rights. There is no lack of researchers who shed light on central themes in extractive governance, such as institution-building, socio-environmental conflicts and development outcomes from the perspective of national elites (Karl 1997,142-166) and local communities (Conde and Le Billon 2017,681-687). Scholars point out some environmental governance-related problems in extractive industries. Indeed, high-value non-renewable resources, such as minerals and metal ores, almost always remain under tightly centralized authority (Larson and de Soto 2008, 213–239). However, usually subnational institutions have to directly deal with environmental issues (Commission on Human Rights 2018, 4). The sub-national level of governance is crucial also in this context (Conde and Le Billon 2017,690-697). While regional authorities often have strong incentives to use existing institutions to influence mining expansion, they often lack capacity, accountable representation, and support from central government as a whole or from one or more key ministries (Gustafsson and Scurrah 2019, 134).

This example shows that in many states environmental governance is operationalised according to traditional governing modes that do not keep into consideration the challenge of governance. Top-down models is predominant in China (Chen 2013, 111-118). In administrative management, local governments are in charge of environmental protection. The economic interests of local governments and enterprises are closely interconnected under Chinese special financial system (Wang and Qi 2015, 108-113). Therefore, for the sake of their own interests, local governments easily become the spokespersons of local enterprises, including polluters, while there is little incentive for them to represent the victims of environmental pollution. Yu (2019, 5) points out that environmental governance should be incorporated into the category of performance appraisal of local government. It is commonly agreed that to improve environmental governance,

[25] Hydraulic fracturing, much applied practically to extract natural gas and petroleum, is highly controversial in many countries now. It increases the risks of water contamination, noise and air pollution, triggers earthquakes and brings hazards to public health and the environment, although accompanied by economic benefits, as well as replacing coal with natural gas.

non-profit actors, local residents and other social parts should be involved in pursuing environmental protection tasks and relevant economic activities (Weston and Bollier 2011, 7).

Scholars have realised that local environmental protection departments are overwhelmed by environmental issues, and are unable to coordinate with other departments (Gustafsson and Scurrah 2019, 134; Eaton and Kostka 2013, 83). Speth expresses his concern about the current environmental protection system and advocates a more participatory environmental governance:

> The main body of environmental action is carried out within the system as currently designed, but working within the system puts off-limits major efforts to correct many underlying drivers of deterioration, including most of the avenues of change…Working only within the system will, in the end, not succeed when what is needed is a transformative change in the system itself…What in need is a revitalization of politics through direct citizen participation in governance, through decentralization of decision making, and through a powerful sense of global citizenship, interdependence and shared responsibility (Speth 2008, 225).

When it comes to environmental issues, a sense of global citizenship (here conceived as simply referred to the realisation that one's responsibilities and rights are not constrained by geographical or political borders) is supposed to be shared worldwide. This encourages to undertake global actions to address environmental problems, despite the fact that they are invariably local and country-specific (Ronzoni 2019, 16). This kind of 'solidarity' (treating all the people around the world as a whole) enables us to tackle local cases as manifestations of global injustice and steps towards the achievement of global sustainable development targets (Ronzoni 2019, 14). They are also struggling for both the present and future generations' benefit (Kirton and Kokotsis, 277-278). It brings the current generation to undertake a change for the sake of the future ones – like consent to cuts in manpower in order to reduce carbon emissions that may negatively affect the future inhabitants of the planet – is not an easy task, but can be facilitated in a good governance framework.

In a nutshell, most of the literature narrowly focusses on some specific environmental problems and fails to address today's complex and wide-ranging challenges; it targets the symptoms rather than the systemic root causes (Vergragt et al 2008, 38). Needless to say, we need to solve the problems of air pollution, global warming and any other environmental issues. However, the measures that scholars propose are single-ended, whereas we look for a comprehensive strategy (or a combination of strat-

egies) to tackle the global environmental issues as a comprehensive governance challenge. In the next section the article will attempt to analyse how some policy-oriented responses to today's pressing environmental problems have been framed.

2. Paradigms of Environmental Governance: the Right to Environment Approach

As it is illustrated in the former part, transparency in decision-making procedures, the participation of all actors, efficient management of resources, respect for human rights, etc. are some of the hallmarks of good governance (Jessop 2002, 1, Speth 2008, 225, IFAD 1999,1 & Commission on Human Rights 2005, 2). The hallmarks of environmental governance will be sought for in vain, as long as the obstacles will not be removed that prevent the unfolding of the 'right to environment'.

The right to environment has been catching the attention of the human rights community since the 1970s (Lv 1995, 60). Numerous human rights scholars and advocates have been making considerable efforts to call on the UN to recognize the right to environment, by demonstrating its importance as a third-generation rights and describing the significant steps states have already taken for its affirmation. A human rights-based approach requires that non-discrimination, justice and rule of law, and human dignity are central in all aspects of environmental or ecological governance (Weston and Bollier 2011, 72). A right to environment should as a minimum capacity upon all this.

Sax (1969, 474) formulated a far-reaching legal doctrine that recognized the air, seas and other natural resources as a 'public trust' which must be protected from private encroachment. The public trust doctrine, a tool of general application for citizens when faced with environmental problems, should meet three criteria: 'It must contain some concept of a legal right in general public; it must be enforceable against the government; and it must be capable of an interpretation consistent with contemporary concerns for environmental quality'.

The first criterion requires that the air, seas and other natural resources can be objects of a specific right. This can be the right to environment. Accordingly, everyone is entitled to enjoy the right to environment and in return, is legally obligated to protect it. When Sax posited the doctrine of public trust, he ushered the academia in a new path, which is to create a new type of right that can flexibly respond to global environmental change. The right to environment embodies this idea and the following paragraphs try to elucidate the concept.

2.1 Defining the Right to Environment

There is no globally recognised official definition of the right to environment. To outline the right's content, we need to delve into some legal and political documents that have addressed some single aspects of it.

Cabre (2014, 122) stresses that Aarhus Convention (1998, Art. 1) was the first to recognise a right to environment at international scale. The Convention clearly enunciates the right of the present and future generations to live in an environment characterized by health and well-being; provides citizens with the right to obtain environmental information, to participate in environmental decision-making processes and to seek legal relief and redress when the right to environment is violated[26].

The Convention however mainly focuses on interactions between citizens and public authorities. It sets procedures rather than establishing specific substantial entitlements constituting a right to environment. The Aarhus Convention focuses on procedural environmental rights which can be applied in pursuit of any substantive rights. It is therefore an instrument to the realization of a right whose component are not fully defined (Zhou and Luo 2017, 93).

The Aarhus convention elaborates on the right to access to information, the principle of due process and the right to appeal. These are first generation (civil and political) human rights, whose enjoyment is therefore prerequisite for the realization of the right to environment, but do not correspond to the substantial content of the right to environment (Huang 2013).

Other internationally recognised fundamental rights that complement a right to environment can be identified (Toepfer 2001). In particular, economic, social and cultural rights can be associated to the right to environment, as well as the peoples' right to self-determination.

Article 22 of the Universal Declaration on Human Rights, on second generation rights, states that:

> Everyone, as a member of society, has the right to social security and is entitled to realization, through *national effort and international co-operation* and in accordance with the organization and resources of each state, of the economic, social and cultural rights *indispensable for his dignity and the free development of his personality*. (Emphasis added).

[26] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (also Aarhus Convention), come into force in 2001. Article 1 reads: 'Objective. In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.'

Article 1 of the international Covenant on Civil and Political Rights (ICCPR - 1966) enshrines the peoples' right to self-determination and control over natural resources:

> All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and *freely pursue their economic, social and cultural development* [...] In no case may a people be deprived of its own means of subsistence. (Emphasis added)

The above provisions display some environmental dimensions (Threadgill 2019, 808) and show that peoples could wisely utilize natural resources to pursue the realization of their own social and cultural development.

States should not only emphasize economic growth, but also do their utmost to improve the rights of citizens. The international community and states should therefore cooperate (Threadgill 2019, 813) to guarantee citizens' rights, their dignity and also make efforts to maintain a social and natural environment in which everyone can freely breathe fresh air, be free from haze and dust; leisurely stroll by a clear river without covering their noses; can enjoy a coffee and read books in their room without being disturbed by outside noise...

Provisions on physical and mental health in the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966, Art. 11 & 12) also make reference to environmental issues.

> Article 11.1: The States Parties to the present Covenant recognize the right of everyone to *an adequate standard of living* for himself and his family [...] and to *the continuous improvement of living conditions*.

> Article 12.1: The States Parties to the present Covenant recognize *the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*. (Emphasis added)

Environment is mentioned as a determinant of human health in ICESCR and other environmental agreements (Shelton 2002, 7). Those stipulations declare that everyone shall be entitled to achieve the maximum quality of physical and mental health, and this is a key component of the right to environment. Ensuring healthy lives and promoting the well-being for all is one of the Sustainable Development Goals (SDGs) and a good environment is the premise of a healthy life (United Nations Development Programme, 2015).

Human beings have not only the right to survive, but the right to improve their life conditions (Cançado Trindade 1993, 17). As the World Business Council (1997) once stated, sustainable development involves the simultaneous pursuit of economic prosperity, environmental quality and social

equity. Human and social values change with time and the task of carving an environment suitable for human physical and mental health should be taken seriously. The recognition of a right to environment could contribute to create the conditions for a healthy and dignified life (Shelton 2002, 1-3).

As a response to this international trend, many states have begun to incorporate the right to environment into their legal systems and to explore ways to implement effective environmental protection measures.

African states have been struggling to eliminate all forms of discrimination and promote African peoples' dignity and genuine independence in order to achieve the total liberation of Africa (African Charter on Human and Peoples' Rights 1981, Preamble). The African Charter on Human and Peoples' Rights is the first regional international human rights instrument legally adopted by developing countries, come into effect in 1986. Significantly, the Charter, clearly states in Article 24 that all peoples shall have the right to a general satisfactory environment favourable to their development. This commitment did bring some positive results, but still need long-run efforts to be implemented.

Rich countries have been taking advantage of the loose regulations in developing countries and, for example, have for long time been shipped their polluting waste to poor countries to be treated, or just abandoned. In Africa, hazardous substances have been found in air, water and even on fruits and vegetables (Gwaambuka, 2017). Leung (2019) reported that African countries are rising against the global trash trade. It can be expected that the human rights-based approach can be a feasible way to improve environmental governance, but this cannot be pursued in a single area or by single states. Only a concerted international effort can yield some results.

Europe is currently at the world forefront of regional human rights protection and possesses the most effective regional human rights mechanisms. However, the European Convention on Human Rights and its Protocols do not include any direct reference to the right to environment. Neither does the American Convention on Human Rights, which is drafted largely based on the European one. Article 11 of the San Salvador Protocol (1988, Art. 11), come into force in November 1999, recognizes that everyone shall have the right to live in a healthy environment and the states parties shall promote the protection, preservation, and improvement of the environment[27]. The Protocol shows that also countries that do not share a recent past of colonisation do realize the great importance of recognizing the right to environment.

[27] Article 11 of the San Salvador Protocol states that: '1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.'

At present, many countries have already enshrined a right to environment in their legal systems. As of 2012, 177 nations out of the 193 UN members recognised this right, either in their constitutions, environmental legislation and consolidated jurisprudence, or by ratification of an international agreement (Boyd 2013, 9-13). In 2017, 88 countries had the right to a healthy environment in their national constitutions and 63 more countries had constitutional provisions on environmental protection (UN Environment Programme 2019, 158). More or less, almost every country is seeking a legal path to some forms of environmental governance.

A few examples of constitutional provisions may help to identify the common features of the right to environment. The Spanish Constitution (1978, Section 45) reads:

> (1) Everyone has the right to enjoy an environment *suitable for the development of the person*, as well as the duty to preserve it.
>
> (2) The public authorities shall watch over a rational use of all natural resources with *a view to protecting and improving the quality of life* and preserving and restoring the environment, by relying on an indispensable collective solidarity. (Emphasis added)

The Constitution of Portugal states in Chapter II-Social security and solidarity, section on 'Environment and Quality of Life', that 'everyone has the right to a *healthy and ecologically balanced* human environment and the duty to defend it' (1976, Art. 66) (emphasis added). The Charter for the Environment, forming part of the French Constitution, affirms that the French people possesses 'the right to live in a *balanced* environment which shows due respect for health' (2004, Art. 1). These stipulations maintain both the national and individual duty to protect the environment while acknowledging the individuals' right to environment.

Most formulations of the right to environment qualify the latter by words such as 'healthy', 'suitable' or 'ecologically balanced', making a link between environmental protection and human beings' physical and mental health (Shelton 2002, 2). Some countries like Spain pay more attention to human-centered development, thus they pursue a healthy environment 'suitable for the development of the person'. Some others, like Portugal, value the co-existence of human and non-human entities, calling for an 'ecologically balanced' environment. All these display the general goals of the right to environment, taking into account the special needs and priorities of different states (Skelton 2013, 142).

The wording of the Constitution of South Africa (1996) deserves special mention. Section 24 provides that:

> Everyone has the right —
>
> (a) to an environment that is not harmful to their health or well-being; and
>
> (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
>
> (i) prevent pollution and ecological degradation;
>
> (ii) promote conservation; and
>
> (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The cautious expression 'not harmful' is in line with the socioeconomic conditions of South Africa and reflects the principle that law is the minimum of morality. In the constitutional context, 'not harmful' is a practical standard (du Plessis 2009, 345). Effective measures, complying with that standard, can be taken, towards the progressive fulfilment of the right to environment (du Plessis 2010, 268). Taking 'health' and 'well-being' as measures of a harmless environment, the provision shows its deference to the individual's subjective feelings as the main yardstick. The denotations of 'health' and 'well-being' have strong connections with dignity on the whole (Kotzé 2007, 300). There is no doubt that a healthy environment is the premise of an enjoyable and decent life. Meanwhile, the constitution provides citizens with the right to ask the State to take proper steps to protect the environment (Kotzé 2007, 301). These constitutional provisions envisage a harmonisation between civil rights and state power, inducing the state to abide by the obligations to protect human rights (Liu 2010, 22). The article aims at securing an ecologically sustainable development, while promoting economic and social rights. It shows that the realization of the right to environment requires diverse and competing actors to work together.

A human rights-based approach, as adopted in the aforementioned states, is important to build environmental governance. Some provisions in human rights instruments share similar goals— the mental and physical health of human beings and their pursuit of a dignified life. But an explicit recognition of the right to environment may make the difference in some circumstances.

2.2 The Right to Environment in China

Environmental law scholars in China have been divided into two camps — those who support and those who oppose the recognition of the right to environment.

The former believe that the right to environment is the basis of any environmental litigation (Cai 1982, 36-38; Cai 1999, 84-96). Lv (1995, 63) maintains that the right to environment refers to the right of individuals to live in an appropriate environment and use environmental resources wisely. Most scholars hold the view that the right to environment should be recognized as a third-generation human right (Chen 1997, 101-102; Wu 2017, 173-181; Wang 2012, 135-138).

Other scholars stress some difficulties of the right to environment approach. They argue that it is difficult to conceive of an individual's duty to respect the environment, as the duty bearers are human beings both of the present and of the future generations (Xu 2004, 109). Others opine that the so-called right to environment overlapped other existing rights. There is no need to set a new right since the same goals can be achieved by using the right to health and others (Zhu 2007, 140).

The academic debate has largely replicated and influenced similar trends in law- and policy-making.

The Chinese Constitution has not recognized the right to environment so far. Nevertheless, it affirms, as one of the basic national policies, that it is the obligation of the state to protect the environment. The provision goes: 'The State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards' (1982, Art. 26). The obligation of citizens to protect environment is affirmed by the General Rules of the Civil Law (2017). The principle of ecological environmental protection is enshrined in chapter I - General provisions. Art. 9 of Chapter I says that 'Any civil activity conducted by civil subjects shall be conducive to saving resources and protecting the ecological environment'.

Both stipulations attach high priority to environmental protection from the perspectives of both the State (government) and civil society, even though a recognition of the right to environment is still missing.

There is also no specific provision about the right to environment within the parameters of non-binding human rights national standards. The National Human Rights Action Plan (2016-2020) (2016, I) puts the environmental rights alongside the right to education and the right to health within the framework of economic, social and cultural rights. It introduces and clarifies some specific goals in the field of environmental pollution (air, water, soil and hazardous waste). The inclusion of these matters in the Hu-

man Rights Action Plan implies that the Chinese government has acknowledged the links between environmental factors and human rights. However, it does not show a clear attitude towards the recognition of a right to environment.

The Chinese Environmental Protection Law (EPL) (2014) complies with many stipulations in Aarhus Convention, such as the right to access to information, the principle of due process and the right to appeal. Also here, the provisions on substantive environmental rights are rare. In addition to the EPL, there are a number of other legal instruments protecting specific environmental factors, such as the sea, water, air, and the soil, and combating pollution including noise pollution[28].

However, it is difficult to achieve a wholly comprehensive environmental protection by enumerating specific factors. Feng (2019, 3) stated that the joint action mechanism for environmental protection is inefficient, the coordination between different environmental protection departments and enterprises is not sound, and weak links exist in the operations of regional joint mechanisms. Due to its large population, China's demand for food far exceeds that of any other country; thus, agriculture management is of great importance. The fast development of urbanization has caused a highly visible loss of agricultural land in former rural areas. In pursuit of high agricultural production, the use of fertilizers and pesticides has grown hugely, bringing about a serious problem of agricultural pollution. China's environmental protection system is based on local agencies; however, most towns and villages lack a proper protection mechanism (Li 2019, 3-4). In the whole country, the environmental protection work is being implemented by different authorities. To overcome the fragmentation of policies and inconsistency among various departments, a holistic approach to regulate and guide the environmental protection work is required.

Conclusion

This survey has shown that there is a lack of a comprehensive and systemic understanding of environmental governance.

Some elements have been identified as components of a sound system of environmental governance at the international level, such as transparency in decision-making procedures, the participation of all actors, efficient

[28] Laws of the People's Republic of China concerning the environment protection include: Marine Environment Protection Law; Law on Prevention and Control of Water Pollution; Law on the Prevention and Control of Atmospheric Pollution; Law on Prevention and Control of Environmental Pollution by Solid Waste; Law on Prevention and Control of Radioactive Pollution; Law on Evaluation of Environmental Effects; Law on Prevention and Control of Desertification; Law on Prevention and Control of Environmental Noise Pollution; etc.

management of resources, and so on. All these elements, taken together, are congruent and convergent, all serving as complementary building blocks for a paradigm of principled and effective environmental governance. Indeed, environmental governance can outline a way to bring ecological sustainability, economic well-being, and social involvement into a well-functioning mechanism. However, we are calling for a clear comprehensive definition of environmental governance that could shed light on as many policies as possible.

The concept of a right to environment seems to be consistent with the values of environmental governance. It expresses the principles that life must be preserved and honoured now and in the future (Weston and Bollier 2011, 8). A human rights-based approach can be a reasonable ground for policies aimed at better protecting people's rights and interests related to the environment. In the light of international, regional and national legal provisions concerning the human right to environment in context, we can conclude that, along with countries that explicitly protect the environment through constitutional and sub-constitutional legislations, there are still a number of states that hesitate to recognize a right to environment. An official recognition of this right, we argue, may promote environmental governance, since it grants the right to environment a status comparable to that of the right to life and other human rights, and provides a practical way to address environmental issues in legal perspective. Establishing a long-term reasonable institutional mechanism and sound laws and regulations to protect the natural environment, should assure good governance in times more and more characterized by natural environmental fragility.

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This book collects five state-of-the-art analyses prepared by doctoral students enrolled in the international joint doctoral programme in 'Human Rights, Society, and Multi-level Governance'. These contributions help updating and systematising a set of ongoing scholarly debates on human rights-related matters, identifying existing weaknesses or under-researched aspects as well as new pathways for research. Overall, the book contributes to consolidate a multi-disciplinary approach to human rights research and dissemination. The subjects addressed show how relevant a human rights perspective may be in addressing some crucial contemporary issues and 'wicked problems' – from irregular migrations to environmental mismanagement, from post-conflict constitutional rebuilding to women's agency in promoting development and peace.

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