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

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

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Editorial

This is the eleventh issue of the Global Campus Human Rights Journal. It consists of eight articles resulting from a special cooperation with the GC Human Rights Preparedness Blog which has provided a valuable platform for innovative and inclusive conversations within the Global Campus network and beyond. In this regard, this blog generally invites contributors to explain the ways in which protecting, respecting and fulfilling human rights is vital in meeting the challenges of pandemics and other emergencies, or to imagine how human rights could be better prepared for such challenges in view of where, how and why human rights have failed or done less well than anticipated.

Seven articles are based on shorter contributions previously published by Global Campus alumni acting as regional correspondents for the aforementioned blog after having been trained by Rosie Cowan, a member of the blog editorial team. The eighth article is written by the lead editor of the blog. All these articles provide insights into different topics from a rights-based approach taking into account that there are lessons to be learned from the past and preparations that can be made for the future.

Maria Koltsova considers that several anti-war movements have been organised in Russia or by Russian emigrants abroad since the start of the Russian invasion of Ukraine. She focuses on the story of the activists from the organisation Feminist Anti-War Resistance (Fem Anti-War Resistance or FAR) and explains the key importance of feminist ideas in opposing the war. She highlights how feminist movements can create structure and spread ideas to prevent further tragedies, while establishing themselves as a pillar of Russia's future civil society.

Khadija Embaby considers two ways in which the politics of energy impacts human rights in the Middle East. First, she focuses on interstate dynamics and how this affects the distribution of energy production costs and benefits, given the new political. Second, she addresses the question of how Western foreign policy towards countries in the Middle East is shaped, given the current energy crisis and increasing dependence on oil in its fossil fuel-based economy. She reflects on these issues by defining energy justice and its relationship to human rights, understanding its implications for US and European foreign policy towards the Middle East and finally how it can be contextualised in regard to specific countries in the region. She highlights the need of the international human rights community to adopt an energy justice framework that acknowledges and considers compensation for harms committed by oil industry giants and

the violent politics of oil.

Johnson Mayamba focuses on the need for Africa to learn lessons from its past and plan for a better future in the field of healthcare. In particular, he underlines the need to increase government funding towards the health sector and to address other still-existing challenges to equitable healthcare. He recommends the building of resilient healthcare systems with more focus on primary healthcare, the adoption of individual and group participation in decision-making processes, as well as the establishment of Universal Health Coverage in order to guarantee the future for most Africans as a equitable, stable, peaceful and prosperous society.

Ana Funa addresses the issue of hydropower plants in the Western Balkans, arguing that activists and scientists across the Balkans have succeeded to some extent in highlighting the negative impact of HPPs, but governments in the region must do more to diversify into alternative renewable energy sources and to protect nature for future generations. In this regard, she analyses numerous studies and reports of relevant international institutions, reviews the numerous activist undertakings to protect the Balkan wild rivers and discusses viable environmentally friendly alternatives to hydropower.

Gema Ocana Noriega examines a series of United Nations reports and other research which contend that inherent economic gender bias and neoliberal financial austerity policies unduly damage women's socio-economic rights. She recommends that human rights principles be combined with comprehensive feminist economic analysis in order to achieve gender equality and afford women more financial security in preparation for future crises. She argues that one useful tool on the way forward could be the development of a gender-sensitive human rights impact assessment of economic reform policies.

Ezequiel Fernandez Bravo examines ongoing challenges of racism and discrimination through the lens of the long troubling history of xenophobic persecution of Haitians by the neighbouring Dominican Republic. He analyses the latter's prejudicial two-tier migration policy toward Haitians; on the one hand, ostensibly excluding them, on the other hand, admitting those it requires for cheap unregulated labour in sectors such as construction and agriculture but denying them and their descendants rights and citizenship. Setting this amid the worldwide context of the relationship between unequal distribution of wealth and a global hierarchy of migration based on race, his article calls on human rights activists inside and outside the Dominican Republic to stand together and renew efforts to dismantle the structural racism upon Haitians.

Chiara Altafin analyses selected litigation efforts relating to children deprived of liberty for migration-related reasons in Europe and Asia where various countries face persisting systemic issues and there are local practitioners working on them. The selective choice of cases draws heavily on the findings of her research for one component of the "Advancing

Child Rights Strategic Litigation" (ACRiSL) project under the auspices of the Global Campus of Human Rights and Rights Livelihood cooperation. She articulates concluding remarks for a children's rights preparedness, reflecting on the importance of stakeholders' approaches towards litigation strategies that are consistent with children's rights and aim to advance children's enjoyment of their rights, in order to contribute effectively to tackle such a harmful practice and bring changes against it.

The Global Campus of Human Rights consists of the Global Campus Europe, South East Europe, Africa, Asia Pacific, Caucasus, Latin America and the Arab World, with the participation of post-graduate students from their respective Master's programmes in Human Rights and Democracy.

Maria Koltsova. "Russian anti-war activists continue feminist tradition of opposing violence" (2022) 6 *Global Campus Human Rights Journal* 185-194
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Russian anti-war activists continue feminist tradition of opposing violence

*Maria Koltsova**

Abstract: *Since the start of the Russian invasion of Ukraine, several anti-war movements have been organised in Russia or by Russian emigrants abroad. One of them is Feminist Anti-War Resistance—a horizontal feminist organisation creating online and offline protest actions against the war in Ukraine. The article tells the story of the activists and explains why feminist ideas are so important in opposing the war.*

Keywords: *Ukraine, Russia, Feminist Anti-War Movement, Feminism, Gender*

1. Creation and structure of Feminist Anti-War Resistance

On February 24 2022, Russian president Vladimir Putin announced a "special operation" —war against the sovereign neighbouring state of Ukraine. Days later, the first and one of the biggest pacifist movements in Russia was created — Feminist Anti-War Resistance (Fem Anti-War Resistance or FAR for short). Members stated in its manifesto: "[A]s Russian citizens and feminists, we condemn this war. Feminism as a political force cannot be on the side of a war of aggression and military occupation—. The feminist movement in Russia struggles for vulnerable groups and the development of a just society with equal opportunities and prospects, in which there can be no place for violence and military conflicts" (FAR Instagram 2022).

Now after more than five months of war, FAR has become known as the instigator of major anti-war demonstrations in Russia and other countries. Its manifesto has been translated into 14 languages including Ukrainian, French, Spanish, Udmurt and Tatar, and it has 33,000 followers on Telegram

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and 15,000 on Instagram. Ella Rosman, one of the founders of FAR, says in an interview (The Village 2022): "[W]e organised the fastest anti-war resistance in Russia. When the invasion of Ukraine began, we contacted the feminist activists we knew and decided to start the movement: we discussed strategy, actions and goals."

There are other anti-war activists operating in Russia, such as Vesna, Free Buryatia Foundation, Anti-War Sick Leave, Students Against War, Safe Repost, 8th Anti-War Group, but FAR was one of the first and one of the most organised.

Rosman, one of FAR's 10 co-ordinators, says that number has stayed more or less the same since the start though different individuals take on various roles. Tasks are distributed among members; some write for social media or create performance protests, others organise partnerships with international feminist groups and organisations.

In an interview for independent media website Meduza (Filippova 2022), another FAR member Daria Serenko explained its decentralised horizontal structure; each city has an autonomous branch: "[T]o set up a FAR cell, it is enough just to call yourself FAR and share our ideological views. You send a message to the bot stating you support our manifesto and want to speak for us. Furthermore, each new cell can act independently, we are not an organisation in the usual sense, since this is not safe. We do not want there to be a 'head' and a 'body': if the 'head' is cut off, then the 'body' will also perish. We've learned about some cells just by chance, for example, from the reports of international journalists - we see our symbols in their photos."

FAR undertakes several different types of activity: media and protest demonstrations; legal support for those prosecuted for their anti-war position; aid for Ukrainian refugees and migrants and political prisoners in Russia; and evacuation of activists from Russia. Moreover, 45 psychologists work helping anti-war activists who have experienced violence, burnout or post-traumatic stress disorder (PTSD) (FAR Instagram 2022). As activists say in their Telegram channel, FAR has helped hundreds of Ukrainians and others, many of them women, who have suffered because of the war.

FAR now has cells in more than 50 Russian cities and some abroad—in Armenia, Georgia, Germany, Korea and other countries. The organisation also has departments in more than 30 countries and has hosted international events and performances. Activists write (Filippova 2022): "[W]hile Russia isolates itself from reasonable international politics, we participate in the

network of international solidarity with Ukraine, we report on activists within the Russian Federation, we look for resources to support activists in Russia. We aim to publicise the anti-war movement and to bring the tragedy of Ukraine to the attention of citizens and the authorities."

FAR reported from the Human Rights House Foundation Conference in Geneva on June 23, 2022, by holding a parallel conference entitled "The situation of human rights in the Russian Federation: building links with civil society as human rights violations intensify" (FAR Instagram 2022). FAR coordinator Lilia Vezhevatova spoke about the scale of the anti-war movement in Russia and the support the movement feels the international community can provide to end the war as soon as possible. More than 60 participants attended, including official representatives from Poland, Lithuania and diplomats from other European countries.

2. War as a feminist issue

Feminist activists have a long tradition of opposition to war, violence and totalitarian regimes. During World War One, the feminist anti-war movement was relatively strong in Europe and the United States. In August 1914, in New York, 15,000 women took part in a peaceful demonstration, refusing offers of cooperation with male pacifists. In 1915, in The Hague, two European feminist pacifists, Rosika Schwimmer and Emmeline Pethick-Lawrence, in alliance with the Women's Party for Peace, organised an international women's peace conference. Despite various obstacles from most governments, delegates came from a number of countries. This conference was the first international meeting aimed at the struggle for peace and the development of principles for a peace agreement between warring nations (9oemarta 2022).

One of the most famous examples of female participation in peacekeeping was at the Greenham Common nuclear missile site in the UK, where in 1981 women set up a peaceful camp to demonstrate against the use of nuclear weapons. The protestors kept a permanent presence for several years, regularly blocking the road to the base in an attempt to prevent the entry and exit of convoys carrying missiles.

In 2020, Belarusian women became leaders and symbols of protest against the Lukashenko regime (Berman et al. 2021). Svetlana Tikhanovskaya, who at first simply wanted to stand in for her arrested husband, accidentally became the only presidential candidate from the opposition. Her triumvirate with Maria Kolesnikova and Veronika Tsepkala became a symbol of the demand for a renewal of democracy after 26 years

of Lukashenko's rule. Meanwhile on the streets, women dressed in white carried flowers to demonstrate their peaceful nature as they protested against police violence.

Historically, feminists and anti-military activists have approached war as a feminist issue, tightly linked to traditional male and female gender roles. Goldstein (2001) explains that gender roles outside war are very different in various societies with contrasting approaches to household labour, maternity and childcare. But cultures develop gender roles that equate "masculinity" with toughness under fire and only one percent of combatants globally down through history have been female (Goldstein 2001). Women therefore bear the brunt of all non-fighting duties during war, including childcare and provision of medical aid and food.

Feminist theorists expanded on this argument, contending that the same gender stereotypes and toxic masculinity which drive men to wage war and carry out acts of aggression against other nations fuel both state brutality against citizens and also intimate partner violence.

Russia in particular has a history of cult-like support for the military and admiration of leaders who project a ruthless hyper-masculine image, of which Vladimir Putin is now seen as the epitome. Russian culture is full of toxic masculinity and consequently normalises violence. In an interview with Russian media organisation Holod, psychologist Oleksandra Kvitko, who works with Ukrainian women impacted by sexual violence, called the accused Russian soldiers "the same age as Putin's rule" and linked their brutality to the fact that they see Ukrainians as "second-class citizens" (Nordic 2022).

The country also has a huge domestic violence problem and little legal or practical protection for women who have fled abusive relationships though it is far from alone as violence against women and girls is a global issue. UK feminist scholar Liz Kelly coined the term, "continuum of sexual violence", in the 1980s to describe a broad range of unwanted sexual acts within what could be considered to be "consensual" relationships. She interviewed 60 women of all ages who had been subjected to verbal, physical or sexual abuse from men. Significantly, not all the acts would be viewed as criminal offences in modern legislation and some of the women only realised that what they had been subjected to was a form of abuse some time later. Kelly defines sexual violence as including: "[A]ny physical, visual, verbal or sexual act that is experienced by the woman or girl, at the time or later, as a threat, invasion or assault, that has the effect of hurting her or degrading her and/or takes away her ability to control" (Kelly 1987: 56).

Kelly argues that societal tolerance of gendered stereotypes and lower level gendered aggression increases the normalisation of gendered abuse and violence in general. During times of war, the level of violence increases.

FAR coordinator Lölja Nordic endorses this position: "[T]he war in Ukraine and the war crimes that are happening there now show that everything feminists said turned out to be true, even though people ignored it for years. First, domestic abuse is decriminalised, the state signalling that you can beat your wife and get off with just a fine, then the state justifies police violence: not a single policeman is punished for torturing and beating his fellow citizens. And then we see that the military is torturing and brutally killing Ukrainians in Bucha. These are links in the same chain—the normalisation of violence, which occurs in stages" (Nordic 2022).

In the past 10 years, Russia's feminist movement and ideology has grown and gained strength. There is more and more female representation in Russian politics and business. By the beginning of the war, there were at least 45 grassroots feminist groups with organisational and networking experience, based in Russian cities. Many of them have joined the anti-war movement. Grassroots feminist activists already had connections throughout the regions which is why it was easier to create a movement in such a short period of time.

3. Breaking the information blockade

From the beginning, FAR has had two main goals for its anti-war activities: development of the protest movement and dissemination of information about the war online and offline in various ways. Due to propaganda, most Russian citizens do not have access to independent sources of information so one of the movement's key tasks is to communicate the truth about the war to as many people as possible. FAR founder member Ella Rosman says: "[P]eople don't know about the monstrous things that are happening in Ukraine. Therefore, the first step in involving people in the protest is to convey the meaning of these events, or rather, their meaninglessness and cruelty."

Daria Serenko adds that the goal is to break through the information blockade: "[O]n their side [the state]—a lot of money and a repressive apparatus, on our side—activists, enthusiasm and a desire for grassroots work. We are most focused on campaigning. We say: become agitators against the war" (The Village 2022).

FAR activities have gained the attention of an audience that has never been interested in politics or war. But the biggest obstacle and danger is current Russian legislation which allows the state to imprison anyone who even discusses the war in Ukraine. Since the start of the war, Russia has passed a number of laws which amount to de facto war censorship. In what conditions does FAR operate?

Researchers say that, after a "honeymoon period" from 2008 to 2012 under the presidency of the relatively more liberal Dmitry Medvedev, Russian media freedom drastically decreased. "[T]he promotion of a state ideology built on a mixture of ultra-conservatism and anti-Westernism within the framework of the concept of a besieged fortress provokes an exaggerated reaction to any critical or simply alternative opinion and leads to the cleansing of the internet space from any points that do not fit into this concept vision and expression" (Net Freedoms 2021).

Currently, three main articles in the Russian Criminal Court are used to silence anti-war voices: these articles criminalise the dissemination of what the state terms "fake news" about the Russian army (Article 207.3); discrediting military forces (Article 280.3) and calls for sanctions against Russia (Article 280.4). All three were introduced after the start of the war and are now frequently employed to target opponents of the war.

On March 4, 2022, two weeks after the war began, President Putin signed a clutch of laws that basically introduced censorship by making it illegal to "knowingly spread false information about the activities of the Armed Forces of the Russian Federation" or "discredit the activities of Russian troops". Punishments for violation of these laws range from fines of up to five million rubles or up to 10 years in prison, which can be increased to 15 years if the spread of "fake information" is judged to have had serious consequences.

What about the discrediting of the Russian army? First offences are subject to a fine of 50,000-100,000 rubles for ordinary citizens, 200,000-300,00 rubles for officials (Code of Administrative Offences, Article 20.4.4). Second offences are punishable by up to five years of imprisonment.

Russian officials see as discreditation any mention of world "war" itself. St. Petersburg artist and musician Alexandra Skochilenko—Sasha—has become one of the symbols of protest against the Russian invasion of Ukraine. After replacing price tags in St. Petersburg supermarkets with anti-war slogans, she was arrested and sent to a pre-trial detention centre. This led to Sasha becoming one of two Russians subject to a criminal rather

than an administrative case for this offence. Moreover, the authorities' allegation that she was motivated by "political hostility" means she now faces up to 10 years in prison (RFE/RL 2022).

On July 8, 2022, Moscow deputy Andrey Gorinov was sentenced to seven years in prison for calling the situation in Ukraine "war" instead of a "special military operation" during an open meeting of council deputies in his district (Kirby 2022). He became the first person to be imprisoned under Criminal Code Article 207.3, while 225 people were subject to criminal prosecution because of their anti-war positions by the end of August (OVD-Info project 2022b).

According to human rights defenders' project Net Freedoms, a total of 73 criminal cases about war censorship on "fake news" (Article 207.3) have been initiated since the war started: 12 of the accused identified themselves as journalists while seven said that they were activists and politicians (OVD-Info project 2022a). Under Article 20.3.3 of the Code of Administrative Offences (discrediting the army), during six months of war, 3,807 administrative cases have been initiated (OVD-Info project 2022b).

4. Partisan war information

While spreading information about the war is extremely dangerous for anti-war activists, FAR members are finding innovative ways to target new audiences.

FAR is focusing on different sections of the population, not just young people or those in big cities: for instance, they have tried to reach out to others through "Odnoklassniki" (Classmates), a social media platform traditionally used by the older generation in Russia, who mostly get information from heavily propagandised state TV (Femagainstwar 2022). There are instructions on FAR's Telegram channel on how Russian-based activists can safeguard themselves by creating accounts using foreign phone numbers and pseudonyms but add more photos and pictures to make a page look more authentic.

Another form of partisan activity is the print newspaper "Female Truth" (Zhenskaya Pravda) that mimics a typical Russian regional newspaper. Again, the goal is to reach older audiences and inform them about the war in a softer way while safeguarding activists who distribute the paper. Editor Lilia Vezhevatova notes: "[W]e periodically receive feedback from people who've sprung our newspaper on their grandmother, for example. It's really heartening that Zhenskaya Pravda is providing opportunities to start a dialogue and to give those who would normally get all their

information from official sources a chance to see an alternative point of view" (Merkuriyeva 2022).

PDF-files of the newspaper are published in open access on FAR's social media so that anyone can print it off to distribute amongst relatives, neighbours and others. Several different issues on special topics were published on July 6, 2022; the fifth issue was devoted to the stories of people who had experienced war at different periods in history. In addition to notes and interviews, each issue contains anti-war anecdotes, stories about famous people who speak out against the war in Ukraine, and useful instructions, such as why you need a VPN (the application to open internet resources that are blocked by the government in the country) and how to install it.

On March 8, 2022, FAR spearheaded an international solidarity protest—"Women in Black"—asking all women and queer people to wear black and lay flowers at Second World War monuments while holding a minute's silence in memory of Ukrainians killed in the current conflict. More than 120 cities around the world took part in this action, and several participants were arrested in Russia.

The "Women in Black" idea was initiated by Israeli women in 1988 when they protested against the occupation of Palestine and Israeli army war crimes and has been repeated in honour of victims of other war crimes since.

Anti-war activism is long-term. And as a FAR member admits, there is little optimism that activists can stop attacks by the Russian army right now. However, such movements can create structure and spread ideas to prevent further tragedies, while establishing themselves as a pillar of Russia's future civil society. FAR member Tanya, whose name has been changed for her safety, states in a recent interview (Filippova 2022): "[N]aturally, the anti-war movement cannot stop the war now. But it must keep going for the long haul. Too bad it didn't start sooner. Perhaps if the FAR had been founded in 2014 [during the events in Crimea], people's reaction [to the war] would not be so amorphous now."

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Khadija Embaby. "How energy injustice fuels Middle East conflict and human rights abuses" (2022) 6 *Global Campus Human Rights Journal* 195-202
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How energy injustice fuels Middle East conflict and human rights abuses

Khadija Embaby*

Abstract: *The abundance of Middle East oil reserves has shaped global politics for decades. United States foreign policy in particular is driven by the desire for energy security and efforts to safeguard this have inversely fuelled conflict and instability in the Middle East. Oil also plays a major role in European foreign policy, the importance of which has been intensified by the Russia Ukraine war which now threatens the continuity of Russian oil and gas supplies. Moreover, tension and inequalities within and between Middle Eastern oil-importing and oil-exporting countries have greatly contributed to human rights abuses in the region. Now is the time for the international human rights community to adopt an energy justice framework which acknowledges and considers compensation for harms committed by oil industry giants and the violent politics of oil.*

Keywords: *Energy justice; Middle East; Oil; Human Rights; US foreign policy; European foreign policy*

1. Global reach of oil politics

Late last year, one of us had a conversation with a woman who was putting US$70 of gasoline into the tank of her large Sports Utility Vehicle. She explained that she needed the large car because her children would squabble if they had to sit near each other. Moments later she added that it was a pity that her brother had been wounded in Iraq, fighting to get cheaper oil to America. She, like many other consumers and even commentators and analysts in the energy studies field, did not see the ethical connection between her personal demand for oil, and military casualties related to securing that oil in the Middle East (Sovacool and Dworkin 2015).

The concept of energy justice is particularly relevant to the human rights situation in the Middle East right now. Many countries in the region are still living through the aftermath of the Arab Spring with either chaos, authoritarianism or transitional states at the heart of their political scene.

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The Gulf has been gaining much more power and regional dominance over the past decade with skyrocketing inflation in the United States and higher dependence on Gulf oil as a substitute for Russian resources.

With that in mind, the politics of energy impacts human rights in the Middle East in two ways. First, it affects interstate dynamics—which vary between the region's oil-exporting and oil-importing countries—and how this influences the distribution of energy production costs and benefits, given the new political order. The second issue is the question of how Western—particularly US—foreign policy towards countries in the Middle East is shaped, given the current energy crisis and increasing dependence on oil in its fossil fuel-based economy. This article aims to reflect on these two questions by defining energy justice and its relationship to human rights, understanding its implications for US and European foreign policy towards the Middle East and finally how it can be contextualised in regard to specific countries in the region.

2. Human rights

While energy justice is considered a relatively new field for academics, policymakers and non-governmental organisations, it has developed as a by-product of both the environmental and climate justice movements that rose to action between the 1970s and 1990s.

Environmental justice started as a movement in the US in response to the unequal distribution of environmental ills such as pollution and waste facilities which were often borne by people of colour and ethnic minority Americans (Jenkins 2018). Initially, environmental justice aimed to mobilise the public into a fair distribution of environmental hazards and access to all natural resources while ensuring that the affected communities are involved in the decision-making process. It gathered traction when several civil society organisations employed it in their push for political action. Environmental justice then expanded outside the US and started gaining momentum but became too broad, encompassing many subfields like activism, policymaking and advocacy for the various environmental challenges that were specific to each community. The concept was also critiqued for its failure to translate into economic and actual policy decisions (Jenkins 2018). By the 1990s, another movement developed with the sole purpose of addressing climate change implications.

Unlike previous environmental justice campaigns, climate justice set out to tackle the issues globally rather than dealing with a series of local and national concerns. It aimed to identify those responsible for CO2 emissions, who should bear the burden of mitigation and adaptation to reduce it and how to protect vulnerable communities most likely to carry that burden (Lyster 2015). Both environmental and climate justice impact

basic human rights, namely the right to food, health and water and the right to live in your own country. While the former is concerned with protecting the environment in which the people live in, the latter is additionally concerned with protecting low income and indigenous communities from the damage caused by climate change. Nonetheless, critiques of environmental and climate justice often allude to the fact that despite some success at local level over the years, both movements have failed to make significant international impact due to different understandings of what counts as (in)justice and the challenges of application on a global level, even though these are universal problems.

Energy justice cannot work as a substitute for environmental and climate justice: however, it adopts a more focused approach based on the politics of energy production and consumption (Jenkins 2018). Founders and proponents of energy justice aimed to develop the concept in a way that acknowledges the philosophical grounding of (in)justice while simultaneously developing it as an analytical and decision-making tool. For example, by employing energy justice in order to realise universal human rights and combat violation of civil liberties—in extreme cases through death and civil war undertaken in pursuit of energy fuels and technology as well as the contribution of energy production to military conflict (Sovacool and Dworkin 2015). A potential solution using the energy justice framework would be developing "extractive industries transparency initiatives, energy truth commissions and inspection panels, improved social/ environmental impact assessments for energy projects, availability of legal aid to vulnerable groups" (Sovacool and Dworkin 2015).

Practically speaking, energy justice acknowledges three main tenets of justice—distributional, procedural and justice as recognition—in the production and consumption of energy. Distributional justice is concerned with a fair distribution of the benefits and ills of environmental resources as well as ensuring a fair allocation of the associated responsibilities such as the anticipated risk involved in installing certain technologies. Procedural justice manifests as a call for equitable procedures that engage all stakeholders in a non-discriminatory way. It states that all groups should be able to participate in decision-making, and that their decisions should be taken seriously throughout. It also requires participation, impartiality and full information disclosure by government and industry and appropriate and sympathetic engagement mechanisms (Sovacool and Dworkin 2015).

Finally, justice as recognition is: "[M]ore than tolerance, and requires that individuals must be fairly represented, that they must be free from physical threats and that they must be offered complete and equal political rights. It may also appear not only as a failure to recognise, but as a

misrecognising —a distortion of people's views that may appear demeaning or contemptible" (Sovacool and Dworkin 2015).

3. US foreign policy

The relationship between the Middle East and the West has always been characterised by a complex network of not only mutual benefits but also hostilities, war and, in many instances throughout history, proxy wars. Grouping all countries with their different governments, political systems, histories and cultures in this region under the term "Middle East" fails to acknowledge significant nuances between countries within the region as well as variation in their energy source management regulation. However, it is safe to assume that the politics of oil, whether imported or exported, is a crucial element in understanding the dynamics between the West and the Middle East and the many human rights abuses which take place in the latter region. For example, Europe relies heavily on oil from the Middle East, Russia and the US in order to secure its energy supply (Ispi 2022). Given Europe's depleting oil reserves, the foreign policy of the European Union (EU) towards oil-exporting countries is highly influenced by this dynamic. Meanwhile, the US and Russia have used Middle Eastern countries like Iraq and Syria as proxy economic battlefields by investing in energy infrastructure and securing different gas pipelines for their own benefits (Maher and Pieper 2020).

While tension between the West and the Middle East has always been dressed in an ideological gown, for the most part, oil is one of the major underlying causes of many conflicts in the region. This also holds true for inter-regional conflicts in the Middle East such as the framing of the Iraq-Iran war as a Sunni versus Shi'i conflict when in fact it was an invasion of the oil-rich province of Khuzestan (Mills 2021). Ethnic tensions, sectarian divisions, religious wars and colonial history certainly contribute to the never-ending instability and insecurity within the region. However, the geopolitics of securing fossil fuels since the 1973 oil crisis is believed to be a major contributor to the heightened inter and intrastate tensions over the past few decades.

Since the 1973 oil crisis, US obsession with energy security and independence has led its foreign policy towards the Middle East to further destabilise the region (Mundy 2020). By supporting authoritarian regimes, coups and creating different alliances in civil wars, US fears have dragged the region in a violent vicious cycle: America's war on terror inversely created so much unrest in the Middle East that in the first decade of the millennium the region rose from being responsible for 30 percent to 50 percent of global armed conflicts (Mundy 2020). A global terrorism database also reports that the Middle East now accounts for half the terrorist incidents worldwide—a massive increase from 10 percent since 2010 (Mundy 2020).

On the other hand, US attempts to avoid direct military intervention in the region while maintaining its geopolitical hegemony made it outsource the task of "securitizing" the Middle East to local nation states, ironically maintaining a constant state of "insecurity" by supporting neoliberal authoritarian regimes (Mundy 2020).

Single lens analysis of Middle Eastern instability, be it in the form of wars, revolutions or civil conflicts, could be construed as reductive. Yet acknowledging the scale of injustice and human rights abuses resulting from US oil politics using the energy justice framework could potentially improve the human rights situation in the Middle East, especially in war zones. The application of energy justice in this context means acknowledging the violence that comes with US oil politics. This means acknowledging the injustices that occur in the extraction of oil by North Atlantic oil companies from lands in the region and holding these companies accountable, not only for existing but also potential future harms. Moreover, it involves recognising that indigenous communities bear the true cost of securing energy sources and considering compensation for their losses.

4. European foreign policy

Geographical proximity coupled with the interdependence between Europe and the Middle East always informed EU foreign policy towards the region (Colombo and Soler i Lecha 2021). Unlike the US, the EU was neither an ally nor a rival in any of the post Arab-Spring inter and intrastate conflicts in the Middle East. Instead, the EU played the role of partner or donor. Even when the rivalry between Iran and Saudi Arabia became more explicit after 2011 and when Qatar's supportive stance toward the political Islam project differed from its regional counterparts, namely Saudi Arabia and the United Arab Emirates, European foreign policy managed to maintain a fair level of neutrality. In 2016, the EU Global Strategy vowed to pursue balanced engagement in the Gulf through ongoing cooperation with the Gulf Cooperation Council (GCC) and individual Gulf countries (EU 2016). Building on the Iran nuclear deal and its implementation, the EU also aims to gradually engage Iran in areas such as trade, research, environment, energy, anti-trafficking, migration and societal exchanges.

After the outbreak of the Russia-Ukraine war, the need for further cooperation between the Gulf and EU was exacerbated. Given the fact that Europe imported an estimated 46.8 percent of its natural gas from Russia alone by the first quarter in 2021, the continent would be forced to find an immediate alternative if it was to maintain sanctions on oil and natural gas exports from Russia. Both long and short-term European energy strategies include heavy reliance on co-operation between the EU and countries in the Gulf and North Africa (EU 2022). One way of reducing reliance on Russian oil and gas imports is to shift to hydrogen-based renewable energy sources in the medium-term. In the short-term, European energy policy aims to diversify its oil and natural gas sources by importing from other countries such the US, Egypt and Israel.

5. Interstate energy politics

The effect of US foreign policy in respect of oil on human rights in the Middle East is only one aspect of the multifaceted issue of energy politics in the region. Major differences between oil-exporting and oil-importing countries are at the heart of regional dominance as well as domestic energy politics in single states.

Countries of the Gulf Cooperation Council (GCC), which include Saudi Arabia, the United Arab Emirates (UAE), Qatar, Kuwait, Oman and Bahrain, possess approximately 30 percent of the world's proven oil reserves. Oil revenue in these countries has created a rentier economy, where oil revenue is allocated to citizens in return for their loyalty to the ruling monarchies. For years, GCC countries maintained their stability using this model. However, the shift to renewables coupled with an increase in national spending in order to maintain this model is currently pushing the Gulf towards a more sustainable economy. One example is massive UAE investment in green energy technologies in order to ensure an alternative revenue stream.

On a regional level, oil wealth has changed the balance of power between countries in the Middle East itself over the past few decades. For instance, international attention has shifted from Egypt and Iraq to the Gulf, especially Saudi and the UAE. The political stances of these two countries in particular started to gain importance after the Arab Spring. Up until 2022, Saudi Arabia and UAE support for the Egyptian army not only aided the 2013 coup in Egypt but also helped entrench the military's growing economic power by directing massive foreign currency investments into newly established state institutions. Similarly, recent UAE support for Israel totally changed the dynamics of the so-called "Arab-Israeli" conflict, narrowing it from an Arab-wide to a Palestinian-only issue. This, in turn, changed the narrative of constant human rights abuses in Gaza and the West Bank, reframing Israeli occupation as a local matter. Gulf power is also clear in the case of Yemen, where Saudi Arabia's war on the Houthis has displaced 100,000 civilians and put over 2m at risk since 2015 (BBC 2022).

For oil-importing countries like Egypt and Jordan, securing energy sources makes up a large portion of the overall national budget. Unlike wealthy oil-rich countries, oil-importing countries have long subsidised energy prices in order to protect poor households from economic shocks while maintaining public order and controlling dissent. Post-Arab Spring, this strategy served neither governments nor the people. Energy subsidies are not customised for those who need them the most. Instead, big business, especially in the transportation and tourism sectors, benefits most. Moreover, the harsh transition into neoliberal economies over the

past two decades has made it almost impossible to keep subsidising energy sources, especially fossil fuels.

Given the above domestic and regional energy politics in the Middle East, energy justice and human rights overlap in several areas. As with US foreign policy, the GCC, particularly the UAE and Saudi Arabia, has likewise fuelled human rights violations in countries like Yemen, Palestine, and Egypt, either through supporting oppressive regimes or by creating new alliances in the region. Oil wealth in these countries has also managed to keep public dissent in check despite the obvious crackdown on freedom of expression and women's rights.

6. Way forward

The adoption of an energy justice framework by international organisations like the United Nations and the International Criminal Court could contribute to improving the human rights situation in many ways. International recognition of atrocities attributable to the violent oil politics of the region would put pressure on local governments which are either dependent on oil revenues or oil importers themselves. This could pave the way for harmed communities to ask for compensation and retribution. Furthermore, human rights law and international criminal law could develop the legal framework to further define and criminalise both past and potential future injustices committed by oil industry giants.

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COVID-19 must accelerate African push for universal healthcare

*Johnson Mayamba**

Abstract: *"The greatest injustice is the lack of access to equitable healthcare" Dr Martin Luther King Jr. In a bid to achieve equitable healthcare in Africa, a total of 46 African states met in Abuja, Nigeria, in 2001. In what came to be known as the Abuja Declaration, each African state pledged to commit 15 percent of public expenditure to health. More than two decades since the Declaration was signed, only two African countries have reached this target, leaving vast swathes of the continent vulnerable to emerging health crises such as Ebola and COVID-19. Poor response and management is exacerbated by unpreparedness due to lack of research and under-developed infrastructure. Limited healthcare funding has also led to other challenges such as exploitation of patients, especially by private health providers, who see public health crises as money-making opportunities. Unfortunately, even those entrusted with managing public funds dedicated to the response and management of these crises have resorted to corruption. Whilst we tentatively celebrate having finally survived COVID-19, Africa needs to learn lessons from its past and plan for a better future. Firstly, by increasing government funding towards the health sector and secondly by addressing other still-existing challenges to equitable healthcare. This article recommends building resilient healthcare systems; adopting individual and group participation in decision-making processes; and ensuring there is Universal Health Coverage. All these must start with political will and good leadership.*

Keywords: *healthcare; universal healthcare coverage; Africa; COVID-19; vaccine distribution; infrastructure*

1. Abuja aspirations still far off

In April 2001, a total of 46 African states met in Abuja, Nigeria, where they rallied each other to mobilise more resources from government coffers to boost support towards the health sector (WHO 2010). They then signed what they called the Abuja Declaration, offering to commit 15 percent of their public expenditure to health (WHO 2010). This was meant to realise universal access to healthcare and also prepare for worst case scenarios such as the COVID-19 pandemic (Abuja Declaration 2001).

Moreover, the African Union's Agenda 2063 (2022) places the objective of realising "healthy and well-nourished citizens" among the first of the seven aspirations towards the attainment of "the Africa we want".

In this case "Universal Health Coverage is achieved in a health system when all residents of a country are able to obtain access to adequate healthcare and financial protection" (Sanogo, Fantaye and Yaya 2019). Achieving this goal requires both adequate healthcare and the financial systems to ensure that all can access it equitably.

However, almost two decades after signing of the Declaration, only a handful of African countries had met that target when the coronavirus pandemic struck (Kaltenborn, Krajewski and Kuhn 2011). As the world slowly limps back to normal after more than two years of the devastating emergency (Allison 2022), one lingering question is whether Africa has learnt anything from this public health crisis. The World Health Organization (WHO 2022) reports that while the COVID-19 death rate has fallen significantly in Africa, this does not take away the fact that access to universal health coverage is still a far-fetched dream on the continent (Ujewe, Werdie and van Staden 2021).

The need for universal healthcare is all the more pressing given that Africa has already lurched from the grip of one deadly virus into another. The Center for Disease Control and Prevention (2019) reports that before COVID-19, West Africa battled Ebola which claimed a total of 11,310 lives in Guinea, Liberia and Sierra Leone 2014-2016, in addition to the 15 deaths that occurred when the outbreak spread outside of these three countries. In 2018, the Democratic Republic of Congo also declared the Ebola virus disease outbreak since the virus was first discovered in 1976 (Wadoum et al. 2019). As of 25 June 2020, 3,470 Ebola cases had been reported, including 3,317 confirmed and 153 probable cases, with 2,287 deaths and overall case fatality ratio at 66 per cent (Wadoum et al. 2019). In 2022, the recurrence of Ebola in Uganda has seen the death toll rise quickly in just days, forcing the Ugandan government to prohibit mass gatherings and limit movement, among other restrictive measures (The East African 2022). So far, two of the six districts in Uganda where Ebola cases have been reported are in a total lockdown (The Independent 2022)—yet another public emergency that could be best handled with accessible, affordable public health services. It is also important to note that AIDS continues to decimate the population of Africa, which has 11 per cent of the global population but 60 percent of the world's people living with HIV (Moszynski 2006). More than 90 percent of the 300-500m cases of malaria in the world each year are in Africa, mainly in children aged under 5 years (Moszynski 2006).

2. Why have Abuja targets not been met?

While COVID-19 brought the world to its knees as no government was prepared for the crisis, Africa's under-resourced public healthcare systems were particularly exposed. So what are some of the major reasons for Africa's failure to meet the Abuja targets and how did the coronavirus pandemic exacerbate the situation?

First, despite better recent economic growth than many other world regions, African governments' spending on health has not automatically increased (Chitonge 2015). While some African countries have made slight upward adjustments to their overall healthcare spending, they are still a minority. By 2018, only two countries—Ethiopia and Rwanda—had hit that 15 per cent target they signed up to in Abuja (Gatome-Munyua and Olalere 2020). On the other hand, between 2001 and 2015, 21 African countries decreased the proportion of government budget allocated to public healthcare (Gatome-Munyua and Olalere 2020). These funds were diverted to other priority areas such as national security.

Amongst various factors behind this, we should be mindful that dependence on development assistance for health has made some African governments reluctant to increase their healthcare budgets (Chang et al 2019). In a 2017 global survey, 20 of the 26 countries relying on donor funding for their health spending were African (Gautier and Ridde 2017). This further complicates the transition from declining donor funding to self-sufficiency in financing the continent's health sector (Chang et al 2019).

Secondly, public awareness about the pandemic was a bare minimum when COVID-19 emerged. Over time, we saw increased campaigns on how best to respond. However, such messages have been pushed to the margins as budget priorities have since shifted from health to other areas. To make matters worse, when COVID-19 testing was introduced, it was very expensive for the ordinary African (Bondo 2021). Unlike developed countries, African nations had very limited access to COVID-19 tests, especially at-home tests, which are still very costly (Cheng and Mutsaka 2022). A case in point, self-tests were available in some pharmacies in Zimbabwe but they cost up to US$15 each, in a country where more than 70 per cent of the population lives in extreme poverty made worse by the pandemic. The situation was no different elsewhere across the African continent (Cheng and Mutsaka 2022).

Thirdly, other issues such as lack of infrastructure remain a serious impediment to healthcare delivery as was evident in the COVID-19 vaccination campaign. Despite improved supplies of coronavirus vaccines on the continent, the transport network in most African states is generally poor, making it difficult to get doses to people in more remote areas (Akuagwuagwu, Bradshaw and Mamo 2022). For example, Sekenani health clinic in rural Kenya did not have COVID-19 vaccines and yet Narok county, where the clinic is located, had nearly 14,000 doses sitting in a fridge in the nearest town, 115 km away (Fick and Mcallister 2021). This is a problem of financing but also a logistical issue, with lack of accessible transport networks impeding the establishment of vaccination centres in isolated regions (Okunogbe 2018).

Fourthly, because of the poor public health facilities, Africa witnessed widespread exploitation, especially by private health providers, who saw it as an opportunity to make a financial killing out of the pandemic. For instance, while many Ugandans do not trust government hospitals due to these inadequacies, those who can afford to do so seek treatment in private hospitals while the wealthy and top government officials choose to go abroad. This was no different during the pandemic except that government officials could not leave the country due to lockdowns (Muhumuza 2021). As time went by, some hospital bills shared on social media by families of COVID-19 patients in intensive care showed "sums of up to US$15,000, a small fortune in a country where annual per capita income is less than US$1,000" (Muhumuza 2021).

Troublingly, there was also little to no transparency regarding management and distribution of COVID-19 funds: it was indeed "time to loot" as much of the money was either embezzled or misappropriated by those charged with administering the funds (Oduor 2021; Nyabola 2021). For example, four top government officials in Uganda were arrested for causing losses in excess of US$528,000 meant for COVID-19 relief food (Athumani, 2020b). In other African countries such as Kenya, Zimbabwe, South Africa, Somalia and Nigeria, those in the corridors of power stand accused of inflating medical supply prices by nearly 1,000 per cent, making relief payments to illegal beneficiaries and rigging lucrative tenders (Ndegwa 2020).

Beyond the challenges of equitable access to Universal Health Coverage, other issues emerged with the response to COVID-19. Governments adopted measures in the form of directives that would later be formalised and used as weapons to violate the human rights of their citizens with impunity. Policymakers rushed to "copy and paste" the processes and

implementation of emergency public health legislation from other parts of the world without proper scrutiny of their financial implications for African countries (Human Rights Watch 2021). This promoted punitive and dictatorial approaches in the way COVID-19 restrictions were implemented that would later affect resources for the health sector (Kurlantzick 2020).

There was also limited research when the pandemic broke out. As of now, Africans have authored only 3 percent of COVID-19 research due to limited financing (BMJ 2021). Furthermore, even when the WHO announced the first six countries chosen to receive the tools needed to produce messenger RNA vaccines in Africa—Egypt, Kenya, Nigeria, Senegal, South Africa and Tunisia—financing such projects still remains a challenge. While some progress has been made in this area, the fruits of such investments are yet to be realised (WHO n.d.).

3. Lessons from best practice

However, in making this scorecard, it is important to note that the right to health is achieved progressively (Torres 2002). "Fifteen per cent of an elephant is not the same as 15 percent of a chicken"—thus different countries operate on different budgets (Wildavsky 1986). Compared to developed countries that spend up to US$4,000 per capita on health (Richardson et al. 2020), African countries' budgets can only stretch as far as US$8 to US$129 (Micah et al. 2021). While there are many reasons for this, the key factors are low GDP and meagre tax collection bases, with each country's differing national priorities vying for a share (Micah et al. 2021). Therefore, it is perhaps more realistic to ask not why they have failed to meet the Abuja Declaration target but rather how much progress each country has made over time and whether such progress has made any significant impact. Are the citizens any healthier? How can it be made better?

The two countries—Ethiopia and Rwanda—which have hit the 15 per cent public health spending target they signed up to in Abuja (Gatome-Munyua and Olalere 2020) have achieved high levels of population coverage through social protection systems that guarantee access to healthcare services. Rwanda achieved this mainly by providing health insurance to the poor in the informal sector through its community-based health insurance, which reduces the financial burden of accessing healthcare (Chemouni 2018). In Ethiopia, the government has made significant investments in the public health sector and increasingly decentralised management of its public health system to the Regional Health Bureau levels that have led to

improvements in health outcomes (Privacy Shield 2022). This has been achieved in both countries because of deliberate political will by those in positions of leadership.

The continent could also learn from the likes of Algeria, Botswana, Lesotho, Kenya, Morocco, Senegal and South Africa, who have increased fiscal space by improving tax collection capacity (OECD 2021). Fiscal space can be defined as "room in a government's budget that allows it to provide resources for a desired purpose without jeopardising the sustainability of its financial position or the stability of the economy" (IMF 2005/2006).

Moreover, Gabon, Ghana and Nigeria have also earmarked allocations to the health sector from government revenue (Barasa et al. 2021). Tanzania and Uganda have implemented reforms to improve resource flows to health facilities and have also improved use of resources. In Uganda, for example, the government has introduced public-private partnership to improve resource mobilisation, coordination and utilisation (Okech 2014). It has also abolished user fees to improve access to health services and efficiency, given autonomy to the National Medical Stores to procure, store and distribute essential medicines and health supplies to public health facilities across the country, and decentralised responsibility for delivering health services to local authorities (Okech 2014). Meanwhile, "decentralisation policy in Tanzania has facilitated the formation of local health governance structures to ensure greater participation of communities in the management of health services" (Kessy 2014).

Governments should make healthcare more available, accessible and affordable. In times of public health emergencies such as pandemics and epidemics, Africa needs cheaper testing kits to enable ordinary people to test frequently (Amukele and Barbhuiya 2022). As governments try to bounce back from COVID-19, they could take South Africa (Pocius 2022) and Uganda's (Athumani 2020a) examples of either cost-sharing with pharmaceutical companies to produce more free testing kits for the masses or lowering costs associated with testing. In these cases, the government supports pharmaceutical companies in research and production of medicines and medical equipment, which reduces the cost of medical fees paid by patients.

Involving individual and group participation in decision-making processes on the pandemic will encourage community engagement in government initiatives and also enable responsive communities (Gilmore et al. 2020). Encouraging public participation in decision-making regarding projects that impact society facilitates fair, equitable, and sustainable outcomes. This in turn allows proper recovery and return to normal.

4. Way forward

Much as the masses are pushing for and celebrating the return to normal, these issues persist and it may take the continent longer to fully recover from the effects of the pandemic. As we have seen, low government spending on healthcare hurts citizens the most and results in high out-of-pocket spending and an inequitable health system that only guarantees access to those who are able to pay.

There have been challenges which we must now confront. The reality is that reaching spending targets is less important than ensuring health systems are adequately resourced and that those resources are used optimally. Increased prioritisation of the health sector and increased health spending are the most feasible approaches to increasing resources for health and thus attain access to universal health coverage.

While Universal Health Coverage is an ambitious Sustainable Development Goal for health services, COVID-19 made us realise that it is the way to go to be better prepared for future pandemics (Ranabhat et al. 2021). As such, there should be a push for this in order to guarantee the future for most Africans as a "stable, equitable, prosperous and peaceful society and economy is only possible when no one is left behind".

Still, with more funding, African governments should also build resilient healthcare systems with more focus on primary healthcare (Gebremeskel et al. 2021). This will enable health actors, institutions and populations to adapt, access and transform their capacities to prepare for and effectively respond to health system shocks and disturbances.

It is true that the right to health is realised progressively but it is high time for our politicians to honour the Abuja Declaration pledge to better prepare the continent for future eventualities (Witter 2021). Even when the target is not met, at least there should be deliberate steps to increase healthcare financing. This will also guarantee health workers decent working conditions and improve healthcare services.

The pandemic exposed Africa's lack of control. Consequently, governments resorted to blame games and pointing fingers instead of taking responsibility and providing solutions. This can be countered in future by being better prepared. In "The End of Epidemics", epidemiologist Jonathan Quick argues that it is up to all of us to hold governments to account: "[O]ne of the most powerful human needs is to feel we have some sense of control over our environment. Control includes the ability to explain why things happen. And pointing fingers at an easy scapegoat, such as the government, can

sometimes provide the answers we need to regain control. More important is to hold those in power to account through social activism" (Quick 2018).

For now, whether Africa should celebrate returning to normal or not depends on how its governments address these challenges and plan for the future—mostly by increasing healthcare financing.

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Human rights preparedness and protracted ongoing emergencies

Visalaakshi Annamalai*

Abstract: *The terms "emergency" and "refugee" often conjure up images of short-term crises quickly resolved by one-off aid efforts and people who will be able to return home at some stage in the near future. However, many emergencies around the world continue for decades and those fleeing them struggle to exist in conditions totally unsuited for the long haul. In Asia Pacific alone, Afghanistan, Tibet and Sri Lanka are all suffering ongoing long-term emergencies with tens of thousands of citizens bringing up new generations in exile: many are denied basic human rights such as citizenship, education and the ability to make a living in their host countries, not to mention the steady erosion of their cultures and traditions. With economic crashes and climate change amongst the many reasons people may flee their countries of origin in order to survive, this article recommends that the global community broadens its definition of refugees and imaginatively redesigns its approach to human rights preparedness in face of ever-increasing movement of peoples migrating from varied and complex long-term emergencies.*

Key words: *long-term emergencies; refugees; economic refugees; climate change; Afghanistan; Tibet; Sri Lanka*

1. Introduction

Every emergency is different, bringing with it new challenges and hardships. Emergencies include pandemics, natural disasters, conflict, wars, economic crises and many more. As such situations manifest, humankind has addressed human rights-related issues time and again and we learn lessons from the past to prepare better for the future. What is sometimes overlooked in preparing for emergencies is that they need not always be short-lived. For example, a crisis from a natural disaster ends when the mitigation efforts and reconstruction of infrastructure ends, and the pre-disaster situation is restored. On the other hand, in situations of war and conflict, when there is displacement of peoples and human

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rights violations, the emergency lasts until a status quo is reached and violence ceases. However, we know that war and conflict are not short-term emergencies and tend to have a spiralling impact on any affected population, sometimes ongoing for generations.

Human rights preparedness must play an increasingly bold and reflective role in promoting a rights-based approach to all emergencies, especially emergencies that cause movement and displacement, keeping in mind that emergencies can seem never-ending, and/or their effects lingering. It is also essential to note that the current definition of refugees excludes many displaced persons whose human rights are denied long-term. To explain further, the definition of refugee in the 1951 Convention Relating to the Status of Refugees refers to someone who is unable to or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (UNHCR 1951, Article 1). This definition is restrictive and narrow with growing forced displacement due to economic crisis and climate change. The Convention principle of ***non-refoulement*** that bars the return of refugees with a well-founded fear of being persecuted to places where their lives, livelihood and freedom will be threatened fails someone who has fled due to climate or economic reasons despite these also being sometimes life and death situations. Even the common understanding of what it means to be a refugee must change to ensure protection reaches all the forcibly displaced. This piece dives deep into how humankind can protect, respect and fulfil human rights in prolonged emergencies and imagines how better we can be prepared to meet such challenges.

2. Prolonged effects of emergencies

Each emergency requires coordinated and cooperative implementation of specifically tailored strategies in order to utilise available resources to meet the urgent needs of those affected. Emergency plans are living documents undergoing constant revision based on changing circumstances. Such plans include research, writing, dissemination, testing, and updating (Alexander 2015). Urgent human rights that must be addressed include the right to food, shelter and physical safety. However, since some emergencies have long-term effects, many human rights such as those to education, livelihood and freedom of movement are restricted. Rapid response support is often unsustainable longer term and sometimes stops at one-time aid. This kind of support is suitable for short-term emergencies such as disasters or public health emergencies where the crisis eases or passes relatively quickly. However, this one-time aid may not satisfy a group of refugees living in camps for several years or those living in conflict zones. In these cases, it is difficult to say when the emergency will end and the

affected population will be able to return to a pre-emergency situation. While human rights preparedness addresses immediate needs, it frequently overlooks long-term needs such as employment or higher education. This is also seldom addressed in international instruments.

Managing migration and displacement of people, for instance, has evolved beyond the purpose for which relevant international instruments were created. For example, the 1951 Refugee Convention provides protection to asylum seekers who satisfy its requirements. Recognition as a refugee becomes a necessity for many who cross borders due to war and persecution to legally claim rights. Migration management at borders where time has tested ways to allow the flow of people who do not count as Convention refugees, is a global challenge. War and persecution are not the only circumstances forcing people to flee their homelands yet they are the only legal reasons to claim asylum in many countries. For example, economic desperation is often ignored and unrecognised, yet sometimes it is also a matter of life and death (Pahnke 2022).

The 1951 Refugee Convention is a creature of its time and circumstances. Perhaps now is the time to make it more inclusive, keeping in mind that in many cases refugee status may not be temporary. Economic drivers, climate-related displacement and movement growing by the year provide all the more reason to do so. Moreover, borders are man-made and ordinary people in desperate circumstances rightly refuse to understand the complexities of borders when their lives are at stake. Is it fair and just that someone with all the resources at their disposal decides what happens to those who have nothing?

We must prepare for prolonged emergencies because the world has witnessed so many in the first two decades of this millennium alone. We can no longer be in denial of what is happening in places like Afghanistan, Sri Lanka, regions with border disputes, and climate emergencies. There have been different causes and consequences of emergencies in the region, and these include war, conflict, natural and man-made disasters and climate change. In Asia and the Pacific alone, the number of displaced and stateless people reached 11.3m at the end of 2021 (UNESCAP 2022). Host countries continue to need support, considering that most hosts in the region are also developing countries themselves struggling to meet their own development goals. In order to understand the need for long-term human rights preparedness, this paper will now examine the reality of emergencies which have lasted for a considerable length of time and are ongoing.

Afghanistan continues to be a country of concern in the Asia Pacific region in terms of human rights and humanitarian issues. The sudden though planned withdrawal of US troops from Afghanistan after nearly 20 years of conflict was followed by the swift Taliban takeover in mid-

August 2021. In the two to three decades of conflict, the country has witnessed high levels of human rights violations with little human rights preparedness. Despite best efforts, abuses were high throughout the period, and even now reports suggest drastic violations and absence of human rights preparedness. Afghanistan was one of the top countries of origin for refugees in the region in 2021 and this has been the case for some time.[1] Beyond what is accounted for, there will be irregular migration and displacement both internally and across borders. The end to this emergency is unknown, keeping the lives and livelihoods of thousands at stake, with aid and assistance out of reach for many.

Meanwhile in Sri Lanka, decades of civil war followed by temporary peace and economic crisis have led to further instability. Prolonged conflict, displacement, loss of lives and unaddressed war grievances have heightened political and economic tensions. Sri Lanka is a small Indian Ocean Island nation of approximately 22m people, which became a republic in 1972. Almost three decades of civil war between the government and the minority Tamil population officially ended in 2009. Notwithstanding the prolonged conflict and political instability, the country began to recover between 2009 and 2019, making some progress in various sectors. Tourism, for example, thrived: in 2018 alone more than 2m tourists visited Sri Lanka. Economic development was at the centre of policy-making during this period, with several major infrastructure projects commissioned. However, despite these efforts, many projects failed to produce expected returns on investment. Political volatility and economic difficulties have sparked widespread protest while the crisis in what we call a democracy has intensified in the post-civil war years due to government mismanagement. With the position of minorities precarious and the prospect of transitional justice for war atrocities still far away, this is one of the worst economic crises the country has seen in almost 75 years of independence. A substantial population is waiting to return to Sri Lanka post-war, but that has not happened. The current economic problems are driving more migration; thus, the emergency has remained ongoing for decades, displacing and impacting thousands of people and with no end in sight.

Myanmar is another country from which many have fled due to prolonged unrest. The southeast Asian state previously known as Burma has a population of 54m and has suffered decades of ethnic strife, only emerging from almost half a century of military rule in 2011. However, on February 21, 2001, the country announced a state of emergency following a military coup against Aung San Suu Kyi's democratically elected government. Adding to the ongoing issues surrounding the Rohingyas, this coup and continued human rights violations have resulted in thousands of people fleeing their homes. Many Burmese refugees live in camps in Thailand, Bangladesh and India, where they have been confined for more

1 Refugees by Country 2022, Link (last visited 8 November 2022).

than three decades. Again, this situation has been ongoing for years with many refugees born and brought up in camps, knowing nothing of the world beyond them. What once started as an emergency continues to date, and insufficient long-term preparedness has resulted in these people being denied their basic human rights as they are fully dependent on outside assistance for survival (Burma Link 2022).

The final example is that of Tibet, where the Chinese invasion and subsequent takeover more than 70 years ago provoked minimal response from the international community. Previously, the mountainous Himalayan country, which shares land borders with China in the north and India, Nepal, Myanmar and Bhutan to the south, was an independent Buddhist nation with very little contact with the rest of the world. In 1950, the year after the founding of the People's Republic of China, the Chinese People's Liberation Army marched into Tibet, setting in motion the forcible occupation, followed by years of turmoil under the 17 Point Agreement for Peaceful Liberation, imposed by China on Tibet. Nine years of resistance culminated in a failed uprising on March 10, 1959. The Chinese brutally suppressed protests, claiming tens of thousands of Tibetan lives. This was also followed by a complete overthrow of the Tibetan Government. Tibet's political and spiritual leader, the 14th Dalai Lama, and almost 100,000 Tibetans were forced to flee into exile where they have remained ever since. The circumstances surrounding the Chinese takeover of Tibet also started as an emergency which in many ways is yet to end with Tibetans across the globe looking forward to an eventual return. While crises may arise suddenly as a result of armed incursions, no one can predict when or even if the after-effects will subside and refugees might have the chance to return home. Tibet teaches us that the process can stretch out over lifetimes, thus emergencies and emergency response need not always be short-lived.

While many of us take freedom of movement and livelihood opportunities for granted, others have no choice but to be confined to certain countries and indeed refugee camps. For some, life in a refugee camp, with no prospect of work or education, is their only reality. Many camps are usually built as temporary short-term solutions to address the immediate need for shelter and are ill-suited to people spending their entire lives there. In addition, while some countries recognise UN Convention refugees, others do not, leaving identities of displaced people in question and making their access to rights in the countries to which they have fled even more difficult.

Apart from movement and displacement due to war and conflict emergencies, there is also movement due to natural disasters and climate change emergencies. The latter has generally been short-lived; however, this will not remain the case in the future as rising sea levels cause permanent land loss. It is widely assumed that small island countries like Tuvalu, Palau and some islands of Vanuatu will be entirely submerged,

costing these countries billions of US dollars in damages (Brook 2021; Esswein and Zernack 2020). Economic costs are quantifiable: loss of identity, culture and tradition are immeasurable, again threatening a wide range of socio-economic rights that fall within the realm of human rights.

3. Why prepare for long-term emergencies?

As the aforementioned examples reflect, it is clear that emergencies can sometimes take a long time to cease, and therefore sustained human rights preparedness is essential. The right to movement, education and work are as fundamental as the right to life itself and the situation of people in prolonged emergencies attests to the fact that they do not always enjoy these rights.

How long can Tibetan communities outside Tibet hold on to identities, culture, language and way of life as they survive in an asylum state? Several countries offer education and asylum to Tibetans across the world but their identities as Tibetan nationals are in limbo unless they acquire a legal status in another country. Moreover, there are countries where some of these communities do not even have access to many basic rights like education and work. These Tibetans are forced to accept what comes their way while hoping against hope to return to Tibet in better circumstances.

Displaced Sri Lankans and Burmese face a similar uncertain future, and there are many more examples around the world. Extended emergencies happen, and uncertainties can linger for longer than one can imagine. When return seems impossible, resettling communities, preserving culture, language and tradition are easier said than done. Somewhere, the essence is lost: that is the price the world pays for silence, inaction, power politics and lack of preparedness. What is even more difficult is to guarantee human rights to the affected population.

The fact remains that prolonged emergencies are not new and we know that rights of displaced people, especially with precarious identities under law are not protected and guaranteed, more so when the protector state is in peril due to emergency. We as the international community must come to their aid: we are talking about thousands of children who might miss going to school, thousands of people left without employment opportunities, and thousands with no alternative way to earn their living securely. This is why we need long-term human rights preparedness with foresight extending two to three decades or more if the situation demands.

4. The way forward

Forced movement of peoples due to various social and economic drivers is an unavoidable reality where more thought must be given to safe and orderly migration. Work is needed on migration governance in order to

eliminate restrictions, making rights and resources accessible to all. The United Nations is an existing international forum which could call for action. We are seeing development in some areas like the Global Compact for Migration which seeks to establish guidelines for safe, orderly, and humane flow of people throughout the world. Nonetheless, most UN actions such as the Compact have their limitations, largely due to lack of consensus among countries, which could prove a barrier to expanding the definition of refugees under the Convention. However, the fact that some countries are attempting to widen that definition and to address the problem is an indication that the system at large needs substantial fundamental overhaul in order to facilitate bigger changes in global movement. Human rights preparedness must be viewed in terms of emergency preparedness and long-term sustainability in cases of prolonged emergencies. While expanding the definition of refugees is one side of the argument, the world should also move towards thinking about support that is beyond just one-time aid to make the process worthwhile and cost-effective for the host country as well as the displaced population.

Not every country in the world is ready to share the burden of providing education and employment to refugees or asylum seekers in camps. The international community also may not have what it takes to make sure these rights reach every person on the planet. What then is a solution to long-lasting emergencies? We perhaps need to revisit emergency preparedness and radically overhaul response mechanisms and make it more sustainable in order to let communities thrive even when external support is unplugged. Rights may reach the affected population quickly this way rather than wait for political will to support expanding the definition and rights of refugees perhaps? Sheltering and protecting refugees, asylum seekers and those who have fled emergency situations is a duty we owe to each other. However, we cannot claim to be championing human rights while ignoring the living conditions of two to three generations of people in camps and temporary shelters fully dependent on external aid and support. Human rights are far away from reaching this population, given that basic rights to livelihood, education, and movement are restricted. When the world knows that there are long-term emergencies whose impact will last for many years, the international community should acknowledge and support the development of the hosting countries as opposed to merely fostering a survival/dependency model. This reinforces the argument that, given the opportunity, refugees or asylum seekers can use their skills and talents to contribute both economically and culturally to the development of their host countries. For example, in small scale, in countries like India, several organisations offer courses and vocational training to refugees to support their economic self-sufficiency Rodriguez, Kallas and Zijthoff 2019; Dagar 2022). There are similar support mechanisms available to refugees in Japan, Malaysia and South Korea. Despite a slow change in refugee rights dynamics, many remain trapped in camps, their economic potential untapped. While most of Asia and the Pacific have yet to fully

embrace the 1951 Refugee Convention, fast-moving global political, economic and social structures mean it is already losing relevance. It is time to redesign existing frameworks and welcome much needed changes to incorporate the needs of millions of displaced in contexts of prolonged emergencies.

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Ana Funa. "Hydropower plants in the Western Balkans: Protecting or destroying nature?" (2022) 6 *Global Campus Human Rights Journal* 223-234
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Hydropower plants in the Western Balkans: Protecting or destroying nature?

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Abstract: *Urgent action is needed to save humanity from the consequences of global warming. The energy sector, especially coal-fired power plants in the Western Balkans, are amongst the worst polluters and contributors to CO2 emissions in Europe, therefore the switch to renewables is essential. Hydropower was seen as an attractive replacement with 3,000 hydropower plants (HPPs) planned between Slovenia and Turkey. However, with most of these earmarked for protected natural areas, the resulting damage to the environment, especially to fragile river ecosystems and dependent biodiversity, is hugely disproportionate to investment, particularly given HPPs' negligible contribution to electricity production and lack of benefits for local communities. Activists and scientists across the Balkans have succeeded to some extent in highlighting the negative impact of HPPs. However, governments in the region must do more to diversify into alternative renewable energy sources and to protect nature for future generations.*

Keywords: *small hydropower plants; Western Balkans; environmental rights; renewable energy*

1. Introduction

Energy production from renewable sources (water, wind and sun) is considered one of the best ways to reduce the effects of global warming, given that electricity production from coal-fired power plants is one of the largest contributors to CO2 emissions in Europe. With the current energy crisis and more visible effects of global warming, the shift to renewable energy is even more crucial. However, renewable energy development has raised questions regarding sufficient protection of environmental rights. This article focuses on the impact of HPPs, especially in the Balkan region which has seen a boom in small hydropower plant (SHPP) construction

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in the past decade. It analyses numerous studies and reports of relevant international institutions, such as the European Commission and the Standing Committee for the Bern Convention on the Conservation of European Wildlife and Natural Habitats. Furthermore, it reviews the numerous activist undertakings to protect the Balkan wild rivers and discusses viable environmentally friendly alternatives to hydropower.

2. Global warming – preventive measures must be taken

Growth and development of the energy industry, burning fossil fuels, cutting down forests and farming livestock are increasingly raising Earth's temperature, adding enormous amounts of greenhouse gases to those already occurring naturally (Europe Commission n.d.). The 2011-2020 decade was the hottest on record, with average global temperatures 1.1°C above pre-industrial levels (before 1750) in 2019. Since a 2°C rise is associated with serious negative impacts on the natural environment and human health and wellbeing, including a much higher risk that dangerous and possibly catastrophic changes in the global environment will occur, the international community has recognised the need to pursue efforts to limit it to 1.5°C (European Commission n.d.).

The European Green Deal has set the target of transforming the European Union (EU) to climate-neutrality by 2050, ensuring an economy with net-zero greenhouse gas emissions. In order to achieve this ambitious goal, the EU aims to reduce net greenhouse gas emissions by at least 55 percent by 2030, compared to 1990 levels (Europe Commission n.d.). As one of the principles for clean energy transition, the European Green Deal envisages developing a power sector based largely on renewable sources (European Commission n.d.).

Greenhouse gas emissions are directly responsible for climate change and global warming and thus extremely harmful to the environment and human health (Pavlovič et al 2022, 2). CO2 produced by human activities is the largest contributor to global warming. By 2020, its concentration in the atmosphere had risen to 48 percent above its pre-industrial level (before 1750) (European Commission n.d.). The energy sector is one of the largest polluters and accounts for more than 75 percent of the EU's greenhouse gas emissions (European Commission n.d.).

Burning coal, oil and gases are amongst the largest contributors to greenhouse gas emissions. Power plants and terminal power plants emitted 24 percent of total gas pollution and 29 percent of CO2 emissions in 2015 (Pavlovič et al 2022, 2). Terminal (coal-fired) power plants in the

Western Balkans are considered some of the biggest polluters in Europe, with emissions 20 times more CO2 and 16 times more particulate matter than the average European power plant (Pavlovič et al 2022, 3).

3. Hydropower - a nature-friendly resource?

For many years, water has been considered a viable renewable energy source. However, construction and functioning of HPPs has brought controversy. The Western Balkans is home to some of the last wild rivers in Europe, full of diverse and protected flora and fauna. Around 3,000 HPPs are currently planned between Slovenia and Turkey (RiverWatch n.d.).

Electricity production from SHPPs in the Western Balkans began in the mid-1990s but increased dramatically when the EU set renewable energy production targets for 2010 and started financing such projects. In 2009-2020, 490 SHPPs were built in Western Balkans countries (EuroNatur and RiverWatch 2022). Moreover, 2018 data shows that as much as 70 percent of EU renewable energy funding has been used for SHPP construction in the region (Pavlovič et al. 2022, 4).

SHPP refers to hydroelectric power plants below 10MW installed capacity. To enable these to function, water is diverted from a river at an intake weir upstream and channelled through a pipe to the powerhouse containing the turbines downstream. The height difference is used to induce kinetic energy in the water which is then transformed into electricity. After passing through the powerhouse, a smaller amount of used water, just enough to ensure the biological minimum, is returned to the section of river in between the powerhouse and intake weir (Vejnovic 2017, 8).

Construction of SHPPs has proven a very invasive process for nature, firstly through interference with the terrain by cutting trees and permanent ground damage where the pipes pass through, and further by endangering water supply for local communities as well as the biodiversity and ecosystems dependent on natural river flow. River flow reduction decreases oxygen levels in the water crucial for river flora and fauna. Insufficient riverbed water levels significantly lower the chances of survival of the ***Salmonidae*** fish family, which swim upstream to spawn, and other dependent species. Moreover, lack of water inhibits the functioning of fish farms which use the natural river flow to supply fish pools with necessary oxygen. The projects envisage construction of fish passes which supposedly mitigate impact of weirs and intakes on fish migration (Vejnovic 2017, 9-10). However, in practice these are not functional, due to the shortage of water needed

for fish to migrate upstream or improper construction[1]. Furthermore, the insufficient control over the functioning of the SHPPs built in the National Park Pelister[2] caused deterioration of amphibian habitats due to lack of providing ecological minimum of water especially in the spring period when it is their main reproductive season (National Park Pelister et al. 2020, 122).

The impact of HPP construction in the Western Balkans and surrounding controversy has been the focus of much research (Balkan Rivers n.d.). A 2015 study found that in the Western Balkan countries, 535 projects were earmarked for strictly protected areas while a further 282 were scheduled to be built inside areas with weaker protection status, all exploiting and endangering nature reserves rich in flora and fauna (Schwarz 2015, 10). In 2017, Bankwatch investigated the effects of EU-financed SHPPs by examining eight sites in the region; two in Albania, one in Croatia and five in North Macedonia, all located in protected or ecologically sensitive areas (Vejnovic 2017). The report concluded that only the Croatian plant had undertaken appropriate biodiversity impact assessment, however, all the plants inspected required increased impact monitoring and restoration measures (Vejnovic 2017).

Furthermore, most HPPs were labelled as small even though they significantly impacted a sizable area of land and had not undergone full environmental impact assessment (EIA). Even in the cases where an EIA is done, it is rarely conducted in accordance with the EU EIA Directive and evaluation of cumulative impact is often missing. According to the report, the countries used an approach allowed by the EU EIA Directive, enabling national authorities to decide whether an EIA is necessary, depending on project classification, even though some of the projects were located within protected areas (for example the Legarica HPP in Albania) (Vejnovic 2017). Challenges obtaining the studies for the HPPs subject to the report were also noted and the research revealed significant violations of national and international financial institutions' standards (Vejnovic 2017). For instance, in Albania, the client redirected water from his project to another SHPP further downstream, resulting in 4.3km of riverbed drying up, but these details were omitted from plans approved by the bank (Vejnovic 2017).

1 For illustration, on the Brajcinska river, North Macedonia (National Park Pelister) intake, close examination shows the fish pass upstream entrance is inadequate, while the upstream exit is blocked, while on the Kriva Kobila river intake (North Macedonia), the fish pass upstream entrance is inappropriate, and the upstream exit is again blocked (Vejnovic, 2017).

2 Four SHPPs have been built in the National park "Pelister", North Macedonia – two on the river Shemnica and two on Brajcinska river. The SHPPs have been built without consultation with the National Park Pelister (National Park Pelister et al. 2020, 43).

In 2021, the State Audit Office of North Macedonia published a report on "Exploitation of Water Resources in Electricity Production for the period of 2012-2021": it disclosed that by the end of 2020, 117 HPPs had been constructed in the state, eight of which are large HPPs, 13 SHPPs which are not subsidised electricity producers and 96 subsidised electricity producers. According to the report, public consultations for 61 percent of SHPPs awarded concessions to produce energy were published prior to adoption of strategic documents which would have ensured higher environmental protection standards. Moreover, environmental protection approval was completed without proper estimation of potential environmental impact, meaning almost certain damage to river ecosystems and natural biodiversity. The report states that the procedures for granting concessions for SHPP construction and water use were also carried out without EIA. Some concessions were awarded based on outdated hydrological data (State Audit Office of North Macedonia 2021a, 5). The State Audit also found that weaknesses in permit issuing procedure and inefficient control by the competent institutions enabled use of water in certain periods without a proper permit (State Audit Office of North Macedonia 2021a, 5).

According to the report, those awarded concessions are guaranteed purchase of the entire production of electricity at preferential tariffs set by law, thus in the period of 2012-2021, they were paid 41m euros more than the market value of the electricity produced, which was just 4 percent of total domestic electricity production in 2020 (State Audit Office of North Macedonia 2021a, 5). SHPP electricity production in other Western Balkan countries is also insignificant and disproportionate to the investment in their construction and permanent damage to nature. In 2021, SHPPs generated 2.5 percent of electricity in Bosnia and Herzegovina (State Electricity Regulatory Commission 2021, 38), 4.1 percent in Montenegro and a mere 0.1 percent in Serbia (Elektroprivreda Srbije n.d.).

SHPP functioning is financed through feed-in tariffs: thus, citizens subsidise state purchase of SHPP-produced electricity through their electricity bills. In the case of North Macedonia, 6 percent of every electricity bill pays for energy produced by subsidised producers (Institute for Communication Studies n.d.). Yet communities do not benefit by getting their electricity from local SHPPs.

The European Commission has also acknowledged concerns about SHPPs in recent reports. The Commission praised Serbia's new ban on building SHPPs in protected areas but felt this should be widened to include procedure on appropriate assessment of the ecological network (European

Commission 2022f). The Commission also noted that the Montenegro government withdrew concessions for several SHPPs, however continued with plans for larger ones. The Commission emphasised and reiterated its findings from the 2021 EU Report that is essential that the development of new renewable energy projects, particularly on hydropower, are carried out in conformity with the EU acquis on concessions, State aid and the environment. and to ensure public participation and consultation and guarantee high quality EIA reports that include cumulative effects on nature and biodiversity (European Commission 2021c and European Commission 2022d).

In its 2021 and 2022 reports on Albania, the Commission stated that SHPPs had significant negative impact on local biodiversity and communities, notably in protected areas where around 20 percent of more than 500 SHPPs are located or planned. It also noted that HPPs have generated much debate, protests and court action, casting doubts on legality of the concession process and on quality and validity of EIAs. The Commission highlighted that no strategic environmental assessments (SEAs) have been conducted despite cumulative effects on river basins. It stressed that hydropower investment should strictly comply with national and international environmental, nature protection and water management standards, involve proper public participation and consultations, and be subject of SEA and EIA reports that include high quality assessments of the cumulative impact on nature and biodiversity. The Commission found that SEAs are lacking despite the high number of existing and planned hydropower installations in all river basins, emphasising that they should be conducted before any licence is granted. Inspection and monitoring of the minimum ecological flow from current HPPs is also lacking. The Commission called on Albania to take immediate measures to review and improve SEAs and EIAs on existing and planned projects, plans and programmes and to continue diversifying electricity production away from hydropower towards solar and wind resources (European Commission 2021a and European Commission 2022b). It further noted that the HPP Skavica is expected to have a large environmental and socio-economic impact on the area and impact the Balkan lynx populations that use this corridor for migration between Albania and North Macedonia. It was called upon the authorities to bring adequate attention to the project design and EIA quality to minimise these impacts, as well as to implement the obligatory planting and restoration of road slopes, having in consideration that no wildlife crossing has been planned and implemented in Albania (European Commission 2022b).

In the case of North Macedonia, the Commission noted that energy law is moderately aligned with the Renewables Energy Directive, and it again stressed that hydropower investment must comply with the relevant environmental EU acquis (European Commission 2022e).

Meanwhile, in its 2021 recommendations, the Standing Committee for the Bern Convention on the Conservation of European Wildlife and Natural Habitats called on the North Macedonia government to suspend and cancel approved concessions and those planned for construction, to ban HPPs in national parks, protected areas and implement the new international standards on HPP prohibition in World Heritage Sites. The Committee also called for due diligence for protected areas, proposed protected areas and corridors between these as well as the prevention of excessive water withdrawal from streams within or impacting upon Mavrovo National Park, other protected areas, World Heritage Sites and Emerald candidate areas (Council of Europe Standing Committee 2021).

4. Protecting nature through activism

Neither leading scientists nor local communities in the Western Balkans have welcomed HPPs. International campaigns, such as Save the Blue Heart of Europe and Vjosa National Park Now, aim to raise awareness of their negative impact, stop construction and protect the last wild rivers in Europe. Many studies and short films document local community action in the region, and in the case of the Vjosa river in Albania, explain the risk of damage to this biodiversity hotspot. A total of 113 endangered fish species inhabit the rivers between Slovenia and Greece – more than in any other region in Europe (Weiss et al 2018), including the Prespa trout endemic to the Balkans.

In all the Western Balkan countries, local people and non-governmental organisations have launched petitions and staged massive protests and blockades which have gained wide support. In Serbia, various demonstrations have been staged over the past three years regarding the Stara Planina Park where, despite its protected status, the authorities granted permission for the construction of 60 SHPPs. More than 40 environmental protection groups participated in these protests. In August 2020, activists even broke through a pipe set up during SHPP construction on the river Rakita (Balkan Rivers 2020). Protests also took place in North Macedonia after the government planned to build dams and HPPs in the National Park Mavrovo, home of the Balkan lynx, one of Europe's most endangered mammals. Recent reports noted that only 10 lynxes were seen in Kosovo, Albania and North Macedonia over a four-month period

(Ranocchiari 2022). Despite this, four SHPPs have been built in the park so far, another four in the National Park Pelister and the state has issued permits for others. The "Brave Women of Kruščica" in Bosnia and Herzegovina defied police intimidation to block a bridge, the only route suitable for transporting heavy machinery to the construction site, for more than 500 days, to prevent a SHPP being built on the river Kruščica, a protected area which provides drinking water for the local communities.

These initiatives have been partially successful. Serbian activists succeeded in stopping construction of 57 HPPs and managed to convince the authorities of the importance of saving the environment. In 2022 the Serbian government initiated a procedure to establish a National Park Stara Planina, giving the region better protection and preserving the wild mountain rivers. Through grassroots activism and using international legal mechanisms by submitting a complaint to the Bern Convention on the Conservation of European Wildlife and Natural Habitats, activists managed to cut off the financial lifeline for the hydropower projects, prevent construction of two dams in the National Park Mavrovo and protect the Balkan lynx's habitat to some degree and campaign leader Colovic Lesoska received the 2019 Goldman Environmental Prize (Goldman Prize n.d.). However, in 2022, the Government of North Macedonia extended the deadline for some HPP permits when construction did not begin on time. The "Brave Women of Kruščica" were awarded the 2019 EuroNatur Award and the 2021 Goldman Environmental Prize (EuroNatur 2019; Goldman Prize n.d.). Moreover, in July 2022, the Parliament of Federation of Bosnia and Herzegovina responded positively to public opinion by adopting legislative changes forbidding SHPP construction on Federation territory (Al Jazeera Balkans 2022). The Vjosa river campaign has also borne fruit when in June 2022 the Albanian government signed a memorandum establishing a Vjosa Wild River National Park which will protect the entire river network from the Greek border to the Adriatic Sea, including its free-flowing tributaries. More is needed to establish the National Park, but this memorandum is the first and crucial step (Balkan Rivers 2022).

The wide support of citizens, NGOs, scientists and relevant international institutions and organisations have significantly influenced state politics regarding further construction of the SHPPs in the Western Balkans.

5. Is there a better alternative?

Despite the aforementioned victories, the impact and irreversible damage to nature caused by existing HPPs is an ongoing concern. Furthermore, many concessions have already been awarded, some without full EIA,

while for others the deadlines have even been extended. Further damage to nature and ecosystems dependent on natural river flows remains a real risk. The European Commission and the Standing Committee for the Bern Convention findings are just another confirmation of the negative impact and the issues relating to Western Balkans HPPs. There is an undoubted need to transform the energy sector by producing electricity from renewable sources. However, preserving nature and fragile ecosystems must also be a priority, especially as the energy sector is being transformed primarily to prevent global warming, thus protecting nature. Less invasive energy sources, for example, wind and sun could be good alternatives. The Western Balkans Investment Framework is financing construction of three photovoltaic power plants. One in Albania is a floating solar photovoltaic power plant at a HPP reservoir, while those in North Macedonia will be installed on an exhausted coal mines site, adjacent to the coal-fired thermal power plant (WBIF 2022). One of the North Macedonian installations has been operational since April 2022 (21Tv 2022). Nevertheless, caution is needed in their implementation. As ground-mounted photovoltaics and concentrating solar-thermal power installations require land, sites need to be selected, designed, and managed to minimise impact to local wildlife, wildlife habitat, and soil and water resources (Office of Energy Efficiency & Renewable Energy n.d.). A serious approach to the issuing and implementation of permits is vital, avoiding any manipulation and controversy that could lead to new damage to nature, as was the case with SHPPs.

With the impact of global warming becoming more visible every year, action to reduce CO2 emissions is vital. The EU goal of climate neutrality by 2050 is a great motivator to shift the energy sector away from fossil fuels toward renewables. However, the huge push for HPP construction in the Western Balkans has been mired in controversy; from irregularities in their financing and environmental assessment planning to their irreversible damage to nature, particularly fragile river ecosystems, endangering native flora, fauna and wildlife, their negligible contribution to electricity production and lack of benefit to local people. Grassroots activism across the whole region has helped protect some of the last wild rivers in Europe, but governments must take decisive action to save the environment by halting construction of new SHPPs and discontinuing use of existing ones. The need for transformation of the energy sector should be met by more environmentally friendly resources, because trying to combat global warming by causing irreversible damage to nature is a contradiction in terms.

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COVID-19 highlights need for feminist human rights approach to ensure socio-economic gender equality

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Abstract: *Economics and human rights have never been close friends. Human rights advocates have rarely engaged with financial systems. Economists, in turn, seldom consider human rights principles. However, COVID-19 intensified the need for mutual cooperation to safeguard the most disadvantaged, particularly women, who have suffered disproportionate negative socio-economic impact from the pandemic, which accentuated female overrepresentation in frontline health and public sector employment as well as unpaid caring responsibilities. This article examines a series of UN reports and other research which contend that inherent economic gender bias and neoliberal financial austerity policies unduly damage women's socio-economic rights. It recommends that human rights principles be combined with comprehensive feminist economic analysis in order to achieve gender equality and afford women more financial security in preparation for future crises.*

Key-words: *Human rights; economics; feminist economics; gender inequality; austerity; COVID-19*

1. Introduction

As coronavirus spread, media across the globe highlighted the incapacity of healthcare systems, citing privatisation, public budget cuts and other austerity measures as the main reasons for inability to cope with the crisis. The UN Independent Expert on debt and human rights Juan Pablo Bohoslavsky emphasises that the best response to the potential economic and social catastrophe provoked by COVID-19 is to "put finance at the service of human rights and to support the less well-off through bold financial approaches" (Bohoslavsky 2020).

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Although correct, there is a deeper concern behind the UN Independent Expert's words: Economics and human rights have never made good bedfellows. On one hand, financial reforms have rarely taken into account human rights law. On the other, engagement with fiscal affairs and economics have long been uncharted territory for human rights advocates. However, with many governments introducing neoliberal austerity policies, especially after the global 2008 financial crisis, the application of human rights standards to economic policies is becoming more widespread (Rudiger 2016).

2. Neoliberalism and austerity measures

Before analysing the progressive engagement of human rights with economic policies, I shall briefly explain the origin of neoliberalism, its connection with austerity measures and why governments introduced such measures after the 2008 financial crisis.

Neoliberalism entails a paradigm shift away from the political and economic landscape that emerged after World War II; the welfare state: the concept that the state plays a key role in protection and promotion of the economic and social wellbeing of its citizens. This usually includes at least some public provision of basic health services, education and housing, in some cases at low cost or without charge. Most welfare states rely on redistributionist or progressive taxation to fund the benefits and services they provide. Neoliberalism, on the contrary, is based on the belief that self-regulated markets are the best way to govern both the economy and social affairs (Chapman 2016, 10-11).

Most governments in industrialised democratic countries after World War II accepted the state had a responsibility to both promote economic growth and distribute the resulting benefits. The 1970s world economic recession marked the first signs of change in this approach. Many intellectuals, business, and politically conservative stakeholders saw this slump as an opportunity to lessen the welfare state and to argue for its substitution by market-based approaches (Chapman 2016, 79).

Reducing the state's role in all economic and public areas is an essential objective for neoliberalism. This purpose aligns with austerity, which aims to decrease government aid by cutting public expenditure and privatising key economic sectors among other actions. Economic crises usually favour introduction of neoliberal and austerity measures, as they provide convenient scenarios to question the efficacy of welfare states. Neoliberalists often argue that states are inefficient economic managers and welfare entitlements excessive and therefore unaffordable.

As in the 1970s, the global financial crisis that began in 2008 resulted in drastic transformation in many countries. The European Commission, the

International Monetary Fund and the European Central Bank, imposed austerity, cut social protection, and further privatised sectors. Nevertheless, not all such measures were introduced under the mandate of global governance institutions such as these. The structural and discursive power of neoliberalism served as justification for many countries and enabled the economic recession to be 'used by many Western governments as a means of further entrenching the neoliberal model' (Wills and Warwick 2016).

Chapman (2016, 100) states that the decision to respond to the financial crisis by disproportionately cutting social welfare spending was often ideologically motivated, moreover, some countries cut social spending while continuing to subsidise the same banks whose irresponsible policies caused the financial crisis. To exemplify that other approaches were possible, Chapman cites the case of Iceland. Like Spain, Ireland, and Portugal, Iceland suffered a severe banking crisis, but its government and population rejected the terms of an IMF financial rescue package, which required significant social services spending reduction. Instead, the government allowed its banks to collapse and increased investment in social protection and measures to get people back to work. Iceland also retained restrictive policies on alcohol and cigarettes, again contrary to IMF advice. As a result, Iceland did not suffer the extensive adverse impact felt by other countries under similar negative conditions and its economy has gradually recovered (Chapman 2016, 102).

After the 2008 crisis, some human rights bodies and advocates highlighted the negative impact of neoliberal austerity measures, especially in socio-economic disadvantaged populations, and emphasised the need to apply human rights standards to economic policies. In what follows, I focus on a number of recent United Nations (UN) documents that underline the necessity of a human rights-based approach to economic policymaking. This approach will help us respond better to future economic crises while considering the needs of the most vulnerable and marginalised groups.

3. Progressive human rights engagement with economic policies

First, it is important to note that international human rights law is neutral regarding economic and governmental systems or approaches that may be in place in individual states so long as human rights are respected and states are democratic. The International Covenant on Economic, Social and Cultural Rights asserts that, in order to achieve the realisation of the rights protected by the Covenant, states must undertake "all appropriate means, including particularly the adoption of legislative measures". The Committee on Economic, Social and Cultural Rights (CESCR) has explained in General Comment no. 3 that this obligation "neither requires nor precludes any particular form of government or economic system" (CESCR 1990). Thus, "the Covenant's principles cannot accurately be predicted exclusively upon a socialist, capitalist, mixed, centrally planned, laissez-faire or any other particular approach" (CESCR 1990).

However, the 2008 global financial crisis triggered a series of documents and reports from different UN bodies throwing this neutrality into question. They show how adoption and implementation of certain economic measures and/or certain political approaches might clash with realisation of economic, social and cultural rights.

For example, in May 2012, in a letter to the states party to the International Covenant on Economic, Social and Cultural Rights in the context of the economic and financial crisis, the CESCR observes the pressure on many states to embark on austerity programmes, recognising that decisions to adopt such measures are always difficult and complex. However, the Committee warns: "[U]nder the Covenant, all states [party to the Covenant] should avoid at all times taking decisions which might lead to the denial or infringement of economic, social and cultural rights" (CESCR 2012).

Austerity was usually invoked as the solution to governments' failure to effectively regulate the financial sector in the aftermath of the 2008 crisis. However, as UN bodies evidence, not only did such measures not ameliorate the financial situation but they also damaged the most vulnerable populations. A report by the Office of the UN High Commissioner for Human Rights emphasises the fact that many States had responded to the global financial crisis with austerity measures that significantly cut social sector spending: this resulted in the denial or infringement of economic, social and cultural rights, especially for populations that were already marginalised or at risk of marginalisation (OHCHR 2013).

In this regard, the reports of the UN Independent Expert on the effects of foreign debt and human rights provide an interesting corpus of analysis. For example, the 2014 and 2019 reports underline, in accordance with the aforementioned 2013 report, that austerity measures do not contribute to recovery but instead negatively impact economic growth, debt ratios and equality and routinely result in human rights violations (United Nations 2014; United Nations 2019).

The 2018 UN report on the guiding principles for human rights impact assessments for economic reform policies provides more details on the sort of economic measures that can clash with the realisation of human rights (United Nations 2018a). This report, aimed at governments, relevant UN bodies, specialised agencies, funds and programmes and other intergovernmental, asks them to consider human rights guiding principles in the formulation and implementation of economic reform policies. It notes that even if fiscal consolidation measures have varied from one country to another, there is a common group of measures that have negatively impacted enjoyment of human rights. These include, for example, cuts in public expenditure and public sector jobs, regressive tax changes, and the privatisation of public utilities and service providers.

This has affected human rights-sensitive fields, often directly diminishing enjoyment of human rights.

In the same report, the UN Independent Expert on the effects of foreign debt and human rights states that women, persons with disabilities, children in single-parent families, migrants and refugees, and other social groups at risk of marginalisation have often been disproportionately affected. In another report also published in 2018, the UN expert develops a more comprehensive discussion on how austerity impacts human rights from a gender perspective (United Nations 2018c).

4. Women particularly affected by austerity measures

The UN Independent Expert on foreign debt acknowledges in his 2018 report devoted to the impact of economic reforms and austerity measures on women's rights that such measures tend to harm women more than men (United Nations 2018c). According to the expert, the impact is different because the prevailing current economic system is based on various forms of gender discrimination. Unpaid work, mostly done by women, and occupational gender segregation in sectors asymmetrically impacted by economic crises are cited among the main reasons. In some regions, the triple jeopardy of austerity, which sees women suffer simultaneously as public-sector workers, service users and the main recipients of social security protection benefits, has specific implications in terms of care. That in turn aggravates labour market gender discrimination and occupational segregation. Cuts to social care have reduced access to many crucial services. Care sector job losses and public sector pay freezes have also affected women more severely.

Other human rights bodies highlight the detrimental effects of austerity measures on women. For example, the 2016 CESCR report on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that reducing public services and introducing or increasing user fees in areas such as childcare, preschool education, public utilities and family support services disproportionately impacts women. Thus, these measures are a backward step for gender equality.

The COVID-19 crisis replicated this pattern and many human rights bodies warned about the particular impact of this health crisis on women. For example, the UN Special Rapporteur on poverty and human rights, Professor Olivier De Shutter, in a report on COVID-19, states that women were particularly vulnerable in this emergency (United Nations 2020). Again, the causes are rooted in socio-economic facts: women are more likely to live below the international poverty line and are overrepresented in the informal economy. Moreover, women, already disproportionately burdened with caring for children, ill and/or elderly family members, were

most impacted by school closures as well as reduced access to healthcare facilities for non-COVID-19 patients.

The relationship between women and poverty was well-known before the pandemic. Now, new projections of global poverty by UN Women estimate that, should the unpredictable course of this pandemic continue, at least 388m women and girls (compared to 372m men and boys) will be living in extreme poverty in 2022 but the figure could be as high as 446m (427m for men and boys). The situation varies from region to region and although Europe is in a better economic position compared to other regions of the world, it is still a worrying issue.

For example, in May 2021, the European Parliament commissioned a case-analytical overview to examine the impact of the COVID-19 crisis on a representative sample of five European Union (EU) member states (Italy, France, Germany, Poland and Sweden) in order to inform recovery period policy recommendations and ensure that recent gender equality gains are not overridden by short-term negative effects of the crisis. The report highlights that one area, amongst others, in which women are disproportionately affected ***vis-à-vis*** men is equal access to the economy, finding greater differences in those member states which did not prioritise gender mainstreaming in the years prior to the pandemic nor account for gender differentials in the measures applied to cease its spread. Overall, women in Europe tended to be overrepresented in the pandemic frontline. This translates into higher female unemployment rates and greater likelihood of poverty for women in the EU (European Parliament 2021). In July 2022, the European Parliament adopted a report with a call to Member States to eradicate women's poverty in Europe and to the European Commission to develop a 2030 EU anti-poverty strategy with a focus on women (European Parliament 2022).

5. Feminist human rights preparedness: the way forward

The aforementioned 2018 report of the UN Independent Expert on the effects of foreign debt insists that policy reactions to economic crises have not been gender responsive. A decade after the 2007–2008 recession, millions of people around the world, particularly women, continue to face significant social and economic hardship due to both the crisis itself and government responses in the form of austerity, structural adjustment and fiscal consolidation. Over two-thirds of countries, most of them following the advice of international financial institutions, were contracting their public purses and limiting their fiscal space. While structural adjustment and fiscal consolidation policies can massively diminish human rights of people in vulnerable situations, most austerity policies have not been designed or implemented in a manner that would promote or safeguard human rights, let alone be sensitive to their gendered impacts. The COVID-19 crisis also revealed how women were disproportionately hit

by the social and economic impact of the pandemic and that a feminist human rights preparedness is necessary (Agapiou Josephides 2020).

As mentioned at the beginning of this article, despite last year's developments, the human rights community has no consistent approach to economics. Perhaps one reason for this is that human rights advocates tend to be lawyers, for the most part not so well versed in the language and methods of economic thought as to be able to influence it. Conversely, the human rights framework is often misunderstood, particularly where economic, social and cultural rights are concerned (Dommen 2021). Feminists have articulated a broadly recognised concept of feminist economics that analyses the interrelationship between gender and the economy. A human rights perspective combined with a feminist economic analysis could guide policymakers in devising alternative solutions that are inclusive and advance gender equality and human rights.

This need has also been patent in the field of health. For example, in September 2019, daily UK economic newspaper the Financial Times published an article by G20 Health and Development Partnership chair Alan Donnelly and Professor Ilona Kickbusch, of the Graduate Institute of International and Development Studies, on why the World Health Organisation (WHO) needs a chief economist. A chief economist, they argued, could provide intellectual leadership within the organisation and advise the director-general and member states on how investment could work to the benefit of global health, especially in the poorest countries (Donnelly and Kickbusch 2019). Others contend that the WHO should be more ambitious than the appointment of just one economist, especially in the aftermath of the COVID-19 pandemic and must instead fully embrace and articulate a feminist economic agenda. Part of this assertion is the fact that governments' ability to fund healthcare services is dictated by their revenue and fiscal policy space, in which international financial institutions play a major role. The IMF and the World Bank, runs the argument, continue to prioritise austerity measures and privatisation strategies that undermine governments' ability to provide public services and achieve Universal Health Care. Neither institution has linked its rhetoric on promotion of gender equality to a systematic evaluation of the implications of its austerity policies on gender inequality, health delivery or outcomes (Herten Crabb and Davies 2020).

One useful tool on the way forward could be the development of a gender-sensitive human rights impact assessment of economic reform policies.

A starting point in this direction could be the guiding principles on human rights impact assessment of economic reforms, adopted by the UN Human Rights Council in 2019 (United Nations 2019a) and developed by the UN Independent Expert on the effects of foreign debt (United

Nations 2019b). Based on the existing human rights obligations and responsibilities of states and other actors, the guiding principles underline the importance of systematically assessing the impact of economic reforms on the enjoyment of all human rights before implementing such reforms, as well as during and after their implementation.

Principle 8 establishes that human rights impact assessments should always include a comprehensive gender analysis. Incorporating a clear gender focus can support the realisation of women's human rights in practice through contextualised analysis aimed at identifying and preventing direct and indirect discrimination; addressing structural socioeconomic and sociocultural barriers; redressing current and historical disadvantage; countering stigma, prejudice, stereotyping and violence; transforming social and institutional structures; and facilitating women's political participation and social inclusion. More specifically, principle 8.2 states that: "[E]conomic reforms which encourage, among other things, labour market flexibilisation, reductions in the coverage of social protection benefits and services, cuts to public sector jobs and the privatisation of services tend to have a negative impact on women's enjoyment of human rights. Economic reform should aim to prevent gender discrimination and transform existing inequalities, instead of creating such situations."

This could help prevent, minimise and compensate violations of women's human rights in the context of government-implemented economic policies and reforms, some of which are being promoted by international organisations (Bohoslavsky and Rulli 2020).

In preparation for future health and financial crises, states should consider human rights standards and guiding principles in the formulation and implementation of their economic reform policies. As the UN Independent Expert on debt and human rights says: "[T]he current pandemic is an opportunity to reflect on and reverse the ideology according to which economic growth is the only way forward" (Bohoslavsky 2020).

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Ezequiel Fernandez Bravo. "Dominican Republic border wall: Concrete symbol of centuries-long anti-Haitian ideology" (2022) 6 *Global Campus Human Rights Journal* 245-252
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Dominican Republic border wall: Concrete symbol of centuries-long anti-Haitian ideology

Ezequiel Fernandez Bravo[*]

Abstract: *This article examines ongoing challenges of racism and discrimination through the lens of the long troubling history of xenophobic persecution of Haitians by the neighbouring Dominican Republic. It analyses the latter's prejudicial two-tier migration policy toward Haitians; on one hand, ostensibly excluding them, on the other, admitting those it requires for cheap unregulated labour in sectors such as construction and agriculture but denying them and their descendants rights and citizenship. In particular, it focuses on current Dominican President Luis Abinader's mammoth construction of a heavily fortified boundary wall stretching the entire length of the border with Haiti – a powerful emblem of the "othering" of Haitians as dangerous Black pagan usurpers of African origin while fostering the perception of "legitimate" Dominicans as white Catholic Hispanics. Setting this amid the worldwide context of the relationship between unequal distribution of wealth and a global hierarchy of migration based on race, the article calls on human rights activists inside and outside the Dominican Republic to stand together and renew efforts to dismantle the structural racism upon Haitians.*

Keywords: *Haiti; Dominican Republic; border regime; deportation; global apartheid; migrant rights*

1. Border construction latest move in history of racism

The waters of the Massacre River flow through the city of Dajabón, dividing the northwestern part of the island of Hispaniola into two countries: Haiti and the Dominican Republic. There, in 1937, the Dominican dictator Leonidas Trujillo initiated a process of ethnic cleansing known as the "Dominicanisation of the border", murdering 15,000-20,000 Haitians accused of invading the country. What became notorious as the "Parsley Massacre" got its name from the actions of the Dominican officials, who

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asked Haitian migrants to pronounce the Spanish word for parsley – ***perejil***: those unable to pronounce the word as Spanish speakers do because of their French accent were killed. On that same site, 85 years later, in February 2022, president-elect Luis Abinader began construction of a giant beam and concrete structure, underlining his actions last June by calling Haitian migration a "national security problem" and pledging to "control the border" (Rostowska and Adams 2022). Abinader euphemistically refers to the construction as a "perimeter fence" but everyone has been saying for months that what is being built is a border wall.

The first part of this four-metre-high, 20cm-wide barrier stretches 54 km along the northern part of the island and will have 19 watchtowers, due for completion in 2023. The second phase of construction will cover another 110km of the border, which is 390 km in total and divides the island in two from north to south. Abinader has said that it will serve to "control bilateral trade and deal with drug trafficking", but the truth is that this wall is the latest step in a history marked by inequality and violation of the rights of those who have migrated from different parts of Haiti to the Dominican Republic for generations.

The reality of the two countries could not be more different. According to World Bank data (2020) six out of 10 people in Haiti are poor and one in four lives in extreme poverty. Years of political and economic crisis have worsened the situation, the assassination of President Jovenel Moise in 2021 triggering the latest slump. In contrast, the Dominican Republic ranks amongst the region's fastest-growing economies in recent times. There, one in four people are classified as poor but just three in 100 are indigent. For 2022, the Economic Commission for Latin America and the Caribbean (ECLAC 2022) projected 5.3 percent growth for the country, while the average for the Latin American and Caribbean region is estimated at 1.8 per cent.

Today, the Dominican Republic is home to 10.5m inhabitants, 500,000 of whom are Haitians. These immigrants, who constitute 87 percent of the country's foreign population, suffer as a result of policies that make it difficult for them to obtain official documentation and regular jobs. Moreover, criminalisation of this population goes hand in hand with the needs of a job market that requires cheap labour without giving workers rights in sectors such as construction and agriculture, where three in 10 workers are Haitians (Cruz and Hernández 2020). Access to employment is limited and controlled by xenophobia and racism.

2. Dominican immigration policy – exploitation and exclusion

Anti-Haitian racism (Curiel Pichardo 2021) in the Dominican Republic has a long history. We must go back centuries to the French, Spanish and United States' imperial occupations to understand the narrative of forced movement and establishment of a permanent border between Haiti and

the Dominican Republic. Since the 16th century, the eastern part of the island, under Spanish rule, was dependent on the supply of food and raw materials from the French-ruled plantations in the west as France began to dominate the new global economy in the 17th century based on the exploitation of slaves (Dilla Alfonso and Carmona 2010).

Although both countries gained independence in the 19th century, both were under US military occupation in the early years of the 20th century. During the Dominican occupation, 1916-24, the country's sugar industry was developed, using Haitian migrant workers (Dilla Alfonso 2004; Muñiz and Morel 2019). Thus, the Dominican Republic became a key global sugar producer and exporter, with Haiti supplying the labour for Dominican and Cuban plantations. This significantly shaped the border on both sides of the island with impact which has endured until the present day. Two aspects are worth noting: the ease of migration to the Dominican Republic for those of European descent and the ongoing exploitation of Haitian migrant labour (Llavaneras Blanco 2022).

In later years, Leonidas Trujillo was central to the border regime. Established in 1930, his dictatorship has left an indelible mark on the Dominican Republic. Over the course of three decades, he consolidated a staunch anti-Haitian national ideology through policies and milestones like the aforementioned Parsley Massacre, after which the border was hermetically sealed, the social interaction and exchange that had previously existed between communities on both sides destroyed.

This did not mean that the Haitian presence in the Dominican Republic was erased; rather, it was restricted to the sugar mills, the only legal places where Haitians could reside and work. In 1939, the government enacted Immigration Law 95/39, which classified the status of foreigners according to the permit with which they entered the country. This meant that Haitian temporary workers were only admitted into Dominican territory upon request of the agribusiness sector; those entering without documents and permits were committing a crime. Such provisions created a situation of material and legal dependence on their employers; de facto slavery (Muñiz and Morel 2019).

Joaquín Balaguer, Trujillo's successor, who governed the country during three separate periods in office from the 1960s to the 1990s, expanded this policy: in addition to isolating Haitians in the sugar cane plantations, he sought to prevent Haitian descendants from entering the national territory. In the decades following Trujillo, the rulers of the Dominican Republic maintained a strong anti-Haitian stance: on the one hand, positioning the Dominican community, self-perceived as Hispanic, Catholic and white; on the other, its Haitian neighbours, perceived as Black pagans of African descent, the great national enemy (Dilla Alfonso 2019). Yet this racist narrative was accompanied by the need for Haitian labour to maintain the sugar industry (Hintzen 2014). Thus, migration policy became increasingly

contradictory: while the regulations became progressively more restrictive and discriminatory against the Haitian population, at the same time, their recruitment was promoted (Muñiz and Morel 2019).

At the end of the 20th century, the Dominican state tried different approaches toward its Haitian population. During the 1990s, Decree No. 417, on regularisation of Haitian nationals in the Dominican Republic, and Decree No. 233, on repatriation of minors and foreign workers, were issued. In 2004, the institutionalisation of this structural racism took another turn with the enactment of a new migration law, regulated in 2011. This law meant sugar workers were once again considered non-residents and temporary workers. In 2007, the Central Electoral Board initiated an arbitrary process of suspending the birth certificates of Dominicans of Haitian immigrant descent, claiming they were fraudulently obtained documents. The Supreme Court intensified this approach by ruling that Haitians in an irregular situation should be considered "transit passengers", regardless of the number of years they had been in the country, therefore their children would be barred from accessing citizenship by birth (Muñiz and Morel 2019). This ruling led to several lawsuits against the Dominican state by human rights organisations; some even reached the Inter-American Court of Human Rights, such as the case of the *Girls Yean and Bosico v. Dominican Republic*. In this case, the Dominican state refused to issue birth certificates to Dilcia Oliven Yean and Violeta Bosico, who were born in its territory to Haitian parents. Yean and Bosico were denied nationality and classified as illegal immigrants and thus in a socially vulnerable situation. The Court found that the state violated the American Convention on Human Rights.

Three years later, in 2010, the new Constitution again restricted the principle of *ius soli* (citizenship by country of birth) by not considering the children of foreigners in an irregular situation as Dominicans. That same year, an earthquake in Haiti triggered an unprecedented humanitarian crisis, which continues to this day, and led to the exodus of a population that could not be protected by its own state (González Valdez 2021). In 2013, tensions caused by Dominican policies reached boiling point: Through judgement 168/13, the Constitutional Court denationalised more than 200,000 people born in the Dominican Republic of Haitian ancestry who could not prove the regularity of their parents' immigration status (UNHCR 2014). Such drastic action raised numerous alarms, including a report by the Inter-American Commission on Human Rights (IACHR), which visited the island in December 2013 (IACHR 2015). Despite various attempts at political reaction, such as a regularisation plan in 2013 and the 169 naturalisation law in 2014, the effects of this machine of criminalisation and production of irregularity continue today. In the 2019 annual report, the IACHR noted that six years after the enactment, "the obstacles faced by the affected population persist" (IACHR 2019, 799). Finally, deportations multiplied in 2022: the Dominican Republic deported an estimated 60,000 Haitians and people of Haitian ancestry only between August and October.

3. Global apartheid – mobility for the privileged

The current situation described in the Dominican Republic is a far from isolated case if we look through the broader lens of global apartheid (Richmond 1994; Sharma 2005; Spener 2008). This concept describes the unequal distribution of resources and welfare, its relationship to race and nationality, and denotes the existence of a system that celebrates the mobility of capital and certain privileged groups, while the movement of others is increasingly curtailed. These controls give shape to differential legal rules which divide the national space in two: one for "citizens" who are "permanent residents", and another much more restrictive one for those characterised as "illegal", in that they are denied lawful permanence in their country of residence. This discrimination is part of an overall regime in which exclusion and criminalisation of one group is not only accepted but seen as necessary. Control over the mobility of impoverished residents and the labour force of non-white populations to which this notion refers well illustrates the process that has been going on for decades on the eastern side of Hispaniola.

Similarly, the concept of "border regime" (Domenech and Días 2020) helps describe the Dominican Republic-Haiti border as a space of conflict, negotiation and contestation between diverse actors who dispute the political definition of migration and the border. Thus, we can view this demarcation as an active process governing the mobility of both people and capital (De Genova 2002). For Dilla Alfonso (2020), the regime can be characterised as a "protective trench", in which border institutions have aimed over time to reinforce nationalist sentiment and foster a regime hostile to cross-border relations.

Analysing how the political order has been territorialised in the Dominican Republic through its borders, Llavaneras Blanco (2022) employs the concept of "obscene inclusion" coined by De Genova (2013), which refers to the clandestine, discretionary and temporary incorporation into the national order of those migrants who do not conform to the criteria of national regulations. In this case, the incorporation over the decades of Haitians and Dominicans of Haitian descent has occurred through a system of subordination and legal precariousness fostered by the Dominican state. This precariousness also enables exploitation outside a framework of human rights protection.

The Dominican Republic has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the Convention relating to the Status of Stateless Persons, nor the Convention on the Reduction of Statelessness, nor has it endorsed the Global Refugee Pact for Safe, Orderly and Regular Migration (2018), nor the Global Compact on Refugees (2018). Hence, in October 2022, Abinader announced that he had allocated six helicopters, 10 reconnaissance and surveillance planes and 21 armoured vehicles to

patrol the wall for "the defence of the country". Identification of the border wall with national security, as Brown (2010) points out when describing a phenomenon present in different parts of the planet, is tied to multiple rhetorics: the construction of a dangerous barbaric other – the binary opposite of civilisation – and the idea of containment of this other within the territorial limits of the country, drawing on the fantasy of impermeability. However, as the same author states, "even the most physically intimidating of these new walls serves to regulate, rather than exclude, legal and illegal migrant labour", producing a zone of indistinction "between the law and the lawlessness that flexible production requires" (Brown 2008, 16-17).

The Dominican wall spectacularises a rhetoric of exclusion, but at the same time it stands as a filter that selects and controls selected individuals (Mezzadra and Neilson 2016). Yet the wall's construction is part of a long process of discretionary and hierarchical inclusion that has developed in tandem with exclusion. There were 250,000 deportations of Haitian nationals 2017-22 (OHCHR 2022), while in 2011 alone more than 44,000 Haitian migrants were deported, including hundreds of pregnant women and mothers who had given birth in the Dominican Republic. In addition to this, in September 2021, a resolution banned foreign women who were more than six months pregnant from entering the country. Both scenarios should be considered together with the systematic violation of Haitians' labour and social security rights: withholding or lack of payment, excessive working hours, absence of vacation and other benefits.

4. Renewed efforts necessary to dismantle structural racism

The report of the United Nations Office of the High Commissioner for Human Rights for the last Universal Periodic Review of the Dominican Republic (UNHCR 2018) highlighted concerns about the "vulnerability of Haitian migrants and the violence and aggressions of which they were victims". Meanwhile, the Human Rights Committee sounded the alarm regarding "the high number of deportations of persons of Haitian origin, as well as reports of massive and arbitrary deportations and expulsions without procedural guarantees, including refoulement at the border". The concern of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights regarding "systematic and persistent racial discrimination against Haitians and people of Haitian descent" was also made explicit. The Committee on Economic, Social and Cultural Rights "urged the Dominican Republic to adopt all necessary legislative and administrative measures to combat all forms of discrimination against these persons". In November 2022, the High Commissioner for Human Rights Volker Turk also spoke out on the matter, calling for a halt to deportations to Haiti, as well as greater efforts by the Dominican government "to prevent xenophobia, discrimination and related intolerance based on national, racial or ethnic origin, or immigration status".

It is worth mentioning initiatives of various organisations in the Dominican Republic which provide legal advice and support to migrants, including those of Haitian descent, as well as information and awareness campaigns and civil society initiatives to develop joint proposals on the issue of migration and nationality (UNHCR 2020). However, the High Commissioner's report also noted "hostility and harassment" towards human rights defenders fighting for the rights of Haitian migrants and Dominicans of Haitian descent and denouncing the exploitation and trafficking of children (UNHCR 2018). Consequently, in order to understand why the wall is being constructed, it is necessary to review and work together to combat the discrimination and structural racism present in the Dominican Republic for people of Haitian nationality or ancestry.

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Chiara Altafin. "Child rights strategic litigation on deprivation of liberty for migration-related reasons: Review of selected cases in Asia and Europe" (2022) *6 Global Campus Human Rights Journal* 253-286
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Child rights strategic litigation on deprivation of liberty for migration-related reasons: Review of selected cases in Asia and Europe

Chiara Altafin[*]

Abstract: *The position of children deprived of liberty for migration-related reasons entails key challenges to children's rights and "child rights strategic litigation" (CRSL) emerges as one way to tackle them while feeding more broadly into national and international advocacy efforts. Litigation practice in this regard has emerged on the issue of deprivation of liberty in the third decade after the coming into force of the United Nations Convention on the Rights of the Child. This article analyses some pertinent litigation efforts undertaken in Asia and Europe. In considering selected case-law (already decided or in the process of litigation) at both national and international/regional levels, it addresses the main issues arising in relation to migration detention and children's rights, how this litigation has been done, the actors involved, the legal standards employed, and eventually the courts' reasoning. Concluding remarks for a children's rights preparedness are articulated, reflecting on the pivotal importance of stakeholders' approaches towards litigation strategies that are consistent with children's rights and aim to advance children's enjoyment of their rights, in order to contribute effectively to tackle such a harmful practice and bring changes against it. It is thus argued that CRSL can be a valuable means to advance access to justice for migrant children.*

Key-words: ***children's rights; strategic litigation; migration-related detention; Asia; Europe.***

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1. Introduction

The detrimental practice of children deprived of liberty for migration-related reasons has been condemned in different parts of the world, as the findings and recommendations of the United Nations Global Study on Children Deprived of Liberty show (UNGSCDL 2019: 430-495). Children are detained for reasons related to their or their parents' migration status, or for other official justifications (including identity verification, health and security screening, facilitated deportation, age assessment procedures) or even for claimed protection purposes, or because of a declared state of emergency (UNGSCDL 2019: 441-445). There is international consensus that such practice violates international law (Smyth 2019). It is emphasised that "deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including UASCs is prohibited" (UNWGAD 2018: para 11, citing A/HRC/30/37: para 46; E/CN.4/1999/63/Add.3: para 37; A/HRC/27/48/Add.2: para 130; A/HRC/36/37/Add.2: paras 41-42) (see also CMW/C/GC/4-CRC/CGC/23: paras 5 and 10).

This critical area results in multiple violations of children's rights and requires preparedness for effective ways to tackle such a harmful practice. In particular, the position of children deprived of liberty for migration-related reasons entails challenges to children's rights which can be addressed through "child rights strategic litigation" (CRSL) while feeding more broadly into national and international advocacy efforts. This kind of litigation is defined by distinguished scholars as seeking "to bring about positive legal and/or social change in terms of children's enjoyment of their rights" (Nolan, Skelton and Ozah, 2022a: 5). Importantly, they have identified a number of factors as likely indicative of whether a case qualifies as CRSL: (i) the process that let up to the case; (ii) the way in which the case was developed or shaped by child rights during the duration of the litigation; (iii) the remedy granted; or (iv) the outcome of the case (both legal and extra-legal).

It is worth also referring to scholars' two key questions in identifying cases that are CRSL. The first question relates to the litigants and/or the litigators, who "may include any parties in the case: applicants, plaintiffs, defendants, appellants, petitioners, authors, amici curiae, third-party intervenors", with a list of relevant ones: "a child or group of children; an adult such as a parent, guardian, curator/guardian ad litem who expressly acts on behalf of a child or children with a broader aim than merely meeting the needs of the individual child; a human rights or civil society organisation (often but not always a children's rights organisation) acting on behalf of a child/children, in the child-specific public interest or in the interests of children generally; national human rights institutions (NHRIs), ombudspersons or children's commissioners, children's rights' defenders or human rights public defenders with a child rights related mandate" (Nolan, Skelton and Ozah, 2022a, 21). The second question relates to the objective(s) of

the litigation, which generally "will need to be a broader one than merely resolving a legal, child rights related problem for an individual child. The litigation will need to seek to advance the rights of more than one child and/or to bring about social change that will benefit all children or a category of children. However, even where the main parties in the case may have a more limited or individualised aim (for instance, defending a particular child in the criminal justice system), an amicus or third party intervenor admitted to the case may have a different, more strategic intention" (Nolan, Skelton and Ozah, 2022a, 22).

Litigation practice in this regard has dealt with the issue of deprivation of liberty since the third decade after the coming into force of the UN Convention on the Rights of the Child (CRC) (Nolan and Skelton 2022: 7). This article analyses selected litigation efforts relating to children deprived of liberty for migration-related reasons in two major regions of concern, namely Asia and Europe, where various countries face persisting systemic issues and there are local practitioners working on them. In considering selected case-law (already decided or in the process of litigation) at both national and international/regional levels, the article addresses the main issues arising in relation to migration detention and children's rights, how this litigation has been done, the actors involved, the legal standards employed, and eventually the courts' reasoning. The selective choice of legal cases draws heavily on the findings of the author's research conducted for one component of the ACRiSL (Advancing Child Rights Strategic Litigation) project, a three-year international research collaboration bringing together partners from advocacy and academia, under the auspices of the Global Campus of Human Rights and Rights Livelihood cooperation (ACRiSL 2020-2023).

Concluding remarks for a children's rights preparedness are articulated at the end of the article, meaning that respecting, protecting and fulfilling children's rights remain crucial in facing and overcoming the challenges posed by the practice of deprivation of liberty for migration-related reasons. It is therefore highlighted the need to reflect on the importance of stakeholders' approaches towards litigation strategies that are consistent with children's rights and aim to advance children's enjoyment of their rights, in order to contribute effectively to tackle such a harmful practice and bring changes against it.

2. Malaysia

Key stakeholders in the country include, ***inter alia***, Malaysian Bar Council Legal Aid Centre (Kuala Lumpur)/Collin's Law Chambers and Asylum Access Malaysia. It is worth considering two effective cases litigated at the national level which can be qualified as CRSL.

In particular, *J.b.M.R. v. Public Prosecutor* (High Court in Shah Alam 2017) concerns a Rohingya minor detained and prosecuted for an immigration offence, namely not having any valid documents, under section 6(1)(c) of the Immigration Act 1959/63. He was not registered with the UNHCR at the time of his arrest and subsequent prosecution. Collin's Law Chambers filed at the High Court an application to challenge the legality of the immigration charge against asylum seeking minors and an application to secure his release from prison pending the full disposal of his case. The lawyers claimed that his detention was in violation of the Child Act 2001 and Article 22 CRC. When this application was filed, the applicant was 15 years old and was held in remand since December 11, 2016, for 3 months at Kajang prison, with adult offenders (after the application for his bail was denied by Sepang Magistrate Court). Notably, the National Human Rights Institution (SUHAKAM) held a watching brief in this case.

The most important aspect taken into account by the Court was the applicant's welfare. It also considered that during the 3 months in prison the young applicant mingled with offenders who faced various criminal charges, exposing him to risk of becoming a future criminal. The immigration charge against the child was eventually withdrawn. Importantly, in granting bail to the minor despite a vigorous objection by the prosecutor, the Court held: "Whether the applicant is a citizen or not, a bail order has to be taken into account so that the potential risks faced by the applicant in prison would not adversely affect the applicant's future. Furthermore, the applicant is only a child of 16 years of age" (High Court in Shah Alam 2017, para 14). It imposed a RM 2,000.00 bail with one surety of Malaysian citizen, and additional conditions: (a) the applicant was ordered to be placed at the Chow Kit Foundation Centre, at all times until the trial of the charge against him was concluded; (b) this centre had to manage his transport to and from the Court each time he was required to be present; (c) the centre was also responsible for his welfare and safety for the entire time he was placed there.

The successful outcomes of this case were multiple. First, the High Court granted an alternative to immigration detention (by way of bail pending the resolution of an immigration charge), a landmark decision in Malaysia. The decision by the Prosecution to appeal the bail of an individual charged on immigration grounds — even after the dismissal of the charge rendered the appeal academic — is a testament to the potential precedential value of such an order. Second, a number of key judicial and government stakeholders were sensitised regarding the practice of arresting and detaining asylum-seeking children and on relevant child protection laws. A third outcome was the public awareness raising value of the media attention gained. The counsel for the Rohingya minor petitioned the media at all stages of the case, which was reported across a range of media sources (Yatim 2017; Nazlina 2017; Tong 2017; Anbalagan 2017). He also

mobilised the support of prominent Malaysian NGOs, including the Suara Rakyat Malaysia (SUARAM) who spoke out against the prosecution and detention of asylum-seeking children, which have contributed to greater public awareness regarding the issue (SUARAM 2017; Yen 2017). This organisation emphasised that the Rohingya minor's detention revealed the Malaysian government's failure in fulfilling its obligations to provide appropriate protection and humanitarian assistance to refugee children under Article 22 CRC.

Another relevant case is *R.R.b.M.S. and 6 Ors v. Komandan, Depot Imigresen Belantik, Kedah & 3 Ors* (High Court in Alor Setar 2018) concerning a boat of 56 Rohingya individuals who arrived on Malaysian shores in April 2018. They arrived after a 23-day long journey from Rakhine state, Myanmar. The boat was intercepted by the Malaysian Maritime Law Enforcement Authorities at the waters of the Langkawi Island, Kedah. These individuals (19 men, 17 women and 20 children) were referred and handed over to the Malaysian Immigration Department and were transferred to the Belantik Immigration Detention Centre. Between April and June, the UNHCR unsuccessfully wrote to the authorities requesting access to these individuals for the purposes of screening and interviewing them. On September 10, 2018, a Notice of Motion for *habeas corpus* application was filed by Collin's Law Chambers against the government, at the High Court in Alor Setar, for seven minors (five boys aged 10 to 14, one girl aged 14, and one aged 5) who were among the boat arrivals and were seeking asylum. The counsels could only act for them as only their family members could be located. The application sought an order for the seven children to be brought to court and released; a declaration that their continued detention was illegal and/or in conflict with their rights under Articles 5 and 8 of the Federal Constitution, the Child Act 2001 read together with Article 22 CRC; a further order that they were not re-arrested and/or detained solely on account of their immigration status; in the alternative, an order that they be released from immigration detention and placed at a children's shelter (instead of punitive indefinite immigration detention) until reunification with their families, or for such time and conditions decided by the court. In particular, the litigators claimed that the children's rights to consult and be defended by a lawyer upon their arrest (under Article 5(3) of the Federal Constitution) was violated, as the refusal to allow them to meet their lawyers or family allegedly amounted to an oppression of their rights to know why they were being detained and also denied their rights to challenge the detention. They also claimed that the children's detention was unlawful, irrational, arbitrary and unreasonable. Additionally, the Rohingya children's indefinite detention was claimed to be invalid as they may not be deported due to their statelessness. Notably, the Malaysian Bar Council, Asylum Access, and the National Human Rights Institution (SUHAKAM) held a watching brief in this case, while UNHCR appeared as an observer.

The Court considered the detention order against the seven applicants as valid since they were non-citizens and therefore have no permission to enter and remain in Malaysia, and so Article 5 of the Federal Constitution was not infringed (High Court in Alor Setar 2018, para 10(h)). Nonetheless, the learned Judge Datuk Ghazali Cha accepted the applicants' alternative plea that "they are allowed to be placed at a shelter which can protect and provide the necessary welfare to them" (para 10l), as an alternative to immigration detention for refugee children. The Court also recognised the rights of asylum seeking minors under Article 22 CRC and the Preamble of the Child Act 2001 as a substantive right: "[W]ithout deliberating further, this Court is of the view that the continued detention of the Applicants at the Belantik Immigration Detention Centre is a direct violation of their rights as a child pursuant to the Convention on the Rights of the Child and the Child Act 2001 which guarantees protection and assistance to be given to children in all circumstances without regard to race, colour, gender, language, religion or distinction of any kind" (para 10k). The Court ordered the release of the seven minors who had been held for more than seven months at the Belantik IDC in Kedah and their placement at the Yayasan Chow Kit Shelter in Kuala Lumpur on a bail bond of RM500.00 per each applicant with a Malaysian surety. It then ordered that "the applicants' safety and welfare are also to be ensured at all times they are at the shelter and they should be made available at all times whenever the authorities require them for their further action, including to attend Court to answer to any charge (if any)" (para 10m). Focusing on the enforcement, on November 21, 2018, the counsel contacted the Deputy Public Prosecutor (DPP) advocating for the children's release, and the day after they agreed to petition the court for clarification on its decision of November 18. Clarification was sought in chambers with the following outcome: the DPP conceded that the parties are satisfied with the court's decision and will not appeal against it to the Federal Court; it was also recorded in court that the minors be released directly to the UNHCR on November 22, as part of the Immigration Department's further action.

Therefore, the High Court's landmark decision comprised three positive precedents against child detention: the acknowledgement of Article 22 CRC and the Preamble of the Child Act 2001 as a substantive right towards asylum seeking children from protracted detention; the acknowledgment of a shelter as an alternative to immigration detention of asylum seeking children; and the acknowledgment of immigration authorities' action(s) to release the children to the UNHCR being the mandated institution to protect and assist asylum seeking children from further detention. The case was widely reported in newspapers and online articles (Lim 2018; Bedi 2018).

3. Republic of Korea

Key stakeholders in the country include, inter alia, Duroo Association for Public Interest Lawyers, Dongcheon Foundation, and GongGam Human Rights Law Foundation. It is worth considering a recent case that can be qualified as CRSL. Precisely, Duroo (in cooperation with other three NGOs) has litigated the case 2020 HunGa 1, for which on January 23, 2020, the Suwon District Court requested the Constitutional Court of the Republic of Korea to rule on the constitutionality of Article 63(1) of the national Immigration Act (amended by Act Decree 12421 on March 18, 2014). This is the first time that the detention of migrant children is under consideration at the Constitutional Court level in the country.

The case concerns a 17-year-old asylum-seeker, national from Egypt, who had overstayed in the Republic of Korea after obtaining a 30-day tourist visa and entering the country on July 23, 2018 as an unaccompanied child and was detained for about two months (UNHCR 2020, paras 8-9). The head of the Suwon Immigration Service detained the petitioner in accordance with Article 51(3) of the Immigration Act on October 17, 2018, and issued the deportation order pursuant to Articles 46(1) 3, 46(1) 8, 11(1) 8, and 17(1) as well as the detention order pursuant to Article 63(1) of the Act thereof on October 18, 2018. The plaintiff filed the lawsuit seeking revocation of these orders (Suwon District Court 2019 Ku-Dan6240), applied for the adjudication on the constitutionality of Article 63(1) of the Immigration Act during the above trial (Suwon District Court 2019 Ah 4057), and the Court accepted the application for Article 63(1) and requested the case of adjudication for its constitutionality on January 23, 2020. The plaintiff argued that Article 63(1) remains a legal ground for indefinite detention of migrants in practice as it states that persons under deportation orders who cannot be immediately repatriated can be detained in any detention facility pending when deportation is carried out. It was also argued that the immigration detention of a child must not be used even as last resort.

In June 2022, Manfred Nowak and the author drafted a written opinion which was translated to Korean and submitted to the Court in July, seeking to assist it and inform its consideration and decision about the issues raised in the above case under the Constitution of the Republic of Korea in light of the general principles and standards enshrined in the CRC. They expressed a shared interest in ensuring that the protection of children from deprivation of liberty within the Korean legal system is rigorous in a national context where: (1) the constitutionality of Article 63 of the Immigration Act is being debated at the Constitutional Court level; and (2) the Ministry of Justice announced in November 2021 that it will initiate a series of legislative and policy changes to improve the immigration detention regime, but has been in its position that there

should be a room for detention of migrant children over 14 (aligning with the criminal detention of children). Therefore, they underlined that this case highlights the paramount importance to address the confinement of children for purely migration-related reasons in the country, especially in view of the findings and recommendations of the UNGSCDL, in particular its Chapter 11, which concludes that purely migration-related detention of children violates the CRC, in particular its provisions on the right to personal liberty (Article 37(b)), the best interests of the child (Article 3), the right to life and development (Article 6), the right to the enjoyment of the highest attainable standard of health (Article 24) and the right of refugee children to receive appropriate protection and humanitarian assistance (Article 22). In October 2022, the Court mentioned the aforementioned expert opinion and the CRC in a public hearing of this case. The parties are awaiting its decision. In the meantime, Duroo and other civil society organisations in the country have approached Members of Parliament to discuss the potential adoption of a provision completely prohibiting the immigration detention of children, considering several elements to make amendments to the Immigration Act.

4. Hungary

Due to the general situation in the country, strategic litigation of migration-related cases has mostly been done in the European Union (EU) and Council of Europe (CoE) fora. The Hungarian Helsinki Committee (HHC) is one of the key actors. It litigated several cases before the Court of Justice of the EU (CJEU)) regarding the placement of asylum seekers in the "transit zones" on the border with Serbia. These efforts, combined with persistent advocacy, resulted in the closing down of such zones on May 21, 2020, following the judgement of the CJEU (a week before) in the joined cases C-924/19 PPU and C-925/19 PPU, which ruled that the automatic and indefinite placement of asylum-seekers in such zones at the Hungarian-Serbian border without a formal decision and due process safeguards amounted to arbitrary detention.

Regarding the "transit zones" regime that Hungary used from March 2017 to May 2021 to automatically detain all asylum seekers upon arrival, including unaccompanied children above the age of 14 or any children with families for the whole duration of the asylum procedure, HHC took extensive litigation efforts also before the European Court of Human Rights (ECtHR) to challenge the arbitrariness of detention and to convince it to deliver a decision in which the "transit zones" would be found as places of detention. The HHC submitted more than 70 cases, including children as applicants, to the ECtHR (e.g., *N.A. and Others v. Hungary* 37325/17; *H.M. and Others v. Hungary* 38967/17; *A.S. and Others v. Hungary*, 34883/17; *Ahmed AYAD v. Hungary and 4 other applications* 26819/15; *Masood Hamid v. Hungary* 10940/17; *Azizi v. Hungary* 49231/18; *F.S. and A.S. v. Hungary* 50872/18).

The ECtHR delivered its first judgement regarding the detention of families with children in such zones on March 2, 2021, in *R.R. and Others v. Hungary* 36037/17 concerning an Iranian-Afghan asylum-seeking family with three children held in *Röszke* "transit zone" for almost 4 months. HHC strategically litigated the case, also directly including the children as applicants alongside their parents. In its submission to the Court, UNHCR ***inter alia*** highlighted the CRC principles (under Article 3 in conjunction with Article 22, and Articles 2, 6, 12, 20(2) and (3)) which apply throughout all stages of displacement (UNHCR 2017, para 3.2.3 referring to the CRC-Committee's General Comment n. 6). Reiterating the state obligations under Article 22(1) CRC, relevant EU directives and its own case law, the Court stated that the confinement of minors raises particular issues, since children, whether accompanied or not, are considered extremely vulnerable and have specific needs related in particular to their age and lack of independence, but also to their asylum-seeker status (ECtHR 2021, para 49). It stressed that the obligation to protect children and take adequate measures as part of its positive obligations under Article 3 does not evaporate if children are accompanied by their parents (para 59). In view of the conditions of the containers where they were accommodated, the unsuitability of the facilities for children, the lack of professional psychological assistance, the children's young age, the mother's pregnancy and health situation and the length of their stay in such zone, the Court found that they were subjected to treatment which exceeded the threshold of severity required to engage Article 3 and so violated it (paras 62-65). It finally acknowledged that in the circumstances of the case (with lack of domestic legal provisions fixing the maximum duration of that stay, its excessive duration and considerable delays in the domestic examination of the applicants' asylum claims, as well as the conditions in which the applicants were held) their stay in such zone amounted to *de facto* deprivation of liberty (para 83), thus in contrast with the Grand Chamber's standpoint in *Ilias and Ahmed* (ECtHR 2019, para 249). Furthermore, the Court acknowledged that their detention could not be considered lawful under Article 5(1) (ECtHR 2021, paras 74-92), as there was no strictly defined statutory basis for it in Hungarian legislation (para 89) and the national authorities had not issued a formal decision complete with reasons for detention. It also considered that the applicants did not have an avenue in which the lawfulness of their detention could have been decided on promptly by a court, thereby violating Article 5(4). Nonetheless, the ECtHR did not follow the CJEU's decision and failed to provide a more substantial analysis of the nature of confinement in the "transit zones", focusing rather on the concrete situations and vulnerabilities of the children concerned. It ordered Hungary to remedy the adult applicants with EUR 4.500 each and EUR 6.500 to each of the applicant children in respect of non-pecuniary damage, as well as to all applicants jointly EUR 5.000 in respect of costs and expenses.

In some judgments of 2022, the ECtHR similarly found that placement in a "transit zone" constitutes detention in other cases concerning families with children (*M.B.K. and Others v. Hungary* 73860/17; *A.A.A. and Others v. Hungary* 37327/17; *W.O. and Others* 36896/18; *H.M. and Others v. Hungary* 38967/17). However, it also issued disappointing decisions which did not recognise the placement in such zones as detention because the related period was too short, declaring the cases inadmissible: *A.S. and others v. Hungary* 34883/17 (concerning a family with children, 40 days); *N.A. and others v. Hungary* 37325/17 (concerning a family with children, 27 days).

Focusing on unaccompanied children's detention in Hungarian "transit zones", it is worth referring to a recent CRSL effort tried in relation to *M.H. v. Hungary* 652/18, litigated by the HHC and communicated by the ECtHR on February 7, 2022,[1] concerning the confinement of an unaccompanied child for about 3 months pending the examination of asylum request. In April 2022, Manfred Nowak and the author prepared and submitted a request for leave for the purpose of submitting a third-party intervention (TPI). The applicant invoked Article 5(1) and (4); relying on Article 3, taken alone and in conjunction with Article 13, the applicant further complained about the allegedly inhuman or degrading conditions in which he was held in the "transit zones" and the lack of an effective remedy in this respect. Therefore, the TPI would have sought to assist the Court in considering the issues raised in the application under the cited provisions of the ECHR as interpreted in accordance with the general principles and standards enshrined in the CRC. This would have been done in view of the practice of interpreting ECHR provisions in the light of other international texts and instruments.[2] The proposed intervention would have covered contextual information drawn from the findings and recommendations of the UNGSCDL. It would have primarily elaborated on its recommendations concerning Article 37(b) CRC, which could have informed the Court's consideration and decision about the deprivation of liberty of the unaccompanied child in such zones. Precisely, Recommendation no. 8 indicates that: "Since migration-related detention cannot be considered as a measure of last resort (as required by Article

1 The Court posed the following questions to the parties: (1) Has there been a violation of Article 3 of the Convention on account of the applicants' living conditions and their treatment in the border transit zones, having regard to their particular circumstances (see *R.R. and Others v. Hungary*, 36037/17, §§ 48-52 and 58-65, 2 March 2021)? (2) Did the applicants have at their disposal an effective domestic remedy for their above complaints under Article 3 of the Convention, as required by Article 13 of the Convention? (3) Were the applicants deprived of their liberty in the border transit zones in breach of Article 5 § 1 of the Convention (see *R.R. and Others v. Hungary*, 36037/17, §§ 74-92, 2 March 2021)? (4) Did the applicants have at their disposal an effective procedure by which they could challenge the lawfulness of their detention, as required by Article 5 § 4 of the Convention (see *R.R. and Others v. Hungary*, 36037/17, §§ 97-99, 2 March 2021)?

2 See: *Tyrer v. the United Kingdom* 5856/72 (1978), para 31; *Marckx v. Belgium* 6833/74 (1979), para 41; *Christine Goodwin v. the United Kingdom* [GC] 28957/95 (2002), para 85; *Demir and Baykara v. Turkey* [GC] 34503/97, paras 65-86; *Hassan v. the United Kingdom* [GC] 29750/09, para 102.

37(b) CRC) and is never in the best interests of the child (Article 3 CRC), it is prohibited under international law and should, therefore, be forbidden by domestic law" (UNGSCDL 2019: 491). Regrettably, in June 2022 the President of the Court section decided to refuse their request "as he considers that – in light of the fact that the case is subject of the Court's well-established case-law – the intervention requested is not necessary in 'the interests of the proper administration of justice'." Nevertheless, a TPI would have helped the Court to address better than in *R.R. and Others* the nature of confinement in the "transit zones". The parties are still awaiting the related judgement.

In the 2014-2018 period, HHC also initiated several cases before the ECtHR in relation to the detention of unaccompanied asylum-seeking children whose age was disputed. A few of them were communicated to the government and the observation phase finished (e.g., *M.M. v. Hungary* 326819/15; *S.B. v. Hungary* 15977/17; *Hamid v. Hungary* 10940/17; *Azizi v. Hungary* 49231/18; *F.S. and A.S. v. Hungary* 50872/18). No judgments on the age assessment issue have been delivered yet.

Overall, the Hungarian litigators contacted by the author look forward to getting more favourable decisions by the ECtHR in the pending cases, especially on age assessment in detention as well as detention at the border, which can have positive influence on other countries as well.

5. Bulgaria

Key stakeholders in the country include, *inter alia*, the Center for Legal Aid - Voice in Bulgaria (CLA), the Foundation for Access to Rights (FAR) and the Bulgarian Helsinki Committee (BHC). At the national level, several detention-related cases were litigated by BHC especially after 2015, whereas other organisations such as CLA supported these judicial processes. These joint efforts had resulted in a decrease of arbitrary detention cases, especially of children both accompanied and unaccompanied. However, there seems to be a limited possibility to influence changes of both laws and practices on migration-related detention of children before Bulgarian courts, while regional mechanisms can play a more effective role for CRSL cases.

A leading case that can be qualified as CRSL is *S.F. and Others v. Bulgaria* 8138/16. It was litigated by the *Service d'Aide Juridique aux Exilé-e-s* (SAJE) on behalf of an Iraqi family including three children (aged 16, 11, and one and a half years), who lodged their application to the ECtHR about the conditions in which they had been kept in a border police's detention facility in Vidin for a few days in 2015. On September 20, 2016, the ECtHR gave Bulgaria notice of the complaints concerning these children's detention conditions. Reiterating its settled case-law on the treatment of immigration detainees and the particular vulnerability of children, it

noted that while the time spent by the applicants in detention was shorter (between 32 and 41 hours), the conditions were considerably worse than those in similar cases where a violation was found (ECtHR 2017, paras 83-87). The Court also noted that "a facility in which a one-and-a-half-year-old child is kept in custody, even for a brief period of time, must be suitably equipped for that purpose" (para 88). The combination of these factors affected the children considerably, both physically and psychologically, with particularly nefarious effects on the youngest of them due to his very young age (para 89). By keeping them in such conditions, even for a brief period of time, the Bulgarian authorities subjected them to inhuman and degrading treatment (para 90). It cannot be said that it was practically impossible for them "to ensure minimally decent conditions in the short-term holding facilities in which they decided to place minor migrants immediately after their interception and arrest" (para 91). In view of the absolute character of Article 3 ECHR, an increased influx of migrants cannot be a justification for not fulfilling the related obligations, which requires to guarantee to people deprived of their liberty "conditions compatible with human dignity" (para 92). In respect of non-pecuniary damage, Bulgaria was ordered to pay to each of the child applicants EUR 600 and jointly to all applicants EUR 1.000 in respect of costs and expenses. Notably, the children were directly involved in the litigation and acted as applicants alongside their parents and were remedied separately from their parents for non-pecuniary damage suffered.

Focusing on the enforcement of the judgement, Bulgarian authorities paid the applicants compensation. Regarding general measures, the authorities provided information, *inter alia*, on the legislative framework, the creation of new detention premises and the efforts to renovate existing renovation premises. The action plan was received in December 2018 (DH-DD(2018)1260), whereas the comments of the Department for the Execution of Judgments were sent to the authorities in January 2020 and a revised action plan or report is awaited. The CoE Committee of Ministers requested additional information on the number of existing border police detention facilities in Bulgaria, their location, conditions of detention and any planned or completed repair works, as well as measures adopted or foreseen to secure timely supply of food and drinks and equipment and supplies for very young children.

This case effectively challenged migration-related detention of accompanied children, which has been a reality for hundreds of them in Bulgaria. Detention during the status determination procedure in closed reception facilities is possible under Article 45(f)(1) of the Law on Asylum Seekers and Refugees. Its provisions provide for the possibility to detain asylum seeking children together with their families as a measure of last resort, to maintain family unity and ensure protection and safety, but the UNHCR deemed these provisions as not adequate because they do not specifically refer to the primacy of the

principle of the best interests of the child when ordering detention (AIDA 2019: 66). *S.F. and Others v. Bulgaria* goes beyond the rights of the individual children acting as applicants, and its successful implementation in terms of general measures can benefit children who are in a similar position.

6. Poland

Key stakeholders in the country include, *inter alia*, the Association for Legal Intervention (SIP, *Stowarzyszenie Interwencji Prawnej*) and the Helsinki Foundation for Human Rights (HFHR). They have repetitively challenged migrant children's detention in Poland, which has been systemic for many years despite strong advocacy and litigation. At the national level, a relevant case concerns a 17 years old unaccompanied migrant child whose release from a detention centre after almost 8 months of confinement was ordered by decision no. VII Kz 420/20 of October 30, 2020, by the District Court in Olsztyn (SIP 2020). SIP also litigated several cases for compensation and redress for children's wrongful detention from the state treasury.

A noteworthy CRSL effort by attorney-at-law Małgorzata Jaźwińska from SIP is case II KK 148/22 of cassation appeal before the Polish Supreme Court, against the judgement of the Court of Appeal in Warsaw of September 27, 2021 (II AKa 310/20), regarding the compensation for wrongful placement in a guarded centre for foreigners of a single mother with her six-month-old child for approximately 16.5 months. Initially, their detention was based on the need to confirm the child's identity and collect information for the asylum procedure. However, the family was detained over 4 months after the mother's interview, without collecting other evidence for which their presence was necessary. Moreover, no procedures were undertaken to establish the child's identity, which in fact was based on the mother's declaration and the birth certificate (both available from the first day of detention). Due to the negative asylum decision, their detention was extended during the return procedure, but beyond the 6 months legal limit. Nonetheless, the deportation could not be executed (for legal obstacles) even if the documents were obtained and Russia provided all documentation within the timeframe of the readmission agreement. Additionally, the child's best interests were basically not included and analysed in any detention decisions. In such context, the District Court and the Court of Appeal dismissed the application and did not grant the requested compensation, questioning the possibility to seek it for unjust placement in a guarded centre during the asylum procedure. They also claimed that, since at the time of the detention court's ruling Polish authorities did not have the aforementioned documents from third countries, there was a delay in the period of detention during the return procedure. Furthermore, they did not take into account the child's rights and ruled that these were not violated and the child's best interests were secured as the family was not separated.

In lodging the cassation appeal in December 2021, the litigator invoked *inter alia* Articles 3, 5(1)(f) and 8 ECHR and Article 3(1) CRC. The Court was also requested to make preliminary reference concerning Article 17(1) of Return Directive 2008/115/EC and Articles 8(3) and 23(1) of Directive 2013/33/EU in view of Articles 6, 7 and 24(2) of the Charter of Fundamental Rights of the EU (CFR), in the context of immigration detention of children. In particular, multiple legal issues have been addressed. One is the proper interpretation of Article 15(6)(b) of the Return Directive (and the litigator prepared a request for a preliminary reference): what do "delays" mean; do they need to be the sole reason why deportation cannot be carried out. A second issue (with another request prepared for a preliminary reference) is what do the best interests of the child in immigration detention cases mean, especially in the context of prolonged detention; what factors and how should be analysed. A third issue (with related request for a preliminary reference) concerns the rule of law issue in Poland and the consequences of the ruling by the 2nd instance court that was incorrectly composed as one of the judges was not properly appointed. A fourth issue regards the possibility to seek compensation for wrongful immigration detention in asylum procedures under Article 5(5) ECHR. A fifth issue is the unlawful character of the detention made to collect information on which the asylum application is made if no such evidence is being collected. A sixth issue is the unlawful character of the detention made to identify if no proceedings of the sort are being carried out. Another issue is the unlawful character of the detention in return procedure beyond the 6 months limit under Article 15(5) of the Return Directive.

Notably, an *amicus curiae* brief in support of the appellant was prepared *pro bono* by Dzidek Kedzia, Agata Hauser and Lukasz Szoszkiewicz from the Global Campus of Human Rights network and was submitted to the Court in May 2022. They analysed relevant sources of international law in relation to the deprivation of liberty of migrant children, in particular the ECHR and the CRC, emphasising that Poland is a state-party to both Conventions and it is the duty of public authorities to apply such an interpretation of national law that will allow the implementation of the treaty provisions to the highest degree. Both ECtHR and UN treaty bodies point to the international consensus on the prohibition of depriving children of liberty on the basis of their or their parents' irregular migration status. Taking into account that Poland is bound by these treaties, as well as constitutional provisions (primarily Article 72 establishing the obligation to protect children's rights), the third-party interveners argued the unlawfulness of the decision to place the child in a guarded centre for foreigners, which was contrary to the child's best interests, well-being, health and development. This also in view of Article 88 of the Act of June 13, 2003, which allowed the use of alternative measures for a proportionate balance between the restriction of the right to personal

freedom and movement and the state interest to ensure efficient migration procedures. Moreover, the district and appellate courts did not carefully consider the effect of detention on the child being nervous and restless and having trouble sleeping at night. It is not enough for those courts to merely note that the child applicant and her mother were medically examined, as it does not meet the requirement of the best interests of the child as the primary consideration on which the decision should be based. Such a situation may constitute a violation of the obligations arising from the CRC, according to the CRC-Committee's position that "in order to demonstrate that the right of the child to have his or her best interests assessed and taken into account first, every decision affecting the child or children must be reasoned, reasoned and explained" (CRC-Committee 2021, para 12.4). Overall, the appellate court failed to act with due diligence, by neglecting the obligation to carry out an effective assessment of the applicants' deprivation of liberty in a situation where one of them was a child in favour of any alternative measures (see ECtHR judgement of July 22, 2021 in *M.D. and A.D. v. France* 57035/18, para 103) as well as by not sufficiently taking into account the child's best interests and addressing the allegations raised by the applicants. Finally, given the limited nature of medical consultations, it is difficult to assume that public authorities have proved that long-term detention will not have a negative impact on the child's well-being and psychophysical development, and so the state should take into account liability for damages.

The parties are awaiting the Polish Supreme Court's decision. Significantly, this case aims to increase legal protection of children's rights through interpretation of statutory provisions, and through finding the practice of migration-related detention of children to be unlawful and in violation of their rights under international and regional law. It also aims to advance children's rights beyond the individual child's rights, to correct such a systemic problem that negatively affects children, and to hold duty bearers accountable for violations of children's rights.

However, CRSL efforts have mostly been done at the regional or international level. A leading case before the ECtHR is *Bistieva and Others v. Poland* 75157/14 concerning the disproportionate detention of a Chechen woman and her three children at the ***Kętrzyn*** guarded centre for foreigners in violation of the right to respect for family life under Article 8. In their complaints against the decisions ordering and extending their administrative detention, the applicants referred, *inter alia,* to the fact that Polish authorities failed to evaluate how detention affects the children. Since they issued a decision refusing to expel the youngest child, the applicants also claimed that there was no justification for the child's detention, which was ordered for the purpose of securing the expulsion. Referring to the CRC (ECtHR 2018, para 78) and its previous case law, the Court held that "the child's best interests cannot be confined to keeping

the family together and that the authorities have to take all necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life" (para 85). The Court was not assured that the authorities ordered the family's detention as a measure of last resort after exploring possible alternative measures (para 86). It also had serious doubts as to whether they had given sufficient consideration to the best interests of the three children in compliance with obligations stemming from international law legal obligations imposed on the authorities (e.g., CRC or CFR) and from section 401(4) of the 2013 Act. In the Court's view, "the detention of minors called for greater speed and diligence on the part of the authorities" (para 87). Even in the light of the risk that the family might abscond, the authorities had failed to provide sufficient reasons to justify detention for 5 months and 20 days (para 88). Subjecting accompanied children to living conditions typical of a custodial institution was, therefore, disproportionate and in contravention with Article 8. Polish authorities were ordered to pay the applicants jointly EUR 12.000 in respect of non-pecuniary damage, plus any tax chargeable on that amount. This was the first decision by an international court concerning the placing of foreign families with children in guarded centres in Poland, and triggered a thread of decisions in "repetitive" cases (*A.B. and Others v. Poland* 15845/15 and 56300/15, *Bilalova and Others v. Poland* 23685/14, *Nikoghosyan v. Poland* 14743/17, and *R.M. and Others v. Poland* 11247/18). Significantly, in reporting on the execution of this judgement, HFHR recommended Polish authorities to: "educate judges and Border Guard officers on the application of the principle of the best interests of the child and on the ECtHR case law in this area; provide practical guidance on the specific activities that the Border Guard and the courts should carry out as part of an examination of the best interests of the child; make sure that the decisions ordering detention of families in guarded centres contain detailed and case-specific justification relating to the situation of the children concerned; provide ex officio legal aid in all cases concerning detention of families with children in guarded centres" (HFHR 2018: 41). Reportedly "the percentage of decisions imposing an alternative to detention increased from 11% in 2014 to over 23% in 2017" in Poland (FRA 2018, 184).

The subsequent case *Bilalova and Others v. Poland* 23685/14 concerns the detention of a Russian national of Chechen origin and her five children (aged three to nine) in a closed centre for aliens and the national authorities' failure to limit to absolute minimum the time of children's detention pending the outcome of their application for refugee status. In finding a violation of Article 5(1)(f), the Court observed that the place and conditions of detention must be appropriate and that the duration must not exceed a period that is reasonably necessary to achieve the aim pursued (ECtHR 2020, para 75). It noted that the place of detention was contrary to the well-established case law indicating that the confinement

of young children in such facilities should be *in principium* avoided (para 78); only a short placement under suitable conditions could be compatible with the ECHR, provided, however, that the authorities have resorted to this ultimate measure only after having concretely verified that no other measure less infringing on liberty could be taken (para 78). It concluded that there was insufficient evidence to show that domestic authorities had carried out such an assessment, especially as the applicants' father, previously in a similar situation, was placed in an open structure for foreigners (para 77). Moreover, steps had not been taken to limit the duration of their detention. The Court therefore found that children's detention was unlawful. It ordered Poland to remedy child applicants with a sum of EUR 10.700 for non-pecuniary damage. This case tackles a widespread and well-documented issue of Polish courts not taking into consideration the child's best interests in cases concerning migrant children whereas alternatives to detention were rarely sought prior to decisions imposing or extending detention. The case significance for tackling the long-term practice of Polish authorities to detain children for migration-related reasons was reiterated in the TPI by ECRE, AIRE Centre and ICJ, drawing the attention of the Court to Articles 3 and 37 CRC (ECRE 2015).

The aforementioned case *Nikoghosyan v. Poland* 14743/17 concerns the "automatic placement" of an Armenian family with three children in the *Biała Podlaska* guarded centre for aliens for six months without individualised assessment of particular situation and needs, pending their asylum application. The applicants' detention was prescribed by section 89 of the Aliens Act, and the domestic courts ordered and extended the measure. However, the ECtHR reiterated that "the detention of young children in unsuitable conditions may on its own lead to a finding of a violation of Article 5(1), regardless of whether the children were accompanied by an adult or not (ECtHR 2022, para 64). It also highlighted that "various international bodies … are increasingly calling on states to expeditiously and completely cease or eradicate the immigration detention of children" (para 65). Critically, the fact that the father was accompanied by his three minor children was not given any consideration when the courts first decided to place them in detention (para 80). Only at a later stage the Regional Court looked into the material conditions at the closed centre and concluded that the family's well-being was not threatened by their detention because the premises were suited to the children's needs (para 81). For the Court, the examination of this aspect of the applicants' case was not "thorough or individualised" (para 82). Firstly, the domestic courts did not refer to the new fact that, while in detention, the mother had given birth to her fourth child. Secondly, the domestic courts, and later the government, relied on the argument that the children's well-being had necessarily been protected by the fact that the family had been detained together and they had not been separated from their parents. On this point the ECtHR reiterated the principle stated (albeit under Article

8) in the aforementioned paragraph 85 of *Bistieva and Others*. The centre constituted a place of confinement and, from its well-established case-law, it ruled that "as a matter of principle, the confinement of young children in detention establishments should be avoided and that only placement in suitable conditions may be compatible with the Convention, on condition, however, that the authorities establish that they took this measure of last resort only after actually verifying that no other measure less restrictive of liberty could be put in place and that the authorities act with the required expedition" (para 86). In this case the domestic courts, after having verified that the applicants had only EUR 50 and had no address in Poland, simply concluded that the applicants did not qualify for any alternative measure under the law. The ECtHR ruled that, in the circumstances of this case, the detention of both adult and children for almost six months was not a measure of last resort for which no alternative was available, and "the fact that minors were being detained called for greater speed and diligence on the part of the authorities" (para 88). Accordingly, Article 5(1)(f) was violated.

The already cited case *R.M. and Others v. Poland* 11247/18 concerns the placement and maintenance of a mother with her three minor children for a period of about seven months in the ***Kętrzyn*** closed centre for foreigners pending their deportation to Russia. In September 2017, they were handed over to the Polish authorities by their German counterparts under the Dublin III Regulation. They complain that the child applicants' detention had been contrary to Article 3 ECHR, having regard to its duration, their young age, the presence of certain factors that caused anxiety (such as surveillance by uniformed staff, restrictions on freedom of movement and exposure to noise caused by renovation work then in progress in the detention centre) and the psychosomatic symptoms from which one of the children suffered. Citing Article 5(1)(f) and (4), they claim that: (a) their detention was arbitrary and unnecessary; (b) the successive requests by the border police to place and keep them in a detention centre were not communicated to them. Moreover, they claim that their placement and continued detention were contrary to Article 8. Notably, HHC submitted a TPI to assist the Court in the following areas: contracting states' obligations under international law regarding safeguards and best interests of the child in all actions concerning her or him; contracting states' obligations under Articles 3, 5 and 8 ECHR for the reception of asylum-seeking families with children and related breaches when detained, especially children; contracting states' obligations to justify the support of asylum-seekers' detention with objectively justified reasoning that proves the necessity of detention while less coercive measures are not applicable (HHC 2020). The parties are awaiting the Court's decision.

At the international level, in September 2021, Manfred Nowak and Dzidek Kedzia filed a third-party submission to the UN Human Rights Committee in relation to the individual communication no. 3870/2021. The latter is the first to be brought against Poland concerning the wrongful placement of foreigners in a guarded centre, under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). It was submitted in November 2019 by a family from Chechnya, represented by HFHR, and concerns a single father and two underage children who applied for international protection in Poland and were immediately placed in the *Biała Podlaska* centre, where they spent over 10 months. The applicants allege violations of Articles 7, 9 and 24 ICCPR. According to the communication the psychologists had stated that the detention had caused the deterioration of the father's health and had a negative impact on the condition of his children, which required specialistic treatment that was not available in the detention facility. In this case, the Polish courts did not properly assess the children's situation and their best interests; deciding on the prolongation of the detention for the family, the District Court considered only the opinion of the Border Guard authority stating that there were no contradictions for furthering the children's stay in detention despite the fact that their mental condition was deteriorating. The *amicus curiae* brief was prepared *pro bono* and offers an opportunity to enrich the Committee's analysis of the issues raised in the communication in terms of violations of the children's rights under Article 24 ICCPR as interpreted in accordance with the CRC (particularly Articles 3 and 37) and the International Covenant on Economic, Social and Cultural Rights (particularly Article 12). In October 2021, the Committee forwarded the brief to the parties, who submitted written observations in reply and related comments in 2022. The parties are awaiting the Committee's decision.

7. Greece

Key stakeholders in the country include, ***inter alia***, Arsis Association, the Greek Council for Refugees, Equal Rights Beyond Borders, the Hellenic Action for Human Rights, and Refugee Support Aegean. At the national level, the Global Campus of Human Rights supported the initiation of CRSL litigation by lawyers from Arsis,[3] precisely five cases against Greece before national administrative courts: *S.Z. v. Greek Administration* AKY187/2022 and AND189/2022; *A.R.Z. v. Greek Administration* AKY75/2021 and AND81/2021; *H.M. v. Greek Administration* AKY528/2020 and AND268/2020; *M.T. v. Greek Administration* AKY609/2020 and AND13/2021; *M.A. v. Greek Administration* AKY434 and AND177/2022.

3 In the context of the ACRiSL project, a cooperation contract (in force between February and July 2022) was signed between the Global Campus of Human Rights and three Greek lawyers from Arsis Association (Nikolas Psathas, Chrysovalantis – Konstantinos Papathanasiou, and Eutychia Chalkeidou) in order to support and monitor progress in five CRSL cases.

In terms of impact, the CRSL activities undertaken in the first four cases have prevented so far concrete risks of detention of the migrant children concerned; in the first, third and fourth cases the children were previously placed under "protective custody" and then in shelters for unaccompanied children. The fifth case was initiated to protect a child who experienced unlawful migration-related detention with adults for 4 months. The parties in all these cases are awaiting the courts' decisions.

At the regional level, some relevant cases decided by the ECtHR include: *Bubullima v. Greece* 41533/08 (Judgement of 28 October 2010); *Mahmundi and Others v. Greece* 14902/10 (Judgement of 31 July 2012); *Rahimi v. Greece* 8687/08 (Judgement of 5 April 2011); *Mohamad v. Greece* 70586/11 (Judgement of 11 December 2014); *H.A. and Others v. Greece* 19951/16 (Judgement of 28 February 2019). Only some of these qualify, to a certain degree, as CRSL, and their effectiveness is highlighted hereafter.

In *Rahimi*, the Court considered the application of Article 3 ECHR to the reception and detention conditions of an unaccompanied minor seeking asylum, finding a violation based on the dreadful detention circumstances (despite short duration, 2 days) and the applicant's extremely vulnerable situation (his homelessness, 7 days), but also concluding that the Greek authorities' negligence to take appropriate care of a child in migration also amounted to a violation of Article 3 ECHR. Furthermore, it was a landmark decision to apply a procedural approach regarding the CRC in relation to vulnerable unaccompanied minors, attaching decisive importance to the fact that the Greek authorities had not examined whether the detention was in the applicant's best interests (Article 3 CRC) and whether the detention was used as a measure of last resort (Article 37(b) CRC). This approach has paved the way for laying the primary responsibility to protect children's rights on the domestic authorities, thereby confirming the subsidiary nature of the ECHR system. However, it must be noticed that the case was not filed through a conscious decision-making regarding strategic litigation; actually, the ECtHR raised itself that changed the legal basis into Article 3 and turned into a strategic judgement. At the practical level, the impact of Rahimi was that it gave the lawyers the confidence and experience to continue bringing cases. The case started a thread of litigation against the absence of an effective remedy (Article 13) enabling the child applicants to complain about their detention conditions (*Mahmundi and Others v. Greece* 2012), as well as against the lack of judicial review of the lawfulness of their detention pending expulsion (Article 5(4)) (*Bulbullima v. Greece* 2010; *Mahmundi and Others v. Greece* 2012).

In *Mohamad*, the Court's decision dealt with one child's situation but targeted the systemic issue of inhumane treatment at Greek border posts (especially in Feres and Soufli) which has affected migrant unaccompanied minors and has led to violate Article 3 ECHR, even in conjunction to Article

13 ECHR. It also targeted the recurring issue of their status as minors being not taken into account when held at such border posts instead of at an alternative accommodation suited to their needs, which has led to violation of Article 5(1)(f) ECHR.

In *H.A.*, the Court recognised the unlawfulness of the "protective custody" in Greek police stations of nine unaccompanied minors within the meaning of Article 5(1) ECHR as it could only fall under subparagraph (f), also highlighting that Article 118 of Decree 141/1991 had not been intended for unaccompanied minors and potentially led to lengthy periods of detention, and thus stressing the need to ensure them the protection linked to their condition, including their possibility to be identified by lawyers working for NGOs in order to bring, within a reasonable time, an appeal against what they regarded as a detention measure and to speed up their transfer to appropriate facilities, even recognising the practical obstacles in any attempt to challenge their detention before the administrative court due to the lack of official detainee status. Significantly, the case targeted widespread issues faced by unaccompanied minors in the context of asylum procedures in Greece, where their reception and protection has been challenged by the long-standing practice of "protective custody" in police stations and pre-departure detention centres, along with their inability to bring a complaint against the (not-child appropriate) detention conditions, the impossibility to establish contact with lawyers and the practical obstacles to challenge their detention. Following several calls (by different stakeholders in different fora) to Greek authorities, Law 4760/2020 exempts unaccompanied minors from the "protective custody" regime under Article 43 whereby the Public Prosecutor (acting as a temporary guardian) along with the Special Secretary for the Protection of Unaccompanied Minors take necessary measures to refer them in appropriate accommodation facilities.

Other cases, although not CRSL, show the importance of litigation efforts to stop violations of children's rights. In particular, Equal Rights Beyond Borders submitted to the ECtHR requests for interim measures. In *N.A. v. Greece* 55988/19, the Court decided (October 28, 2019) to grant them and obliged Greece to immediately release a 16-year-old Afghan unaccompanied minor kept in "protective custody" under "devastating conditions" in a police station in Athens, in order to accommodate him in suitable conditions until his transfer to be reunified with his sister in the UK. In *A.M. v. Greece* 61303/19, the Court decided (November 27, 2019) to grant interim measures to an Afghan unaccompanied minor imprisoned in the Greek camp Fylakio under "unimaginable conditions" and ordered Greece to treat him as unaccompanied minor until the performance of an age assessment (if deemed necessary and doubts exist as regards his actual age), to transfer him to an accommodation with reception conditions compatible with Article 3 ECHR and his particular status, and to clarify and facilitate

the lodging of his asylum request and family reunification request with his uncle in Germany. Even in *H.M. and R.M. v. Greece* 6184/20, the Court decided (May 14, 2020) to grant interim measures to two unaccompanied minors kept in the camp Fylakio, and ordered Greece to transfer them to an accommodation with reception conditions compatible with Article 3 ECHR and their particular status as unaccompanied minors, as well as to clarify and facilitate the lodging of their asylum requests and family reunification requests with an older brother legally residing in Germany.

The Greek Council for Refugees (GCR) also submitted requests for interim measures, claiming breaches of Articles 3 and/or 5 ECHR to stop violations of unaccompanied children's rights. For instance, in *D.F. and Others v. Greece*, 65267/19, the Court granted (December 24, 2019) interim measures in one day to transfer to age-appropriate facilities five unaccompanied and asylum-seeking children living for many months in substandard conditions in the RIC of Samos and in the surrounding area known as the "jungle". The case illustrated the enormous gaps in protection for unaccompanied children, resulting in their exposure to serious risks. It highlighted that all necessary measures must be taken for juvenile refugees' effective protection, including the immediate implementation of a guardianship system, the increasing number of suitable accommodations, the prohibition of the legalisation of juvenile detention under the national asylum and immigration law, and the immediate termination of such a practice. Also in *T.S. and M.S. v. Greece* 15008/19, the Court granted (March 21, 2019) interim measures to transfer to age-appropriate accommodation facilities some underage unaccompanied girls seeking international protection and placed in "protective custody", under unsuitable and dangerous conditions, within the detention facility for adult women of Attika's General Police Directorate of Foreigners.

A noteworthy case, litigated with the support of GCR that represented some of the affected children before national authorities, is *ICJ and ECRE v. Greece* 173/2018, which was decided by the European Committee of Social Rights (ECSR) on January 26, 2021. Significantly, systematic detention and lack of adequate facilities for children's enjoyment of special care and protection were deemed to be among the most blatant infringements of the rights of migrant children under the European Social Charter, which included their rights to shelter (Article 31.2), to social and economic protection (Article 17.1), to protection against social and moral danger (Article 7.10), to adequate housing (Article 31.1), to protection of health (Article 11.1 and 11.3), and to education (Article 17.2) (ECSR 2021). The ECSR's immediate measures against Greece (to provide age-appropriate shelter, water, food, health care and education, to remove unaccompanied children from detention and from RICs at the borders, to place them in suitable accommodation for their age, and to appoint effective guardians) were not fully implemented. Nonetheless, this decision brought to light that even under the most precarious circumstances (inadequate reception system), children's rights cannot be suspended and immediate access to basic social entitlements must be ensured.

8. Malta

Key stakeholders in the country include, *inter alia*, aditus foundation and Jesuit Refugee Service Malta (JRS). The Global Campus of Human Rights supported the initiation of CRSL litigation by lawyers from aditus in cooperation with JRS respectively before national courts and the ECtHR.[4]

In particular, *A.F. v. Ministry for Home Affairs, Security, Reforms and Equality, the Permanent Secretary, Ministry for Home Affairs, Security, Reforms and Equality, Director of the Detention Services, The Director of the Agency for the Welfare of Asylum Seekers, the Superintendent for Public Health and the State's Advocate* was filed before the First Hall Civil Court (Constitutional Jurisdiction) on July 12, 2022. It originates from the situation of six migrants (from Sierra Leone, Liberia, Ivory Coast) who, after being rescued and taken to Malta in November 2021, were confirmed to be minors during the course of a protracted age assessment procedure. They were subsequently released after the *habeas corpus* application filed by aditus in January 2022, although such application was rejected by the national Court[5] (that confirmed the applicants' detention) and it is not clear which entity ordered their release (Falzon 2022). In May 2022, aditus filed an application before the Civil Court (Voluntary Jurisdiction) requesting authorisation to proceed with the children's human rights application in the absence of the legal guardian's consent. This court issued a positive decision in June 2022. In the meantime, some of the children left the country. Nonetheless, a human rights application was filed for the remaining child (an asylum-seeking child from Liberia) before the aforementioned First Hall Civil Court in July 2022. This was based on violations of Articles 3 and 5 ECHR, Articles 1, 4, 6 and 24 CFR, and Articles 32, 34 and 36 of the Constitution of Malta. Relevant CRC provisions are Articles 3, 8, 16, 20, 22, 24, 27, 30, 31, and 37. The applicant was confirmed a child by the national authorities and was provided with a legal guardian. In November 2022, aditus prepared and filed an application to the Court, requesting proceedings to be conducted in the English language. The litigation is still pending. Depending on the outcome of the judgement, an appeal before Malta's Constitutional Court will be possible for both the applicant and Malta.-

Notably, the children are the applicants before these national procedures. They have been actively involved at all stages of the lawyers' work through participating in all decisions taken on the basis of regular

4 In the context of the ACRiSL project, a cooperation contract (in force between February 2022 and March 2023) was signed between the Global Campus of Human Rights and a lawyer from aditus foundation (Neil Falzon) in order to support and monitor progress in two CRSL cases.

5 The *habeas corpus* application was rejected by the national court since it had been filed against the Commissioner of Police, whilst the Commissioner was not the entity detaining the children.

information provision and updates. With these clients the lawyers needed to undertake a more in-depth and sensitive empowerment process due to their placement under a legal guardianship regime that was (and remains) opposed to their engagement in legal actions against the state.

From a CRSL perspective, three considerations emphasised by the litigators are noteworthy. First, this case aims to advance children's rights beyond the individual child concerned. The process is intended to bring judicial and political attention to Malta's excessive and irregular reliance on administrative detention of children as a tool of migration management. It also underlines the institutional abuse presented by the cumulative effect of various inadequate procedures (vulnerability identification, age assessment, detention decision-making) and the terrible living conditions in which children have been kept in the state detention centres. This is the first case where the Maltese courts are called upon to look at Malta's detention regime and its treatment of unaccompanied children. The lawyers are ensuring that the First Hall Civil Court is given information on the reception system from the moment of disembarkation until eventual release of the child and appointment of a guardian, in order for the Court to appreciate the systemic deficiencies, the administrative negligence and the sheer disregard for legal norms. Second, the case aims to increase legal protection of children's rights. The application highlights the early stages of Malta's detention regime whereby asylum-seekers, including children, are detained on grounds not in conformity with international and regional standards. It seeks to reinforce the principle that detention of minors is never in the best interests of the child, including where medical considerations are being assessed. Third, the application also emphasises the lawyers' concerns in relation to Malta's regime of legal guardianship, where the guardian has clearly acted against the best interests of the minor under their charge.

At the regional level, aditus filed an application A.D. v. Malta 12427/22, to the ECtHR in March 2022. The applicant is a young Ivorian national who attempted to reach Europe through Libya by boat with other asylum seekers in early November 2021. They were rescued by the Armed Forces of Malta after spending 10 days stranded at sea and disembarked in Malta on November 24, 2021, while some people reportedly died (Arena 2021). Despite suffering from ill-health and exhaustion, all the male survivors were directly detained. Upon arrival, the applicant declared that he was a minor. He was detained in inhumane living conditions and under different legal regimes Malta relies on to detain asylum-seekers (COVID-19 quarantine, public health, and reception regulations). He was released in July 2022. On May 24, 2022, the ECtHR communicated the case to the government, with questions for Malta to comment on regarding detention conditions and review mechanisms. The facts at issue span from November 24, 2021, until July 7, 2022, and the ECHR provisions allegedly violated includes

Articles 3, 5(1), 5(4), 13 and 14. Relevant CRC provisions are Articles 3, 8, 16, 20, 22, 24, 27, 30, 31, and 37. In August 2022, aditus received the government's observations on the application, and in October 2022 submitted to the ECtHR their own final observations and request for just satisfaction. The submissions also included *affidavits* made by the applicant and by two other persons detained at the same time. Notably, the applicant child has been actively involved at all stages of the lawyers' work through participating in all decisions taken on the basis of regular information provision and updates. With his consent, his story also featured in a blogpost on the lawyers' work in relation to his detention (Falzon 2022).

In this context, on October 17, 2022, AIRE Centre, Manfred Nowak and the author from the Global Campus of Human Rights, ICJ and ECRE jointly submitted a TPI to the ECtHR (EDAL 2022). They underlined the need for detention under Article 5(1) to comply with the requirements of legality, not be arbitrary and be in accordance with a provision prescribed by law, with consideration of less invasive alternatives to detention as part of an individualised assessment, which takes into account all circumstances of the case and applicant concerned. Moreover, they stressed the need for the child's best interests to be an overriding consideration and thus be assessed in all cases relating to children, including when deprivation of liberty is at stake. Additionally, the presumption of minority should be applied where there is doubt as to the age of the person concerned and corresponding rights. They emphasised the Court's previous findings that children's vulnerability can mean that their deprivation of liberty has been violated in situations where it may not have been for adults. In this context, they highlighted that the CRC-Committee's General Comments (particularly n. 6 paras 61-63; n. 10 para 79; n. 14 paras 75-76; n. 23 para 10) are authoritative and interpretative tools which should also be considered under Article 53 ECHR. Furthermore, they highlighted the need for an effective judicial review of detention under Article 5(4), clearly prescribed by law and accessible in practice, as an essential safeguard against arbitrary detention, including in the context of immigration control. Access to legal aid and advice is important in ensuring the accessibility and effectiveness of judicial review, and the absence of provision for legal assistance in law or in practice should be taken into account in assessing both the arbitrariness of detention and the adequacy of judicial review.

On November 25, 2022, aditus received Malta's final submissions which provided useful information in relation to its asylum regime. All parties are awaiting the ECtHR's decision. In the meantime, advocacy efforts by the lawyers, including public dissemination and bilateral meetings with government stakeholders, have been engaged in so as to raise the profile of detained children. From a CRSL perspective, three considerations emphasised by the litigators are noteworthy. First, similarly to the previous case, *A.D. v. Malta* aims to advance children's rights

beyond the rights of the individual child concerned, bringing judicial and political attention to Malta's reliance on administrative detention as a tool of migration management. It also underlines the aforementioned institutional abuse presented by the cumulative effect of inadequate procedures and the terrible living conditions in the state detention centres. Second, the application aims to strengthen legal protection of children's rights, highlighting Malta's detention regime whereby asylum-seekers, including children, are confined on grounds not in line with international and regional standards. It seeks to reinforce the principle that detention of minors is never in the best interests of the child, including where medical considerations are being assessed. Additionally, the case has the potential of radically changing the remedies that Malta provides for detained persons, including children. The formulation of the ECtHR's questions to Malta shows an interest by the Court in the nature of the Immigration Appeals Board, and whether it conforms to the Convention's requirements for an effective remedy. The lawyers' submissions had underlined the lack of impartiality of this body, highlighting the politicisation of appointments of its members. Third, the application seeks redress through a regional body for a violation of children's rights at the domestic level.

Importantly, the two cases are highlighted in all advocacy meetings aditus and JRS attend on the issues of detention, protection of children, and general migration issues. On May 31, 2022, they also publicly launched a report that presents the voices of children talking about their experiences of Malta's asylum regime; the qualitative study explores various stages of a child's life in Malta and identifies key concerns (Carabott 2022; Agius 2022). With this report they intend to focus on a key advocacy message echoing Malta's own national policy on children: migrant children are firstly children. These lawyers' advocacy attempts to shift narratives from a migration-centric one –inevitably leading to discussions on age assessment, detention, status, procedures, etc.– to a child-centre one, with a more obvious focus on care, security, attention, guidance and support.

9. Concluding remarks for a children's rights preparedness

The litigation efforts explored in previous sections seem to indicate that there can be valuable opportunities to strategically litigate children's rights in relation to migration-related detention before national and regional/international bodies. Nonetheless, it is important to emphasise the need for a children's rights preparedness in addressing the challenges of such a damaging practice. This entails to focus on litigation strategies that are consistent with children's rights and aim to advance children's enjoyment of their rights, in order to contribute effectively to tackle such practice and bring changes against it.

In the above selected cases, the actors driving and supporting CRSL work in this area are law firms, child rights organisations and other civil society organisations working with lawyers on a regular basis. The applicants include the children concerned. The respondents are state actors. The litigation undertaken by these organisations has proved to contribute to challenging such rights-violating practice and opening up to further opportunities, especially when leading to landmark decisions that provide important considerations to be used in further strategic litigation and advocacy. Importantly, as these CRSL activities have been undertaken before national and regional courts and international monitoring bodies, the related long-term impact is likely to be wide-ranging. In the European context, the considered litigators do not generally expect the cases to be solved domestically and rather seem to rely on possible positive outcomes in the EU, CoE or UN fora. All the countries involved in the selected cases, however, are not yet parties to the Optional Protocol to the CRC on a communications procedure.

It must be emphasised that the author's qualitative research conducted for ACRiSL and from which the above selected cases are drawn show a certain diversity linked to the existence of regional human rights monitoring mechanisms, favouring the number of Global North CRSL experiences (in comparison to Global South CRSL experiences) in relation to child migration-related detention. The fact that CRSL is under-practiced in this thematic area in most of the Asian countries concerned does not help the lawyers concerned to work on new cases. Such difficulty seems partly due to practitioners' impossibility to access immigration detention centres in their countries and the consequent unfeasibility to initiate new cases, or to the large xenophobic sentiment existing in their countries, or to the conservative approach of national courts who are not very fond of the possibility of TPI from abroad on how to take up and implement certain policies. Some progressive results have been obtained through strategic advocacy and inter-ministerial agreements. Nonetheless, the same research also shows that all of the European and Asian states on the radar have experienced similar structural challenges impeding the rights of children in migration-related detention (especially in terms of risk of arbitrary detention, lack of protection, and barriers to access basic services)[6].

These considerations make clear the value of creating opportunities for discussion and exchange for legal and advocacy practitioners from different countries and even regions in terms of inspiring positive change in litigators' approaches to CRSL and learning from each other about how

6 For an overview of the challenges that diverse types of cross-border migration pose for children and the support systems provided to them in countries of origin and destination in East, South, and Southeast Asia, see Maruja M.B. Asis and Alan Feranil. 2020. "Not for Adults Only: Toward a Child Lens in Migration Policies in Asia" in 8(1) *Journal on Migration and Human Security*, 68-82. Link

to use innovative ways to tackle similar issues in their respective countries. Thus, besides mapping and highlighting existing pertinent cases, it remains important to build-up and consolidate a non-formal network of practitioners who are either experienced in or willing to engage in CRSL on migration-related detention, by facilitating the sharing of expertise about it with manifold interactions focusing on specific challenges to be solved and/or skills to be acquired for new CRSL efforts that could effectively change the lives of children on the ground.

In this regard, a successful example about positive influence on lawyers' approaches towards CRSL is represented by the workshop organised in May 2021 by the Global Campus of Human Rights for the ACRiSL project, which explored the most appropriate forms of CRSL dealing with migration-related detention. Several participants emphasised how the participation therein had already enriched their knowledge and inspired them to use innovative tactics in their work. By creating a space for lawyers from different continents experiencing similar issues and by inviting international experts to the discussion, the workshop was appreciated by the participants who reacted positively to learning from each other and from experts about original ways to face similar issues in their respective countries. Subsequent interactions with these lawyers have offered further opportunities to reflect on CRSL specific objectives in order to develop their attitudes towards ongoing challenges in the area of migration-related detention and to identify new cases.

The author's activities carried out to support specific CRSL cases in cooperation with selected lawyers have provided opportunities to understand some concrete challenges that practitioners can face in preparing and developing the cases concerned, especially given the often rapidly changing litigation context. Some can stem from factors independent from the efforts undertaken, such as in the case of the ECtHR's refusal of the request to submit a TPI in *M.H. v. Hungary*. Another example regards the pending Greek cases 1 and 5 which have been delayed due to the preliminary cases before other courts which would need to be resolved before there can be further progress. Other challenges can stem from dynamics that are largely outside the control of lawyers, such as in cases of unaccompanied minors who left Malta after having been considered as clients for the purposes of CRSL efforts. Further challenges can end up being additional aspects to tackle in the litigation process, as in one case litigated by Maltese lawyers who unsuccessfully engaged with the minors' legal guardian for legal authorisation to file their human rights application before the national civil court.

Strong arguments have been recently articulated in favour of child rights-consistent practice based on the CRC and the work of the CRC-Committee (Nolan and Skelton 2022, 9-13), also emphasising the real risk

of raising issues of legitimacy, internal coherence and overall contribution to children's rights achievements. They have well identified the most appropriate child rights standards that CRSL practitioners should have in mind to assess such consistency at all stages of litigation. Key attention is given to Articles 12, 13, 17 and 5 CRC, but also Articles 2, 3(1), 6, 16, 19, 36 and 39 (Nolan, Skelton and Ozah 2022, 36-39; Nolan and Skelton 2022a, 13-19). In this regard, they have also articulated key principles that should be borne in mind by CRSL actors when carrying out work around the scoping, planning and design of CRSL (Nolan, Skelton and Ozah 2022b). In this context, the selected litigation efforts addressed in the present article clearly go in the desirable direction but even show a space for more preparedness in terms of making multiple considerations of children's rights that can inform and develop further strategic litigation practice against migration-related detention. In this vein, increasing children's rights literacy across relevant stakeholders in turn can contribute to being prepared and bring much greater results.

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