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Generativity is a Core Value of the ESJ: A Decade of Growth

Erik Erikson (1902-1994) was one of the great psychologists of the 20th century¹. He explored the nature of personal human identity. Originally named Erik Homberger after his adoptive father, Dr. Theodore Homberger, he re-imagined his identity and re-named himself Erik Erikson (literally Erik son of Erik). Ironically, he rejected his adoptive father's wish to become a physician, never obtained a college degree, pursued independent studies under Anna Freud, and then taught at Harvard Medical School after emigrating from Germany to the United States. Erickson visualized human psychosocial development as eight successive life-cycle challenges. Each challenge was framed as a struggle between two outcomes, one desirable and one undesirable. The first two early development challenges were 'trust' versus 'mistrust' followed by 'autonomy' versus 'shame.' Importantly, he held that we face the challenge of **generativity** versus **stagnation in middle life**. This challenge concerns the desire to give back to society and leave a mark on the world. It is about the transition from acquiring and accumulating to providing and mentoring.

Founded in 2010, the European Scientific Journal is just reaching young adulthood. Nonetheless, **generativity** is one of our core values. As a Journal, we reject stagnation and continue to evolve to meet the needs of our contributors, our reviewers, and the academic community. We seek to innovate to meet the challenges of open-access academic publishing. For us,

¹ Hopkins, J. R. (1995). Erik Homburger Erikson (1902–1994). *American Psychologist*, 50(9), 796-797. doi:<http://dx.doi.org/10.1037/0003-066X.50.9.796>

generativity has a special meaning. We acknowledge an obligation to give back to the academic community, which has supported us over the past decade and made our initial growth possible. As part of our commitment to generativity, we are re-doubling our efforts in several key areas. First, we are committed to keeping our article processing fees as low as possible to make the ESJ affordable to scholars from all countries. Second, we remain committed to fair and agile peer review and are making further changes to shorten the time between submission and publication of worthy contributions. Third, we are looking actively at ways to eliminate the article processing charges for scholars coming from low GDP countries through a system of subsidies. Fourth, we are examining ways to create and strengthen partnerships with various academic institutions that will mutually benefit those institutions and the ESJ. Finally, through our commitment to publishing excellence, we reaffirm our membership in an open-access academic publishing community that actively contributes to the vitality of scholarship worldwide.

Sincerely,

Daniel B. Hier, MD

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From Reporting to Responsibility: Legal Innovations in Corporate Law and Governance under the examples of the EU's "Corporate Sustainability Reporting Directive (CSRD)"

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Abstract

The topic of this research is as practical as it is theoretical and cognitive. It is based on the example of the EU's Corporate Sustainability Reporting Directive (CSRD). The practical relevance of the research issue is considered in terms of global environmental, social, labour and governance issues, as well as regulatory issues, which have affected the entire EU and given rise to the need for a mechanism to protect corporations from inefficient outcomes and create a more transparent, accountable and sustainable corporate environment within the EU. In the modern digital era, companies have started to act for sustainability after facing the failures of corporations to make efficient reporting efforts, which leads to poor risk management, increased costs and decreased innovation. However, it is obvious that the global community has not created the mechanisms that would vitally promote sustainable economic development over the last decade. In the paper Principles of Political Economy by the renowned English philosopher John Stuart Mill, we read that 'the most cogent reason for establishing a rule of conduct is that it promotes general happiness; it has been found to do so by experience, and that constitutes its title to be respected as a rule'. In order to improve transparency and accountability within companies, promote sustainable business practices, support informed decision-making and

contribute to the EU's Green Deal, the EU consolidated the directive, the meaning of which is considered within the context of recent history (Guerman, 2021). The Volkswagen emissions scandal (also known as 'Dieselgate', 2015) revealed the problem of environmental degradation when it was discovered that the company had installed software in its diesel vehicles to cheat emissions tests. This allowed the cars to emit nitrogen oxides at levels up to 40 times higher than the legal limit. The scandal has highlighted the need for greater transparency and accountability in corporate environmental practices. Similarly, Amazon has faced ongoing criticism for its labor practices, including reports of harsh working conditions, inadequate breaks and high injury rates in its warehouses (Guerman, 2021). Repeated investigations and media reports have brought these issues to light, demonstrating the need for greater transparency and accountability in how companies treat their employees. However, the legal process is ongoing. In 2018, Facebook faced intense scrutiny following the Cambridge Analytica scandal, in which the personal data of millions of users was harvested without consent and used for political advertising. The lack of transparency in data handling practices and inadequate accountability measures were widely discussed, highlighting the need for more robust reporting and user privacy protection. These examples illustrate the diverse range of problems that corporations have faced, demonstrating the urgent need for the EU's Corporate Sustainability Reporting Directive. The dilemmas between 'reporting' and 'responsibilities' are evident in the market, and the legal and economic analysis of innovations in the corporate sustainability process is a fascinating area of research.

Keywords: CSRD, Corporate Responsibility, Compliance, Corporate Sustainability, Corporate Governance, Reporting Directive, Legal Innovations

Introduction

In recent years, there has been a significant shift in the evolution of corporate governance, particularly within the European Union (EU), where legal reforms have placed a stronger focus on sustainability and corporate responsibility (Wamsler, 2018). This change is largely due to global issues such as social justice and climate change, as well as mounting pressure from stakeholders, including investors and customers, to adopt more ethical business practices. One of the most significant legal developments in this area is the Corporate Sustainability Reporting Directive (CSRD), which aims to improve transparency regarding environmental, social and governance (ESG) factors (Freiberg, 2022).

Undoubtedly, the CSRD is a significant advancement in ensuring that companies disclose their true environmental and social impacts. To meet the

growing demand for thorough, standardized and reliable ESG data, the CSRD introduces several innovations to the previous Non-Financial Reporting Directive (NFRD) (Wamsler, 2018). This study examines these legal developments, their impact on corporate governance, and the shift from reporting to real corporate responsibility. In doing so, it examines the CSRD in light of the evolving corporate responsibility landscape and EU legal reforms (Zimmermann, 2020).

Background and Context

Despite the fact that corporate governance systems have historically placed a strong emphasis on the financial performance of businesses, particularly profitability and shareholder value (Guerman, 2021), this shareholder-centric model is coming under increasing scrutiny. Businesses used to frequently ignore the wider societal and environmental effects of their practices. However, corporate governance practices have changed as a result of growing awareness of the social and environmental consequences of business decisions, even though financial profitability remains crucial.

Global accords such as the United Nations Sustainable Development Goals (SDGs) and the 2015 Paris Agreement on climate change demonstrate the growing understanding that a company's financial performance is inextricably linked to its social and environmental obligations. In this respect, the EU has established itself as a pioneer in advancing corporate governance and sustainability. The EU has recognized the importance of integrating sustainability into business operations through various legislative initiatives.

Notably, the Non-Financial Reporting Directive (NFRD), implemented in 2014, had gaps that the CSRD directly addressed. While the NFRD required large public-interest companies to disclose non-financial information, it soon became clear that these requirements were inadequate. Inconsistent and insufficient disclosures caused by the NFRD's lack of standardized, auditable reporting criteria made it challenging to determine a company's actual social and environmental impact. To overcome these drawbacks, the CSRD was created to mandate more thorough, open and consistent sustainability reporting.

Research Aims, Objectives & Questions

This study aims to critically assess the legal innovations brought about by the CSRD and investigate their impact on corporate governance in the EU. The study will analyze how the CSRD enhances corporate accountability and transparency in terms of sustainability reporting, and examine how it builds upon earlier frameworks, particularly the NFRD. While the CSRD's primary objective is to enhance transparency, this research will also examine how the directive encourages companies to adopt sustainability practices as integral

components of their core business strategies. It is important to understand not only how businesses report on sustainability, but also whether these reports lead to sustainable business practices and genuine corporate responsibility (Wamsler, 2018).

The study will address the CSRD's practical and legal ramifications by answering several important research questions: What legal innovations does the CSRD introduce, and how does it enhance the NFRD? (Zimmermann, 2020). While it is evident that the CSRD builds upon the NFRD's framework, the heightened demand for transparency is evident in its more comprehensive reporting requirements. This study will examine the CSRD's unique innovations, such as the requirement for third-party auditing of sustainability reports and the extension of reporting obligations to smaller businesses (Freiberg, 2022).

In practical terms, how does the CSRD affect businesses in terms of accountability, transparency, and sustainability reporting? Although the CSRD is intended to improve corporate responsibility, it has a variety of real-world applications for companies. This inquiry will examine how businesses are responding to the new reporting requirements, the tools they are using to evaluate their sustainability impact, and the challenges they face in meeting these demanding requirements. What impact does the CSRD have on the transition to sustainable business practices and corporate responsibility?

While enhancing transparency is the CSRD's primary objective, it also seeks to transform business practices. This study will evaluate the extent to which the CSRD motivates businesses to prioritize sustainability in their operations and decision-making processes (Guerman, 2021).

What difficulties do businesses encounter when adhering to the CSRD, and how have certain businesses overcome these challenges? For businesses, especially those not accustomed to thorough ESG reporting, complying with the CSRD poses significant challenges. This study will examine the challenges businesses face and provide examples of businesses that have successfully complied with the CSRD's regulations (Zimmermann, 2020). How does the CSRD align with international sustainability trends and reporting guidelines such as the TCFD and GRI? The alignment of the CSRD with global reporting standards raises the question of whether it can promote greater international consistency in sustainability reporting. This study will examine how the CSRD enhances the EU's influence over global sustainability practices and its interaction with other international frameworks.

The Evolution of Corporate Sustainability Reporting

Over the past few decades, corporate sustainability reporting has changed significantly. This evolution has been driven by increasing demands

for corporate transparency, social inequality and environmental degradation. While financial reporting has long been a pillar of corporate governance, sustainability reporting is now just as significant in determining a company's long-term viability (Zimmermann, 2020). This change signifies a shift away from solely assessing financial performance towards considering a business's broader impact on the environment and society (MaxWealth, 2022).

This section will examine the historical evolution of corporate sustainability reporting, the legal developments that have influenced its current structure, and the crucial role that corporate law has played in promoting this development (Lehmann, 2017).

Historical Development of Corporate Sustainability Reporting

As environmental concerns began to receive international attention in the early 1970s, the concept of corporate sustainability reporting emerged. During this time, companies prioritized making as much money as possible, often at the expense of social and environmental concerns. However, as environmental issues such as pollution, resource depletion and climate change began to dominate public discourse, businesses were increasingly asked to incorporate these concerns into their operations (Freiberg, 2022).

Despite the fact that early sustainability initiatives were frequently voluntary and disorganized, the 1980s saw the start of more structured reporting frameworks. The concept of sustainable development was formalized in the 1987 Brundtland Report, also known as Our Common Future, which emphasized the importance of companies integrating social, economic, and environmental factors into their long-term plans. As mentioned, this report paved the way for corporate responsibility in the following decades and laid the groundwork for modern sustainability thinking (Sörensson, 2021).

A significant milestone in the development of sustainability reporting was reached in the 1990s with the establishment of the Global Reporting Initiative (GRI). To encourage businesses to reveal their environmental, social and governance (ESG) practices in a uniform manner, the GRI created the first internationally accepted set of guidelines for corporate sustainability reporting. These voluntary guidelines were widely adopted by large multinational corporations, signaling the beginning of more organized and uniform sustainability reporting procedures (Zimmermann, 2020).

Other frameworks emerged in the early 2000s, such as the International Financial Reporting Standards (IFRS) Foundation and the UN Global Compact. Although these frameworks had different scopes and methodologies, they collectively demonstrated an increasing awareness that sustainability should be integrated into the core principles of corporate governance (Cinquini & De Luca, 2022). As the need for thorough corporate

accountability grew, sustainability reporting gradually expanded to encompass social and governance issues alongside environmental performance.

This historical overview demonstrates that sustainability reporting evolved gradually, with the development of international frameworks and guidelines representing significant milestones. However, these initiatives lacked the legal authority to enforce uniform reporting guidelines, resulting in irregular and occasionally cursory disclosures.

Legal Innovations in Corporate Governance

Even though sustainability reporting has been developing for several decades, legal frameworks that require companies to provide more thorough, trustworthy and comparable reports have only recently been introduced. The most recent legal innovation in this area is the Corporate Sustainability Reporting Directive (CSRD), which came into force in 2024. Compared to its predecessors, such as the Non-Financial Reporting Directive (NFRD), the CSRD greatly expands the breadth and depth of sustainability reporting (Guerman, 2021).

Enacted in 2014, the NFRD required large public-interest entities to disclose non-financial information relating to governance, social issues, and the environment. However, it became clear that the absence of precise and uniform reporting guidelines in the NFRD resulted in inconsistent disclosures from businesses and sectors. As a result, stakeholders could not rely on the reported data to determine the true impact of businesses on society and the environment, which reduced the directive's effectiveness.

By contrast, the CSRD introduces a number of significant legal innovations to address these shortcomings. Firstly, it expands the reporting requirements to include small and medium-sized enterprises (SMEs) listed in EU-regulated markets, as well as large public-interest corporations. The CSRD now requires SMEs to submit comprehensive and consistent sustainability reports, despite having been exempt from the NFRD previously. To guarantee that sustainability practices are embraced at all corporate levels, extending the reporting requirements is essential (Zimmermann, 2020).

Another significant innovation is the CSRD's requirement for third-party audits of sustainability reports. While companies could self-certify their non-financial disclosures under the NFRD, the CSRD stipulates that these reports must be independently audited to ensure their accuracy and reliability. This is a significant development in enhancing the credibility of corporate sustainability reports and ensuring that businesses are held accountable for their statements (Wamsler, 2018).

The CSRD also introduces a more standardized approach to sustainability reporting, which is in line with international frameworks such

as the Sustainability Accounting Standards Board (SASB) and the Task Force on Climate-related Financial Disclosures (TCFD). The CSRD aims to create a more consistent and comparable reporting environment across jurisdictions by adhering to these widely accepted frameworks. Despite the possibility of difficulties in reaching global alignment, the CSRD is a major attempt to encourage uniformity and transparency in sustainability reporting.

Building on the groundwork of earlier frameworks such as the NFRD, the CSRD introduces important legal innovations to enhance corporate accountability, transparency, and responsibility in sustainability. These innovations are necessary to build trust between businesses and their stakeholders, and the growing need for trustworthy, comparable, and auditable ESG data can only be met by them (Sörensson, 2021).

The Role of Corporate Law in Sustainability Reporting

Corporate law is a major influence on how sustainability reporting practices are developed and implemented. It is well known that holding businesses accountable for their social and environmental impact hinges heavily on the legal framework governing corporate governance. The development of corporate sustainability reporting cannot be understood without considering the influence of law on these developments (Freiberg, 2022).

Although voluntary frameworks such as the GRI were crucial in raising awareness of sustainability issues, the legal requirements imposed by regulations such as the CSRD have had the biggest influence on corporate behavior (Freiberg, 2022). The legal requirement to report on sustainability issues strongly encourages businesses to take their social and environmental obligations seriously. Consequently, when businesses are legally required to report on their ESG performance and practices, they are more likely to prioritize sustainability.

According to Sörensson (2021), corporate law contributes to the promotion of transparency and the initial adoption of sustainable practices by businesses. The broader goals of sustainable development align with the increasing focus on corporate responsibility within legal frameworks. However, sustainability is not just a corporate issue; it is a global issue that requires coordinated action from all sectors of society, including businesses, as emphasized by international agreements such as the Paris Agreement.

Even though there are still many obstacles to overcome to ensure compliance with sustainability reporting requirements, corporate law continues to change in response to the increasing demand for sustainability (Zimmermann, 2020). For instance, the CSRD is putting increasing pressure on businesses to address environmental and social issues, as well as report on their ESG performance. This shift demonstrates a move away from mere

transparency towards true corporate responsibility, where businesses are accountable for the real-world effects of their operations in addition to their reported performance (Wamsler, 2018).

In summary, corporate law has had a significant influence on the development of sustainability reporting. The introduction of mandatory legal requirements, such as the Corporate Sustainability Reporting Directive (CSRD), has had the greatest impact on corporate governance, although voluntary reporting frameworks have also played a crucial role in raising awareness. Corporate law ensures that businesses adhere to higher sustainability standards, making them more likely to take significant action to address social inequality, climate change and governance issues by demanding transparency, accountability and third-party verification.

Overview of the EU Corporate Sustainability Reporting Directive (CSRD)

A significant development in the regulation of corporate sustainability reporting is the Corporate Sustainability Reporting Directive (CSRD) introduced by the European Union. As is well known, the directive aims to improve the comparability, accountability and transparency of corporate sustainability practices. This section provides a detailed overview of the CSRD's introduction, goals, scope, important provisions and comparisons with the Non-Financial Reporting Directive (NFRD), the CSRD's predecessor.

Building on the framework established by the NFRD, the CSRD addresses the NFRD's shortcomings and broadens the scope of sustainability reporting requirements. Despite sustainability reporting having been in place for many years, the CSRD highlights the EU's commitment to incorporate sustainability into its regulatory frameworks by introducing more comprehensive measures. This section examines the CSRD's main elements, emphasizing its objectives, parameters, key provisions, and impact on business reporting procedures (Lehmann, 2017).

Introduction to the CSRD

The introduction of the Corporate Sustainability Reporting Directive marks an important turning point in the EU's continuous attempts to incorporate sustainability into corporate governance. As has been said many times, the CSRD is a complete and more reliable framework than the NFRD (German, 2021). When the NFRD was first implemented in 2014, it required large public-interest companies to disclose non-financial information, primarily focusing on environmental, social and governance (ESG) factors. However, the lack of clarity, uniformity and enforcement mechanisms in this regulation drew criticism and frequently resulted in disparate reporting practices among businesses (Guerman, 2021).

In response to these problems, the European Commission proposed the CSRD in 2021 to improve corporate sustainability reporting and replace the NFRD. To help companies disclose their sustainability practices in a comparable and useful way for stakeholders, the CSRD seeks to establish a more standardized, transparent and reliable reporting framework (Sörensson, 2021). Consequently, the CSRD aligns with global sustainability frameworks such as the Paris Agreement and forms part of the EU's broader strategy to achieve climate neutrality by 2050.

The CSRD clarifies what sustainability information should be disclosed and how, adds new requirements for businesses and broadens the list of entities that must report (Wamsler, 2018). Despite certain difficulties, especially with regard to implementation and compliance costs, the CSRD is a major advancement in corporate sustainability regulation.

Objectives and Scope of the CSRD

The main goal of the CSRD (Blokdyk, 2024) is to ensure that businesses disclose trustworthy, consistent and comparable sustainability information that provides a more complete picture of their environmental, social and governance impacts. By promoting corporate transparency and encouraging companies to adopt sustainable practices, the CSRD supports the EU's long-term sustainability goals, as emphasized by the EU Commission. Under the CSRD, more businesses must now report on their sustainability performance, and the CSRD has a far wider scope than the NFRD (Freiberg, 2022).

Large public-interest corporations listed SMEs and non-EU businesses operating in the EU are all subject to the CSRD's reporting requirements. Specifically, the directive applies to non-EU businesses with significant operations in the EU, all EU businesses with more than 250 employees, and all businesses listed on EU-regulated markets. Unlike the NFRD, the CSRD guarantees that a wider range of businesses, including SMEs, report on sustainability issues. To fully capture the broader effects of corporate operations on the environment and society, this expansion is essential (Sörensson, 2021).

The CSRD seeks to increase the caliber and dependability of sustainability reports by requiring businesses to submit more thorough information about their governance framework, risk management procedures, and approaches to addressing social and environmental issues. This represents a significant departure from the NFRD, which did not specify what businesses had to report. In line with global frameworks such as the Task Force on Climate-related Financial Disclosures (TCFD) and the Global Reporting Initiative (GRI), the CSRD sets out clear standards for measuring and

reporting on various sustainability issues, including resource usage, social equality, climate change and human rights (Cinquini & De Luca, 2022).

Key Provisions of the CSRD

It is worth noting that the CSRD introduces several significant clauses aimed at strengthening corporate sustainability reporting in the EU and addressing the shortcomings of previous legislation. The most noteworthy clause is the requirement for businesses to submit thorough sustainability reports that are open to third-party audits (Zimmermann, 2020). Unlike the NFRD, which permitted businesses to self-certify their sustainability reports, the CSRD requires independent verification of these disclosures. This is critical in guaranteeing the data's accuracy and dependability for investors, stakeholders, and policymakers who depend on the reported data for decision-making (Wamsler, 2018).

Another significant clause is the requirement for businesses to reveal how their sustainability initiatives complement the EU's larger environmental and climate goals, particularly its objective of achieving net-zero emissions by 2050. This clause aims to make companies more accountable for their contribution to social inequality, environmental degradation and climate change, as noted by the European Commission. According to the CSRD, companies must also report how they handle sustainability risks and how these risks may affect their financial performance (Sörensson, 2021). This crucial step is required to incorporate sustainability into corporate governance and decision-making procedures. The CSRD establishes a legal requirement for businesses to integrate sustainability risks into their business plans, although some have already started to do so consistently and transparently (Zimmermann, 2020).

The CSRD also emphasizes the importance of businesses disclosing information about their supply chains, including the social and environmental policies of their suppliers. This clause aims to address concerns about environmental damage, human rights abuse and other ethical issues in international supply chains. It reflects the growing recognition of the interconnectedness of businesses and the need for more ethical business practices.

Comparison with Previous Regulations (Non-financial Reporting Directive)

Despite being a pioneering regulation in the field of corporate sustainability reporting, the NFRD was criticized for several reasons, which the CSRD aims to address. One of the NFRD's main drawbacks was its lack of precise and uniform reporting guidelines, as is often mentioned. As businesses were free to select the sustainability metrics and reporting formats

that best suited them, the information disclosed was not comparable or transparent. The CSRD, on the other hand, establishes more precise rules and reporting requirements, ensuring that sustainability reports are reliable, comparable and consistent across businesses and sectors (Wamsler, 2018).

Another significant distinction is the extent of the regulations. The CSRD extends reporting requirements to a much broader range of businesses, including SMEs listed on EU-regulated markets, whereas the NFRD only applied to large public-interest entities. Since SMEs account for a significant proportion of the EU economy and are increasingly being held accountable for their social and environmental impact, this expansion is particularly important. While SMEs may struggle to comply with the CSRD's reporting requirements, the directive provides the necessary framework to ensure they contribute to the EU's sustainability goals (Zimmermann, 2020).

Questions were raised about the accuracy of the information revealed because the NFRD did not require third-party verification of sustainability reports. However, the CSRD requires sustainability reports to be independently audited, thereby raising the legitimacy and accountability of the information. This is an important development, as consumers, stakeholders and investors are increasingly relying on reliable and accurate sustainability data to inform their decisions (Sörensson, 2021).

In summary, the CSRD constitutes a substantial improvement over the NFRD by establishing more thorough and uniform reporting requirements, broadening the scope of applicability, and guaranteeing the accuracy of sustainability disclosures through third-party audits (Wamsler, 2018). The CSRD takes corporate sustainability reporting to a new level by meeting the growing demand for greater corporate accountability and aligning with the EU's wider climate and sustainability goals. Nevertheless, the NFRD was a useful first step (Lehmann, 2017).

Enhancing Legal Accountability through the CSRD

An important step towards improving legal accountability in corporate governance is the Corporate Sustainability Reporting Directive (CSRD). As sustainability becomes a top priority for stakeholders and businesses alike, legal frameworks are changing to require more transparency in how businesses handle environmental, social, and governance (ESG) issues. The CSRD strengthens these regulations to guarantee that businesses take legal responsibility for the environmental and social impacts of their operations, as well as disclosing relevant sustainability data (Freiberg, 2022).

This section explores how the CSRD establishes clearer legal obligations for corporations, clarifies the implications for corporate directors and officers, and enhances legal accountability by mandating comprehensive reporting on environmental and social impacts. It also covers the compliance

procedures and penalties for non-compliance, both of which are essential to the effective execution of the directive (Freiberg, 2022).

Environmental and Social Impacts Reporting

The CSRD pays special attention to the requirement for businesses to disclose their environmental and social impacts in a clear, accountable and uniform way. It is becoming increasingly widely acknowledged that businesses have a significant impact on the environment and society through their labor practices, resource consumption, and carbon emissions. The CSRD ensures that businesses are aware of their environmental and social footprints and are legally required to disclose them in a comprehensible and comparable manner by stipulating comprehensive reporting on these impacts (Blokdyk, 2024).

Concerns over corporate actions that damage the environment or transgress social norms have led to the implementation of this reporting requirement. The CSRD's mandatory approach ensures that all relevant companies are legally required to provide accurate, comparable and audited reports on their sustainability performance, even though some companies already voluntarily report on sustainability issues. This is particularly true of topics that the CSRD requires businesses to address in full, such as working conditions, biodiversity, climate change, and human rights.

The CSRD has a particularly significant impact on environmental reporting because it requires companies to report not only their direct environmental impacts, but also their strategies for mitigating climate change and adapting to environmental challenges. For example, companies must disclose how they are pursuing the goals of the EU's Green Deal, such as achieving carbon neutrality by 2050. As a result, this kind of reporting improves transparency and fortifies legal accountability by requiring businesses to demonstrate their actions and progress towards sustainability goals.

Furthermore, reporting on social impact is equally important. Businesses must reveal how they handle matters such as diversity, equity, inclusion and labor rights in their supply chains and internal operations. This mandate coincides with heightened public scrutiny of corporate social responsibility initiatives. In response to these demands, the CSRD imposes a legal requirement on businesses to demonstrate that their actions promote societal well-being beyond generating profits. By integrating social responsibility into corporate governance, the CSRD is thus transforming the corporate environment (Lehmann, 2017).

The Volkswagen Emission Scandal and Its Connection to the Corporate Sustainability Reporting Directive (CSRD)

The Volkswagen emission scandal, known by many as 'Dieselgate', is one of the biggest business scandals of the twenty-first century. To pass emissions tests in the US and Europe, the Volkswagen Group - one of the world's leading car manufacturers - manipulated diesel engines. This dishonest practice exposed significant deficiencies in regulatory compliance and corporate governance, emphasizing the inadequacies of existing environmental legislation and corporate reporting guidelines. The Volkswagen case illustrates the need for thorough corporate sustainability reporting and legal accountability and highlights the effectiveness of the European Union's Corporate Sustainability Reporting Directive (CSRD) in tackling this kind of corporate misconduct (Sörensson, 2021).

The Volkswagen Emission Scandal: An Overview

In 2015, the US Environmental Protection Agency (EPA) found that Volkswagen had installed 'defeat devices' in its diesel vehicles. These devices were software applications designed to recognize when a car was undergoing emissions testing and adjust engine performance to comply with regulations (Wamsler, 2018). However, when driven normally, the cars release nitrogen oxide (NOx) pollutants at levels up to 40 times higher than the legal limit.

The scandal had far-reaching effects for Volkswagen. The company had to recall millions of cars worldwide and faced legal action, including lawsuits and substantial fines. The scandal damaged Volkswagen's reputation and sparked discussion among industry participants about the need for stronger emissions controls and increased corporate transparency regarding environmental impacts (Freiberg, 2022).

The Volkswagen scandal made the consequences of poor corporate governance and lax regulatory oversight clear. It emphasized the importance of having robust mechanisms in place to ensure corporate accountability and transparency regarding environmental issues. This is precisely the purpose of the CSRD, a significant development in the promotion of comprehensive and transparent corporate reporting, particularly regarding sustainability and environmental impact.

The CSRD and Its Relevance to the Volkswagen Scandal

The scope of corporate sustainability reporting for EU-based businesses is greatly expanded by the Corporate Sustainability Reporting Directive (CSRD), which came into effect in 2023. It requires companies to disclose a wide range of sustainability-related information, including details of their governance, social and environmental practices (ESG). By mandating more thorough and uniform disclosures than the previous Non-Financial

Reporting Directive (NFRD), the CSRD improves the comparability, reliability, and transparency of corporate sustainability reports (Reimer, 2024).

One of the main ways that the CSRD relates to the Volkswagen emissions scandal is through its emphasis on strengthening legal accountability for corporate environmental practices. Under the CSRD, companies must report on their environmental impact, including specific disclosures about how they are managing climate change-related risks and their carbon footprints (Lepore & Pisano, 2022). This is particularly relevant in the context of the Volkswagen scandal, where the company faced severe legal and reputational consequences for manipulating emissions testing and inadequately disclosing the environmental impact of its vehicles (Lehmann, 2017).

If Volkswagen had been operating under the CSRD's framework at the time of the scandal, it would have had to make more thorough and open disclosures about its environmental policies and practices. Specifically, the company would have been required to disclose information about its emissions testing procedures, its compliance with national and international environmental standards, and the risks associated with non-compliance. The company would also have had to provide information on how it managed environmental risks, including the potential long-term impact on public health and air quality of its diesel engine technology (Lepore & Pisano, 2022).

If these disclosures had been required, regulators, investors and consumers could have discovered contradictions and inconsistencies in Volkswagen's environmental claims considerably sooner. The CSRD's emphasis on accountability and transparency aims to prevent incidents like the Volkswagen scandal by making it difficult for businesses to conceal their environmental impact with falsified or insufficient data.

Facebook, the Cambridge Analytica Scandal, and the Corporate Sustainability Reporting Directive (CSRD)

In 2018, Facebook shot to international prominence when it was discovered that the political consulting firm Cambridge Analytica had obtained personal information of millions of users without their consent. The Cambridge Analytica scandal raised serious issues regarding corporate governance, data security, privacy and the responsibility of tech companies to protect user data. It also revealed the potential for personal information to be misused to influence democratic processes (Guerman, 2021).

Against this backdrop, the European Union's Corporate Sustainability Reporting Directive (CSRD) emerged, aiming to enhance corporate transparency and accountability, particularly regarding environmental, social, and governance (ESG) factors. The scandal exposed shortcomings in

corporate reporting, particularly concerning data privacy and corporate accountability, and the CSRD gained significant support in its aftermath.

The Cambridge Analytica Scandal: A Brief Overview

The Cambridge Analytica scandal broke out when it was revealed that Facebook had permitted third-party apps to gather enormous volumes of user data without their knowledge or consent (Lehmann, 2017). In particular, a Facebook app developed by researcher Aleksandr Kogan collected personal information from users and their friends, totaling over 87 million people. The political consultancy Cambridge Analytica then used this data to create detailed psychological profiles of voters, which were reportedly used to target political adverts during significant events such as the Brexit referendum and the 2016 US presidential election (Wamsler, 2018).

The data harvesting itself was a major factor in the scandal, as was Facebook's lack of accountability and transparency in its handling of user data. Many users were unaware of the extent to which third-party applications were using their personal information because Facebook's privacy policies and data usage practices had been opaque for years. Furthermore, Facebook's management was accused of failing to take the necessary actions to protect user privacy, and the company did not adequately address early warnings about data misuse.

The scandal resulted in public indignation, legal inquiries and regulatory scrutiny, particularly from the European Union, which had already begun to take action to strengthen data protection regulations. The scandal also raised important issues regarding accountability and transparency in corporate governance, as well as the responsibility of companies like Facebook to protect user data.

The Connection Between the Cambridge Analytica Scandal and the CSRD

The CSRD, which is set to be implemented in 2023, marks a substantial advancement in corporate sustainability reporting. To increase transparency, uniformity and comparability in corporate reporting, the directive requires businesses to provide comprehensive information about their environmental, social and governance (ESG) practices. Given the CSRD's increased focus on social issues such as data privacy, ethical governance, and the societal impact of business operations, this is particularly relevant in the context of the Facebook-Cambridge Analytica scandal (Sörensson, 2021).

Under the CSRD framework, businesses like Facebook would have to reveal much more specific information about how they manage cybersecurity and data privacy risks, both of which were major concerns in the Cambridge

Analytica scandal. Specifically, Facebook would have to provide clear reports on its user data collection policies, its monitoring of third-party apps using its platform, and the precautions it takes against data misuse.

The CSRD seeks to bridge the accountability gap observed in cases such as Cambridge Analytica by requiring businesses to reveal the risks they face when managing their data, the governance mechanisms in place to supervise such operations, and the efficacy of those mechanisms in guaranteeing compliance with data protection laws. For Facebook, this would mean disclosing details of its internal controls relating to privacy, how it handles user consent, and the safeguards it has in place to prevent illegal access to user information (Wamsler, 2018).

The CSRD enforces these reporting requirements to ensure that businesses cannot simply hide their data protection procedures. This is in stark contrast to the circumstances surrounding the Cambridge Analytica scandal, when Facebook failed to accurately, comprehensibly and clearly disclose its data usage practices. Advocating openness, the CSRD pushes businesses to embrace ethical practices that prioritize people's rights and privacy (Lehmann, 2017).

Impact of the CSRD on Corporate Governance

A significant development in corporate governance is the Corporate Sustainability Reporting Directive (CSRD), which requires corporate leaders to prioritize long-term sustainable development over short-term profit maximization. The CSRD requires companies to disclose a great deal of information about environmental, social, and governance (ESG) factors, so a change in the structure, management, and implementation of corporate governance is necessary. The CSRD is transforming governance practices, the roles of corporate boards and executives, and the functions of other governance bodies as companies strive to comply with these new reporting and accountability requirements (Wamsler, 2018).

This section examines the CSRD's significant influence on corporate governance, exploring how the directive modifies legal obligations, integrates sustainability into strategies, and affects governance structures and practices. We also examine case studies that demonstrate how businesses are adapting their governance structures to address these novel issues.

Corporate Governance Structures and Practices

As companies are now expected to integrate sustainability into their core business strategies and operations, the CSRD is set to transform corporate governance structures and practices. Prior to the CSRD, many organizations used traditional governance models that were primarily focused on shareholder returns and financial performance. However, the CSRD requires

businesses to re-evaluate their governance models to ensure they align with sustainability goals, given the increased focus on ESG considerations (Zimmermann, 2020).

One significant change brought about by the CSRD is the requirement for specific sustainability oversight at the highest levels of governance. Consequently, roles such as Chief Sustainability Officers (CSOs) and corporate boards' sustainability committees have been established or strengthened (Guerman, 2021). These governance frameworks are intended to ensure that sustainability is considered an integral part of business operations and strategy, rather than a secondary issue. The CSRD provides the legal basis for sustainability committees to be mandatory for businesses of a certain size and in certain industries. However, large multinational corporations such as Unilever and Nestlé have had them on their boards for some time (Wamsler, 2018).

These committees are responsible for monitoring the business's sustainability reporting, ensuring that the data is accurate, relevant and compliant with the CSRD's legal requirements. Similarly, sustainability officers are increasingly being included in executive teams to help develop corporate strategy and ensure that ESG considerations are taken into account when making decisions.

Another recommendation made by the CSRD is to involve all tiers of governance in coordinating corporate goals with sustainable development objectives. The composition of boards reflects this shift towards a more inclusive approach to governance. Board discussions occasionally include diverse stakeholders, such as social activists, environmental specialists, and other external consultants, because they offer a broader perspective. There is a growing acknowledgement that incorporating different perspectives leads to stronger sustainability plans that can solve long-term environmental and social issues while complying with the law.

While businesses may find it challenging to adapt their governance structures to align with the CSRD's requirements, those that successfully accomplish this will be better positioned to achieve long-term sustainability goals. This will ultimately enhance their resilience and competitiveness within the ever-evolving global marketplace.

Integration of Sustainability into Corporate Governance

One of the most significant effects of the CSRD is the incorporation of sustainability into corporate governance. Rather than being a supplementary or optional practice, sustainability is now a key component of governance under the directive. Consequently, businesses must align their strategic and operational objectives with broader societal goals, including social justice, climate change mitigation, and ethical governance (Zimmermann, 2020).

One example of how sustainability is being incorporated into corporate governance practices is the way businesses are integrating ESG considerations into their long-term strategies. For instance, alongside traditional financial targets, many companies now include specific ESG goals in their annual business reports (Lehmann, 2017). Attaining sustainability goals is directly linked to corporate governance practices because these goals are linked to executive compensation packages. This approach helps to reinforce sustainability within the governance structure and incentivizes leaders to prioritize long-term value creation over short-term profit maximization (Sörensson, 2021).

Furthermore, as companies are required to report on the methods, they use to manage sustainability risks and opportunities, the CSRD has prompted a more proactive approach to sustainability. This involves providing detailed information on how businesses are addressing risks related to climate change, human rights, supply chain ethics and community impact.

Siemens AG, for example, is a company that plays a significant role in creating sustainable infrastructure. It now provides comprehensive reports on its efforts to reduce its carbon footprint and on how it integrates sustainability into the development of new products. By incorporating sustainability into the core of its business model, Siemens satisfies CSRD reporting requirements and aligns its long-term strategy with global environmental and social goals (Freiberg, 2022).

However, there are difficulties in incorporating sustainability into governance. Some businesses may struggle to adapt their business models and legacy systems to meet these new requirements. However, the directive positions sustainability as a crucial driver of value creation in contemporary corporate governance, offering a clear legal framework that motivates companies to innovate and implement more sustainable practices.

Legal Responsibilities of Corporate Governance Bodies

The legal obligations of corporate governance bodies have changed since the introduction of the CSRD. Historically, executives and corporate boards have been legally responsible for ensuring that businesses adhere to industry regulations and financial reporting standards. However, the CSRD has expanded the scope of these responsibilities to include legal requirements relating to ESG factors, such as labor practices, corporate ethics, and environmental impact (Guerman, 2021).

One of the main changes is the CSRD's requirement that boards monitor sustainability risks and ensure the right management systems are in place (Zimmermann, 2020). This involves ensuring that sustainability disclosures are truthful, thorough and in line with the CSRD's legal framework. As the directive emphasizes, boards are now legally responsible

for the sustainability data that their companies publish and must ensure that their reports adhere to the new EU rules (Freiberg, 2022).

Failure to meet the CSRD's reporting requirements may result in severe legal repercussions. For example, failing to comply with sustainability reporting requirements could result in financial penalties or reputational damage (Vemula, 2024). Therefore, corporate governance bodies must ensure they have mechanisms in place to efficiently manage these risks. Consequently, new risk management frameworks that consider ESG factors have been developed, enhancing the ability of corporate governance systems to anticipate and mitigate sustainability-related risks (Sörensson, 2021).

Furthermore, the CSRD requires businesses to ensure their governance procedures align with broader EU policy objectives, such as the European Green Deal. As well as being legally required to report on their contributions, corporate boards are now responsible for ensuring that their organizations help to achieve these policy objectives. This signifies a change in governance that incorporates environmental, social and legal considerations as integral components of corporate leadership.

CSRD and Harmonization of Corporate Law Across EU Member States

One of the main objectives of the Corporate Sustainability Reporting Directive (CSRD) is to promote greater uniformity of corporate law among EU member states. The CSRD aims to ensure that companies throughout the EU comply with consistent legal requirements regarding the disclosure of their environmental, social and governance (ESG) impacts, by establishing a standardized framework for corporate sustainability reporting. It is anticipated that this harmonization will improve transparency, create a level playing field, and make corporate sustainability data more comparable across national boundaries (Freiberg, 2022).

However, there are several difficulties in implementing this directive in various member states, despite the CSRD offering a uniform framework at the EU level. These difficulties are caused by the various legal, regulatory, and cultural contexts that exist within the EU. This section examines the legal systems of different EU member states, the challenges of standardizing the CSRD among these jurisdictions, and the vital role of national regulatory bodies in ensuring compliance with the law (Wamsler, 2018).

Legal Frameworks in Different EU Member States

Before the Corporate Sustainability Reporting Directive (CSRD) came into effect, corporate sustainability reporting was approached differently in each EU member state, each of which had its own rules, policies and reporting requirements (Lepore & Pisano, 2022). The Non-Financial Reporting Directive (NFRD) was already in effect, for example, but member states'

interpretations and applications of it varied greatly. In some countries, companies were required to report on social and environmental issues more strictly than in others (Zimmermann, 2020).

The CSRD therefore offers a unified, consistent legal framework for sustainability reporting in order to increase uniformity. However, the implementation and enforcement of the CSRD may be impacted by the fact that member states continue to function under their own legal frameworks. Countries such as Germany and the Netherlands, for instance, have robust environmental legislation and a long-standing commitment to sustainability, which could facilitate compliance with the CSRD's requirements. However, countries with weaker environmental regulations may struggle to align their national frameworks with the EU's comprehensive sustainability agenda (Freiberg, 2022).

Furthermore, in certain countries, the CSRD's rules on the disclosure of sustainability-related data may conflict with existing national legislation. For example, France's Duty of Vigilance Law requires large companies to publish detailed reports on environmental and human rights risks in their supply chains. The French legal system requires businesses to go further in some areas, which could lead to overlap and confusion, despite the fact that the CSRD aims to standardize such disclosures at EU level.

Member states may still have difficulty integrating the CSRD with their own national legislation, even though it provides a uniform framework. This is particularly the case when local laws go beyond EU regulations (Sörensson, 2021).

To prevent legal inconsistencies and ensure companies can comply without excessive burden or confusion, the EU and national governments must coordinate closely (Langert, 2019).

Challenges in Harmonizing the CSRD

Although the CSRD aims to standardize sustainability reporting throughout the EU, there are still several obstacles to its implementation. The most important of these is the difference between the legal and regulatory traditions of the various EU member states. While the CSRD provides a consistent regulatory framework, national legal contexts can influence how its provisions are interpreted and implemented (Wamsler, 2018).

For example, case law and judicial interpretation carry significant weight in countries with a common law tradition, such as the United Kingdom (pre-Brexit). The civil law systems of countries such as France and Germany, which prioritize codified statutes and legal certainty, contrast with this approach. Different legal traditions may result in different degrees of latitude in applying for the CSRD. Some jurisdictions may permit more complex

interpretations that could make compliance more challenging, while others may adopt a stricter approach to implementation (Zimmermann, 2020).

Furthermore, member states differ in terms of experience and skill when it comes to corporate sustainability reporting. Certain nations, such as the Nordic states, have long incorporated sustainability reporting into their corporate governance practices (Guerman, 2021). These countries may therefore find it simpler to adopt the reporting requirements of the CSRD. Other member states, especially those with less advanced sustainability frameworks, may struggle to develop the necessary knowledge and infrastructure to comply with the new regulations.

Another difficulty is the possible conflict between national regulatory strategies and EU-wide goals. For instance, certain member states may wish to implement stricter guidelines for corporate sustainability disclosures, particularly regarding supply chain transparency and climate risk reporting. While the CSRD establishes minimum requirements, member states may advocate for more stringent laws, potentially causing conflicts between national aspirations and EU-wide harmonization.

Despite these challenges, the CSRD framework provides nations with an opportunity to enhance their corporate sustainability policies and align them with the EU's broader sustainability objectives. If national governments and regulators collaborate and adapt to the EU's vision, the legal harmonization process could eventually lead to greater convergence in reporting practices among member states.

Role of National Regulatory Bodies in Enforcement

National regulatory agencies play a key role in ensuring that businesses adhere to the CSRD's guidelines. Given the challenges of harmonizing the CSRD across different legal systems, the role of these bodies in interpreting and implementing the directive at a national level is paramount. The responsibility of national regulators is to establish the systems required to monitor companies' adherence to sustainability reporting guidelines and to take appropriate action when non-compliance occurs (Wamsler, 2018).

In Germany, for instance, the Federal Financial Supervisory Authority (BaFin) is responsible for monitoring the application of sustainability reporting laws. To ensure that businesses adhere to the German Corporate Governance Code, which includes additional sustainability reporting requirements, as well as the CSRD, BaFin collaborates closely with other national regulatory bodies. Similarly, national regulators in countries such as France and Spain ensure that companies accurately and completely disclose sustainability information in compliance with the CSRD and any other applicable national laws.

The success of the CSRD depends on the ability of national regulatory agencies to implement the new regulations effectively (Lehmann, 2017).

This involves providing businesses with clear guidelines on how to submit sustainability data, establishing systems to monitor compliance, and implementing sanctions for non-compliance. Furthermore, to guarantee uniform implementation of sustainability reporting requirements, national regulators must cooperate with other EU authorities (Langert, 2019).

One issue that national regulatory agency must deal with is the difficulty of evaluating the correctness and quality of sustainability reports. This is because sustainability reports often contain qualitative and non-financial data, which is generally more difficult to verify than financial reports. To guarantee the accuracy and reliability of the information disclosed, regulators must develop new auditing standards and procedures (Guerman, 2021).

This involves providing companies with clear guidance on submitting sustainability data, implementing compliance monitoring mechanisms, and imposing penalties for non-compliance. Furthermore, national regulators must collaborate with other EU authorities to ensure consistency in the application of sustainability reporting requirements.

One challenge for national regulatory agencies is assessing the accuracy and caliber of sustainability reports. Unlike financial reports, which are usually auditable, sustainability reports often contain qualitative and non-financial data that is more difficult to validate. Regulators must therefore develop new auditing standards and practices to ensure the reliability and accuracy of the disclosed information (Zimmermann, 2020).

Effectiveness of National Regulatory Bodies

Ultimately, the success of the directive in achieving its objectives of increased corporate accountability and transparency will depend on how effectively national regulatory agencies implement the CSRD. Some member states have regulatory agencies with a proven track record of upholding sustainability laws and established procedures for monitoring business compliance. Implementing the CSRD is likely to be more straightforward in these countries, with few enforcement obstacles.

Sweden, for example, has long been a pioneer in corporate sustainability reporting, and its regulatory bodies are experienced in implementing sustainability-related legislation. The Swedish Financial Supervisory Authority (Finansinspektionen) is well placed to oversee the implementation of the CSRD, as it has robust mechanisms in place to monitor businesses' social and environmental performance. Similarly, to ensure compliance with national and EU-level regulations, the Dutch Authority for

the Financial Markets (AFM) has set out clear reporting guidelines for businesses on ESG factors (Wamsler, 2018).

By contrast, regulatory agencies may find it more challenging to implement the CSRD's provisions in countries with limited experience of sustainability reporting. These authorities may need to invest more in creating the necessary infrastructure, educating companies about the new regulations and training employees. Without this support, there is a risk that the CSRD will not be applied consistently or effectively in certain regions.

Nevertheless, national regulatory agencies play a vital role in ensuring that companies adhere to the CSRD's reporting guidelines. The success of the CSRD in achieving its broader objectives of transparency, corporate responsibility and sustainable business practices throughout the EU will depend on how effectively they enforce these rules (Zimmermann, 2020).

In conclusion, EU member states face opportunities and challenges because of the CSRD's harmonization of corporate law. While the directive provides a consistent legal framework for sustainability reporting, its implementation is complicated by the various legal and regulatory frameworks within the EU. While national regulatory bodies are essential for ensuring the CSRD is enforced effectively, the effectiveness of these bodies will depend on each member state's infrastructure, resources, and experience. To achieve greater legal consistency and ensure the directive's ambitious goals are met throughout the EU, continued collaboration between national and EU regulators will be crucial as the CSRD evolves (Sörensson, 2021).

Legal Implications of the CSRD for Small and Medium-Sized Enterprises (SMEs)

The corporate sustainability reporting environment in the European Union has undergone significant changes since the introduction of the Corporate Sustainability Reporting Directive (CSRD). While large corporations with well-established reporting frameworks and resources may find it simpler to adjust to the new requirements, small and medium-sized enterprises (SMEs) encounter difficulties in fulfilling the CSRD's requirements (Lehmann, 2017). SMEs are vital to the EU economy, making up two-thirds of private sector employment and approximately 99% of all businesses. To ensure that these companies can comply with the directive without facing excessive burdens, it is essential to understand the legal implications of the CSRD for SMEs and explore potential solutions and legal support (Guerman, 2021).

The following section examines the specific challenges faced by SMEs in relation to the CSRD, suggests potential solutions to help them comply, and assesses the impact of the CSRD on SMEs' legal obligations.

Challenges Faced by SMEs

Small and medium-sized enterprises (SMEs) face several obstacles in their efforts to comply with the CSRD. The scarcity of resources is one of the most urgent problems. Unlike large corporations, which often have specialized teams to handle sustainability reporting and compliance, SMEs usually lack the infrastructure, funding, and staff needed to meet the new reporting requirements (Zimmermann, 2020). Under the CSRD, companies are subject to stringent requirements to disclose a variety of environmental, social, and governance (ESG) data, such as details regarding their supply chain operations, workforce conditions, and environmental impact. As many SMEs may lack the internal resources to collect, evaluate and report such comprehensive data, this can be particularly challenging for them.

In addition, SMEs often operate in a less formal manner than larger corporations. They may not have systems in place to monitor and report on sustainability issues, and their internal procedures may not be standardized. Larger businesses often have advanced data management systems to track water consumption, carbon emissions and other environmental metrics, but many SMEs may not even gather this information (Lepore & Pisano, 2022). Consequently, they may struggle to meet the CSRD's requirements, particularly with regard to the disclosure of non-financial information.

Another major obstacle that SMEs must overcome is the complexity of the legal and regulatory framework pertaining to sustainability reporting. Even though the CSRD aims to standardize reporting throughout the EU, businesses must still manage a complicated array of requirements (Guerman, 2021).

SMEs may struggle to understand these rules, particularly in countries where sustainability legislation is less well-established. Despite the growing importance of sustainability in business operations, the added burden of understanding and adhering to complex legal frameworks may deter SMEs from participating in sustainability reporting entirely (Guerman, 2021).

Additionally, the CSRD incorporates the 'double materiality' concept, which requires companies to evaluate the impact of their operations on society and the environment (from an outside-in perspective), as well as the effect of sustainability issues on their bottom line (from an inside-out perspective) (Ruell, 2023). This dual requirement may be especially challenging for SMEs as it requires a comprehensive understanding of the company's ESG risks and their potential impact on long-term profitability. Many SMEs may lack the knowledge and resources necessary to conduct this thorough analysis.

Possible Solutions and Legal Support for SMEs

Considering the difficulties SMEs encounter in adhering to the CSRD, there are a number of potential remedies and types of legal assistance that

could facilitate their transition to the new reporting requirements. First and foremost, it is crucial to provide SMEs with the guidance and resources necessary to understand and comply with the CSRD's provisions. This could involve providing easily understandable legal frameworks, streamlined reporting guidelines and useful tools for collecting and analyzing data (Freiberg, 2022).

One potential remedy is the implementation of tiered reporting requirements. Compared to large businesses, SMEs could be granted exemptions or have less stringent reporting requirements. For instance, companies with fewer than 250 employees or lower turnover thresholds might be permitted to report on a smaller range of ESG factors, focusing on those most pertinent to their operations (Lehmann, 2017). To simplify the reporting process, the European Commission could provide SMEs with streamlined templates for creating their sustainability reports. Furthermore, such a tiered approach would ensure that the reporting burden remains proportionate to the size and capacity of the business, enabling SMEs to focus on the most relevant ESG risks and impacts (Zimmermann, 2020).

Supporting SMEs financially and legally is essential, as is streamlining reporting requirements. National governments and EU organizations could implement support systems to help SMEs fulfil their reporting requirements. For example, SMEs investing in sustainability projects or building the capacity to comply with the CSRD could receive financial incentives, such as tax breaks or grants. Such financial incentives would reduce the costs of compliance, particularly for SMEs with limited funding (Sörensson, 2021).

Additionally, legal aid could help SMEs understand their responsibilities under the CSRD. Legal professionals could support SMEs in overcoming the challenges of sustainability reporting by offering workshops, training courses and consultancy services. Clear guidance on evaluating ESG risks, understanding the concept of double materiality, and determining which information should be disclosed would be particularly beneficial for SMEs. Legal assistance could also help SMEs avoid potential legal pitfalls, such as fines for non-compliance or reputational damage resulting from inaccurate reporting (Wamsler, 2018).

Furthermore, cooperation and information exchange between SMEs could reduce the reporting burden. Business networks, industry associations and sustainability-focused platforms may offer SMEs the opportunity to share resources, reporting tools and best practices. By facilitating collaborative efforts on sustainability reporting, these platforms could also enable SMEs to share compliance costs and collaborate on addressing shared issues.

Impact of the CSRD on SMEs' Legal Responsibilities

The legal obligations of SMEs in the EU have been significantly affected by the introduction of the CSRD. The directive imposes new legal requirements on SMEs while seeking to increase corporate accountability and transparency regarding their ESG practices. In order to comply with these new reporting requirements and ensure adherence to the legal framework outlined by the CSRD, SMEs will need to modify their internal governance structures (Freiberg, 2022).

The CSRD requires businesses to provide comprehensive information about their governance structures, diversity and inclusion initiatives, human rights policies, and environmental impact. For SMEs, this means ensuring that ESG issues are properly addressed at board level and integrating sustainability considerations into corporate decision-making processes. This change in emphasis may require SMEs to update their corporate governance frameworks, implement new guidelines and allocate funds to ensure compliance with the CSRD's reporting requirements. To monitor ESG issues and direct reporting efforts, SMEs may need to establish sustainability committees or designate specialized sustainability officers (Wamsler, 2018).

Furthermore, the CSRD imposes greater legal obligations on executives and corporate directors to ensure the completeness and accuracy of sustainability reports. Directors are responsible for ensuring that businesses provide accurate, verifiable and transparent information about their environmental, social and governance (ESG) practices in accordance with the directive (Zimmermann, 2020). Executives of SMEs may face greater legal risks as a result of this increased accountability, particularly if it is discovered that the business has falsified its sustainability data. Directors and officers of SMEs will therefore need to familiarize themselves with the CSRD's provisions and ensure that the correct procedures are in place to adhere to the reporting requirements (Guerman, 2021).

Verifying SMEs' sustainability reports will also be part of their legal obligations. Due to the CSRD's requirement that sustainability reports be audited, SMEs must hire external auditors to confirm the veracity and accuracy of their disclosures. This requirement places a particular burden on SMEs because external audits can be costly and logistically challenging. However, this issue could be mitigated by implementing uniform auditing practices and providing reasonably priced audit services for SMEs (Ruell, 2023).

Lastly, noncompliance with the CSRD may result in legal repercussions, including fines, reputational damage, and missed business opportunities. These risks could be particularly severe for SMEs as non-compliance could result in a decline in investor confidence or the loss of contracts with customers who prioritize sustainability in their supply chains.

Therefore, SMEs may be disproportionately affected by the legal repercussions of non-compliance compared to larger companies, highlighting the need for targeted support and customized solutions to help SMEs fulfil their legal obligations under the CSRD (Lehmann, 2017).

In conclusion, the CSRD has significant legal implications for SMEs in the EU, particularly given the challenges these companies face in complying with the directive's requirements. While the CSRD aims to encourage increased accountability and transparency in corporate sustainability practices, SMEs must navigate a challenging legal and regulatory landscape to comply with these standards. To lessen the compliance burden, SMEs must have access to specialized guidance, financial and legal support, and streamlined reporting frameworks. By doing so, the EU can ensure that SMEs fulfil their legal obligations under the CSRD and support the broader goal of promoting sustainable economic growth by addressing the specific challenges these companies face.

The CSRD and Its Interaction with Other EU Regulations

The Corporate Sustainability Reporting Directive (CSRD) is one of the main components of the European Union's larger plan to encourage sustainability and accountability in corporate practices. However, to promote sustainable finance and corporate responsibility, the CSRD interacts with other significant EU regulations. Understanding these relationships is crucial because they influence how sustainability is incorporated into corporate governance, reporting and decision-making, and how this shapes the regulatory landscape for businesses (Wamsler, 2018).

In this section, I will examine how the CSRD interacts with other key EU legislation, including the Sustainable Finance Disclosure Regulation (SFDR) and the EU Taxonomy Regulation. Alongside discussing the legal innovations resulting from these interactions, I will also examine the conflicts and synergies that arise (Ulfbeck, 2019).

The EU Taxonomy Regulation

The EU Taxonomy Regulation is one crucial law that attempts to establish a uniform classification scheme for sustainable economic activity. Intended to assist investors, companies and policymakers in identifying environmentally sustainable practices, it is also a component of the EU's broader green finance agenda. In other words, it provides a framework for identifying the types of economic activity that qualify for green investment and can be considered environmentally sustainable (Freiberg, 2022).

As both the CSRD and the EU Taxonomy Regulation aim to enhance corporate transparency regarding sustainability issues and promote the transition to a more sustainable economy, I believe their goals are closely

aligned (Zimmermann, 2020). The CSRD requires companies to report on their sustainability practices and their effects, including how their operations meet the requirements for environmentally sustainable activities set out in the EU Taxonomy. For example, businesses must report how much of their revenue, capital expenditure and operating expenses relate to activities that the Taxonomy Regulation defines as sustainable.

For example, companies in industries such as energy and construction might be required to reveal whether their operations support the development of low-carbon technologies or renewable energy, both of which are specifically listed as sustainable activities in the EU Taxonomy. Thanks to these disclosures, investors and other stakeholders will be better able to determine whether a company is making a difference to environmental sustainability or just making empty claims.

The Sustainable Finance Disclosure Regulation (SFDR)

The Sustainable Finance Disclosure Regulation (SFDR) aims to improve financial market transparency by offering consistent, comparable, and trustworthy information on how financial products relate to sustainability goals (Freiberg, 2022). As the SFDR requires financial institutions to disclose how they incorporate environmental, social and governance (ESG) risks into investment decisions, it is highly relevant to companies covered by the Corporate Sustainability Reporting Directive (CSRD), despite primarily applying to financial market participants such as asset managers, institutional investors and financial advisors (Zimmermann, 2020).

In my opinion, the requirement for businesses to submit data that financial institutions can use to assess their ESG performance and make investment decisions is where the CSRD and SFDR interact. For example, the SFDR requires financial products to reveal how they incorporate sustainability risks into their investment strategy. To enable asset managers and investors to evaluate a company's ESG performance, the company must disclose comprehensive ESG data that satisfies the standards outlined in the SFDR, provided that it is subject to the CSRD (Zimmermann, 2020).

For sustainability information to be accurate and consistent across various sectors, it is essential that the two regulations interact with each other. According to the SFDR, financial institutions must disclose how their investments support sustainability objectives, using the disclosures made in the CSRD to determine whether businesses are meeting these requirements. This creates an accountability system in which companies are responsible for their sustainability practices and for providing the necessary data for the financial market to support sustainable development goals (Sörensson, 2021).

The interaction between the two regulations is essential for sustainability information to be accurate and consistent across various sectors.

According to the SFDR, financial institutions must disclose how their investments support sustainability objectives and use the CSRD disclosures to assess whether businesses are meeting these objectives. This establishes a system of accountability in which companies are held responsible for their sustainability practices and for providing the necessary data for the financial market to support sustainable development goals.

Synergies and Conflicts with Other Regulations

The interaction of the CSRD with other EU regulations, such as the SFDR and the EU Taxonomy, creates potential conflicts as well as synergies. One of the main synergies is the shared goal of advancing sustainability and transparency. Together, the SFDR, the EU Taxonomy and the CSRD provide a comprehensive and consistent framework for corporate governance, investment and sustainability reporting. The EU aims to establish a unified framework that promotes accountability and accelerates the transition to a more environmentally friendly economy by harmonizing these regulations (Lehmann, 2017).

For example, the CSRD's alignment with the EU Taxonomy Regulation guarantees that businesses reveal information that accurately depicts their environmental impact and how they support sustainable economic practices. This synergy makes it easier for stakeholders and investors to compare and evaluate businesses' sustainability performance (Wamsler, 2018).

Nevertheless, these regulations may conflict despite these synergies. One such conflict arises from the intricacy of each regulation and the disparate deadlines and standards they impose (Zimmermann, 2020). For instance, while the EU Taxonomy Regulation focuses exclusively on environmental sustainability, the CSRD requires businesses to report on a variety of ESG factors. As a result, companies may find it difficult to align their reporting procedures with both sets of requirements. They may be unsure of how to present their sustainability data to meet the more focused emphasis on environmental sustainability of the EU Taxonomy, as well as the more comprehensive ESG disclosures of the CSRD (Freiberg, 2022).

Furthermore, misunderstandings may arise regarding the types of sustainability data businesses must disclose under the CSRD due to the SFDR, which primarily targets financial market participants. Inconsistencies in reporting standards may arise when financial institutions request specific data points for investment decisions that fall outside the scope of the CSRD.

Legal Innovations Resulting from Interactions

Significant legal innovations have emerged from the interaction between the CSRD and other EU regulations, particularly in the areas of

corporate governance and sustainability reporting. One such innovation is the concept of 'double materiality', whereby businesses must evaluate the impact of their operations on the environment and society, as well as the effect of sustainability issues on their financial performance. This concept lies at the core of the CSRD's reporting requirements and is also being adopted in the SFDR and the EU Taxonomy Regulation (Guerman, 2021).

Another new development in the law is the heightened focus on standardized reporting frameworks. According to the CSRD, businesses must use the European Sustainability Reporting Standards (ESRS), which provide a consistent format for disclosing sustainability information. These standards are designed to align with other EU regulations, such as the SFDR and the EU Taxonomy Regulation, to ensure consistency and comparability (Freiberg, 2022).

Additionally, the CSRD and SFDR being in alignment has resulted in a more integrated approach to ESG risk management emerging. Businesses must now report on their sustainability policies, as well as the risks these pose to their operations and to the financial system as a whole. This change in emphasis has led to legal innovations in the assessment and management of sustainability risks, with many businesses now adopting comprehensive ESG risk frameworks to comply with the new regulations (Zimmermann, 2020).

In conclusion, the interactions between the CSRD and other EU laws, including the SFDR and the EU Taxonomy Regulation, produce a complex yet coherent legal framework for corporate governance and sustainability reporting. The regulations' synergies support accountability, transparency, and consistency in sustainability practices by ensuring that businesses reveal pertinent and trustworthy ESG data. However, there are still difficulties, particularly in navigating the complexities of the various reporting requirements and ensuring uniformity across different legal frameworks. Ultimately, the legal advancements brought about by these interactions are influencing the business environment and driving the transition to a more responsible and sustainable economy.

Comparative Analysis of Legal Approaches

In order to fully comprehend the scope of the CSRD's legal innovations, it is crucial to contrast them with comparable regulatory frameworks outside of the EU and with the EU's legacy systems. This comparison highlights the distinctive features of the CSRD and the insights gained from other legal systems (Freiberg, 2022).

The CSRD's legal framework closely reflects developments in international sustainability reporting standards, including those of the Task Force on Climate-related Financial Disclosures (TCFD) and the Global Reporting Initiative (GRI). However, one of the main differences is that EU

regulations are legally binding (Wamsler, 2018). For instance, the CSRD legally obliges businesses to disclose sustainability-related information, ensuring compliance, whereas the GRI guidelines provide voluntary frameworks for sustainability reporting (Zimmermann, 2020).

Notable distinctions also exist when compared to the sustainability reporting environment in the United States. Currently, there are no federal requirements for sustainability reporting in the United States, and some businesses choose to adhere to frameworks such as the TCFD or GRI. This results in a disjointed and uneven reporting environment, with companies making selective disclosures.

On the other hand, the CSRD's binding nature and uniform reporting standards encourage a more unified and open approach to corporate sustainability (Ulfbeck, 2019).

Additionally, U.S. Securities and Exchange Commission (SEC) regulations mainly focus on the financial materiality of ESG factors and differ from the CSRD in that the latter emphasizes double materiality. This distinction highlights the EU's more comprehensive approach to sustainability, considering not only the immediate financial impact, but also social and environmental factors. For example, a European business that causes serious environmental damage may be legally required to report these effects, even if they do not immediately affect the business's profitability.

This is in stark contrast to the US approach, where such disclosures may be optional unless it can be demonstrated that they affect financial performance.

Conclusions

A significant turning point in the development of corporate law and governance in the European Union was the introduction of the Corporate Sustainability Reporting Directive (CSRD). With its comprehensive approach to corporate sustainability reporting, characterized by enhanced accountability and legal innovations, the CSRD marks a significant departure from earlier regulatory frameworks. The final section of the article summarizes the main conclusions, suggests future legal and regulatory developments, describes the contributions of the research to the field of corporate law and concludes with thoughts on the wider ramifications of the CSRD.

The CSRD will bring about a number of groundbreaking legal changes that will transform corporate governance and sustainability standards throughout the European Union. One of the most important innovations is the requirement for businesses to embrace the double materiality principle, which requires them to reveal how sustainability factors impact their financial performance and how their operations impact the environment and society. This ensures that businesses cannot disregard their social and environmental

impacts, thereby expanding the definition of corporate responsibility (Freiberg, 2022).

Furthermore, the CSRD greatly improves corporate transparency by requiring third-party assurance for sustainability reporting (Zimmermann, 2020). This gives stakeholders more confidence in the accuracy and reliability of corporate disclosures, thereby boosting the credibility of the reported data. For instance, requiring companies to submit verified data on their social impacts, supply chain procedures, and carbon emissions will result in a more reliable and accountable business environment (Wamsler, 2018).

Moreover, the scope of the CSRD has been expanded to include a greater number of businesses, such as smaller and unlisted entities, thereby ensuring the directive's extensive reach. To address disparities observed under earlier regulations, such as the Non-Financial Reporting Directive (NFRD), the CSRD mandates comprehensive and uniform reporting across industries and nations, encouraging comparability and consistency in sustainability disclosures. To bring corporate reporting into line with the EU's overarching objectives of achieving sustainability and climate neutrality, the European Sustainability Reporting Standards (ESRS) have been introduced.

Additionally, by emphasizing the legal responsibilities of corporate boards and directors, the CSRD increases the legal accountability of corporations. The CSRD puts pressure on businesses to incorporate sustainability into their core business plans by requiring sustainability reporting and making it legally binding. As businesses will no longer be able to prioritize short-term profits over long-term environmental and social sustainability, it is anticipated that this will result in significant changes in corporate behavior.

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References:

1. Alan S. Guerman, *Managing Sustainability* (Routledge, 2021).
2. Anand Vemula, *Navigating the European Union's Corporate Sustainability Reporting Directive: A Practical Guide* (3rd ed., 2024).
3. Anna Sörensson, *Corporate Responsibility and Sustainability During the Coronavirus Crisis* (Palgrave Macmillan, 2021).

4. Bob Langert, *The Battle to Do Good: Inside McDonald's Sustainability Journey* (Emerald Group Publishing, 2019).
5. Gerardus Blokdyk, *Mastering Corporate Sustainability Reporting Directive* (The Art of Service, 2024).
6. James Ruell, *Nonprofit Fundraising Strategies: 7 Strategies to Consistently Secure Funding and Ensure Your Organization Doesn't Fail* (2023).
7. Jens Freiberg, *Corporate Sustainability* (Haufe 2022).
8. John MaxWealth, *Non-Financial Reporting Directive (NFRD) 101 - A Beginner's Crash Course* (ESGLA Press, 2022).
9. Julia Reimer, *Nachhaltigkeitsberichterstattung großer Unternehmen: Eine Analyse unter besonderer Berücksichtigung des Konzepts der New Corporate Governance* (Springer Gabler, 2024).
10. Kristina Lehmann, *Die Publizität Nachhaltigkeitsbezogener Informationen: Eine Empirische Analyse* (Dissertation, Universität Ulm, 2017).
11. Lino Cinquini & Francesco De Luca (eds.), *Non-Financial Disclosure and Integrated Reporting: Theoretical Framework and Empirical Evidence* (Springer, 2022).
12. Luigi Lepore & Sabrina Pisano, *Environmental Disclosure: Critical Issues and New Trends* (Routledge, 2022).
13. Salome Zimmermann, *How Institutional Logics Shape Corporate Sustainability Strategies* (Hagen: FernUniversität in Hagen, 2020).
14. Stefan Wamsler, *Corporate Sustainability and Brand Equity* (Aachen: Edition Wissenschaft Apprimus, 2018).
15. Stéphanie Bijlmakers, *Corporate Social Responsibility, Human Rights and the Law* (Routledge, 2018).
16. Suzanne Farver, *Mainstreaming Corporate Sustainability: Using Proven Tools to Promote Business Success* (2nd ed., J. Ross Publishing, 2019).
17. UN Global Compact Office, *Global Corporate Sustainability Report* (2013).
18. Vibe Ulfbeck, Alexandra Andhov & Kateřina Mitkidis (eds.), *Law and Responsible Supply Chain Management: Contract and Tort Interplay and Overlap* (Routledge, 2019).

Discrimination Experienced by ‘Third-Country National’ Women Working in Malta

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Abstract

‘Third-country national’ (TCN) women in the EU tend to experience discrimination both as women and as migrants, in the workplace and in the ‘receiving’ society. This article focuses on a recurring cluster of issues that emerged around the theme of discrimination, over the course of 19 interviews with ‘third-country national’ women from South Asian countries working in Malta. More specifically, the study explores situatedness and lived experience through an intersectional feminist approach, taking into account the individual socioeconomic conditions as well as aspects such as gender, nationality, religion, culture, educational level, and the occupation of the informants. The data was analysed using thematic analysis and led to the emergence of four key themes relating to discrimination, which proved to be interlinked: the relationship between intersecting factors; everyday discrimination; discriminatory procedures at the local and EU level; and sexual harassment. We found that workplace discrimination and broader social discriminatory practices often co-occur and are mutually reinforcing, while having an effect on the individual’s general quality of life and personal well-being. Such discrimination also interlinks with practices, power structures, and perceptions at transnational, EU, national, organisational, and local social levels.

Keywords: EU, migration, gender, labour studies, sexual harassment

Introduction

There is evidence that ‘third-country national’ (TCN) women in the EU tend to face “double discrimination” in the workplace – that is, both as women and as migrants (Orav, 2023, p. 4). Research into their situation requires an intersectional approach, taking into account their individual socioeconomic conditions as well as aspects such as their gender, nationality, religion, culture, educational level, occupation, and caring responsibilities. This is in line with recent approaches, which have foregrounded “the ways in which gender is cross-cut by class, ethnicity, nationality, sexuality, age and other social variables” (Yeoh, 2014, p. 139) in everyday lived experience, where “gendered subjectivities are inextricably bound up with wider cultural struggles over resources and representations” (p. 143). Our aim was to examine the situation of TCN women working in Malta through a qualitative study, and more specifically, this article focuses on a recurring cluster of issues and concerns that emerged around the theme of discrimination over the course of 19 interviews with TCN women from South Asian countries working in Malta. Mahler and Pessar’s (2001) “gendered geographies of power” are helpful here, where gender is seen to operate on “multiple *spatial* and *social* scales (e.g., the body, the family, the state) across transnational terrains” (p. 445). “Social location” refers to “persons’ positions within power hierarchies created through historical, political, economic, geographic, kinship-based, and other socially stratifying factors” (pp. 445-6), and is particularly relevant here. While a lot has been written on women’s labour migration on the global stage (e.g. Anastasiadou et al., 2023) and at the EU level (e.g. Kofman, 2012), less attention has been given to TCN women migrating to Malta for work, with the exception of Filipino workers (e.g. Debono & Vassallo, 2020).

Our study focuses on South Asian women in Malta because there has been little research into the situations and experiences of TCN migrant workers from these countries; yet, the highest proportions of non-European migrant workers by nationality hail from the South Asian countries, with migrants from India being the most numerous and those from Nepal the third most numerous, both of which have seen a steep rise in recent years (Jobsplus, 2023). More research on the experiences of these nationality groups is therefore needed and timely. We recognise and emphasise that these ‘groups’ of TCN workers are heterogeneous groups. As Rajiva (2013, p. 17) points out, the category ‘South Asian’ may tend towards a reductively homogenising narrative, a racialising trend that may also be observed in Malta (Calleja et al., 2023, p. 35). In our study, we remain sensitive to differences across various categories (gender and nationality, as well as other intersecting factors, such as education, socioeconomic circumstances, immigration status, and work roles), while recognising some shared aspects of experience. Our research

adds to the existing literature by shedding light on an underexplored but important area of labour migration.

We employ an intersectional framework in order to better capture and interpret the experiences gathered. Our qualitative approach seeks to engage with intersectionality as “lived experience” (Valentine, 2007). An intersectional perspective “highlights the need to account for multiple grounds of identity when considering how the social world is constructed” (Crenshaw, 1991, p. 1245) and has been shown to be a particularly valuable approach in migration studies (Bastia, 2014; Erel & Reynolds, 2018).

EU context

In theory, EU policy acknowledges that labour market participation is “one of the most effective and practical ways of integrating into society” (EESC, 2015, para. 5.1); however, in practice it is less straightforward, and member states’ needs (addressing labour and skill shortages) remain pivotal and decisive in the EU framework governing the labour migration of third-country nationals (Weatherburn, 2023, p. 43), empowering the state to make decisions on volume of admissions (European Parliament and Council, 2011, Art. 8(3); TFEU, 2012, Art. 79(5)). The EU ‘single permit’ binds a third-country national’s right to reside in a Member State to the single purpose of work, and is thus designed to facilitate an “instrumentalising” approach to migration (Beduschi, 2015, p. 219). Third-country nationals are likely to “be treated differently according to their skills level, family situation, country of origin, or length of residence in the host State” (p. 216) and are often perceived at state level not as “potential citizens, but rather as flexible low-wage labour” to compensate for perceived shortages (Bastia & Piper, 2019, p. 22). Despite migrant women experiencing multiple disadvantages, gender-sensitive migration policies are lacking in many receiving countries (Hennebry et al., 2017). Overall, female TCN migrant workers tend to undergo deskilling when they come to the EU, often facing barriers in finding employment commensurate with their skills and education, particularly if they have young children (Orav, 2023).

Applying for the single permit and its renewal is not always straightforward, and the procedural obstacles can leave the applicant all the more vulnerable. The process itself “can be dehumanising as there is a lack of consideration for the individual who is left waiting with no alternative means of subsistence” (Weatherburn, 2023, p. 34). Employers and potential employees alike may find the process complicated, costly and slow and may lack access to information about the procedures, TCNs’ employment rights, and their application status, among other things (Weatherburn, 2023).

The single permit does not offer prospects of permanent residence and employment, putting most TCN workers in a precarious position; in fact,

economic precarity (see Standing, 2011) and ontological precariousness (Butler, 2004) may be said to be intricately linked (Bonello and Wångren, 2023, p. 6), with economic and contractual precarity affecting all areas of life (p. 119). For example, precariously employed workers are likelier to be exposed to sexual harassment at work (Boucher, 2025; EU Agency for Fundamental Rights, 2014, p. 111; TUC, 2016; Wångren, 2023). Across the EU, sexual harassment at work is recognised as a recurring gender-based issue (Riso & Eurofound, 2024). This is exacerbated by migration status and job insecurity (Boucher, 2025; Villegas, 2019). Migrant women may feel too vulnerable to report such incidents, fearing a lack of protection (Villegas, 2019). The EU Agency for Fundamental Rights (2014, p. 189) also finds that migrant women experience higher rates of sexual violence. Exposure to sexual harassment and other forms of harassment is therefore likely to be exacerbated by the conditions of the single permit.

The Maltese Context

Throughout much of its history, Malta saw more labour emigration than immigration (Baldacchino & Debono, 2021), with the result that immigration “was scantily regulated by Maltese law [...] up until Malta’s accession to the EU” in 2004 (Cauchi, 2018, p. 9). The Single Permit was introduced in Malta in 2014. Ten years into its implementation in the national context is a suitable point at which to take stock and get a glimpse into its impact on the everyday lives of those affected by it. Malta now has a labour-importing economy (Farrugia, 2023) and is enjoying economic prosperity. In line with the trend in the EU more generally, Malta has, in more recent years, seen a rise in migration from outside the EU, with the rise in TCN workers exceeding that of EU citizen workers (Debono, 2021, p. 276).

However, socially pervasive attitudes include a rise in racism and anti-immigration sentiment (Cassar, 2023; Cummings, 2024), also filtering into the workplace (see e.g. Cachia, 2024, focusing on the construction sector), which can make Malta a hostile destination for migrants. The diverging attitudes to migrants in Malta create a climate that is inclusive “on the surface”, “supported by an economic logic that markets plurality”, but which masks “everyday bordering practices that serve to reproduce the racial/ethnic order and boundaries of belonging within the nation state” (Pisani, 2022, p. 146) – a tension reinforced by government policy that values migrants primarily as a temporary workforce. This is reminiscent of the tensions Baldacchino (2012) observed in another small island context, Prince Edward Island. Baldacchino offers some explanations for the chilly reception of migrants on the island, connecting it to its post-colonial context. Malta is likewise a post-colonial small island state, and may be subject to similar tensions, with a tendency to reproduce hierarchies and exclusionary practices.

There is also discrimination within the category of migrant workers. Sangare's study of migrant women in Malta found a disparity between TCN status and EU citizenship, as perceived by her respondents. On the one hand, EU citizenship was experienced as "an asset and gate-opener for mobility, work, access to rights and increased acceptance by Maltese people;" and on the other, TCN status was often associated with "additional legal and practical, every day challenges" (Sangare, 2019, p. 83). As noted by Debono (2021), TCNs face a number of challenges "in their quest for decent work" in Malta; for example, TCNs earn around 17% less than the average local salary (Agius et al., 2024, p. 11). This mirrors the tendency across the EU, with non-EU migrants being "more vulnerable to discrimination" than EU migrants (Benedí Lahuerta, 2009, p. 755).

Cauchi (2018) observes that there is also differential treatment within the broader category of TCN workers in the procedures for entry, favouring workers deemed to be 'highly-skilled', who also receive more protection under Malta's laws. This unequal treatment is experienced at the level of procedure and access to rights. The different categories of TCN workers include: highly-qualified workers, represented in Malta by the 'Key Employee Initiative', the EU Blue Card, the 'Specialist Employee Initiative' (Identità Malta, 2025), and intra-corporate transferees. All other third-country nationals fall under the Single Permit Directive 2011/98/EU The 2024 recast Directive (European Parliament and Council, 2024) has not yet been transposed into Maltese law.

The Single Permit is tied to a specific employment and employer (Identità Malta, 2023). This significantly increases the worker's dependence on their employer, and could be seen as a form of "status coercion" (Hatton, 2020), where the workers' legal status and right to reside is at the mercy of their employer, exacerbating the risk of exploitation. The employee is effectively the one punished when loss of employment occurs, even if it is the fault of the employer. For example, in Malta, workers suffered the consequences of the government's "crackdown" on "abusive" employers, with their permit applications being denied or not renewed (Carabott, 2024). At the time of the interviews, if terminated from employment, a TCN person had 10 days (3 months in the case of blue card holders) to find other employment (Identità Malta, 2024a), beyond which their immigration status would fall into 'irregularity'. This renders their situation more precarious, since their jobs lack security and stability.

As Beduschi (2015) notes, the single permit's restrictions on work as an economic right also compromise the right to work as a human right. EU citizens and TCN job applicants do not have equal access to employment. Noting that TCNs are only likely to stay in Malta short-term, Clyde Caruana, the current Minister for Finance and Employment, declared: "We will

prioritise Maltese workers. If we can't find enough Maltese nationals to fill vacancies, we will look across the EU, as is the norm" (Martin, 2017). There are moves to cap the arrival of non-EU workers (Carabott, 2024); and the Government has also introduced skills cards for migrant workers (Arena, 2023; Xuereb, 2023) in hospitality/tourism, which come with a fee, creating yet another barrier for migrants. Meanwhile, growing resistance to TCN persons cuts across partisan lines. The opposition party has also proposed plans to limit "excessive" population growth that include restricted work permits, requiring migrant workers to learn Maltese, and compiling a skills database for the "continuous assessment of skills and participation" (Times of Malta, 2023).

This needs-based approach is often supported by, and in its turn fuels, attitudes in the receiving society. In Baldacchino's study of attitudes towards labour migration in the comparable island context of Prince Edward Island, respondents felt "distrusted and discriminated against; valued just for the money they inject into the local economy, and welcomed only as long as they are temporarily servicing the local labor market" (2012, p. 149). This conditional welcome is indeed likewise an attitude that seems to characterise government policy in Malta, as well as being held by a vocal segment of the public (see Cassar, 2023; Pisani, 2022).

As Rajiva (2013) notes (with reference to South Asian migrants in Canada), the perceptions and attitudes they are subjected to may come to characterise a shared aspect of experience. In Malta, South Asian peoples are regularly targeted by dehumanising hate speech (Calleja et al., 2023, p. 36), subjected to both discrimination in the workplace and public "disdain for [their] basic rights" (p. 58). South and Southeast Asian people also face more hurdles: the migration procedures across origin and destination countries are lengthy (Ellul, 2023a); Bangladeshi applicants for example have a low chance of receiving a visa, with Bangladeshi sources reporting that "only around 20% of visa applicants are successful" after a process that typically takes 1.5 years (Ellul, 2023b).

Discrimination in the workplace on the grounds of gender, race, and ethnicity may be systemic and/or individualised, as well as institutional, and often reflects and is reinforced by social values outside the workplace (Borg, 2019). Women, immigrants, and disabled persons are likelier to be subjected to bullying in the workplace (bBrave, 2023, pp. 41-2). The bBrave study conducted in Malta finds that women labour under a social perception of their "fragility" and "emotional" sensitivity, making them likelier targets for bullies. Immigrant workers may be bullied due to stereotypes associated with their country of origin, and they are treated differently depending on where they are from. For example, "if an Indian employee receives a promotion, this

would cause problems and complaints amongst employees, while the same would not hold for a German employee” (bBrave, 2023, pp. 41-2).

Yet some of Sangare’s (2019, p. 82) respondents experienced workplaces in Malta as being mostly “exempt of overt discrimination.” However, reports of racial discrimination as well as “racially-stereotyped sexual harassment” in the workplace were more common among those working in lower-paid jobs and more industrialised environments, and more common among non-EU than EU citizen workers. According to Sangare, this “seems to suggest that the socio-economic class intersects with race to create specific situations of discrimination against migrant women” (2019, p. 82). Particular nationalities have also come to be associated with certain sectors, which in turn influences what kinds of jobs they are likely to get (Debono, 2021, p. 277). Migrant women globally are also likelier than migrant men to be working in so-called ‘feminised’ sectors, where jobs tend to be more precarious and lower-paid (Bastia & Piper, 2019).

“Everyday discrimination”, understood as racism encountered in their daily lives (Erel & Reynolds, 2018), was however, more widely reported than was discrimination specifically centring on the workplace (Sangare, 2019, p. 81). As Bastia and Piper (2019, p. 26) note, the effects of racist attitudes on daily life and well-being are insidious and pervasive, including an impact on “socioeconomic and psychological well-being.”

In the Maltese context, victims of sexual harassment (including Maltese persons) feel social pressure to endure sexual harassment silently: “The microaggression they meet daily, pushes them to learn to brush it off to cope in Maltese society” (Cutajar & Vassallo, 2024, p. 119). More than 27% of women have been found to have experienced sexual harassment in the workplace in Malta over the course of their working life; women accounted for more than two-thirds of those who experienced such harassment at work (NSO, 2024, p. 17). TCN migrant women in particular often feel too unprotected and fearful of the repercussions (such as the possibility of losing their jobs) to report harassment (Agius et al., 2024, p. 47).

The trauma of sexual harassment may be compounded by its cultural implications in the country of origin (COO). For example, Bélanger and Rahman (2013, p. 361) note that there was a stigma attached to Bangladeshi women’s migration for work, leading to the assumption that they were likely to have been sexually harassed by their employers, or that they were involved in prostitution to earn money while abroad. Victim-blaming is commonplace in some South Asian countries (Shahid et al., 2021), including India (Vijayalakshmi et al., 2022) and Bangladesh (Huq & Mortada, 2020), discouraging victims from speaking out. Gendered victim-blaming is also frequently encountered in the Maltese context (Borg, 2024; Cutajar & Vassallo, 2024, p. 120; European Commission, 2024).

Methodology

This cross-sectional qualitative study is based on 19 semi-structured in-depth interviews conducted with South Asian women coming from India (9), Nepal (4), Sri Lanka (3), Pakistan (2) and Bangladesh (1), with the aim of gaining better understanding of their work experience in Malta, focusing on the single permit conditions and on the intersection between gender and immigration status. Respondents were recruited via a call issued over social media channels, including the Facebook page of Expats Malta and TCN Malta, as well as through other networks. In order to protect the informants, pseudonyms are used and their role is categorised in broad terms. The interview questions were open-ended and semi-structured, focusing on their work experience, the support they received, and the barriers they encountered, including challenges or incidents of discrimination they may have faced as women and as migrants at work and more generally. This gave the participants the opportunity to tell their stories in their own words and with their own emphases, enabling the inductive emergence of identifiable themes. Our interpretative lens was intersectional.

The face-to-face interviews were conducted in 2023 and 2024 and lasted between 30 and 75 minutes. The recorded data were transcribed, then coded through NVivo and analysed using Thematic Analysis (Braun & Clarke, 2006).

We self-reflexively acknowledge our own expectations and positioning as researchers (Braun & Clarke, 2019), as well as the relationship of reciprocity that characterised the interviews. We recognise that our position as European researchers entails a degree of privilege - for example, simply by being EU citizens, we have certain automatic rights that our respondents may struggle to access or assert. The framework provided by our literature review and our contextualising research enabled us to interpret our findings in a way that tested their validity through their consistency in the light of previous findings. The interviews were transcribed verbatim and in full, enabling the researchers to gain close familiarity with the data. Two authors independently took stock of the themes and their analysis. To further ensure validity, the coding of themes was checked and discussed over several meetings, and an agreement was reached. The findings were then discussed among all the authors.

We aimed to create a safe space for our respondents by inviting them to choose the place and time of the interview. Where additional detail was provided that was felt to be particularly sensitive or that may make the respondents identifiable, we provide additional anonymity by not specifying the particular informant. Our qualitative approach followed the tradition of feminist approaches that focus on the enabling of voices and the sharing of lived experience (Kelly et al., 1994), recognising our informants as

knowledge-holders (Bruce et al., 2016). Through this study, we endeavoured to provide a channel for communication, since such channels are often limited by intersecting vulnerabilities. The study received ethics clearance from the University of Malta. All of the participants who volunteered were women in their 20s or 30s at the time of the interviews, and were working in a variety of sectors. These included higher-income administrative, management, and/or corporate roles, and lower-income roles in sectors such as hospitality, retail, or health care. In many cases, they were overqualified for their role or were working in a role that did not match their educational background and experience.

Findings and Discussion

The majority of our respondents were in Malta on the single permit, although a couple were on intra-company transfers and one was on the Key Employee Initiative. As noted by Cauchi (2018), the latter were relatively more privileged. We found that discrimination, in line with Mahler and Pessar's (2001) observations, cuts across all levels: the everyday, as well as the national and transnational (EU, global) levels. Most experiences were mixed, rather than either wholly good or bad. The themes relating to discrimination broadly fall into four areas: (1) observations on the relationship between intersecting factors (including race, gender, and religion) as perceived by the respondents; (2) everyday discrimination; (3) discriminatory procedures; (4) sexual harassment as a theme that demonstrably connects the other themes and shows how they interact and intermesh.

Discrimination: Intersectionality as perceived by respondents

Among our respondents, there were more complaints of discrimination on the basis of race, nationality, and ethnicity than on the basis of gender. In answer to whether she had experienced gender discrimination as a woman, Radha said: "No [...]. Maybe I didn't realise it, or I don't remember, maybe." Likewise, Amina felt that she is "identified mostly as a Brown person," rather than as a woman. She argued: "I have never faced any issue because of [being a woman], but I would say there has been bullying or harassment because I am Pakistani." However, on reflecting further she said that she hadn't really considered that angle before being asked:

I think I identified mostly as a Brown person, you know. So, I thought whatever issues [were] happening were mostly because I'm a person of colour working in, or living in Malta. There were a lot of racial incidents but I don't know if it's because I'm a woman or because of who I am. [...] I mostly just identified as my ethnicity, my colour more than my gender. [...]

Your question just rattled me, like oh my god I'm experiencing it as a woman.

In this regard, it is worth noting that gender discrimination may be so 'normalised' that it goes unrecognised. An intersectional approach cautions us against positing a clear and simple binary separation between gender and racial discrimination, as these are often interlinked (Nash, 2008), although one may appear more prominent at a given time.

While reports of racism were rather more common, some respondents claimed to have had a more liberating experience in terms of gender, compared to their home country. For example, Muiya (Nepal) spoke about her positive experience as a woman working in Malta. She claimed that: "Here is a different culture [...], here is freedom." Sangita, from Nepal, added that in Malta: "Women can do everything," commenting that she usually feels safe as a woman in Malta during the daytime. Habiba also recounted how her experience as a woman in Malta differed from her experience in Pakistan:

When I came here, it was really very surprising for me, that here men and women they are working in the same environment, [doing the] same [jobs], and everything for them is equal and the same. [...] Here, as a woman, no, I didn't find any difficulty. Women are driving, they are in every field of life, so I observed them, that they are serving and working on the same [team] like men, so [...] my experience is not bad.

Habiba however, was also the only one of our respondents who explicitly mentioned discrimination on the basis of religion.¹ She was offered a job (while her looks were objectified) on condition that she removes her hijab on the job. However, she did not want to do so, and she encountered rejections because of this. When she applied for a part-time job in the hospitality sector, the manager

saw me and he admired me a lot – "oh you are really very beautiful, wow," and when I asked him for a part-time, [at] the same time he offered, "Yes, why not? [...] From tomorrow or this evening, if you want to come." And when I [told him], "OK, I need to cover my head, at least" – "no, no, no, you cannot, you cannot." I said [...] "like only if I cover my hair up, until here, at least – like [...] a cap." He said "no."

In this particular experience, religious and cultural differences intersected with gender.

One respondent reported that she was assigned to a job by her agency, and when she arrived, she realised that the employer was expecting a male

¹ Joppke (2014) suggests that Muslims face particular challenges in Europe, and there are moreover reports of rising Islamophobia (Kassam, 2024).

worker. The employer gave her the same tasks regardless, which involved manual loading and unloading of heavy goods, despite the health and safety implications. This incident shows the intersection of gender and working conditions specific to TCN migrants, where TCNs might be entirely dependent on an agency for assigning them – often inappropriately and not gender-sensitively – to jobs with no regard for individual skills and capabilities.

Everyday Discrimination

Many respondents reported everyday low-simmering discrimination that they found difficult to pinpoint, such as unequal opportunities at work. In Indira's (India) experience: "it's not something direct, [...] but behind the curtain it's still there: the discrimination, the racism and everything." For some, the experience was pervasive, both in and out of the workplace: "You still, at the end of the day, get those people who don't like you for the way you look, or for the colour of your skin, or for the way you talk. It's not something limited I would say to the workplace or to outside – it is what it is" (Gayatri, India).

The more direct discrimination experienced by our respondents in the workplace included being paid later than one's co-workers in the catering sector (Muiya); being denied a job because of the hijab (Habiba); receiving abusive racist comments from patients under one's care (Nisha, a nurse from India; and Habiba), or from customers in retail.

Nisha described racism at work: "sometimes the patients will [say] 'fuck Indians go back' [...] but we can accept all those things," because "I think a lot of third nationals are coming and some people, they do not like us;" but she believes that the large majority of Maltese people accept TCNs. Habiba described an experience with an elderly patient: "he was confused but he was still in his senses. He was saying, 'Oh my god, you fucking people coming from other countries,' and I just turned and I said, 'Yes, because we are paying tax as well.'" While Habiba spoke up for her rights, Radha felt unable to respond to racist customers in her previous job in retail. Originally from Nepal, she was in more stable employment in health care at the time of the interview, although she had previously worked for an agency that would move her between jobs. She said:

I meet a lot of people who are bad, and who are good as well, you know. In [some] moments, [...] I was like "why did I come to Malta?" I had that feeling [...] for some time, but I'm better now, better than before, for now it's ok, it's going well; but before it was very hard for me to adjust here, far from family, and even, you know, when working. [...] But some places, it was [a] disaster! [...] Usually you know, to be honest there [is] a lot of discrimination as well, because we are from a 'third

country', and [...] sometimes are too different. Some people [EU citizens], they treat us as though we are not humans.

The experience of racism is dehumanising, and again, its impact was felt beyond the workplace, having an effect on Radha's mental wellbeing and quality of life (see Bastia & Piper, 2019, p. 26). Radha acknowledged that there is good mixed in with the bad. However, she highlighted one incident in particular where a male customer entered the shop she was working in, and

he directly tells me, "If I were prime minister of this country, I would kick out all of you from this country." He was [speaking] directly into my face, you know, I was like "What?" [...] Because he was [a] customer, I can't tell him anything as well.

She noted that the experience is typical, albeit one of the worst she's experienced: "This kind of situation to be honest, we face a lot. [...] The way they treat you Maltese is different, and the way they treat us is different."

Amina, who worked for a time in retail and catering, likewise experienced hostility from customers. On the other hand, Razia used to work in retail, and testified to such attitudes among managers. She witnessed one manager speaking "with others like [they were] Asian monkeys, but I'm standing beside him, I'm also Asian." He seemed to have forgotten or disregarded her presence, while he was complaining "that they can't speak English, blah blah blah. But I was also standing as an Asian representative there."

Chandani (Sri Lanka) linked social attitudes to her right to work:

Just think of us as humans. [...] I didn't come uninvitedly, I was invited, I came through a proper channel. Just because of my colour, the way I dress, the way I look – don't judge me with that. Just, I'm doing a proper job. [...] [We] are here because there was no one to do that job, [...] respect us.

Our findings align with Sangare's conclusion that discrimination is more common in lower-paid jobs than in higher-paid jobs. A number of our respondents who worked in retail and catering experienced some kind of discrimination rooted in daily practices. There was also a greater sense of vulnerability in such sectors. For example, the fear of losing her job held Sabina, a Nepalese woman working in retail, back from claiming more sick leave: "I took the day I got sick and the next day.... And he, the doctor ask me: 'you want more days?' and I said: 'if I take more then maybe he will fire me.'" Such presenteeism (such as working while ill) has been found to be more common among those who lack job security (Fiorini, 2024).

Conversely, those who were working in better-paid jobs in private multinational companies with a multicultural organisational culture, ethos, and composition, such as Maneet (India), Leela (India), Indira (India), Chandani (Sri Lanka), and Rashmika (Sri Lanka), were more aware of where to go within the organisation to assert their rights and more willing to exercise them.

They also claimed to have experienced very “welcoming” and “accommodating” workplace environments (Maneet), where “they treat everyone equally” (Leela). Maneet made the point that supportive structures at work make a significant difference: “my human resources department is very involved in these kind of matters, they are very assuring. If I have any problems with sexism or racism I can go to them.” Rashmika said she was working in a global financial institution where: “there is more of a speak-up culture and very diverse and inclusive I would say, that’s what they [brand themselves as] most of the time.”

While it is important to note that the kind of workplace and job does indeed make a difference, it is also crucial to bear in mind that organisations are often “constructed” as “gender neutral” (Acker, 1990; Kelan, 2009), which may actually invisibilise – but not eliminate – gender discrimination. In line with Kelan’s (2009) findings, most of our respondents who claimed that there was no or little gender discrimination in their corporate workplaces acknowledged that it was a possibility, that it could occur as an exceptional or isolated incident, or that it had happened in the past. While it may indeed be rarer in some working environments than in others, this perception may also be indicative of what Kelan (2009) terms “gender fatigue”: where the organisational culture’s claim to be gender-blind is mostly accepted, and the possibility of gender discrimination is considered as a rare deviation from the norm, rather than an endemic tendency.

Education may also make a difference. Razia, who has been through tertiary education and could compare different sectors (moving from a job she was overqualified for, to one more closely matching her qualifications), hypothesised that education level affects the way one may be treated as a woman: “because I think education matters sometimes, [whether] you are women or men.” She went on to specify however: “Especially for women – when they see women educated and a bit, like, vocal, they are kind of afraid to do something.” However, the impact of education was not as manifest as might be expected, and should not be overestimated: it is important to note that most of our respondents in lower-paid jobs were educationally overqualified for their roles (see also Orav, 2023). Working in administration, Amina (who has been through higher education) has avoided such “exploitation workplace-wise, [...] but I also know people that go through these issues where they’re exploited.”

Amina (Pakistan) reported everyday prejudices outside the workplace, for example in relation to assumptions about food:

my landlord strictly instructed me not to cook in the flat because he said the food I would make would leave a smell in his windows and his walls. Insinuating that South Asian food stinks.

On one occasion, when she offered some homemade food to a neighbour, the latter immediately said:

“Please do not cook in your house because there’s another Indian person living here and their food smells really bad.” So, first I’m identified as an Indian which I really don’t like, because I’m obviously from a different country and second, there’s this prejudice or bias attached to it.

She also reported feeling rebuffed through more subtle social signals, such as avoidance of direct engagement and eye contact. For example, referring to a local individual she said:

he would refuse to talk to me, he just talks to my friend who’s white. [...] It’s really hard to explain in words when there’s this body language of people when they don’t want to be friends with you or don’t want to talk to you.

Habiba heard explicitly disdainful comments about her hijab: “some people [say], ‘Oh, it’s very hot; why are you covering your head? You have to remove [it], my God, Madonna!’” More positively, she also claimed that she has encountered Maltese people who “appreciated” her and told her that: “‘with this modern world, you didn’t change yourself, you didn’t leave your ethics’.” Habiba admitted that such comments encouraged her and boosted her morale.

Like Nisha, Mehar (India) observed that there has been an increase in TCNs, and offered a contextualising explanation for the change in social attitudes: “when I came here in 2016, I felt the people [...] until 2018 or 2019 [...] were quite happy here, they were welcoming foreigners. [...] I felt happy. But after 2019, a lot of foreigners have come,” and attitudes shifted. A couple of respondents commented that the perceptions associating nationalities with certain jobs (as also observed by Debono, 2021, p. 277) have been over-generalised to become stereotypes, influencing perceptions. Again however, the workplace cannot be clearly separated from the broader social context: workplace and social attitudes intersect and reinforce each other, sometimes affecting the types of jobs most readily available (Debono, 2021). This is the case even with those whose skills and qualifications would qualify them for a higher-paid role, but who have not arrived on a programme for highly-skilled workers (the latter have an advantage in this regard, gaining immediate access to higher-paid jobs). Amina offered an explanation relating to a perceived tendency to reproduce colonial power relations in the post-colonial environment of an ex-colony (also noted by Baldacchino, 2012):

I don’t mean they’re taking over those jobs. I mean I feel like white people or regular European people don’t want to do those jobs because they feel it’s beneath them. I understand where

it's coming from, because Pakistan is also a colonial country so I feel like it's a colonial mindset.

Mehar encountered assumptions and stereotypes at odds with her managerial role:

Most [TCNs] are in the [lower-paid] labour category so the respect for foreigners [is] bad at the moment. Somebody sees me and asks, 'Are you a nurse?' And they see my husband and ask, 'Are you a chef?' So it's like anybody that comes with this colour, they make assumptions. [...] I do understand but then I don't like that.

Mehar's experience demonstrates that assumptions may be flawed, and that they operate along both gendered and racial lines.

Discrimination in Procedures

Discrimination tends to restrict TCNs' exercise of and access to their rights. Discrimination is in some respects "institutionalised" (Suban & Zammit, 2019): built into the system, including in the EU single permit procedure. For example, the procedures for recognising TCNs' qualifications in Malta have been described by Suban and Zammit (2019, p. 117) as "opaque, dilatory and discretionary." Gayatri commented on the mismatch between skills and available jobs, and the barriers to recognising qualifications and previous work experience:

It's not just in Malta. It's something that's [...] EU. Because when a TCN comes in, we start afresh. Even though I had the two years' experience in India, it's [...] not taken in consideration [for] the working permit. [...] My fiancé, [...] is just finishing his thesis for his Masters degree, and he had experience. [...] He did not even get a response for the applications he sent in, not even a rejection, and he applied for like at least 75 jobs.

Those working in health care pointed out the barriers to working as a nurse in Malta; many start off as a carer or cleaner, even if they were qualified as a nurse in their country of origin. They are required to complete a bridging course to be recognised as nurses in Malta. Despite its rationale in terms of aligning training and expectations, this considerably lengthens the procedure for entering the relevant job market, in comparison to the experience of EU citizens.

Mention was made of the administration of required procedures such as biometrics (related to identity verification), where one Indian respondent reported being left waiting in the queue as "whiter-looking" people were ushered in before her. Another respondent described an unwelcoming environment at the government agency ID Malta: "I go inside, [...] they start

speaking in Maltese, it becomes more anxiety-inducing for me and I'm like, 'I'm getting out of here.'" Several respondents had to deal with bureaucratic issues in order to get administrative errors fixed on their permits. One described a situation where she went to the ID Malta offices to ask for a correction to be made on her permit, and instead of resolving the problem, the person there threatened to call the police on her. The next day, she returned with her white flatmate: "she does all the talking and I just go inside [...] and as soon as they see someone who's white, their whole body language and everything changes."

Amina noted that discriminatory treatment and delays are sometimes an outcome of the procedures, rather than ill-intention on the employer's side:

The management [...] were a bit confused as well because they didn't know how to handle a case like this and they were leaving me a bit hanging. I do think that when it comes to [...] dealing with paperwork and legalities people don't know how to deal with third-party nationals.

This points to a lack of transparency within the system, as also noted by Weatherburn (2023), who found that employers were sometimes uninformed, and unwilling or ill-prepared to engage with the convoluted procedures. Gayatri encountered delays due to lack of communication between her employer and ID Malta:

I basically can't work, if I don't have the permit; I have to just stay at home and there's nobody funding me anyway, they are not paying while we wait for the permit; and I understand – legally, they can't let me work until I get the permit.

Procedural delays in the application for renewal of the permit were experienced by several other respondents, which put their rights on hold. Chandani's employer, a private company, handles the process, which makes it smoother. However, she experienced a series of delays when a recurring administrative error compromised the validity of her renewed permit. She pointed out that without a valid ID, she does not have access to health care, and she cannot travel. Rashmika also encountered an administrative error, and was unhelpfully told to wait till the next renewal. She noted that these errors are frequent: "Sometimes – not sometimes, quite often – there are mistakes that happen as well. Like, on the card they issue." The error was resolved after someone from her private company liaised with ID Malta on her behalf. Despite this supportive intermediary, a safety-net unavailable to many of our respondents, Rashmika said that every time she had to make changes she encountered new procedural hurdles:

every time it's so difficult whenever I have to go through my renewal process [...] You have to wait for travel plans and wait

until after you get the ID, because you can't travel without it.
[...] The process [...] is the main challenge.

Likewise, Leela recounted her experience of chasing ID Malta, since her application for renewal was still pending: “[ID Malta] didn't respond to the emails; and I called them, I sent an email every day. [...] Because without that, I can't receive my salary; without the card, I can't work here.” Leela also went to ID Malta in-person, and was told “it's with third parties; we can't do anything.” She observes that they already had all the information since she'd already been in Malta for a few years, so she assumed “a basic check” was all that would be needed: “It's just a renewal; it took ages.” In the meantime, while it was being processed: “if something happens, I can't do anything. I'm stuck here.” She observes, “I think it's a really common problem for third country nationals.” This is borne out by the number of similar stories that emerged in the interviews. One respondent pointed out that it could take several months to renew the permit after a change of designated role. Chandani observed that difficulties have increased over the years: “At the beginning it was very straightforward and it was easy back then, in 2017. [...] The process was simpler, even though they had a lot of paperwork – even for a renewal [...]. Now, they have changed. I think they have changed it in a more complicated way.”

Razia commented on the way these application procedures and delays empower the employer and enable exploitation: “You know, it's waste of time, waste of money, and [your] employer can play with you.” Such dependence on the employer exacerbates the precarity and vulnerability that TCNs on the single permit are subject to, as noted by Weatherburn (2023), creating the conditions for “status coercion” (Hatton, 2020).

Several of our respondents encountered insurmountable difficulties in bringing their family members over (see Bonello et al, 2025), because they were unable to reach the required income threshold of average wage plus 20% per family member (Identità Malta, 2024b), which is higher than in many other EU member states (EMN, 2017). A couple of respondents in higher-paid jobs had succeeded, but one had found reaching the threshold to be a “long tiring process.” Those TCNs who are here as ‘highly-skilled’ workers (e.g. on the Key Employee Initiative) or through intra-company transfer were found to be relatively more privileged, reinforcing Cauchi's observations (2018) – for example, they were likelier to report receiving institutional support in navigating permit procedures; and they achieved family reunification with less difficulty.

Sexual Harassment

A number of respondents reported encountering what they described as “flirting” behaviour, but some viewed it as harmless. However, Sabina's

comments show how easily this can border on something more threatening: “boys they want to flirt with us, [...] not like harass but they want to come close with us, like joking, you know.” She sometimes speaks out directly, telling them to go their own way. She found such unwanted attention to be particularly rampant in housekeeping work, but says her refusals were respected: “They want to try their luck, but if we are [...] not comfortable [...] they move.” Yet Sabina was not at ease, expressing a sense of general apprehension and distrust: “I feel scared. Yes, definitely here I feel scared. To talk with, especially, the boys.”

While Sangita mostly feels safe – particularly in her domestic work environment, looking after an elderly woman – she acknowledged that she does not feel safe walking alone at night as a woman, especially after she sees social media posts about women being murdered or bullied. Sabina’s feelings are likewise ambivalent - she describes a bad occurrence as a “good thing”, out of relief that a worse situation has been averted:

another [...] good thing about Malta is [as a] foreigner whenever we are walking late [at] night, especially, this area, they [boys] come and tell us: “Hey girl, do you want coffee?”, they say. “No sorry, I no drink coffee.” [...] They stop when not interested, they stop. That’s the best thing I liked.

Though she should not have to be engaging with such unwanted invitations, the effort fell to her to fend off these advances. She interpreted her experience in the intersectional light of being both a woman and a “foreigner”.

While working temporarily in retail, one respondent encountered a manager who “was trying to touch me inappropriately, which is not acceptable in my culture.” The participant stood up for herself and lost the job: “they just removed me from the position because I complained against that particular person.” She subsequently found a much better job and notes that apart from that one experience, “everyone respected me, to be honest. They didn’t count me as a woman, they respected what I have in my head and what I have [in] my background.” She factored in education and the type of job, and the financial support she had from her family. She contrasted this with even less secure positions: “I think if I was a cleaner it [would] be different; if I was a waitress [there would] be different stories, I believe.” As noted in the literature (Boucher 2025; EU Agency for Fundamental Rights 2014, 111; Wånggren 2023), precarious working conditions intersect with gender to increase vulnerability to sexual harassment.

Another respondent, who was indeed working as a cleaner, reported a similar experience where speaking up also backfired on her and had even worse repercussions, because she had fewer options and support in terms of finding a new job. She described an incident that occurred while cleaning in the workplace, when “one of the employees tried to take advantage” of her.

She reported this to management, who preferred to handle it internally. Management eventually decided to let go the alleged perpetrator, “after a long period” of discussion. Her account did not end there, however:

But then later on, you know, everybody has had this impression about me, [...] it was like, either I should not have spoken up, or kept it to myself. [...] Later on [...], it was not easy for me to work in that environment, because every time I did, it brought [on] like this really bad memory.

The aftermath was felt on two levels: a change in attitudes towards her and her lingering trauma after the event. She experienced the workplace becoming an unsafe space, and was then subjected to doubt and victim-blaming. She felt that while the male employee found support in some quarters, her story was not taken equally seriously:

[I] felt like, unsure what’s happening. [...] Because the other employees were coming and asking, “Are you sure you didn’t do anything to him?” [...] They were actually thinking of bringing him back; and I said, “No, I don’t feel safe.” [...] My supervisor was [telling team leaders], “Hey, you know, take him, give him another chance.”

She then voiced concern about the effects of sexual harassment on her own status in her culture, and what this might mean for her “marriageability”:

Usually, in a [COO] love triangle, when the girl is touched by another guy, it feels like, you know something is wrong – it feels like you know, like she’s dirty, like she’s not clean, you know. So he’s like, “how am I going to tell my family?”, and stuff like that. [...] I don’t know, we might even call off the engagement, I don’t know, he’s like, “I don’t know whether I want to be with you anymore.”

In addition to the further victimisation these victims encountered at their place of work in Malta, sexual harassment may also have cultural implications in their COO (as noted above) which put an added burden on the victim.

Sexual harassment relates to all thematic categories: intersectional vulnerabilities increased its likelihood; unwelcome advances were experienced as a commonplace everyday event; and those who experienced sexual harassment in the workplace found that their channels for redress were restricted, where procedures and policy failed to protect them.

Conclusions

This study offers insights into the discriminatory practices affecting TCN migrant women in Malta, through the stories and testimonies of those who have experienced them. Though some respondents saw gender and

migration status as distinct factors, others indicated the ways in which they intersect, for example, in the case of sexual harassment. One could also note discrimination happening at multiple levels - EU, transnational, state, organisational, social and personal – which interact structurally, as well as converging in individual cases. The impact of the power structures is also intersectional, with respondents experiencing discrimination on several grounds, sometimes simultaneously. The inequality is also systemic, experienced both in everyday practices and procedurally. Although some respondents drew a distinction between their experiences in and outside the workplace, other respondents sensed something more pervasive that could not be so easily identified as pertaining exclusively to particular domains. Both everyday discrimination and discriminatory procedures are not confined to one area of life (e.g., work vs living conditions), but permeate various aspects of lived experience and have an impact on the general quality of life and personal well-being. This is exemplified in the nature of the EU single permit, where residence is bound up with work as the purpose of migration, and where work precarity directly translates into precarity of livelihood, the right to reside, and increased vulnerability. This vulnerability also threatens to silence voices. In fact, none of our respondents were union members. This vulnerability may be further heightened by other factors, and further research is needed on discrimination along different intersections, e.g., with disability and age. Some communities were more difficult to reach than others, so the participants who responded to the call were likelier to come from more established and sizable communities. Those who responded to our call were all in their 20s and 30s, leaving the voices of older women unheard. Our perspective as researchers was also coloured by our relative privilege as Maltese nationals; while we actively sought out TCN workers' voices and lived experiences, one direction for further research would be to include TCNs as co-researchers. By giving glimpses into the lived experiences of TCN women working in Malta, focusing on South Asian women, we hope to lay the basis for comparative approaches (e.g., with other migrant communities) not covered in the course of this study.

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References:

1. Acker, J. (1990). Hierarchies, jobs, bodies: A theory of gendered organizations. *Gender and Society*, 4(2), 139-158. <http://www.jstor.org/stable/189609>.
2. Agius, S., Borg, M. G., Cachia, M., Cauchi, I., del Buono, C., Zammit, R., & Fenech, G. (2024). *Beyond GDP II: Third country nationals in Malta: Sharing in our economic future or serving labour market interests?* Justice and Peace Commission.
3. Anastasiadou, A., Kim, J., Sanlitürk, A. E., de Valk, H., & Zagheni, E. (2023). *Sex- and gender-based differences in the migration process: A systematic literature review*. MPIDR Working Paper WP 2023-039. Max Planck Institute for Demographic Research. <https://doi.org/10.4054/MPIDR-WP-2023-039>
4. Arena, J. (2023, December 27). Skills card for foreign workers postponed until March. *The Times of Malta*.
5. Baldacchino, G. (2012). Come visit, but don't overstay: Critiquing a welcoming society. *International Journal of Culture, Tourism and Hospitality Research*, 6(2), 145–153. <https://doi.org/10.1108/17506181211233072>
6. Baldacchino, G., & Debono, M. (2021). Editorial: Rationed bread, and such: The transformation of Malta: 1960-2020. In M. Debono & G. Baldacchino (Eds.), *Working life and the transformation of Malta 1960-2020* (pp. 11-24). Malta University Press.
7. Bastia, T. (2014). Intersectionality, migration and development. *Progress in Development Studies*, 14(3), 237-248. <https://doi.org/10.1177/1464993414521330>
8. Bastia, T., & Piper, N. (2019). Women migrants in the global economy: A global overview (and regional perspectives). *Gender & Development*, 27(1), 15-30. doi:10.1080/13552074.2019.1570734.
9. bBrave. (2023). *Research study on bullying and ostracism at the workplace in Malta - Final report*. bBrave.
10. Beduschi, A. (2015). An empty shell? The protection of social rights of third-country workers in the EU after the single permit directive. *European Journal of Migration and Law*, 17(2-3), 210-238. <https://doi.org/10.1163/15718166-12342078>
11. Bélanger, D., & Rahman, M. (2013). Migrating against all the odds: International labour migration of Bangladeshi women. *Current*

- Sociology*, 61(3), 356–373.
<https://doi.org/10.1177/0011392113484453>
12. Benedí Lahuerta, S. (2009). Race equality and TCNs, or How to fight discrimination with a discriminatory law. *European Law Journal*, 15(6), 738-756. <https://doi.org/10.1111/j.1468-0386.2009.00488.x>
 13. Bonello, K., & Wånggren, L. (2023). *Working conditions in a marketised university system: Generation precarity*. Palgrave Macmillan.
 14. Bonello, K., Borg, A., Debono, Manwel, Fiorini, Luke A. (2025). Transnational care networks of ‘third country national’ women working in Malta, *Discover Global Society*, 3(40), <https://doi.org/10.1007/s44282-025-00174-9>
 15. Borg, A. (2019). Equality, diversity and inclusion. In G. Baldacchino, V. Cassar, & J. Azzopardi (Eds.), *Malta and its human resources: Management and development perspectives* (pp. 119-140). Malta University Press.
 16. Borg, N. (2024, November 27). Women are partly to blame if raped while drunk, a fifth of Maltese say. *The Times of Malta*.
 17. Boucher, A. K. (2025). Migrant sexual precarity through the lens of workplace litigation. *Gender, Work & Organization*, 32(1), 458-472. <https://doi.org/10.1111/gwao.13160>
 18. Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101. <https://doi.org/10.1191/1478088706qp063oa>
 19. Braun, V., & Clarke, V. (2019). Reflecting on reflexive thematic analysis. *Qualitative Research in Sport, Exercise and Health*, 11(4), 589–597. <https://doi.org/10.1080/2159676X.2019.1628806>
 20. Bruce, A., Beuthin, R., Sheilds, L., Molzahn, A., & Schick-Makaroff, K. (2016). Narrative research evolving: Evolving through narrative research. *International Journal of Qualitative Methods*, 15(1). <https://doi.org/10.1177/1609406916659292>
 21. Butler, J. (2004). *Precarious life: The powers of mourning and violence*. Verso.
 22. Cachia, M. (2024). *The “Ejja Ejja” culture: An analysis of socio-economic, political and legal factors which impact the health and safety of workers in the construction industry*. Justice and Peace Commission.
 23. Calleja, C., Giordmania, J., Camilleri, C., Sonne, K. (2023). *Understanding hate speech and derogatory language against migrants and ethnic minorities in Malta: A qualitative analysis of social media comments and lived experiences*. University of Malta.

24. Carabott, S. (2024, July 26). “TCNs refused work permits as cab, food courier markets saturated”: government. *The Times of Malta*.
25. Cassar, J. (2023, February 20). Coming here as a third country national? Just don’t bother. *Malta Today*.
26. Cauchi, A. (2018). *Labour immigration of third-country nationals to Malta: A critical appraisal of the current regulatory framework* [LL.D. dissertation, University of Malta].
27. Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6), 1241-1299. <https://doi.org/10.2307/1229039>
28. Cummings, J. (2024, August 6). “No Pakis...”: Estate agent accidentally publishes internal ‘restriction’. *The Times of Malta*.
29. Cutajar, J., & Vassallo R. (2024). “You kind of expect it – it’s not necessarily ok, but at the same time I’ve gotten used to it”. Tackling sexual harassment in higher educational institutions. *Postcolonial Directions in Education*, 13(1), 98-141.
30. Debono, M. (2021). Migrants and the challenge of decent work in Malta. *e-Revista Internacional de la Protección Social*, VI(2), 272-293. <http://dx.doi.org/10.12795/e-RIPS.2021.i02.12>.
31. Debono, M., & Vassallo, M. T. (2020). Predictors of employment outcomes among Filipino workers in Malta. *Xjenza Online*, 8, 16–31. DOI: 10.7423/XJENZA.2020.1.02
32. Ellul, D. (2023a, January 13). Asians coming to Malta for work are waiting more than a year for a visa decision. *The Times of Malta*.
33. Ellul, D. (2023b, August 10). Fired from job while abroad, unable to return to Malta. *The Times of Malta*.
34. Erel, U. & Reynolds, T. (2018). Introduction: Migrant mothers challenging racialized citizenship. *Ethnic and Racial Studies*, 41(1), 1-16. <https://doi.org/10.1080/01419870.2017.1334939>
35. EU Agency for Fundamental Rights. (2014). *Violence against Women: An EU wide survey: Main results*.
36. European Commission. (2024). *Flash Eurobarometer 544. Gender stereotypes - Violence against women. Eurobarometer Report*, February.
37. European Economic and Social Committee (EESC). (2015). *Inclusion of Migrant Women in the Labour Market. EESC Opinion*. European Commission.
38. European Migration Network (EMN). (2017). *Family Reunification of Third-Country Nationals in the EU plus Norway: National Report*. EMN.
39. European Parliament and Council. (2011). Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on

- a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. *Official Journal of the European Union*. EUR-Lex <https://eur-lex.europa.eu/eli/dir/2011/98/oj/eng>
40. European Parliament and Council. (2024). Directive (EU) 2024/1233 of the European Parliament and of the Council of 11 April 2024 on a single permit for third-country nationals to reside and work in the territory of the Member States and on a common set of rights for third-country workers (recast). *Official Journal of the European Union*. <https://eur-lex.europa.eu/eli/dir/2024/1233/oj/eng>
 41. Farrugia, J. (2023, October 22). Addressing HR challenges of foreign workers in Malta. *The Times of Malta*.
 42. Fiorini, L. A. (2024). Remote workers' reasons for changed levels of absenteeism, presenteeism and working outside agreed hours during the COVID-19 pandemic. *Sage Open*, 14(1). <https://doi.org/10.1177/21582440241240636>
 43. Hatton, E. (2020). *Coerced: Work under threat of punishment*. University of California Press.
 44. Hennebry, J., Grass, W., & Mclaughlin, J. (2017). *Research paper: Women migrant workers' journey through the margins: Labour, migration and trafficking*. UN Women and EU.
 45. Huq, S., & Mortada, S. S. (2020, October 19). To tackle sexual violence in Bangladesh the culture of victim blaming must end. *Guardian*.
 46. Identità Malta. (2023). *Single Permit*. Retrieved September 10, 2023, from <https://www.identitymalta.com/wp-content/uploads/2023/01/Single-Permit.pdf>
 47. Identità Malta. (2024a). *Expatriates Unit*. Retrieved October 10, 2024, from <https://identita.gov.mt/expatriates-unit-change-of-designation-or-employer-change-of-employer/>
 48. Identità Malta. (2024b). *Non-EU Nationals/Non-Employment Permits/Family Member/Family Members Policy: Policy on family members of third-country nationals who do not qualify for family reunification by means of the Family Reunification Regulations S.L. 217.06. 2021*. <https://identita.gov.mt/expatriates-unit-non-employment-permits-family-members-policy/>
 49. Identità Malta. (2025). *Expatriates Unit: Highly Qualified Individuals*. Retrieved January 10, 2025, from <https://identita.gov.mt/expatriates-unit-employment-related-permits-highly-qualified-individuals/>

50. Jobsplus. (2023). *Labour Market Information*. Retrieved October 10, 2023, from <https://jobsplus.gov.mt/resources/publication-statistics-mt-mt-en-gb/labour-market-information/foreigners-data>
51. Joppke, C. (2014). European immigrant integration after multiculturalism. In G. Battistella (Ed.), *Global and Asian Perspectives on International Migration* (pp. 77-99). Springer & IOM.
52. Kassam, A. (2024, October 24). Muslims in Europe experiencing “worrying surge” in racism, survey finds. *Guardian*.
53. Kelan, E. K. (2009). Gender fatigue: The ideological dilemma of gender neutrality and discrimination in organizations. *Canadian Journal of Administrative Sciences* 26(3), 197-210. <https://doi.org/10.1002/cjas.106>
54. Kelly, L., Burton, S., & Regan, L. (1994). Researching women’s lives or studying women’s oppression? Reflections on what constitutes feminist research. In M. Maynard & J. Purvis (Eds.), *Researching women’s lives from a feminist perspective* (pp. 27-48). Taylor & Francis.
55. Kofman, E. (2012). Gender and skilled migration in Europe. *Cuadernos de Relaciones Laborales*, 30(1), 63–89.
56. Mahler, S. J., & Pessar, P. (2001). Gendered geographies of power: Analyzing gender across transnational spaces. *Identities: Global Studies in Culture and Power*, 7(4), 441– 459. <https://doi.org/10.1080/1070289X.2001.9962675>
57. Martin, I. (2017, November 18). New deals to import non-EU foreign workers to Malta. *Times of Malta*.
58. Nash, J. C. (2008). Re-thinking intersectionality. *Feminist Review*, 89(1), 1-15. <https://doi.org/10.1057/fr.2008.4>
59. Orav, A. (2023). *Migrant women and the EU labour market: Overcoming double discrimination*. EU Parliamentary Research Service. Briefing. EU Parliament. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747905/EPRS_BRI\(2023\)747905_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747905/EPRS_BRI(2023)747905_EN.pdf)
60. Pisani, M. (2022). “Race” to the bottom?: Critical reflections on race relations in Malta over the past 20 years. *Journal of Mediterranean Studies*, 31(2), 135–154. <https://doi.org/10.1353/jms.2022.a912066>
61. Rajiva, M. (2013). “Better lives”: The transgenerational positioning of social mobility in the South Asian Canadian diaspora. *Women's Studies International Forum*, 36, 16-26.
62. Riso, S., & Eurofound (2024, October 1). After #MeToo: Changes in sexual harassment policy at work. Eurofound.

63. Sangare, A. (2019). "I'm integrated, but not in a Maltese way": Motherhood, migration and belonging in Malta. [Master's dissertation, University of Malta].
64. Shahid, R., Sarkar, K., & Khan, A. (2021, January 26). Understanding 'rape culture' in Bangladesh, India, & Pakistan. *Atlantic Council, South Asia Center*.
65. Standing, G. (2011). *The precariat: The new dangerous class*. Bloomsbury Academic.
66. Suban, R., & Zammit, D. E. (2019). Promoting the integration of third-country nationals through the labour market: Combating discrimination in employment: The case of third-country nationals in Malta. *Mediterranean Human Rights Review, 1*, 98-117.
67. Treaty on the Functioning of the European Union (TFEU). (2012). https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj/eng
68. *Times of Malta*. (2023, October 19). PN pledges to curb 'excessive' population growth in economic vision. *The Times of Malta*.
69. Trade Union Congress (TUC). (2016). *Still just a bit of banter? Sexual harassment in the workplace in 2016*. TUC.
70. Valentine, G. (2007). Theorizing and researching intersectionality: A challenge for feminist geography. *The Professional Geographer, 59*(1), 10–21. <https://doi.org/10.1111/j.1467-9272.2007.00587.x>
71. Vijayalakshmi, A., Dev, P., & Kulkarni, V. (2022). Domestic workers and sexual harassment in India: Examining preferred response strategies. *World Development, 155*. <https://doi.org/10.1016/j.worlddev.2022.105875>
72. Villegas, P. E. (2019). "I made myself small like a cat and ran away": Workplace sexual harassment, precarious immigration status and legal violence. *Journal of Gender Studies, 28*(6), 674–686. <https://doi.org/ejournals.um.edu.mt/10.1080/09589236.2019.1604326>
73. Wånggren, L. (2023). Sexual misconduct through inequality and precarity. In E. Pritchard and D. Edwards (Eds.), *Sexual misconduct in everyday academic spaces: Experience and ethical dilemmas* (pp. 27-43). Palgrave Macmillan.
74. Weatherburn, A. (2023). *The lived experiences of migrants in the EU with a single permit*. ULB and ELC.
75. Xuereb, M. (2023, October 26). Foreign workers will need €575 'skills card' to get a job in tourism. *The Times of Malta*.
76. Yeoh, B. S. A. (2014). Engendering international migration: Perspectives from within Asia. In G. Battistella (Ed.), *Global and Asian perspectives on international migration* (pp. 139-152). Springer & IOM.

From Immanence to Becoming: Beauvoir, Nietzsche, and the Feminist Monologue in *The Patience Stone*

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Abstract

The article explores the feminist existentialist dimensions of Atiq Rahimi's *The Patience Stone* (2008), situating the unnamed female protagonist's radical monologue within a broader philosophical lineage that includes Simone de Beauvoir and Friedrich Nietzsche. Drawing on Beauvoir's *The Ethics of Ambiguity* (2004) and Nietzsche's *The Gay Science* (1974), the study frames the woman's struggle against immanence and patriarchal silencing as a philosophical revolt. Beauvoir's humanist existentialism provides a lens for understanding the protagonist's resistance to passive identity, while Nietzsche's concept of revaluation of values illuminates her defiant articulation of desire, trauma, and agency. The protagonist's transformation from passive to self-authoring entity echoes Nietzsche's call to transcend herd morality and affirm the self through creative resistance. By bridging Beauvoir's ethics with Nietzsche's radical critique of moral normativity, this study argues that *The Patience Stone* stages a feminist revolt that is both existential and genealogical - dismantling inherited structures of meaning while forging new modes of becoming. Ultimately, enacts a philosophical drama of voice, vulnerability, and value creation in a context where silence has long been mistaken for virtue.

Keywords: Feminist existentialism, Beauvoir and Nietzsche, Afghan literature, gendered subjectivity, and philosophical revolt

Introduction

In *The Patience Stone*, Atiq Rahimi crafts a sparse yet searing narrative centred on a nameless Afghan woman who, after years of being silenced by patriarchal and religious constraints, erupts in a confessional monologue to her comatose husband. This act of speech, though delivered in isolation and without any expectation of reply, becomes a philosophical rebellion against the structures that have rendered her invisible. This paper argues that the protagonist's speech act enacts a form of feminist existential resistance, as theorised by Simone de Beauvoir and Friedrich Nietzsche. Through her voice, she moves from immanence to transcendence, from object to subject, and from silence to authorship.

Beauvoir, in *The Ethics of Ambiguity* (1948), asserts that "to will oneself free is also to will others free" (p. 73). This ethical imperative underscores her belief that freedom is not an abstract ideal but a lived, relational condition - one that must be asserted through action, speech, and solidarity. In this respect, Rahimi's unnamed protagonist embodies this quest: her speech is not only therapeutic but transformative, a refusal to remain the "patience stone" that absorbs others' pain while erasing her own. Moreover, her confessions, desires, and transgressions somehow echo Beauvoir's insistence that "One is born, but rather becomes, a woman (1956, p. 273), transforming it into a call to revolt against passivity and imposed identity.

Nietzsche's influence, though less overt, is equally resonant in Rahimi's novel. His call for the *Umwertung aller Werte* - the "revaluation of all values" (2006, p. 118) - resonates in the protagonist's rejection of moral codes that have governed her body and voice. She speaks of sex, shame, and suffering without apology, dismantling the inherent norms that have dictated her existence. As Nietzsche writes in *Twilight of the Idols* (1997), "if you have your *why* for life, you can get by with almost any *how*" (p. 6), Rahimi's protagonist, in seeking her own "why," confronts the "how" of her life with brutal honesty and existential courage.

This study explores several key dimensions of this feminist existentialist reading. First, the protagonist's anonymity functions as a radical refusal of imposed identity. Second, the narrative's temporal disruption and non-linear memory reflect a lived, affective temporality that privileges emotional truth over chronological coherence. Third, the protagonist inhabits a space of abjection, speaking from the margins of cultural intelligibility.

Building on these foundations, the study explores several additional dimensions. It examines the role of speech as an ethical and ontological act, drawing on de Beauvoir's notion of ambiguity and Nietzsche's concept of creative resistance. The paper also analyses the protagonist's relationship to her body - not as an object of male desire, but as a site of memory, pain, and eventually reclamation. It considers the novel's minimalist structure as a

philosophical space where silence and voice, death and desire, converge. Crucially, the protagonist's confessional monologue unfolds a world stripped of divine intervention or metaphysical consolation, echoing Nietzsche's pronouncement of the "death of God" and the existential imperative to create meaning in the absence of transcendent authority. Her speech becomes a form of value-creation, oscillating between religious morality and ethical revolt that is grounded in lived experience. Ultimately, *The Patience Stone* is read not as a narrative of confession, but as a drama of becoming, where existential freedom is carved out of constraint, and feminist revolt is voiced in solitude.

Methods

This study employed a qualitative, interpretive methodology grounded in feminist existentialist literary criticism. The primary subject of analysis was Atiq Rahimi's *The Patience Stone* (2008), examined in its English translation to ensure accessibility for an international scholarly audience. The research focused on the unnamed female protagonist's monologue, treating it as a philosophical site of resistance and transformation.

Textual analysis was conducted through close reading, with particular attention to narrative voice, thematic development, and rhetorical structure. The selection of theoretical works was based on their relevance to existentialist ethics, moral reevaluation, and the construction of agency under oppressive conditions.

No statistical methods were employed, as the research did not involve numerical data or empirical sampling. Instead, the analysis was mainly hermeneutic and genealogical, tracing philosophical concepts across texts and contexts. Secondary sources included peer-reviewed journal articles and monographs on feminist and existential theories as well as Afghan cultural studies, accessed through Scopus-indexed databases and university library holdings.

All interpretations were situated within a feminist existentialist lens, emphasising the intersection of gender, voice, and value creation in a sociopolitical context marked by immanence, patriarchal silencing, and the struggle for self-authorship.

Results

The analysis reveals that the unnamed female protagonist in *The Patience Stone* enacts a philosophical transformation from passive silence to active self-authorship. Her monologue disrupts patriarchal structures of meaning by reevaluating inherited moral norms, aligning with Nietzsche's concept of life-affirming revolt and Beauvoir's ethics of transcendence. The protagonist's articulation of trauma, desire, and agency demonstrates a feminist existential resistance to immanence, culminating in a radical

definition of voice and value within a context of enforced silence. The novel thus stages a genealogical and existential drama that bridges humanist and post-moral philosophical traditions.

Discussion

In Rahimi's novel, the anonymity of the female protagonist operates as a deliberate existential strategy, rather than a mere narrative omission. Her namelessness aligns with Beauvoir's existential feminist framework, particularly the concept of woman as the "Other" in patriarchal societies. By withholding an anonymous identity, Rahimi allows the protagonist to emerge as a subject through speech and introspection rather than remain an object defined by familial or societal roles. This narrative choice foregrounds the woman's agency, enabling her to freely articulate trauma, desire, and resistance in a context that would otherwise silence her. In this sense, Shukla (2025) observes that the protagonist's anonymity is not a form of erasure but a mechanism of liberation, an opportunity to reconstruct selfhood through confession and care.

Furthermore, the existential function of anonymity also intersects with the psychological dimensions of trauma. Khan and Khan (2021) argue that the protagonist's namelessness reflects the unspeakable nature of her suffering, allowing her to narrate pain without the constraints of social labelling. In this sense, anonymity becomes a therapeutic space, a narrative strategy for healing and survival. Thus, the absence of a name somehow shields her from the reductive gaze of cultural expectations and offers a discursive field where she can confront the contradictions of existence. This also aligns with feminist literary traditions that use anonymity to resist patriarchal authorial subjectivity. Batchelor (2017) notes that women's writing has historically employed anonymity as a form of subversion, preserving the liberating potential of outsider status and challenging dominant models of identity and authorship.

From a philosophical standpoint, the protagonist's refusal of a fixed identity resonates with existentialist notions of ambiguity and freedom. Boredal (2012), interpreting Beauvoir's existential feminism, emphasises the importance of resisting objectification and embracing the fluidity of selfhood. In *The Patience Stone*, the woman's anonymity thus becomes a gesture toward existential freedom - a refusal to be defined by her roles as wife, mother, or victim. Instead, she becomes a speaking subject, capable of naming her own experience and asserting her presence in a world that has rendered her invisible. Therefore, this strategic anonymity functions as both a literary and philosophical device, enabling a radical reimagining of female agency in feminist and existential contexts.

Rahimi's novel unfolds a fragmented, nonlinear fashion that reflects the protagonist's psychological and existential dislocation. Confined to a single room with her comatose husband, the unnamed woman's monologues are not structured by external events but by unpredictable surfacing of memory, trauma, and desire. Her recollections are triggered by silence, bodily sensations, and emotional ruptures rather than chronological cues. This temporal fluidity reflects Beauvoir's (2004) notion of ambiguity, where past, present, and future are not discrete categories but interwoven in the process of becoming. Beauvoir's (1948) words: "But the present is not a potential past; it is the moment of choice and action; we can not [sic] avoid living it through a project" (p. 76) emphasise that time is not a neutral container; it is constituted through action, choice, and engagement.

Moreover, the novel's lack of chronological order emphasises interiority over external plot, reinforcing the existential focus on consciousness and subjective experience. The protagonist's speech flows between memories of childhood, sexual trauma, religious uncertainty, and maternal exhaustion without linear progression. This structure resists the conventions of realist storytelling, which often rely on cause-and-effect logic and narrative closure. Instead, Rahimi's narrative mimics the disjointed rhythm of trauma and introspection. In this regard, Debuire (2023) notes that the novel portrays a fight between reality and imagination, where the protagonist's fragmented mind reflects her inner exile and existential rupture.

This resistance to linearity conforms with feminist critiques of patriarchal storytelling. Feminist theorists such as Luce Irigaray and Helene Cixous have long argued that traditional narrative structures - centred on climax, resolution, and teleological progression - reflect masculine logic and suppress feminine modes of expression. Beauvoir's existential feminism similarly rejects fixed identities and prescriptive narratives. In *The Second Sex*, she insists that women's subjectivity must be understood as fluid, refusing to conform to a redemptive arc or moral resolution; her speech is not a confession seeking absolution but a process of existential articulation.

Additionally, the novel's temporal disruption reflects the philosophical implications of Nietzsche's concept of "the death of God." With the absence of divine authority, the protagonist must construct meaning from her own lived experience. Though the protagonist's memories do not cohere into a singular truth, they nevertheless oscillate between religious morality and ethical revolt. She defies God, compares her husband to God, and declares herself God's messenger. These moments reinforce the collapse of metaphysical consolation and the emergence of speech as a form of value-creation. In this sense, Nietzsche writes, "The sea, our sea, lies open again; perhaps there has never yet been such an open sea" (1974, p. 280), suggesting that in the absence of

divine order, the individual must navigate meaning through existential courage.

Julia Kristeva's assertion - "and yet, from its place of banishment, the abject does not cease challenging its master" (1982, p. 2) - encapsulates the disruptive potential of marginalised voices to destabilise dominant structures from within. In Rahimi's novel, the unnamed woman, who is rendered voiceless by patriarchal and political violence, occupies precisely this abject position. Her speech, directed at a husband in a vegetative state, becomes a radical act of resistance, challenging the symbolic order that has silenced her. This aligns with Nietzsche's concept of the revaluation of values, which calls for the overturning of inherited moral systems and the creation of new values rooted in life. The woman's confessions - her intimate secrets, desires, and traumas - redefine the moral landscape from within her abjection, rather than transgressing cultural taboos. McNeal (2023) notes that Nietzsche's critique of truth and morality offers fertile ground for feminist reinterpretation, enabling figures like Rahimi's protagonist to enact existential transformation; her voice, once banished, becomes a site of a new ethical and ontological order, one that pulverises patriarchal sediment and affirms lived experience as the basis of meaning.

The struggle for voice and recognition has long been a central concern of feminist and existentialist thought. Simone Beauvoir, in *The Ethics of Ambiguity* (2004), emphasises that freedom is not a solitary abstraction but a relational process that requires engagement with others. Similarly, Nietzsche insists that freedom and self-realisation are not passive inheritance, but rather active, creative achievement forged in resistance to conformity and silencing forces. Nietzsche, in *The Gay Science* (1974), declares the death of God, not as a theological rupture but as a philosophical provocation: with the collapse of absolute values, individuals must become the authors of their own meaning. "Must we ourselves not become gods simply to appear worthy of it?" (p. 181) he asks, challenging readers to embrace the task and possibility of self-creation.

Thus, in existentialist feminist thought, speech is not merely a communicative tool; it is an ontological assertion and an ethical act. Beauvoir (1948) argues that human existence is fundamentally ambiguous - i.e., each person is both subject and object, both free and constrained. Ethical action, according to Beauvoir, involves embracing this ambiguity and willing freedom not only for oneself but for others. She writes, "To will oneself free is also to will others free" (Beauvoir, 1948, p. 73), suggesting that speech, particularly when it breaks imposed silence, is a form of ethical engagement. In this respect, the act of speaking becomes a refusal to remain the "Other."

Nietzsche's concept of creative resistance complements Beauvoir's ethics by framing speech as a generative force that arises in opposition to

silencing structures. In *The Gay Science*, Nietzsche declares, “We philosophers and free spirits’ feel, when we hear news that ‘the old god is dead,” as if a new dawn shone on us... the sea, our sea, lies open again; perhaps there has never yet been such an ‘open sea” (1974, p. 280). This metaphor of the open sea captures the ontological rupture that follows the collapse of inherited values, compelling individuals to create meaning through action and expression. Speech, in this sense, becomes a vessel of resistance, an act of self-creation that defies imposed norms and affirms existence.

Atiq Rahimi’s *The Patience Stone* dramatizes this existential tension through the unnamed female protagonist, who begins the novel in silence, tending her comatose husband. Her resolution to speak - to narrate, reflect, and confess - marks a radical shift from object to subject. While the novel itself is sparse in overt philosophical exposition, Khaled Hosseini’s words, in the introduction of Rahimi’s novel, convey the protagonist’s voice as emblematic of Afghan women’s silenced suffering:

the ironclad rule of patriarchal, tribal law has long denied women their right to work, education, adequate healthcare, and personal independence - all of this made infinitely worse by three decades of war, displacement, and anarchy... For far too long, Afghan women have been faceless and voiceless... a savage indictment of war, the brutality of men, and the religious, marital, and cultural norms that continually assault Afghan women, leaving them with no recourse but absorb without a complaint, like a patience stone. (Hosseini, as cited in Rahimi, 2009, pp. ix-x)

Though not Rahimi’s own words, this depiction highlights the ethical weight of the protagonist’s speech; it is not solely cathartic but ontologically challenging.

Some scholars interpret the protagonist’s monologue as a form of ethical resistance. Suryani et. al (2023) analyze how Rahimi’s narrative teaches readers about sexist oppression, women’s solidarity, and the power to resist male cruelty, aligning with Beauvoir’s call for women to engage in endeavours to assert their autonomy and existential agency. In this sense, Nietzsche’s notion of resistance as an incentive for growth is echoed in the protagonist’s transformational power of speech. Other critics have underscored how Rahimi’s narrative “breaks the silence and speaks of the wounding pain of one woman” (Yawari, 2020, p. 435), while simultaneously gesturing toward collective trauma and agency.

Rahimi’s protagonist, silenced by patriarchal structures and war trauma, begins to speak to her unconscious husband, transforming his silence into a space for radical self-expression. Once constrained by fear and cultural norms, her speech becomes a vehicle for existential emancipation. In the

throes of speaking freely, the unnamed woman feels the heavy weight of the unspoken words. Feeling the urge to let words out, the protagonist punches her in the belly twice, “As if to beat out the heavy word that has buried itself in her guts” (Rahimi, 2008, p. 18). Furthermore, she exhibits initial dependence on her comatose husband for financial support, her disappointment in his brothers and mother for abandoning her and her children. Alternatively, she turns to God and implores Him to help her: “Allah, help me!... and weeps” (Rahimi, 2008, p. 20). Her imploration turns into demanding when she says, “Bring him back to life, God!... After all, he fought in your name for so long. For jihad” (Rahimi, 2008, p. 21). Demanding transforms to defying when she says, “Prove that you exist, bring him back to life!” (Rahimi, 2008, p. 21); later on, the protagonist objects to God’s will by saying, “Why doesn’t God send Ezrael, to finish you off once and for all?” (Rahimi, 2008, p. 68). Feeling that she is losing her faith, she declares, “My strength is deserting me, day by day. Just like my faith” (Rahimi, 2008, p. 57). Finally, upon reaching God’s last name, Al-Sabur (the Patient), she strikes a daring simile between her husband and God: “You hear, and do not speak. You see, and cannot be seen! Like God, you are patient, immobile” (Rahimi, 2008, p. 140), comparing herself to God’s messenger: “And I am your messenger! Your prophet! I am your voice! Your gaze! Your hands! I reveal you! *Al-Sabur!*” (Rahimi, 2008, p. 140).

The unnamed woman in Rahimi’s novel embodies the existential struggle for rebellious voice and recognition in a context saturated with patriarchal dominance, religious fatalism, and war trauma. On the one hand, the protagonist’s initial silence is not merely circumstantial; it reflects her initial fluctuation, leading to the throes of articulating what she has always been afraid to utter. On the other hand, her speech to her comatose husband is not only therapeutic and confessional but also represents a radical ethical act in order to reclaim her subjectivity and agency and challenge the structures that have silenced her. Moreover, punching her stomach is emblematic of existential anguish, dramatizing the tension between facticity and transcendence; her body, shaped by cultural and religious constraints, becomes the site of resistance and self-creation. This moment aligns with Nietzsche’s notion of creative resistance, where the collapse of inherited values compels individuals to forge meaning through defiance.

The protagonist’s deteriorating relationship with God further illustrates this existential arc. Her imploration transforms into demand, then defiance, and finally into negation. The regression reflects a Nietzschean rupture, where divine authority is no longer a source of comfort but a target of existential challenge. As her faith erodes, she begins to assert her own interpretive power, culminating in a daring theological inversion: “You hear, and do not speak... Like God, you are patient, immobile” (p. 140). Thus, by

declaring herself to be God's messenger and voice, she reclaims the divine voice for herself, enacting what Beauvoir would call a project of situated freedom; one that embraces ambiguity, responsibility, and ethical transformation.

The protagonist's speech ruptures cultural taboos and confronts abject experiences such as sexual traumas, bodily autonomy, and existential despair. Once cast into abjection, her voice becomes a site of resistance and transformation. Furthermore, the protagonist's speech can be considered both an ethical and ontological act, enacting both Beauvoir's call to embrace ambiguity and Nietzsche's imperative to resist through creation. Her voice - once buried in silence - emerges as a locus of existential emancipation, defying God, patriarchy, and cultural fatalism to assert a new horizon of meaning.

In *The Patience Stone*, the protagonist's body is central to her lived experience, not simply as an object of male possession, but as a repository of memory and trauma. Throughout the novel, the unnamed woman recalls how her body has been disciplined by patriarchal violence. After being engaged - and even married - in her groom's absence for three years, the protagonist reflects on their first meeting by: "You sat down next to me. As if we already knew each other... as if you were seeing me after just a brief absence or I were tawdry reward for your triumph!" (Rahimi, 2008, p. 61). Moreover, she recalls their first sexual encounter not as an act of intimacy, but one marked by fear and ignorance; she confesses that she was unprepared for what would happen to her body and that no one had explained anything to her. This testimony underscores how her body is not her own, but something appropriated by patriarchal structures and male desire. Such a portrayal is reminiscent of Beauvoir's assertion in *The Second Sex* that women's position, in relation to men, has been relegated to the position of "the Other" (Beauvoir, 1949, p. 77) - a designation that resonates with the substantial objectification of women in Afghan society. Thus, the protagonist's body is reduced to a productive and sexual tool within a system that denies her subjectivity.

At the same time, the unnamed woman's body becomes a repository of painful memories. Throughout the narrative, she recalls childbirth not as a moment of creation, but as an act of suffering - associating her scars, exhaustion, and silence with the long history of bodily domination she has endured. This makes clear how her body becomes a vessel of her lived experiences and not simply a physical entity, aligning with Beauvoir's (1949) existentialist ontology that the body is not merely a biological destiny but a situation, a mode of existing in the world. In this respect, the protagonist, by recounting her memories, inscribes meaning onto her flesh, transforming it into a living testament to her oppression.

Yet, with the progression of the narrative, the protagonist's body becomes a site of reclamation. The more she speaks with her comatose

husband, who becomes her patience stone, the more she transforms silence into articulation, echoing Friedrich Nietzsche's (1997) notion of creative resistance, which contends that he who has a why to live can bear almost any how. By speaking her bodily truth - pain, desires, and frustration - she produces a new "why" that is not formulated by patriarchal norms but forged through her own existential confrontation with various painful moments of her life. Critics such as Shukla (2025) have noted that in Rahimi's novel, the female body becomes a battlefield where survival and agency are negotiated, reflecting the feminist existentialist notion that transcendence is possible even within conditions of extreme immanence.

In the latter half of the novel, the protagonist mobilises her body as a survival tool, particularly during the harrowing moment when two militia men storm her house. Asked how she manages alone, she replies shamelessly, "I sell my body, as you sell your blood" (Rahimi, 2008, p. 85), knowing that telling the truth would likely lead to rape or death. The provocative comparison of her feigned occupation and the militia men's violence reframes her response not as confession but as existential self-definition. According to Debuire (2023), the protagonist "feels powerful because she is able to push the man away with just words... feeling that she is able to fight against the oppressors in her own way" (p. 19). Her statement disrupts the silence imposed by patriarchal norms and reframes her body as a site of agency rather than shame. From a feminist existentialist perspective, this utterance signals her refusal to be passively defined by societal expectations, confirming Beauvoir's (2004) claim that a woman is not born, but becomes a woman. Thus, her decision to commodify her body cannot be construed as surrender, but rather as an existential, strategic, and survival-driven manoeuvre to reclaim control in a world that has stripped her of autonomy. She boldly confides to her unconscious husband that for men like those who have entered her house, to "rape a whore is not an achievement... Men like him are afraid of whores" (Rahimi, 2008, p. 87). She elaborates by asserting that when men engage in sexual transactions with a prostitute, they do not dominate her body since, as the encounter is framed as an exchange, sex for money. She adds that it is the prostitute who holds the dominant position in this affair.

The protagonist's existential agency deepens further when she begins to receive visits from a shy young man, a war victim who is seeking comfort and intimacy. By making him believe that she is a prostitute, she creates a relational space that transcends conventional morality standards and gender roles. Their encounters are not portrayed as romantic or transactional, but rather moments of mutual vulnerability and recognition. During one of their secret meetings, the young man stammers, "I ... want t-t-to ... s-s-speak ... t-t-to you" (Rahimi, 2008, p. 123), and confides to her his deepest secrets. Being an orphan, he has been kidnapped, forced to carry a Kalashnikov, tortured, and

raped; his kidnapper “keeps that poor little boy for his own pleasure!” (p. 124). Thus, in this context, the protagonist exceeds being a passive listener to embody what Beauvoir (2004) terms as the ethics of ambiguity, in which freedom is realised not in isolation but through recognition of the Other. At this point, the young man somehow becomes the Other, who presumably feels ashamed of divulging to her his most intimate secrets; as a result, he spits in her face and quickly leaves the house. Moreover, by allowing the young man to articulate his traumatic experience, she affirms her subjectivity and transforms their clandestine relationship into a space of shared humanity. In existentialist terms, her decision to create the illusion of being a prostitute is less an act of deception than an assertion of creative freedom, echoing Nietzsche’s (1974) call for individuals to resist oppressive structures through imaginative revaluation of values.

This relational dynamic can also be read as a critique of patriarchal violence in Afghan society towards both sexes. The boy’s abduction and exploitation evoke the practice of “bacha bazi” (sexual enslavement of boys), a form of violence that strips children of their subjectivity and silences them (HRW, 2013). By giving voice to his suffering, the protagonist also disrupts the cycle of silence and opens a space of intersubjective recognition. Thus, both characters, in their shared vulnerability, embody Beauvoir’s conviction that freedom must be lived with and through others despite the risks and ambiguities that such encounters entail.

Interestingly, the protagonist’s relationship with the young stammering boy sharply contrasts with her experience with the unknown man who impregnates her, fathering her two daughters. On the one hand, her affair with the young man is a stratagem of survival, marked by mutual vulnerability and recognition. By this, Rahimi dramatizes an existentialist ethic of speech, where articulation of suffering becomes an act of rebellion and solidarity. On the other hand, the protagonist’s recollection of the unknown man who impregnates her is marked by radical asymmetry, silence, and erasure. As she recalls bitterly, “The man wasn’t allowed to talk to me or touch me... Both of us were very anxious, terrified” (Rahimi, 2008, p. 138), and on top of that, she is forced to sleep with her husband after this humiliating act. In this relationship, her body is reduced to its reproductive function, serving the patriarchal demand for offspring. Unlike her dialogues with the young man, which foster intersubjectivity, the affair with the unknown man is deprived of choice, voice, and recognition.

Therefore, the contrast between the protagonist’s two relationship stages two opposing possibilities of relationality under conditions of war and patriarchy. The anonymous sexual encounter somehow symbolises the oppressive structures Nietzsche critiques when he insists that individuals must resist forces that silence and diminish them. It embodies an existential denial,

where the protagonist is treated as an object of male desire. On the other hand, her relationship with the stammering young man becomes an experiment of creative resistance, where she transforms a socially forbidden connection into a space of solidarity, self-expression, and ambiguous freedom. Obviously, Rahimi's narrative foregrounds speech as an act of rebellion in a world that thrives on silencing women. Thus, while one relationship embodies silence and subjugation, the other embodies dialogue and existential agency, underscoring a feminist existentialist insight that freedom is not merely individual but relational, negotiated in and through the Other.

The Patience Stone is constructed with a stark, minimalist structure that strips away narrative excess to foreground a single confined setting: a war-torn room, a comatose husband, and the voice of a woman who finally dares to speak. This spatial and narrative minimalism creates the perfect philosophical arena in which silence and voice, death and desire, converge. The husband's silence becomes both stimulating and liberating for the wife, a void that allows her voice to emerge. As Debuire (2023) observes, the novel's "inner exile" structure allows the protagonist to navigate between reality and imagination, turning the absence of dialogue into a space for radical introspection and existential confrontation. Somehow, this structural austerity does more than creating an atmosphere; it becomes a philosophical space, where the stillness of her husband embodies death-in-life, an absence that paradoxically enables the woman's voice to surface; she confesses, "I've been talking to you, getting angry with you, insulting you, telling you everything that I've kept hidden in my heart, and you not being able to reply, or do anything at all ... all of this has been soothing and comforting to me" (Rahimi, 2008, p. 74). The sparse setting thus highlights both the cathartic effect and the challenging aspect of the act of speech itself, making her voice resonate against the silence that has long defined her existence.

The woman's confessional monologues unfold a world void of divine intervention or metaphysical consolation. Her many prayers to God are met with silence, and her appeals grow increasingly defiant, reflecting Nietzsche's pronouncement of the "death of God," which signals the collapse of transcendent authority and the imperative to create meaning through human experience. In *The Gay Science* (1974), Nietzsche writes, "God is dead. God remains dead. And we have killed him... Must we ourselves not become gods simply to appear worthy of it" (p. 181). The protagonist's rejection of divine responsiveness mirrors an existential rupture, forcing her to confront the void and assert her own interpretive power, particularly when she deduces that her husband is God: "Look at you; you are God. You exist, and do not move" (Rahimi, 2008, p. 140). To her, both exist within her minimalist milieu, but are of no use despite her endless implorations for both to aid her.

On the other hand, Beauvoir's *Ethics of Ambiguity* (2004) insists that ethical action must arise from the concrete situation of the subject, not from abstract moral codes. Beauvoir, by claiming that one cannot truly will oneself free without simultaneously willing freedom for others, underscores the relational dimension of existential ethics. In this sense, the protagonist's monologue is not only a personal catharsis; it is an ethical revolt against the structures that have silenced her, framing her speech as a feminist pedagogy of resistance. Her voice, emerging from silence, becomes a philosophical act of self-definition and ethical engagement.

This minimalist frame also dramatizes the tension between death and desire. On one side lies her husband's body, which is described in minute detail. On the other hand merges the woman's suppressed sensuality and longing for recognition, both becoming evident in her confessions: "And that is why you're still alive. Yes, you are alive for my sake, for the sake of my secrets" (Rahimi, 2008, p. 74). This juxtaposition of a dying, mute body with a speaking, desiring subject emphasises how life asserts itself precisely in the proximity of death. As Nietzsche (1974) suggests, the awareness of mortality intensifies the need to create meaning, and this meaning, in Rahimi's narrative, is created through the woman's audacious speech. Furthermore, the absence of divine consolation reinforces this convergence. The protagonist's lamentations, the husband's muteness, and the war's indifference further consolidate this convergence. In such a space, the protagonist's speech becomes not only an act of survival but an act of value-creation in the Nietzschean sense. Clearly, the woman generates meaning through her lived experience without any metaphysical or personal support. In this sense, Beauvoir (1947) argues that freedom must be enacted within constraint; here, the minimalist setting of the novel represents the constraint against which the protagonist articulates her agency.

Thus, *The Patience Stone* demonstrates how form itself becomes a feminist existential philosophy. The minimalist structure does not simply reflect the woman's world; it creates the condition for existential exploration. Moreover, silence is never just silence but the basis from which voice erupts. Similarly, death is never simply an absence but the shadow that whets desire. Therefore, in compressing the narrative to its most elemental form, Rahimi allows opposites to converge, turning the novel into a meditation on freedom, morality, and the fragile possibility of meaning. In a way, the convergence of silence and voice, death and desire, unfolds in a space stripped of metaphysical comfort, where the protagonist seeks to create meaning through speech, memory, and revolt, making her monologues both as an embodiment of Nietzsche's post-theistic imperative and Beauvoir's feminist ethics as well as a site of philosophical and political resistance.

Reading *The Patience Stone* from a feminist existentialist perspective reveals how the novel is not a diary of despair but a manifesto of emergence. The protagonist's voice, though forged in constraint and solitude, becomes a site of resistance, agency, and transformation. Her narrative is a drama of becoming, where existential freedom is not inherited but spoken into being. Though the premise may suggest a confessional structure, the narrative resists this reduction. The woman's speech is not a mere unburdening of intimate secrets; rather, it is a process of self-construction. Her voice, previously silenced by patriarchal norms and wartime trauma, emerges not to seek absolution but to assert existence, signalling a shift from relational confession to self-reflexive transformation. This dual address marks the beginning of her existential becoming.

The titular "patience stone," drawn from Persian folklore, becomes a potent metaphor for the husband's inert body - a receptacle for centuries of suppressed female pain. Rahimi, in his novel, introduces the mythical stone by describing it as "a magical stone... that one confides in, that absorbs all the words, all the secrets until one day it explodes" (Rahimi, 2008, p. 3). The patience stone is a mythical black stone believed to possess magical properties. It serves as a silent confessor to which individuals pour out their secrets, sorrows, and suffering, and the stone absorbs all their pain. According to the legend, when the stone can no longer bear the weight of these confessions, it explodes. In the novel, the patience stone thus functions as a metaphor for emotional containment and catharsis; a sacred object that listens without judgement and eventually liberates the speaker through rupture.

In *The Patience Stone* (2008), Rahimi reimagines this folkloric symbol in a realist and feminist existentialist context. Initially, the woman herself functions as her husband's patience stone - absorbing his violence, silence, and neglect. However, over the course of the narrative, she reverses that metaphorical role and renders her husband's inert body to her patience stone. She confides to her "sang-e saboor" all her painful memories and traumatic experiences. The more she confides in her patience stone, the more concerned she becomes that it might explode under the weight of her revelations. This reversal is not merely symbolic; it marks a radical shift in agency. She has turned from being the vessel of endurance to the speaker of truth, from passive receptacle to active subject. In this sense, the novel dramatizes a feminist existentialist reconfiguration of power; thus, it can be noticed how the woman not only exists in relation to her husband's silence, but he exists as the silent witness to her becoming.

Moreover, Rahimi's narrative structure echoes existentialist traditions, particularly those of Camus, Sartre, and Beauvoir, where freedom is forged in adversity. Accordingly, the protagonist's existential freedom is carved from the constraints of war, gender, and silence. Her words - "You know, the kind

of fear that doesn't separate you from your desire, but instead arouses you, gives you wings, even though it may burn" (Rahimi, 2008, p. 34) - mark a rupture, a philosophical awakening that transcends religious, societal, and marital subjugation. The confined setting intensifies this drama of becoming, much like in Beckett's *Not I* or Sartre's *No Exit*, where space and silence amplify existential tension. Furthermore, Rahimi's choice to write in French, rather than Dari, further underscores the transgressive nature of the narrative, allowing her to bypass cultural censorship and portray a woman who defies the archetypes of saintliness and submission.

Conclusions

The Patience Stone dramatises a feminist existential revolt through its protagonist's radical monologue, challenging patriarchal silencing and inherited moral norms. By engaging Beauvoir's ethics of ambiguity and Nietzsche's revaluation of values, the novel constructs a philosophical space where voice becomes a mode of resistance and self-authorship. The unnamed woman's transformation affirms that existential agency can emerge even within oppressive contexts, and that silence - when broken - can generate new modes of becoming. The message behind this article can be summarised by: Rahimi's narrative is not only literary but philosophical, staging a defiant reimagining of value, vulnerability, and voice through a distinctly feminist existential lens.

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References:

1. Batchelor, J. (2017). Anon, Pseud and 'By a Lady': The Spectre of Anonymity in Women's Literary History. In *Women's Writing, 1660–1830* (pp. 115–132). Springer. https://doi.org/10.1057/978-1-137-54382-0_6
2. Beckett, S. (1972). *Not I*. In *Collected Shorter Plays* (pp. 216–222). Grove Press.
3. Boredal, P. (2012). *Existentialist Feminism: Simone de Beauvoir*. Academia.edu. https://www.academia.edu/24617419/Existentialist_Feminism_Simone_de_Beauvoir
4. de Beauvoir, S. (2004). *The ethics of ambiguity* (B. Frechtman, Trans.). Citadel Press. (Original work published 1948)

5. Debuire, M. (2023). Representation of inner exile in *The Patience Stone*: Exposing the inner self and fight between reality and imagination. *Journal of English Studies in Arabia Felix*, 2(1), 10–22. <https://doi.org/10.56540/jesaf.v2i1.35>
6. Human Rights Watch (HRW). (2013). *They have to give us work: Bacha bazi in Afghanistan*. HRW.
7. Khan, S. A., & Khan, M. U. (2021). Narrating the indescribable: Psycho-traumatic persona of "the woman" in Rahimi's *The Patience Stone*. *Liberal Arts and Social Sciences International Journal (LASSIJ)*, 5(1), 401–412. <https://doi.org/10.47264/idea.lassij/5.1.26>
8. Kristeva, J. (1982). *Powers of horror: An essay on abjection* (L. S. Roudiez, Trans.). Columbia University Press. (Original work published 1980)
9. Nietzsche, F. (1974). *The gay science* (W. Kaufmann, Trans.). Vintage Books. (Original work published 1882), p. 181
10. Rahimi, A. (2008). *The patience stone* (P. McLean, Trans.). Other Press. (Original work published 2008 as *Syngué sabour* by P.O.L. éditeur)
11. Sartre, J.-P. (1975). *No Exit* (S. Gilbert, Trans.). In *No Exit and Three Other Plays* (pp. 1–47). A.A. Knopf. (Original work published 1944)
12. Shukla, A. (2025). Survival, subjugation, and agency: The body as a battlefield in *The Patience Stone*. *International Journal of Multidisciplinary Research and Review Studies*
13. Suryani, S., Kurnia, F. D., & Retnaningdyah, P. (2023). Gender pedagogy: A feminist approach to teaching sexist, women solidarity, and power in *The Patience Stone*. *International Journal of Recent Educational Research*, 4(6), 710–731. <https://doi.org/10.46245/ijorer.v4i6.416>
14. Yawari, A. W. (2020). The woman in the novel *The Patience Stone* (*Syngue Saboor*). *International Journal of Scientific and Research Publications*, 10(2), 435–440. <http://dx.doi.org/10.29322/IJSRP.10.02.2020.p9860>

The Role of Family and Culture on Young Women's Perceptions of Motherhood: A Comparative Study of Sri Lankan and Indian Female College Students

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Abstract

Fertility rates in South Asia have declined significantly over the past four decades, with Sri Lanka and India leading this demographic transition. Addressing this problem, the study focuses on two key objectives: first, to explore cultural differences in the socialization process in Sri Lanka and India, particularly concerning the reinforcement of motherhood; and second, to examine culture-specific parenting practices that shape young women's decision-making about marriage and motherhood. To achieve this, the research investigates how the socialization process of young, unmarried female undergraduates in these two countries influences their perceptions of motherhood and the declining fertility rate in contemporary times. Using a mixed-method and pseudo-longitudinal design, data were collected from over 500 students at the University of Colombo in Sri Lanka and the VET Institute of Arts and Science in Tamil Nadu, India, covering diverse academic disciplines, years of study, and socio-economic backgrounds. The findings indicate that while traditional ideals of motherhood remain deeply rooted, young women are renegotiating these roles through education, career

aspirations, and exposure to global norms, though in varying ways across the two contexts. Indian students display greater confidence in balancing motherhood and career, while Sri Lankan students confront stronger patriarchal pressures and weaker institutional support. These results highlight the complex interplay of culture, family, and modern aspirations, contributing to the understanding of ongoing demographic shifts in Sri Lanka and India and offering policy-relevant insights into gender, education, and reproductive decision-making.

Keywords: Perceptions of motherhood, declining fertility, familial and cultural upbringing, socialization process

Introduction

Motherhood, historically idealized in South Asian societies, remains a critical marker of womanhood, familial duty, and cultural identity. However, in the context of rising female literacy, urbanization, and shifting economic landscapes, young women are increasingly questioning the inevitability and primacy of motherhood in their life trajectories. Accordingly, the main objective of this research was to examine how the processes of socialization, along with familial and cultural upbringing, influence the decision-making of young unmarried girls in Sri Lanka and India with regard to marriage and motherhood. Two sub-objectives further guided the research;

- I. To explore cultural differences in the socialization process in Sri Lanka and India, particularly concerning the reinforcement of motherhood.
- II. To examine culture-specific parenting practices that shape young girls' decision-making about marriage and motherhood in Sri Lanka and India.

In Sri Lanka and India, fertility rates have declined significantly over the past four decades. The World Bank (2022) reports that India's total fertility rate (TFR) has dropped from 4.5 in 1980 to 2.0 in 2020, and Sri Lanka's from 3.4 to 2.2 within the same timeframe. These figures suggest a broader socio-cultural shift in reproductive behavior, particularly among educated young women.

This study investigates how young female undergraduates in both countries perceive motherhood and how their perceptions intersect with broader themes such as their process of socialization and familial and cultural upbringing. The comparative approach enables the identification of country-specific nuances as well as regional trends that reflect broader transformations in South Asian gender roles and fertility behavior.

Literature Review

The social construction of motherhood has been a central theme in feminist and sociological literature. Scholars such as Adrienne Rich (1976) distinguish between the “institution of motherhood” and the “experience of mothering,” emphasizing how societal expectations shape the identity and role of mothers. In the South Asian contexts, motherhood is closely tied to religious duty, cultural continuity, and familial reputation (Dube, 2001). Patriarchal structures often reinforce the notion that a woman achieves full societal validation only through childbirth, particularly of male offspring (Kandiyoti, 1988).

Contemporary demographic studies highlight a marked decline in fertility rates in both India and Sri Lanka, driven by factors such as increased female education, urbanization, delayed marriage, and greater access to contraceptives (Bongaarts, 2017). Jayaraman, Mishra, and Arnold (2009) note that female literacy significantly correlates with reduced fertility, as educated women tend to marry later and are more likely to participate in the workforce. Moreover, they develop stronger autonomy in reproductive decisions.

Studies focused on South Asian youth (UNFPA, 2023) show a divergence in how traditional gender roles are internalized. Female students exposed to diverse educational environments are more likely to challenge conventional expectations and envision alternative life paths. Within Indian higher education, students in urban areas increasingly embrace egalitarian gender norms (Jeffery & Jeffery, 2006). In Sri Lanka, however, while educational attainment is high, cultural values surrounding motherhood remain relatively conservative, particularly in rural areas (Herath, 2015).

Sri Lankan-specific scholarship offers a nuanced understanding of how Buddhism, nationalism, and postcolonial identity shape gender expectations. Scholars such as Ranjini Obeyesekere (1990) and Kumari Jayawardena (1986) have examined the dual burden of cultural reverence and social control imposed on women through the idealization of motherhood. Jayawardena, in particular, identifies how nationalist discourse in Sri Lanka often co-opts women’s reproductive roles to serve the interests of the state, linking fertility and moral citizenship.

More recent studies in Sri Lanka have also explored how maternal identities intersect with class and ethnicity. De Alwis (2002) critiques the way Sinhala-Buddhist nationalism frames motherhood as a patriotic duty, marginalizing Tamil and Muslim women’s reproductive narratives. Meanwhile, work by Perera (2018) illustrates that urban Sri Lankan women are increasingly negotiating hybrid identities, balancing familial expectations with globalized feminist ideals.

Research by Dasgupta and Sharma (2019) suggests that the perception of motherhood is gradually shifting from a life-defining obligation to a

personal choice influenced by socio-economic aspirations. This aligns with global feminist discourses that advocate for reproductive autonomy and a decentering of motherhood from female identity (Ginsburg & Rapp, 1995). However, South Asian societies often exhibit a disjuncture between modern legal frameworks promoting gender equality and deep-seated cultural ideologies that valorize fertility.

The role of academic discipline as another form of socialization is another underexplored yet crucial variable. Students in social sciences tend to engage more critically with gender norms than those in technical or professional courses like STEM (Kabeer, 2005). Peer influence, access to gender-sensitive curricula, and participation in university forums and activism further reinforce this divergence. Literature also underscores the importance of family background and economic stability in shaping reproductive choices, with wealthier families affording their daughters greater freedom in delaying or even forgoing motherhood (Desai & Andrist, 2010).

This body of literature provides a strong foundation for the present research, which seeks to bridge demographic trends with lived experiences and sociocultural ideologies among young women in Sri Lanka and India. It contributes to the expanding field of youth reproductive studies by offering a comparative, empirical exploration grounded in both statistical evidence and cultural interpretation.

Methodology

Organized as a multi-sited research, this study was conducted in arts, science, and management faculties in the University of Colombo in Sri Lanka and social science, computer science, and business administration faculties in the VET Institute of Arts and Sciences (Co-education) in Tamil Nadu, India.

This study has adopted a mixed-method approach backed by a pseudo-longitudinal design. Pseudo longitudinal design had to be used due to the time constraint the research team had to face. The exact way of doing a longitudinal study involves comparing a same group after a given period of time. But in this research, taking the time constraint into the consideration, the first year and final year female students from different student intakes were taken into the sample.

Following the random sampling method female students were selected from both first and final years in both countries. Quantitative data were collected through structured questionnaires administered via Google Forms and same Google form was distributed among the respondents in both countries. In total, 300 students were surveyed in Sri Lanka and 248 in India. The survey included questions on the importance of motherhood, ideal age for childbirth, family and societal pressures, socialization process, reasons for

delaying motherhood, career priorities, and the influence of educational environments. SPSS was employed for statistical analysis of survey responses. Qualitative data were obtained through in-depth interviews with 20 students (12 from Sri Lanka and eight from India) and four focus group discussions consisting eight students for each (two in each country). All the in-depth interviews and focus group discussions were transcribed, coded and recurrent themes were then identified. Accordingly, Thematic analysis was used to interpret qualitative data.

The ethical clearance for the research was obtained through a committee established by the Centre for Multidisciplinary Research and Innovation in Social Policy (CEMRI) at the University of Colombo, Sri Lanka.

Results and Discussion

This comparative study investigated how young women in Sri Lanka and India navigate the complex interplay between familial and cultural upbringing and their evolving perceptions of motherhood in contexts of declining fertility. The findings show that while traditional cultural and religious frameworks continue to exert a strong influence, higher education, intergenerational negotiation, and career aspirations are reshaping reproductive attitudes in both societies. Importantly, these influences do not operate in isolation but intersect in ways that reveal both continuities and shifts in gender norms, reflecting the layered nature of social change in South Asia.

Cultural and Religious Influence on Motherhood Perceptions

Cultural and religious norms remain foundational in shaping motherhood ideals, embedding expectations within women's identities from early life. Across the sample, **75.3%** of Indian and **66%** of Sri Lankan respondents indicated that these factors influenced their perceptions of motherhood. In Sri Lanka, this was especially pronounced among students in Buddhist Studies and Sociology, where motherhood was framed as a moral and religious obligation tied to community respectability and even national identity (De Alwis, 2002; Jayawardena, 1986). As one participant explained, *"According to our religion, a woman has to become a mother. Otherwise, they will be excluded from society"* (In-depth interview data, 2025 – Sri Lanka).

In Tamil Nadu, Hindu traditions similarly frame motherhood as sacred, yet the narratives among urban and upper-middle-class students showed greater room for individual choice. This difference aligns with **modernization theory** (Inglehart & Baker, 2000), which predicts that education, urbanization, and exposure to global discourses reduce the normative rigidity of traditional gender roles. At the same time, **intersectionality** (Crenshaw, 1989) is crucial for understanding these differences: religious influence is not uniform for all but shaped by the intersection of caste, class, geography, and education.

These findings also resonate with the **Demographic Transition Model** (Bongaarts, 2017), which explains that fertility decline is accompanied by shifts in value systems. However, the persistence of cultural and religious ideals suggests that even in lower-fertility contexts, the symbolic value of motherhood remains deeply entrenched.

Education as an Influential Socialization Process

Higher education emerged as a critical site where perceptions of motherhood are either reinforced or challenged. In both contexts, university life not only delayed the timing of motherhood for many participants but also provided an arena for reinterpreting its meaning. The findings reflect **social constructionist perspectives** (Gergen, 1985), which conceptualize motherhood as an identity negotiated within institutional and cultural contexts, rather than an inevitable biological outcome.

Students pursuing advanced degrees frequently cited the difficulty of combining academic and maternal responsibilities. A Sri Lankan interviewee noted, *“If someone goes to MSc level and has a baby, it is very difficult to manage both”* (In-depth interview data, 2025 – Sri Lanka).

For Arts and Social Sciences students in Sri Lanka, courses on gender, sociology, and critical cultural studies acted as catalysts for critical reflection. *“Sociology includes everything like religion, culture, gender. It has helped me understand issues related to motherhood more deeply”* (In-depth interview data, 2025 – Sri Lanka).

Similarly, humanities students in India were more likely to question the centrality of motherhood, whereas students in business, science, and technology integrated it into longer-term life planning, often after establishing financial stability.

This disciplinary variation reflects **Bourdieu’s habitus** (Bourdieu, 1984), whereby pre-existing dispositions shaped by family and culture interact with academic experiences to produce distinct orientations toward motherhood. Importantly, some participants emphasized that their views remained more strongly influenced by familial and cultural values than by educational content:

“Neither our disciplines nor our disciplinary specializations have discouraged us from becoming mothers” (FGD data, 2025 – Sri Lanka).

This highlights the limits of educational influence in contexts where familial and cultural norms are deeply internalized.

Familial Expectations and Intergenerational Dialogues

The family remains a central agent in shaping reproductive intentions, though the nature of this influence is highly variable. In India, **44.8%** of respondents reported experiencing direct family pressure to have children,

compared to **33.3%** in Sri Lanka. This reflects broader patterns of family involvement in marriage and reproduction in South Asia (Uberoi, 2006).

In some households, especially in urban areas, intergenerational relationships have become sites of negotiation, with parents, particularly mothers, supporting delayed motherhood to prioritize education and career. One Sri Lankan participant recounted,

“My mother was forced into an early marriage, but she tells me to finish my studies first” (In-depth interview data, 2025 – Sri Lanka).

These narratives align with transformative learning theory (Mezirow, 1991), which emphasizes how personal and intergenerational reflection can prompt individuals to reassess inherited norms.

However, in more conservative families, young women continue to navigate the **patriarchal bargain** (Kandiyoti, 1988), accepting traditional reproductive timelines in exchange for other forms of security and support. The **life course perspective** (Elder, 1994) is useful here, as it accounts for how familial influence shifts over time in response to both structural changes and individual life transitions.

Career Aspirations, Cultural Expectations, and Motherhood Decisions

Career ambitions play a decisive role in the timing and desirability of motherhood, often acting as a counterweight to traditional expectations. Consistent with **Rational Choice Theory** (Becker, 1981), many participants assessed motherhood in terms of opportunity costs, particularly in relation to professional advancement. In Sri Lanka, **53.2%** of respondents cited career as a primary reason for delaying motherhood, compared to **68.8%** in India.

Workplace norms and gender discrimination amplified this trade-off in Sri Lanka, where participants frequently described structural incompatibility between career progression and motherhood:

“For me, career and financial independence take precedence over embracing motherhood” (In-depth interview data, 2025 – Sri Lanka).

Indian respondents, bolstered by more flexible family arrangements and growing urban employment opportunities, expressed greater confidence in balancing the two roles - **74.4%** believed they could do so successfully. However, even here, a majority (**62%**) preferred to establish careers before starting families.

These patterns reflect McDonald’s Gender Equity Theory (2000), which posits that fertility declines when women enjoy greater educational and occupational opportunities but face limited institutional support for balancing work and family life. The absence of comprehensive childcare systems and flexible work policies in both countries reinforces delayed motherhood as a rational adaptation to existing structural constraints.

Emerging Narratives: Beyond Biological Motherhood and Redefining Care

A smaller but notable group of participants articulated alternative visions of care that moved beyond the expectation of biological motherhood. Some expressed a preference for caregiving in non-traditional forms, such as adoption.

These perspectives resonate with postmodern family theory (Stacey, 1996) and the ethics of care framework (Tronto, 1993), both of which acknowledge diverse forms of caregiving and challenge the tendency to conflate motherhood solely with biological reproduction. They also align with the **Second Demographic Transition** (Lesthaeghe, 2010), which associates delayed or foregone childbearing with post-materialist values emphasizing autonomy and self-fulfillment. The emergence of such narratives in both Sri Lanka and India indicates that the redefinition of care and kinship is no longer confined to Western contexts but is becoming a part of South Asia's evolving demographic landscape.

Conclusions

This study demonstrates that socialization processes, familial guidance, and cultural upbringing strongly shape young women's perceptions of motherhood and decisions regarding marriage and childbearing in Sri Lanka and India. Cultural and religious norms continue to position motherhood as a central marker of womanhood; however, higher education, career aspirations, and exposure to globalized ideals are enabling young women to reinterpret these expectations and exercise greater autonomy in their reproductive choices.

The research highlights cultural variations in socialization: Indian students, particularly in urban and educated contexts, show greater flexibility in balancing motherhood with personal and professional goals, whereas Sri Lankan students encounter stronger patriarchal norms and more limited institutional support, reinforcing traditional timelines. Further, culture-specific parenting practices, ranging from intergenerational guidance to direct familial pressure, significantly influence young women's reproductive decisions. Supportive parental attitudes, especially of mothers who experienced early marriage, encourage delayed motherhood, while conservative households maintain expectations for earlier childbearing.

Overall, the findings reveal a dynamic negotiation between inherited cultural ideals and individual aspirations. Career priorities, educational experiences, and peer influences intersect with familial and cultural expectations, resulting in diverse reproductive intentions, including delayed, reduced, or non-biological forms of caregiving. This study contributes to understanding fertility decline in Sri Lanka and India by illustrating how

socialization and cultural upbringing continue to shape, yet are increasingly mediated by, young women's agency.

Building on these insights, several recommendations can be made. First, policies should strengthen institutional support for women in higher education and professional settings by expanding childcare services, maternity leave benefits, and flexible career pathways that reduce the conflict between work and family life. Second, gender equality initiatives must include educational reforms and awareness campaigns that challenge rigid patriarchal norms while promoting shared caregiving responsibilities between men and women. Third, community and family-level interventions - such as programs encouraging open dialogue between generations - can help reduce intergenerational pressures for early marriage and childbearing. Finally, cross-border policy learning between Sri Lanka and India could foster regionally relevant frameworks for supporting reproductive autonomy, ensuring that young women's choices are respected and enabled across different cultural contexts.

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Data Availability: All data are included in the content of the paper.

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References:

1. Becker, G. S. (1981). *A treatise on the family*. Harvard University Press.
2. Bongaarts, J. (2017). Africa's unique fertility transition. *Population and Development Review*, 43(S1), 39–58. Retrieved August 15, 2025, from <https://doi.org/10.1111/padr.12058>
3. Bourdieu, P. (1984). *Distinction: A social critique of the judgement of taste*. Harvard University Press.
4. Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: A Black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics. *University of Chicago Legal Forum*, 1989(1), 139–167.
5. Dasgupta, S., & Sharma, S. (2019). Changing perceptions of motherhood among urban Indian women. *Journal of Family Issues*, 40(15), 2203–2225. Retrieved August 14, 2025, from <https://doi.org/10.1177/0192513X19856789>
6. De Alwis, M. (2002). Nationalism, gender, and motherhood in Sri Lanka. *Asian Journal of Social Science*, 30(2), 233–257. Retrieved August 13, 2025, from <https://doi.org/10.1163/156853102320159450>
7. Desai, S., & Andrist, L. (2010). Gender scripts and age at marriage in India. *Demography*, 47(3), 667–687. Retrieved August 15, 2025, from <https://doi.org/10.1353/dem.0.0118>
8. Dube, L. (2001). *Women and kinship: Comparative perspectives on gender in South and South-East Asia*. Sage Publications.
9. Elder, G. H., Jr. (1994). Time, human agency, and social change: Perspectives on the life course. *Social Psychology Quarterly*, 57(1), 4–15. Retrieved August 15, 2025, from <https://doi.org/10.2307/2786971>
10. Gergen, K. J. (1985). The social constructionist movement in modern psychology. *American Psychologist*, 40(3), 266–275. Retrieved August 14, 2025, from <https://doi.org/10.1037/0003-066X.40.3.266>
11. Ginsburg, F. D., & Rapp, R. (1995). *Conceiving the new world order: The global politics of reproduction*. University of California Press.
12. Herath, H. M. P. (2015). Gender roles and fertility in contemporary Sri Lanka: A socio-cultural perspective. *South Asian Journal of Social Studies*, 12(1), 45–63.
13. Inglehart, R., & Baker, W. E. (2000). Modernization, cultural change, and the persistence of traditional values. *American Sociological Review*, 65(1), 19–51. <https://doi.org/10.2307/2657288>
14. Jayaraman, R., Mishra, V., & Arnold, F. (2009). Education and fertility decline in India. *Population Research and Policy Review*, 28(3), 259–285. Retrieved August 15, 2025, from <https://doi.org/10.1007/s11113-008-9105-3>

15. Jeffery, R., & Jeffery, P. (2006). *Gender, caste, and religious identity: Continuities and changes in India*. Routledge.
16. Kabeer, N. (2005). Gender equality and women's empowerment: A critical analysis of the third millennium development goal 1. *Gender & Development*, 13(1), 13–24. Retrieved August 14, 2025, from <https://doi.org/10.1080/13552070512331332273>
17. Kandiyoti, D. (1988). Bargaining with patriarchy. *Gender & Society*, 2(3), 274–290. Retrieved August 13, 2025, from <https://doi.org/10.1177/089124388002003004>
18. Lesthaeghe, R. (2010). The unfolding story of the second demographic transition. *Population and Development Review*, 36(2), 211–251. Retrieved August 15, 2025, from <https://doi.org/10.1111/j.1728-4457.2010.00328.x>
19. McDonald, P. (2000). Gender equity in theories of fertility transition. *Population and Development Review*, 26(3), 427–439. Retrieved August 14, 2025, from <https://doi.org/10.1111/j.1728-4457.2000.00427.x>
20. Mezirow, J. (1991). *Transformative dimensions of adult learning*. Jossey-Bass.
21. Obeyesekere, R. (1990). *The work of culture: Symbolic transformation in psychoanalysis and anthropology*. University of Chicago Press.
22. Perera, R. (2018). Negotiating motherhood in urban Sri Lanka: Between tradition and modernity. *Asian Journal of Women's Studies*, 24(4), 456–475. Retrieved August 14, 2025, from <https://doi.org/10.1080/12259276.2018.1543210>
23. Rich, A. (1976). *Of woman born: Motherhood as experience and institution*. W. W. Norton & Company.
24. Stacey, J. (1996). *In the name of the family: Rethinking family values in the postmodern age*. Beacon Press.
25. Tronto, J. (1993). *Moral boundaries: A political argument for an ethic of care*. Routledge.
26. Uberoi, P. (2006). *Freedom and destiny: Gender, family, and popular culture in India*. Oxford University Press.
27. UNFPA. (2023). *Youth and reproductive health in South Asia: Trends and perspectives*. United Nations Population Fund. Retrieved August 13, 2025, from <https://www.unfpa.org>
28. World Bank. (2022). Fertility rate, total (births per woman) – India, Sri Lanka. *World Bank Data*. Retrieved August 13, 2025, from <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

The Relevant Market as a Juridical Construct: Its Origins and Evolution under Moroccan and European Competition Law

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Abstract

In competition law, delineating the boundaries of fair and effective market regulation remains a persistent challenge. Central to this challenge is the concept of the relevant market, which functions simultaneously as an economic analytical tool and a legal framework for assessing competitive behavior. In Morocco and the European Union, the relevant market ensures non-discriminatory access, preserves competitive neutrality, and maintains economic public order, serving as a fundamental pillar of antitrust enforcement. This study adopts a comparative and interdisciplinary methodology, integrating doctrinal legal analysis, economic modeling, and empirical examination of case law. It draws on Morocco's Law No. 104-12 on the Freedom of Prices and Competition, Articles 101 and 102 TFEU, and the decisions of the Moroccan Competition Council alongside European jurisprudence. Through this approach, the research describes how the relevant market is operationalized and applied in practice to regulate anti-competitive conduct. This research paper traces the deployment of the relevant market throughout the history of economic thought, highlighting its conceptual evolution from classical and neoclassical theories to contemporary frameworks. It further examines the gradual consecration of the relevant

market by Moroccan and European legal systems, showing how legislation and jurisprudence have progressively shaped its role as both a regulatory and analytical instrument. Findings indicate that the relevant market transcends its technical function to become a guiding legal principle for competition policy. By maintaining economic public order, ensuring market integrity, and promoting equitable competition, it serves as an essential instrument for both regulators and market participants. Comparative analysis emphasizes the European Union's established doctrinal framework and Morocco's emerging system, illustrating the importance of integrating economic reasoning with legal enforcement.

Keywords: Competition and Economic Law, Relevant Market, Monopoly, Regulatory Law, Praetorian Jurisprudence, and The History of Legal and Economic Events

Introduction

Under competition law, companies and market operators are constantly urged to change their egocentric perception of their own legal security (Spector, D. 2006). It is no longer a question of them digging in their heels to preserve their acquired rights, but rather of playing an active role in establishing and even sustaining legal certainty within the competitive arena, namely by opting for fair competition that guarantees the objective of ensuring the greatest possible equality of access to the market (Le Roy, F. 2004).

In fact, equality in competition is assessed in terms of freedom of trade between operators and even from the perspective of the guarantee granted to competing parties to access the market without any restrictions (Dumez, H. & Jeunemaitre, A. 2005). In this respect, competition law complements the law on freedom of movement (Stuyck, J. 1999). Restrictions on freedom of trade or violations of the principle of free competition constitute an infringement of access to and exercise of economic activity, and such restrictions on freedom of trade are classified as anti-competitive or restrictive of the normal functioning of the competitive system. This requires an examination of the relevant market. This is justified by the need to understand the situation that is hindering market access. This examination is carried out by defining the relevant market.

Research objectives

This research primarily seeks to analyze and evaluate the genesis and evolution - both legal and economic - of the concept of the relevant market, while highlighting its conceptual, practical, and normative implications for regulating the behavior of economic operators and preserving competitive balance. The relevant market is understood not only as an analytical economic

tool, but also as a fundamental pillar for ensuring fair competition, safeguarding equal treatment among enterprises, and protecting economic public order - a role that competition law assumes as the ultimate guardian of economic peace.

The legal framework of this study is grounded in the provisions of Law No. 104-12 on the Freedom of Prices and Competition in the Kingdom of Morocco as well as the Treaty on the Functioning of the European Union (TFEU). Articles 6 and 7 of Law No. 104-12 respectively prohibit anticompetitive practices and abuse of dominant position in the Moroccan market, while Articles 101 and 102 TFEU regulate restrictive agreements and abuse of dominance within the European market. The analysis further draws on the opinions and decisions of the Moroccan Competition Council and the jurisprudence of European courts, thereby confronting theory with practice and assessing the effectiveness of competition law within the legal systems under review.

This study considers the legal, economic, and factual dimensions of the relevant market, while also examining its impact on both macro- and microeconomic actors. It emphasizes the function of competition law as the ultimate defender of economic public order, a role reinforced through the systematic use of the matrix index, commonly referred to as the relevant market. From this perspective, the research is structured around six core objectives, which serve as methodological and analytical benchmarks ensuring coherence, rigor, and scholarly relevance.

Objective 1 – Legal and economic understanding of the relevant market

We aim to define and analyze in depth the concept of the relevant market, with particular emphasis on its role in the legal and factual assessment of economic operators' conduct. This analysis relies on Articles 6 and 7 of Law No. 104-12, Articles 101 and 102 TFEU, as well as the opinions and decisions of the Moroccan Competition Council and the consistent jurisprudence of the European courts. The goal is to clarify the scope of this concept in identifying dominant positions, detecting anticompetitive agreements, and evaluating the obligations of market operators, while also assessing its impact on both macro- and microeconomic actors.

Objective 2 – Historical and conceptual evolution of the relevant market

We seek to trace the historical and conceptual development of the relevant market through a thematic and chronological approach. The analysis considers industrial economics, centered on market structures; monopoly economics, focused on regulating dominant positions; and antitrust economics, which formalizes rules for the protection of competition. This perspective demonstrates the progressive juridification of the concept and its

integration into Moroccan and European law, while also illustrating the need to combine legal and economic approaches, reinforced by the systematic use of the relevant market matrix index.

Objective 3 – Defining the scope and formulating the research problem

We aim to precisely delineate the scope of the study and formulate a legal and economic research problem centered on the genesis, definition, and evolution of the relevant market. This allows the analysis to focus on competition law and economic law, while targeting mechanisms of market regulation and the prevention of distortions. The problematization highlights the tensions between contractual freedom and the principle of free competition, while evaluating the reach and effectiveness of the applicable norms.

Objective 4 – Progressive implementation in Moroccan and European law

We aim to trace the gradual implementation of the notion of the relevant market in both Moroccan and European law. This objective assesses its impact on the regulation of anticompetitive practices and on market actors, drawing upon legislative provisions, European jurisprudence, and the opinions and decisions of the Moroccan Competition Council. The analysis allows for measurement of regulatory effectiveness, verification of compliance with established norms, and evaluation of their effects on both macro- and microeconomic actors, while ensuring equal treatment among enterprises and promoting fair competition.

Objective 5 – Adoption of an integrated approach

We aim to adopt an integrated approach that combines legal, economic, and factual dimensions to produce a comprehensive and coherent analysis. Such an approach makes it possible to evaluate the impact of defining and applying the relevant market on both macro- and microeconomic actors, to demonstrate the necessity of effective coordination among economics, competition policy, and competition law, and to highlight the significance of normative and jurisprudential instruments in effectively regulating the market.

Objective 6 – The necessity of adopting the relevant market as a regulatory benchmark

We aim to demonstrate the pressing need to legally adopt the relevant market as an instrument and regulatory benchmark of competitive markets. This perspective underscores the structuring role of the legal definition of the relevant market in framing operator's practices, preventing distortions, and ensuring effective regulation of competition. It evaluates the practical consequences of such adoption for both macro- and microeconomic actors,

while ensuring equal treatment among enterprises and the promotion of fair competition. It also highlights the importance of coordination among economics, law, and competition policy, as well as the role of competition law as the ultimate guardian of economic public order, reinforced by the systematic use of the relevant market matrix index.

Research Problem and Significance of the Study

Given the central importance of accurately defining the relevant market in understanding the dynamic realities of the competitive arena, it is essential to frame a precise legal problem: « How has the process of delineating the relevant market been operationalized within the Moroccan and European competition law frameworks, and to what extent does this process ensure effective regulation of anticompetitive conduct while safeguarding market equality? »

This question raises multiple interrelated legal and economic issues. First, it highlights the tension between economic theory and legal practice. While economic models provide tools to identify market boundaries, assess substitutability, and measure competitive pressures, their translation into legally binding criteria remains complex and context-dependent. Competition authorities and courts must reconcile abstract economic reasoning with concrete market realities, ensuring that legal interventions are proportionate, predictable, and consistent with the principles of due process.

Second, the question emphasizes the normative function of the relevant market in competition law. The delineation of the relevant market constitutes the analytical backbone for detecting market power, identifying anticompetitive agreements or abuses of dominant positions, and imposing corrective measures. Inadequate or inconsistent market definitions can compromise legal certainty, hinder the detection of infringements, and ultimately undermine the effectiveness of competition policy. Therefore, understanding the methodologies and criteria applied by Moroccan and European authorities is crucial for evaluating the robustness and coherence of regulatory frameworks.

Third, this problem invites a comparative legal analysis. The European Union benefits from a well-established doctrinal and jurisprudential tradition, with the relevant market being operationalized through a combination of legal precedent, economic reasoning, and policy instruments. In contrast, Morocco's competition law framework is relatively young, seeking to integrate international best practices while adapting to national economic realities. The problem thus lies in determining whether Morocco's application of the relevant market concept achieves a level of precision and effectiveness comparable to the European standard, and how such implementation impacts

the enforcement of competition law, the protection of consumers, and the maintenance of fair market conditions.

Finally, framing this issue as a legal problem underscores the dual function of the relevant market as both a conceptual economic tool and a practical legal instrument. Addressing this problématique requires examining the interaction between statutory provisions, jurisprudence, and economic evidence, and assessing the extent to which the delineation of the relevant market provides a coherent, enforceable, and equitable framework for regulating competitive behavior in both jurisdictions.

Methodology of the study

Economic law, and more specifically competition law, constitutes a fundamental normative instrument for the regulation of competitive markets, particularly in a context characterized by economic liberalization and the growing interdependence of markets. At the heart of this regulatory framework, the concept of the relevant market assumes a pivotal role in both Moroccan and European law, as it underpins the legal and factual assessment of the conduct of economic operators. The definition and delimitation of the relevant market enable the evaluation of firms' positions within the competitive landscape, the identification and sanctioning of restrictive practices - including monopolistic behaviors, anticompetitive agreements, and abuses of dominant position - and the enforcement of the principle of equal treatment among market participants. Moreover, this analysis requires a thematic and chronological examination of the recognition and evolution of the relevant market within the history of economic thought, encompassing industrial economics, monopolistic economics, and Antitrust economics, which constitute the theoretical foundations for its subsequent legal formalization. Similarly, it is essential to trace the progressive implementation of the relevant market concept in Moroccan and European competition law, highlighting the stages of its normative construction and the mechanisms of its practical application. Consequently, the delineation of the relevant market emerges as a structuring axis for competitive regulation, ensuring a balance between the contractual freedom of operators and the imperative of preserving effective competition.

To address the research problem posed by this study, we employ the methodology of the legal dissertation as adopted by private law scholars, allowing us to structure our analysis around four complementary axes: a conceptual analysis (1), a dialectical analysis (2), a methodological analysis (3), and a comparative analysis (4).

1. Conceptual Analysis: Articulation of Foundational Legal Concepts

Our treatment of the subject relies on the private law dissertation methodology, which compels a rigorous and systematic examination of fundamental concepts, particularly in the fields of economic and business law. It was necessary to define with precision the central legal concepts, including market regulation, the relevant market, monopolies, anticompetitive agreements, the obligations of operators in the Moroccan and European domestic markets, and equal treatment among enterprises. To this end, we relied on applicable legislative provisions, established jurisprudence, and specialized doctrine. This conceptual analysis allowed us to delineate the precise contours of each notion, to understand their interactions, and to assess their practical implications, particularly in regulating corporate conduct and promoting fair competition within the market. We consider this step indispensable to ensure both the rigor and relevance of our analysis.

2. Dialectical Analysis: Delimitation of the Study Scope and Formulation of the Legal Problem

In approaching our research subject, it was necessary to clearly delimit the scope of the study, focusing on competition and economic law while excluding peripheral issues. This delimitation enabled the identification of essential elements for analysis, including the genesis of the relevant market, its definition and legal recognition, and the regulatory mechanisms designed to prevent monopolies and sanction anticompetitive agreements, while ensuring equal treatment among enterprises. From this analysis, we formulated our legal problem, which extends beyond the mere statement of applicable rules to interrogate their scope, applicability, and the tensions between operators' contractual freedom and the obligation to respect free competition. This problem constitutes the guiding thread of our reasoning and informs the structure of our study, thereby ensuring coherence and analytical unity.

3. Methodological Analysis: Approach of Private Law Scholars

Accordingly, our approach is grounded in a methodology characteristic of private law scholarship, enabling the coherent, rigorous, and progressive structuring of our reasoning. We combined the examination of legislative and regulatory texts, the analysis of major judicial decisions, and the consultation of specialized doctrine to confront theory with practice. We engaged in critical reflection on the interpretation and application of competition rules and regulatory mechanisms, particularly concerning monopolistic practices, anticompetitive agreements, and equal treatment among enterprises. This methodology allows us to transcend mere description,

producing an analytical and argumentative work that articulates concepts, norms, and legal practice, thereby ensuring the scientific rigor and coherence of the dissertation as a whole.

4. Comparative Analysis: Legal and Factual Apprehension of the Relevant Market in Moroccan and European Law

We propose a comparative analysis of the legal and factual apprehension of the relevant market under Moroccan and European competition law, particularly concerning anticompetitive practices such as agreements and abuses of dominant position. We seek to assess the nature of the competitive environment governing the market, taking into account the different forms of conduct by firms that may restrict or impede free competition. In this regard, the recourse to the relevant market constitutes a central and indispensable analytical instrument, allowing for the precise delimitation of the affected market, the characterization of relationships among competing products or services, and the identification of dominant actors capable of undermining effective competition. It also permits the assessment of the actual impact of anticompetitive practices on the competitive structure, both at macroeconomic and microeconomic levels, serving as an essential tool to bridge legal evaluation and economic realities.

The comparative study of Moroccan and European legal systems is justified for several legal, methodological, and practical reasons. Both systems have developed relatively comparable normative frameworks to address practices that may distort competition, thereby ensuring a coherent and protective legal environment. The study of the “relevant market” in the European context, approached through the French language, aligns with our Francophone legal training and allows the integration of robust doctrinal and jurisprudential references to enrich the comparative analysis. We emphasize that the systematic recourse to the relevant market constitutes a key instrument for effective market regulation, prevention of competitive distortions, assurance of equal treatment among enterprises, and provision of a rigorous tool for competition authorities in evaluating and sanctioning anticompetitive conduct. It is, in essence, a foundational pillar of competition policy, bridging legal theory and economic analysis within a coherent normative framework.

In Moroccan law, the apprehension of the relevant market is approached as a process of discovery and in-depth analysis of a relatively recent legal system in the context of modern history. Although still nascent, this system has not been subject to comprehensive analysis in French or in national languages, notably Arabic. We aim to highlight the specificities of the application of the relevant market concept in Morocco, comparing its mechanisms with those of the European Union to draw insights on normative effectiveness, competition protection, and the adaptation of international legal

concepts to the national context. In Morocco, recourse to the relevant market emerges as a structuring and indispensable instrument for regulating the conduct of economic operators, identifying dominant positions, preventing anticompetitive agreements, and ensuring effective regulation of the competitive arena, thereby consolidating competition law as the ultimate guarantor of economic order and market fairness.

Study Outline

Emphasizing the necessity of employing the relevant market as a regulatory and analytical instrument to preserve equality among firms in the competitive arena is of fundamental importance. This study seeks to examine the historical evolution of the relevant market concept and to demonstrate the extent to which it has been institutionalized as a cornerstone of competition law enforcement. The analysis unfolds through two complementary, yet interrelated approaches, each essential for capturing both the conceptual and practical dimensions of the relevant market.

The first approach consists of a rigorous conceptual and historical examination. We analyze the evolution of the relevant market within the framework of established economic doctrines, underscoring its critical function in delineating market structures, competitive dynamics, and the interaction of economic actors. Drawing upon industrial economics, monopoly theory, and antitrust economics, we situate the relevant market within the historical development of economic thought and its subsequent juridical recognition. The concept enables the identification of product and service substitutability, precise market boundary definitions, and systematic assessment of competitive pressures, which in turn facilitates the detection of market power and potential distortions resulting from restrictive practices.

Nonetheless, the determination of the relevant market entails significant complexity. Historically, a persistent tension has existed between economic theory and legal practice: while economic models are well-established, early jurisprudence frequently disregarded them, despite the necessity of accurately defining markets to measure the scope and intensity of competitive constraints. Although the relevant market constitutes a fundamental principle of economic analysis, its legal application demands meticulous factual inquiry, including the assessment of product and geographic substitutability, cross-elasticities of demand, market shares, and the competitive relevance of individual actors. Such empirical evaluation ensures that legal interventions are proportionate and appropriately aligned with the actual market context, thereby safeguarding competition and fairness (A).

The second approach focuses on the comparative and operational implementation of the relevant market concept. We analyze its progressive

adoption by Moroccan and European competition authorities, particularly in the regulation of anticompetitive conduct, such as collusive agreements and abuses of dominant positions. The relevant market serves simultaneously as an analytical framework and a practical regulatory tool, structuring the economic understanding of market interdependencies while providing a legal mechanism to monitor, assess, and sanction anticompetitive behavior. Comparative analysis reveals both convergences and divergences between Moroccan and European regulatory regimes, offering insights into the adaptation of international legal doctrines and the effectiveness of competition policy in diverse jurisdictions. Consequently, the relevant market is not merely an abstract economic construct, but a decisive legal instrument for evaluating market power, detecting anticompetitive practices, and ensuring equality among market participants. Its significance is reinforced by the integration of doctrinal reasoning, empirical evidence, and judicial practice, establishing it as a central pillar of competition law enforcement **(B)**.

Results of the study

The concept of the relevant market occupies a pivotal position in the architecture of competition law, functioning simultaneously as an economic analytical instrument and a legal framework for regulating corporate conduct. Its precise delineation is indispensable not only for identifying the boundaries of competitive interaction but also for safeguarding economic public order and guaranteeing equitable access to markets. In practical terms, the relevant market constitutes a cornerstone of antitrust enforcement, equipping regulators and courts with the analytical and normative tools necessary to assess market power, detect anti-competitive practices, and ensure the maintenance of a level playing field for all economic actors.

This study has enabled the identification of two defining characteristics that are central to the very essence of the relevant market: its factual dimension and its teleological function.

The factual dimension frames the relevant market as an empirical and conceptual construct, tracing its intellectual lineage from classical economic theory to its contemporary operationalization within legal systems. It captures the concrete domain in which competition unfolds and provides a robust basis for evaluating competitive dynamics, market boundaries, and substitutability among goods and services **(1)**.

The teleological or functional dimension underscores the role of the relevant market as a normative and regulatory instrument within Moroccan and European legal frameworks. It delineates the competitive arena, informs the assessment of corporate conduct, and preserves entrepreneurial equilibrium. By integrating these two dimensions, the study demonstrates that the relevant market transcends a purely technical notion; it operates as a

guiding principle that ensures fair, legally certain, and effective competition, while reinforcing market integrity and the overarching order of economic governance (2).

1. Recourse to the relevant market is a factual issue, not a legal one

From the outset, the relevant market is a concept that has its origins in the early roots of fundamental economic theories and has been adopted by competition law. This economic analysis tool has an ancestral genealogical lineage, as it appears in the writings of the founding authors of political economy, sometimes under the terms industry, relevant market, reference market, or simply market.

Naturally, from the point of view of economic theory, the definition of the relevant market has always been a key consideration, particularly for the pioneers of classical economics. However, there is no single definition of the concept of market. In fact, there are several. For some, the market is primarily a geographical location where competition between trading operators is freely exercised. It is also seen as a force field defined by competition, which operators must comply with (Smith, A. 1776). For others, the market is understood primarily as a variable dependent on the capitalist mode of production (BOYER, R. 1986). Similarly, the market is considered a form of organization of exchanges between economic agents, one of whose essential characteristics is that economic transactions take place on the basis of prices (Diemer, A. 2006).

Indeed, legal doctrine is reluctant to accept the relevant market, which had been defined in a rather rudimentary way as the abstract domain of goods trading. According to legal doctrine, the market serves as an ideal gathering place for those seeking to acquire goods and those seeking to sell them (Savatier, R. 1959). In competition law, it is exceptional case law that has given the relevant market the place it deserves. It is for this very reason that it is referred to as a praetorian concept (Bousaouf, M. 2021). However, the concept of the relevant market that we have studied in this research paper corresponds more precisely to the term “relevant market” as it is currently understood in practice.

2. The function of the relevant market was the underlying reason for its implementation

Certainly, the jurisprudence of the Moroccan and European legal systems highlights a meticulous analysis of a context presented as economic in terms of understanding the relevant market, which is conceived as a drastic precept insofar as it allows the competitive arena to be defined and, in this way, the framework within which the activities of the company or companies concerned are carried out (Liarte, S. and Cailluel, L. 2008). In fact, the analysis

of the competitive field is based on the prism of contemporary economic reality, which implies that competition only exists between competing agents who share the same playing field on an equal footing, because by the nature of things, one cannot compete with oneself. Thus, it would only be possible to assess competition (measure its variations) on the basis of the scope of the area of action in which this competition takes place (Bouchar, C. 2005). Consequently, defining the relevant market is an inevitable step in the process of establishing legal certainty within the market and, as a corollary, preserving entrepreneurial equilibrium.

In practice, this means that defining the relevant market is not an end in itself; rather, it is an effective means of understanding the behavior of companies and determining whether that behavior is likely to undermine free competition. The idea is that defining the relevant market only makes sense when it aims to reframe the actions of companies in the market, which is why understanding the market is considered a first step in assessing market stability.

This fundamental phase is an integral part of the process of maintaining effective competition. How could it be otherwise, since it is unanimously accepted that the outcome of the market definition determines the outcome of the case? It follows, therefore, that any attempt to shed light on equal conditions of access to the market and the principle of free competition in the Moroccan and European legal systems necessarily involves understanding the relevant market. This exercise aims to trace the boundaries of the competitive arena by locating the source of the infringement of competition and to measure the competitive constraints weighing on the market, which is a favorite area for both economic actors and consumers.

Assessing the relevant market also involves identifying the players involved in establishing mechanisms for deploying correlations between companies and evaluating the market shares held by a company or group of companies, which are, in this case, the source of practices that prevent, restrict, or distort competition.

Discussion

A. The disregard of economists towards the recourse to the relevant market

It is now widely accepted that the holistic approach to business practices (particularly through economic tools) has always been valued by the international economic community for its focus on the issue of a company's position within a competitive environment. This interest in studying the business environment has grown considerably with the emergence of industrial economics (Houssiaux, J. 1958), whose treatment of the uncertainty

of the degree of rivalry between companies in the market remains the primary concern (Diawara, K. 2008).

Despite the extremely delicate context, which even reveals the degree of uncertainty involved in competition between companies in the market, most economists, with the exception of industrial economics theorists, are not in favor of defining the relevant market in order to understand and comprehend the phenomenon of competition. The first thing that becomes apparent when studying economic writings on the relevant market is the lack of credibility or even a complete lack of interest that some economists have in the issue (Werden, G. 1983).

Such disaffection, revealed by theorists of corporate behavior in the relevant market, draws its inspiration from the emergence of the theory of imperfect or monopolistic competition (1). But still following in the footsteps of the proponents of imperfect competition, the extent of this discredit (the subject of the founding debate urged and supported by the Harvard School and the Chicago School) can be explained in part by different considerations related mainly to the concept of economic efficiency (2).

1. The impassiveness of Monopolistic Competition regarding the relevant market

This disregard on the part of economists for the established requirement to understand the relevant market (as a benchmark for identifying the behavior of companies in the competitive arena) draws its intrinsic value from the emergence of the theory of imperfect competition (Etner, F. 2012) or monopolistic competition (Chamberlin, E- H. 1949).

Theorists of monopolistic economics (Keppeler, J-H. 2004) or imperfect competition (the first critics of the concept of relevant market) believe that products are not homogeneous or substitutable, particularly when incorporating indicators of product differentiation and sales costs (Rainelli, M. 2003). These theorists of monopolistic economics categorically and similarly reject the theory of general equilibrium (Walras, L. 2018) based on pure and perfect competition (GABSZEWICZ, J. 2003) as defended by the classical school of industrial economics.

By incorporating the indicators of product differentiation and sales costs (Rainelli, M. 2003), this resurgent theory of monopolistic economics or imperfect competition has thus demonstrated that most companies have monopoly power over their products while competing with each other.

Moreover, based on the product differentiation indicator, the theory of imperfect competition rejects the use of the relevant market by assuming that each company sells products and seeks to attract consumers by differentiating its offering from that of its competitors. According to the theory of imperfect competition, each product is different from that marketed by the competitor,

as the products are not substitutable for one another. The situation can be analyzed as a set of monopolies where each product is a market in itself. Therefore, defining a relevant market by establishing boundaries that include or exclude products is absurd according to theorists of monopolistic economics (Chamberlin, E-H. 1950). In fact, it is the very idea of substitutability that is rejected by these economists, who consider that all products are necessarily different from each other and cannot belong to the same market.

The reasoning of monopolistic competition theorists regarding the indicator of product differentiation still resonates in today's economy, given that the lack of product substitutability in the market is a direct consequence of the differentiation and segmentation strategy employed by competing companies (Chavonnand-Valades, N. 2019).

By way of illustration, we can cite the recent position taken by the European Commission in its decision of September 6, 2018. In light of this decision, the European Commission declared Apple's proposed acquisition of Shazam compatible with the internal market and with the functioning of the EEA Agreement. Through this decision, the Commission gives concrete expression to the product differentiation indicator used by monopolistic economics theorists. In this decision, the Commission concludes by noting the lack of substitutability between music streaming services and video streaming services, indicating that the music streaming market consists of all music streaming services (i.e., Spotify, Deezer, Google Play, Amazon Music, and Apple Music) forming a market or monopoly in their own right, distinct from the video streaming services market, even though both services are used on the same mobile device (Commission EC, Commission Decision of September 6, 2018 declaring a concentration compatible with the internal market and the functioning of the EEA Agreement, Case M.8788 - Apple/Shazam, Official Journal No. 2018/C 417/04 of 16/11/2018, § 99).

Product or service differentiation can be seen even within the same mobile streaming service monopoly, despite the fact that, at first glance, these platforms offer streaming services with music libraries at similar prices. Indeed, when looking at the interactions between mobile devices and these platforms, it is clear that these services are not homogeneous and that their substitutability is not self-evident, particularly given that Apple's operating system, iOS, allows for synergies between Apple products and the Apple Music service that do not exist with other music services. For example, it is possible to launch an Apple Music playlist via the iPhone's Siri feature, whereas it is not possible to do the same for a Spotify playlist. It could therefore be argued that the specificity sought by the Apple brand in the very architecture of its solutions segments the market and contradicts the substitutability between these services.

Therefore, the original and conceptual criticism of monopolistic competition theorists regarding the indicator of product differentiation cannot simply be dismissed as an eccentricity of economic history.

Furthermore, in order to better understand the contextual framework that conditioned the antagonism surrounding the use of the relevant market definition in monopolistic competition theory, we must go back to Marshallian theory (Samuelson, P-A. 1972), which was the first to advocate dividing economic activity into industries in order to determine equilibrium prices (Glais, M. & Laurent, P. 1983). According to the principle of partial equilibrium, the market is understood as “the space where product prices tend towards equality, easily and over a short period of time” (Marshall, A. 1920). Clearly, based on Marshallian theory, the market remains an effective mechanism offering the opportunity to bring together all companies with sufficiently similar technical equipment, experience, and knowledge to manufacture goods.

This narrow-minded, even static approach to grouping economic activity made it possible to demonstrate, through Marshallian perception, that the competitive process is based on prices that tend toward equilibrium. This theory of partial equilibrium, which is based on pure and perfect competition, was to be spectacularly challenged by the proponents of monopolistic competition.

However, we know that the main criticism levelled at the theory of pure and perfect competition focuses particularly on its utopian and unrealistic nature. It follows that, given this situation, it is not surprising to see the same utopian pretext used and brandished as a recursive argument against the understanding of the relevant market in competition cases.

Thus, the theory of imperfect or monopolistic competition tends to vexatiously reject the use of the relevant market, challenging the very concept of industry, which (at the time of the resurgence of industrial economics theory) was synonymous with market. The same applies to the content of the concept of industry, which proves to be inappropriate to reality (Robinson, J. 1933).

This isolationist and unsympathetic attitude towards the use of the relevant market concept stems from the blatant combination of various arguments to construct an absolute dogma that categorically rejects anything that favors consolidating the definition of the relevant market for the purposes of regulating competition. In addition, the indirect knock-on effects are spreading, with the result that this situation has influenced the position of the economic community, which continues to challenge the doctrinal structures that maintain a favorable position towards the use of the relevant market definition. Thus, the essential debate focused on opposition to or observation of the relevant market - with the aim of increasing economic efficiency and

improving competitiveness - has gained momentum in the history of economic thought on antitrust and competition protection since the 1950s, particularly between the close rivals: the Harvard School and the Chicago School.

2. The dissensions on the relevant market across the Antitrust History

The Harvard School, or structuralist school, considers that given the absence of pure and perfect competition in real economic life and its potentially significant repercussions on the economic environment, competition can be assumed to exist when the structural mechanisms of the market are functioning sufficiently smoothly.

In line with the thinking of structuralist theorists, the competition paradigm revolves specifically around three groups of specific, interdependent, and essential factors. The first is market structure, which is characterized by the presence or absence of barriers to entry. Secondly, there is the behavior of market players, which can take the form of either intense rivalry between competitors or tacit or explicit collusion between market players. Thirdly, there is market performance, taking into account price levels, production, and innovation.

According to the paradigm developed by the Harvard School, market structure determines the nature of competition within that market. In other words, the relationship between market structure and the power exercised within it depends essentially on the conditions of entry into the market, through the existence of barriers to entry (Bain, J. 1968). According to the Harvard School, the goal of establishing a modern liberal economy - within the framework of competition policy - is the top priority. Market power is therefore seen as a negative factor that must be prohibited by nature, with the aim of increasing economic efficiency and improving competitiveness.

In terms of its impact on economic growth, the Harvard School believes that achieving efficiency is linked to the protection of competitors. Indeed, structuralists see barriers to entry as the catalyst for increased market inefficiency. The Harvard School therefore supports structural action by public authorities to restore effective competition, particularly through the enforcement of competition law.

The Chicago School, for its part, proposes a dynamic approach to competition, which is viewed as a process in its own right, designed to select the most efficient companies to support the development of their industries. In this view, proponents of the Chicago School believe that it is the behavior of companies and their overall performance that influences market concentration in the same way as they influence economic growth and development, and they emphasize this point. Thus, a company that offers a product tailored to demand (particularly in terms of better quality than its competitors) acquires

new customers without losing its existing ones, and can thus achieve a dominant position. Market concentration, the position of competitors and their number, and the stability of market shares over time undoubtedly remain a function of differences in performance between companies, with a dominant position being simply attributable to a company's better positioning relative to its competitors. Consequently, a market must be judged on the basis of its efficiency rather than its structure, as a concentrated structure is invariably the result of a long evolutionary process in which the efficient behavior of the company plays a decisive role.

Taking issue with the doctrines of the Harvard School, which are based on a static, vague, and counterproductive conception of competition (Posner, R. 1979), the Chicago School proposed a dynamic approach to competition based on the concept of *laissez-faire*, *laissez-aller*, which values non-intervention by the state, more unreservedly embedding the conviction that the market works best when the government leaves it alone (Freedman, V-L. 2013). This dogma refutes the argument that barriers to entry allow undue market power to be exercised. Indeed, for the Chicago School, apart from legal barriers, barriers to entry are a manifestation of the greater efficiency of companies already established in the market. According to this theory, the dynamism of competition should not be judged on the basis of the structure of a market at a given moment, but rather on the basis of the ever-necessary exercise of freedom to act without outside interference, so that new competitors can position themselves in that market.

The extent of this ongoing controversy between the Harvard School and the Chicago School can be explained, *de facto*, by widely differing views on the cumulative nature of market concentration and economic efficiency, which translate into distinct conceptions of what competition law should be. As a result, throughout the historical evolution of these doctrinal schools, the concept of the relevant market has always been the main arena for ideological confrontations between proponents of more active intervention by competition law and their opponents from the Chicago School (Ianos, L. 2007), heralding the birth of a capitalist, fiercely neoliberal school of thought.

Initially based on the fundamental principles of non-interventionism by the state and the enshrinement of free competition in an open space, the Chicago School challenged the very idea of defining a relevant market. According to the Chicago School, the ultimate goal of competition policy should be to ensure that there are no barriers to entry for companies into markets, particularly regulatory barriers (Brozen, V- Y. 1969).

Nevertheless, once the need for state regulation of the economic sphere was widely accepted, the economic community sought to directly measure the degree of market concentration of entities creating barriers to market entry. In this regard, a certain consensus emerged in favor of the need for the concept

of the relevant market. However, despite clear statements in favor of the gradual formalization of the concept of the relevant market, it should not be overlooked that the content of the concept in question is neither clearly defined nor clearly arranged.

The relevant market subsequently became a source of disagreement among economists. Supporters of the structuralist school defend a narrow definition of the relevant market, in which the company's market share (represented by the percentage of sales made by the company in a given market compared to the total sales of the same product or a substitutable product made by its competitors and itself) is significant. Meanwhile, economists from the Chicago school argue for a relevant market in which the market share ratio is diluted and therefore has a particularly soothing effect on the assessment of the company's position.

In a line of thinking that tends to favor structuralist theory, US federal case law has introduced the idea of submarkets within the relevant market. This resurgent concept was first defined in the *Brown Shoe Co. case* (United States Supreme Court, *Brown Shoe Co. Inc. v. United States*, 370 U.S. 294, 1962, p.325). According to this ruling, there is a smaller and even more relevant market within the relevant market. This involves defining a narrow space in which products share a high degree of substitutability (a relevant market within a relevant market where the products on sale have characteristics that differ little from those that already exist, but which meet the same need and provide the same degree of satisfaction to consumers) in order to rigorously assess the position of the company concerned. However, assuming that it is officially confirmed that the submarket exists in pro-structuralist case law, one should question the usefulness and relevance of defining a submarket within a relevant market. One thing that is not obvious is that the submarket seems to be the relevant market tout court. It is rightly noted that the US Court of Appeals (for the Fourth Circuit) considers the concept of a submarket to be an unusual curiosity compared to the rigorous definition of the relevant market alone (United States Court of Appeals for the Fourth Circuit, *Satellite Television & Associated Resources, Inc. v. Continental Cablevision of Virginia, Inc.*, Citation No. F.2d No. 714, 1983, footnote No. 5).

For its part, the Chicago School found in the theory of contestable markets a compelling argument in favor of reviving the theory of dynamic efficiency rather than studying market structure. In this regard, it should be noted that, overall, this theory provides a new analysis of market structures, and in particular a novel framework for understanding monopoly situations. Contestable markets theory emphasizes the vital role of potential competition as a constraint on companies in a given sector. The two main vectors are the absence of barriers to entry and the absence of barriers to exit from the market.

A market in which entry is completely free and exit is cost-free is a contestable market. The functioning of a contestable market is reflected in the following mechanism: existing companies keep their prices at competitive levels because of the constant threat posed by potential entrants. If existing companies raise their prices, new companies will enter the market. Thus, unlike the paradigm of a market in a situation of pure and perfect competition, a contestable market can bring together any number of companies, including a dominant company (Demsetz, H. 1974).

While the relevant market has been the source of the most persistent disagreements between, on the one hand, proponents of the structuralist school and, on the other, those of the Chicago school, it has been acknowledged that the concept has always been the main arena for ideological confrontations among antitrust economic theorists. For observers specializing in strategic issues, and more particularly in the history of antitrust, the definition of the relevant market has played a decisive role in the implementation of competition policy, particularly with regard to corporate mergers. The definition of the relevant market has served two purposes: first, to identify the strong a priori suspicion against large companies and concentrated market structures, and second, to address the growing problem of simplifying to the extreme the burden of proof incumbent on competition regulators, which formed the basis of a policy aimed at strengthening economic efficiency, in particular by limiting the market power of large companies suspected of engaging in practices that are contrary to free competition. However, despite historical factual assertions clearly in favor of defining the relevant market in order to address concerns about business competitiveness, it should not be overlooked that the content of the concept in question is not clearly defined or enshrined in legislation.

Considering the above, it is reasonable to infer that the symptoms of apprehension surrounding the concept of the relevant market have evolved considerably, aligning themselves in particular with the considerations and aims of the dominant school of thought of the moment and its political history, to become a complex set of factors involving economic, political, and legal proportions. This dynamic and evolving path is not reprehensible in itself. Any use, concept, idea, or knowledge contained in the information received can evolve in step with advances in science and technology and the ideological currents taking hold in the economic arena, becoming more precise and closer to the reality of the facts. On the other hand, it can hardly be said that the concept of the relevant market is absolutely objective, independent, and detached from any ideological doctrine or opinion. *Expressis verbis*, between supporters in sharply reduced numbers and opponents on the rise, the definition of the relevant market benefited from establishing a dialogue, albeit antagonistic, between them. However, *interpreted factis et verbis*, the

opponents won the day and tipped the balance against the definition of the relevant market, considering the relevant market to be an instrument devoid of interest or even imperfect for achieving progress towards the establishment of an area of freedom, security, and equal access to markets.

But if most liberal economic and political theorists show little faith in the effectiveness of defining the relevant market, coupled with a complete lack of interest and detachment from anything related to it, the relevant market, in addition to providing a benchmark of stability for both regulators and litigants, remains an important tool that competition law has gradually assimilated. Therefore, any inclination to abandon the definition of the relevant market would prove to be a perilous undertaking due to the significant changes that this would entail in the practice of law itself. This is inevitably why, following the example of European case law, we see that the Competition Council of the Kingdom of Morocco has diligently established the requirement to define the relevant market as an essential step toward establishing a model for assessing the regularity of market players' actions.

B. The acceptance of the relevant market by the competition law Authorities

The task of defining the relevant market is not an end in itself, but rather an integral part of the framework for analyzing the contours of the economic sphere. It is an essential step in establishing economic peace within the market. In fact, it is required by the dynamic nature of the influx of operators trading goods and services on the market. Such a substance, the understanding of which depends above all on the location of the operators, is not only a matter of legal definition, but also a matter of economic reality. It is, in fact, required by the dynamic nature of the influx of operators trading goods and services on the market. Such a concept, the understanding of which depends above all on the location of the sphere of action of these antagonistic protagonists, is necessary in order to properly assess the legitimacy of their behavior. The definition of the relevant market has no other purpose than to outline the framework for the application of competition rules, which the competition authorities of the systems under review (both the Competition Council of the Kingdom of Morocco and the European Court of Justice) are required to implement. Otherwise, these authorities will not be able to apply the rule of law *ex aequo et bono*.

The understanding of the relevant market by competition law authorities is based on a legal logic of implementing provisions of law that regulate the actions of competitors in the competitive arena, namely when such alleged conduct is deemed to have the object or effect of preventing, restricting, or distorting competition in a market. This logic is based on the normative and regulatory dimension of competition law. However, analysis

through the prism of the arguments put forward by the regulatory authorities of the legal systems under review only allows them to consider the relevant facts, as revealed by the prominent factual elements that enable them to apply the rule of law appropriately. It is in this context that we should understand the imperative that an understanding of the relevant market is essential for fulfilling the first condition for combating practices that are contrary to free market access.

This is without doubt why, following the example of European case law, the Competition Council of the Kingdom of Morocco has diligently imposed the requirement to define the relevant market as an essential step in assessing the legality of market players' actions, operating, where necessary, a remarkable shift of the economic concept of the market into the legal sphere, namely through the opinions and decisions issued by it in its capacity as competition authority, as part of its mission to monitor markets and reflect on the best ways to make them competitive, as well as in the context of its summary studies on the competitiveness of certain sectors.

Furthermore, in both Moroccan and European competition law, recognition of the need to codify the concept of the market can be conceptualized chronologically in a triad of consecutive stages. Initially, case law was subject to narrow views, leading to a subtle or even implicit reference to the legitimate need to define the relevant market. This necessity led to the recommendation that the concept be fully established as an assessment criterion for companies engaging in practices that restrict market access **(1)**. Secondly, we will follow a pragmatic approach by the court, tending towards the gradual emergence of the concept of the relevant market, which was more or less instigated by an abrupt re-evaluation of market data at the sole final stage of assessing possible restrictions on competition **(2)**.

1. A modest benchmark for the statutory instrumentalisation of the relevant market

The analysis of the evolution of the content and internal structure of European case law clearly shows that the first cases in which the European courts referred in broad terms to the relevant market concerned antitrust litigation.

During the initial application of Article 81(1) EC (now Article 101(1) TFEU), it was observed that European courts tended to focus on the market in which the parties to the agreement were active.

During the first series of applications of Article 81(1) EC (now Article 101(1) TFEU), it can be seen that the European Court of Justice took into consideration the importance of highlighting the economic and legal context in which the disputed agreement was widespread and produced its effects.

It must be noted that Article 81(1) EC was drafted in such a way that,

in order to determine whether an agreement falls within its scope, its effects on the market must be assessed in advance. In other words, in order to determine whether the alleged prohibited agreement is likely to have an appreciable effect on competition, the undertaking must hold a certain position of dominance on the relevant market, which requires that significantly greater importance be attached to the automatic reference to the relevant market.

This is how the Court of Justice of the European Community simply emphasizes the need to refer to certain aspects of the relevant market. This interest in the relevant market is evident in its judgment in *La Technique Minière* (ECJ, *Société Technique Minière (L.T.M.) v. Maschinenbau Ulm GmbH (M.B.U.)*, June 30, 1966, Case 56-65, Rec. 1966 00337), since the Court of Justice of the European Community states unequivocally that in assessing whether a contract should be considered prohibited under the regulations in force, particular attention must be paid to the nature and quantity of the products covered by the agreement, but also to the position of the licensor and the licensee in relation to competition on the market for the products in question. This is without overlooking the specific features of the suspected agreement (whether it is an isolated agreement or, on the contrary, an agreement that is part of a set of agreements). Similarly, the strictness of the clauses governing the licensor-licensee relationship, which are intended to preserve exclusivity, must be taken into account. In the same vein, the Court of Justice of the European Community affirms the need to identify any opportunities left open to other commercial channels for the same products covered by the exclusivity agreement, if such opportunities exist.

This unprecedented ruling by the European Court of Justice would go on to become a well-known and economically significant legal precedent. It would subsequently be consistently and proactively reaffirmed in cases involving Article 85(1) EC. Thus, in the *Brasserie de Haecht* case (ECJ, *SA Brasserie de Haecht v. Consorts Wilkin-Janssen*, Dec. 12, 1967, Case C-23/67, ECR 1967 00525), the Court of Justice of the European Community took the same approach, stating that the application of Article 85(1) EC requires, among other things, consideration of the economic and legal context in which the suspected agreements are situated and where they have the potential to compete with others. The Court of Justice of the European Community thus considers, in its *Brasserie de Haecht* judgment, that it is pointless to target an agreement without taking into account the market in which it has an impact. Following the reasoning of the Court of Justice of the European Community, in order to assess whether the agreement falls within the scope of Article 85(1) EC, it is not permissible under any circumstances to isolate the agreement in question from its context. In other words, from all the factual or legal circumstances that have the effect of preventing, restricting, or distorting competition. Likewise, in the *Gnmdig-Consten* case (ECJ, *Établissements*

Consten SARL and Grundig-Verkaufs-GmbH v. Commission, July 13, 1966, joined cases 56 and 58-64, Rec. 1966 00429), the Court of Justice of the European Community ruled that, in order to characterize a contractual situation suspected of negatively impacting free competition, it is essential to first place the contract in the economic and legal context in which the parties entered into it.

Along the same lines (and without further delay on the arguments reinforcing the case for or against defining the market in relation to cartels), it is appropriate at this stage to raise certain points regarding specific cases in which reference to the economic and legal context of the cartel itself, interpreted differently, is self-evident. In reality, these specific cases mainly concern agreements that give rise to a certain degree of market power on the part of either the players involved or at least one of the parties to the agreement (Diawara, K. 2008, pp. 44-45).

It is important to bear in mind that this original case law trend, established in the *Brasserie de Haetch* case and reaffirmed in the *Gnmdig-Consten* case, arose in the exceptional circumstances of assessing the compatibility of certain types of beer contracts with Article 81(1) EC (now Article 101 TFEU). However, it is well known that in this type of agreement (Lambert, T. 2000), the supplier effectively holds a certain position in the market that enables it to undermine free competition, in particular by concluding a large number of similar distribution agreements. Nevertheless, the *Délimitis* case (ECJ, *Stergios Delimitis v. Henninger Bräu AG*, February 28, 1991, Case C-234/89, Rec. 1991 I-00935) provides a remarkable illustration of this, with the Court of Justice of the European Community establishing the principle that beer agreements are not harmful per se to competition in the market. This is a significant ruling, which must, however, be interpreted in the light of the context in which these agreements were concluded and implemented, and this must be done, in particular, on the basis of the framework for analysis as defined by the *Brasserie de Haetch* case law.

Further still from the line of reasoning evoked in the *Brasserie de Haetch* case, the Court of Justice of the European Community has repeatedly and consistently affirmed the need to conduct an analysis focused primarily on the criterion of access to the market in question, an analysis in which the definition of the market is the cornerstone.

In other terms, the Court of Justice of the European Community summarizes its thinking on the cumulative effect of beer contracts on access to the relevant market in its *Délimitis* case law, reaffirming its belief in the use of the relevant market, while rigorously asserting that, in the event that an examination of all similar distribution agreements concluded on the market, combined with other elements of the economic and legal context of the suspected agreement, reveals that the contracts do not have the cumulative

effect of foreclosing access to the market for the rest of the competition, the contracts cannot therefore affect the play of competition and would subsequently escape the reprehensible scope of Article 85(1) EC. However, if analysis of the legal and economic framework of the distribution agreements in question reveals that the market is difficult to access, it is necessary, according to the Court of Justice of the European Community, to focus primarily on the imperative requirement to assess, in the light of the facts and the law, the extent to which the agreements in question contribute to the emergence of the cumulative effect produced and to its consolidation. In this case and in this particular case, the definition of the relevant market is a *sine qua non* condition for the development of satisfactory solutions to ensure the efficient functioning of the competitive ecosystem.

In Moroccan law, reference to the concept of the relevant market is purely a matter of case law. Thus, the definition of the relevant market was used in the context of the application of Law No. 06-99 on freedom of prices and competition governing the sphere of activity of companies engaged in economic activity. In this regard, the Moroccan competition regulatory authority effectively assigns a relatively preliminary meaning to the concept of relevant market, which was gradually formulated during the first series of advisory opinions, investigations and studies on the competitiveness of the country's economic sectors, carried out in accordance with the provisions aimed at improving the competitive environment, so that the reference to the relevant market has taken the form of a dualistic bifurcation. On the one hand, the reference to the definition of the relevant market is brief but precise, particularly with regard to the Council's opinions on monopoly issues (Competition Council of the Kingdom of Morocco. 2013, Annual Report, Opinion on the proposed acquisition by the Strategic Investment Fund of 6% of the capital of CMA-CGM through the subscription of bonds redeemable in shares, pp. 41-44) and concentrations (Competition Council of the Kingdom of Morocco. 2013, Opinion on the acquisition by China Merchants of 49% of the shares and voting rights of Terminal Link, pp. 44-46). And secondly, in a more transposed manner, with regard to summary studies relating to the competitiveness of certain sectors of activity, including the telephony sector (Competition Council of the Kingdom of Morocco. 2011, Annual Report, Study on the Competitiveness of the Mobile Telephony Sector, pp. 69-98), the banking sector (Competition Council of the Kingdom of Morocco. 2013, Annual Report, Study on the Banking Sector, pp. 65-117), the television and radio broadcasting sector, and the pharmaceutical industry.

The spectacular shift in the economic concept of the relevant market in the legal sphere by the Moroccan courts is evident in the study on the competitiveness of the television and radio broadcasting sector (Competition Council of the Kingdom of Morocco. 2013, Annual Report, Study on the

Competitiveness of the Television and Radio Broadcasting Sector, pp. 153-162), conducted internally by the Competition Council in 2013 with the aim of assessing the state of competition in the television and radio broadcasting sector at the national level, particularly after its liberalization in 2002 (pursuant to Decree-Law No. 2-02-663 of September 10, 2002, abolishing the state monopoly on radio and television broadcasting) and thus enable the regulator to feed its retrospective and prospective database on the state of competition in all economic sectors in the Kingdom.

Furthermore, based on the study of the impact of the competitive environment in the television and radio broadcasting sector in Morocco, the aim was to determine whether access to the television market faces real and potential obstacles that discourage investment and the development of competition within this sector.

In this regard, the Competition Council proceeded to define the relevant market, establishing the classic distinction between the material and territorial aspects of the market. First, with regard to the material aspect of the relevant market, the Competition Council considers that the reference market is that of television and radio communication services, which is intended to deliver broadcast content to the general public. Moreover, in line with the sector study initiated by the Moroccan regulator, the relevant market for television and radio communication services also covers associated production and broadcasting services, which consist of providing content or exercising responsibility for such content. Furthermore, according to the substance of the study on the competitiveness of the television and radio communication sector, the relevant market for television and radio communication services is also a market open to advertising, which is the main source of revenue, excluding public subsidies, for operators in the sector. The Competition Authority therefore considers it useful to point out that the interdependence between the television and radio broadcasting services market and the advertising market makes these two markets extremely interconnected. With regards to the territorial aspect of the relevant market, it is essentially a question (according to the report drawn up by the Competition Council) of outlining the geographical scope of the provision of television and radio communication services, which corresponds to the geographical area of broadcasting of television and radio communication services. However, taking into account, where applicable, linguistic and cultural barriers, the market for television and radio broadcasting services is considered to be national in scope.

Therefore, following the chronological approach adopted by the court in preparing the sectoral study in question, and after defining the relevant market for the purposes of applying competition law, the Moroccan Competition Council proceeded – pursuant to Articles 6 and 7 of Law No. 06-

99 on freedom of prices and competition – to examine the conditions for new competitors entering and exiting the television and radio broadcasting services market, with a view to identifying any barriers that could perpetuate a position of strength in the market and thus slow down the move towards genuine liberalisation. The Moroccan Competition Council has identified various obstacles to the liberalisation of the television and radio market, which new entrants to this sector face. Among these, the study on the competitiveness of the television and radio communications sector in Morocco mentions three types of barriers to free competition. First, there are regulatory or administrative barriers that condition investors' access to the Moroccan market in order to obtain a licence. In the Council's view, the licensing system is generally seen as a potential barrier to competition, as it usually comes with restrictions that can make it harder or more expensive for operators to offer services. Furthermore, the criteria for granting licences in Morocco include not only economic factors but also social, cultural and general interest factors, which, in the view of the Moroccan competition regulator, constitute a barrier to entry into the television market. According to the Kingdom's Competition Authority, the development of competition remains dependent on the removal of these barriers and the introduction of transparent rules that encourage potential competitors to enter the market. Secondly, in its report on the competitiveness of the television and radio broadcasting sector, the Council identifies a third type of barrier to market access: barriers to access to transmission infrastructure, resulting in a monopoly on terrestrial transmission infrastructure exercised by the Moroccan National Broadcasting and Television Company (SNRT), a prominent factor which puts it in a dominant position and gives it a dissuasive competitive advantage. The study of competitiveness in the television and radio broadcasting sector in Morocco also identified a third category of barriers to entry into the television and radio broadcasting market, namely barriers related to access to spectrum or radio frequency resources. Indeed, as indicated in the Competition Council's report on the subject, the extent of competition in the television and radio broadcasting sector also depends on competitors' access to the spectrum, which is a scarce resource and whose restricted access or lack thereof would constitute a real barrier to market entry. Nevertheless, spectrum limitations should no longer constitute a barrier to entry, given that the transition from analogue to digital spectrum would reduce the scarcity of spectrum resources and allow a greater number of competing channels to be carried on a smaller number of waves. Furthermore, the report on the competitiveness of the television and radio broadcasting sector in Morocco points out that the transition to digital broadcasting, which began in Morocco in 2007 and is expected to cover the entire country by 2015, should offer more opportunities to new broadcasters and thus bring about changes in existing services.

Hence, for the purposes of this study on the competitiveness of the television and radio broadcasting sector in Morocco, it can be observed that the Competition Council has provided a practical demonstration of the potential for analysing the competitive environment, and more specifically, in terms of the deployment of legal and economic factors influencing the context in which operators in the television and radio broadcasting sector operate. This analysis was carried out on the basis of the integration of various indices and aspects of economic evaluation, and these different vectors of analysis undoubtedly constitute the key elements for defining the relevant market for the purposes of applying competition law.

In short, in line with the simple observation that competition law authorities attach great importance to the definition of the relevant market in the legal systems under review, and with a view to describing the current state of affairs with regard to the impact of the relevant market on the outcome of disputes falling within the scope of competition regulation, one can only be mindful of the fact that we are in the early stages of implementing the reference to the relevant market. In this sense, the action of the authorities concerned consisted first of all in measuring the position held by the companies concerned on the market, then the European judge and the Moroccan competition authority analysed the competitive structure of the market, and finally, the two magnates defending the competitive ecosystem combined the two aforementioned elements to identify constraints on competition. This first phase, which constitutes the initial steps taken by the Moroccan and European courts to define the relevant market, will be followed by a second phase that amounts to a concrete affirmation of the usefulness of defining the market in question.

2. *A praetorian orientation in favor of consolidating recourse to the relevant market*

The praetorian establishment of the definition of the relevant market emerged in Moroccan law when referrals were received for the purpose of investigating requests for opinions initiated by the Competition Council at the request of the parties to the disputes, particularly in the context of highlighting the provisions of Law No. 06-99 on freedom of prices and competition; in the context of the need to ensure that companies' actions comply with competitive standards, thereby giving the Moroccan competition authority the task of contributing to the regulation of economic governance. The same assertion was made in European law in cases relating to Article 86 of the EC Treaty (now Article 102 TFEU).

An analysis of the decisions taken by the Moroccan Competition Council (in cases relating to provisions aimed at regulating the competitive ecosystem) illustrates once again the extent to which the opinions issued by

this constitutional body have played a decisive role in establishing the concept of the relevant market in Moroccan positive law.

Indeed, among the cases pending before the Competition Council in which the need to define the relevant market is affirmed is the case concerning the port transit of imported cereals at the port of Casablanca (Competition Council of the Kingdom of Morocco. 2010, Annual Report, Decision No. 13/10 on the port transit of imported cereals at the port of Casablanca, pp. 39-40), which concerns the controversial case of the interpretation of the restriction on free competition.

In fact, the Kingdom's Competition Council was promptly and effectively seized of the matter in the order of appeal, first by the Association of Compound Feed Manufacturers on 23 November 2009, and then by the National Federation of Cereal and Legume Traders on 5 January 2010. Within the limits of their respective interests, the two professional organisations jointly sought the opinion of the Competition Council on the consequences of the facts that they considered likely to restrict competition in the market for the transit of imported cereals at the port of Casablanca.

In this instance, and according to the writs of summons, the plaintiffs accuse the National Ports Agency of having taken decisions at the port of Casablanca that run counter to the implementation of healthy competition. De facto, the parties bringing the action consider that by raising the tariffs for the aforementioned services, the National Ports Agency is abusing its power and that this increase is contrary to the very principle of responsible governance of the sector and even of port liberalisation, and will therefore have a direct upward impact on animal feed prices and even on the price of soft wheat.

In doing so, the petitioners believe that by prohibiting the unloading of grain at the quay, the National Ports Agency is forcing these cargoes to be transhipped through the two specialised facilities at the port of Casablanca. The parties also point out that this decision reduces the number of workstations from five (four at the quay and one at the port silos) to two (two at the port silos: one is old and public, and the other is new and private), which may lead to unusual congestion at the port.

The Association of Compound Feed Manufacturers and the National Federation of Cereal and Legume Traders are asking the Competition Council to conduct a fair arbitration procedure in order to settle and put an end to the dispute between them and the National Ports Agency and are seeking its support to ensure that the National Ports Agency maintains healthy and fair competition between all port service providers.

It was in this case that the then dissenting Competition Council clearly set out the importance of defining the relevant market in order to assess the arguments put forward by the applicants. Following this same line of reasoning and, above all, the Competition Council, in its analytical

examination of the facts submitted to it, takes stock of the actions required of it and asks the right questions before providing the right answers, which questions deserve to be repeated in full.

The competitive assessment of the relevant market for the transit of imported cereals at the port of Casablanca was based on both a descriptive and comparative analysis focusing on three main areas. The first area of focus was the analysis of the market and its functioning before and after port reform. The second focused on a particularly substantial aspect, namely the analysis and assessment of the facts invoked and the evaluation of their compliance with competition law under the provisions of Law No. 06-99 on freedom of prices and competition. The third parallel approach developed by the Competition Council in a longitudinal and transversal sense shed light on the issue of material jurisdiction with regard to the port authority, as well as on the applicability of competition law to the National Ports Agency – in accordance with the provisions of Law No. 06-99 – for port operating activities, particularly in light of European case law.

Consequently, based on the findings of the relevance study conducted by the Competition Council on the market for the transit of imported cereals at the port of Casablanca, and taking into account the nature of the case that is the subject of the request by the parties involved, and on the basis of a comparative analysis of the various facts transposed constituting the allegations of the parties to the case in dispute, and considering the material framework for the functioning of the market in question established by the Moroccan regulator in strict accordance with competition law. It follows that the Competition Council has decided that the referrals in question are inadmissible on the grounds of lack of jurisdiction in the matter. Firstly, on the grounds that the National Ports Agency, which is a party to the disputed facts, exercises - de jure and de facto - the prerogatives of public authority and public service. Secondly, because activities relating to the management of the rules and conditions of operation of port facilities are not considered - in the context of this case - to be activities of an economic nature, given that they are directly related to the public authority prerogatives vested in the National Ports Agency and do not fall within the scope of Law No. 06-99 on freedom of prices and competition, in accordance with the provisions of the third paragraph of its first article.

It is clear, therefore, that with this clear statement appearing in abstracto in the explanatory memorandum included in the Competition Council's opinion on the port transit of imported cereals at the port of Casablanca, the Moroccan regulator is likely referring to the relevant market as the framework for analysing the competition dispute, emphasising its fundamental importance in understanding the competitive phenomenon,

without, however, neglecting to take into account the legal requirement to classify the nature of the dispute in accordance with the regulations in force.

The same line of reasoning regarding the legal necessity of defining the relevant market has been applied in other cases submitted to the Competition Council for its opinion, particularly those relating to the market for building and public works laboratories (Competition Council of the Kingdom of Morocco. 2010, Opinion No. 14/10 of 29 November 2010 on the market for building and public works laboratories, pp. 38-39) and the request for an opinion made by the Moroccan Plastics Association concerning the safeguard measures filed by the National Electrolysis and Petrochemical Company with the Ministry of Foreign Trade (Competition Council of the Kingdom of Morocco. 2010, Decision of the Competition Council No. 12/10 of 14 October 2010 on the request for an opinion from the Moroccan Plastics Industry Association on the safeguard measures filed by the National Electrolysis and Petrochemical Company with the Ministry of Foreign Trade, pp. 138-139).

For its own part, European law has more or less followed the same path as its Moroccan counterpart, namely, without mincing words, with regard to the judicial establishment of the definition of the relevant market. Indeed, European judges have shown interest in the idea that, in order to assess the position of an undertaking in the market, the definition of the relevant market remains of vital importance, given that the possibilities for competition within markets can only be assessed on the basis of the characteristics of the products in question, by virtue of which characteristics these products would be capable of satisfying the constant needs of consumers and would therefore be largely non-interchangeable with others (ECJ, *Europemballage Corporation and Continental Can Company Inc. v Commission*, 21 Feb. 1973, Case 6-72, ECR 1973-00215).

The judicial emergence of the concept of the relevant market began to take shape in a subtle way with the *Sirena* ruling, in which the European Court of Justice already used the fundamental concept of the relevant market in cases of abuse of a dominant position. In other words, the Court of Justice of the European Community made a radical and unprecedented statement in the *Sirena* ruling that for a trademark owner to effectively enjoy a dominant position on the market within the meaning of Article 86 EC (now Article 102 TFEU), it must have the power to impede effective competition in a substantial part of the common market (ECJ, *Sirena S.R.L. v. Eda S.R.L. and others*, 18 February 1971, Case 40-70, ECR 1971-00069). Shortly afterwards, the concept of the relevant market was adopted by the *Continental Can* case law (ECJ, *Europemballage Corporation and Continental Can Company Inc. v Commission*), then consistently reaffirmed, notably in the *Hoffmann-La Roche* judgment, in which the Court of Justice of the European Community

clearly stated that in order to assess whether the undertaking holds the alleged dominant position, it is necessary to define the relevant market (ECJ, Hoffmann-La Roche & Co. AG v Commission, 13 February 1979, Case 85/76, ECR 1979-00461).

As a result, it was undoubtedly the application of Article 86 EC (now Article 102 TFEU) that allowed the European Court of Justice to clearly affirm the need to define the relevant market. Similarly, the interpretation of Article 86 EC by the Commission and the Court of Justice of the European Community made it possible to quickly understand, in addition to simple situations of dominant position, corporate mergers. Consequently, the European Commission announced in its Memorandum on the problem of concentration in the common market (EEC Commission, The problem of concentration in the common market, Competition Series 3, Brussels, 1966) that it would apply the provisions of Article 86 EC to mergers between undertakings which, in certain cases, may constitute an abuse of a dominant position in the common market or in a substantial part of it. This is what it did for the first time in the Continental Can case, with the blessing and support of the judicial authorities.

Thanks to the fact that European law got to grips with the concept of the relevant market pretty quickly, especially since the interpretation of Article 86 EC (now Article 102 TFEU) allowed European case law to pave the way through theories about the economic and legal context of abuses of dominant positions, but also mergers in relation to the appreciable effect on competition.

For its part, the Court of First Instance of the European Communities did not stand idly by in the face of the imminent wave of judicial recognition of the definition of the relevant market. The importance of taking into account the understanding of the relevant market in competition cases is clearly demonstrated in the *Societ  Italiana Vetro* judgment (CFI, *Societ  Italiana Vetro SpA, Fabbrica Pisana SpA and PPG Vernante Pennitalia SpA v Commission of the European Communities*, 10 March 1992, joined cases T-68/89, T-77/89 and T-78/89, Rec. 1992 II-01403, § 159), in which the Court of First Instance of the European Communities held that the definition of the relevant market is a necessary prerequisite for any judgment on allegedly anti-competitive behaviour. On the basis of the considerations set out in the *Societ  Italiana Vetro* judgment, the Court of First Instance of the European Communities therefore clearly establishes the general obligation to apply the definition of the relevant market, particularly in the context of the application of Article 86 EC, in order to assess the sensitivity of the infringement of competition, since (according to the Court) it is necessary, well before establishing the existence of an abuse of a dominant position, to establish the existence of the commercial entity's dominance in a given market, something

which presupposes, in the logical order and progression of things, that this market has been previously defined.

Conclusion

It is abundantly clear that addressing barriers to market access requires, above all, the adoption of an approach that views any violation of equal opportunity between companies as a restriction. This approach, which is likely to contribute to the preservation of equality in competition and even to the promotion of dynamic competition between market players, remains dependent on the importance attached to the definition of the relevant market itself.

Relevant market definition is not an end in itself, but rather an integral part of the framework for analyzing the contours of the economic sphere. It is an essential step in establishing economic peace within the market. It is, in fact, required by the dynamic nature of the influx of operators trading goods and services on the market. Such a substance, the understanding of which depends above all on the location of the sphere of action of these antagonistic protagonists, before the legitimacy of their behavior can be properly assessed. The definition of the relevant market has no other purpose than to outline the scope of application of competition rules, because otherwise the competition authorities of the systems studied will not be able to apply the rule of law *ex aequo et bono*.

Delineating the relevant market is a necessary step in combating practices that could undermine the competitive balance, through the provisions of competition law relating to cartels or concerted practices, or even more so, abuse of a dominant position. The delimitation of the relevant market is essential, as it allows the law to examine the existence or absence of the very essence of the infringement of effective competition in the market.

Hence, from a legal standpoint, the relevant market constitutes the framework for all behavior on the part of companies, whether they are competitors or antagonists, hence the importance of defining the relevant market in order to be able to assess the variables of competition. In fact, the need to define the relevant market stems from its generic function, which applies regardless of the legal category of the restriction in question. The relevant market therefore forms the basis of a complex reality that is assessed according to the formal origin of the restriction on competition.

The predominance of the definition of the relevant market has been established gradually. In the legal systems under review, the spectacular shift of the economic concept of the relevant market into the legal sphere is purely a matter of case law. A study of the evolution of the content and internal structure of case law shows more clearly that the first cases in which the competition regulatory authorities of the systems in question referred in broad

terms to the relevant market concerned litigation involving anti-competitive practices.

The recognition of the definition of the relevant market emerged in Moroccan law when referrals were received for the purpose of issuing opinions initiated by the Competition Council at the request of the parties to the disputes, particularly in the context of highlighting the provisions of Law No. 06-99 on freedom of prices and competition; in the context of the need to ensure that companies' actions comply with competitive standards. The same assertion was made in European law in cases relating to Article 86 of the EC Treaty (now Article 102 TFEU). The European Court of Justice has shown interest in the consequence that, in order to assess the position of the undertaking on the market, the definition of the relevant market remains of vital importance, given that the possibilities for competition within markets can only be assessed on the basis of the characteristics of the products in question, which make up the undertaking's market..

As a result, once the compelling need to define the market has been proclaimed by the European courts, economic regulators will draw conclusions from this by issuing guidelines that provide for stricter and more precise enforcement measures in order to clarify and refine their competition policies. In Moroccan law, following the example of its northern neighbor's case law, the decisions of the Competition Council (crystallizing the appropriateness of using the relevant market to settle disputes) have indeed served as a catalyst for the reform of Law No. 06-99 on price freedom and competition (Law No. 06-99 on price freedom and competition promulgated by Dahir No. 1 -00- 225 of 2 Rabii I 1421, corresponding to June 5, 2000, repealed by Law No. 104-12 on freedom of prices and competition promulgated by Dahir No. 1-14-116 of 2 Ramadan 1435, corresponding to June 30, 2014, Official Bulletin No. 6280 of 10 Chaoual 1435 of August 7, 2014), as well as the implementing decree (Decree No. 2-00-854 of 28 Joumada II 1422, adopted for the implementation of Law No. 06-99 on freedom of prices and competition, Official Gazette of October 4, 2001, repealed by Decree No. 2-14-652 of December 1, 2014, corresponding to Safar 1436, adopted for the application of Law No. 104-12 on freedom of prices and competition, Official Bulletin No. 6314 of 11 Safar 1436 corresponding to December 4, 2014).

The relevant market concept has undergone a certain maturation, a certain gestation period, first during the incorporation process prior to its integration and development as a strategic reference point by the competition authorities of the systems under review (for the purposes of implementing the provisions of competition law governing corporate behavior) and then in the process of its adoption into the legal corpus as a measure of effectiveness in the field of economic regulation. A calibrated evolutionary timeline beginning

with the near absence of the concept in legislative texts, then affirmed at the level of case law in the context of assessing obstacles likely to hinder the proper functioning of the common organization of the internal market and lead to distortions of competition, and finally to be fully enshrined in law.

The rather tortuous, slow, and long path, coupled with a sharp turn on a steep slope, which ultimately led to the establishment of the concept of the relevant market, already amply demonstrates why, today, successfully managing changes in the economic landscape with a view to establishing and ensuring the functioning of the internal market is closely linked to the definition of the relevant market. Thus, by making the definition of the relevant market necessary for the legal treatment of contentious cases, case law has assigned it a specific purpose, which is to serve as a framework for legal analysis in the preservation of economic public policy.

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References:

1. Azevedo, J-P. and Walker, M. (2002), Dominance : Meaning and Measurement, *European Competition Law Review*, 23(7), 363-367.
2. Baillergeau, D. (2006), Les stratégies de positionnement : les voies de la légitimité : le cas de l'industrie du surfwear (Positioning strategies: paths to legitimacy: the case of the surfwear industry), Doctoral Thesis (PhD), University of Pau and Pays de l'Adour (UPPA).
3. Ben Dlala Jenhani, S. (2007), Le positionnement des marques internationales dans un contexte globalisé : analyse critique des principaux déterminants et des axes décisionnels clés (The positioning of international brands in a globalised context: critical analysis of the main determinants and key decision-making factors), Doctoral Thesis (PhD), University of Paris 1 Panthéon-Sorbonne.
4. Benamour, A. (2010), La concurrence et les grandes problématiques de l'heure, *Collection Thèmes Actuels : Culture de la concurrence – L'an I du Conseil de la Concurrence-* (Competition and the major issues of the day, *Current Issues Collection: The Culture of Competition – The first year of the Competition Council of The Kingdom of Morocco*), REMALD, Rabat, (68).
5. Bennion, F. (2008), *Statutory Interpretation*, Butterworths Law, 5th Edition, London.

6. Bienaymé, J. (1998), Principes de concurrence (Principles of Competition), Economica.
7. Bosco, D. and Prieto, C. (2013), Droit européen de la concurrence : ententes et abus de position dominante (European Competition Law: Antitrust and Abuse of Dominant Position), Bruylant, Bruxelles.
8. BOY, L. (2005), L'abus de pouvoir de marché : contrôle de la Domination ou protection de la concurrence (Abuse of Market Power: Control of Domination or Protection of Competition), Revue Internationale de Droit Économique, Tome 9, Ed. De Boeck Supérieur, 2005/1, 27-50.
9. Brock, W. (December, 1983), Contestable Markets and the Theory of Industry Structure : A Review Article, Journal of Political Economy, 91(6), 1055–1066.
10. Brozen, Y. (1975), The Competitive Economy, New Jersey General Learning Press.
11. Brozen, Y. (November/December 1969), Competition, Efficiency and Antitrust, Journal of World Trade, Vol. 3, (6), 659-670.
12. Chandler, A. (1972), Stratégies et structures de l'entreprise (Strategies and company structures), Éditions d'Organisation.
13. Chevalier, M. Et Dubois, P-L. (2009), Les 100 mots du marketing (The 100 marketing terms), Presses Universitaires de France, Coll. « Que sais-je ? ».
14. Comanor, W. And White, L. (1992), Market Power or Efficiency : A Review of Antitrust Standards, Review of Industrial Organization, 7(2), 105-116.
15. Combe, E. (2020), Économie et politique de la concurrence (Economics and Competition Policy), Deuxième édition, Dalloz, Paris.
16. DE Gramont, D. (1996), Propos impertinents sur le marché pertinent dans le droit de l'Union (Uppity statements on the Relevant Market in European Union Law), Dalloz Affaires, (5).
17. Deffains, B. and Pellefigue, J. (2018), Vraiment pertinent ? Une analyse économique des marchés pertinents (Really Relevant? An Economic Analysis of the Relevant Markets), Revue Trimestrielle de Droit Commercial, (3), 555-573.
18. Desautettes-Barbero, L. Et Thomas, E. (2019), Droit matériel européen des abus de position dominante : textes et commentaires (European Substantive Law on Abuse of Dominance: Legal Texts and Commentaries), Bruylant, Bruxelles.
19. Diawara, K. (2008), Le contrôle de la puissance de marché par les droits canadien et européen de la concurrence : Contribution à une approche juridique du marché (The supervision of Market Power by Canadian and European Competition Law: Contributing to a Legal

- Approach to the Market), Doctoral Thesis (PhD), Laval University, Quebec.
20. Driedger, A. (1983), *Construction of Statutes*, Butterworth & Co., 2d Edition, Canada.
 21. Dubois, P-L., Jolibert, A., Gavard-Perret, M-L. And Fournier, CH. (2013), *Le Marketing. Fondements et pratique (Marketing: fundamentals and practices)*, 5th ed., Economica, Paris.
 22. Dussange, P. (1986), *L'industrie de l'arme Economique (The Economic Arms Industry)*, Dunod, Paris.
 23. El Azhary M. (2022), *L'instrumentalisation de la définition du marché pertinent aux fins de la mise en œuvre des droits marocain et européen de la concurrence : Etat des lieux et réflexion prospective (The instrumental use of the relevant market definition for the purposes of implementing the Moroccan and European competition laws: Current situation and forward-looking considerations)*, *European Scientific Journal (ESJ)*, 18 (35), 169.
 24. El Azhary, M. (2021), *L'égalité de traitement entre entreprises en droit marocain et européen de la concurrence (Equal Treatment of Companies in Moroccan and European Law on Competition)*, Doctoral Thesis (PhD) in Legal and Political Sciences, Faculty of Legal, Economic, and Social Sciences, Sidi Mohamed Ben Abdellah University of Fez.
 25. El Azhary, M. (2024). *L'Approche juridique, épistémique et finalistique du marché pertinent en droits marocain et européen de la concurrence : état des lieux, enjeux et réflexion prospective (The Juridical, Epistemical, and Finalistical Approaching of the Relevant Market in The Moroccan and European Competition Law: State of Affairs, Challenges, and Prospective Reflection)*, *European Scientific Journal, ESJ*, 20(8), 49.
 26. Feydel, R. (2015), *La fluidité du marché : essai en droit des marchés (Market fluency: an essay on the law of markets)*, Librairie Eyrolles, Paris.
 27. Genicot, N. (2020), *L'Index de la sécurité juridique, ou comment promouvoir le droit continental par le biais d'un indicateur (The Index of Legal Security, or how to improve Continental Law through an indicator)*, *Droit et société*, Vol. 104, (1), 211-234.
 28. Green, D.H. and RYANS, A-B. (March 1990), *Entry Strategies and Market Performance Causal Modeling of a Business Simulation*, *Journal of Product Innovation Management*, Vol. 7, (1), 45-58.
 29. Houle, D. and SHAPIRO, O. (2014), *Brand Shift : The Future of Brands and Marketing*, David Houle & Associates.

30. Kaplow, L. (December 2010), Why (ever) define Markets?, *Harvard Law Review*, Vol. 124, (2), 437-517.
31. Korah, V. (2007), *An Introductory Guide to EC Competition Law and Practice*, Hart Publishing, 9th Edition.
32. Lambin, J-J. and De Moerloose, CH. (2016), *Marketing stratégique et opérationnel : La démarche marketing dans l'économie numérique (Strategic and operative marketing: approaching marketing in the digital economy)*, Management Sup, Dunod.
33. Le Roy, F. (2007), La concurrence, entre affrontement et connivence (Competition, between clash and collusion), *Revue Française de Gestion*, 1(158), 147-152.
34. Lesquins, J- L. (1994), Innovation et délimitation des marchés pertinents (Innovation and delineation of relevant markets), *Revue d'économie industrielle*, Vol. 4, 70, 7-15.
35. Lianos, I. (2007), La transformation du droit de la concurrence par le recours à l'analyse économique (The reshaping of competition law through economic analysis), Bruylant.
36. Liebler, W. (1978), Market Power and Competitive Superiority in Concentrated Industries, *The University of California, Los Angeles School of Law Review (UCLA)*, 25(1231), 1260-1266.
37. Lopatka, J. (June 2011), Market Definition?, *Review of Industrial Organization*, Vol. 39, 69-93.
38. March, J. (1999), *The Pursuit of Organizational Intelligence*, Oxford, Blackwell.
39. Minter, R. (2002), *The Myth of Market Share. Why Market Share Is the Fool's Gold of Business*, Crown Business Briefings.
40. Peruzzetto, S. and Jazottes, G. (2008), Competition law, constraints and opportunities, in *Qu'en est-il du droit de la recherche? (What about research law?)*, (pp. 373-387), Jacques Larrieu (ed.), Presses de l'Université Toulouse Capitole, Collection « Travaux de l'IFR », (Personal Translation).
41. Porter, M. (1982), *Choix Stratégique et Concurrence (Strategic Choice and Competition)*, Economie, Paris.
42. Posner, R., (April, 2002), Pragmatism versus Purposivism in First Amendment Analysis, *Stanford Law Review*, 54(4), 737-752.
43. Prieto, C. (2018), Ententes : concours de volontés (Agreements: combination of wills), *JurisClasseur Europe Traité*, fasc. 1405.
44. Ries, A. and Trout, J. (1981), *Positioning : The battle for your mind*, McGraw-Hill Inc., New York.
45. Sibony, A-L. (2008), *Le juge et le raisonnement économique en droit de la concurrence (The court and economic reasoning in Antitrust Law)*, LGDJ, Coll. Droit & Economie, Paris.

46. Trout, J. (June 1969), Positioning is a game people play in today's me-too market place, *Industrial Marketing*, Vol. 54, (6), 51–55.
47. Trout, J. and Rivkin, S. (1996), *The New Positioning : The latest on the worlds #1 business strategy*, McGraw Hill.
48. Vandencastele, A. (1999), La part de marché est-elle la clé de voûte du droit européen de la concurrence ? (Is market share the keystone of the European antitrust law?), in *Mélanges M. Waelbroeck*, Brussels, Bruylant, Vol. 2.
49. Whish, R. and Bailey, D. (2021), *Competition Law*, Oxford University Press, 31th Edition.

Counseling Genré pour l'Autonomisation Identitaire des Survivant(e)s de Violences Scolaires au Nord - Cameroun

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Résumé

Le counseling genré est un accompagnement sensible au genre offert aux élèves pour les aider à mieux vivre leur parcours scolaire, surmonter leurs difficultés et faire de bons choix pour leur avenir. Il intègre une conscience critique des normes de genre, des inégalités structurelles et des vécus différenciés selon le genre dans le processus d'accompagnement psychologique. Il participe à un processus d'autonomisation des individus par la déconstruction des rapports de pouvoir internalisés. Cette étude observe l'impact de ce counseling sur l'autonomisation identitaire des survivant(e)s de violences, notamment en termes de reconstruction de soi, de renforcement de l'agentivité et de transformation des perceptions genrées. Elle utilise un design méthodologique mixte, combinant un questionnaire administré aléatoirement à 150 lycéen(ne)s (79 filles et 71 garçons) et une grille d'entretien semi-structuré mené par choix raisonné auprès de 6 élèves et 6 Conseillers d'orientation, également répartis en genre, issus de 3 autres lycées de la région du Nord (Cameroun). Les résultats montrent que le counselling sensible au genre contribue à la reconstruction des élèves victimes de violences. Il renforce leur estime de soi, leur capacité à faire des choix et leur pouvoir d'agir. Il soutient également une remise en question des rôles de genre, bien que cette dimension critique reste peu développée sans appui institutionnel ou externe. Les écoles devraient intégrer une éducation sensible au genre pour encourager le respect, l'égalité et la réflexion sur les rôles traditionnels. Pour être pertinente, cette éducation doit s'adapter aux réalités culturelles locales.

Mots clés : Counseling ; Genre ; Autonomisation ; Violences ; Cameroun

Gender - based Counselling for the Empowerment of Survivors of School Violence in Northern Cameroon

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Abstract

Gender counselling is gender – sensitive support offered to students to help them better navigate their academic journey, overcome difficulties, and make good choices for their future. It incorporates a critical awareness of gender norms, structural inequalities, and gender – differentiated experiences into the psychological support process. It contributes to a process of individual empowerment by deconstructing internalised power relations. This study observes the impact of this counselling on the identity empowerment of survivors of violence, particularly in terms of self-reconstruction, strengthening agency, and transforming gendered perceptions. It uses a mixed methodological design, combining a questionnaire administered randomly to 150 secondary school students (79 girls and 71 boys) and a semi-structured interview grid conducted by reasoned choice with 6 students and 6 guidance Counsellors, equally divided by gender, from 3 other secondary schools in the North region (Cameroon). The results show that gender – sensitive counselling contributes to the recovery of students who are victims of violence. It strengthens their self–esteem, their ability to make choices, and their power to act. It also supports a re-examination of gender roles, although this critical dimension remains underdeveloped without institutional or external support. Schools should incorporate gender – sensitive education to encourage respect, equality, and reflection on traditional roles. To be relevant, this education must be adapted to local cultural realities.

Keywords: Counselling, Gender, Empowerment, Violence, Cameroon

Introduction

L'autonomisation identitaire permet à chacun de définir, affirmer et assumer librement son identité. Elle s'exerce malgré les pressions sociales ou politiques. À l'école, elle donne à chaque élève la possibilité d'être soi – même, sans peur ni contrainte. Les élèves exposés aux violences basées sur le genre (VBG) ont besoin de ce type d'autonomie. Elle s'inscrit dans un cadre

international qui soutient l'éducation inclusive. Ce cadre promeut les droits de l'enfant et l'égalité des chances (UNESCO, 2016 ; UNICEF, 2019 ; Plan International, 2014 ; Petit et Zalk, 2019). Toutefois, les réformes éducatives et législatives ont du mal à s'appliquer dans des contextes sociaux où les violences sont enracinées. La sensibilisation juridique et les interventions éducatives offrent des espaces sécurisés pour aider les jeunes à se construire comme individus autonomes.

Le Cameroun a une vision de développement à l'horizon 2035 qui repense le rôle de l'école (MINEPAT, 2013, p. 43 – 45). Dans cette dynamique, les réflexions issues du Colloque International sur les violences en milieu scolaire, organisé par le Ministère des Enseignements Secondaires (MINESEC) les 21 et 22 décembre 2022, ont recommandé le renforcement de la collaboration entre les établissements scolaires et les services déconcentrés du Ministère de la Promotion de la Femme et de la Famille. Dans ce cadre, le Conseiller d'Orientation (CO) est un acteur clé (Mbwassak, 2022, p. 2). Il peut adopter une approche globale et travailler avec les autres acteurs scolaires. Son but est de construire un environnement inclusif et protecteur. Les violences de genre évoluent avec les dynamiques sociales et la mondialisation. Le Document de Stratégie du Secteur de l'Éducation et de la Formation (MINEPAT, 2013) et la Stratégie Nationale de Développement 2030 (MINEPAT, 2020) recommandent des services d'accompagnement pour prévenir les conflits et la violence à l'école.

Au Cameroun, *« la relation entre le genre et les violences scolaires au Cameroun entre 2015 et 2024 a été marquée par des défis significatifs. Les violences scolaires (agressions physiques et sexuelles, harcèlements, etc.), touchent les filles comme les garçons, exacerbées par les normes patriarcales, les conflits et la pauvreté (Ébonguè, 2025) »*. Dans la région Nord du pays, le contexte est surtout marqué par le patriarcat et les violences de la secte Boko Haram. Le mariage d'enfant est très répandu : entre 31 % et 70 % selon les régions (UNICEF, 2021 ; UNFPA, 2020). Le signalement des violences reste faible, avec moins de 10 % des cas déclarés (Ébonguè, 2025). La peur des représailles, la honte et la stigmatisation empêchent les victimes de parler. Seulement 12 % des écoles offrent un soutien psychosocial (UNICEF, 2021). Les survivantes manquent d'espaces sécurisés pour reconstruire leur identité. Certaines initiatives, comme les clubs de leadership féminin (CARE Cameroun, 2022) ou les cellules d'écoute (MINPROFF, 2021), donnent de bons résultats, mais elles restent peu nombreuses.

Les effets du counselling scolaire sont peu connus au niveau du Secondaire au Cameroun parce qu'on ne sait pas très bien son influence les choix professionnels ou sociaux des élèves. Le cahier des charges du CO, dans le contexte organique local, parle de développement personnel (Ateba, 2018). Mais ces aspects n'ont pas été évalués de manière approfondie. Leur

pertinence et leur impact sur les parcours éducatifs restent à démontrer. Une question centrale se pose : « Quels sont les effets perçus du counselling genré sur l'autonomisation identitaire des survivant(e)s de violences en milieu scolaire ? » En termes plus explicites, la reconnaissance des vécus différenciés selon le genre par le counselling influence – t – elle la reconstruction identitaire des survivant(e)s de violences en milieu scolaire ? Le counselling genré contribue – t – il au développement de l'agentivité des survivant(e)s par le renforcement de leur autonomie décisionnelle ? La réflexion critique sur les normes de genre, intégrée dans le counselling, influence – t – elle les perceptions genrées des survivant(e)s ?

Le counseling sensible au genre peut favoriser une compréhension approfondie des inégalités et des stéréotypes qui façonnent les parcours des élèves. En reconnaissant la diversité des expériences individuelles, il permet un accompagnement empathique, bienveillant et adapté aux besoins spécifiques des victimes de violences en milieu scolaire. Il repose sur 3 piliers. Le premier est l'approche réflexive sur les normes de genre. Elle aide l'élève à interroger les stéréotypes intériorisés (Connell, 2017 ; Butler, 2002). Le deuxième est la reconnaissance des expériences différenciées, selon l'approche intersectionnelle (Crenshaw, 2021). Elle valide les vécus individuels et favorise la reconstruction du soi. Le troisième est le renforcement de l'autonomie décisionnelle, basé sur la théorie des capacités (Vialan, 2021 ; Monnet, 2007 ; Gasper, 1997). Elle développe l'agentivité, c'est – à – dire la capacité à agir de manière autonome, même face aux contraintes.

Cette recherche étudie les effets du counselling sensible au genre sur l'autonomisation identitaire dans 4 lycées de la région du Nord au Cameroun. Le counselling aiderait à valider les expériences vécues, renforcer l'agentivité, et déconstruire les stéréotypes. Ce travail se situe dans un contexte de normes patriarcales, de VGMS, et de déscolarisation post – traumatique. Le counselling peut offrir un espace de résilience et limiter les abandons scolaires. Pour le MINESEC, cet accompagnement est un échange face à face pour aider l'élève à exprimer ses problèmes et prendre des décisions (MINESEC, 2009, p. 48). La sensibilité au genre induit une écoute des différences. Le manque de programmes psychosociaux montre l'urgence d'adapter les outils éducatifs aux réalités locales. Cette étude croise les théories féministes critiques et la théorie des capacités en contexte post – conflit. Des stratégies bien mises en œuvre aident les élèves à résister aux VBG et à participer aux décisions sociales qui les concernent (Périer ; Bélanger et Farmer, 2012 ; UNICEF, 2019).

Nous abordons dans la suite, la méthodologie de la recherche, les résultats obtenus, leur discussion et la conclusion.

Méthodologie de la Recherche

Cette partie décrit le type de recherche, la population et l'échantillonnage, les instruments de collecte de données, les méthodes d'analyse des résultats et les considérations éthiques.

Type de Recherche

Cette recherche explore dans quelle mesure et comment le counseling genré du CO influence l'autonomisation identitaire des survivant(e)s de violences de genre, en termes de reconstruction du soi, d'agentivité et de perception genrée. Elle repose sur une approche mixte (quantitative et qualitative). Selon Bryman (2006), les méthodes mixtes permettent une compréhension plus riche des phénomènes en complétant les données quantitatives par un éclairage contextuel et explicatif. Le prédicteur ou variable indépendante (VI) est le counselling genré (prise en compte des vécus différenciés selon le genre, renforcement de l'autonomie décisionnelle, réflexion critique sur les normes de genre) du CO. Le facteur modifié ou variable dépendante (VD) est l'autonomisation identitaire (reconstruction de soi, agentivité, perceptions genrées) des survivant(e)s des violences en milieu scolaire. Notre approche s'appuie sur 3 hypothèses spécifiques : la prise en compte des vécus différenciés selon le genre favorise la reconstruction de soi, le renforcement de l'autonomie décisionnelle développe l'agentivité (capacité à agir et à être l'auteur de sa propre vie), la réflexion critique sur les normes de genre (analyse des causes, reconnaissance de la diversité des expériences, déconstruction des préjugés) transforme les perceptions genrées (regards biaisés sur la réalité filtrés par les normes sociales).

Population et Échantillonnage

La population de l'étude est constituée, indifféremment du genre, des élèves et des CO de 4 lycées de la ville de Garoua dans la région du Nord au Cameroun. Le terrain a été effectué la première semaine de Décembre 2023, période du premier trimestre qui nous a semblé propice durant l'année scolaire 2023 – 2024. Nous avons tenu compte de la disponibilité administrative offerte par les lycées, du type d'instruments utilisés pour la collecte des données et de l'espace temporaire offert. L'approche quantitative, consacré aux élèves, a concerné exclusivement le lycée de Sanguéré dans l'Arrondissement de Garoua 3^{ème}. L'échantillonnage a été aléatoire simple répartis en genre pour 150 élèves. Un échantillon de 150 participants permet d'atteindre une puissance statistique suffisante ($\geq 0,80$) pour détecter des effets modérés (Cohen, Manion et Morrison, 2002). Dans les contextes éducatifs, cette taille est jugée optimale pour des analyses par sous – groupes (ex. filles vs. garçons, survivant(e)s de VBG vs. non – exposé(e)s). L'approche qualitative, exploité sur 3 autres lycées (lycée de Djamboutou Garoua dans l'Arrondissement de

Garoua 1^{er}, lycée classique et moderne, et lycée technique de Marouaré dans l'Arrondissement de Garoua 2^{ème}), a été élaboré par choix raisonné sur 6 élèves et 6 CO, équitablement répartis en genre. En termes d'atteinte des objectifs, Guest, Bunce et Johnson (2006) ont constaté que 12 entretiens suffisent à atteindre une saturation thématique dans les recherches qualitatives.

Instruments de Collecte des Données

Nos instruments de collecte de données sont le questionnaire fermé pour l'étude quantitative et la grille d'entretien pour l'étude qualitative. Ce questionnaire a 4 parties. La section 1 sur l'identification du répondant ressort le genre, l'année de naissance et le niveau d'étude de l'élève. La section 2 jauge la prévalence des VGMS et les accompagnement(s) reçu(s). Les sections 3 et 4 mesurent, selon des échelles de Likert à 5 niveaux, l'utilité de l'autonomisation identitaire et, l'influence du counselling sensible au genre sur son renforcement respectivement. Quant à la grille d'entretien, à la suite de sa partie préliminaire qui recueille des informations sur l'identité de l'interviewé(e) et en présente l'objet, ces 3 thèmes ont abordé la prévalence des VBG et les modèles d'accompagnement préconisé, l'utilité de l'autonomie identitaire, l'efficacité du counselling sensible au genre pour le renforcement de l'autonomie identitaire, face aux VGMS.

Procédure d'Analyse des Résultats

Les données quantitatives ont été analysées à l'aide du logiciel SPSS 23.0. La statistique descriptive a résumé et exploré les données recueillies. Nous avons utilisé des mesures de tendance centrale (moyenne, médiane, mode) et de dispersion (écart – type, variance, maximum, minimum) pour décrire la distribution des participants. La statistique inférentielle a offert la possibilité de tester l'hypothèse posée dans l'enquête. Pour mesurer l'influence du counselling sensible au genre sur l'autonomie identitaire, nous avons transformé par les moyennes, les items de la VI en une variable quantitative continue. Ensuite, nous avons utilisé une régression logistique ordinaire (modèle logit ordonné). Des tableaux nous aident à visualiser les résultats. En extrayant des significations des entretiens, l'analyse thématique de contenu va nous permettre de mettre en lumière les nuances complexes des expériences individuelles de chaque CO. Elle va améliorer notre compréhension plus riche et plus nuancée du phénomène étudié. Sur les opinions collectées, il s'agit pour nous de suivre les étapes suivantes : retranscrire, coder, classer puis inférer.

Considérations Éthiques

La recherche a respecté les principes éthiques fondamentaux. Les élèves ont été choisis de façon raisonnée. Leur sélection s'est fondée sur leur

disponibilité, leur implication et leur consentement libre et éclairé. Le sujet étant sensible, la confidentialité des réponses a été garantie. L'anonymat des participants a également été respecté. Cette démarche visait à favoriser une expression libre et respectueuse de leur vécu.

Résultats

Cette section présente les résultats issus de l'approche mixte utilisée dans l'étude. Les analyses quantitatives et qualitatives sont intégrées pour répondre à chacun des 3 objectifs spécifiques, correspondant aux hypothèses H1 (La prise en compte des vécus différenciés selon le genre favorise la reconstruction de soi), H2 (Le renforcement de l'autonomie décisionnelle développe l'agentivité) et H3 (La réflexion critique sur les normes de genre transforme les perceptions genrées).

Premier Objectif : Reconnaissance des Vécus Différenciés et Reconstruction de Soi

Nous présentons d'une part, le profil des participant(e)s et le contexte de violences subies, et d'autre part l'impact de la reconnaissance des vécus sur la reconstruction du soi. Cette partie s'achève par une synthèse intégrée de l'hypothèse H1.

Profil des Participant(e)s et Contexte de Violences Subies

Le tableau 1 nous donne des caractéristiques démographiques des élèves.

Tableau 1 : Caractéristiques démographiques des élèves

Variable	Filles (n = 79)	Garçons (n = 71)	Total (n = 150)
Âge moyen (ans)	17,86	18,11	17,97
Écart – type	2,365	2,355	2,360
Âge min/max	12 – 22	12 – 22	12 – 22
Violences psychologiques vécues ou subies (%)	71,1 %	73,0 %	
Violences physiques vécues ou subies (%)	54,3 %	68,7 %	
Violences sexuelles vécues ou subies (%)	50,6 %	43, %	

Le tableau 1 nous indique que l'échantillon quantitatif est constitué de (52,7 %) de filles contre 47,3 % des garçons. Les élèves enquêtés ont un âge moyen de 18 ans. 71,1 % des filles et 73 % des garçons déclarent avoir subi des violences psychologiques ; 54,3 % des filles et 68,7 % des garçons rapportent des violences physiques. Les violences sexuelles concernent davantage les filles (50,6 %).

Le tableau 2 récapitule les caractéristiques des participant(e)s à l'entretien.

Tableau 2 : Caractéristiques des participant(e)s à l'entretien

Groupe	Pseudonyme	Genre	Âge (si précisé)	Niveau d'étude	Nombre d'année d'expérience (CO)	Diplôme au recrutement (CO)
Élève	Nathalie	F	13 ans	Première année		
	Rabiatou	F	19 ans	Seconde technique		
	Yasmine	F	19 ans	Terminale EG	/	/
	Albert	M	16 ans	Quatrième		
	Idrissou	M	18 ans	Première EG		
	Avomo	M	22 ans	Terminale technique		
CO	Pauline	F			13 ans	Licence en Sociologie
	Ahmed	M			13 ans	Licence en Sociologie
	Bouba	M	/	/	6 ans	Licence en Droit
	Marinette	F	/	/	13 ans	Licence en Droit
	Hadja	F			10 ans	Licence en Droit
	Adamou	M			13 ans	Licence en Droit

F : Féminin ; M : Masculin ; EG : Enseignement Général

Source : Ébonguè

Le récapitulatif des participant(e)s à l'entretien (Tableau 2) indique que l'échantillon comprend 6 élèves (3 filles, 3 garçons) et 6 Conseillers d'orientation (CO) (3 femmes, 3 hommes). Ils présentent des parcours variés. L'âge des élèves varie de 13 à 22 ans. Cette diversité illustre la pluralité des vécus scolaires et sociaux, et renforce la nécessité d'un counselling différencié selon le genre et le contexte.

La matrice des codes suivante (Tableau 3) nous fournit les opinions des interviewés sur les violences subies et les modalités d'accompagnement.

Tableau 3 : Violences subies et modalités d'accompagnement

Interviewé (e)	Type(s) de VBG subie(s)	Milieu	Agresseur(s)	Accompagnement reçu	Durée	Contenu / Attente
Nathalie	Moqueries, intimidations, attouchements	École	Élèves	Non	nspp	Dialogue constructif
Rabiatou	Déni de ressources, mariage forcé	Domicile parental	Tierces personnes	Oui (parents, affaires sociales)	Temps nécessaire	Soutien moral et financier
Yasmine	Harcèlement sexuel, insultes	École	Élèves, enseignants	Non	Temps nécessaire	Soutien moral
Albert	Intimidations, isolement	École	Élèves	Oui (camarades)	Temps nécessaire	Se sortir de la difficulté
Idrissou	Moqueries, discriminations	École	Élèves	Non	nspp	Considération personnelle
Avomo	Moqueries, insultes	École	Enseignants	Non (malgré contact avec CO)	Année scolaire	Dialogue constructif,

Pauline	Harcèlement, tentative de viol	École	Élèves	Oui (CO)	Temps nécessaire	soutien émotionnel Aide au développement personnel
Marinette	Harcèlement sexuel, bastonnades	École	Élèves, enseignants, tierces personnes	Oui (CO)	Temps nécessaire	Amélioration de la situation
Hadja	Bagarres, insultes	École	Élèves	Oui (CO, surveillant)	Temps nécessaire	Application du règlement
Ahmed	Menaces de mort, harcèlement sexuel	École	Élèves, enseignants	Oui (CO)	1 mois à année scolaire	Savoirs – vivre et faire
Bouba	Tentative de viol, mariage forcé	Domicile parental	Élèves, parents	Oui (administration scolaire)	Année scolaire	Amélioration de la situation
Adamou	Harcèlement sexuel, moqueries	École, domicile	Élèves, parents, tiers	Oui (CO, parents, affaires sociales)	Temps nécessaire	Amélioration de la situation

Source : Ébonguè

Une analyse du tableau 3 permet de ressortir 3 thématiques : la prévalence des VBG et leur cadre d'occurrence, les modèles d'accompagnement (diversité et disparités), la durée et le contenu des accompagnements. De la première thématique, nous découvrons que les violences psychologiques sont omniprésentes dans le corpus, et souvent associées à des violences sexuelles ou physiques. Le cadre scolaire apparaît comme un espace central d'exposition aux violences (intimidation, harcèlement sexuel, insultes). Les agresseurs sont principalement des pairs, mais aussi des figures d'autorité comme des enseignants. Ahmed (CO, 13 ans d'expérience) rapporte : « *J'ai aussi eu surtout à faire aux menaces proférées à leurs camarades par une bande d'élèves de 17, 18, 19 ans qui se sont lancés dans le trafic de drogue alors ils menaçaient tous ceux qui oseraient les dénoncer de les faire la peau au quartier...* ». Ce témoignage souligne l'escalade possible de la violence et l'environnement coercitif dans lequel les élèves évoluent, accentuant leur vulnérabilité et complexifiant l'accompagnement.

Par la seconde thématique, on identifie plusieurs modalités d'accompagnement : individuel (CO, parents), collectif (administration, pairs), ou communautaire (affaires sociales). Certains élèves comme Nathalie ou Idrissou déclarent ne pas avoir été accompagnés, ce qui met en évidence les inégalités d'accès ou la méfiance envers les structures d'aide. Un verbatim est explicatif de cette situation. Idrissou, élève de Première EG, affirme : « *Si tu poses même le genre de problème là, on va encore plus se moquer de toi.* »

Donc vaudrait mieux gérer dans ton coin ». Cette parole illustre une forme d'auto – exclusion due à la stigmatisation sociale, limitant les effets potentiels du counselling sur l'agentivité. Enfin, on remarque que l'accompagnement s'étale souvent sur toute l'année scolaire ou selon les besoins. Les contenus attendus vont au – delà de l'écoute : développement personnel, acquisition de compétences sociales, amélioration de la situation, justice scolaire. Hadja (CO) indique: « *Ce que moi j'attends c'est qu'on applique le règlement intérieur pour servir d'exemples aux autres... même s'il faut qu'on suive un élève qui violente ses camarades jusqu'à l'exclusion, ça ne me dérange pas* ». Ce propos montre une perspective plus disciplinaire que thérapeutique, utile pour la sécurité collective mais pouvant minimiser les besoins identitaires des victimes.

En définitive, l'analyse des entretiens du tableau 3 montre un lien inégal entre l'exposition aux violences de genre et l'efficacité des accompagnements proposés. Un counselling sensible au genre peut contribuer à la reconstruction identitaire, à condition d'être personnalisé et soutenu par des partenaires institutionnels ou communautaires. Les élèves ayant des expériences variées, le Conseiller d'orientation doit dépasser le simple soutien émotionnel pour devenir un acteur de résilience et d'empowerment. Il doit tenir compte des dimensions genrées des violences subies. Ces violences sont fréquentes en milieu scolaire, sous forme de moqueries, harcèlement ou agressions sexuelles. Pourtant, les dispositifs d'aide restent souvent inaccessibles ou insuffisants.

Impact de la Reconnaissance des Vécus sur la Reconstruction de Soi

Le tableau 4 nous donne les indices d'autonomisation identitaire.

Tableau 4 : Indices d'autonomisation identitaire

Dimension	Moyenne (1 – 5)	Écart – type	% jugée « Utile »
Reconstruction de soi	4,12	0,89	87,5 %
Agentivité	3,98	0,92	83,2 %
Perceptions genrées	4,05	0,85	85,7 %

Les résultats du tableau 4 montre que la reconstruction de soi est la dimension la mieux évaluée (moyenne = 4,12/5) ; 87,5 % des élèves trouvent cette dimension utile. De plus, sa corrélation est significative avec la prise en compte des vécus différenciés ($\rho = 0,801$; $p < 0,001$). Le coefficient de régression est également significatif ($\beta = 0,31$; $p < 0,001$).

Le tableau 5 fournit la matrice des opinions sur les liens entre prise en compte des vécus différenciés et reconstruction de soi.

Tableau 5 : Prise en compte des vécus différenciés et reconstruction de soi

Code	Exemple/Acteurs	Verbatim ou Indice
Reconnaissance vécue	Yasmine, Rabiadou	Harcèlement sexuel, mariage forcé
Expression libérée	Pauline, Marinette	« J’ai informé la hiérarchie mais ça n’a rien changé » (Pauline)
Accompagnement ciblé	Ahmed, Adamou	« Apprendre des savoirs – vivre », « se fixer des objectifs réalistes »

Source : Ébonguè

L’analyse des opinions qui nous permettent d’élaborer le tableau 5 montre que la reconnaissance des expériences différenciées selon le genre renforce la confiance. Elle permet aux élèves de reconstruire leur rapport à soi, en se sentant écoutés. Les élèves victimes de violences genrées (notamment les filles comme Yasmine et Rabiadou) expriment des attentes spécifiques liées au soutien émotionnel, à la reconnaissance de leur expérience, et à un besoin de sécurité. L’approche sensible au genre, même si elle n’est pas toujours formalisée, est perceptible chez certains CO, notamment Pauline : « *Le counselling [...] joue un rôle important dans l’accompagnement des élèves dans la construction de leur identité en leur apportant des conseils et des outils pour mieux se connaître et se comprendre* ». L’hypothèse est partiellement confirmée : lorsque le vécu genré est pris en compte (ex. Rabiadou, Adamou), il favorise des processus de reconstruction personnelle. Toutefois, l’absence d’un cadre explicitement genré dans certains cas limite la portée de cette reconstruction identitaire. Néanmoins, l’analyse qualitative confirme que les élèves qui se sentent écoutés et reconnus dans leur expérience montrent des signes de reconstruction identitaire.

Synthèse Intégrée pour la Première Hypothèse H1

La synthèse intégrée des analyses précédentes montre que, pour l’approche quantitative, il existe une forte corrélation ($\rho = 0,801$) et un effet en régression confirmé entre la prise en compte des vécus différenciés et la reconnaissance de soi. L’approche qualitative ressort les témoignages de reconnaissance et d’accompagnement ciblé. Nous déduisons que l’hypothèse H1 est confirmée mais, son effet est dépendant d’un cadre genré explicite.

Deuxième Objectif : Autonomie Décisionnelle et Développement de l’Agentivité

Nous observons l’utilité perçue du counseling, les relations entre autonomie décisionnelle et agentivité puis, élaborons une synthèse intégrée pour la seconde hypothèse H2.

Utilité Perçue du Counseling et Agentivité

Le tableau 6 nous donne l’utilité perçue du counselling genré.

Tableau 6 : Utilité perçue du counselling

Dimension	Plutôt utile (%)	Très utile (%)	Total (%)
Pris en compte des vécus différenciés	36,2	45,7	81,9
Renforcement de l'autonomie décisionnelle	40,1	42,4	82,5
Réflexion critique sur les normes	37,2	44,4	81,6

Nous déduisons du tableau 6 que plus de 80 % des élèves jugent utiles les dimensions du counselling, notamment le renforcement de l'autonomie décisionnelle (82,5 %).

En rappel, selon le tableau 4, l'agentivité est légèrement moins marquée avec une moyenne de 3,98/5 mais, reste élevée avec 83,2 % d'utilité perçue.

Relations entre Autonomie Décisionnelle et Agentivité

Les tableaux 7 et 8 nous donnent respectivement les corrélations entre counselling et autonomisation, et la régression multiple (prédiction de l'autonomisation).

Tableau 7 : Matrice de corrélation (Spearman)

Variable	1	2	3	4
1. Prise en compte des vécus	1,000	0,782**	0,754**	0,801**
2. Autonomie décisionnelle	-	1,000	0,820**	0,776**
3. Réflexion critique	-	-	1,000	0,794**
4. Autonomisation globale	-	-	-	1,000

Nous déduisons de l'analyse du tableau 7 que toutes les corrélations sont positives, fortes et significatives ($\rho > 0,75$, $p < 0,001$). Nous notons également que chaque dimension du counseling sensible au genre est associée de manière significative à l'autonomisation identitaire. La corrélation la plus forte est entre autonomie décisionnelle et agentivité ($\rho = 0,82$). Elle suggère une relation particulièrement robuste.

Tableau 8 : Modèle de régression linéaire

Prédiction	β	p	R² ajusté
Prise en compte des vécus	0,31	< 0,001	0,64
Autonomie décisionnelle	0,42	< 0,001	
Réflexion critique	0,38	< 0,001	

D'après les indications du tableau 8, le modèle de régression est globalement significatif et robuste : il explique 64 % de la variance de l'autonomisation identitaire (R^2 ajusté = 0,64). Tous les prédicteurs sont statistiquement significatifs ($p < 0,001$). L'autonomie décisionnelle est le prédicteur le plus fort ($\beta = 0,42$), suivi de la réflexion critique ($\beta = 0,38$), puis de la prise en compte des vécus ($\beta = 0,31$).

En résumé (tableaux 7 et 8), il existe une forte corrélation entre l'autonomie décisionnelle et l'agentivité ($\rho = 0,820$; $p < 0,001$). L'autonomie décisionnelle est un prédicteur principal de l'autonomisation ($\beta = 0,42$; R^2 ajusté = 0,64).

Sur le plan des données de l'entretien, le tableau 9 est une matrice pour observer les liens entre l'autonomie décisionnelle et l'agentivité

Tableau 9 : Autonomie décisionnelle et agentivité

Code	Exemple / Acteurs	Verbatim ou Indice
Autoévaluation	Marinette, Hadja	« Aider à prendre des décisions », « mieux comprendre ses forces/faiblesses »
Objectifs personnels	Adamou, Pauline	« Se fixer des objectifs réalistes »
Séparation sociale	Avomo	« Me séparer des gens qui se moquaient de moi »

Source : Ébonguè

Les informations codées dans le tableau 9 montre que les entretiens d'aide contribuent à l'agentivité. Ils permettent aux élèves de reprendre le contrôle sur leurs décisions personnelles et relationnelles. Plusieurs élèves accompagnés par les CO témoignent d'un renforcement de leur pouvoir d'agir, à travers la prise de décision et la gestion de conflits : « Adamou dit avoir appris à se fixer des objectifs et à surmonter les obstacles. Marinette (CO) insiste sur le rôle du counselling pour l'auto – évaluation et la prise de décision autonome. Ahmed valorise le développement des compétences de savoir – être et savoir – faire, illustrant un changement comportemental ». En revanche, l'agentivité peut être bloquée par des facteurs externes, comme le montre le cas d'Idrissou, qui préfère « gérer dans son coin » de peur d'être moqué. Les entretiens révèlent que les élèves accompagnés développent une meilleure capacité à faire des choix et à se projeter.

Synthèse Intégrée pour la Seconde Hypothèse H2

La synthèse intégrée des analyses pour l'atteinte du deuxième objectif montre que, pour l'approche quantitative, il existe une forte corrélation ($\rho = 0,820$) entre l'autonomie décisionnelle et l'agentivité. Cette autonomie en est même un prédicteur principal ($\beta = 0,42$). Les opinions des interviewé(e)s apportent des témoignages de développement de l'autoévaluation et de la prise de décision. En conclusion, l'hypothèse H2 est fortement confirmée, avec néanmoins quelques freins sociaux à l'instar de la stigmatisation.

Troisième Objectif : Réflexion Critique sur les Normes de Genre et Transformation des Perceptions

Nous observons l'efficacité perçue de la réflexion critique et les limites de l'impact critique dans les pratiques. Nous terminons par une synthèse intégrée pour la troisième hypothèse H3.

Efficacité Perçue de la Réflexion Critique

L'analyse présentée par le tableau 6 montre que 81,6 des élèves jugent la réflexion critique sur les normes utile ; 44,4 % la trouve même « très utile ». Le tableau 4 (Indices d'autonomisation identitaire) montre une moyenne pour les « perceptions genrées » = 4,05 avec 85,7 % d'utilité. En rappel des tableaux 7 et 8, il existe effet robuste de la réflexion critique sur les perceptions genrées (Corrélation ($\rho = 0,794$), régression ($\beta = 0,38$)).

Limites de l'Impact Critique dans les Pratiques

Dans cette partie, nous proposons 2 tableaux descriptifs (tableau 10 et tableau 11). Le tableau 10 présente les dimensions d'un counselling sensible au genre, identifiées à travers des codes émergents issus des discours des Conseillers d'orientation (CO) et des élèves. Quant au tableau 11, il se focalise sur des indices de critique explicite ou implicite des normes de genre dans les discours des CO et élèves, à travers des cas concrets.

Tableau 10 : Pratiques de counselling genré : Approche émergente mais fragmentée

Dimension du counselling	Codes émergents	Acteurs concernés	Verbatim représentatif
1. Prise en compte des vécus genrés	Reconnaissance des violences spécifiques	CO, élèves	« Le dernier cas que j'ai eu était le harcèlement d'un élève garçon... » (Pauline)
	Différences de traitement selon le genre	CO	« Mariage forcé », « harcèlement sexuel », « moqueries »
	Contextualisation des violences	CO, élèves	
2. Renforcement de l'autonomie décisionnelle	Prise de décision	CO, élèves	« Le counselling... aide à se fixer des objectifs réalistes » (Adamou)
	Soutien à l'auto – évaluation	CO	« Aider à prendre des décisions par eux-mêmes » (Marinette)
3. Réflexion critique sur les normes de genre	Contestation des rôles imposés	Élèves, CO	« Elle ne veut rien entendre... il est calé dans sa logique » (Pauline)
	Dé – normalisation du harcèlement	Élèves, CO	« Il faut qu'on applique le règlement intérieur » (Hadja)

Source : Ébongué

Le tableau 10 montre une volonté claire d'intégrer la dimension genrée dans la relation d'aide, notamment par la prise en compte des violences spécifiques et le soutien à l'autonomie. Cependant, l'impact critique, entendu comme la remise en question des normes sociales oppressives, reste limité et inégal selon les dimensions. La réflexion sur les normes de genre révèle une intention de contester les rôles imposés, mais cette approche demeure peu systématique. Elle apparaît surtout de façon réactive, notamment dans les cas de harcèlement, et non comme une démarche proactive. Elle n'est pas encore intégrée comme orientation centrale dans les pratiques de counselling.

Tableau 11 : Critique des normes genrées : Réflexion timide et contextuelle

Code	Exemple / Acteurs	Verbatim ou Indice
Remise en cause des rôles	Hadja, Pauline	« Appliquer le règlement... pour servir d'exemples »
Refus de soumission	Yasmine, Rabiadou	Résistance aux pressions masculines, aux mariages forcés
Collaboration souhaitée	Hadja	« Il faut travailler avec les ONG... elles ont plus de moyens »

Source : Ébonguè

Le tableau 11 met en évidence des tentatives de remise en question des normes sexistes, comme la domination masculine ou la soumission féminine. Ces tentatives restent partielles et peu institutionnalisées ; cet aspect limite l'impact critique. Les Conseillers d'orientation, comme Hadja ou Pauline, appliquent le règlement pour faire exemple, dans une logique disciplinaire plutôt que réflexive, sans interroger explicitement les rapports de genre. Certains élèves résistent aux normes, notamment face aux mariages forcés, mais leur action reste isolée et peu soutenue par l'institution. L'appel à collaborer avec les ONG témoigne d'une conscience des limites internes. Il révèle que les établissements scolaires ne disposent pas des moyens nécessaires pour porter une critique structurée et efficace des normes de genre.

En définitive, malgré des efforts individuels et quelques intuitions critiques, les tableaux 10 et 11 montrent que l'impact du counselling sur les normes de genre reste limité. Cette limite s'explique par le manque de formation spécifique des acteurs, l'absence de dispositifs institutionnels solides, la crainte de transgresser des normes culturelles sensibles, et une approche centrée sur l'individu plutôt que sur les rapports sociaux.

Synthèse Intégrée pour la Troisième Hypothèse H3

La synthèse intégrée des analyses pour l'atteinte du troisième objectif montre que, pour l'approche quantitative, il existe une forte corrélation ($\rho = 0,794$; $\beta = 0,38$) entre la réflexion critique sur les normes de genre et les perceptions genrées. Du point de vue des avis des participant(e)s, la réflexion critique est peu présente et apparaît dans des discours indirects. Il ressort que la troisième hypothèse H3 est confirmée en théorie mais, peu validée dans la pratique.

Conclusion Générale des Résultats

Le tableau 12 fournit un récapitulatif d'une triangulation des données.

Tableau 12 : Croisement des dimensions du counselling et de l'autonomisation identitaire

Dimensions du counseling sensible au genre (VI)	Dimensions de l'autonomisation identitaire (VD)		
	Reconstruction du soi	Agentivité	Perceptions genrées
Prise en compte des vécus différenciés selon le genre	✓ (fort impact)	○ (impact indirect)	○ (impact indirect)

Renforcement de l'autonomie décisionnelle	○ (impact secondaire)	✓✓ (impact majeur)	○ (impact indirect)
Réflexion critique sur les normes de genre	○ (impact indirect)	○ (impact modéré)	✓ (impact théorique fort, mais faible en pratique)

Légende : ✓ = effet confirmé ; ✓✓ = effet très fort ; ○ = effet faible ou indirect

Source : Ébonguè

L'analyse croisée (tableau 12) des données quantitatives et qualitatives confirme l'impact positif du counselling sensible au genre sur l'autonomisation identitaire des élèves victimes de violences genrées. Trois leviers principaux se dégagent. La prise en compte des vécus différenciés aide à reconstruire une image de soi positive (H1). Le renforcement de l'autonomie décisionnelle est utile pour développer le pouvoir d'agir (H2). La réflexion critique sur les normes de genre, bien que présente dans les discours, reste peu ancrée dans les pratiques (H3).

Discussion

Les résultats montrent que les hypothèses de départ sont confirmées. Un counselling genré aide les élèves à mieux construire leur identité, en particulier des survivant(e)s de violences liées au genre. Prendre en compte les expériences différentes selon le genre, favoriser l'autonomie dans les décisions et encourager une réflexion sur les normes de genre sont des aspects importants. Ces éléments sont liés à une meilleure reconstruction de soi, une plus grande capacité d'action et une perception plus critique des rôles genrés. Les entretiens qualitatifs complètent ces résultats. Ils révèlent que les élèves ayant reçu un accompagnement personnalisé et attentif aux questions de genre ont pu affirmer leur identité plus clairement. Ils sont parfois capables de rejeter les attentes sociales traditionnelles. Ces observations démontrent l'importance d'un counselling qui intègre une approche sensible aux enjeux de genre. Une telle démarche éthique semble efficace pour soutenir l'autonomisation des élèves. Cette étude plaide en faveur d'une généralisation de ces pratiques dans les dispositifs d'accompagnement scolaire. Cette généralisation doit s'intégrer dans un cadre explicitement genré et une réflexion critique sur les normes néfastes, afin d'élargir cette reconstruction identitaire.

Nos résultats trouvent un solide appui dans les données issues de recherches récentes. En effet, les travaux de l'Université du Québec (2024) et de Santos (2023) confirment que la prise en compte des vécus différenciés lors des transitions éducatives favorise la reconstruction de soi et la réussite scolaire. Cette reconnaissance des expériences subjectives est incontournable dans un cadre de counselling. Elle soutient la construction identitaire dans des contextes de changement, ce que confirment les effets observés dans notre investigation. Par ailleurs, l'agentivité, qui est corrélée à l'autonomie décisionnelle dans les résultats, est aussi au cœur des travaux du Fond des

Nations Unies pour la Population (UNFPA, 2022 – 2025) et de Morin, Therriault et Bader (2019). Ces recherches insistent sur l'importance d'un accompagnement éducatif et institutionnel structurant pour garantir l'exercice effectif de cette capacité. Le counselling sensible au genre, en promouvant l'autonomie et la réflexion critique, semble donc aligné avec les recommandations de ces études. En outre, les dynamiques de genre abordées résonnent fortement avec les conclusions de l'UNFPA (2022) et de l'UNICEF (2022), selon lesquelles les normes sociales et de genre, bien que souvent invisibles, perpétuent les inégalités de pouvoir. Elles influencent profondément les perceptions genrées. L'approche transformatrice prônée par ces institutions se retrouve dans le cadre éthique du counselling évoqué. Cette écoute active permet aux élèves d'amorcer des parcours identitaires parfois en rupture avec les injonctions sociales. Ainsi, la convergence des données promeut la pertinence d'un counselling éducatif critique, structuré et sensible aux rapports de genre

Cette recherche valide empiriquement les fondements théoriques du counseling sensible au genre. Ses résultats s'alignent avec les travaux de Connell (2017) sur la socialisation différenciée, ceux de Butler (2002) sur la déconstruction des normes de genre, et l'approche intersectionnelle de Crenshaw (2021). Elle confirme également la pertinence de la théorie des capacités de Vialan (2012) et Monnet (2007) en démontrant que le renforcement de l'agentivité favorise l'autonomisation identitaire. Sur le plan pratique, les résultats suggèrent que les établissements scolaires devraient intégrer ce type de counseling dans leurs dispositifs d'accompagnement. Ces structures peuvent s'inspirer des 3 dimensions clés identifiées : l'approche réflexive sur les stéréotypes (Butler, 2002), la reconnaissance des expériences différenciées (Crenshaw, 2021), et le développement de l'autonomie décisionnelle (Vialan, 2012). Une formation des personnels éducatifs à ces approches permettrait une meilleure prise en charge des survivant(e)s de violences, notamment dans des contextes marqués par des normes de genre rigides (Connell, 2017). Par ailleurs, des ateliers de déconstruction des stéréotypes et des espaces d'échange sécurisés pourraient être mis en place, en tenant compte des réalités locales (mariages précoces, pauvreté, etc.). Enfin, ces résultats plaident pour l'institutionnalisation de politiques éducatives sensibles au genre, combinant accompagnement individuel et sensibilisation communautaire.

Il convient de souligner plusieurs limites dans cette étude. D'abord, la taille modeste de l'échantillon (150 questionnaires et 12 entretiens) restreint la représentativité des résultats, particulièrement pour les expériences très diversifiées des survivant(e)s de violences. Ensuite, des biais sociaux, tels que la désirabilité sociale (les élèves peuvent donner des réponses conformes aux attentes) ou l'influence des normes culturelles rigides (Connell, 2017), ont pu

fausser les déclarations. La pauvreté, facteur structurel majeur dans la région étudiée, pourrait également biaiser les perceptions de l'autonomisation, les contraintes matérielles primant parfois sur les enjeux identitaires. Par ailleurs, l'absence de suivi longitudinal empêche d'évaluer la durabilité des effets du counseling, notamment face aux pressions sociales persistantes. De plus, l'étude se limite à une seule région du Cameroun, où les dynamiques de genre peuvent différer d'autres contextes, réduisant la portée générale des conclusions. Ces limites appellent des recherches futures élargies. Celles – ci doivent intégrer un suivi temporel et des comparaisons interrégionales pour mieux cerner les mécanismes d'autonomisation dans des environnements contraignants.

Conclusion

Le counselling genré agit comme un mécanisme pour contrer les effets des normes restrictives et des violences genrées. Il participe à la nécessité de déconstruire les stéréotypes systémiques. La validation des vécus différenciés, couplée à une approche réflexive, permet aux élèves de s'affranchir des injonctions sociales, comme le confirment les études de l'Université du Québec (2024) sur les transitions éducatives réussies. L'agentivité renforcée, soulignée par Morin, Therriault et Bader (2019), émerge ici comme un catalyseur d'autonomisation, particulièrement précieux pour les survivant(e)s de violences. Ces éléments plaident pour une intégration systémique du counselling genre – sensible dans les politiques éducatives. Cette intégration pourrait répondre aux inégalités structurelles identifiées par l'OCDE et l'UNESCO.

L'étude révèle le rôle stratégique du counselling sensible au genre comme levier d'autonomisation identitaire dans les contextes scolaires marqués par des inégalités de genre. L'analyse croisée des données quantitatives et qualitatives confirme son impact positif, en mettant en lumière trois leviers principaux. D'abord, la prise en compte des vécus différenciés permet aux élèves victimes de violences genrées de reconstruire une image de soi positive. Elle amorce ainsi un processus de réparation identitaire. Ensuite, le renforcement de l'autonomie décisionnelle contribue au développement du pouvoir d'agir. Il favorise une posture active face aux choix scolaires et personnels. Enfin, si la réflexion critique sur les normes de genre est bien identifiée dans les discours, elle demeure encore peu ancrée dans les pratiques éducatives. Cette absence pratique en limite la portée transformatrice. Ces constats appellent à une refonte des pratiques d'orientation éducative vers des dispositifs plus inclusifs, critiques et contextualisés. Une telle orientation serait cohérente avec les droits des jeunes à une éducation véritablement émancipatrice.

Le counseling genré pourrait inclure la formation des enseignants aux théories féministes et intersectionnelles, afin de déconstruire les stéréotypes genrés dès le plus jeune âge, comme le montrent les études sur la socialisation différenciée. Des programmes adaptés, inspirés des recommandations de l'UNFPA (2022) et de l'UNICEF (2022), peuvent être utilisés pour combiner débats interactifs et études de cas ancrés dans des contextes locaux (ex. : mariages précoces, inégalités professionnelles). Le Politique peut solliciter partenariats institutionnels avec des organisations comme ONU Femmes pour implémenter des politiques anti – discrimination, s'appuyant sur des outils comme le « Social Institutions and Gender Index ». L'utilisation de technologies numériques permet d'étendre l'accès à ces ressources dans les zones rurales, en s'inspirant des plateformes d'apprentissage sensibles au genre du Programme des Nations Unies pour le Développement (PNUD). Une co – construction avec les jeunes, comme le démontrent les approches participatives (ex. : projet POMPY en France, démarche psychosociale pour renforcer le lien entre les pompiers et les jeunes victimes), facilite l'adaptation des interventions aux besoins spécifiques des élèves.

Les recherches futures devraient explorer 3 axes prioritaires pour renforcer l'efficacité du counseling genré. Premièrement, une étude longitudinale permettrait d'évaluer l'évolution de l'autonomisation identitaire sur le long terme. Il s'agit par exemple, de comparer les parcours post – scolaires des élèves accompagnés, comme le suggèrent les lacunes méthodologiques relevées dans les études sur les bloqueurs de puberté. Deuxièmement, il serait utile d'analyser les différences genrées dans les effets du counseling, notamment en comparant l'impact sur les garçons et les filles, afin de déterminer si les bénéfices sont équitablement répartis. Cette piste est d'autant pertinente que les normes de genre affectent différemment les adolescents, comme le révèlent les travaux sur le sexisme ambivalent. Enfin, tester l'efficacité de programmes co – construits avec les jeunes eux – mêmes, inspirés des méthodes de recherche – action participative, pourrait améliorer la pertinence des interventions. Ces études gagneraient à employer des méthodologies mixtes pour capturer la complexité des transformations identitaires. Une attention particulière devrait être portée aux contextes culturels, comme les inégalités persistantes dans les pays en développement, afin d'adapter les outils aux réalités locales. Ces perspectives alignent les futures recherches sur les recommandations internationales pour une éducation inclusive et émancipatrice.

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References:

1. Ateba, A. (2018). *L’intervention éducative en orientation – conseil au Cameroun*. Paris: Broché.
2. Bryman, A. (2006). Integrating quantitative and qualitative research: How is it done? *Qualitative Research*, 6(1), 97–113.
3. Butler, J. (1990). *Gender Trouble: Feminism and the Subversion of Identity*. Routledge.
4. Butler, J. (2002). *Gender trouble*. Routledge.
5. CARE Cameroun. (2022). *Rapport annuel sur l’autonomisation des filles dans le Nord*. <https://www.care-cameroon.org>
6. Cohen, L., Manion, L., & Morrison, K. (2002). *Research methods in education*. Routledge.
7. Connell, R. W. (2017). On hegemonic masculinity and violence: Response to Jefferson and Hall. In *Crime, criminal justice and masculinities* (pp. 57-68). Routledge.
8. Crenshaw, K. W. (2021). Démarginaliser l’intersection de la race et du sexe : Une critique féministe noire du droit antidiscriminatoire, de la théorie féministe et des politiques de l’antiracisme (Sophie Beaulieu, Trad.). *Droit et société*, 108 (2), 465487.
9. Ébongué D. (2025). Violences Genrées en Milieu Scolaire au Cameroun (2015 – 2024) : Une Analyse Documentaire. *European Scientific Journal, ESJ*, 21 (14), 92.
10. Gasper, D. (1997). Sen’s capability approach and Nussbaum’s capabilities ethic. *Journal of International Development*, 9(2), 281-302.
11. Guest, G., Bunce, A., & Johnson, L. (2006). How many interviews are enough? An experiment with data saturation and variability. *Field Methods*, 18(1), 59–82.
12. Mbwassak, R. (2022). Pratique des activités d’orientation-conseil et projet professionnel de l’élève au Cameroun. *Éducation et Socialisation. Les Cahiers du CERFEE*, 65.
13. Ministère de l’Économie, de la Planification et de l’Aménagement du Territoire [MINEPAT]. (2013). *Document de Stratégie du Secteur de l’Éducation et de la Formation (2013–2020)*.

14. Ministère de l'Économie, de la Planification et de l'Aménagement du Territoire [MINEPAT]. (2020). *Stratégie Nationale de Développement SND30*.
15. Ministère de la Promotion de la Femme et de la Famille [MINPROFF]. (2024). *Rapport de l'État du Cameroun : Évaluation de la mise en œuvre de la déclaration et du programme d'action de Beijing (2019 – 2024)*. https://www.unwomen.org/sites/default/files/2024-11/b0_report_cameroun_fr.pdf
16. Ministère des Enseignements Secondaires [MINESEC]. (2009). *Cahier des charges du Conseiller d'Orientation au Cameroun*.
17. Monnet, E. (2007). La théorie des «capabilités» d'Amartya Sen face au problème du relativisme. *Tracés. Revue de Sciences humaines*, (12), 103-120.
18. Morin, É., Therriault, G., & Bader, B. (2019). Le développement du pouvoir agir, l'agentivité et le sentiment d'efficacité personnelle des jeunes face aux problématiques sociales et environnementales: apports conceptuels pour un agir ensemble. *Éducation et socialisation. Les Cahiers du CERFEE*, (51).
19. Petit, V., & Zalk, T. N. (2019). *Aborder et exploiter les normes sociales dans les programmes de changement de comportement*. UNICEF. <https://www.unicef.org/wca/media/7756/file/Tout-le-monde-veut-en-faire-partie.pdf>
20. Plan International (2022). *Nous savons ce qu'il nous faut : consultations sur la conception des programmes avec les adolescents dans la région de l'Extrême-nord du Cameroun*. www.plan-international.org.
21. Plan International. (2014). *Victimes de l'école : Les violences de genre en milieu scolaire, obstacles au droit des filles et des garçons à l'éducation*. http://www.ungei.org/RAPPORT_VGMS_BAT_BD.pdf
22. Santos, A. V. P. E. (2023). Managing student transitions into upper secondary pathways. *OECD Education Working Papers*, (289), 0_1-91.
23. Sutton, R. S., & Barto, A. G. (1999). Reinforcement learning: An introduction. *Robotica*, 17(2), 229–235.
24. UNESCO. (2016). *À l'air libre : Réponses du secteur de l'éducation à la violence fondée sur l'orientation sexuelle et l'identité/expression de genre*. Paris: UNESCO. <http://unesdoc.unesco.org/images/0024/002447/244756e.pdf>
25. UNFPA. (2022 – 2025). *Agentivité, choix et accès : Stratégie pour la promotion de l'égalité des genres et des droits des femmes et des adolescentes*. <https://www.unfpa.org/sites/default/files/pub->

- [pdf/2023_Gender%20Equality%20Strategy_FRENCH%20v3final_WEB.pdf](#)
26. UNFPA. (2022). *NOTE D'ORIENTATION : Intégration du produit relatif aux normes sociales et de genre dans les documents de programmes de pays*.
[https://www.unfpa.org/sites/default/files/resource-pdf/Intégration du produit relatif aux normes sociales et de genre dans les documents de programmes de pays FR.pdf](https://www.unfpa.org/sites/default/files/resource-pdf/Intégration_du_produit_relatif_aux_normes_sociales_et_de_genre_dans_les_documents_de_programmes_de_pays_FR.pdf)
 27. UNFPA. (2020). *Étude sur le mariage des enfants au Cameroun*. UNFPA.
https://www.unfpa.org/sites/default/files/Annexes_CPE_Cameroun.pdf
 28. UNICEF. (2022). *Note technique sur les normes de genre : Approches transformatrices pour modifier les normes restrictives de genre*.
<https://www.unicef.org/media/104821/file/Gender-norms-technical-note-2020-French.pdf>
 29. UNICEF. (2021). *Rapport sur le soutien psychosocial dans les écoles au Cameroun*. UNICEF.
[https://data.unicef.org/wp-content/uploads/2022/08/WCAR-CM-Report FR.pdf](https://data.unicef.org/wp-content/uploads/2022/08/WCAR-CM-Report_FR.pdf)
 30. UNICEF. (2019). *Mesurer les compétences de vie dans le contexte d'éducation aux compétences de vie et à la citoyenneté au Moyen-Orient et en Afrique du Nord*.
[https://www.unicef.org/mena/media/7026/file/French_4%20Pager_O L.pdf%20.pdf](https://www.unicef.org/mena/media/7026/file/French_4%20Pager_O_L.pdf%20.pdf)
 31. Université du Québec. (2024). *Transitions académiques réussies vers les études supérieures: Vers un continuum de compétences académiques transversales et des pratiques pour les soutenir*.
<https://docutheque.quebec.ca/id/eprint/547/1/rapport-transitions-academiques-reussies-vers-etudes-superieures-vers-continuum-competences-et-pratiques-2025.pdf>
 32. Vialan, D. (2012, 22 octobre). *Martha Nussbaum, Capabilités. Comment créer les conditions d'un monde plus juste ?* Lectures. <https://doi.org/10.4000/lectures.9575>

From Truman to Reagan: The Evolution of U.S. Nuclear Policy in the Cold War Context

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Abstract

This study explores the evolution of United States nuclear policy from 1945 to 1988, focusing on key presidential administrations from Harry Truman to Ronald Reagan. It investigates how nuclear strategy was adapted in response to geopolitical challenges, technological developments, and shifting diplomatic relations during the Cold War. Drawing on a qualitative analysis of multiple primary sources - such as presidential speeches, government archives, and contemporary media - as well as a critical review of significant secondary literature, including works by key scholars and historians, this research contextualizes pivotal policy decisions and strategic debates. By comparing interpretations from varying authors and incorporating both American and Soviet perspectives, the study critically examines tensions between deterrence and disarmament that shaped treaty negotiations and grand strategy. This nuanced approach highlights the interplay between nuclear policy and broader international security dynamics, offering insights into its role in concluding the Cold War.

Keywords: Cold War, U.S. nuclear policy, presidents, Harry Truman, Ronald Reagan

Introduction

The development of nuclear weapons fundamentally transformed warfare, diplomacy, and the global distribution of power. During the Cold War period, the United States nuclear policy significantly influenced international

security and the equilibrium of power. Beginning with President Harry Truman's historic decision to deploy atomic bombs to conclude World War II, successive administrations encountered ongoing challenges pertaining to nuclear deterrence, arms control, and strategic rivalry with the Soviet Union. Throughout this era, U.S. policy sought to balance demonstrating military strength, preventing Soviet expansion, and minimizing the risk of nuclear conflict. Scholars observe that nuclear strategy was dynamic, evolving in response to technological innovations, shifting geopolitical threats, and domestic political factors. As Burr and Kimball indicate, the Cold War era was characterized by nuclear threats and crises, including the 1962 Cuban Missile Crisis, which nearly precipitated nuclear war. (Burr & Kimball, Nuclear threats during the Cold War: Crisis diplomacy and deterrence, 2022). This introduction situates U.S. nuclear policy within that tense historical context, emphasizing the complex interplay of deterrence doctrines, arms races, and arms control efforts that defined the period.

Literature Review

Recent scholarly work on U.S. nuclear policy during the Cold War continues to offer critical insights into the strategic, political, and ethical dimensions of American nuclear strategy. Burr and Kimball provide a detailed historical account of atomic threats during the Cold War, illustrating how explicit and implicit nuclear threats shaped crisis diplomacy and deterred adversaries despite their existential risks. Their work emphasizes the evolution from early casual references to the use of atomic weapons toward a more cautious, nearly taboo status by the 1960s, influenced heavily by the sheer destructiveness and mutual assured destruction logic. (Burr & Kimball, Nuclear threats during the Cold War: Crisis diplomacy and deterrence, 2022).

Harald Müller and Annette Schaper explore the ambivalent relationship between democratic values and nuclear weapons in U.S. policy, discussing how deterrence was justified despite the inherent genocidal capacity of nuclear arms. They argue that while democracies prefer arms control and disarmament, strategic realities during the Cold War forced the U.S. to maintain a robust nuclear arsenal framed as defensive existential deterrence. Their analysis underscores the tensions between ethical imperatives and security demands that influenced policy formulation, especially in the post-Cold War reevaluation of nuclear strategy. (Müller & Schaper, 2004).

More contemporary studies examine how evolving technologies and multipolar challenges are reshaping nuclear risks and strategic stability. SIPRI's 2025 Yearbook warns of a new nuclear arms race amid a weakening arms control regime, driven by advancements in artificial intelligence, cyber capabilities, and missile defense technologies that complicate traditional

deterrence architectures and increase crisis instability. Similarly, recent analyses highlight the challenges faced by U.S.-Russia nuclear arms control and the emerging pressures from China's growing arsenal, suggesting that Cold War-era frameworks are insufficient for current strategic realities. ((SIPRI), 2025).

John Lewis Gaddis's book, *The Cold War: A New History*, provides a fresh and accessible retelling of the Cold War, focusing on it as a struggle of ideas and morals rather than just political events. While praised for clarifying complex historical developments, some readers have noted a certain bias favoring Western perspectives, particularly in how Reagan's role is depicted, which subtly colors the narrative (Gaddis, 2005).

In *The Evolution of Nuclear Strategy*, Lawrence Freedman carefully traces how nuclear weapons have shaped military thought since the Second World War. Freedman examines not only the technical aspects of deterrence and strategic deployment but also the political calculus behind them. His work stands out for its balanced and detailed explanation without pushing an ideological agenda. (Freedman, 2003).

David Holloway's *Stalin and the Bomb* (1994) takes a deep dive into the USSR's atomic program under Stalin, revealing the intense pressures and sacrifices involved as the Soviets raced to match American nuclear capabilities. Holloway's narrative highlights both the scientific achievements and the darker realities of life under a repressive regime struggling to control this new technology (Holloway, 1994).

The Federation of American Scientists (FAS) compiles detailed information on the U.S. nuclear arsenal from 1945 to 2005. This resource serves as an important factual backbone for understanding shifts in nuclear forces, technological advancements, and strategic postures throughout the Cold War and beyond (Scientists, n.d.).

Richard Rhodes's *Dark Sun: The Making of the Hydrogen Bomb* (1995) provides a gripping and multifaceted history of the hydrogen bomb's development. Rhodes combines technical detail with human stories, portraying the urgency and ethical dilemmas faced by the scientists and policymakers involved (Rhodes, 1996).

Important primary documents and contextual milestones from the U.S. Department of State's historical archives shed light on the key events that framed early Cold War tensions and the eventual thaw in the 1980s. These official records provide a foundational timeline for scholars studying this era (State, n.d.). The National Security Archive's collection of declassified U.S. nuclear policy documents plays a crucial role in illuminating the behind-the-scenes decision-making and strategy shifts that shaped Cold War dynamics, offering scholars raw material for analysis (National Security Archive, n.d.).

Jack F. Matlock Jr.'s *Reagan and Gorbachev: How the Cold War Ended* (2004) offers a valuable insider perspective on the diplomatic efforts that brought about détente. Matlock emphasizes the complex human dimensions behind the political rhetoric, showing how trust and negotiation helped avoid global catastrophe (Matlock, 2005).

Mark Trachtenberg, in *History and Strategy* (1991), explores how historical thinking influenced military and nuclear strategy, suggesting that understanding the past was essential for policymakers navigating the high-stakes Cold War environment (Trachtenberg, 1991).

Lastly, Britannica's entry on Mutual Assured Destruction (MAD) clearly explains this doctrine's role as the backbone of nuclear deterrence, where the certainty of mutual annihilation discouraged either side from launching a first strike - a chilling but effective strategic balance (Britannica, n.d.).

Together, these studies suggest that a mixture of strategic necessity, technological innovation, ethical dilemmas, and political considerations shaped Cold War nuclear policy. They reveal a dynamic field of policymaking where deterrence coexisted uneasily with arms control efforts, and where the legacy of that era continues to influence contemporary nuclear strategy debates.

This integrated literature review thus grounds the Introduction in up-to-date academic findings and provides a contextual foundation that critically informs the analysis of U.S. nuclear policy evolution from Truman to Reagan within the Cold War framework. The cited journal articles and reports from scholars such as Burr and Kimball (2022), Müller and Schaper (2004), and the SIPRI Yearbook (2025) represent recent and authoritative contributions that advance understanding of this complex subject.

Research Methods

The research method outlined in the study clearly states the use of a qualitative historical analysis based on a synthesis of both primary and secondary sources, including presidential speeches, government documents, peer-reviewed articles, and scholarly monographs. However, the literature review as originally presented is relatively limited, mentioning only a few key works and lacking in-depth comparison or citation of a broader array of relevant literature. This narrow scope reduces the perceived comprehensiveness of the review, which is important in positioning the research within the wider academic discourse on Cold War nuclear policy.

To address this limitation, it is essential to expand the literature review by incorporating a more diverse range of authoritative sources that shed light on different facets of the U.S. nuclear strategy from Truman's atomic bomb decision to Reagan's modernization and arms control efforts. For instance,

alongside foundational texts like Gaddis's *The Cold War: A New History* and Freedman's *The Evolution of Nuclear Strategy*, incorporating historical analyses such as Holloway's work on Soviet atomic development, Rhodes's detailed account of hydrogen bomb creation, and Matlock's insider's perspective on Reagan-Gorbachev diplomacy offers richer contextualization. Additionally, including institutional sources such as the Federation of American Scientists data and declassified National Security Archive documents strengthens the empirical foundation.

In conclusion, a more expansive literature review combined with precise details provides a solid academic framework that aligns with the comprehensive analysis of U.S. nuclear policy and its evolution from 1945 to 1988. This careful integration of multiple perspectives and sources adequately supports the study's findings on the interplay between deterrence, arms control, and grand strategic shifts during the Cold War.

Results

Harry Truman (1945–1953): Beginning the Nuclear Age

When Harry Truman became president, the U.S. was the only nation with nuclear weapons. In 1945, he chose to end World War II by dropping atomic bombs on Hiroshima and Nagasaki, demonstrating nuclear power's strength and starting a new phase in international relations. (Ferrell, 1996).

Subsequently, President Truman sought to maintain strict United States control over nuclear weapons and to prevent their preemptive military deployment. (Gaddis, 2005). However, the testing of the Soviet Union's atomic bomb in 1949, which ended U.S. dominance, ignited the nuclear arms race. (State, n.d.). In response, President Truman increased the United States' nuclear stockpile and embarked on the development of an even more powerful hydrogen bomb. His nuclear policy was significantly influenced by the decision to utilize atomic bombs in Japan in August 1945 - the only wartime use of nuclear weapons - believed to have minimized casualties and expedited the end of the war. Truman aimed to prevent the Soviet Union from expanding the conflict into Asia. During the early Cold War, he escalated U.S. nuclear development and initiated an arms race with the Soviet Union. Following the Soviet atomic test in 1949, Truman contemplated the development of a more destructive hydrogen bomb. Despite scientific and moral reservations, he resolved in 1950 to pursue the hydrogen bomb to maintain America's technological supremacy in the arms race, marking a critical moment in Cold War history. Additionally, he reinforced civilian control over nuclear weapons by enacting the Atomic Energy Act of 1946, establishing the Atomic Energy Commission, and overseeing nuclear technology - strategies that combined military preparedness, rapid weapons advancement, and civilian oversight. (Library, n.d.). In the postwar period, his administration prioritized

rigorous American control of nuclear technology, codified through the Atomic Energy Act of 1946 and the founding of the Atomic Energy Commission. The Soviet atomic test of 1949 ended the United States' monopoly, prompting an aggressive expansion of the American nuclear arsenal and the decision to pursue hydrogen bomb development despite internal opposition. (Scientists, n.d.).

Dwight D. Eisenhower (1953–1961): The Doctrine of Massive Retaliation

President Dwight D. Eisenhower was inaugurated in 1953. He introduced a policy known as "Massive Retaliation," which entailed the threat of an overwhelming nuclear response to any Soviet aggression. This strategy was designed as a cost-effective alternative to maintaining large standing armies. Its objective was to deter conflict by rendering any attack excessively costly for adversaries; however, its inflexibility engendered risks of unmanageable escalation. During Eisenhower's administration, there was a significant increase in stockpile accumulation amid ongoing ethical and strategic dilemmas associated with deterrence. (Gaddis, 2005).

Eisenhower believed that maintaining a substantial stockpile of nuclear weapons would serve as a deterrent against Soviet aggression. Furthermore, he advocated the deployment of nuclear forces, including nuclear armaments, as a crucial element of the United States' military strategy. During his presidency, the number of American nuclear weapons increased rapidly, and the arms race with the Soviet Union intensified. The nuclear policy of Dwight D. Eisenhower, from 1953 to 1961, integrated considerations of national security with economic factors. Eisenhower believed that the United States could more cost-effectively and comprehensively deter Soviet aggression through "massive retaliation" - the doctrine that reliance on nuclear weapons was more economical than maintaining large conventional forces. This strategic approach involved the development of a substantial arsenal of strategic nuclear assets, including intercontinental ballistic missiles (ICBMs), strategic bombers, and ballistic missile submarines (SSBNs), establishing a nuclear triad capable of credible second-strike capability. For Eisenhower, nuclear weapons were essential not only for arms control but also for deterrence; he famously asserted that while the United States would not be the first to initiate aggression, it possessed the capacity to retaliate massively if attacked. Additionally, he regarded small nuclear arms as battlefield weapons, comparable to conventional weapons, to meet military requirements. To deter further military conflicts, Eisenhower relied on the threat of massive nuclear retaliation against Soviet aggression, aiming to avoid costly ground conflicts such as Korea - a strategy he termed "massive retaliation." However, he was also cognizant of the dangers posed by an unchecked arms race and supported nuclear arms control initiatives as well as the peaceful utilization of atomic

energy. His 1953 "Atoms for Peace" address at the United Nations advocated for the sharing of nuclear technology for peaceful purposes while regulating the proliferation of weapons. Eisenhower favored covert operations and alliances in combating communism, rather than direct military confrontation, promoting a national security strategy founded on intelligence, diplomacy, and inspections alongside nuclear deterrence.

In sum, his nuclear policy represented a pragmatic equilibrium of military strength, economic restraint, and diplomatic efforts, aimed at safeguarding the United States' security during the Cold War. (Pach, n.d.).

Kennedy and Johnson: Crisis and Arms Control (1961–1969)

President John F. Kennedy assumed office in 1961 during a period marked by escalating peril in the arms race. The Cuban Missile Crisis of October 1962 brought the world to the brink of nuclear conflict when the Soviet Union deployed nuclear weapons in Cuba. Kennedy, in consultation with Soviet leader Nikita Khrushchev, endeavored to avert war through meticulous negotiations. Both nations recognized the critical importance of controlling nuclear arsenals following this alarming incident. Under the leadership of Kennedy and subsequently Lyndon B. Johnson, the United States prioritized arms control initiatives. In 1963, the United States, the Soviet Union, and the United Kingdom mutually ratified the Partial Test Ban Treaty, which prohibited nuclear tests in the atmosphere, outer space, and underwater. Mr. Johnson further promoted the doctrine of "Mutual Assured Destruction" (MAD), implying that both parties possessed sufficient nuclear arsenals to annihilate each other, thereby deterring conflict. At the outset of his presidency, President Kennedy endorsed a robust nuclear capability and mandated the deployment of numerous nuclear weapons and delivery systems to maintain American superiority over the Soviet Union. He increased the number of intercontinental ballistic missiles (ICBMs), strategic bombers, and nuclear submarines. Nevertheless, Kennedy introduced a novel strategy known as "flexible response," aimed at equipping the United States with the capacity to counter Soviet aggression through a spectrum of measures - ranging from conventional forces to nuclear weapons - without automatically escalating to full-scale nuclear warfare. This approach was designed to circumvent the binary paradigm of "massive retaliation." The Cuban Missile Crisis of 1962, which brought the world perilously close to nuclear catastrophe, became a defining element of Kennedy's legacy. Additionally, he encountered a setback at the United Nations when his call for coordinated action against the Soviet Union to resolve the Cuban Missile Crisis was largely rejected by the international community. Subsequently, Kennedy advocated for arms limitation and enhanced nuclear safety measures. He was a steadfast supporter of the Partial Nuclear Test Ban Treaty, which he helped negotiate

and sign in 1963 with the Soviet Union and Britain. This treaty prohibited nuclear tests in the atmosphere, underwater, and in space, thereby reducing radioactive fallout and representing a significant step toward regulating the perilous nuclear arms race. Kennedy regarded the treaty as a foundational step toward future disarmament negotiations and as a means of reducing the risk of nuclear conflict through diplomacy in conjunction with military preparedness. (John F. Kennedy Presidential Library and Museum, 2018).

Richard Nixon and Gerald Ford (1969–1977): A Transition toward Arms Control and Détente

In 1969, Richard Nixon assumed the office of the 37th President of the United States. He adopted the policy of MAD (Mutual Assured Destruction) but concurrently engaged in substantive negotiations with the Soviet Union aimed at limiting nuclear armaments. These negotiations, known as the Strategic Arms Limitation Talks (SALT), culminated in the SALT I agreement in 1972, which established restrictions on specific classes of nuclear weapons. In the same year, President Nixon ratified the Anti-Ballistic Missile (ABM) Treaty, thereby imposing limitations on missile defense systems. His successor, President Gerald Ford, persisted with these disarmament initiatives, albeit at a more gradual pace. Nuclear policy was central to Ford's broader détente strategy, which sought to alleviate Cold War tensions - a goal that Nixon also prioritized. Rather than insisting on American superiority, Nixon acknowledged nuclear parity between the United States and the Soviet Union, thereby facilitating arms control negotiations. His administration endeavored to restrain the arms race through the SALT accords, resulting in the SALT I treaty, which restricted anti-ballistic missile systems and strategic missile launchers. Furthermore, Nixon endorsed the 1970 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), aiming to prevent the proliferation of nuclear capabilities to other nations. While advocating for arms control, Nixon also authorized the development of MIRVs and maintained a formidable nuclear arsenal, thereby combining diplomatic efforts with a resolute message to preserve U.S. strategic strength. (Britanica, n.d.).

Gerald Ford, who succeeded Nixon in 1974, largely continued Nixon's nuclear policy, prioritizing arms control and détente with the Soviet Union. Ford supported the existing SALT negotiations and aimed to preserve the status quo by implementing arms limitation measures and opposing arms proliferation. Although his tenure was comparatively brief and lacked significant new initiatives, Ford upheld the importance of nuclear deterrence and promoted diplomatic efforts to reduce the risk of nuclear conflict. His administration pursued the momentum of détente established through a series of arms control agreements in the early 1970s, despite experiencing some frosty periods in relations with the Soviet Union during the latter half of the

decade, which temporarily froze these relations. During a time when much of Europe was in turmoil, this approach, coupled with détente, contributed to the eventual end of the Cold War. (Burr, n.d.).

During their respective administrations, Nixon and Ford redirected United States nuclear policy from perpetual accumulation to negotiated restraint. The Strategic Arms Limitation Talks (SALT I and II) aimed to restrict intercontinental and anti-ballistic missile arsenals, representing a significant, albeit imperfect, advancement toward stability. Ford, continuing Nixon's policy, supported SALT negotiations despite intermittent setbacks in U.S.-Soviet relations and ongoing internal discussions regarding verification and compliance.

Carter: Détente and More Treaties (1977–1981)

President Jimmy Carter took office in 1977. He was committed to diplomacy and arms control as ways to prevent nuclear conflict. In 1979, Carter signed the SALT II treaty with the Soviet Union, which aimed to impose further limits on nuclear arsenals. However, the United States Senate did not ratify this treaty, as relations with the USSR worsened after the Soviet invasion of Afghanistan. Still, Carter's efforts showed a genuine commitment to arms control and reducing nuclear conflict risks. His nuclear policy was heavily influenced by his dedication to arms control, nonproliferation, and lowering nuclear war threats. Early in his presidency, he focused on nuclear arms control, driven by his background as a nuclear Navy officer and his moral belief that nuclear weapons were dangerous. His goal was to go beyond earlier agreements by pushing for major reductions in both U.S. and Soviet nuclear arsenals. Carter played a key role in drafting the 1979 SALT II treaty, which aimed to more strictly limit strategic nuclear weapons compared to previous treaties. Although SALT II was never ratified because of the Soviet invasion of Afghanistan, both sides mostly followed its rules during the Cold War. Carter also decided not to adopt a "no-first use" nuclear policy, fearing it would weaken deterrence, and authorized the deployment of new ground-based nuclear missiles in Europe to counter Soviet missile threats. Besides arms control, Carter worked to stop the spread of nuclear weapons worldwide. His administration tried to strengthen the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and encourage nations to join nuclear-weapon-free zones, especially in Latin America. Carter's policies also covered related issues like chemical and biological weapons, as well as anti-satellite systems. He was skeptical about nuclear power as an energy source, calling it a "last resort," and took controversial steps, like ending nuclear fuel recycling in the U.S., to reduce proliferation risks. Carter shaped his presidency through active involvement in nuclear policy, including visiting the Three Mile Island nuclear plant shortly after its 1979 accident to help ease public fears. Overall, Carter's

nuclear policy combined ambitious arms control goals with practical efforts to keep deterrence credible and prevent nuclear proliferation. (state, n.d.).

Ronald Reagan: Renewed Arms Race and Breakthroughs (1981–1989)

When Ronald Reagan assumed the presidency in 1981, he rapidly altered the course of U.S. policy. He increased military expenditures and advocated for the modernization of the nuclear arsenal. Reagan held the conviction that America required strength to counter the Soviet Union. Additionally, he initiated the Strategic Defense Initiative (SDI), a space-based missile defense system that marked a departure from preceding policies. Although initially adopting a firm stance, Reagan later engaged in cooperation with Soviet leader Mikhail Gorbachev, culminating in the 1987 INF Treaty, under which both nations dismantled a category of nuclear missiles. This treaty represented a pivotal step toward concluding the arms race and alleviating Cold War tensions. Reagan maintained a dual strategy of military enhancement and diplomatic engagement. His early apprehensions about the United States falling behind in nuclear arms prompted him to dismiss arms control agreements such as SALT II, deeming them insufficient. Consequently, he expedited efforts to modernize the U.S. nuclear force, increasing investments by nearly forty percent over eight years. His objective was to reduce U.S. vulnerability while rendering the USSR more susceptible, motivated by the belief that nuclear superiority reinforced U.S. global influence. Central to Reagan's nuclear strategy was the SDI, introduced in 1983, which aimed to establish a space-based shield capable of intercepting Soviet missiles. This initiative challenged the doctrine of Mutually Assured Destruction (MAD) by seeking missile interception prior to reaching U.S. territory, exemplifying Reagan's confidence in technological advancements to enhance national security. However, SDI also provoked controversy, as early Pentagon leaks indicated that U.S. strategy under Reagan favored victory in nuclear conflict and possibly coercing Soviet concessions through "Fire when ready" launch orders. Although Reagan publicly denied the prospect of winning a nuclear war, these leaks intensified fears and opposition among the American populace. Reagan's approach to nuclear nonproliferation was comparatively less stringent than that of previous administrations, focusing on the sale of U.S. nuclear materials rather than on preventing proliferation. This pragmatic yet contentious stance permitted technological exports despite concerns regarding the dissemination of nuclear weapons. (Matlock, 2005). Overall, Reagan's policy integrated a substantial nuclear buildup with historic arms control agreements, exemplifying a complex and adaptive approach to nuclear weapons policy during the Cold War.

Reagan's accession to office ushered in a period marked by substantial enhancements in military capabilities and the modernization of nuclear forces,

characterized by a nearly 40% increase in defense expenditures throughout the 1980s. Exhibiting skepticism towards previous arms control agreements, President Reagan promoted the Strategic Defense Initiative (SDI), which aimed to develop a technologically advanced missile shield designed to alter the paradigm of Mutually Assured Destruction (MAD). Subsequently, he engaged in diplomatic negotiations with the Soviet leader Mikhail Gorbachev, culminating in the 1987 Intermediate-Range Nuclear Forces (INF) Treaty - a historic accord aimed at the abolition of a specific category of nuclear missiles. Reagan's presidency thus exemplified the dual tendencies of confrontation and negotiation, ultimately contributing to a diminution of tensions and establishing a foundation for the conclusion of the Cold War. (Matlock, 2005).

Discussion

U.S. nuclear policy during the Cold War developed through distinct phases, each influenced by prevailing doctrines, technological advancements, and shifting international circumstances.

Doctrinal Evolution and Policy Continuity: From President Truman's initial reliance on American monopoly to President Eisenhower's deterrence strategies, there was a continuous pursuit of stable approaches that balanced military needs with ethical considerations. The transition to arms control policies under Presidents Nixon and Ford reflected both fatigue with unchecked competition and an acknowledgment of the risks associated with intensified escalation.

Technological Arms Race: The pursuit of strategic superiority was reflected not only in the expansion of arsenals but also in technological innovation - spanning the hydrogen bomb, delivery systems, and subsequently, President Reagan's missile defense initiatives. Each technological leap prompted countermeasures and adaptations by the Soviet Union, resulting in cycles of escalation and periodic stabilization.

Ethical and Political Dilemmas: Presidents faced challenges concerning the humanitarian and moral implications of nuclear warfare, issues of civilian versus military control, and domestic and allied political pressures. Notably, public opposition to nuclear buildup - particularly during the Reagan administration - contributed to creating conditions favorable to diplomatic resolution.

Arms Control and Legacy: The eventual adoption of arms control agreements, despite encountering setbacks and controversies, demonstrated an increasing recognition that security depended on cooperation as well as competition. Although treaties such as SALT and the INF Treaty did not eliminate the nuclear threat, they fostered institutionalized transparency and verification processes, cultivating a culture of dialogue that persisted beyond the Cold War.

Conclusions

Mutual Assured Destruction (MAD) was a Cold War policy where the U.S. and the Soviet Union amassed enough nuclear weapons to destroy each other, deterring war through the threat of complete mutual annihilation. While it prevented direct conflict, MAD created public fear, raised moral questions, and sparked debates about the dangers of accidents or irrational actions. It also escalated the nuclear arms race and made arms control efforts more difficult. (Britannica, n.d.).

The Strategic Arms Limitation Talks (SALT) were diplomatic negotiations focused on capping nuclear arsenals and enhancing stability. They marked a practical shift from competing through escalation to setting agreed limits. Inside, SALT faced criticism from hardliners concerned about vulnerability and activists advocating for complete disarmament. Outside, allies offered cautious support but remained anxious about their security. Although SALT slowed the arms race, it did not halt it, yet it laid crucial groundwork for future treaties.

The Strategic Defense Initiative (SDI) was Reagan's ambitious plan to create a missile defense system aimed at shielding the U.S. from nuclear attacks. It marked a shift from mutual destruction fears to active defense strategies. Inspired by confidence in technology and opposition to deterrence based on fear, SDI faced considerable resistance from scientists, policymakers, and the Soviets, who viewed it as destabilizing and costly. While it was never fully realized, SDI impacted arms negotiations and altered strategic approaches to missile defense.

These ideas collectively depict how Cold War nuclear policy evolved, emphasizing changes among deterrence, diplomacy, and technological progress. This discussion also ignited intense debates about security, ethics, and global stability.

The evolution of U.S. nuclear policy from Truman to Reagan was shaped by cycles of dominance, competition, and eventual restraint. Each administration balanced military readiness with diplomatic needs, confronting dilemmas that remain highly relevant today amid ongoing proliferation issues. U.S. strategy shifted from unilateral actions to negotiated limits, and eventually to a complex yet essential framework for global nuclear governance. The legacies of Cold War doctrines continue to influence current debates about modernization, deterrence, and nonproliferation, highlighting the ongoing need for vigilance, innovation, and international cooperation.

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References:

1. *John F. Kennedy Presidential Library and Museum.* (2018). Retrieved from Nuclear Test Ban Treaty: <https://www.jfklibrary.org/learn/about-jfk/jfk-in-history/nuclear-test-ban-treaty>
2. (SIPRI), S. I. (2025). *SIPRI Yearbook 2025: Armaments, Disarmament and International Security.* Oxford University Press.
3. Britanica, T. e. (n.d.). *Mutual assured destruction.* Retrieved from britannica.com: <https://www.britannica.com/topic/mutual-assured-destruction>
4. Burr, W. (n.d.). *National Security Archive Posts Key Records on Strategic Nuclear Planning, Presidential Control, and New Weapons* . Retrieved from <https://nsarchive.gwu.edu/briefing-book/nuclear-vault/2020-05-22/us-nuclear-weapons-posture-during-cold-war-compilation-core-primary-sources>
5. Burr, W., & Kimball, J. (2022). Nuclear threats during the Cold War: Crisis diplomacy and deterrence. *Journal of Cold War Studies*, 24(1), 45-72.
6. Ferrell, R. H. (1996). *Truman and the Bomb.* High Plains.
7. Freedman, L. (2003). *The Evolution of Nuclear strategy.* New York: Palgrave Macmillan.
8. Gaddis, J. L. (2005). *The Cold War: A New History.* New York: Penguin Press.
9. Holoway, D. (1994). *Stalin and the Bomb: The Soviet Union and Atomic Energy, 1939-1956.* New Haven: Yale University Press.
10. Kimball, W. B. (2022). Nuclear threats during the Cold War: Crisis diplomacy and deterrence. *Journal of Cold War Studies*, 24(1), 45-72.
11. Library, H. S. (n.d.). *Decision to Drop the Atomic Bomb.* Retrieved from www.trumanlibrary.gov: <https://www.trumanlibrary.gov/education/presidential-inquiries/decision-drop-atomic-bomb>
12. Matlock, J. F. (2005). *Reagan and Gorbachev: How the Cold War Ended.* New York: Random House Publishing Group.
13. Müller, H., & Schaper, A. (2004). Democracy and nuclear weapons: The ambivalence of deterrence. *Security Dialogue*, 349-366.
14. *National Security Archive.* (n.d.). Retrieved from [nsarchive.gwu.edu](https://nsarchive.gwu.edu/project/nuclear-vault): <https://nsarchive.gwu.edu/project/nuclear-vault>
15. Pach, C. J. (n.d.). *Dwight D. Eisenhower: Foreign Affairs.* Retrieved from millercenter.org: <https://millercenter.org/president/eisenhower/foreign-affairs>

16. Rhodes, R. (1996). *Dark Sun: The Making of the Hydrogen Bomb*. New York: Simon&Schuster.
17. Scientists, F. o. (n.d.). *fas.org*. Retrieved from *fas.org*: <https://fas.org/?s=nuclear>
18. State, A. S. (n.d.). *Containment and Cold War, 1945-1961*. Retrieved from *history.state.gov*: <https://history.state.gov/departmenthistory/short-history/containmentandcoldwar>
19. state, U. D. (n.d.). *Treaty Between The United States of America and The Union of Soviet Socialist Republics on the Limitation of Strategic Offensive Arms (SALT II)*. Retrieved from <https://2009-2017.state.gov/t/isn/5195.htm>
20. Trachtenberg, M. (1991). *History and Strategy*. Princeton: Princeton University Press.

The U.S.-Iraq War's Legacy in Global Terrorism and the Taliban's Return to Power

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Abstract

This article explores the enduring consequences of the 2003 U.S.–Iraq War, emphasizing its influence on global terrorism and its indirect role in enabling the Taliban's return to power in Afghanistan in 2021. The study aims to analyze how U.S. strategic decisions in Iraq reshaped regional security dynamics, fostered the rise of extremist organizations, and undermined stabilization efforts in Afghanistan. Methodologically, the research employs a qualitative, historical–analytical approach, combining process tracing, comparative case studies, and thematic content analysis of policy documents, secondary literature, and international reports. The findings demonstrate that post-invasion decisions - such as dismantling Iraq's military institutions, marginalizing Sunni communities, and fueling sectarian polarization - produced structural conditions that allowed radical groups, notably al-Qaeda in Iraq and ISIS, to consolidate power and expand transnationally. At the same time, the protracted U.S. engagement in Iraq diverted resources and attention from Afghanistan, weakening state-building initiatives and creating opportunities for the Taliban to reorganize, rebrand, and ultimately reclaim authority following the U.S. withdrawal. These outcomes illustrate the paradoxical effects of military intervention, whereby efforts to enhance global security unintentionally accelerated radicalization and insurgent resurgence. The article concludes that a deeper understanding of these interconnected conflicts is necessary for developing sustainable counterterrorism strategies and more responsible foreign policy frameworks.

Keywords: U.S.-Iraq War, Global Terrorism, Taliban, Post-9/11 Conflicts, Security Studies, Counterterrorism, Foreign Intervention, Political Instability

Introduction

The ripple effects of the U.S.-led intervention in Iraq have profoundly influenced the early 21st century. Originally presented as a pre-emptive strike to eliminate weapons of mass destruction and disrupt terrorist networks, the 2003 U.S.-Iraq War quickly turned into a long-lasting conflict with wide-reaching effects. While the main goal - to remove Saddam Hussein - was achieved quickly, the aftermath threw Iraq into chaos, tearing apart its fragile social fabric and fueling a cycle of sectarian violence. The dismantling of the Ba'athist regime, the disbandment of the Iraqi military, and the installation of a U.S.-backed transitional government created a power vacuum that extremist groups exploited rapidly. Instead of reducing terrorism, the invasion unintentionally increased it, leading to the rise of insurgent networks and eventually, the Islamic State. (ISIS) (A, 2016).

The Iraq War's strategic errors had effects that extended well beyond Iraq's borders. As the U.S. military's focus shifted to Iraq, Afghanistan - the original front of the "War on Terror" - began to receive less attention. Early successes against the Taliban and Al-Qaeda after 2001 faded without ongoing international support and comprehensive state-building efforts (Byman, 2015). Over the following twenty years, Afghanistan faced continued political turmoil, corruption, and insurgent resurgence. In 2021, the Taliban took advantage of reduced U.S. presence and widespread disillusionment among Afghans, retaking control in a dramatic reversal of two decades of intervention. (Cockburn, 2015).

This paper examines the long-term effects of the U.S.-Iraq War on global terrorism and how it indirectly led to the Taliban's resurgence. It contends that the war not only destabilized the Middle East but also fostered conditions that encouraged radicalization throughout the region. The dissemination of jihadist ideologies, supported by online networks and driven by anti-Western sentiment, thrived amidst the chaos left behind. The analysis explores how flawed foreign policies, short-term military goals, and a lack of cultural insight influenced the rise of modern extremist movements.

Additionally, the research places the Taliban's resurgence in the context of broader failed interventions. It examines how U.S. involvement in Iraq and Afghanistan is interconnected, highlighting the impact of fragmented counterterrorism efforts and inconsistent diplomacy (Khalilzad, 2016). The study provides insight into how the legacy of the Iraq War still affects the Middle East, South Asia, and the global arena - altering security dynamics, shaping international relations, and questioning the effectiveness of Western military interventions. (Ricks, 2007).

By examining these developments holistically, this paper aims to contribute to a nuanced Understanding of how the U.S.-Iraq War influenced the development of global terrorism and indirectly enabled the Taliban's return, raising important questions about the future of international conflict management, counterinsurgency, and foreign policy.

This research lies at the intersection of International Relations, Security Studies, Terrorism Studies, and Middle Eastern Politics, offering an interdisciplinary approach to understanding the enduring consequences of the U.S.-Iraq War. The study draws primarily from the discipline of International Relations (IR), employing theories of realism, constructivism, and critical security studies to interpret the geopolitical and ideological transformations that followed the 2003 invasion of Iraq. Within IR, the research engages with the post-9/11 security paradigm, scrutinizing how foreign interventions reshape the global security architecture and facilitate the transnational diffusion of extremist ideologies. The emergence and consolidation of terrorist organizations such as Al-Qaeda in Iraq (AQI), and later ISIS, are examined through the lens of asymmetric warfare and power vacuums resulting from regime change and state fragility. The discipline of Security Studies contributes to understanding how the reconfiguration of security priorities - particularly the U.S.'s focus on counterterrorism - led to unintended consequences, including the emboldening of non-state actors and the neglect of long-term stabilization in Afghanistan. These oversights arguably set the stage for the Taliban's resurgence. In addition, the research incorporates insights from Terrorism Studies, focusing on the evolution of terrorist networks, their ideological adaptations, recruitment mechanisms, and operational expansions in response to Western military interventions. The Iraq conflict is treated as a catalyst for the decentralization and globalization of jihadist terrorism. Middle Eastern Politics provides the necessary regional and cultural context, particularly regarding the interplay between local grievances, sectarian divides, and foreign occupation. The research pays close attention to how the war altered political balances, fueled insurgency dynamics, and facilitated the strategic repositioning of groups like the Taliban. By integrating these disciplines, the study offers a comprehensive and nuanced understanding of how the U.S.-Iraq War not only transformed Iraq and Afghanistan but also reshaped the global contours of terrorism and counterterrorism in the 21st century.

Methods

This research adopts a qualitative and interpretive methodological framework designed to capture the complex and long-term consequences of the 2003 U.S.-Iraq War, particularly its relationship to global terrorism and the Taliban's return to power. A qualitative approach is most appropriate

because the subject matter involves historical processes, geopolitical shifts, and ideological transformations that cannot be fully explained through quantitative or statistical modeling. The methodology is structured as a sequential, multi-layered design consisting of three main stages: historical-political analysis, comparative case study, and thematic content analysis.

Stage One: Historical–Political Analysis

The first stage reconstructs the trajectory of U.S. involvement in Iraq from 2003 through the rise of ISIS and considers its regional spillover effects. This includes identifying the key turning points in U.S. policy, such as the dissolution of the Iraqi military and the introduction of sectarian governance structures, and tracing their unintended outcomes. The analysis also situates these developments within the broader global “War on Terror,” with particular attention to how U.S. focus on Iraq affected parallel strategies in Afghanistan. Primary materials - including official government statements, declassified reports, and international organizational documents - were combined with secondary scholarly works to establish a chronological and causal narrative.

Stage Two: Comparative Case Study Design

The second stage applies a comparative framework to examine Iraq (2003–2017) and Afghanistan (2001–2021) as two interconnected but distinct cases. Iraq is analyzed as a case of state collapse and insurgent proliferation following foreign intervention, whereas Afghanistan is treated as a case of prolonged counterinsurgency culminating in insurgent resurgence. The comparative method is justified because it enables the identification of both similarities (e.g., the exploitation of power vacuums by extremist groups) and differences (e.g., patterns of foreign support, sectarian mobilization, and legitimacy crises). By placing the two cases in dialogue, the research highlights causal linkages across contexts, showing how strategic overextension in Iraq indirectly compromised stabilization in Afghanistan.

Stage Three: Thematic Content Analysis

The third stage systematically examines a wide range of textual sources, including peer-reviewed journal articles, think-tank reports (RAND, Brookings, Carnegie, Chatham House), policy speeches, and media accounts from reputable outlets (BBC, Al Jazeera, The Guardian). The material was coded both deductively, using categories derived from international relations and conflict theory (e.g., “power vacuum,” “radicalization,” “proxy warfare”), and inductively, based on themes emerging from the data. This dual coding approach was supported by NVivo 12 software to ensure consistency and transparency. To enhance reliability, a sample of coded materials was

reviewed by a secondary coder, yielding a Cohen's Kappa coefficient of 0.82, which indicates strong intercoder agreement.

Source Selection and Temporal Scope

Sources were selected with attention to credibility, diversity, and temporal breadth. The analysis incorporated literature spanning 2001–2024 to capture both immediate and long-term consequences. Emphasis was placed on works produced after 2018 to integrate more recent academic perspectives and policy evaluations. By balancing primary government and NGO reports with scholarly analyses, the research mitigates potential bias and situates findings within broader academic debates.

Analytical Framework

The study is anchored in international relations theory, drawing on realism (to explain power competition and intervention logics), constructivism (to examine ideological and identity-driven radicalization), and critical security studies (to interrogate the unintended consequences of intervention). These theoretical lenses provide conceptual clarity to the analytical variables of the research:

- Global terrorism (operationalized as the transnational spread of extremist networks following regime collapse),
- Taliban resurgence (understood as the re-establishment of political and territorial control after foreign withdrawal), and
- Power vacuum dynamics (defined as institutional voids that facilitate insurgent mobilization).

Limitations

While the research design provides a structured and rigorous foundation, limitations remain. Some military records are classified or incomplete, constraining access to the full decision-making process. Establishing causality in complex geopolitical contexts is necessarily interpretive and must be treated with caution. Furthermore, Afghanistan's rapidly evolving political landscape after 2021 requires that conclusions be understood as provisional, subject to reassessment as new data emerges. Despite these limitations, the triangulation of sources, comparative design, and systematic coding ensures that the findings rest on a credible and analytically sound basis.

Results

The research shows that the U.S.-Iraq War led to extensive and interconnected consequences that greatly influenced the global terrorism environment and impacted Afghanistan's political course, resulting in the

Taliban regaining power. These effects encompass geopolitical, ideological, security, and humanitarian aspects.

The Transformation of Global Terrorist Networks

The dismantling of Iraq's state apparatus after the 2003 invasion led to a power vacuum that insurgent groups, especially al-Qaeda in Iraq (AQI), exploited. AQI later developed into ISIS (Jones, 2017). This change marked a shift from loosely affiliated terrorist cells to groups with territorial control, capable of projecting power regionally and globally (Gerges, 2016). The Iraq War also accelerated the decentralization and spread of jihadist networks throughout Europe, North Africa, and Southeast Asia (Byman D. L., 2015).

Increased Radicalization and Recruitment

The view of the war as illegitimate - heightened by the failure to locate weapons of mass destruction (WMDs) and reports of abuses like those at Abu Ghraib prison - fuelled resentment and radicalization throughout the Muslim world (Lynch, 20123). Extremist groups used these narratives to portray their actions as defensive jihad, resulting in more local and foreign fighters being recruited. (Hoffman, 2014).

Regional Destabilization and Expansion of Iran's Influence

The ousting of Saddam Hussein, a Sunni leader, resulted in the rise of Shi'a political groups closely aligned with Iran, boosting Tehran's influence across Iraq and the broader Middle East (Katzman, 2009). This change deepened Sunni-Shi'a sectarian conflicts, which helped fuel the emergence of Sunni extremist groups like ISIS (Levitt, 2015). Additionally, the breakdown of centralized authority intensified proxy wars in Syria and Yemen, further complicating regional security issues. (Lister, 2017).

Diverted Strategic Focus and the Taliban's Regrowth

The U.S. military's emphasis on Iraq diverted attention from stabilization initiatives in Afghanistan, enabling the Taliban to regain its operational strength over nearly twenty years (Rashid, 2010; Giustozzi, 2019). This oversight helped the Taliban rebrand as a nationalist movement and ultimately regain power after the U.S. withdrawal in 2021. (Jones S. G., 2021).

The Erosion of Trust in Western-Led Interventions

The controversial rationale behind the Iraq War, along with its human and economic toll, undermined the credibility of Western interventions worldwide (Parker, 2006; Chomsky, 2007). This skepticism from the public and politicians grew, affecting the rapid and chaotic U.S. withdrawal from Afghanistan (Malkasian, 2021).

Long-Term Humanitarian Consequences

Decades of conflict led to mass displacement, infrastructure destruction, and trauma passed down through generations in Iraq and Afghanistan (Group, 2018). The reemergence of the Taliban reversed advances in women's rights and education in Afghanistan, highlighting the profound societal effects of these conflicts (2020, 2020).

Discussion

This research highlights the significant and complex effects of the U.S.-Iraq War on global terrorism trends and political changes in Afghanistan, leading to the Taliban's comeback. The war served as a crucial turning point, altering terrorist networks, shifting regional power structures, and changing international views on military intervention.

First, the shift of terrorist groups from decentralized cells to territorially controlled entities, like ISIS, highlights the unintended effects of dismantling the Iraqi state. This change challenged conventional counterterrorism strategies by producing actors driven by both ideology and territorial goals, making international security efforts more complex. The evidence supports research that shows the collapse of Iraqi institutions provided ideal conditions for extremist ideas to develop and extend beyond the country's borders (Gerges, 2016).

Secondly, the increase in radicalization and recruitment underscores the importance of narratives in conflict dynamics. The perceived injustice of the invasion, along with images of civilian suffering and abuses, served as effective propaganda for extremist recruitment globally (Hoffman, 2014). This indicates that military actions lacking apparent legitimacy can unintentionally strengthen violent groups by giving them a strong ideological justification.

Thirdly, Iran's regional destabilization and growing influence highlight the complex relationship between sectarian politics and international conflicts. The strengthening of Shi'a groups in Iraq altered the regional power balance, deepening sectarian tensions and fueling proxy wars. This situation shows how local power vacuums can trigger chain reactions, affecting wider geopolitical rivalries (Jeremiah Goulka, 2009).

Shifting strategic attention from Afghanistan to Iraq had considerable effects on the Taliban's resurgence. The extended focus on Iraq drained resources and political commitment, hindering efforts to stabilize Afghanistan and allowing the Taliban to reemerge. This illustrates common critiques of U.S. foreign policy, highlighting the dangers of overextension and the importance of consistent, well-planned strategies in conflict areas (Rashid, 2010).

Furthermore, the decline in trust toward Western-led interventions has had enduring effects on global security policy. The controversial basis of the

Iraq War and its expensive aftermath have increased public skepticism, limited future military actions, and hindered international collaboration. This mistrust likely played a role in the disorderly U.S. withdrawal from Afghanistan, highlighting the lasting impact of Iraq on later foreign policy choices (Malkasian, 2021).

Ultimately, the long-term humanitarian impacts emphasize the human toll of these conflicts. The escalating crises in Iraq and Afghanistan show that warfare affects more than just immediate violence, causing deep societal trauma and hindering development. The Taliban's resurgence, in particular, risks undoing advancements in human rights and gender equality, underscoring how fragile these gains are when reliant on international backing.

In summary, this research highlights the significance of understanding the lasting and interconnected effects of military interventions. It shows how events in one area can influence regions and events over time, affecting ideologies, power dynamics, and humanitarian conditions. Future policies should incorporate these insights to prevent repeating cycles that lead to instability and conflict.

Conclusions

This research examines the lasting effects of the U.S.-Iraq War, highlighting its transformative influence on global terrorism and its indirect but significant role in the Taliban's return to power in Afghanistan. Originally seen as a necessary response to perceived threats from weapons of mass destruction and terrorism, the war has unfolded into a complex story of unintended consequences, regional instability, and strategic errors.

The findings show that the war not only dismantled the Iraqi state but also enabled violent non-state groups like al-Qaeda in Iraq and later ISIS to rise. This represented a significant shift in global terrorism, moving from dispersed, secretive cells to a hybrid approach of insurgency and governance that could control territory and carry out international attacks. The ideological void and disorder in post-invasion Iraq created ideal conditions for jihadist recruitment, radicalization, and foreign fighters.

At the same time, the war triggered a significant geopolitical shift in the Middle East. The overthrow of a Sunni-led regime and the emergence of Shi'a political groups allied with Iran altered sectarian dynamics and heightened regional tensions. These developments destabilized Iraq and extended into Syria, Yemen, and other areas, contributing to a widespread atmosphere of insecurity and proxy conflicts.

Importantly, the U.S. prioritized Iraq, which diverted attention away from long-term stabilization in Afghanistan. This shift allowed the Taliban to rebuild, rebrand, and slowly regain influence - leading to their complete return

to power after the U.S. withdrew in 2021. The close links between these conflicts show how focusing on Iraq indirectly compromised progress in Afghanistan, with significant repercussions for regional and global security.

Beyond the battlefield, the Iraq War diminished global confidence in Western-led interventions. The lack of WMDs, ongoing insurgency, and humanitarian costs challenged the moral grounds for foreign actions and shifted global opinions on U.S. foreign policy. This increasing doubt was evident in the hesitant and chaotic withdrawal from Afghanistan, highlighting how the Iraq War's repercussions continue to influence international decisions.

Finally, the human toll of these conflicts remains immense. Iraq and Afghanistan still face humanitarian crises, societal division, and generational trauma. The decline in human rights, especially for women and marginalized groups in Afghanistan, highlights that military successes do not automatically lead to lasting peace or progress.

In conclusion, the impact of the U.S.-Iraq War extends beyond national borders and military timelines. It has significantly reshaped global terrorism, changed regional power balances, and facilitated the resurgence of authoritarian regimes claiming stability. Recognizing these interconnected effects is crucial for scholars, policymakers, and international stakeholders who wish to learn from history and develop more responsible, ethical, and sustainable strategies for international security and rebuilding after conflicts.

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References:

1. 2020, W. R. (2020). Afghanistan events 2020.
2. A, F. (2016). *ISIS: A HISTORY*. Princeton University Press. Retrieved from <https://www.jstor.org/stable/j.ctvc77bfb>
3. Byman, D. (2015). *Al Qaeda, the Islamic State, and the Global Jihadist Movement*. Oxford University Press. Retrieved from <https://global.oup.com/academic/product/al-qaeda-the-islamic-state-and-the-global-jihadist-movement-9780190217266?cc=ge&lang=en&>
4. Byman, D. L. (2015). Comparing Al Qaeda and ISIS: Different goals, different targets. *BOOKINGS*.
5. Chomsky, N. (2007). *Failed States: The Abuse of Power and the Assault on Democracy*.

6. Cockburn, P. (2015). *The Rise of Islamic State: ISIS and the New Sunni Revolution*. Verso Books. Retrieved from https://www.versobooks.com/en-gb/products/116-the-rise-of-islamic-state?srsIid=AfmBOoqKg03_hJuAftqHKA69srnEjnNb39EJhKfs54quWnVBDvN2CyZ
7. Gerges, F. A. (2016). *ISIS: A History*. Princeton University Press.
8. Giustozzi, A. (2019). *The Taliban at War*. Oxford University Press.
9. Group, W. B. (2018). *Iraq Economic Monitor, Fall 2018: Toward Reconstruction, Economic Recovery and Fostering Social Cohesion*.
10. Hoffman, B. (2014). *Inside Terrorism*. Columbia University Press.
11. Jeremiah Goulka, L. H. (2009). *The Mujahedin-e Khalq in Iraq*.
12. Jones, D. S. (2017). *THE PERSISTENT THREAT: AL-QAEDA'S EVOLUTION AND RESILIENCE*. The U.S. Government Publishing Office.
13. Jones, S. G. (2021). *In the Graveyard of Empires: America's War in Afghanistan*.
14. Katzman, K. (2009). *Iran's Influence in Iraq*. Congressional Research Service ~ The Library of Congress.
15. Khalilzad, Z. (2016). *From Kabul to the White House, my journey through a turbulent world*. New York: St. Martin's Press. Retrieved from <https://archive.org/details/envoyfromkabulto0000khal>
16. Lister, C. R. (2017). *The Syrian Jihad - The evolution of Insurgency*. HURST.
17. Lynch, M. (2012). *The Arab Uprising: The Unfinished Revolutions of the New Middle East*.
18. Malkasian, C. (2021). *The American War in Afghanistan: A History*.
19. Parker, G. (2006). *Assassins' Gate, The Paperback*.
20. Rashid, A. (2010). *Militant Islam, Oil, and Fundamentalism in Central Asia*. Yale University Press.
21. Ricks, T. E. (2007). *The American Military Adventure in Iraq*. Pepperdine University. Retrieved from <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1044&context=globaltides&httpsredir=1&referer=>

Les enjeux juridiques de la ratification de la Convention relative à la gestion intégrée de la ressource en eau du bassin du lac Kivu et de la rivière Ruzizi

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Résumé

La gouvernance juridique des bassins transfrontaliers, en Afrique centrale, reste inégalement structurée selon les sous-espaces concernés. En effet, le bassin du lac Tanganyika bénéficie, depuis 2003, de la Convention sur la gestion durable du lac Tanganyika, en vigueur. En revanche, le bassin du lac Kivu et de la rivière Ruzizi relève de la Convention relative à la gestion intégrée de la ressource en eau du bassin du lac Kivu et de la rivière Ruzizi que nous appelons convention ABAKIR. Ce cadre normatif a été signé en 2014, mais n'a pas encore été ratifié par la République démocratique du Congo, le Rwanda et le Burundi. Ce déséquilibre normatif compromet la gestion durable des ressources naturelles stratégiques. Cet article recourt à une comparaison entre la Convention sur la gestion durable du lac Tanganyika et la convention ABAKIR. L'objectif est de démontrer la pertinence de la ratification de cette dernière. L'article conclut que la complémentarité entre ces deux instruments peut constituer le socle d'une gouvernance régionale renforcée. Cette gouvernance serait fondée sur la coopération interétatique, la prévention des conflits liés aux ressources et la consolidation d'un maillage juridique coordonné de protection écologique dans la région des Grands Lacs d'Afrique.

Mots clés : Bassin transfrontalier, droit international de l'environnement, convention ABAKIR, lac Tanganyika, gouvernance institutionnelle, Afrique

centrale, coopération régionale

The legal implications of ratifying the Convention on the integrated management of water resources in the Lake Kivu and Ruzizi River basin

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Abstract

The legal governance of transboundary basins in Central Africa remains unevenly structured across sub-regional spaces. While the Lake Tanganyika basin has benefited from an operational international environmental framework since 2003, the Lake Kivu and Ruzizi River basin still lacks a binding legal instrument, despite the signature of a convention in 2014 by the Democratic Republic of the Congo, Rwanda, and Burundi. This normative imbalance undermines the sustainable management of strategically shared natural resources. This article demonstrates the relevance of ratifying the ABAKIR Convention through a comparative law methodology. The analysis contrasts both legal frameworks to assess their respective legal scope, degree of institutionalization, and the effectiveness of their governance mechanisms. The study indicates that the ABAKIR Convention (between the Democratic Republic of the Congo, Rwanda and Burundi) introduces significant advances in institutional architecture, financing mechanisms, and integrated resource management that align with contemporary standards of international environmental law. The article concludes that the complementarity of these two international instruments could form the foundation of a strengthened regional governance system based on interstate cooperation, the prevention of resource-based conflicts, and the consolidation of a legal ecological protection belt in the Great Lakes region.

Keywords: Transboundary basin, international environmental law, ABAKIR Convention, Lake Tanganyika, institutional governance, Central Africa, regional cooperation

Introduction

La gouvernance des ressources naturelles transfrontalières constitue un défi majeur en Afrique centrale ; en effet, plusieurs bassins hydrographiques y sont partagés entre des États confrontés à des vulnérabilités environnementales, institutionnelles et géopolitiques. On en dénombre une

dizaine dans la région, parmi lesquels le bassin du Congo, le lac Tchad, l'Ubangi, l'Ogooué, la Sangha, le Chari-Logone, le lac Tanganyika, le bassin du lac Kivu et de la rivière Ruzizi comme le souligne Programme des Nations Unies pour l'environnement (PNUE, 2019).

Dans cette région, le bassin du lac Tanganyika, d'une part, et celui du lac Kivu et de la rivière Ruzizi, d'autre part, incarnent deux exemples particulièrement sensibles d'un point de vue à la fois écologique et stratégique. Ces milieux abritent des écosystèmes fragiles (tels que les forêts riveraines et la biodiversité aquatique unique du lac Tanganyika), des gisements énergétiques importants (notamment le méthane dissous du lac Kivu et le potentiel hydroélectrique de la rivière Ruzizi) ainsi que des zones densément peuplées dont les villes de Bujumbura, Kigali, Uvira, Bukavu et Goma. Leur protection suppose un encadrement juridique rigoureux et une coopération interétatique efficace.

Malgré la prolifération des conventions internationales environnementales, les bassins transfrontaliers africains continuent de souffrir d'un déficit de gouvernance cohérente, opérationnelle et juridiquement contraignante. Le bassin du lac Kivu et de la rivière Ruzizi, partagé entre la République démocratique du Congo (RDC), le Burundi et le Rwanda, illustre ce paradoxe : bien que la Convention relative à la gestion intégrée de la ressource en eau du bassin du lac Kivu et de la rivière Ruzizi (communément appelée « convention ABAKIR ») ait été signée, elle n'a jamais été ratifiée, ce qui laisse cette zone écologiquement stratégique sans cadre normatif effectif avec des conséquences concrètes : absence de coordination entre les trois États, vulnérabilité accrue face à la pollution et à la déforestation, risques de tensions autour de l'exploitation énergétique (méthane du lac Kivu, projet hydroélectrique Ruzizi III), et difficultés à mobiliser durablement des financements internationaux (Derounane et al., 2020 ; PNUE, 2019).

En revanche, le bassin du lac Tanganyika, bien que confronté à des défis similaires – pollution issue des activités portuaires et minières, pression démographique sur les zones riveraines et surexploitation des ressources halieutiques –, bénéficie depuis 2003 de la Convention sur la gestion durable du lac Tanganyika, en vigueur. Celle-ci est dotée d'institutions fonctionnelles (Secrétariat de l'Autorité du lac Tanganyika, Conférence des Parties) et de mécanismes de financement (Convention sur la gestion durable du lac Tanganyika, art. 23-28).

Ce contraste soulève une question centrale : quels sont les enjeux juridiques liés à la ratification différenciée des instruments de gouvernance transfrontalière dans les bassins du lac Kivu et de la rivière Ruzizi, d'une part, et du lac Tanganyika, d'autre part ?

La présente étude mobilise une méthode de droit comparé, consistant à confronter deux instruments juridiques internationaux relatifs à des bassins

fluvio-lacustres contigus : la Convention sur la gestion durable du lac Tanganyika (2003) et la convention ABAKIR (2014). Cette approche permet d'identifier des points de convergence et de divergence entre ces deux régimes juridiques en matière de dispositifs normatifs, de mécanismes de gouvernance et de logiques de mise en œuvre des conventions internationales (c'est-à-dire leur activation institutionnelle, l'exécution des obligations étatiques et la mobilisation des ressources financières). La recherche vise ainsi à apprécier la cohérence et la robustesse de ces instruments conventionnels afin de démontrer l'intérêt stratégique, juridique et environnemental d'une ratification effective de la convention ABAKIR.

L'article se subdivisera en trois parties. Tout d'abord, les deux conventions et leur contexte d'élaboration seront présentés. Ensuite, une analyse juridique comparative des dispositifs institutionnels, normatifs et financiers de ces deux conventions sera menée. Enfin, la troisième partie exposera les arguments en faveur d'une ratification de la convention ABAKIR et montrera comment cette dernière peut compléter et renforcer le cadre existant dans une logique de coopération régionale.

Cadres juridiques applicables aux bassins du lac Tanganyika, du lac Kivu et de la rivière Ruzizi : vers une clarification normative

La gestion des ressources en eau dans les bassins transfrontaliers d'Afrique centrale pose un défi juridique complexe : conjuguer souveraineté étatique et responsabilité collective. Les bassins du lac Tanganyika et du lac Kivu (y compris celui de la rivière Ruzizi) offrent deux approches contrastées de coopération environnementale. L'analyse de leurs cadres conventionnels permet de déterminer dans quelle mesure ces instruments traduisent les principes fondamentaux du droit international de l'environnement, notamment ceux relatifs à la coopération, à la prévention des dommages transfrontaliers et à la gestion durable.

La Convention sur la gestion durable du lac Tanganyika : un cadre opérationnel mais limité

La Convention sur la gestion durable du lac Tanganyika, adoptée en 2003 puis entrée en vigueur en 2005, constitue un jalon important pour la coopération environnementale régionale en Afrique centrale. Elle traduit trois principes fondamentaux du droit international de l'environnement :

- Le principe de souveraineté limitée, selon lequel les États riverains ne peuvent user de leurs ressources de manière à causer un préjudice significatif à leurs voisins. Ce principe est reconnu par la Convention sur les cours d'eau de 1997 (art. 7) et la jurisprudence internationale (Cour internationale de Justice, Gabčíkovo-Nagymaros, 1997).

- Le principe de conservation durable, formulé notamment dans la Convention sur la diversité biologique (1992) et repris dans les objectifs de la Convention sur la gestion durable du lac Tanganyika (préservation de la biodiversité et usages soutenables, art. 2 à 5).
- Le principe de coopération technique, à travers l'instauration d'un Secrétariat, de comités techniques et d'un mécanisme de planification commune (art. 4, 26, 27).

Grâce à ces éléments, la Convention sur la gestion durable du lac Tanganyika s'aligne sur les logiques contemporaines de gouvernance écologique régionale. Toutefois, elle reste marquée par une approche souple, à mi-chemin entre engagement politique et cadre technique. Certains auteurs considèrent qu'elle incarne une forme de *soft law* (droit mou) régional, destiné à encourager des pratiques vertueuses plutôt qu'à établir des obligations contraignantes (Brunnée & Toope, 2010).

Son efficacité repose donc moins sur la force normative de ses dispositions que sur la volonté politique des États Parties et leur capacité à mobiliser des partenaires techniques et financiers.

Malgré ses limites juridiques, la Convention sur la gestion durable du lac Tanganyika a permis une coopération technique continue, soutenue notamment par des partenaires internationaux (Programme des Nations Unies pour l'environnement, PNUE ; Organisation des Nations Unies pour l'alimentation et l'agriculture, FAO ; Coopération technique allemande, GIZ), à travers des programmes de conservation des espèces halieutiques endémiques, des initiatives de lutte contre la pollution des eaux et des mécanismes conjoints de suivi scientifique. Elle constitue à ce titre un précédent important dans la région (FAO, 2010 ; PNUE, 2019).

La convention ABAKIR : un instrument juridiquement abouti mais inopérant

Signée en 2014, la convention ABAKIR n'est toujours pas entrée en vigueur, faute de ratification par les trois États signataires. Pourtant, elle constitue un instrument novateur dans l'architecture juridique régionale, aligné sur les standards récents du droit international de l'environnement. En effet, elle intègre plusieurs principes structurants, tels que :

- Le principe de gestion intégrée des ressources en eau, qui repose sur la coordination intersectorielle et la gestion par bassin hydrographique, conformément aux lignes directrices de la Convention sur le droit relatif aux utilisations des cours d'eau internationaux à des fins autres que la navigation de 1997 (art. 5 à 10).
- Le principe de participation consacré notamment par l'Agenda 21 (chapitre 28), qui encourage la création d'instances locales de gestion

durable, et par la convention d'Aarhus (1998, art. 6 à 8), qui garantit l'accès du public à l'information et la participation aux processus décisionnels, trouve également un écho doctrinal dans les travaux de Kiss et Shelton (2004) et Dupuy et Viñuales (2015). La convention ABAKIR reprend cette logique en prévoyant l'implication des acteurs locaux et nationaux dans l'élaboration et la mise en œuvre des politiques de bassin. Bien que la convention d'Aarhus n'ait pas été ratifiée par les États de la région, elle demeure pleinement en vigueur à l'échelle internationale depuis le 30 octobre 2001 et constitue une référence normative pertinente.

- Le principe de coopération renforcée, par l'institutionnalisation d'un Secrétariat exécutif, d'un Conseil des ministres et d'un Sommet des chefs d'État (art. 12), ce qui dépasse le cadre classique des arrangements techniques ou informels souvent rencontrés dans les accords africains sur l'environnement.

À travers cette structuration, la convention ABAKIR se rapproche d'instruments modernes, tels que le Protocole révisé de la Communauté de développement d'Afrique australe (SADC) sur les cours d'eau partagés (2000), considéré comme modèle de gouvernance régionale en Afrique australe (Tanzi, 2017). Elle offre donc un cadre potentiellement robuste, d'un point de vue à la fois juridique, institutionnel et financier.

Leçons juridiques et enjeux pour la gouvernance environnementale régionale

Au-delà des éléments techniques, une lecture croisée des deux conventions révèle des logiques juridiques contrastées, qui témoignent de tensions structurelles dans le droit international de l'environnement en Afrique.

Elle montre une asymétrie juridique significative entre la Convention sur la gestion durable du lac Tanganyika et la convention ABAKIR. La première est en vigueur, mais demeure marquée par un formalisme institutionnel limité et une force contraignante faible ; tandis que la seconde propose une gouvernance juridico-institutionnelle aboutie, mais reste juridiquement inopérante en raison de l'absence de ratification.

Ce contraste met en évidence une difficulté structurelle du droit international dans le contexte africain, qui est de concilier la nécessité d'un encadrement juridique contraignant avec les réticences persistantes des États à déléguer une part de leur souveraineté à une gouvernance régionale partagée. Comme l'affirme Bodansky (2010), le droit de l'environnement est souvent un droit « de coordination », fondé sur la persuasion, l'incitation et la coopération volontaire, plutôt que de « contrainte ». Cette caractéristique

contribue à la multiplication d'instruments à faible normativité, souvent qualifiés de *soft law* (droit mou).

La convention ABAKIR se distingue par sa volonté d'institutionnaliser la coopération environnementale grâce à un dispositif hiérarchisé intégrant des organes politiques, techniques et opérationnels. À ce titre, elle s'inscrit dans une évolution doctrinale vers une « constitutionnalisation fonctionnelle » du droit international selon Allott (1990). D'après cet auteur, le droit international doit en effet dépasser le simple enregistrement des volontés étatiques pour instaurer un ordre juridique structuré au service d'intérêts communs.

Toutefois, l'absence de ratification de la convention ABAKIR montre que la normativité formelle ne suffit pas : une volonté politique effective demeure indispensable. Comme rappellent Brunnée et Toope (2010), l'effectivité d'un instrument dépend autant de la qualité de ses institutions que de l'« autorité normative » qu'il parvient à construire parmi les États Parties. Cette autorité repose notamment sur la clarté des obligations, la transparence des mécanismes de suivi et la capacité à mobiliser des incitations financières. Cette analyse met ainsi en lumière le rôle que pourrait jouer la convention ABAKIR en tant que modèle de régulation juridique régional, à condition que les États Parties s'engagent conjointement à la ratifier et à en assurer une mise en œuvre dynamique, de manière à en faire un instrument réellement vivant.

Dans cette perspective, les deux instruments étudiés traduisent deux modèles distincts de gouvernance environnementale. Le premier, illustré par la Convention sur la gestion durable du lac Tanganyika, repose sur une approche pragmatique et minimaliste, centrée sur la coopération technique et la flexibilité procédurale. Le second, incarné par la convention ABAKIR, propose un modèle intégratif et judiciarisé qui, une fois ratifié, pourrait constituer une étape décisive vers une gouvernance régionale pleinement institutionnalisée et juridiquement contraignante.

Ce constat appelle une réflexion normative plus large sur la manière dont les États africains peuvent articuler souveraineté nationale, gestion partagée des ressources et obligation juridique effective. Cette analyse met en lumière le potentiel de la convention ABAKIR en tant que modèle de régulation juridique régional, à condition que les États s'engagent à la ratifier et à en assurer une mise en œuvre effective, de manière à en faire un instrument pleinement opérationnel.

Avant d'apprécier les retombées concrètes que pourrait générer la ratification de la convention ABAKIR sur la coopération environnementale régionale, il importe de confronter les deux instruments juridiques à travers une méthode comparative. Cette dernière permettra d'identifier les convergences et les divergences structurelles entre la convention ABAKIR et celle sur la gestion durable du lac Tanganyika, en mettant en lumière les forces normatives de la première. À cet effet, la Partie II s'attachera à comparer les

dispositifs institutionnels, les modalités de mise en œuvre, les mécanismes de financement et les régimes de règlement des différends qui caractérisent ces deux conventions transfrontalières.

Analyse juridique comparée des dispositifs normatifs et institutionnels

L'analyse comparée des conventions relatives aux bassins du lac Tanganyika et du lac Kivu (y compris celui de la rivière Ruzizi) met en lumière leurs approches respectives en matière de gouvernance environnementale. Au-delà de leurs différences d'entrée en vigueur, les deux textes présentent des dispositifs qui traduisent des conceptions contrastées du rôle des institutions, des modalités de mise en œuvre, des mécanismes de financement et du règlement des différends. Cette partie vise à identifier les forces et limites de chacun, grâce à une démarche juridique approfondie.

Gouvernance institutionnelle : entre centralisation politique et coordination technique

La structuration institutionnelle d'un instrument international (une convention internationale) reflète son ambition politique autant que sa conception de la coopération. Dans le domaine de la gestion des ressources en eau, la doctrine distingue deux grandes approches : l'une hiérarchisée et judiciarisée, favorisant l'intégration régionale (Brunnée, 2002 ; Tanzi & Arcari, 2001), et l'autre fonctionnelle et souple, axée sur la coordination technique entre États souverains (Bodansky, 2010).

L'article 12 de la convention ABAKIR consacre une architecture institutionnelle robuste, organisée autour d'un Sommet des chefs d'État chargé de définir les grandes orientations politiques, d'un Conseil des ministres assurant la prise de décisions stratégiques, et d'un Secrétariat exécutif responsable de la mise en œuvre opérationnelle et du suivi quotidien des activités.

Ce schéma s'avère conforme aux standards d'une gouvernance intégrée des bassins transfrontaliers, tels qu'ils sont promus par la Commission du droit international des Nations Unies sur la prévention des dommages transfrontaliers résultant d'activités dangereuses (2001) et la Convention de 1997 sur le droit relatif aux utilisations des cours d'eau internationaux à des fins autres que la navigation.

L'architecture institutionnelle rappelle également celle du Protocole révisé de la SADC sur les cours d'eau partagés (2000), souvent présenté comme un modèle de gouvernance régionale en Afrique australe. Comme ce dernier, la convention ABAKIR organise ses organes politiques et techniques de manière hiérarchisée afin de garantir la mise en œuvre effective des obligations de coopération.

À l'inverse, la Convention sur la gestion durable du lac Tanganyika (art. 23 et 24) met en place un dispositif institutionnel plus limité. Elle prévoit une Conférence des Parties, conçue comme un organe de concertation politique mais sans véritable pouvoir supranational, ainsi qu'une Autorité du lac Tanganyika, composée d'un Secrétariat, d'un comité de gestion et des comités techniques, chargée principalement de mettre en œuvre les décisions adoptées et d'assurer la coordination entre les États Parties.

Cette structure permet une coordination régulière entre les États Parties, mais elle repose essentiellement sur des mécanismes consultatifs, ce qui la rend vulnérable aux blocages diplomatiques et à l'inertie politique. Comme l'affirme McCaffrey, S. (2007), l'absence d'un organe politique de haut niveau empêche l'adoption de décisions contraignantes dans les moments critiques.

Plus globalement, cette différence illustre deux conceptions opposées de la gouvernance environnementale régionale. La première, d'inspiration intégrative, repose sur des institutions permanentes et juridiques structurées, comme le souligne Allott (1990) et comme l'ont souligné Brunnée et Toope (2010) à propos de la légitimité institutionnelle, logique que reprend la convention ABAKIR. La seconde de nature intergouvernementale, privilégie la flexibilité et la coopération technique, conception décrite par Dupuy et Viñuales (2015) et illustré ici par la Convention sur la gestion durable du lac Tanganyika.

Dans cette perspective, la convention ABAKIR présente une architecture plus en phase avec les exigences contemporaines du droit international de l'environnement, qui tend vers une institutionnalisation progressive des responsabilités communes (Bodansky, 2010). Elle reflète un effort de formalisation qui pourrait renforcer la prévisibilité et la légitimité de l'action environnementale régionale à condition d'être activée par la ratification des États concernés.

Mise en œuvre : rigueur normative contre flexibilité procédurale

La mise en œuvre des conventions environnementales internationales repose sur un équilibre entre la définition d'obligations claires et la marge d'appréciation laissée aux États. Dans le cas du bassin du lac Kivu et de la rivière Ruzizi et de celui du lac Tanganyika, les deux conventions adoptent des approches contrastées à cet égard, ce qui met en évidence deux modèles distincts de normativité environnementale.

La convention ABAKIR : une structure normative détaillée

La convention ABAKIR fait preuve d'une rigueur juridique remarquable dans la définition des obligations des États Parties. Elle impose en particulier le respect et l'application du principe de partage juste et

équitable des bénéficiaires (art. 6 c.), la poursuite et le développement d'une coopération renforcée (art. 7 a.), la coopération sur les questions fondamentales de gestion intégrée de la ressource en eau et la prise de toutes mesures juridiques, administratives et techniques requises pour maintenir et, si possible, améliorer la qualité des eaux du bassin (art. 7 b.) ainsi que la notification mutuelle de toute information utile en cas de situation d'urgence (art. 7 e.).

Cette structuration répond aux exigences formulées par la Commission du droit international des Nations Unies sur la prévention des dommages transfrontaliers résultant d'activités dangereuses (2001) dans son projet d'articles sur la prévention des dommages transfrontaliers causés à l'environnement. Elle traduit une volonté d'intégration normative, proche de celle mise en œuvre dans les instruments européens de gestion de l'eau (par exemple, la directive-cadre sur l'eau de l'Union européenne).

Selon Brunnée et Toope (2010), un tel encadrement crée une « autorité internationale du droit », qui favorise l'appropriation par les acteurs nationaux à condition qu'il soit accompagné d'un suivi institutionnel effectif.

La convention sur le lac Tanganyika : une approche souple et progressive

La convention sur le lac Tanganyika adopte une logique plus procédurale. Elle prévoit des plans d'action environnementaux nationaux (art. 13) et des mesures d'encouragement à la coopération technique (art. 18, 20, 27).

Cependant, elle n'établit pas de calendrier d'exécution ni de mécanismes de vérification contraignants.

Cette souplesse traduit une volonté de respecter la souveraineté étatique, mais limite la capacité d'harmonisation des politiques environnementales. Pour Bodansky (2010), cette approche, dite *bottom-up*, vise à privilégier la faisabilité politique à court terme au détriment d'un cadre juridiquement robuste.

Un contraste doctrinal : normativité contre effectivité

La doctrine oppose souvent les instruments à normativité forte mais à effectivité faible (comme la convention ABAKIR en l'état) aux instruments à efficacité politique mais à normativité limitée (comme celui du lac Tanganyika). Cette opposition rejoint les analyses de Bodansky (2010), selon qui l'effectivité d'un instrument dépend moins de la rigueur juridique des textes que de la capacité institutionnelle et politique à les faire vivre.

En définitive, la convention ABAKIR repose sur une normativité structurée et exigeante – fidèle aux standards modernes du droit international de l'environnement –, mais suspendue à une volonté politique incertaine. À l'inverse, la Convention sur la gestion durable du lac Tanganyika, bien que

juridiquement moins ambitieuse, tire sa relative efficacité de sa flexibilité procédurale. Ce contraste illustre un dilemme classique de la gouvernance environnementale transfrontalière en Afrique centrale.

Financement : entre prévisibilité budgétaire et dépendance extérieure

La viabilité d'un régime juridique international de protection environnementale dépend en grande partie de sa capacité à mobiliser des ressources financières pérennes. En matière de gestion des bassins transfrontaliers, le financement conditionne l'opérationnalisation des institutions, l'établissement des plans d'action et la capacité à attirer l'appui des partenaires internationaux. À ce titre, les mécanismes financiers prévus par la convention ABAKIR et la Convention sur la gestion durable du Tanganyika traduisent des choix structurels divergents.

Un dispositif budgétaire intégré dans la convention ABAKIR

L'article 13 de la convention ABAKIR prévoit la création d'un fonds du bassin du lac Kivu et de la rivière Ruzizi. Celui-ci est destiné à financer les programmes communs et les activités de l'Autorité du bassin. Il sera alimenté par les contributions obligatoires des États parties, les appuis des bailleurs de fonds, les produits générés localement (redevances d'usage, partenariats publics-privés et mécanismes de marché).

La convention prévoit également un mécanisme de gestion financière transparente (budgets annuels, audits et rapports financiers), qui sera confié au Secrétariat exécutif. Ce dispositif traduit une volonté de prévisibilité et de responsabilité budgétaire, conformément aux bonnes pratiques identifiées par l'Organisation de Coopération et de développement économiques (OCDE) : en particulier, l'adoption d'objectifs clairement définis, la transparence dans la répartition des responsabilités institutionnelles, et la mise en place de mécanismes de suivi réguliers (OCDE, 2011).

Sur le plan doctrinal, cette approche correspond au modèle d'autonomisation financière des institutions environnementales, qui est notamment défendu par Najam et al. (2003). Ces derniers plaident pour que les organes de gouvernance ne dépendent pas exclusivement de la volonté politique des bailleurs. Cette démarche reflète également la tendance à associer des mécanismes de marché à la gestion des ressources naturelles, comme le prévoient certains accords multilatéraux récents (Convention-cadre des Nations Unies sur les changements climatiques, Protocole de Nagoya sur l'accès aux ressources génétiques et le partage juste et équitable des avantages découlant de leur utilisation, etc.).

Une dépendance aux financements extérieurs dans la Convention sur la gestion durable du lac Tanganyika

L'article 28 de la Convention sur la gestion durable du lac Tanganyika, quant à lui, prévoit que le financement des activités de l'Autorité repose essentiellement sur des contributions volontaires des États Parties, des fonds mobilisés auprès des bailleurs bilatéraux ou multilatéraux.

Aucun mécanisme interne de recouvrement n'est prévu. Cette dépendance aux financements extérieurs, bien qu'efficace à court terme, expose la mise en œuvre de la convention aux aléas des priorités internationales.

Selon Ivanova (2021), ce type de modèle fondé sur la dépendance externe limite la capacité de planification à long terme, réduit la marge d'autonomie des institutions et rend les politiques environnementales vulnérables aux changements de stratégie des bailleurs.

Démarche comparative et enseignements

La convention ABAKIR se distingue par un modèle financier mixte et structuré, qui favorise la soutenabilité budgétaire, l'appropriation régionale et la confiance des partenaires. Celui-ci correspond aux critères de la bonne gouvernance environnementale, notamment en matière de responsabilité financière, de transparence et d'autonomie institutionnelle (Esty, 2006).

À l'inverse, le financement de la Convention sur la gestion durable du lac Tanganyika repose sur une logique de projet dont la viabilité dépendant de la mobilisation ponctuelle de financements extérieurs par des bailleurs internationaux. Ce choix, bien qu'opérationnel à court terme, compromet la continuité des actions, la stabilisation des institutions et l'ancrage régional du régime.

L'enjeu, pour les États riverains du bassin du lac Kivu et de la rivière Ruzizi, serait de faire de ce modèle un levier de souveraineté budgétaire partagée et de renforcement des capacités institutionnelles. Pour cela, la ratification devra toutefois s'accompagner d'un engagement réel à alimenter ce fonds et à activer les moyens régionaux et innovants du financement environnemental.

Règlement des différends : entre mécanisme souple et encadrement institutionnalisé

Dans les régimes internationaux de gestion des ressources naturelles, le règlement des différends constitue un pilier essentiel de l'effectivité juridique. Il garantit non seulement la stabilité du cadre normatif, mais aussi la confiance mutuelle entre les États Parties. La présence, l'absence ou la qualité des mécanismes contentieux révèle souvent le degré de maturité

juridique d'un instrument. La comparaison entre la convention ABAKIR et la Convention sur la gestion durable du lac Tanganyika illustre bien cet enjeu.

La convention ABAKIR : une approche contentieuse encadrée et institutionnalisée

L'article 16 de la convention ABAKIR prévoit expressément un mécanisme progressif de règlement des différends, qui est organisé en différentes phases, à savoir : le règlement à l'amiable avant le recours à l'arbitrage.

Ce dispositif présente plusieurs atouts puisqu'il repose sur des principes de règlement pacifique des différends, tels qu'ils sont consacrés par la Charte des Nations Unies (art. 33), qu'il s'appuie sur l'arbitrage et qu'il traduit une volonté d'institutionnaliser la garantie juridique de la coopération environnementale, en réduisant les risques de déni de justice ou de blocage politique.

Sur le plan doctrinal, cette démarche s'inscrit dans une logique de judiciarisation encadrée de la gouvernance environnementale, conformément à l'analyse de Sand (2004). La justiciabilité des engagements est la condition d'un droit international crédible.

La Convention sur la gestion durable du lac Tanganyika : un mécanisme de règlement souple, mais à portée limitée

La Convention sur la gestion durable du lac Tanganyika prévoit un mécanisme de règlement des différends. En effet, l'article 29 consacre un mécanisme optionnel, qui va de la négociation, à la médiation, en passant par le recours à une commission d'enquête impartiale ou à défaut à l'arbitrage. Ce dispositif présente l'avantage d'inscrire les différends dans une logique de prévention et de gestion pacifique, conformément aux principes généraux du droit international.

Cependant, ce mécanisme reste souple et non contraignant dans la mesure où le recours à l'arbitrage repose sur le consentement explicite des États Parties.

Analyse comparée et portée juridique

La convention ABAKIR se distingue par une approche institutionnalisée, tandis que la Convention sur la gestion durable du lac Tanganyika demeure dans une logique souple et ponctuelle. L'efficacité pratique de la seconde est limitée par l'absence d'un recours obligatoire à un organe opérationnel chargé du règlement des différends, malgré les garanties procédurales qu'elle énonce.

Dans un contexte géopolitique aussi sensible que celui de la région des Grands Lacs – marqué par la méfiance réciproque, les tensions sécuritaires et

les ingérences par acteurs armés interposés –, la sécurité juridique devient un facteur de stabilisation.

À ce titre, l'insertion, dans la convention ABAKIR, d'un arbitrage obligatoire la rapproche des standards évolutifs du droit international de l'environnement. En effet, ces derniers tendent vers un renforcement de la contrainte normative, notamment grâce à l'intégration des juridictions régionales dans la gouvernance écologique (Dupuy, 2004).

L'analyse comparative des deux conventions met en évidence la solidité juridique, institutionnelle et procédurale de la convention ABAKIR, en dépit de son absence d'entrée en vigueur. Cette évaluation renforce l'idée selon laquelle cet instrument présente un potentiel certain pour répondre aux enjeux de gouvernance environnementale dans la région des Grands Lacs. Il reste toutefois à démontrer en quoi sa ratification revêt un intérêt stratégique, environnemental et géopolitique majeur pour les États concernés. Cela constituera l'objet de la dernière partie de cette étude.

Intérêt stratégique, environnemental et géopolitique de la ratification de la convention ABAKIR

La ratification de la convention ABAKIR par le Rwanda, le Burundi et la RDC dépasse la seule logique d'adhésion formelle à un instrument juridique. Cette ratification constitue un levier stratégique pour la gestion durable des ressources naturelles, la stabilité régionale et le renforcement des engagements environnementaux des États Parties. À l'heure où les défis écologiques, économiques et sécuritaires s'entrecroisent, l'entrée en vigueur de cette convention constituerait un acte fort en faveur d'une gouvernance environnementale responsable et solidaire.

Une réponse juridique à des menaces écologiques partagées

Le bassin du lac Kivu et de la rivière Ruzizi est confronté à des menaces environnementales croissantes : pollution domestique et industrielle, érosion des sols, perte de la biodiversité aquatique et déforestation accélérée dans les zones périphériques (Derouane et al., 2020). Ces pressions sont aggravées par l'absence de coordination des politiques nationales.

Or, l'approche par bassin versant repose sur le principe de gestion intégrée des ressources en eau, qui est consacré par la convention d'Helsinki de 1992 (art. 3) et la Convention des Nations Unies de 1997 sur le droit relatif aux utilisations des cours d'eau internationaux à des fins autres que la navigation. La convention ABAKIR, en proposant une institution transfrontalière et des plans d'action coordonnés, répond directement à ces exigences.

Comme le rappellent Kiss et Shelton (2004), le droit international de l'environnement s'oriente vers des obligations de diligence due dans la

prévention des dommages transfrontaliers. En ratifiant la convention ABAKIR, les États engagés se doteraient d'un instrument normatif de prévention conjointe, ce qui éviterait que les externalités négatives d'un État affectent les droits écologiques des autres.

Une valorisation des ressources naturelles stratégiques du bassin

Le bassin du lac Kivu et de la rivière Ruzizi recèle des ressources à haute valeur économique et géostratégique. En effet, le lac Kivu contient environ 60 milliards de mètres cubes de méthane dissous, une ressource qui constitue à la fois une menace – en raison du risque d'éruption limnique – et une opportunité énergétique majeure. Cette ressource est déjà exploitée, notamment à travers le projet KivuWatt au Rwanda pour la production d'électricité (Schmid et al., 2005).

La rivière Ruzizi possède pour sa part un potentiel hydroélectrique supérieur à 400 MW, dont seuls 70 MW sont actuellement exploités grâce aux barrages Ruzizi I et II. Le projet Ruzizi III, soutenu par l'Union africaine et la Banque africaine de développement, illustre une démarche concentrée visant à répartir équitablement les bénéfices entre les trois États riverains (RDC, Rwanda et Burundi).

Enfin, le paysage du bassin offre un potentiel touristique considérable, appuyé sur la richesse de ses sites volcaniques, lacustres et montagneux. Pris dans leur ensemble, ces ressources pourraient soutenir une croissance économique régionale durable, à condition qu'elles s'accompagnent d'un cadre juridique commun de gestion et de partage équitable. Comme le soulignent Rieu-Clarke et Loures (2009), l'absence de règles claires en matière de gouvernance transfrontalière risque de générer des tensions sur l'utilisation et la répartition des bénéfices.

Le potentiel énergétique, hydraulique et touristique du bassin du lac Kivu et de la rivière Ruzizi peut constituer une base solide pour une croissance économique régionale durable, à condition qu'il soit encadré par un dispositif juridique commun garantissant la gestion et le partage équitable des ressources. Comme le soulignent Rieu-Clarke et Loures (2009), l'absence de règles claires peut générer des tensions sur les bénéfices tirés des ressources partagées, d'où l'importance des mécanismes juridiques multilatéraux.

Une opportunité de rapprochement géopolitique et de stabilisation régionale

Au-delà des aspects écologiques et économiques, la convention ABAKIR peut jouer un rôle central dans la normalisation des relations entre les États riverains. Elle créerait un espace institutionnel de dialogue régulier entre la RDC et le Rwanda, dont les relations sont historiquement marquées par des conflits armés et des soupçons de soutien à des groupes rebelles. Elle permettrait aussi un dialogue entre le Rwanda et le Burundi, dont les liens

bilatéraux ont été rompus pendant plusieurs années, avant une reprise timide et progressive.

La doctrine reconnaît de plus en plus le rôle du droit de l'environnement comme vecteur de paix et de coopération (Cordonier Segger & Khalfan, 2004). Dans le contexte africain, les bassins transfrontaliers peuvent servir de laboratoire de diplomatie environnementale, grâce à l'instauration de routines de dialogue et de négociation techniques (Conca, 2006 ; Zeitoun & Mirumachi, 2008).

La convention ABAKIR pourrait donc constituer un catalyseur de normalisation dans une région marquée par la méfiance, en instaurant un dialogue institutionnel régulier et structuré. À cet égard, l'environnement devient une passerelle vers la paix, une vision déjà esquissée dans le droit international et consolidée dans les stratégies africaines de prévention des conflits.

Conclusion

L'analyse comparée des deux instruments juridiques – la Convention sur la gestion durable du lac Tanganyika et la convention ABAKIR – met en évidence un déséquilibre normatif dans la gouvernance environnementale régionale. Tandis que le lac Tanganyika bénéficie d'un cadre opérationnel consolidé, fondé sur des mécanismes institutionnels actifs, le bassin du lac Kivu et de la rivière Ruzizi demeure dans une incertitude juridique en raison de l'absence de ratification de sa convention-cadre. Cette asymétrie est d'autant plus problématique que les deux bassins partagent des caractéristiques écologiques, géographiques et stratégiques similaires ainsi que des enjeux communs liés à la sécurité, à la biodiversité, à la coopération énergétique et à la prévention des conflits.

Dans ce contexte, la ratification de la convention ABAKIR revêt plusieurs intérêts. Premièrement, elle permettrait aux États concernés – la RDC, le Burundi et le Rwanda – de se doter d'un cadre juridique commun, structuré et adapté à la complexité des enjeux transfrontaliers. Deuxièmement, elle ouvrirait la voie à une gouvernance de l'eau plus inclusive, c'est-à-dire favorisant la participation des différents acteurs nationaux et locaux.

Cette ratification pourrait ainsi mobiliser des financements internationaux et ancrer une gestion concertée des ressources dans le respect des principes du droit international de l'environnement. De plus, elle contribuerait également à renforcer la stabilité régionale en instaurant un dialogue institutionnel et pérenne entre des États historiquement marqués par des tensions récurrentes.

En définitive, les deux conventions n'expriment pas de visions concurrentes : elles proposent des approches complémentaires, adaptées à des contextes institutionnels distincts. En mettant en œuvre la convention

ABAKIR, les États riverains du bassin du lac Kivu et de la rivière Ruzizi consolideraient un pilier encore fragile de la gouvernance environnementale régionale. L'organisation fonctionnelle entre les deux instruments permettrait alors de bâtir une architecture juridique intégrée, qui permettrait de répondre aux défis transfrontaliers contemporains tout en renforçant la diplomatie environnementale africaine.

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References:

1. Allott, P. (1990). *Eunomia: New order for a new world* [Eunomia : Vers un nouvel ordre pour un monde nouveau]. Oxford University Press.
2. Bodansky, D. (2010). *The art and craft of international environmental law* [L'art et la pratique du droit international de l'environnement]. Harvard University Press.
3. Brunnée, J. (2002). *International legal accountability through the lens of the law* [Responsabilité internationale des États]. Netherlands yearbook of international law, 33, 21-56.
4. Brunnée, J., & Toope, S. J. (2010). *Legitimacy and legality in international law: An international account* [Légitimité et légalité en droit international: une analyse internationale]. Cambridge University Press. <https://doi.org/10.1017/CBO9780511781261>
5. Conca, K. (2006). *Governing water: Contentious transnational politics and global institution building* [Gouverner l'eau: Politiques transnationales et institutionnalisation mondiale]. MIT Press.
6. Cordonier Segger, M.- C., & Khalfan, A. (2004). *Sustainable development law: Principles, practices, and prospects* [Le droit du développement durable : principes, pratiques et perspectives]. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199276707.001.0001>
7. Dupuy, P.-M. (2004). *Droit international public*. Dalloz.
8. Dupuy, P.-M., & Viñuales, J. E. (2015). *International environmental law* [Droit international de l'environnement]. Cambridge University Press.

9. Esty, D. C. (2006). *Good governance at the international level: A critical analysis with suggestions for reform* [La bonne au niveau international: Une analyse critique assortie des propositions de réforme]. *Global Governance*, 12(4), 439-457.
10. Ivanova, M. (2021). *The untold story of the world's leading environmental institution: UNEP at fifty* [L'histoire méconnue de la principale institution environnementale mondiale : le PNUE à 50 ans]. The MIT Press.
11. Kiss, A., & Shelton, D. (2004). *International environmental law* [Droit international de l'environnement] (3rd ed.). Transnational Publishers.
12. McCaffrey, S. C. (2007). *The law of international watercourses* (2nd ed.). Oxford University Press.
13. Najam, A., Papa, M., & Taiyab, N. (2003). *Global environmental governance: Options and opportunities* [La gouvernance environnementale mondiale: Options et opportunités]. International institute for sustainable development.
14. Rieu-Clarke, A., & Loures, F. (2009). *Still not in force: Should states support the 1997 UN watercourses convention?* Review of European Community & international environmental law, 18(2), 185-197.
15. Sand, P. H. (2004). *Environmental dispute settlement: Environmental law in international courts and tribunals* [Le règlement des différends environnementaux : le droit de l'environnement devant les juridictions internationales]. Yearbook of international environmental law, 14 (1), 3-45.
16. Schmid, M., Halbwachs, M., & Wüest, A. (2005). *Modelling the reinjection of deep-water gas extraction in Lake Kivu* [Modélisation de la réinjection issue de l'extraction de gaz en eaux profondes dans le lac Kivu]. EAWAG aquatic research report, 1-18.
17. Tanzi, A. (2017). *The consolidation of international water law: A comparative analysis of the UN and UNECE water conventions* [La consolidation du droit international de l'eau: Une analyse comparative des conventions de l'ONU et de la CEE-ONU sur l'eau]. Review of European, comparative & international environmental law, 26(1), 66-75.
18. Tanzi, A., & Arcari, M. (2001). *The United Nations Convention on the Law of International Watercourses: A framework for sharing* [La Convention des Nations Unies sur le droit relative aux utilisations des cours d'eau internationaux: Un cadre pour le partage]. Kluwer Law International.
19. Zeitoun, M., & Mirumachi, N. (2008). *Transboundary water interaction I: Reconsidering conflict and cooperation* [Interaction transfrontalière autour de l'eau: Réconsidérer le conflit et la

- coopération]. International environmental agreements: Politics, law and economics, 8(4), 297-316. <https://doi.org/10.1007/s10784-008-9083-5>
20. Convention relative à la gestion intégrée de la ressource en eau du bassin du lac Kivu et de la rivière Ruzizi (convention ABAKIR). (2014).
 21. Convention relative aux zones humides d'importance internationale particulièrement comme habitats des oiseaux d'eau (convention Ramsar). (1971).
 22. Convention sur la biodiversité biologique (convention de Rio). (1992).
 23. Convention sur la gestion durable du lac Tanganyika. (2003).
 24. Convention sur la protection et l'utilisation des cours d'eau transfrontaliers et des lacs internationaux (convention d'Helsinki). (1992).
 25. Convention des Nations Unies sur le droit relatif aux utilisations des cours d'eau à des fins autres que la navigation. (1997).
 26. Protocole révisé de la Communauté de développement d'Afrique australe sur les cours d'eau partagés. (2000).
 27. Traité instituant la Communauté de l'Afrique de l'Est. (1999) (rév. 2007).
 28. Derouane, J., Goor, Q., Linel, A., & Kayigamba, F. (2020). Étude de base du bassin du lac Kivu et de la rivière Rusizi/Ruzizi. Autorité du bassin du lac Kivu et de la rivière Ruzizi. <https://uploads.water-energy-food.org/resources/Etude-de-base-du-bassin-du-lac-Kivu-et-de-la-Rivière-Rusizi.pdf>
 29. Organisation de coopération et de développement économiques (OCDE). (2011). *La gouvernance de l'eau dans les pays de l'OCDE : Une approche multi-niveaux*. <https://doi.org/10.1087/9789264119284-fr>
 30. Organisation des Nations Unies pour l'alimentation et l'agriculture (FAO). (2010). *Rapport de l'atelier de la FAO sur le changement climatique et la pêche dans les Grands Lacs africains, Bujumbura, Burundi, 20-21 avril 2010*. https://www.academia.edu/12458723/Report_of_the_FAO_workshop_on_climate_change_and_fisheries_in_the_african_Great_Lakes
 31. Programme des Nations Unies pour l'environnement (PNUE/UNEP). (2019). *Gouvernance environnementale des bassins transfrontalières en Afrique centrale*. <https://www.unep.org/fr/resources/rapport/gouvernance-environnementale-bassins-transfrontaliers-afrique-centrale>

Évolution des systèmes fonciers dans un ancien front pionnier de cacaoculture : la région du N’Zi (Centre-Est de la Côte d’Ivoire)

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Résumé

La région du N’zi, reconnue pour son rôle pionnier dans la culture du cacao en Côte d’Ivoire est marquée par d’importantes transformations foncières. Cet article explore l’évolution des systèmes de gestion des terres d’un contexte pionnier à une période post pionnière. La méthodologie de recherche a consisté à faire une recherche documentaire sur le contexte foncier des pratiques antérieures et actuelles régionales. Les enquêtes de terrains étaient des ‘enquêtes à plusieurs passages’ dans 53 localités sur 206 localités. Les résultats montrent d’une part que les anciennes pratiques foncières sont en survie car 87 % des producteurs ont obtenus leurs parcelles par héritage. D’autre part, dans le contexte actuel, une inégale délimitation des terroirs dans les départements est observée. Cette dynamique foncière favorise l’implantation de 4 nouvelles sociétés agricoles dans 9 localités de la région.

Mots clés : Évolution, systèmes fonciers, front pionnier, cacaoculture, N’zi

Evolution of Land Systems in a Former Pioneer Cocoa Farming Front: The N'zi Region (Central-East of Côte d'Ivoire)

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Abstract

The N'zi region, renowned for its pioneering role in cocoa cultivation in Côte d'Ivoire, is marked by significant land transformations. This article explores the evolution of land management systems from a pioneer context to a post-pioneer period. The research methodology consisted of documentary research on the land context of past and current regional practices. Field surveys were conducted in 53 out of 206 locations. The results show, first, that old land practices are still alive, as 87% of producers obtained their plots through inheritance. Second, in the current context, an uneven delimitation of terroirs is observed within the departments. This land dynamic is favoring the establishment of four new agricultural companies in nine locations in the region.

Keywords: Evolution, land systems, pioneer frontier, cocoa cultivation, N'zi

Introduction

La région du N'zi, autrefois région du N'zi Comoé, avait une superficie de 19 560 km² et comptait 8 sous-préfectures Arrah, Bocanda, Bongouanou, Daoukro, Dimbokro, Kouassi kouassikro, M'batto et Ouéllé (S. Akira, 2003). Deuxième boucle du cacao et du café, la production était estimée entre 15 à 20% de la production nationale entre 1960 et 1975. Cette dynamique reposait sur des pratiques foncières basées sur le système traditionnel. Après cet âge d'or, la production du café a chuté de 1 à 2% entre 2000 et 2005 et celle du cacao de 5 à 8% à la fin des années 1970, et ne constitue plus que 0,70% en 2005. Avec la redéfinition des frontières administratives en 2011, cette région est devenue le N'zi avec une superficie de 4 772 km² (ANADER, 2018). Aussi, cette dernière décennie, d'importants projets agricoles ont été initiés pour relancer l'agriculture et insuffler une reconversion agricole. C'est le cas du Projet d'Aménagement Agricole de la Vallée du N'zi, du Projet de Relance de l'Agriculture à Dimbokro Commune, du Projet d'Aménagement

Agricole de la Vallée du N’zi, Programme d’Urgence à la Production Vivrière (MINADER, 2014 ; MINADER, 2020,). Dans ce même registre pour résoudre la question foncière, support essentiel de développement des activités agricoles, la région a bénéficié des phases pilotes des projets de renforcement des politiques foncières aboutissant à une mutation des pratiques foncières. Dans ce contexte, comment le rapport au foncier a-t-il évolué de la période pionnière jusqu’aujourd’hui ? Cette interrogation principale se décline en trois questions subsidiaires à savoir : quels sont les caractéristiques des anciennes pratiques foncières dans la région du N’zi ? Comment le foncier est-il approprié aujourd’hui dans la région du N’zi ? Quel est l’impact du changement du mode de gestion foncière dans la région du N’zi ? L’objectif de cette étude est de montrer les transformations des pratiques foncières du passage de la période pionnière à la période de reconversion agricole.

Méthodologie

Collecte des données

La méthodologie de recherche a consisté à une recherche documentaire. Elle a été réalisée sur internet, à la bibliothèque de l’université Alassane Ouattara et Jacques Aka de Bouaké. Également, dans les documents généraux, spécialisés et techniques, statistiques et cartographiques ont été consultés. L’objectif est de recueillir la perception des communautés sur le contexte foncier, les pratiques antérieures et actuelles régionales. Les enquêtes de terrains étaient des “enquêtes à plusieurs passages” dans 53 localités sur 206 localités que comprend la région. Ces choix se justifient par la présence de front pionnier et la mise en place des politiques foncières. Certaines localités de la région du N’zi sont présentées par la figure 1.

Figure 1. Présentation de la région du N'zi



Sources : Bnetd, CCT, 2012
Réalisation : A. Konaté, juillet 2021

La figure 1 présente les départements de la région du N'zi où se trouve la Direction Régionale de l'Agriculture de Dimbokro, des directions départementales Bocanda, Kouassi kouassikro et les 10 sous-préfectures où se

localisent parfois l'Agence du Foncier Rural chargé de la politique foncière. Au total, 350 exploitants agricoles ont été sélectionnés selon un choix raisonné avec un taux de sondage de 10 % des 3498 exploitants recensés. Les raisons de ce choix sont liées au type d'activité agricole, aux types de production, et aux superficies des parcelles agricoles.

Outils d'analyse des données

L'outil informatique a été utilisé principalement pour la saisie et le traitement des données de l'enquête. Le logiciel SPSS a d'abord servi au dépouillement des données collectées. Il a ensuite servi à la réalisation des tableaux statistiques et des différents tests. Enfin, le logiciel Excel 2016 a permis d'effectuer certains calculs ; peaufiner les graphiques et les diagrammes réalisés dans notre travail de recherche. Le traitement cartographique a permis de spatialiser notre étude. Le logiciel cartographique QGIS a permis d'élaborer les différentes cartes de la zone d'étude. Ces cartes portent essentiellement sur les formes d'occupation du sol.

Résultats

Les résultats issus de la méthodologie se structurent autour de trois grandes parties, d'abord la présentation des anciennes pratiques foncières, ensuite l'analyse de la dynamique de la nouvelle politique foncière et enfin l'évaluation de l'impact de l'évolution.

Des anciennes pratiques foncières en survie

Des pratiques foncières pionnières basées sur le système matrilineaire

Des particularités caractérisent l'accès au foncier par les populations des deux anciennes sous-préfectures de l'ancien front pionnier de la région du n'zi ; illustrées dans le tableau 1.

Tableau 1. Mode d'appropriation du foncier durant la période pionnière dans le N'zi

Pratiques	Caractéristiques
Succession des terres	Matrilineaire
Type de travailleur	Saisonnier/Aboussan/
Pérennisation de superficie	Anticipation de l'installation du fils

Sources : D. Boussou, 2019, p. 41 ; C. Benveniste, 1974, p. 46 ; E. Molard, 1998

Le tableau 1 présente des modes d'accès au foncier. La région est peuplée par les Baoulé et spécifiquement la tribu des Agba. L'accès à la terre était auparavant caractérisé par le mode de succession matrilineaire et le droit d'ainesse. Plus clairement, la succession se fait dans le clan de la mère, de frère à frère utérin et d'oncle à neveu utérin. Les femmes succédaient donc difficilement à la terre. Aussi la typologie des exploitants agricoles fait ressortir qu'ils étaient souvent des saisonniers. Ils étaient rémunérés et venaient à des périodes d'intensification des travaux dans les parcelles pour

une durée de 6 mois et repartaient dans leurs localités d'origine. Enfin, dans la course au foncier, le père privilégie l'installation de son fils une fois qu'il acquiert de grandes superficies de forêts.

La survie de l'héritage dans les transactions foncières

Trois types de modalités d'acquisition des terres ont été identifiés lors des enquêtes. Les premiers sont des propriétaires terriens qui accèdent aux portions de terres agricoles par héritage. Les seconds ont des portions de terres qui leur sont octroyées partiellement par des possesseurs. La dernière modalité est l'achat. Le tableau 2 montre la répartition des différents modes d'accès au foncier selon les enquêtés.

Tableau 2. Répartition du mode d'accès à la terre en fonction du genre dans la région du N'zi

Modes d'acquisition	Héritage		Métayage		Achat	
	M	F	M	F	M	F
Proportion en %	66	21	11	1	1	0
Proportion en %	87		12		1	

Source : enquêtes de terrain, 2020

La plus grande proportion de producteurs (87 %) acquiert leur parcelle par l'héritage. Cela s'explique principalement par le fait qu'après la migration du front pionnier à la fin des années 1980, les producteurs sont restés en majorité dans leurs lieux d'origine qui constituent les villages de la région du N'zi pour exploiter leurs parcelles. Même si la période post-pionnière correspond à un moment de souplesse du marché foncier, seulement 12% des producteurs ont accès aux parcelles agricoles suite au métayage. L'achat perçu en périphérie des villes est observé chez 1% des producteurs de la région du N'zi

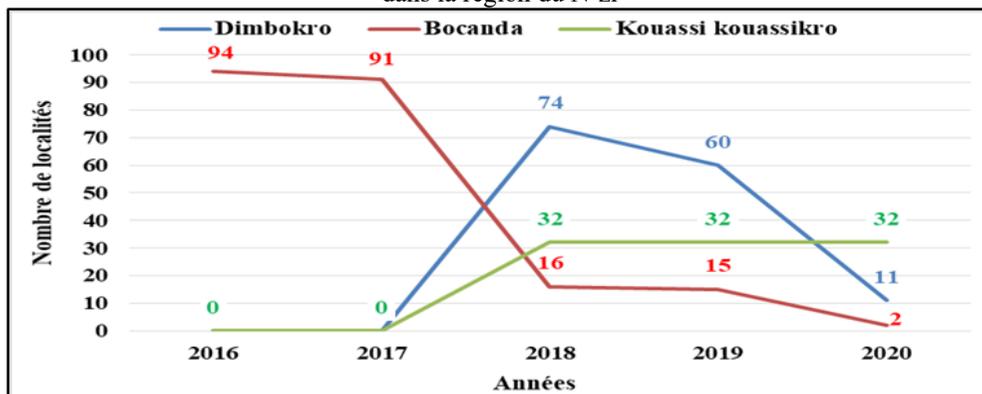
Des fonciers appropriés autrement à la période post-pionnière

L'Agence Foncière Rurale (AFOR), en collaboration avec l'ensemble des directions départementales de l'agriculture (DDA) ont, à travers le Contrat de Désendettement et de Développement C2D de 2012, mis en place le Projet d'Appui à la Relance des Filières Agricoles de Côte d'Ivoire (PARFACI) en 2016 dans le département de Bocanda. Ce projet inclus un processus de délimitation des terroirs villageois et a été élargi en 2017 à travers le Projet d'Appui au Foncier Rural (PAFR) à l'ensemble des terroirs.

La délimitation des terroirs impulsé par les projets

Le processus de délimitation des terroirs devait éviter les conflits, pour une exploitation sécurisée des terroirs des différents villages. Toutefois, les dynamiques de délimitations sont diverses à l'échelle des départements. La figure 2 relève cette évolution à l'échelle de la région du N'zi.

Figure 2. Évolution du nombre de localités totalement délimité par le PAFARCI et le PAFR dans la région du N’zi



Sources : Rapports annuels DRA Dimbokro, 2016-2020

L'évolution du nombre de localités délimité est traduite par la figure 2. Dans le département de Bocanda, la délimitation a commencé en 2016 avec le projet PAFARCI et a pris fin en 2018. Ainsi 94 localités ont commencé le processus en 2016, 91 en 2017 et 16 en 2018. 15 localités sont en cours de délimitation en 2019 et 2 en 2020. À partir de 2017, le PAFR vient se joindre à cette initiative et va prendre en compte les 3 départements de même que celui de Bocanda. Ce projet verra réellement le jour en 2018 où successivement dans le département de Bocanda, 74 localités sont concernées en 2018, 60 en 2019 et 11 en 2020. À Kouassi kouassikro, la délimitation entamée en 2018 est en cours jusqu'en 2020.

Une délimitation des terroirs non effective dans tous les départements

Dans la région du N’zi, tous les villages ne sont pas délimités. Cette délimitation est issue du projet PAFARCI qui comporte une enquête auprès des différents villages avant le tracé des limites. Cette prise en compte des acteurs locaux a abouti à un tracé des limites précises des différents villages. Ainsi, les aires d'extension des différents villages sont bien circonscrites Le tableau 3 présente le nombre de localités des départements où s'est déroulé la procédure de délimitation.

Tableau 3. Nombre de villages délimités par département dans la région du N’zi

Départements	Villages délimités	Villages non délimités	Total
Bocanda	104	00	104
Dimbokro	63	10	73
Kouassi kouassikro	0	32	32

Sources : Rapports annuels DRA Dimbokro, 2016-2020

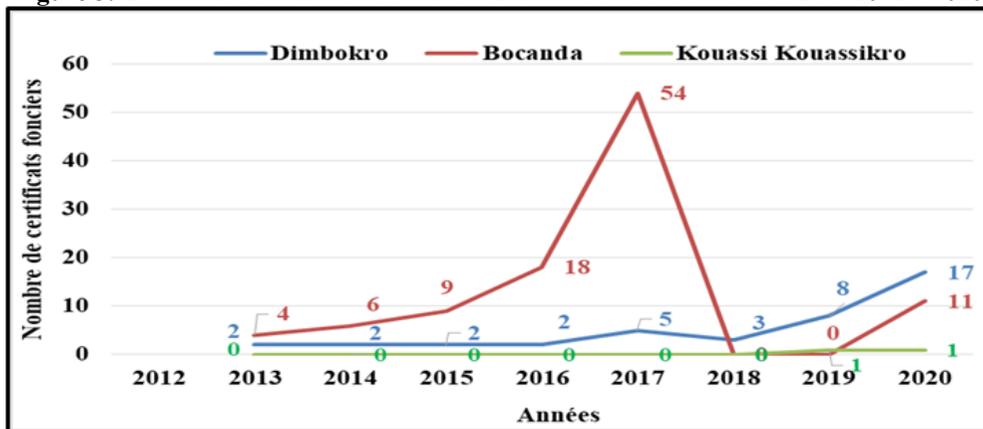
Le tableau 3 présente le nombre de localités délimitées et non délimitées à l'échelle des départements de la région. Kouassi kouassikro a

toutes ses localités non délimitées. En effet, le projet pilote n'a pas touché cette localité dans les débuts. Par contre à Bocanda et Dimbokro, le contexte est différent. La totalité des 104 localités est délimitée dans le département de Bocanda. À Dimbokro, 63 localités sont délimitées contre 10 non encore délimitées. Les villages non délimités sont souvent marqués par des dissensions entre des localités voisines ou le non début du processus.

Une dynamique figée du processus de délimitation des parcelles individuelles

L'attribution des certificats fonciers est issue d'un autre projet nommé Projet d'Amélioration et de Mise en Œuvre de la politique Foncière Rurale de Côte d'Ivoire (PAMOFOR). Initié en 2019, il devrait permettre de renforcer la délimitation des parcelles individuelles débutées depuis 1998 à l'intérieur des localités suivi de leurs sécurisations et la délivrance des certificats fonciers. À Dimbokro, les sous-préfectures touchées pour le moment sont Nofou et Djangokro; 2 sous-préfectures à Bocanda et une à Kouassi kouassikro. Cette opération qui s'est achevée en 2022 est présentée dans la figure 3.

Figure 3. Évolution du nombre de certificats fonciers délivrés dans le N'zi de 2012 à 2020



Source : Rapport annuel DRA Dimbokro, 2012-2020

L'observation de la figure 3 permet de distinguer 3 tendances de délivrance du certificat foncier dans les trois départements. Au total 144 certificats fonciers ont été attribués dans la région. À Bocanda, entre 2013 et 2017, les populations adhèrent massivement à la délimitation de leurs parcelles individuelles dans la mesure où le nombre est passé de 4 à 54 certificats obtenus en 2017. Le nombre chute à 11 en 2020 et les deux années qui y précèdent sont marquées par une absence de statistiques. À Dimbokro, le processus prend de l'ampleur à partir de 2017 avec 5 certificats avant d'aboutir à 17 en 2020. À Kouassi kouassikro c'est en 2019 que ce processus

est perceptible dans la mesure où un certificat a été délivré de même qu'en 2020. L'avance observée dans le département de Bocanda à l'inverse des autres départements peut être attribuée à la récurrence des projets fonciers qui y sont initiés. De même, cet espace plus dominé par la forêt offre de nombreux atouts pour la mise en valeur. Les populations préfèrent donc sécuriser leurs terres. Par ailleurs, cette initiative concourt à créer un cadre formel de sécurisation des limites jusque-là matérialisées par des repères traditionnels (arbres, collines, pistes).

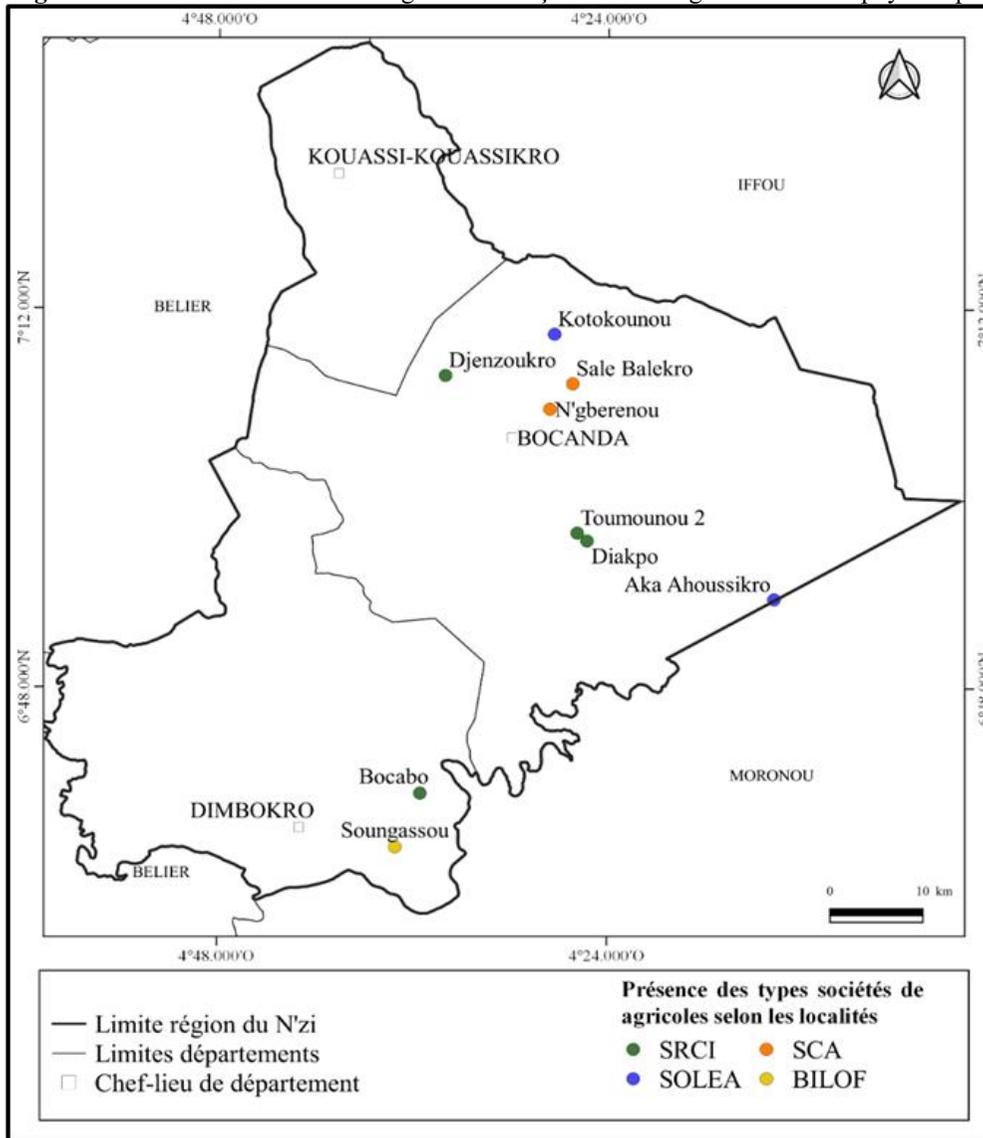
Entre sécurité et fragilité des fonciers malgré les délimitations

Le foncier sécurisé est favorable à diverses formes d'exploitations, tandis que les terres non encore délimitées portent des gènes de conflits.

La sécurité foncière favorable aux sociétés agricoles dans le N'zi

Les lois n°2004-412 du 14 août 2004 et n°2013-655 du 13 septembre 2013 viennent modifier l'article 6 de la loi n°98-750 du 23 décembre 1998 relative au domaine foncier ivoirien (MINADER, 2017, pp. 1, 4, 5, 10). Elles visent à créer un cadre consensuel et moins conflictuel lors de la gestion des terroirs. La loi n° 2015-537 du 20 juillet 2015 d'orientation agricole sécurise les droits des détenteurs coutumiers et incite à la valorisation des ressources foncières. Dans cette même logique, la loi n°2014-427 du 14 juillet 2014 portant code forestier attribue la propriété des forêts au titulaire de titre de propriété foncière selon les types des actes détenus. Ainsi, des agro-industriels disposants de bail emphytéotiques exploitent des parcelles. La figure 4 présente la localisation de certaines sociétés dans la région disposant de bail emphytéotique.

Figure 4. Localisation des sociétés agricoles exerçant sous le régime du bail emphytéotique



Sources : Bnetd, CCT, 2012 ; enquêtes 2020
Réalisation : N. J. Yéo, juillet 2021

La figure 4 présente les différentes firmes agro-industrielles de la région du N'zi. Elles sont dans l'ensemble localisées dans le centre-est et le sud de la région du N'zi précisément dans les départements de Bocanda et Dimbokro, du fait de la présence d'une végétation de forêt, favorable à la mise en place de leurs activités. La société agricole SRCI est spécialisée dans la culture de l'hévéa. Elle a ses superficies agricoles localisées à Diakpo,

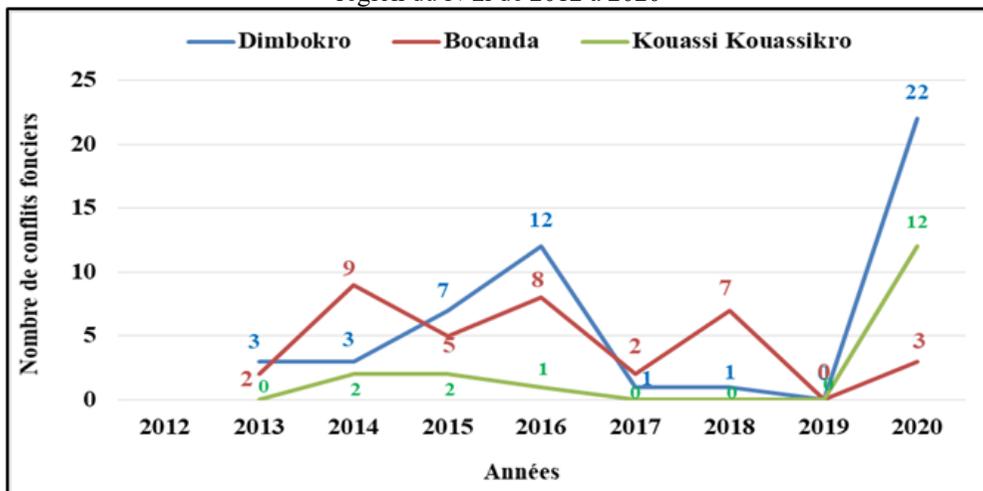
Tomonou 2 Djenzoukro dans le département de Bocanda et Bocabo dans le département de Dimbokro.

SCA Tempete spécialisé dans l'hévéaculture a ses parcelles qui se localisent dans les localités de Salèbalekro et N'gberenou dans le département Bocanda. SOLEA a ses exploitations de cultures vivrières telles que l'igname, la banane plantain, les maraichages et de cultures pérennes telles que le cacao, le café. Leurs parcelles sont implantées dans les villages de Kotokounou, Aka ahoussikro dans le département de Bocanda. Elle est spécialisée dans le domaine des cultures vivrières et le cacao. BILOF est spécialisée dans la semence de Riz est localisée dans la localité de Soungassou dans le département de Dimbokro. Le foncier devient donc accessible aux firmes dans les localités.

Les frontières inter-rurales et individuelles encore floues et conflictuelles

Les limites entre terroirs voisins sont souvent objets de crise. En effet, les oppositions sur les parcelles situées dans deux localités distinctes mais limitrophes et l'absence de conciliation sont les premières causes de crise née de la délimitation foncière lors du PAFARCI ou du PAFR. À cette première cause s'ajoute les crises internes dans les villages lors du PAMOFOR. L'affirmation de la propriété foncière en milieu rural ivoirien est fondée sur l'acquisition des certificats fonciers. Toutefois, les conflits fonciers persistent durant le processus d'attribution de ce certificat comme relevés dans la figure 5.

Figure 5. Évolution du nombre de conflits fonciers par an dans les départements de la région du N'zi de 2012 à 2020



Sources : DDA Bocanda, Dimbokro, Kouassi kouassikro, Nos enquêtes de terrain, 2020

Dans l'ensemble de la région, les années 2016 et 2020 sont marquées par la présence de nombreux conflits fonciers avec respectivement 23 et 37.

Cela se justifie par la pleine mise en œuvre du projet. En fonction des départements, Dimbokro et Bocanda enregistrent le plus grand nombre de conflits (49) et (36) du fait de l'orpaillage, une recrudescence conflictuelle est observée dans la mesure où les parcelles situées en périmètre aurifère sont très convoitées. Aussi le nombre élevé de conflits observé en 2020 est le fait d'une synthèse de ceux de 2019 et 2020 du fait du Coronavirus.

Le faible nombre de conflits en général est lié à la présence active du PAMOFOR qui met l'accent sur l'application de la loi 98-750 du 23 décembre 1998 du domaine Foncier Rural, et l'exécution du projet National de Gestion des Terroirs et Équipement Rural (PNGTER) depuis 1999. Des Comités Villageois de Gestion Foncière Rurale (CVGFR) ont été créés au sein des villages et des Comités de Gestion Foncière Rurale (CGFR) à l'échelle des sous-préfectures afin de régler les conflits.

Discussion

Les différents modes d'accès au foncier ont été abordés par certains auteurs. Par exemple, Mel (2009 p. 85) souligne que la plupart des localités à forte homogénéité autochtone telles que Ayébo, Adaou, Aboisso et plus encore Krindjabo, qui constituent des « localités-bastions » du système matrilineaire, appréhendé comme infrastructure culturelle, l'héritage et la régulation foncière se structure autour de la parenté utérine. Pour N'Goran (2016, p.130 ; 131) le don qui est un type de cession très rare aujourd'hui, se déroule entre membres d'une même famille, d'un même lignage ou d'une même communauté. Cette pratique consiste à céder une parcelle à un parent ou à un proche, en vue de son exploitation sans définir de délai au préalable. En effet, pour certains bénéficiaires notamment les jeunes, l'un d'entre eux soutient que : «lorsque les parents (ou la famille) nous fournissent un lopin de terre, ils nous donnent les moyen de lutter, mais aussi de nous réaliser». Quant au prêt de courte durée ou don temporaire, ce type de cession découle de l'état des relations existantes entre l'acquéreur et le cédant. Cette pratique consiste à céder une parcelle à un parent ou à un tiers, en vue d'une exploitation, dans un délai raisonnable excédant rarement un (1) an.

Au-delà des principes traditionnels prédominants dans la gestion des terroirs agricoles, un élan de modernité s'instaure progressivement. Pour Kouamé *et al.* (2016) la loi n° 98-du 23 décembre 1998 portant sur le foncier rural ivoirien ordonne les modalités et légifère ce domaine. En effet, la question de la sécurisation foncière et du titrage est l'objet de nombreux débats et de conceptions contrastées. Colin *et al.* (2009, p.70) rappelle que les PFR eux-mêmes sont l'objet de représentations diverses et en partie contradictoires, en concurrence entre elles. Les différents acteurs des politiques foncières ont mis en place des règles négociées. En outre, selon Mel Meledje (2009, p. 4 ; 9) l'historique de ces systèmes dans toute l'Afrique de l'Ouest permet de

relever que les droits fonciers coutumiers sont soumis à une logique d'enregistrement afin qu'un caractère officiel, et une valeur juridique leur soient reconnus. Pour cela, des dispositifs de formalisation très variés se sont développés depuis les indépendances. L'influence civiliste dans les systèmes de ces États remonte à l'époque coloniale de l'administration coloniale française jusqu'aux indépendances dans les années 60. Dans d'autres cas, la gouvernance foncière coutumière est fondée sur le collectivisme agraire et l'exclusion de toute affirmation du droit de propriété sur le foncier considéré comme un bien commun à Tioroniaradoukou pour Aloko *et al.* (2018)

Le mode de gestion des terres agricoles est en évolution. Mais des crises persistent. Par exemple, Soro (20 p. 306 ; 310) relève que Cocody est une commune composée de plusieurs villages ayant des limites conflictuelles. Cependant, cette intégration se trouve contrariée par des problèmes de délimitation de ces villages communaux dont parfois les limites vont au-delà de celles de la commune qui les abrite. Les outils géo-spatiaux permettent d'identifier les zones litigieuses et contribuent au tracé de nouvelles limites consensuelles. Par ailleurs il faut noter que ces conflits fonciers dans le cas des zones semi-autochtones sont fortement corrélés au facteur politique. En effet Bourdieu (1994, p. 64) a insisté sur l'importance de la lutte et du conflit dans le fonctionnement d'une société. Mais pour lui, ces conflits s'opèrent avant tout dans différents champs sociaux autonomes : le champ politique, économique, culturel...Et c'est le rapport systémique de ces champs qui produit la trame de la société. C'est pourquoi la dynamique foncière qui est un « fait social total » (1923) est aussi éminemment politique. À Mouyassué, si le facteur démographique, conjugué aux facteurs culturels et de loi du marché, contribue aux crises intra et extra familiales entre autochtones Agni et allogènes, les indicateurs semblent montrer qu'ils sont loin de prendre leur autonomie du champ politique.

Conclusion

En somme il ressort que la gestion foncière passe progressivement du système traditionnel au système moderne à travers des éléments de modernité. L'évolution foncière dans la région du N'Zi met aussi en lumière les dynamiques complexes entre l'héritage historique du front pionnier de la cacao-culture, les mutations socio-économiques contemporaines et les enjeux de durabilité. Les changements dans l'accès et la gestion des terres reflètent à la fois les transformations des systèmes de production agricole et les adaptations des structures communautaires face aux pressions démographiques et environnementales. Une meilleure compréhension de ces dynamiques est essentielle pour élaborer des stratégies de gouvernance foncière qui concilient développement économique et préservation des ressources.

Conflit d'intérêts : Les auteurs n'ont signalé aucun conflit d'intérêts.

Disponibilité des données : Toutes les données sont incluses dans le contenu de l'article.

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References:

1. Agence Nationale d'Appui au Développement rural (2018) *Plan stratégique de développement 2018-2027, région du N'zi, Tome 2 : bilan diagnostic*, Abidjan, Côte d'Ivoire, 49 p.
2. Agence Nationale d'Appui au Développement rural (2018) *Plan stratégique de développement 2018-2027, Tome 1 : monographie de la région du N'zi*, Abidjan, Côte d'Ivoire, 80 p.
3. Aloko N. J., Kouassi Y. F. (2014) « Diagnostic d'une ancienne zone pionnière de l'économie de plantation : le département de Bocanda » *European Scientific Journal, January édition vol.10, No 1 ISSN : 1857 – 7881 (Print) e - ISSN 1857- 7431*, Espagne et Macédoine, pp. 470 - 497.
4. Aloko N. J., Adjoba M. K-D, Coulibaly H. T. (2018) « Développement agricole et gouvernance foncière à Tioroniaradoukou (Nord de la Côte d'Ivoire) » [en ligne], *EchoGéo*, 43, disponible sur [<https://doi.org/10.4000/echogeo.15192>], Consultée le [18/08/ 2021] , 14 p.
5. Bakayoko G. A., Kouamé K. F., Boraud N. K. M. (2017) « Culture de l'igname au centre-est de la Côte d'Ivoire : contraintes, caractéristiques sociodémographiques et agronomiques », *Journal of Applied Biosciences 110 : 10701-10713 ISSN 1997-5902*, Kenya, pp. 10701 - 10713.
6. Bouin G. E. (2018) *Immigration étrangère et conflits fonciers dans la Sous-Préfecture de Duekoué*, Mémoire Master Géographie, Université Alassane Ouattara, Bouaké, Côte d'Ivoire, 158 p.
7. Colin J-P, Ruf F. (2011) « Une économie de plantation en devenir L'essor des contrats de planter-partager comme innovation institutionnelle dans les rapports entre autochtones et étrangers en Côte d'Ivoire », *Revue Tiers Monde*, n° 207, [en ligne], Disponible sur [<https://www.cairn.info/revue-tiers-monde-2011-3-page-169.htm>] Consultée le , [10/02/2022] pp.169-187.
8. Gastellu J-M (1979) « Disparition de la main-d'œuvre étrangère ? », *CIRES no 23*, Abidjan, pp. 17-45

9. Kouame G., Koffi B. E., Vaelet F., Soro M. D., Gbede J., M'bra S. K., Zehouri B. P-A (2016) *Cadre d'analyse de la gouvernance foncière de la Côte d'Ivoire*, Groupe banque mondiale, Cote d'Ivoire, 186 p.
10. N'goran K. G. (2016) « sens et fonctions des arrangements fonciers dans les pratiques agricoles du département d'Oumé (centre-ouest ivoirien) » , *rev. ivoir. anthropol. sociol. kasa bya kasa, n° 31, educi*, pp129-148
11. Pelissier P., Sautier G., Blanc-Pamard C., Lericollais A. (1979) *Maîtrise de l'espace agraire et développement en Afrique tropicale*, [en ligne], Disponible sur [\[https://horizon.documentation.ird.fr/exl-doc/pleins_textes/doc34-08/30662\]](https://horizon.documentation.ird.fr/exl-doc/pleins_textes/doc34-08/30662), Consultée le [18/08/ 2021], 28 p.