Breaking Free

Local Governments' Boundary-Defying Engagement
with Human Rights and Migration

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PhD Thesis - Faculty of Law, Economics and Governance
Utrecht University
Supervisors: Prof Dr Barbara Oomen, Dr Moritz Baumgärtel

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Human Rights and Migration

Losbreken
Grensverleggende Betrokkenheid van Lokale Overheden bij
Mensenrechten en Migratie

(met een samenvatting in het Nederlands)

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Elif Durmuş

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Promotor:
Prof. dr. B.M. Oomen

Copromotor:
Dr. M.G.N. Baumgärtel

Beoordelingscommissie:
Prof. dr. C.M.J. Ryngaert
Prof. dr. P. Schiff Berman
Prof. dr. A. Kaya
Prof. dr. A. Brysk
Prof. dr. J.E. Nijman

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Acknowledgements

A few days ago, for an icebreaker in a meeting, I had to answer the question: "What is your biggest accomplishment?" I thought the most evident answer would be the PhD that was complete, submitted and about to be defended. But I realised that this would not be truthful. There have been far bigger challenges in my life that I have had to overcome, and the PhD didn't even appear in the top five in my mind. I also realised that both the PhD and these other challenges would not have been so overcome, had I not had an incredible support network, and a whole bunch of luck and privilege.

I had highly-educated parents, both university graduates, and a lot of university-graduate aunts, uncles and even grandparents. I had a mother who read books about how to raise children, who was able to take three years off from work in order to focus on raising me. I had a father who had accepted me and loved me when I later became a young Turkish woman living in Europe with a foreign boyfriend. I had many toys and many books as I grew up, and went to lots of good schools, including some private ones. My parents were diplomats, so I had the challenge but also the privilege to repeatedly be exposed to different countries, languages, education systems and cultures. I really do not know if I would be in the position that I am today, had I not had "library hours" every Monday at the International School of Dhaka in Bangladesh. I don't know if I would be here today if my mother had not become a single working mother of two, and even a cancer patient, but still supported me in using every opportunity of growth, even an exchange to the US for a month, while she was ill. I'm not sure if I would have developed the seemingly endless love of learning that I have today, if my mother had created an environment of pressure to perform and achieve for her or for others, or if I didn't have the opportunity to seek refuge in Russian and Chinese courses when I was a lonely, bullied kid in a new country. I never had to worry about money until I was a Master's student, and even then my family was supporting me. I would not have had a chance to do an Advanced LLM at Leiden University after the post-coup Turkish government cancelled all foreign scholarships, had I not had an extremely generous grandfather who spent a significant amount of his savings to pay for my (very expensive) student fees and living costs.

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I would like to give a special thank you to the most patient, understanding and transparent new supervisor I could hope for in a post-doc I started before having finalised my PhD. Prof Dr Wouter Vandenhole: Thank you most sincerely for being so human in the world of academia and treating me with such kindness and patience as I struggled with the excruciating final patches of finalising the PhD amindst stress, overwhelm and health struggles. I am very very happy our paths crossed and I cannot wait to spend the next three and a half years working together, reveling in good research.

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Elif Durmuş
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Summary for the Public

Breaking Free – Local Governments' Boundary-Defying Engagement with Human Rights and Migration

Traditionally, it is states who have the authority to determine policies of migration, citizenship, and human rights. However, recently, there have been many frustrations about states' inability or unwillingness to make good, fair migration and human rights policies – within Europe and worldwide. It the meantime, cities, towns, and their local governments have been observed to step up above and beyond their traditional responsibilities (and sometimes even competences) and make better, more inclusive and rights-based policies for all, including for those most vulnerable. Many local governments have also shown a determination to defend international law and human rights, even when their own national governments are violating them. Moreover, cities have also been mobilising and cooperating with civil society actors, international organisations, universities, citizens – locally, nationally and even internationally – to participate in the making of international law and policy. Sometimes, they seek a seat at the table with states, sometimes they simply gather in their own institutions and networks, but they demonstrate high skill and capability in using the language of international law and navigating international diplomacy. In my thesis, I show the important role local governments play in making inclusive societies and human rights for all a reality on the ground. In addition, I argue that local governments have become actors in international law, influencing the development of international law and policy, as demonstrated in their activities in the field of migration and human rights. Any actor working towards rights-based, inclusive and just societies should consider local governments an important partner, as well as an invaluable forum for advocacy, creative and effective cooperation, and the cultivation of a culture of human rights.

Samenvatting voor het algemene publiek

Losbreken - Grensverleggende Betrokkenheid van Lokale Overheden bij Mensenrechten en Migratie

Traditioneel zijn het staten die bevoegd zijn om het beleid inzake migratie, burgerschap en mensenrechten te bepalen. Tegelijkertijd bestaan er frustraties over het onvermogen of de onwil van staten om een goed en eerlijk migratie- en mensenrechtenbeleid te voeren - binnen Europa en wereldwijd. Vast is komen te staan dat steden, kleinere gemeenschappen en hun lokale overheden inmiddels vaak verder gaan dan hun traditionele verantwoordelijkheden (en soms zelfs bevoegdheden) en beter, inclusiever en op rechten gebaseerd beleid maken voor iedereen, ook voor de meest kwetsbaren. Veel lokale overheden hebben ook laten zien dat zij vastbesloten zijn het internationale recht en mensenrechten te verdedigen, zelfs wanneer hun eigen nationale regeringen deze schenden. Bovendien werken lokale overheden ook met elkaar en met actoren uit het maatschappelijk middenveld, internationale organisaties, universiteiten en burgers - lokaal, nationaal en zelfs internationaal. Zo mobiliseren zij zich om deel te nemen aan de totstandkoming van internationaal recht en beleid. Soms zoeken zij een plaats aan tafel met staten, soms verzamelen zij zich in hun eigen organisaties en netwerken, maar zij geven blijk van een grote vaardigheid en bekwaamheid in het gebruik van de taal van het internationale recht en het navigeren in de internationale diplomatie. Het proefschrift toont de belangrijke rol aan die lokale overheden spelen bij het realiseren van rechtvaardige, inclusieve samenlevingen en mensenrechten voor iedereen. Daarnaast betoog ik dat lokale overheden actoren zijn geworden in het internationaal recht. Uit hun activiteiten op het gebied van migratie en mensenrechten blijkt dat zij de ontwikkeling van internationaal recht en beleid beïnvloeden. Iedereen die werkt aan op rechten gebaseerde, inclusieve en rechtvaardige samenlevingen vindt in lokale overheden een belangrijke partner en een forum van onschatbare waarde voor creatieve en doeltreffende samenwerking en het stimuleren en cultiveren van een mensenrechtencultuur.

CHAPTER I

Introduction

Local governments are not entities an international lawyer would usually think of when asked about the "actors of international law". In fact, local governments are considered irrelevant in classical international law, mere state organs whose actions can trigger the responsibility of the state,[1] without any relevance or "actorhood" of their own to boast. This thesis is a theoretical and empirical demonstration of why this is not true, as it is not the full truth, even if we look from the lens of traditional, Westphalian international law.

Before the modern state – based on nations as polities – became the norm, free cities were relevant actors in international relations, forming unions such as the Hanseatic League,[2] setting norms about international trade,[3] signing treaties,[4] holding rights and obligations,[5] and granting rights and protection to persons living within their territory.[6] In fact, the very Treaty of Westphalia, which is often quoted as the landmark signalling the beginning of a new era of sovereign and equal states (and *only* states) as actors of international law, had cities among its signatory parties.[7] In the following centuries however, cities lost this privileged status and became mere lower tiers of administration within modern states,[8] without competences in international relations or migration. Citizenship – now understood as nationality status, rather than being of a "city" – and border control became the primary tools through which States retained exclusive control over who belongs in their territory and who does not.[9] Thus, cities have been pushed to a place of irrelevance as a locus of status, rights and as a scale of governance that really matters in the big questions.

In the past thirty to forty years however, the city has been receiving increasing attention from a plethora of scholarly fields. Trailblazing works such as Saskia Sassen's "The Global City" have started putting the city under spotlight as a locus of convergence for the effects of the global capitalist market economy; the influence of international organisations and the transnationalisation of regulation; as well as increasing mobility of capital, workers,

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1   Articles on the Responsibility of States for Internationally Wrongful Acts, Art. 4., UNGA, 2008.
2   Nijman, 2016.
3   Ibid.
4   See e.g. *infra* note 7.
5   Nijman, 2016; Prak, 2018.
6   Prak, 2018.
7   Such as the cities of Strasbourg, Dortmund, Nuremberg, Lübeck, Regensburg, any many more. See for the original full texts including signatories: https://de.wikisource.org/wiki/Westf%C3%A4lischer_Friede_%E2%80%93_Vertrag_von_M%C3%BCnster and https://de.wikisource.org/wiki/Westf%C3%A4lischer_Friede_%E2%80%93_Vertrag_von_Osnabr%C3%BCck.
8   This is the UN definition of "local government": Human Rights Council, Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee, UN Doc. A/HRC/30/49, 7 August 2015, para 8.
9   Bauböck and Orgad, 2020.

service and perhaps most importantly: information.[10] Benjamin Barber in his seminal work "If Mayors Ruled The World" argued that the pragmatic approach of mayors and local governments towards issues on the ground allow them to make much more effective, result- and solution-oriented, inclusive policies; especially in the fields of migration and social cohesion.[11] Migration studies and political science have seen a so-called "local turn" in both the scholarship of and the empirical findings on the most central actors influential in policies of migration and integration.[12] Socio-legal scholars of human rights who study the localisation,[13] the local relevance,[14] or "vernacularisation"[15] of human rights, have also slowly broadened their analysis to include the role of local governments, as it became increasingly clear that human rights were realised, violated, contested, disseminated, and defended most visibly at the local level.[16] Finally, scholars of international and constitutional law have also observed local governments' (and their transnational networks')[17] increased involvement in international legal processes and global governance.[18]

The increased attention from scholarship did not happen in a vacuum. More than 55% of the world's population – more than ever before and rapidly increasing – live in cities now, rather than the countryside.[19] This proportion is projected to reach 68% by 2050.[20] The city is however more than just the theatre backdrop to the play of politics, discourse, and

10   Sassen, 2001.

11   Barber, 2013.

12   Caponio and Borkert, 2010; Zapata-Barrero et al, 2017; Bendel et. al, 2019. Caponio et al (eds), 2019.

13   Marx et al, 2015.

14   De Feyter et al, 2011. "Grounding human rights in local experiences offers the human rights movement the opportunity to emphasize similarities between the challenges facing different communities, while at the same time respecting and acknowledging local differences." De Feyter, 2006, p.13

15   Merry, 2006a; Merry 2006b.

16   Marx et al, 2015; Goodale, 2007; De Feyter et al, 2011; Oomen and Baumgärtel 2014; Griggolo, 2016; Oomen and Baumgärtel, 2018; Goodhart, 2019; Hoffman, 2019; Oomen and Durmuş, 2019, Durmuş 2020. See also Chapter II, IV, V and VI in this thesis.

17   Davidson et al, 2019; Coenen et al, 2019; Acuto and Ghojeh, 2019; Oomen, 2019; Durmuş and Oomen 2021; See also the complete 2021 Special Issue of *Local Governments Studies* titled "City Networks Activism in the Governance of Immigration" edited by Aude-Claire Fourot, Aisling Healy and Anouk Flamant https://www.tandfonline.com/action/doSearch?AllField=City+Networks+Activism+in+the+Governance+of+Migration&SeriesKey=flgs20.

18   Frug and Barron, 2006; Blank, 2006 Aust, 2015; Nijman, 2016; Aust, 2017; Oomen and Baumgärtel 2018; Hirschl, 2020; Oomen et al 2021a; see also in general the Special Edition of the European Yearbook of Constitutional Law dedicated to cities and city networks: Hirsch Ballin E., van der Schyff G., Stremler M., De Visser M. (eds) European Yearbook of Constitutional Law 2020. European Yearbook of Constitutional Law, vol 2. T.M.C. Asser Press, The Hague. https://doi.org/10.1007/978-94-6265-431-0_12

19   UN, "68% of the world population projected to live in urban areas by 2050, says UN", 16 May 2018, New York, https://www.un.org/development/desa/en/news/population/2018-revision-of-world-urbanization-prospects.html

20   Ibid.

law that happens to take place in an urban setting.[21] It is a different scale of community, political organisation and legal administration with its unique dynamics, advantages and disadvantages.[22] The local community is arguably more tangible, less imagined and more real, grounded in everyday interactions between residents in spaces of learning, working, shopping, play and rest.[23] The locality is sometimes considered the highest scale in which participatory, but also (semi-)direct democracy is still possible.[24] It is also considered an innovation hub, or a laboratory for new, innovative, more participatory and horizontal forms of governance.[25] The city is also a place of convergence in which different actors, individuals, practices, interests and influences meet; in which local, regional, national, and transnational forces converge and manifest on-the-ground results.[26] It is a place of memory and history, arguably more immediate and visible than the "motherland" or the "nation", offering visual evidence of collective experiences that shape and even define identities.[27] A place, historically, of refuge, for individuals ranging from the musicians of Bremen in folktales[28] to serfs who escaped from their feudal masters to come and see if it was true that "Stadtluft macht frei"[29]. This, even today, can be as visible in writing at the ancient gates of Maastricht and the walls of Geneva.[30]

Local governments, which are defined by the United Nations Human Rights Council as "the lowest tier of general public administration in a State"[31] are at times the invisible, but often also more accessible faces of the greater "State" as such, much closer than the nation's capital Ankara or Bern is to someone in Lüleburgaz or St Gallen.[32] While they

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21   Nijman et al, forthcoming in 2022.

22   Ibid.

23   LeFevbre, 1968; Varsanyi, 2006; Aust, 2015; Oomen and Durmuş 2019.

24   Best et al., 2011.

25   Somers et al., 2016.

26   Sassen, 2001; Oomen and Durmuş, 2019.

27   Boyer, 1994; Crinson, 2005.

28   Pedroza, 2020.

29   German for "City air makes free", short for "Stadtluft macht frei nach Jahr und Tag" ("City air makes free after a year and a day"). A saying that is based in the legal principle connoting to serfs becoming free from their masters upon having stayed in a city for a year and a day: Mitteis, 1952.

30   The ancient city gates of Maastricht announce that people within it will be safe and free, while Geneva has "City of Refuge" written on the walls of some of its older buildings: observations during field research.

31   Human Rights Council, Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee, UN Doc. A/HRC/30/49, 7 August 2015, para.8. The United Nations uses the term 'local authority' as a synonym for local government. Some civil society groups, such as the Habitat International Coalition, reject the notion of tiers of government as diminutive and talk about spheres of government, in addition to advocating for the inclusion of a public-election-condition for the term 'local government' while 'local authorities' may include both elected and appointed officials. Interview with Habitat International Coalition – Housing and Land Rights Network officials, 20 August 2019.

32   Interview #1 Anonymous, civil society representative, Istanbul, December 2018.

provide immediate essential services to their inhabitants, realising (and potentially violating) their most basic human rights, they can also act autonomously for their own political interests, and thus appear to be distinct from "the State".[33] In fact, scholars have described this phenomenon as the "dual sub-state and non-state character" of local governments.[34] This phrasing alludes to the concept of "non-state actors" in international law, a category defined in the negative (not being a State) which includes actors such as multinational corporations, international organisations, non-governmental organisations, armed groups, and individuals. Such actors may be considered "internationally relevant"[35], but nonetheless do not enjoy "primary" or "full" legal personality in international law, with the complete set of accompanying prerogatives of the capacity to create law, carry rights and obligations, and be held accountable in their own name.[36]

For domestic, perhaps constitutional lawyers, this implied problematique may seem non-existent. In domestic law, local governments do have legal personality, yet they also are organs of the State. Within the state, there is a division of labour, one which places local governments at the bottom of the hierarchy, and gives them tasks that the central government might be willing, even happy to delegate, while it concerns itself with "bigger" questions such as security, migration, citizenship, and international relations. Yet, what happens when local governments do not remain obligingly within their designated playing rooms and *break free* in order to engage with precisely these traditionally centrally-governed issues? These are the same issues that have for centuries been the subject of international law. Yet now, we have cities issuing ID cards,[37] advocating "urban citizenship" that is independent from and even revolutionary at the face of national citizenship,[38] engaging in regional and global political and legal debates,[39] governing their international relations through their foreign affairs departments and through massive regional and transnational city networks that resemble international

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33   Durmuş, 2020.

34   Nijman, 2016; Durmuş 2020. See also Chapter II.

35   Aust, 2015.

36   Alston, 2005; Ryngaert, 2016. See also the "Reparations for Injuries" Advisory Opinion of the International Court of Justice, in which the Court determined that the United Nations had "partial" and "functional" international legal personality as opposed to the "full" and "primary" legal personality of States: International Court of Justice, *Reparations for Injuries suffered in the Service of the United Nations*, Advisory Opinion, 11 April 1948.

37   De Graauw, 2014.

38   Varsanyi, 2006; Bauböck, 2003; Oomen, 2019; Bauöck and Orgad, 2020. See also Chapter VI in this thesis.

39   Aust 2015; Oomen and Baumgärtel, 2018; See also Chapter III in this thesis.

organisations,[40] drafting normative documents in the language of international law in these networks and in large-scale conferences,[41] advocating for and defending international law that their own States are violating or rejecting.[42] In the past ten years, in reaction to the Syrian Civil War and Russia's invasion of Ukraine, many local governments have been taking highly proactive stances welcoming refugees, at times in open defiance of their national governments, even seeking to open their ports to ships rescuing people in the Mediterranean Sea.[43] Local governments have also increasingly been fighting for a seat at the table when matters of international law and governance are determined, such as during the drafting and adoption processes of the Paris Climate Agreement, the Sustainable Development Goals, and the Global Compacts for Migration and Refugees.[44] This brings us to an important conclusion: neglecting – as an object of analysis – local governments and their engagement with issues that would traditionally have been considered tasks of the (central) State is a mistake for the those studying (the cross-sections between) international law, migration and human rights; as it leaves us oblivious to both the current influence these actors have on processes essential in our fields, and blind to the potential roles they could play.

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40   Davidson et al, 2019; Coenen et al, 2019; Acuto and Ghojeh, 2019; Oomen, 2019; Durmuş and Oomen 2021; See also the complete 2021 Special Issue of *Local Governments Studies* titled "City Networks Activism in the Governance of Immigration" edited by Aude-Claire Fourot, Aisling Healy and Anouk Flamant https://www.tandfonline.com/action/doSearch?AllField=City+Networks+Activism+in+the+Governance+of+Migration&SeriesKey=flgs20

41   Discussed in depth in Chapter III. See for instance the European Charter for the Safeguarding of Human Rights in the City, 2000, Adopted in Saint-Dennis, https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta% 20Europea%20Sencera_FINAL_3.pdf; and "Cities for Adequate Housing: Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City," 2018. New York, July, 16. https://www. uclg.org/sites/default/files/cities_por_adequate_housing.pdf

42   See for example San Francisco, Boston and many other US cities locally ratifying and localizing the Convention on the Elimination of Discrimination Against Women, while the US refuses to ratify the treaty (Davis, 2016; Haidi Haddad, Presentation in ACUNS Conference, Rome, July 2018); or again US cities locally ratifying and seeking to implement the Paris Climate Agreement in times in which former President Trump pulled out of the treaty (Durmuş, 2020). Further, both US and Italian cities attended the Marrakech Conference on the Global Compact for Migration, despite their central governments refusing to participate and adopt the document: Cities of Refuge Participant Observation, December 2018, Marrakech.

43   Some recent examples include statements and initiatives from the UK Local Governments Association: https://www.local.gov.uk/topics/communities/refugees-and-asylum-seekers/ukraine-council-information/ukraine-lga-position, the EU Committee of Regions: https://cor.europa.eu/en/engage/Pages/Help-Ukraine-refugees.aspx, and the Council of Europe Congress for Local and Regional Authorities: https://www.coe.int/en/web/portal/-/-local-governments-unite-for-welfare-and-peace-online-marathon-series-between-ukrainian-local-leaders-and-their-international-counterparts

44   See Chapter III.

Meanwhile, local governments can make or break the quality of life – thus also the fulfilment of the human rights – of inhabitants living within them. The convictions, practices and attitudes of local governments[45] and the people working within them[46] can make the difference between dystopian havens of inequality, poverty, and social exclusion on the one side, and localities created for and by inhabitants on the other side. These latter localities can enjoy a sense of community and belonging, a system of governance that is rights-based, and access and participation in the decision-making processes on the city. Local governments' input in international legal processes on the grand scale on the other hand can introduce to bureaucratised high politics the needs and experiences from the ground, knowledge on the qualities of effective norms, and ownership of the implementing actors in the norms created. The late Benjamin Barber said that the world would be a better place if mayors ruled it.[47] I would like to nuance that statement and say, the world would be a better place if local communities as well as local governments had an established position from which to contribute to the production of its norms and policies. This however, needs to be facilitated or at least accompanied by close inquiry and exploration by researchers and practitioners into several under-researched areas. One such areas is the question of the capacities of local governments: legally – in their own domestic systems – and structurally, financially, and other important elements of institutionalised governance such as personnel, know-how and data. Another field of inquiry that needs attention is the extent of the current engagements of local governments with international law, both through mechanisms foreseen by traditional international law and otherwise, including the processes of norm creation, diffusion, contestation and socialisation of and by local governments. Such inquiry would need to include local governments' engagement with other participants of the international community, and their inclusion to and exclusion from fora and processes of international law and governance. Understanding how local governments are engaging with and contributing to international law, a better migration governance and the realisation of human rights would require an understanding of the networks, institutionalised and non-institutionalised, that local governments and individuals associated with them operate in – locally, regionally, nationally and transnationally. Finally, in the quest for a better realisation of human rights on the ground, research should be conducted into the reasons why certain local governments, led and operated by certain key individuals, chose to go above and beyond what legal coercion compels them to do for the sake of human rights and the fair and humane inclusion of vulnerable migrants. In this rich environment full of interrelated un(der)-explored issues, this thesis aims to tackle the

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45   See Chapters IV and V.
46   See Chapter VI.
47   Barber, 2013.

following over-arching question: *How and why do local governments, at times challenging the limits of their competences, engage with matters pertaining to human rights and migration, which are subjects of international law?*

While local governments have been defying boundaries and engaging in many fields in which international law-making is conducted (primarily) by States (climate change[48] and the sustainable development goals[49] come to mind as a start), the fields of human rights and migration will be those that will be the focus of this thesis. They touch upon one of the most fundamental mandates of nation-states: the determination of who belongs – and who doesn't – in their territories.[50] Simultaneously, this very fundamental function affects the very core of an individual's well-being.[51] If a person's status as a legitimate holder of the rights essential to the enjoyment of life are not recognised by the State they are in, their security, livelihood, freedom of movement, rights to education, work, political participation and equality will be inevitably violated.[52] Hannah Arendt famously coined the "right to have rights" as a prerequisite to the realisation of universal human rights in a global regime of sovereign nation-states.[53] It is a widely accepted paradigm today that States have the prerogative to decide to whom to "grant" rights and whom to exclude, through the determination of the status of individuals within (and sometimes outside) the territory of the State.[54] Categories such as "citizen", "highly-skilled migrant", "low-skilled migrant", "migrant worker", "illegal immigrant", "asylum seeker", "refugee", "person under temporary protection", "conditional refugee", "unremovable rejected asylum seeker" are only a few of the tools a State can use in order to ensure differentiated rights and privileges to persons subject to their jurisdiction. This state of play however – one placing nation-States at the centre of our universe and – is neither an unavoidable law of nature, nor the way things have always been or always have to be. Fixed and violently guarded borders; civilians intercepted at sea and pushed back; working, taxpaying members of society apprehended and deported; and bureaucratic regimes so complex even bureaucrats struggle to navigate; have not always been the reality. And today, local governments, with the challenges they pose to state-centrism in international law and in the determination of citizenship, are simultaneously shaking

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48   Kern and Mol, 2013.

49   Aust and De Plessis, 2019.

50   Isin, 2002.

51   "If a person does not have a nationality, it may be impossible for them to go to school, see a doctor, get a job, open a bank account, or even get married." OHCHR, "OHCHR and the Right to a Nationality", https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx#:~:text=The%20right%20to%20a%20 nationality%20is%20a%20fundamental%20human%20right,change%20and%20retain%20a%20 nationality.

52   Ibid.

53   Arendt, 1949; Kesby, 2012.

54   Isin, 2002.

the very core of state-centric international law, as well as practicing their ability to radically improve the lives of persons present in their territories, people who States might have preferred to exclude or neglect.[55] This is why the normative frameworks under focus in this thesis will be migration and human rights. Here, what is understood under human rights is the maxim that every individual has the same set of inalienable, indivisible and interrelated rights,[56] along with a broad range of socio-legal affiliations based on this notion – such as legal, non-legal and not-exactly-legal norms; beliefs; discourses; values; and "social construction and practice".[57] How human rights are conceived of will be further elaborated upon in the individual chapters of this thesis. On the other hand, "migration" as such is a very wide field relating fundamentally to the circumstances surrounding people on the move, within or across borders of nation-States.[58] For the purposes of this thesis, reference to migrants and migration will most frequently point towards (the engagement of local governments with) persons present and/or residing in the territory of a locality, who do not enjoy formal national citizenship and are frequently in precarity. Thus, vulnerable migrants will be the focus, without zooming in on distinctions of the legal categories they are allocated to, as a principled commitment to the inalienability and universality of human rights. Such vulnerable migrants will include, but not be limited to: refugees, including those who haven't been legally determined to be refugees but fulfil the factual criteria;[59] persons in various stages of the asylum process; undocumented migrants; and other migrants who are in a (for instance socio-economically) vulnerable position. The term "migration" and "migration governance" in this thesis will therefore also encompass the processes following a person's move away from their home into a new territory, which can be referred to as integration, social cohesion or inclusion.[60] The lens strategically chosen to evaluate the well-being of non-nationals and the peaceful co-habitation and communal living however will be human rights. As local governments are the unit of analysis,

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55   Varsanyi, 2006; Oomen 2019; Bauböck and Orgad 2020. See also Chapter VI in this thesis.

56   OHCHR, "What Are Human Rights?" https://www.ohchr.org/en/issues/pages/whatarehumanrights. aspx

57   Grigolo, 2016.

58   There is no definition of a migrant in international law, but the International Organisation for Migration considers "Migrant", as a working definition "[a]n umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons." IOM, IOM Definition of Migrant, [available at: https://www.iom.int/ about-migration], accessed 15.06.2022.

59   Listed in the Geneva Convention Relation to the Status of Refugees: UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.refworld.org/docid/3be01b964.html [accessed 15 June 2022]

60   Caponio, Scholten and Zapata-Barrero, 2019.

the focus will be primarily on persons already present within the territory of the local government, though references will be made to engagement of local governments with issues surrounding migration understood as the crossing of national and local borders.

1. Methodology

In seeking to answer the central question of the thesis (*How and why do local governments, at times challenging the limits of their competences, engage with matters pertaining to human rights and migration, which are subjects of international law?*) it is important to explicate the methodology of the wider research project. This project relies on a grounded theory approach[61] and conducts socio-legal empirical research. In this empirical research, I employ qualitative case studies in addition to desk research comprising of a literature review for each individual article and legal and policy research. The thesis comprises of eight chapters, of which all but the Introduction and Conclusion are individual self-contained works, four of them already published, one in working paper stage. The different articles zoom in on different aspects of the theories applicable to the research as well as different data, particularly different geographical fields of research (i.e. Turkey, Switzerland and the transnational field, explained below in Subsection I(a)). This choice of format has enabled me to engage in different strands of scholarship, different disciplines, as well as receive more immediate feedback and societal and academic engagement with my work. The Introduction and Conclusion seek to explain the interrelationship between the Chapters (although the Chapters themselves also take on that task to different extents) as well as map some cross-cutting findings and recommendations for future research. Below, the methodology, in particular the case selection and the grounded theory approach will be further elaborated upon.

a. Case Selection

i. Turkey, Switzerland and the Transnational Field

To begin, the research underlying this thesis is a part of the Cities of Refuge project[62] which pursues a socio-legal exploration of the relevance of human rights as law, praxis and discourse in the reception and integration of refugees by local governments in Europe. This project funded by the VICI grant of the Netherlands Scientific Organisation, initially had six field research sites: The Netherlands and Germany as countries of destination for migration, Italy and Greece as border countries of the EU, and Switzerland and Turkey, as extreme case studies which are – though both non-members of the EU – in very diverging geographical and socio-economical positions

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61   Charmaz, 2006. This will be elaborated upon in Section 1.b.

62   https://www.citiesofrefuge.eu/

in the field of migration. The research underlying this thesis was conducted in these two countries as well as a third field research "site": the transnational field of local government engagement.

To first explain further the choice of Turkey and Switzerland as extreme cases: Turkey is the country in the world hosting the largest number of registered refugees along with hundreds of thousands of unregistered asylum seekers.[63] While Switzerland is at the centre of Europe, accessible only with difficulty for the few refugees who succeed in reaching Europe in hope of a safe future; Turkey is also geographically at the very borders of Europe, immediately neighbouring many conflict zones.[64] The latter is also a highly centralised country, a unitary state with centrally-appointed governors and locally elected mayors governing the same provincial, municipal and district territories.[65] The Turkish central government is responsible for many tasks that are local government tasks in the rest of Europe, such as educational policies and healthcare. Turkey also has high legal ambiguity in the field of migration and integration, especially when it comes to the competences of local governments.[66] On the other hand, Switzerland – similar to many other European countries – has a deterrence policy which only enables very few refugees to ever reach its borders.[67] Switzerland also has a highly regulated and complex asylum system in which it assesses individual cases (as opposed to Turkey's mass temporary protection regime) and assigns asylum seekers and refugees to designated centres in which to wait out the results of their procedures, alongside a diverging level of restrictions to applicants' freedom of movement.[68] Even after a positive decision, refugees must remain in the Cantons they have been assigned to through their dispersal

63   According to the UNHCR statistics as of March 4th, 2022, Turkey hosts more than 4 million refugees and asylum seekers registered under UNHCR. This is 15% of the world's total refugee population. This does not include undocumented migrants, the numbers of which are estimated at around 500.000. https://www.unhcr.org/refugee-statistics/download/?url=6uQxF9

64   Less than 10% of the world's refugees live in all of the EU, compared to the 15% hosted in Turkey. More than 86% of the world's refugees live in developing countries that neighbour the conflict zones. In 2020, out of 521.000 first instance asylum decisions in the EU, 41% were positive: "Seeking Asylum in Europe", European Union, https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en#overall-figures-of-immigrants-in-european-society. In Switzerland, 40% of 11,041 asylum applications were positive: European Council of Asylum and Exile, Asylum Information database, Switzerland: https://asylumineurope.org/reports/country/switzerland/statistics/.

65   Turan, 2016.

66   Erdogan, 2017; also see Chapters IV and V for more detailed analyses.

67   Holzer et al., 2000.

68   Various interviewees in my Swiss field research between March-September 2021 have repeated this. See also Marion McGregor, "Switzerland: Why asylum seekers are put off", 10 October 2018, *InfoMigrants*, https://www.infomigrants.net/en/post/12548/switzerland-why-asylum-seekers-are-put-off.

regime.[69] In Turkey however, most (around 90%) refugees and asylum seekers (including Syrians under temporary protection) live in urban settings of their own choosing, the initial reception centres at the Syrian border having proven insufficient after the first months.[70] Therefore, refugees in Turkey are forced to fend for themselves, working mostly in unregistered and exploitative settings for a fraction of the minimum wage and without social security.[71] They are – however – also not closely tracked by the state (unless they commit a crime) and often fall into the cracks of the data available at public administrations. Switzerland is also considered a highly decentralised State, with its elected Cantonal institutions enjoying wide-ranging competences, including in migration and citizenship, and its municipalities boasting both high capacity in budget and personnel, and competences related to social, economic and cultural rights, as well as the field of integration.[72] Alongside all this, Switzerland enjoys a comfortable position in the worldwide economic context, with a GDP per capita of 87.000 USD,[73] while Turkey has been in a rapidly declining economic trajectory, at least in the last 10 years, with a current GDP per capita of around 8.500 USD.[74]

All in all, this extreme divergence between the country contexts has enabled me to look at both the most privileged (in money, personnel and legal competences) and some of the most overwhelmed and least privileged local governments, comparing and contrasting their possible and preferred lines of action in engaging (or not) with issues concerning human rights and migration.

As mentioned briefly above, I however chose to select yet a third field research site alongside the countries of Turkey and Switzerland: the transnational arena in which local governments engage with human rights and migration. This choice had two main

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69   "Anerkannte Flüchtlinge, vorläufig aufgenommene Flüchtlinge und vorläufig Aufgenommene werden während oder nach Abschluss des Asylverfahrens einem Kanton zugewiesen. Sie bleiben auch nach dem Asylentscheid in diesem Kanton wohnhaft. Innerhalb des Kantons, welchem Sie zugewiesen werden, können Sie den Wohnort frei wählen." (German for: "Recognised refugees, temporarily admitted refugees, and temporarily admitted persons will be assigned to a Canton during or after the completion of the asylum process. Also after the decision of the asylum process, they will remain in this Canton. Within the Canton to which they have been assigned, they may choose their place of residence freely." Translation mine.) German Language Brochure of the Swiss Secretariat for Migration (SEM) on Recognised Refugees, Temporarily Admitted Refugees, and Temporarily Admitted Persons. https://www.sem.admin.ch/dam/sem/de/data/publiservice/publikationen/info-flue-va/info-flue-va-de.pdf. download.pdf/info-flue-va-de.pdf

70   Erdogan, 2017; Durmuş 2020.

71   Korkmaz, 2017.

72   Keuffner, 2017; Keuffner and Papazian, 2020.

73   As per data from the World Bank: https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=CH

74   Again, according to data from the World Bank:

https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=TR

reasons. First, my background in international law and my strong research interest in the pluralisation of the sources and participants of international law made me particularly fascinated with the relevance *for international law* of local governments' engagement with human rights. I found quickly in my research that – indeed – local governments proved to be internationally relevant actors[75] – engaging with other prominent international actors, forming networks akin to international organisations, seeking to take part in mainstream (state-centric) international legal processes of law- and decision-making, and collectively generating norms of their own in the form and language or international law.[76] The second reason for my interest in the transnational arena and city networking was my desire to explore, seek and track down the persons, processes, and pathways of information and socialisation across different so-called "levels" (local, national, international etc). My suspicion was that engagement of local governments with human rights and migration could not be neatly categorised into levels and would instead by deeply complex and highly interlinked, with plenty of people, institutions, norms, practices and information travelling and (re)produced, in between[77] levels.

Therefore, I decided to study local governments not only in their local contexts, but also in their networking, at the national, regional, but most importantly also international scale. It was – of course – impossible to map all international and transnational engagement of local governments worldwide (though I initially attempted such a mapping exercise, which served as a basis for my first Chapter), but nonetheless, taking the transnational scale into perspective and into study along with my local field research has proven extremely insightful, as it has allowed me to trace the travel of practices, norms, ideas and discourses throughout vast webs of interconnected relationships reaching from the local fields of governance to national city associations, civil society, academia, regional city networks, transnational city networks and the halls of international organisations and conferences.[78] Chapters II, III and IV are partially or completely results of this transnational field research. Looking at different scales of networks and the travel of ideas, norms and practices eventually garnered my interest in the micro scale of analysis: the individual. In discussions with my Cities of Refuge colleagues, we found that in all of our field research, leading individuals and actors creating, disseminating, taking ownership of, and contesting ideas, discourses, values and practices on human rights and rights-based migration were often at the root of progressive institutional policies, regional practices and international norms. Chapter VI, co-authored with my fellow PhD researchers Tihomir Sabchev and Sara Miellet, is a result of this research interest,

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75   Aust, 2015.
76   See Chapters II and III for an in-depth analysis.
77   Or "in the middle" in the words of the late Sally Merry (2006b).
78   Such as the UN Human Rights Council, the Habitat Conferences, the Paris Climate Agreement, the Global Compacts for Refugees and Migration and many more.

and constitutes an attempt to address a key missing piece in the puzzle of why certain local governments go above and beyond legal requirements and regulatory coercion in matters of human rights and migration.

ii. Selected Local Governments, Interviewees and Data

Between November 2018 and September 2021, a total of 55 interviews were conducted as part of this research, of which 20 in the Turkish context, 27 in the Swiss context, and 7 in the international context (the latter category from officials of city networks and prominent members of local governments worldwide known as human rights cities – Gwangju in South Korea and Sao Paolo in Brazil). The interviews were conducted with officials of local governments (mostly the administrative and executive branches), local and international civil society organisations engaging with local governments, city networks in the national, regional and transnational scale, international organisations engaging with local governments, and academics. My transnational field work relied mainly on participant observation in conferences of regional and transnational city networks as well as meetings of international organisations and international conferences which included local governments.[79] The interviewees were provided with informed consent forms in which they could indicate how their data could be cited. The project and the main research question were also explained to them, and consent for voice recordings was requested. Some interviews are cited anonymously in this thesis in accordance with the wishes of the interviewee and/or safety concerns the researcher had for them, while other interviews are cited with affiliations only, or names and affiliations.

The local governments in Turkey and Switzerland were selected to represent different competence levels within each country context (metropolitan municipality vs district municipalities in Turkey and City-States [Kantonstädte] vs municipalities in Switzerland). The cases were selected from amongst localities that had a reputation of being either very progressive with human rights or welcoming and open to refugees and migrants. In Turkey, it was also possible to achieve political diversity as the local governments selected were governed by fundamentally opposing political parties. In

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79   Including, but not limited to the 2017 Metropolis Conference in The Hague; the 2018, 2019 and 2020 World Human Rights Cities Fora in Gwangju (and online); the Cities for Rights Conference in 2018, in Barcelona; the International Migration and Integration Symposium in 2018, in Istanbul; The International Human Rights Cities Conference in 2018, in Istanbul; the Human Rights Cities Workshop organised by the Raoul Wallenberg Institute in Graz, in 2018; the CLISEL Roundtable organised in 2018, in Stockholm; the 5th Mayoral Forum on Migration, Human Mobility and Development, conducted in parallel the Global Forum on Migration in 2019, in Marrakech; the UN Human Rights Council Advisory Meeting with Local Governments in 2019, in Geneva; the Human Rights Cities Roundtable at the Fundamental Rights Forum of the EU in Vienna, in 2019; the Urban Citizenship Workshop in La Chaux-de-Fonds in 2021 .

Switzerland however, with the added difficulty of the Covid-19 pandemic, smaller and more centre or right-leaning municipalities were impossible to access and motivate to participate in the research. Therefore, as a shortcoming of this research, almost all Swiss localities selected were left-leaning or highly left wing. In the end, the local governments whose officials were interviewed were municipalities of Ankara (Metropolitan), Keçiören, Çankaya, Şişli, Sultanbeyli, Maltepe, Bağcılar and Zeytinburnu from Turkey; and the City-State of Basel, the City-State of Geneva, the municipalities of Zürich, Bern and Illnau-Effretikon from Switzerland.

All field work was complemented by desk research. For the Turkish context, this was mainly an analysis of both mainstream and social media as well as the 5-year Strategic Plans of local governments and publications of city networks and civil society as the municipal archives were often insufficient and/or inaccessible to the public. For the Swiss context, desk research was conducted into the publications of civil society and online sources of the government on migration-related issues, as well as archives of local governments, searching particularly for policy documents relating to asylum, migration, urban citizenship, integration and human rights.[80] For the transnational field, this desk research provided some of the most crucial data. I mapped 27 normative documents drafted about local governments by key international organisations,[81] or by local governments collectively (at the regional or transnational scale), which had *prima facie* relevance for international law. Then, particular in-depth analysis was conducted into the European Charter for Safeguarding Human Rights in the City,[82] the Global Charter-Agenda for Human Rights in the City,[83] the Mayors' Marrakech Declaration,[84] The Istanbul Declaration on Social Inclusion[85] and the Cities for Adequate Housing –

80   This desk research was conducted almost entirely by my brilliant research assistant Margherita Goetze.

81   Particularly: Human Rights Council, Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee, UN Doc. A/HRC/30/49, 7 August 2015; and Council of Europe, Congress on Local and Regional Authorities, *Resolution 334* (2011) adopted on 20 October 2011, Annex 'Explanatory Memorandum', Lars O. Molin, <https://rm.coe.int/168071933b>.

82   European Charter for Safeguarding Human Rights in the City, signed in Saint Dennis, 18 May 2000, https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera_FINAL_3.pdf.

83   Global Charter-Agenda for Human Rights in the City, adopted in Florence, December 2011 by the UCLG World Council <https://www.uclg-cisdp.org/en/right-to-the-city/world-charter-agenda>.

84   Marrakech Mayors Declaration: Cities Working Together for Migrants and Refugees (2018), adopted at the 5th Mayoral Forum on Human Mobility, Migration and Development, 8 December 2018; Presented at the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration (10-11 December 2018) and at the UNGA (17 December 2018). https://www.iom.int/ news/ global-mayors-unite-support-human-mobility-migration-and-development

85   Istanbul Declaration: Commitment to Local Action for Social Inclusion, 17 May 2016, adopted at the "Social Integration Summit", 17-18 May 2016, Istanbul, https://www.coe.int/en/web/congress/-/istanbul-declaration-commitment-to-local-action-for-social-inclusion

A Municipalist Declaration for the Right to Housing and the Right to the City.[86] These normative documents were selected for their range and diversity in format and topics (from human rights in general to migration and integration without reference to the rights regime) and simultaneous relevance to the project and prominence in the field. Interviews, notes from participant observation, as well as normative documents were coded, including through the use of NVivo, in order to develop a grounded mapping of reoccurring themes. These codes have provided the basis for the theoretical categories emerging through the grounded theory approach, for each individual Chapter.

iii. Shortcomings of the Case Selection and Reflexivity

Unfortunately, as with every research, this field research also had shortcomings. Due to an immobilising accident during my Turkey field research and the Covid-19 pandemic plaguing my Swiss field research, I had to seriously downscale the number of local governments I could include into my case selection. Therefore, the geographical range among my Turkish local governments were limited, and border towns as well as smaller and mid-sized towns were not possible to include. In Switzerland, the overwhelming effects of the Covid-19 pandemic on the workload of local governments made it impossible to access almost any smaller and mid-sized municipality digitally. In a bid for more honesty in academia, I would also like to disclose that my field research was delayed by a year due to serious mental health struggles and 10-months of part-time working capacity, shortly before the Covid-19 pandemic. Luckily, this period proved to be temporary and I could pick up work in full force later on, adapting my research plan accordingly. Further shortcomings of this research, such as points on generalisability and replicability will be discussed in the section below. Finally, on the note of positionality and reflexivity, it may be worthwhile for the reader to know that I am a young Turkish woman trained as a lawyer in Turkey, raised in a middle-class family with parents working for the Turkish Foreign Ministry. I grew up living in different countries including Germany (8 years) which facilitated my field research in Switzerland. My childhood rich in diverse experiences and frequent changing countries of residence, as well as my current position as a Turkish migrant in Europe are likely important factors shaping my academic views. Perhaps most importantly, my identity and positionality has most likely affected my Turkish and Swiss interview participants' attitudes towards me, in ways which are open to speculation.

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86 'Cities for Adequate Housing – A Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City', signed 16th July 2018 in New York, https://citiesforhousing. org/#section–0

b. Grounded Theory Approach

This research was conducted with a grounded theory approach. Grounded theory methods are "systematic, yet flexible guidelines for collecting and analysing qualitative data to construct theories 'grounded' in the data themselves".[87] The grounded theory process consists of data-collection, observation, description of observed data, the posing of fundamental questions, and the systematising of patterns emerging from data into theoretical categories.[88] The iterative process of data collection, data analysis and theorisation is continued until new data does not produce any further new categories (i.e. "saturation").[89] Theories that have emerged as a result of this process should "refine[...], extend[...], challenge[...] or supersede[...]" concepts pre-existing in literature.[90] The concepts and theories emerging from grounded theory should thus be placed amongst, and contrasted and related to existing theories and concepts, complementing them.[91]

This research has combined qualitative case studies with grounded theory. The selection of the case studies, while seeking to reach as broad and rich a database as possible, does not claim any generalisability, as mentioned also in Section I(a)(iii). This does not, however, mean that the grounded research and the theoretical categories brought forth in this research have no relevance for different realities and research elsewhere. On the contrary, an emerged grounded theory that demonstrates "credibility", "originality", "resonance" and "usefulness"[92] can not only explain and interpret a localised reality, but also have cross-cutting relevance for the understanding of related phenomena across disciplines.[93] In the words of Charmaz: "A contextualised grounded theory can (...) end with inductive analyses that theorize connections between local worlds and larger social structures. Grounded theorizing does not preclude constructing meso and macro analyses."[94] This is precisely why the grounded theory approach was considered appropriate and selected for the qualitative research underlying this research. The Chapters of this thesis offer different sets of theoretical categories for the different aspects of the larger research they focus on, but these theoretical categories are complementary to both each other and other theories in scholarship. Nonetheless, the theoretical and conceptual findings of the Chapters do not form a single, unitary and densely integrated theoretical framework, but rather different but complementary conceptual and theoretical explanations for different but interlinked parts of the same research.

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87   Charmaz, 2006, p. 2.

88   Charmaz, 2006, p. 25.

89   Charmaz, 2006, p. 96

90   Ibid, p.169.

91   Ibid., p.167-169.

92   Ibid, p. 182-183.

93   Ibid, p. 153

94   Ibid, p.243.

2. Remarks on the Overarching Theoretical Framework

Following the methodology, I would like to bring forth some insights into the ontological and epistemological assumptions underlying the research presented in this thesis. I started this PhD as a young scholar trained in first Turkish, then public international law, with a particular interest in the frontiers of the questions of the sources and participants of international law.[95] At that time, my understanding of "the law" extended beyond black-letter hard law to soft law – non-legal norms that nonetheless have a "normative pull"[96] and persuasive value – but not to much else. Doing research on armed groups and international law, I had become convinced that more pluralism, inclusivity, democracy and increased engagement with excluded actors would increase the legitimacy of international, as well as its effectiveness and meaningfulness on the ground.[97] I was thus inclined to analyse cities and local governments initially from the lens of the scholarship on "non-state actors" in international law.[98] Additionally the discrepancy between assigning international legal obligations to certain actors while excluding them from law-making processes became blatant inconsistencies to me.[99] Starting this project, I therefore had a normative standpoint that actors charged with obligations should also enjoy some kind of access to the creation process of those norms applying to them, if the obligations are to hold legitimacy. Previous research on and experience with engagement with armed opposition groups had shown very promising results in compliance with the laws and customs of war when there was recognition of the agency of those actors, engagement with them, and a norm-generating process which included their free and voluntary commitment.[100] Entering socio-legal research, I quickly realised that I had a social constructivist outlook; considering law, human rights, norms and even understandings of "good local migration governance" as contested and created ("constructed") by members of the community that engages with them. Some of the fundaments of my understanding of the role of cities and local governments in international law were laid down by the trailblazing works of Helmut Aust, Janne Nijman, Yishai Blank and Barbara Oomen and Moritz Baumgärtel.[101] Thus, in relating local governments' engaging with human rights, I became interested not only in local governments' role in passively implementing, or even through engagement with it, taking ownership of a previously existing and fixed set of international norms, but also in how they contribute to the continued development of those norms, in more

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95 Ryngaert, 2008, 2016; Gal-Or et al, 2015; Alston, 2005; Clapham, 2013; Chinkin, 1989, Hillgenberg, 1999; Guzman and Meyer, 2010.

96 Franck, 2016.

97 Ryngaert, 2008; Bellal, 2015; Bilkova 2015a.

98 Gal-Or et al, 2015; Alston, 2005; Clapham, 2013.

99 Ryngaert, 2008; Bellal, 2015; Bilkova 2015a, 2015b.

100 See for instance Heffes, 2020.

101 Aust, 2015; Aust, 2017; Nijman, 2016; Oomen and Baumgärtel, 2018; Blank, 2006.

and less explicit ways. Meanwhile, my worldview concerning the (micro-)processes and functioning of international law was shaped substantively by the works of Paul Schiff Berman, Harald Hangju Koh, Janet Kovan Levit and further scholars of the ("New") New Haven School of Law.[102] Thus developed a deeper interest towards the intersections of law, norm-generation, actors, society and politics.

With this influence, I began to seek to look beyond the black box of "actors", whether states, local governments of others, and look at the individuals, interactions and processes that shape them, their identities and their interests. Finally, the socio-legal research on the socialisation of states into international law and the localisation of human rights – not only conceived of as law but also discourse, politics and practice – has further complemented my understanding of how ideas, values, norms, and practices are sparked, developed, contested, disseminated, advocated, spread and localised.[103] Almost all of these mentioned works also have an interdisciplinary background, combining especially political science, international relations, sociology, anthropology with law. This was crucial in helping me develop my sensitivities in interdisciplinarity and socio-legal approaches as well as – over time – some fluency. In line with the Grounded Theory Approach that came naturally to me as a scholar outside of her comfort zone in empirical research, I was able to develop my understanding of reality iteratively through a constant dialogue between the input of a rich and continuous influx of data (including through desk research) and a parallel exploration of the theories behind how international law, socialisation of norms, contestations and dissemination work.

Each Chapter in this thesis, being an individual and distinct work (all but one published independently from the rest of the Chapters), will – further to these general remarks – introduce their own theoretical frameworks and literature reviews, as well as their individual methodologies. This is both to introduce readers of that single text to the research in a sufficient manner, but also because the Chapters may focus on diverging theories, disciplines and data.

3. Outline of the Thesis

In order to answer the question of how and why local governments engage with human rights and migration, at times challenging the limits of their competences; this thesis will first, in Chapter II, tackle the first sub-question (SQ1): *How do local governments*

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102   Berman, 2007; Koh, 1996, 2007; Levit, 2007.
103   Merry, 2006a, 2006b; Brysk, 2019; Risse and Ropp 1999; Risse et al 1999, 2013; Béland and Cox, 2016; De Feyter, 2006, 2011; Goodale, 2007; Goodman and Jinks, 2004.

across the world currently engage with human rights and migration? This Chapter will provide a wide mapping and typology of all local government engagement with human rights, particularly the rights of migrants, as a subset of norms in international law. The Chapter will introduce the six identified ideal types of engagement of local governments with human rights: The Formulation of Human Rights, Implementation of Human Rights, Coordination of Human Rights, Defence of Human Rights, Dissemination of Human Rights, and Contestation of Human Rights. The mapping will aim to offer insights from legal pluralism, social constructivism and the (New) New Haven School of Law, for the scholarship of international law.

Next, Chapter III will zoom on one form this engagement with human rights and migration can take – the jurisgenerative engagement – and address the second sub-question (SQ2): "*How and why do local governments and their transnational networks engage in norm-generation in international law?*" Falling under the "contestation" and "formulation" types of engagement as defined in Chapter II, local governments, individually and collectively, have been defying their exclusion from processes of making (international) law in the field of human rights and migration. This they do by drafting legal and quasi-legal documents formulated in the form and language of international law, expressing crystallised versions of local governments' interests, ideals and values. Chapter III analyses the normative engagement of local governments – not individually, but in their institutionalised and non-institutionalised collectivities – with the field of international. The Chapter describes two modes of jurisgenerative engagement for local governments: trying to take a part in mainstream state-centric law-making processes (formulation type engagement) and generating norms in their own fora centred around (and often created by) local governments (contestation type engagement). Subsequently, four functions of such jurisgenerative activity are identified: (1) the horizontal function of creating a normative cause to rally local governments and other actors around; (2) the external function of formulating local governments' interests and values in the discursive frame that is the *lingua franca* of global governance and demonstrating to the dominant actors of international law that local governments, too, are fluent and competent in the language and practice of international law; (3) the internal function of self-regulation, standard-setting and making themselves accountable; and finally, (4) the integrating function of bringing different sets of norms and loyalties together in more practicable, actionable handbooks to guide themselves.

Following the focus on local governments' transnational engagement with human rights and migration in Chapters III, Chapter IV will finally turn the lens towards and increase the focus on the local level, more specifically in the Turkish context. Sub-Question 3 will be tackled here: "SQ3 - *Why and how do certain local governments in Turkey come to engage proactively in policy-making that improves the realisation of refugees' rights?*" This Chapter

will comprehensively demonstrate how norms, practices and ideas on the rights-based local governance of migration cross-pollinate amongst and take root within local governments, potentially leading to an improved human rights realisation of migrants on-the-ground. The four factors identified here that have influenced the likelihood of Turkish local governments engaging in such policy-making were: (1) the capacity of local governments (including the available budget, personnel, data and all-around level of institutionalisation); (2) the present dissemination of norms amongst individuals, networks and institutions relevant to the local government; (3) the available cooperation opportunities with external actors such as international organisations, city networks and local and international civil society; and, (4) political will, determining whether the final figurative trigger would be pulled in setting steps into motion in reforming local governments' engagement with human rights and migration.

Chapter V, grounded in data collected in both the Turkish and the Swiss contexts, will explore and elaborate upon the relevance of regulation – i.e. the domestic laws and policies that frame the space of action for local governments – in the proactive engagement of local governments with human rights and migration, embodied in practices of urban citizenship. Sub-Question 4 will be at the centre of this Chapter: "SQ4: *How do local governments develop proactive urban citizenship practices in favour of refugees and undocumented migrants in high- vs low-regulation contexts?*" Taking the opportunity to elaborate on the concept of urban citizenship, this Chapter will – with the help of the high-regulation context of Switzerland and the low-regulation context of Turkey – demonstrate how domestic regulation shapes local governments' (1) perceptions of their own autonomy and available discretionary spaces, (2) whether they distinguish between local residents in terms of status and corresponding rights, and (3) whether they opt for more legal vs extra-legal, or (4) more upwards, downwards or horizontal types of engagement with urban citizenship.

Finally, in Chapter VI, a finding that had emerged from the field research of all three Cities of Refuge PhDs including myself – the relevance of individual agency – will be explored and conceptualised as a factor leading to the creation of political will (see the last factor in Chapter IV) within the local government in engaging proactively with human rights and migration. The following sub-question will be tackled: SQ5 - "*How does the exercise of individual agency by public officials within local authorities contribute to the effectiveness of human rights in local migration governance and why do certain individuals exercise that agency?*" The backgrounds and motivations of individuals as well as interactions between individuals will be identified as elements shaping the agency of individuals in contributing to the dissemination of norms, practices and ideals within and amongst local governments, generating political will for progressive policies.

The Concluding Remarks collected under VII will discuss cross-cutting findings, key contributions to scholarship, and points for further research. These remarks will be centred around the core finding of this research that local governments *matter* as internationally relevant actors; that their engagement with human rights and migration (as sub-topics of international law) have both *practical* relevance for the on-the-ground realisation of the human rights, and *theoretical* relevance for the scholarships of international law, human rights, and migration, as actors not only implementing but also formulating, coordinating, defending, disseminating and contesting norms that fall in the subject matter of international law.

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CHAPTER II

A Typology of Local Governments' Engagement with Human Rights

Legal Pluralist Contributions to International Law and Human Rights

Elif Durmuş[104][*]

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This Chapter was originally published as an article in the Netherlands Quarterly of Human Rights. The Chapter below is an unabridged version of that text, except for the author's contact information, which has since changed. Please note that publications which were forthcoming at the time may already be published. This Chapter sets the groundwork for the chapters that follow, with regards to the socio-legal theoretical framework underlying the analysis of local governments' engagement in this thesis.

104 [*] Elif Durmuş, PhD Researcher at VICI Project 'Cities of Refuge' (funded by the Netherlands Scientific Organisation – 'NWO'), Utrecht University. Lecturer at University College Roosevelt. www.citiesofrefuge.eu - @UUCoR - @_Elif_Durmus - elif.durmus@uantwerpen.be

Abstract

Local governments around the world have been engaging with international law and policy at an exponential intensity, with prominent engagement in climate change, migration and more recently human rights. This engagement cannot be adequately understood within the terms and framework of positive international law alone. This contribution aims to map and create a grounded typology of local government engagement with human rights, encompassing both activities within their localities and outside - at national, international or transnational scales. The article introduces local governments' engagement in the Formation of Human Rights, Implementation of Human Rights, Defence of Human Rights, Coordination of Human Rights, Dissemination of Human Rights and the Contestation of Human Rights as empirical ideal types that have emerged from data through grounded theory. Analysing this engagement from the perspectives of both positive international law as well as legal pluralism, with specific focus on the New Haven School of Law, the article argues that local governments are now at the core of a newly formed norm-generating community. local governments engage with local and international actors and processes both within the rules of inclusion of contemporary international law-making - seeking to expand these norms to include local governments themselves - but they also contest and challenge the very rules of the game in the first place, and resort to creating "human rights in the city" as a body of norms parallel to international human rights law. Whether we accept a pluralist understanding of international law to include local governments and their human rights engagement, or whether we consider these developments to be outside international law, forming a parallel normative order in the legal pluralist sense, local government engagement with human rights has already succeeded in reaching and influencing many established international actors and has already infiltrated recent instruments of positive international law.

Keywords:

1. Introduction

Cities in Northern Europe founded the Hanseatic League in the 12th century to facilitate regional economic, diplomatic and military cooperation, 'rather autonomously from the Holy Roman Emperor or the Electors or princes to which they were formally obliged'.[105] Nijman explains how the executive organ of this League, the Hansetag, 'adopted rules on trade and safe navigation routes [which] then bound all member-cities; these rules influence[d] the development of the maritime law of nations'.[106] Transnational norm-generation by cities existed before the notion of the (nation-)State became the primary lens through which we understand the world and international law. While cities have long predated the existence of States, today's positive international legal order considers local governments to be nothing more than administrative units within a State's internal organisation, and as such no more than 'State organs'.[107]

In contrast to this categorisation in positive international law, local governments historically, and today with a renewed proactivity upon globalisation, urbanisation and decentralisation, have been engaging with the development of international norms. Human rights, facing difficult times, have been a field which local governments have increasingly taken ownership of.[108] Local governments, defined by the UN as the lowest tier of general public administration within a State,[109] have long stepped out of the boundaries of competence they were thought to be confined in.[110] They engage in foreign relations autonomously from the State in whose territory they are located,[111] establish

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105 Janne Nijman, 'Renaissance of the City as a Global Actor – The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors', February 2016, Asser Institute Centre for International and European Law Research Paper Series, 7.

106 Ibid 11.

107 International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts* (2001), Article 4; ibid 8.

108 Barbara Oomen, Moritz Baumgärtel, 'Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law' (2018) 29(2) European Journal of International Law 339.

109 Human Rights Council, *Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee*, UN Doc. A/HRC/30/49, 7 August 2015, para 8. The United Nations uses the term 'local authority' as a synonym for local government. Some civil society groups, such as the Habitat International Coalition, reject the notion of tiers of government as diminutive and talk about spheres of government, in addition to advocating for the inclusion of a public-election-condition for the term 'local government' while 'local authorities' may include both elected and appointed officials. Interview with Habitat International Coalition – Housing and Land Rights Network officials, 20 August 2019.

110 Yishai Blank, 'Localism in the New Global Legal Order' (2006) 47 Harvard International Law Journal 263.

111 Nijman (n 104).

transnational city networks to facilitate international cooperation and representation,[112] set standards and sign charters,[113] declare themselves human rights cities, symbolically ratify international human rights treaties,[114] report to the UN on their progress on the SDGs,[115] and take public positions opposing their national governments on issues of international law.[116] The city network C40, named in reference to its State-counterparts G6 and G20, has been engaging with international institutions as prominent as the World Bank, with whom it has special funding agreements setting minimum standards for cities wishing to join in, exercising 'a form of legislative function'.[117]

With insights from international legal theory, legal pluralism, and the original and 'New' New Haven School of International Law, this article argues that local governments around the world have today become the core of a '*norm-generating community*' in Berman's terms.[118] This article offers a typology of city engagement with human rights (understood in a broad sense, including practice and discourse along with international human rights law), grounded in empirical research. The empirical desk research included social media analysis and a close reading into normative documents created by city networks and international organisations on the issue. Field research consisting of 5 months included participant observation in meetings of international organisations and city networks, and twenty four interviews with officials of ten local governments (in Turkey, Brazil and South Korea), officials of transnational city networks, international organisations, civil society organisations, and with academics. The resulting typology explicates local governments' engagement in the *Formation of Human Rights*, *Implementation of Human Rights*, *Defence of Human Rights*, *Coordination of Human Rights*, *Dissemination of Human Rights*, and *Contestation of Human Rights*. Local governments engage with human rights both *within* the systemic rules of inclusion of international law, seeking to expand these

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112 Barbara Oomen, Moritz Baumgärtel, Elif Durmuş, 'Transnational City Networks and Migration Policy', Report presented to the Mayor's Migration Council, March 2018, <https://citiesofrefuge.eu/sites/default/files/2018-12/Policy%20brief%20Dec%202018.pdf>.

113 See for instance the work of the network of the European Coalition of Cities Against Racism ('ECCAR'), the European Charter for Safeguarding Human Rights in the City, and the Global Charter-Agenda for Human Rights in the City.

114 See Section 5.2 below.

115 Nicole Javorsky, 'Why New York City Is Reporting Its Sustainability Progress to the UN' (*Citylab*, 13 July 2018) <https://www.citylab.com/environment/2018/07/why-new-york-city-is-reporting-its-sustainability-progress-to-the-un/564953/>, Date accessed: 20.12.2019.

116 See Section 5.3 below.

117 Helmut Phillip Aust, 'Shining Cities on the Hill? The Global City, Climate Change, and International Law'. Review of Michele Acuto, *Global Cities, Governance and Diplomacy. The Urban Link*; Benjamin Barber, *If Mayors Ruled the World - Rising Cities, Declining Nation States; Sofie Bouteligier, Cities, Networks, and Global Environmental Governance*; Spaces of Innovation, Places of Leadership; Simon Curtis (ed.), *The Power of Cities in International Relations*' (2015) 26(1) The European Journal of International Law 255, 263.

118 Paul Schiff Berman, 'A Pluralist Approach to International Law' (2007) 32 Yale Journal of International Law 301.

rules to allow official participation of local governments, but they also engage *with* these rules of inclusion, in contestation of them. If an observer of such engagement has a conservative understanding of the international legal system, only few instances of engagement (those that play out *within* the rules of the system), will be taken into account. Most of this vast engagement will then be considered outside the realm of human rights, developing a body of normative engagement that can be called '*human rights in the city*'. This body of norms and practices are inspired by, but develop *in parallel* to established international human rights law (as a result of local governments' general exclusion from international legal processes), nevertheless interacting with and influencing the latter through a dissemination of their elements amongst local, national, and international actors. These parallel orders would reflect the classical sociological definition of legal pluralism. Alternatively, with the New Haven School approach, understanding the international legal system as a larger, more inclusive, pluralist system surpassing traditional State-centricism, it is possible to reflect more freely on the complete range of engagement conducted by local governments with the system and norms of international law. In an iterative process, depending on how ready international law will be to consider the contestation created by local governments, the international legal system will either further pluralise to accommodate the challenges and critique posed to it, or remain restrictive and push local governments into their parallel alternative normative order. Regardless of outcome, local governments have developed into a norm-generating community in international law, furthering pluralism, with their ultimate influence on positive international law to be evaluated in the coming years.

To explicate these findings, this article first provides a brief overview of varying understandings of legal pluralism that are relevant for this analysis (Section 2), followed by an introduction to the critiques of human rights and the relevance of the rise of local governments to these critiques (Section 3). Section 4 offers a picture of the status of cities in the current international legal system, as State organs as well as non-State actors ('NSAs'). Section 5 introduces a typology of their engagement with international law, while Section 6 provides an analysis of this engagement.

2. Legal Pluralism and the New Haven School of Thought

The term legal pluralism has been developed and used throughout the last decades in many different understandings within different disciplines, such as anthropology, sociology, political science, and law.[119] As the most efficient way to distinguish between different conceptualisations, Twining suggests asking the question: 'The plurality of what?'[120]

The most dominant conceptualisation of legal pluralism, rooted in the anthropology and sociology, has been that of 'a situation in which two or more legal systems coexist in the same social field'[121] or, 'the coexistence of different normative orders within one socio-political space'.[122] Thus, under this notion, there is a plurality of normative (or legal) orders applying to a given space and time. 'Law' under this conception covers normative orders outside the 'official' or 'State' legal system,[123] which is considered only one type of normative order among many others (official or positive legal systems; customary normative systems; religious normative systems; economic/capitalist normative systems; functional normative systems and community/cultural normative systems).[124]

Although earlier literature focuses primarily on the coexistence of, and interactions between State and at least one type of non-State law, recent literature has also taken up the legal pluralism between different *official* legal orders. The development of the notion of 'constitutional legal pluralism' or instance, has evolved from the study of the *sui generis* legal order within the European Union, with its multiple national and supranational constitutional systems coexisting with varying degrees of success in cooperation, coordination and coherence.[125] A further conceptualisation, 'international legal pluralism'[126] refers to the proliferation of NSAs and the emergence of new sub-fields of international law that might apply collectively to a given situation.

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119 William Twining, 'Normative and Legal Pluralism: A Global Perspective' (2010) 20 Duke Journal of Comparative and International Law 473.

120 ibid 511.

121 Sally Engle Merry, 'Legal Pluralism' (1988) 22(5) Law and Society Review 869, 870.

122 Franz von Benda-Beckmann, 'Citizens, Strangers and Indigenous Peoples: Multiple Constructions and Consequences of Rights, Resources and People' (1997) 9 Law & Anthropology (International Yearbook for Legal Anthropology) Special Edition: Natural Resources, Environment and Legal Pluralism 1, 1.

123 Twining (n 118) 485.

124 Brian Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global?' (2008) 30 Sydney Law Review 375, 397-400.

125 Neil Walker, 'The Idea of Constitutional Pluralism' (2002) 65(3) Modern Law Review 317.

126 William W. Burke-White, 'International Legal Pluralism' (2004) 25 Michigan Journal of International Law 963.

Staying with international law as our subject of study, the New Haven School has gone a step further, to look beyond different categorisations of sub-fields, and to observe a complex system of intertwined norm-generating communities contesting over alternative imaginations of the law, which in turn have different levels of persuasive power and authority.[127] This process is very similar to Koh's 'transnational legal process', which is non-traditional (discarding distinctions between the public/private and domestic/international), non-Statist, dynamic and normative.[128] Norms are created, interpreted, challenged and enforced – travelling, as they change, among different international actors and governance levels – within a constant multi-directional process.[129]

The original Cold War-era New Haven School understood pluralism in the field of political science as a 'theory which opposes monolithic State power and advocates instead increased devolution and autonomy for the main organisations that represent man's involvement in society'.[130] Led by Myres McDougal, Harold Lasswell, and Michael Reisman, the New Haven School, along with some legal pluralist writings of Robert Cover, articulated that law's normative power does not solely flow from coercive power, but that law is 'constantly constructed among various norm-generating communities'.[131] Today's reality of State and non-State communities generating norms demonstrating varying degrees of formality, coercive power, and persuasive authority reflects the world these scholars have described.[132] Normative claims brought forward by actors, whether international legal persons or not, have the capacity to open up a debate on the articulation of legal norms, and in most successful cases, these norms can be incorporated into positive, official legal systems.[133] This pluralist process offers higher chances for error correction, and brings a wider field of legal imagination and articulations to the attention of other actors.[134] Berman argues that 'international human rights are now an important element of global legal consciousness, [...] because of a long process of rhetorical persuasion, [...] and other forms of 'soft law' slowly changing the international consensus, not because of positivist decree'.[135]

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127   Berman (n 117).
128   Harold Hongju Koh, 'Transnational Legal Process' (1996) 75 Nebraska Law Review 181.
129   ibid.
130   Twining (n 118) 477-8.
131   Berman (n 117) 302.
132   ibid 303.
133   ibid 319
134   ibid 303.
135   ibid 308.

Levit, in an example of 'New' New Haven scholarship,[136] demonstrates 'bottom-up international law-making' *inter alia* through the example of Berne Union's 'General Understanding' on export credit insurance being adopted as binding by the WTO.[137] More recently, the development of the right to housing has been successfully pushed forward by urban actors, particularly by United Cities and Local Governments ('UCLG') (world's largest city network) and the Habitat International Coalition (a coalition of urban civil society organisations). The UN invited more urban actors than national government representatives for the negotiations at the Habitat III Conference on the codification of the right.[138] The Preamble of 'Cities for Adequate Housing: A Municipalist Declaration' reflects a perfect example of local governments' educated engagement in these normative processes:

> Building on the milestones of the New Urban Agenda of Habitat III (Quito, 2016) and the momentum of 'The Shift', a global initiative on the right to housing, the signatory cities below take part in this High-Level Political Forum of the United Nations to follow up on Sustainable Development Goal 11 [...], with the support of UCLG [...], the Office of the High Commissioner for Human Rights, and Leilani Farha, UN Special Rapporteur on the right to housing.[139]

This demonstrates how alternative imaginations of the law can travel in different directions to affect the legal consciousness of different actors, to finally possibly influence the dominant norm. Berman, terming the process 'global legal pluralism'[140] explains,

> [L]ocal' norms are always contested, even within their communities, and 'local' actors may well invoke 'non-local' norms for strategic or political advantage. In addition, local actors deploying or resisting national or international norms may well subvert or transform them, and the resulting transformation is sure to seep back 'up' so that, over time, the 'international' norm is transformed as well.[141]

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136   Harold Hongju Koh, 'Is There a "New" New Haven School of International Law?', (2007) 32 Yale Journal of International Law 559.

137   Janet Koven Levit, 'Bottom-up International Lawmaking: Reflections on the New Haven School of International Law' (2007) 32 Yale Journal of International Law 393, 401.

138   Miha Marcenko, 'Global Assemblage of the Right to Adequate Housing: Security of Tenure and the Interaction of City Politics with the Global Normative Discourse', (2019) 51(2) Journal of Legal Pluralism and Unofficial Law 151.

139   'Cities for Adequate Housing – A Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City', signed 16th July 2018 in New York, <https://citiesforhousing.org/#section--0>

140   Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (CUP 2012)

141   Berman (n 117) 311.

The analyses in this article will be guided by the classical definition of legal pluralism as 'coexisting normative orders' and the (New) New Haven School conceptualisation addressing the inclusive and pluralist processes of norm-generation. The most important difference between these two definitions lies in individuation, a foundational question of the general theory of norms.[142] While the anthropological conception assumes a plurality of distinct normative orders (albeit interacting in many ways), the pluralism of the New Haven School assumes *a single* complex normative order which is pluralist in its actors, sources and norm-generating processes.

3. Local Governments and Challenges Against Human Rights

Since their codification following World War II, human rights have faced criticism from many different groups, which could be briefly summarised in the following list:[143] Criticism against their roots in liberal Western ideology,[144] their claim of universality (led primarily by cultural relativists),[145] their legalistic nature, being too technical – or abstract and aspirational rather than practical and close to the people,[146] their

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142   Twining (n 118) 479.

143   David Kennedy, 'The International Human Rights Movement: Part of the Problem?' (2002) 15 Harvard Human Rights Journal 101; Barbara Oomen, 'Introduction', in Barbara Oomen, Martha F Davis, and Michele Grigolo (eds.), *Global Urban Justice: The Rise of Human Rights Cities* (CUP 2016).

144   Andreas Follesdal, Johan Karlsson Schaffer, and Geir Ulfstein, *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives* (CUP 2013).

145   Abdullahi Ahmed An-Na'im, 'Universality of Human Rights: Mediating Paradox to Enhance Practice,' in Midrag Jovanovic and Ivana Krstic (eds), *Human Rights Today – 60 Years of the Universal Declaration* (Eleven International Publishing 2010) 29; Karen Engle, 'Culture and Human Rights: The Asian Values Debate in Context' (1999–2000) *New York University Journal of International Law and Politics*; Michael Freeman, 'Universalism of Human Rights and Cultural Relativism', in Scott Sheeran and Sir Nigel Rodley (eds.), *Routledge Handbook of International Human Rights Law* (Routledge 2013).

146   Kennedy (n 142) 111. See also Laurence Helfer, 'Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights' (2002) 102 Colombia Law Review 1832; Julie Fraser, 'Challenging State-Centricity and Legalism: Promoting the Role of Social Institutions in the Domestic Implementation of International Human Rights Law' (2019) 23(6) The International Journal of Human Rights 974, 978.

individualistic and adversarial character, rather than a community-based approach,[147] their State-centric shortcomings in addressing privatisation in service-provision,[148] and their effectiveness, (failing to protect those most in need of it).[149]

Much of this criticism is linked to the State-centric and top-down image of human rights law, especially through arguments that human rights do not accommodate local community values and cultural differences and thus lack ownership and effectiveness. According to these critics, overreliance on the State, its institutions and on legal incorporation of treaties into domestic law as the primary tool for rights realisation proves ineffective when other actors or norms have higher local legitimacy than the State and human rights.[150] This approach neglects the potential of NSAs in communicating and realising rights in culturally appropriate ways and creating 'grassroots support for rights'.[151] In this perceived clash between the public and the private, the State and non-State actors, local governments constitute an ideal bridge between (and fitting into) the two notions,[152] simultaneously demonstrating the shortcomings of the distinction. The preamble of the European Charter on Safeguarding Human Rights in the City (signed by more than 400 local governments), for instance, elaborates:

> Why, on the threshold of the 21st century, a European Charter for Human Rights in the City? The Declaration of Human Rights (1948) is universal. [...] The European Convention (1950) offers what we call a legal guarantee. However, there exist many rights which are still not 'effective' and the citizens find it difficult to see their way through the labyrinth of legal and administrative procedures. How to give a better guarantee? How to act more effectively? [...] This is where the City comes in.[153]

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147   Kennedy (n 142) 113; Eileen Babbit and Ellen Lutz (eds.) *Human Rights and Conflict Resolution in Context* (Syracuse University Press 2009).

148   Koen de Feyter, *Privatisation and Human Rights in the Age of Globalisation* (Intersentia 2005).

149   Michael Ignatieff, *Ordinary Virtues* (Harvard University Press 2017); Hafner-Burton and Tsutsui, 'Human Rights in a Globalizing World: The Paradox of Empty Promises' (2005) 110 American Journal of Sociology 1373; Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press 2013); Michael Goodhart (ed.), *Human Rights – Politics and Practice* (OUP, 2nd ed., 2013.); Eric A. Posner, *The Twilight of Human Rights Law* (OUP 2014).

150   Fraser (n 145) 977.

151   ibid.

152   See the next Section.

153   European Charter for safeguarding Human Rights in the City, Preamble, at 1, signed in Saint Dennis, 18 May 2000. < https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera_FINAL_3.pdf.>

In social sciences, the city, or rather the 'global city' has attracted wide academic interest since the 1990s, famously led by Saskia Sassen.[154] Through the trends of urbanisation, globalisation and decentralisation,[155] cities in many countries have grown in population and economical power, while at the same time being bestowed upon with new legal obligations – especially in the realisation of social and economic rights – within their own national settings.[156] Diverse, economically strong metropolitan cities have characteristically adopted more liberal political views.[157] Two global issues on which nation-States have particularly disappointed the international community have been primary playing fields for cities: climate change, and migration.[158] Localities in the US have been implementing parts of the Kyoto Protocol locally, without federal government ratification.[159] More recently, when President Trump pulled out of the Paris Climate Agreement, many local governments, including New York and San Francisco, have made public commitments to uphold the Paris commitments to their utmost power.[160] The Sustainable Development Goals have also seen strong advocacy and support among local governments, with New York City becoming the first local government to report its progress to the UN, a duty envisaged for States alone.[161]

Local government engagement could provide a response to critiques of human rights in many ways. Local governments are uniquely placed to localise human rights[162] and bridge the gap between the universality and cultural relativism poles. They are actors often able and willing to travel between physical and discursive spaces of the local and international levels, and offer hands-on experience on the realisation of human rights, relevant for the international community when codifying human rights norms capable of tangible protection. With their pragmatic perspectives,[163] they also might bring together different actors and segments within localities, and establish human rights as a normative basis for co-habitation in the city, diffusing its adversarial rights-

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154   Saskia Sassen, *The Global City* (Princeton University Press, 1990, 2nd Ed, 2001).

155   See Nijman (n 104) 12.

156   Michele Acuto, *Global Cities, Governance and Diplomacy: The Urban Link* (Routledge 2013).

157   Michele Acuto, 'City Leadership in Global Governance,' (2013) 19 Global Governance: A Review of Multilateralism and International Organizations 481.

158   See, Porras, 'The City and International Law: In Pursuit of Sustainable Development', (2009) 36(3) Fordham Urban Law Journal 537.

159   Levit (n 136).

160   Audrey Comstock, 'US Cities and States want to implement Paris Climate Accord Goals. It's not that simple.' (*Washington Post*, 13 June 2017) <https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/13/u-s-cities-and-states-want-to-implement-the-paris-climate-accord-goals-its-not-that-simple/> Date accessed 20.12.2019.

161   Javorsky, (n 117).

162   Simon Hoffman, 'The UN Convention on the Rights of the Child, Decentralisation and Legislative Integration: A Case Study from Wales' (2019) 23(3) The International Journal of Human Rights 374, 376.

163   Benjamin Barber, *If Mayors Ruled the World - Rising Cities, Declining Nation States* (Yale University Press 2014)

holder vs duty-bearer nature. Of course, none of this positive potential negates the flip side of decentralisation and localisation, namely that local governments can also opt to use their competences and abilities to take regressive stances against the principles of human rights.[164] However, considering the lack of scholarship mapping the positive potential of local engagement with and for human rights, regressive policies of local governments will be outside the scope of this article. Regardless, any human rights violations by local governments would fall under *Implementation* (which includes the element of responsibility), while any alternative imaginations of human rights that seem detrimental to its essence would constitute *Contestation of Human Rights*.

4. The Status of Local Governments in International Law: The Dual Sub-State and Non-State Character

From an international legal perspective, local governments' engagement with international law consistently reflect the unique nature of local governments as both (sub-)State and non-State actors, the positions constituted in each case by varying proportions of these two identities.[165] Their classification as (sub-)State actor is based on the law on state responsibility, where actions and omissions of *State organs* can be attributed to the State.[166] What constitutes a State organ is determined according to the internal organisation of the State.[167] Local governments, while possessing varying degrees of autonomy from central governments, are considered State organs in the constitutions of modern nation-States.[168]

This classification, while insufficient in explaining all normative engagement of local governments with international law, offers nevertheless some venues to understand the relevance of local government practice. As discussed under *Formation of Human Rights* in Section 5, local governments could be considered to contribute to the development of State practice and *opinio juris*, elements of customary international law under Article 38(1)(b) of the Statute of the International Court of Justice ('ICJ').[169] Some literature on

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164 Chiara Marchetti, 'Cities of Exclusion: Are Local Authorities refusing Asylum Seekers?' and Maurizio Ambrosini, 'The Local Governance of Immigration and Asylum: The Policies of Exclusion as a Battleground', in Maurizio Ambrosini, Manlio Cinalli, David Jacobson (eds.), *Migration, Borders and Citizenship: Between Policy and Public Spheres* (Palgrave Macmillan 2019).

165 Nijman (n 104).

166 Aust, 'Shining Cities' (n 116); ILC, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, Article 4.

167 ibid Article 4(2).

168 United Nations Human Rights Council, *Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee*, UN Doc. A/HRC/30/49, 7 August 2015, para 42.

169 Statute of the International Court of Justice, Article 38(1), 1945.

the topic discusses the possibility of sub-State actors producing State practice.[170] A thorough analysis of local governments' possible contributions to the development of State practice and/or *opinio juris*, is yet to be made. Whether other primary sources of international law, treaties and general principles of law, would ever recognise local governments' contributions from a positive legal perspective, is another question only time and further research can answer. Also worthy of future research is the position of local governments with special status, such as some Belgian cities with capacity to enter into international treaties[171] and City States (such as Berlin, Hamburg, Geneva, Zurich, Singapore).[172]

Coming to the concept of the 'non-State actor' ('NSA'), despite the multi-actor and pluralist roots of international law and relations,[173] State-centric positivism, referencing the infamous 'Westphalian Order' (forgetting that the Treaty of Westphalia was signed by cities as well) has long accepted States as sole subjects, and other entities as objects of international law.[174] The conception of international legal personality as State-exclusive has however changed at the latest with ICJ's *Reparations for Injuries* Advisory Opinion, establishing that the UN enjoyed a partial *international legal personality*, in order to fulfil its obligations in accordance with the needs and functioning of the international order.[175] Following international organisations; individuals, peoples, multi-national companies, armed non-State groups, and NGOs have been considered for their role and status in international law, and referred to, collectively, as *non-State actors*.[176] Without entering into

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170 Although some scholars have argued that State practice could only be created by State organs responsible for foreign relations (primarily the Foreign Ministry) (Karl Strupp, 'Les règles générales du droit de la paix' (1934) 47 Recueil des Cours 257, 313-315; Dionisio Anzilotti, Cours de Droit International (trans. Gidel)74-75) it is widely accepted today that this is a far too restrictive approach (Maurice Mendelson, *The Formation of Customary International Law* (Martinus Nijhoff 1999), 198). A more modern understanding includes practice of all State organs relevant for the subject-matter of the international norm created (economy, aviation, environment etc).

171 Belgian Constitution, Article 167(1). See also Quentin Pironnet, 'Treaty Making Power in Belgian Constitutional Law: The Case of CETA', presented in '"Understanding Federalism" Swiss, Belgian & EU Perspectives on Federalism Trainee to Trainee Event', 12 June 2018, Brussels, Belgium <https://orbi. uliege.be/handle/2268/225000>

Date accessed: 28.12.2019.

172 UN HABITAT, *The Challenge of Local Government Financing in Developing Countries* (2015), 65-75.

173 Nijman (n 104).

174 Noemi Gal-Or, Cedric Ryngaert, Math Noortmann (eds.), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place* (Brill 2015) 371; Cedric Ryngaert (ed.), *Non-State Actors in International Law: from Law-Takers to Law-Makers* (Routledge 2010); August Reinisch, Cedric Ryngaert, Math Noortmann (eds.), *Non-State Actors in International Law* (Hart 2015).

175 International Court of Justice, *Reparations for Injuries suffered in the Service of the United Nations*, Advisory Opinion, 11 April 1948.

176 See (n 173).

the discussions regarding the shortcomings and the State-centricity of the term itself,[177] this article utilises it for the purposes of foregrounding the autonomous activities of local governments as opposed to their activities as a State organ (their sub-State character). Parallel to the pluralisation of actors in international law, the last decades have also witnessed a decline in the usage of traditional forms of law listed in Article 38(1) of the ICJ Statute as sources of international law, and an increased preference for non-binding commitments, guidelines, or so-called 'soft law'.[178] International law-making capacity, once accepted as a prerogative of States, is now hesitantly considered to be shared, at least by other recognised subjects of international law, such as international organisations.

Local governments have fallen largely outside the literature on NSAs, most probably due to their position within the organisation of the State, as opposed to the other actors mentioned above. However, their engagement with international law and human rights cannot be explained by their (sub-)State character alone, and parallels the engagement of other, more familiar NSAs. Local governments have for instance been creating normative commitments that bridge the realms of policy, discourse and law, while using the format and language of international law to varying degrees. The European Charter for Safeguarding Human Rights in the City,[179] the Global Charter-Agenda for Human Rights in the City,[180] the 10 Principles of the European Coalition of Cities Against Racism,[181] the Belfast Declaration/Charter of Healthy Cities,[182] The Mayors' Marrakech Declaration adopted in parallel to the Global Compacts for Migration and Refugees,[183] Cities for Adequate Housing: The Municipalist Declaration for the Right to

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177 Philip Alston, 'The "Not-A-Cat" Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?' in Philip Alston (ed.), *Non-State Actors and Human Rights* (OUP 2005). Andrew Clapham, 'The Use of International Human Rights Law by Civil Society Organisations' in Scott Sheeran and Sir Nigel Rodley (eds.) *Routledge Handbook of International Human Rights Law* (Routledge 2013)

178 Prosper Weil, 'Towards Relative Normativity in International Law' (1983) 77 American Journal of International Law 413.

179 European Charter, (n 152).

180 Global Charter-Agenda for Human Rights in the City, adopted in Florence, December 2011 by the UCLG World Council <https://www.uclg-cisdp.org/en/right-to-the-city/world-charter-agenda>.

181 ECCAR, '10 Points Action Plan. Toolkit for Equality: City Policies Against Racism', February 2017, Graz, Stockholm, Potsdam <https://www.eccar.info/sites/default/files/document/1_Toolkit-en_10PointsActionPlan.pdf>

182 Belfast Charter for Healthy Cities <http://www.euro.who.int/__data/assets/pdf_file/0008/384614/belfast-charter-healthy-cities.pdf?ua=1>

183 Marrakech Mayors Declaration: Cities Working Together for Migrants and Refugees, adopted at the 5th Mayoral Forum on Human Mobility, Migration and Development, 8 December 2018, presented at the Intergovernmental Conference to adopt the Global Compact for Safe, Orderly and Regular Migration (10-11 December 2018) and at the UNGA (17 December 2018), <https://www.iom.int/news/global-mayors-unite-support-human-mobility-migration-and-development>.

Housing and the Right to the City,[184] the Manifesto of the Forum of the European Local Communities Engaged in Refugees' Welcoming and First Inclusion,[185] and the Global Green New Deal endorsed by C40 in collaboration with the Fridays for Future Movement and other stakeholders for climate,[186] constitute only a fraction of norms generated by local governments and their networks. Some of these normative documents entail the language of rights and obligations, discuss their own legal value and bindingness, and foresee internal and external monitoring mechanisms for the tangible commitments they entail.[187] This parallels the proliferation of codes of conduct and principles of good governance produced by transnational companies ('TNCs') and major international NGOs.[188] Similarly, local governments are enjoying a recent, gradual inclusion into mainstream State-centric law-making mechanisms, as discussed in *Formation of Human Rights*, similar to the processes of the slow inclusion of actors such as IOs, TNCs and NGOs, at least as stakeholders, in negotiations and adoptions of international norms. Both the autonomous norm-generation and the inclusion in state-centric law-making mechanisms allow local governments to participate in the contestation and development of international norms in a general sense. The contestation and development however concerns not only the creation of norms but also their realisation, as local governments develop and adopt non-legal means of realisation and implementation through various innovative means,[189] just as civil society contributes to the localisation of international norms and the creation of ownership among local communities.[190] Additionally, just as accountability of TNCs and armed opposition groups was the main entry point for discussion of such actors in international law,[191] the more conservative international organisations such as the UN Human Rights Committee ('UNHRC') started to look at local governments first from the prism of their human rights obligations.[192] Whether local governments could ever obtain (partial) international legal personality, which would entail the capacity to hold independent rights, obligations, as well as the prerogatives of

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184   Cities for Adequate Housing, (n 138).

185   Manifesto, Forum of the European Local Communities Engaged in Refugees' Welcoming and First Inclusion, Pandpas Project, Ljubljana 14-15 Febrauary 2019.

186   C40, Press Release, 'Mayors Announce Support for Global Green New Deal; Recognize Global Climate Emergency' <https://www.c40.org/press_releases/global-gnd>.

187   For instance, the European Charter for Safeguarding HR in the City discusses its own legal value and obliges internal and external monitoring mechanisms to be set up and utilised, the Global Charter Agenda includes a framework of short-term and mid-term steps to the taken in realisation of the Rights enshrined, and the member cities of the Coalition of Cities Against Racism are monitored by the transnational network in regular internals on their compliance with the principles of the Coalition.

188   August Reinisch, 'The Changing International Legal Framework for Dealing with Non-State Actors', in Philip Alston (ed.), *Non-State Actors and Human Rights* (OUP 2005), 50-55; Clapham, (n 176).

189   Oomen et al (n 142).

190   Fraser (n 145) 975; Reinisch (n 187) 67.

191   Gal-or et al (n 173).

192   HRC (n 167).

law-making and law-enforcement (legal standing before courts), and how this question is dependent on different constitutional dispensations and local government competences around the world, are questions worth tackling, attracting increasing and well-deserved attention by international and constitutional lawyers.[193]

5. A Typology of Local Government Engagement with Human Rights

Following a grounded data collection process from desk and field research (consisting of 25 interviews with officials of 10 different local governments in Turkey, South Korea, and Brazil, of NGOs, international organisations and city networks, as well as participant observation in 5 major meetings of city networks and international organisations) this typology has been created with an intention of offering a systematic – albeit non-exhaustive – mapping of the rich normative engagement of local governments with human rights and international law. This data was collected as part of the Cities of Refuge project exploring the role of human rights as law, praxis and discourse in the reception and integration of refugees by local governments in six European countries and in transnational fora.[194] Desk research was conducted into international organisations' resolutions on local governments and human rights, publications and social media activity of transnational city networks, and of policies and legislation of local governments involved. Qualitative data collected through field research does not claim any generalisability, nor is it based on a representative sample of local governments. Instead, the grounded theory approach allows for the deduction of certain ideal types from the data, followed by theoretical sampling to achieve a saturation point in which no new types of engagement were emerging from new data.[195] As is the limitation of typologies in general, this typology will not be able to cover every form of city engagement, and will resort to some degree of simplification. Nevertheless, such a mapping can arguably contribute to the research on cities and international law by offering scholars a contemporary overview of the normative engagement of local governments.

Frug and Barron pioneered scholarship mapping local government relationships with international law, focussing somewhat conservatively on the subject-object distinction in international law, placing cities as objects regulated by the law, and stressing the dangers

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193 See the upcoming Special Issue of the European Yearbook on Constitutional Law, Volume 2 (2020) on 'The City in Constitutional Law.

194 www.citiesofrefuge.eu

195 Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (SAGE 2006).

of a possible recognition of their actorhood.[196] Aust on the other hand, in his dissertation 'Das Recht der Global Stadt' identified three general forms of internationalisation of local governments' activities: horizontal networking between local governments, vertical cooperation between local governments and international organisations, and the reference in local politics and legislation to international norms.[197] Marx et al. presented the different functions of local governments in localising fundamental rights within EU system, as rule-maker, rule-intermediary, service provider, policy supporter and policy coordinator.[198]

Looking into previous literature on localisation of human rights, though not necessarily the role of local governments, Merry famously coined the term 'vernacularisation' in understanding how international norms travel and are made familiar to local contexts by 'translators' or middle-(wo)men familiar to both the local and international social fields.[199] De Feyter explored the success of the language of rights (over alternative discourses) in shifting domestic power balances and the role of these local struggles in reconstituting global human rights norms.[200] Hoffman, discussing the relationship between decentralisation, legislation and the realisation of the Convention on the Rights of the Child, linked a normative approach regarding domestic implementation of international treaties to the concept of localisation of human rights.[201] He argued that a normative rather than regulative approach to legal integration, in the context of decentralisation, would enable 'interpretative communities'[202] and help create a 'cultural acceptance' of the norms avoiding overreliance on individual judicial claimants, improving overall realisation.[203]

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196   Frug and Barron, 'International Local Government Law', (2006) 38 The Urban Lawyer 1.

197   Helmut Aust, *Das Recht der Globalen Stadt* (Mohr Siebeck 2017), 8-12. While Aust makes clear that his intention is not to create a typology as it would do injustice to the vast variety of local engagement with international law, he nonetheless presents three empirical ideal types as a general way of organising this engagement.

198   Axel Marx, Nicolas Hachez, Katrien Meuwissen, Pierre Schmitt, Jakub Jaraczewski, Tamara N. Lewis, Kolja Raube, Joanna Roszak, Klaus Starl, Dolores Morondo Taramundi, Anna-Kaisa Tuovinen, Amy Weatherburn, 'Localizing Fundamental Rights in the European Union: What is the Role of Local and Regional Authorities, and How to Strengthen It?' (2015) 7(2) Journal of Human Rights Practice 246.

199   Sally E. Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108(1) American Anthropologist 38.

200   Koen De Feyter, Stephen Parmentier, 'Introduction: Reconsidering Human Rights from Below', in Koen de Feyter, Stephen Parmetier, Christiane Timmerman, and George Ulrich (eds.), *The Local Relevance of Human Rights* (CUP, 2011).

201   Hoffman (n 161), 378.

202   John Tobin, 'Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation' (2010) 23 Harvard Human Rights Journal 1; cited in Hoffman (n 161) 378.

203   Hoffman (n 161) 377.

This typology will contribute to the existing debates in a number of ways. First, as local governments' engagement with international law and human rights is expanding exponentially, this typology will be able to present a more up-to-date picture of the complexity and reach of the engagement. This typology will also opt out of the subject-object discussion and the rigid focus on the form (legislation, discourse etc) and fora (local vs international etc) of engagement, and look instead into what the engagement constitutes substantively for human rights. In mapping only local government activity, the typology does not cover how the locality serves as an 'arena' or 'hub' for human rights localisation,[204] where local actors interact with each other and contest the meaning of human rights without the direct engagement of the municipality.

A Typology of Local Government Engagement with Human Rights
Formation of Human Rights
Implementation of Human Rights
Defence of Human Rights
Coordination of Human Rights
Dissemination of Human Rights
Contestation of Human Rights

Table 1: A Typology of Local Government Engagement with Human Rights

5.1 Formation of Human Rights

The *Formation of* (Positive) *Human Rights* (Law) entails the incidents in which local governments have sought opportunities to directly contribute to official processes of law-making at the international level, joining States and international organisations. Normative formulations by local governments in fore not including central governments are included under the category *Contestation of Human Rights*. Perhaps the most significant of events demonstrating such *Formation* was the Habitat III Conference which dealt with the codification of the content of the Right to Housing.[205] In this Conference, more local government representatives were invited than national governments representatives, together with other local actors such as NGOs.[206]

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204 Barbara Oomen, Elif Durmuş, 'Cities and Plural Understandings of Human Rights: Agents, Actors, Arenas' (2019) 51(2) Journal of Legal Pluralism and Unofficial Law 1 <https://doi.org/10.1080/07329113.2019.1596731>

205 Marcenko (n 137).

206 ibid.

Less self-evident and more difficult to track, local governments could potentially be contributing to the development of customary international law, through the production of (sub-)State practice as well as *opinio juris*, as discussed in Section 5. Instances falling under *Defence of Human Rights*, of local governments pushing back on national policies regressing human rights sometimes gain international attention and response, which could constitute *opinio juris* when analysed retrospectively.

The incorporation of SDG 11 in the Agenda 2030 and the Sustainable Development Goals, as well as the lobby for and the subsequent inclusion of the role for local governments in both the Global Compacts for Migrants and Refugees are examples worth mentioning, although they may constitute soft law created through State-centric processes rather than binding law. Local governments' formation of human rights only mirrors and adds to their efforts and successes in other fields of international law, such as international environmental law, with their success of incorporating the role of local governments in the text of the Paris Climate Agreement,[207] in addition to being a driving force behind its adoption process as a whole.[208]

5.2 Implementation of Human Rights

Perhaps the least controversial and most ubiquitous engagement with human rights concerns local governments implementing human rights. 'Implementation' here, aligning with the sub-State character of local governments, refers to the efforts to realise established positive international (rather than domestic) legal norms created in a State-centric manner.

Some of the most significant examples of this engagement are those relating to the practice of so-called 'Human Rights Cities' with prominent trailblazers such as Rosario, Buenos Aires, Utrecht, Graz, Barcelona and Gwangju.[209] Many cities, large and small, have symbolically ratified international treaties, and even created local enforcement policies which have been much more successful than national ones.[210] San Francisco for instance, has incorporated CEDAW into one of their local ordinances, implementing the Treaty

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207 C40 Blog, 'From Paris to Quito, Mayors are Leading on our Sustainable Future', (14 October 2016) <https://www.c40.org/blog_posts/from-paris-to-quito-mayors-are-leading-on-our-sustainable-future>

208 Parlementaire Monitor, 'COP21: success of climate change agreement rides on empowering local government' (14 October 2015)

   <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjy64loyy5zy?ctx=vg9hm2g38wd-d&tab=1&start_tab0=60>.

209 Oomen et al. (n 142).

210 Oomen and Baumgärtel, (n 107) 2.

within its jurisdiction ever since.[211] Graz has adopted the CRPD, and made institutional changes including the establishment of a council responsible for its implementation. This council has made a call for recommendations on this issue, collecting hundreds of recommendations from the citizens of Graz, which were analysed, categorised, and brought together in a local implementation plan of the CRPD for the city of Graz.[212] The Human Rights Cities project in Turkey led by the Raoul Wallenberg Institute and the Association of Municipalities of the Turkic World guide local governments in conducting human rights-sensitive budgeting.[213] Local ombudspersons, anti-discrimination offices, or simply enacting local policies and legislation with reference to (international) human rights law, are all different forms in which implementation can take place.

Local governments' human rights obligations were also in the agenda of important international bodies such as the Council of Europe Congress of Local and Regional Authorities, which created a set of human rights indicators at the local level;[214] and the United Nations Human Rights Council adopting resolutions on the role of local governments in the promotion and protection of human rights.[215] The latter confirmed that local governments do indeed have obligations under international human rights law and that 'any failure to comply with these responsibilities will entail their liability under national law as well as international responsibility of the State as a whole'.[216] As such, the Council emphasises the sub-State character of local governments, reminding all that 'the State is one single entity, regardless of its unitary or federal nature and internal administrative division'.[217] The Council holds that only the State can enter into international obligations, be brought before international courts, and submit reports on their progress to treaty bodies; although States and local governments possess 'shared and complementary duties',[218] which requires local governments to enjoy the 'necessary powers and financial resources' in order to realise the State's international obligations that fall within their constitutional competences, while the State retains primary responsibility.[219]

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211 Martha Davis, 'Cities, Human Rights and Accountability: The United States Experience', in Oomen et al (eds.) *supra* note 142; Haidi Haddad, Presentation in ACUNS Conference, Rome, July 2018.

212 Based on information provided by Klaus Starl and municipal officials of the City of Graz during a Seminar on Human Rights Cities – The Swedish and Austrian Experiences in March 2018, Graz.

213 International Conference on Human Rights Cities, Istanbul, 23-24 November 2018.

214 Council of Europe, Congress on Local and Regional Authorities, Resolution 334 (2011) adopted on 20 October 2011, Annex 'Explanatory Memorandum', Lars O. Molin, <https://rm.coe.int/168071933b>.

215 HRC (n 167).

216 ibid para 25.

217 ibid para 17.

218 ibid Section 3.

219 ibid paras 21-23.

As can be expected, this implementation also entails varying degrees of interpretation of the interpreted norms. When local governments give content to rights, it can at times be difficult to distinguish *Implementation* from *Formation of Human Rights*, especially when it comes to the development of the customary content of the norm. The development of customary international law and the interpretation of treaty obligations are both dialectic processes in which the implementation (in a certain way) or non-implementation of a norm can *ex post facto* be considered an alteration of that norm or the crystallisation of another.

5.3 Defence of Human Rights

At times, local governments engage with human rights not in their capacity as an administrative State organ, but in their particular local identity (non-State, rather than sub-State). This can be observed best when cities take rebellious stances towards national governments and their policies, in defence of human rights. Such defensive positions arise both within local government competences in a certain domestic constitutional context and extra-legally.[220] Local governments may act in a space of legal ambiguity or silence, using it strategically in their favour to stand up for human rights;[221] stay within their explicit legal competence but go out of their way to make a pronounced stance in defence of human rights; or even step outside their legal constitutional competences in order to take a stance. To clarify, this typology considers an act as *Defence of Human Rights* when the stance taken is public, political, and aims to stand against any law, policy or discourse considered to be in violation with human rights. Whether this stance then reaches success in altering that law, policy or discourse, or whether it is within the local government's constitutional competences to react in such a way, is not of consideration.

In the area of refugee reception and integration, local governments have taken proactive stances, such as Utrecht in the 'Bed, Bad & Brood' discussion with the Dutch national government. When in 2012 the national government prohibited municipalities to provide services to undocumented migrants, many Dutch municipalities including

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220 Barbara Oomen, Moritz Baumgärtel, Sara Miellet, Elif Durmuş, Tihomir Sabchev, Strategies of Divergence: Local Authorities, Law, and Discretionary Spaces in Migration Governance, *Journal of Refugee Studies*, Volume 34, Issue 4, December 2021, Pages 3608–3628, https://doi.org/10.1093/jrs/feab062

221 Such as local governments in Turkey interpreting Article 14 of the Law on Local Governments as allowing them to provide services to Syrians under temporary protection, when the law is highly ambiguous.

Utrecht protested against this decision,[222] leading to the European Committee on Social Rights to decide in 2014 that this practice would violate Netherlands' obligations under the European Social Charter.[223] Utrecht is also prominent for protests it hosted and organised when the Dutch government declared Afghanistan a safe country and started planning deportations of Afghani persons in the country.[224]

When the former Italian Minister of Interior Affairs Salvini declared that Italy would not accept any further boats carrying migrants and refugees rescued in the Mediterranean sea, southern Italian cities such as Palermo, Naples, Messina and Reggio Calabria expressed protest and defied the policy, saying that they were 'ready to disobey Salvini's order and allow Aquarius [the migrant rescuing ship] to dock and disembark in their sea ports.'[225] The Mayor of Palermo, Leoluca Orlando stated:

> Palermo in ancient Greek meant 'complete port'. We have always welcomed rescue boats and vessels who saved lives at sea. We will not stop now. [...] Salvini is violating the international law. He has once again shown that we are under an extreme far-right government.[226]

This last stance was an example of defiance through an attempted extra-legal step, such as opening the ports to migrant ships, whereas this required the cooperation of the Italian Coastguard, which is under command of the central government. The cities' statements thus had no direct practical effect, however, these statements made news both in traditional and social media, and continued to raise awareness and protest about the situation, contributing to the efforts of civil society and international organisations in condemning Salvini's policy.

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222 VVD and PvdA, 'Bruggen Slaan: Regeerakkoord VVD – PvdA', 29 October 2012, http://www.parlement. com/9291000/d/regeerakkoord2012.pdf, at 30 (last visited 22 July 2017). For extensive background see Pelle de Meij, 'Het Recht Van Vreemdelingen Op Een Menswaardig Bestaan En De Rol Van De Rechter', (2015) 90 Nederlands Juristenblad; PICUM (ed.), *Book of Solidarity: Providing Assistance to Undocumented Migrants: Belgium, Germany, the Netherlands, the UK* (De Writter 2002).

223 ESCR, *European Federation of National Organisations working with the Homeless (FEANTSA) v the Netherlands*, Complaint No. 86/2012, published 10 November 2014. See also ESCR, *Conference of European Churches (CEC)* v *the Netherlands*, Complaint No. 90/2013, published 10 November 2014.

224 See European Charter (n 152).

225 Patrick Wintour, Lorenzo Tondo and Stephanie Kirchgaessner, 'Southern Mayors Defy Italian Coalition to Offer Safe Ports to Migrants' (*The Guardian* ,11 June 2018), <https://www.theguardian.com/world/2018/ jun/10/italy-shuts-ports-to-rescue-boat-with-629-migrants-on-board> accessed 28 April 2019.

226 ibid.

5.4 Coordination of Human Rights

A type of engagement with human rights that is quite ubiquitous, though not necessarily as public as *Defence*, is the local *Coordination of Human Rights*. Local governments, in times of decentralisation, privatisation and globalisation are often in the difficult position of being responsible for the provision of more services with less resources, struggling in a competitive market in its commercial activities. However, the local government's unique proximity to and likely awareness of the locality's and citizens' needs, as well as its potential to be well connected with local actors such as businesses, civil society, national institutions' local offices, hospitals, schools, universities and vulnerable persons provide invaluable tools to overcome the challenges of human rights realisation for the local government.[227]

In line with the principle of good governance, local governments often consult stakeholders before developing policies in response to complex situations relating to human rights. While *Implementation of Human Rights* refers to local governments' more traditional legalistic role as duty-bearers; the *Coordination of Human Rights*, in line with the notion of *governance* rather than *government*, focusses on local governments' role as leaders, facilitators, and collaborators, where rights realisation is a shared duty of the community. Sometimes, local governments initiate or facilitate the creation of 'horizontal governance structures'[228] by bringing a large variety of local stakeholders together in a series of meetings, such as was the case of the Danish city of Odense, for the purposes of developing strategies and partnerships towards the realisation of refugees' fundamental rights and their integration into the city.[229] Whether decentralisation is a result of official legislative and administrative steps or a simple practical reality, such coordination of human rights can be very an efficient way of addressing multiple issues holistically. In Turkey, while local governments are not officially assigned responsibilities on the realisation of human rights of refugees[230] situated in their territories, municipalities nevertheless find themselves in situations in which large numbers of refugees are in need of urgent protection of their human rights, with the national government is unable to provide all necessary services. Consequently, local governments team up with international, national and local actors, to create projects

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227 Hoffman (n 161) 376.

228 Romana Careja, 'Making Good Citizens: Local Authorities' Integration Measures Navigate National Policies and Local Realities' (2018) Journal of Ethnic and Migration Studies [insert page nr] (Special Issue: Migration Governance in an Era or Large Movements).

229 ibid.

230 Turkey has ratified the Geneva Convention on the Status of Refugees only with a reservation upholding a geographical limitation, which means that the country does not legally offer asylum to or consider refugees persons coming from outside Europe. The Syrian displaced people in Turkey are under a temporary protection regime for the last 8 years.

of service provision for refugees.[231] For instance, the International Organisation for Migration has partnered with Kecioren, Adana Metropolitan and Sanliurfa Metropolitan Municipalities, in order to fund and staff 'one-stop shops' for refugees and migrants in town, within the premises of the municipality.[232] Here, staff hired by IOM register, assist and guide applicants to specialised municipal bureaus, possible employers, schools, specialised organs of the central administration represented in the town.[233] The ultimate objective of the project is for the municipality to take over the one-stop shop at the end of the project, and continue its services. This way, guidance for refugees and migrants, a function previously unfamiliar to the municipality, is introduced to the bureaucracy, and in the meantime essential services are provided. Ankara Metropolitan Municipality on the other hand leads a project funded by UNHCR, in which the municipality, after consulting local businesses on the current needs and priorities of the job market, has built a large facility aimed to provide Turkish language education followed by vocational training with certification to around 500 refugees and locals at all times.[234] The facilities include classrooms, day care for the children of the attendees, psychological support, conference rooms (that are open for public use of the locals), and modern machines to be used in technical vocational training.

In some instances, municipalities are less active in direct provision of services to refugees and thus realisation of human rights, but they cooperate with local NGOs who have organically developed to fill that void in earlier stages. In Sisli, two primary NGOs provide services to refugees and migrants while the municipality provides free basic healthcare, a welcoming environment and general oversight.[235] In another prominent example, Sultanbeyli Municipality in Istanbul – in order to avoid problems with regards to the legal competences of the municipality for providing services to refugees, and to work around the general trend for foreign funding in Turkey to be given to NGOs instead of administrative entities – has created an 'Association for Refugees' based in two large facilities run by international as well as local funding; providing healthcare, language education, psychological care, legal support, vocational training and childcare.[236] The

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231 See also Colleen Thouez, 'Strengthening Migration Governance: the UN as "Wingman"' (2018) Journal of Ethnic and Migration Studies, DOI: 10.1080/1369183X.2018.1441604; UN, 'Report of the Special Representative to the Secretary-General on Migration', 3 February 2017, UN.Doc.A/71/728.

232 Interviews with staff of the Kecioren Migrant Service Centre and the IOM Coordinator of the projects were conducted in February 2019 in Ankara.

233 ibid.

234 A focus group with the staff of the centre in Ankara in January 2019.

235 Interview conducted with the Sisli Migration Office Staff in January 2019.

236 Multiple interviews and field visits conducted with Sultanbeyli Municipality and staff of the Association for Refugees in December 2018.

centre functions under an administration consisting of municipal officials and persons hired independently, and runs with the concerted efforts of international organisations, the national government, charities, chambers and other stakeholders.[237]

5.5 Dissemination of Human Rights

The *Dissemination of Human Rights* points at how local governments are key actors in spreading the norms, values, practices, the essence of human rights and rights-based thinking. This happens both within their territory and also in interactions with other actors of the international community, especially other local governments, which will be discussed in turn.

When engaging with actors *outside* their territory such as other local governments and city networks, local governments use their unique hands-on experience to provide persuasive and practical guidance on how to best create fair, sustainable, inclusive communities. Much of the engagement within city networks consists of the exchange of best practices, peer-to-peer learning, and networking, during which agendas and priorities compete. Here, local governments previously unaware of their role in human rights realisation – for instance those working with concepts such as good governance or sustainable development – become exposed to and sometimes won over by the concept of human rights in the city. Elements of human rights in the city, as well as conceptions of the role of cities in international law thus travel within and among spaces of interaction for local actors, and gain ground depending on the persuasiveness and persistence of the advocacy. Barcelona and its presence in city networking is a perfect example for this engagement. With more than 30 years of experience in implementing a human rights policy, Barcelona is an honoured guest at any meeting of transnational city networks, and often an initiator, organiser and/or a host.[238] Municipal officials of Barcelona share their experience, strategies, and conviction that human rights are a hard obligation for local governments and not just a matter of taste.[239] Expressing this firm belief and backing it up with successful practices, Barcelona becomes a role model for upholding human rights in the city for other local governments with less resources and experience.[240] Gwangju's role, as the first human rights city in South Korea, is similar within the Korean and Southeast Asian context. Hosting the World Human Rights Cities Forum for

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237 ibid.
238 Participant observation conducted in the World Human Rights Cities Forum in Gwangju, October 2018, the Fundamental Rights Forum organized by the EU FRA in Vienna, September 2018 as well as the 'Cities for Rights' Conference organized in Barcelona in December 2018.
239 ibid.
240 ibid, where representatives of local governments from Nepal, Indonesia and India expressed admiration for Barcelona and an intention to follow through with Barcelona's example.

eight consecutive years and lobbying with the national government as well as other local governments, Gwangju has contributed significantly to Seoul and other Korean cities becoming human rights cities, and the government of South Korea sponsoring the role of local governments for the agenda of the UN Human Rights Council.[241]

There are countless examples of this *Dissemination of Human Rights*, in its essence, values, usefulness for the local administrations and its feasibility in practice, which can be observed in any international meeting in which local governments advocating human rights are present. *Dissemination* gains its power from being an identity and interest forming process.[242] Through interactions with other actors, local governments may adopt human rights as part of their values forming their identity, and start seeing human rights realisation as being in their interest. As such, *Dissemination* directly contributes to the *Contestation of Human Rights* by local governments.

Dissemination within the territory of the local government refers to localising and increasing ownership of human rights within the local administration and among the citizens of the locality. Providing specialised training or conducting focus groups with different departments of the administration, as is the case in cities such as Barcelona, Vienna, Maltepe and Cankaya can for instance increase awareness and ownership among personnel on the human rights implications of the policies they implement.[243] Steps like these are often essential if a local administration aims to achieve sustainability of a human rights policy and the rights-based approach in the administration.[244]

Local governments can however contribute to the creation of a culture of human rights within their locality, amongst citizens. Some cities such as Vienna and Graz provide human rights education for their citizens, sometimes for those as young as nursery aged children.[245] Local acceptance and ownership of human rights become especially important when human rights require local governments to take unpopular decisions

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241 Interview conducted with the International Relations Advisor to the City of Gwangju as well as observations in the World Human Rights Cities Forum, both in October 2018.

242 Koh, 'Transnational Legal Process', *supra* note 127, 199-205.

243 Interviews conducted with Sisli, Cankaya and Maltepe Municipalities in November 2018-January 2019 and speeches of Barcelona representatives in the World Human Rights Cities Forum, October 2018. Presentation by Vienna Human Rights Director in Istanbul during the International Human Rights Cities Conference, 23-24 November 2018. Presentations during Human Rights Cities Workshop, Graz, March 2018.

244 Interviews with officials of the Sao Paolo (Brazil), and Barcelona, both done in October 2018 in Gwangju, in which they that work on human rights of refugees and undocumented migrants in the city and the continued existence of the Human Rights Departments in the cities were ensured by institutional changes done previously following a legislation on human rights.

245 Vienna (n 242).

such as allowing and protecting a gay pride parade in Gwangju,[246] or accepting and providing essential services to refugees from Syria in Gaziantep (Turkey). Expressing ideals akin to human rights in a culturally-sensitive language, the Mayor of Gaziantep Fatma Sahin, stated in an interview that 'as [a matter of] humanity, as [a matter of] the rights of neighbours, we cannot be expected to be indifferent to it, to ignore it when there is a fire with our neighbours, when there is a tragedy of humanity'.[247] Using the concepts of humanity and the Islamic and ancient Turkish value of 'rights of neighbours' the Mayor reaches out to her constituency in concepts that are familiar and sacred to them, contributing to a localised understanding of human rights.

5.6 Contestation of Human Rights

The final type of local engagement with human rights constitutes *Contestation of Human Rights*. Local governments, individually and in cooperation with other actors, contest elements of established international law and positive human rights law as they stand. *Contestation* focuses most of all on (1) the State-centricity of international law-making concerning human rights, (2) the specific content of the positive human rights norms, (3) the State-centricity in the prerogative to enter into human rights obligations, and (4) the State-centric notion of citizenship which conditions the protection of individuals' rights on being documented, registered and lawfully present in a State's territory. This contestation may be explicit and outspoken, in opposition to a dominant actor's more regressive policy, in which case it might also constitute *Defence of Human Rights*, though not all *Defence* will bring into question the established system of international human rights law. Pronouncements on how the local government has a right to regulate a human rights issue, at times surpassing domestic competences of the local government, can constitute 'jurisdictional assertions' as Cover terms, competing for authority with other claims of jurisdiction, challenging dominant (State) assertions on human rights.[248] Local and regional governments in Spain implementing universal health care policies covering undocumented migrants despite national government and Constitutional Court efforts to illegalise such efforts arguing on inequality and an unconstitutional stretch of local

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246 Which took place despite massive conservative protests and direct pleas to the municipality to ban the parade, in October 2018.

247 Fatma Sahin, 'Gaziantep Gonlunu ve Kapilarini Suriyelilere Acti',(2016) 813 Iller ve Belediyeler 3, 5 (author translation)

248 Robert M Cover, 'The Uses of Jurisdictional Redundancy: Interest, Ideology, and Innovation' (1981) 22 William and Mary Law Review 639.

competences, have for instance succeeded in gaining a pronouncement by the CESCR that Spain may not impede with local governments realising human rights to a higher extent than the national average.[249]

When authors of a *Contestation* wish to persuade the international community and achieve a change in (a part of) the dominant understanding of human rights, they may interact with other actors and *disseminate* their understanding. But *Contestation* can also be a quiet one, such as a quiet resistance in refusing to follow national government policies violating human rights, within the territory of the locality, such as the practice of local governments in the US refusing to cooperate with national policies requiring them to provide information on undocumented migrants that could lead to their deportation, which constitutes a contestation based on the premises that persons without documentation deserve protection and that local authorities have a say in determining and providing such protection at times against the central government position.[250]

Other examples of contestation of (1) the State-centricity of human rights law-making are for instance the drafting, signing and ratification by local governments of the European Charter for Safeguarding Human Rights in the City, the Global Charter-Agenda for Human Rights in the City, the Cities for Adequate Housing: A Municipalist Declaration on the Right to Housing and the Right to the City, the Marrakech Mayors Declaration: Cities Working Together for Migrants and Refugees and numerous other normative documents created and adopted by city networks and local governments.[251] Formulated in a manner demonstrating deliberate and advanced legal drafting techniques, and imitating a form of inter-State law-making, the creation of these

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249   UN Economic and Social Council, Concluding observations on the sixth periodic report of Spain, 25 April 2018, E/C.12/ESP/CO/6, para 11: 'Notwithstanding the fact that decentralization and autonomy can encourage implementation of the Covenant, the Committee remains concerned at the persistence of certain unjustifiable disparities between the different autonomous communities, which impede the full enjoyment of some Covenant rights by persons in some of those communities. The Committee is also concerned that certain Constitutional Court decisions prevent the autonomous communities from granting, by means of their own resources, fuller protection for Covenant rights than that provided at the national level. Uniform, national solutions are welcome when they promote the progressive realization of economic, social and cultural rights, but are of concern to the Committee when they hinder such progressive realization (Articles 2 (1) and 28)'. See also: 'Joint Submission to the Committee on Economic, Social and Cultural Rights on the occasion of the review of Spain´s 6th Periodic Report at the 63rd Session', March 2018, Executive Summary, 15 February 2018, <http://www.cesr.org/executive-summary-joint-submission-un-cescr-spain-review-march-2018>.

250   Oomen et al. (n 219).

251   For a more detailed analysis of norm-generation by local governments, see Elif Durmuş and Barbara Oomen 'Transnational City Networks and Their Contributions to Norm-Generation in International Law' submitted to Local Government Studies as part of Special Issue on Transnational City Networks and Migration Governance. See Cities for Adequate Housing (n 138); European Charter (n 152); Global Charter-Agenda (n 179); Marrakech Declaration, (n 79).

documents arguably reflect local governments' frustration with their lack of access to the scene of international law-making. Second, (2) local governments, in creating these documents, generate new human rights norms and alternative contestations of existing ones. For instance, the European Charter mentioned above enshrines a 'General Right to the Public Services of Social Protection', the 'Right to the Environment', the 'Right to Harmonious and Sustainable City Development', the Right to Movement and Tranquility in the City' and the 'Right to Leisure' all of which are new to positive international human rights law.[252] Third (3) local governments also commit, in even the most official means available to them, to international norms that their respective States have not chosen to be bound by, contesting that entering into international obligations are a State-exclusive prerogative. Local governments in the United States symbolically ratifying the CEDAW convention when the US has not ratified it, and adopting the Convention into their local legislation, is one such example.[253]

On a last note (4) local governments also contest the State-centric notions of citizenship linking rights to lawful presence within State borders and nationality. The Global Charter-Agenda states

> [a]ll Charter-Agenda provisions apply to all city inhabitants, individually and collectively, without discrimination. For purposes of this Charter-Agenda, all inhabitants are citizens without any distinction. [...] A city inhabitant is any person that lives within its territory even if without fixed domicile.[254]

Contestation of citizenship through the advocacy of a city-citizenship (or 'cityzenship'[255]) based on residence or even presence in the locality is also reflecting in the actions of New York, Barcelona, Zurich and other cities providing city identity cards to undocumented migrants present in their territory, so that they may benefit from municipal services. Additionally, *registering* vulnerable undocumented migrants for the purpose of local service provision, when they are not registered elsewhere in a national system or when

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their status normally excludes them from benefitting from those services, are also steps that local governments take in contestation of a State-centric (nationality-based) and legalistic understanding of citizenship and belonging.[256]

6. How Local Government Engagement Pluralises International Law and Human Rights

How do we understand such vast and complex engagement of local governments with human rights? First, it is fit to make an empirical observation. The introduced types of local government engagement with human rights relate to the system of international law in and challenge it in different ways. While some forms of engagement could be considered to communicate with the system of international law within its own terms, they nevertheless seek to pluralise that system, and upgrade the status of local governments in it to establish them as internationally relevant actors[257] with the possible future implication of international legal personality. Some kinds of engagement on the other hand challenge the very fundaments of international law, such as its State-centricity, rules concerning inclusion, exclusion and participation of actors other than the nation-State, and its systemic rules on sources and law-making. Most engagement with human rights falls somewhere in a spectrum between the two poles of accepting a State-centric international legal system and contesting its very fundaments.

To offer a few examples of local governments' engagement *within the rules* of the traditional international legal system; local governments engage in the *Implementation of Human Rights* as State organs, implementing States' human rights obligations within their local jurisdiction, and in the *Formation of Human Rights*, by contributing to the accumulation of State practice and *opinio juris* as internal elements of the State. They may however also foreground their autonomy and non-State character by seeking a separate seat at the table when international agreements are negotiated in State-centric law-making processes as part of *Formation*. They may also pursue *Implementation* of

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256 Kecioren Migrant Service Centre, Sultanbeyli Association for Refugees (administered by local officials) and Bagcilar Municipality register persons under temporary protection in their local registries, in order to better plan for, prioritise, provide services and realise the rights of persons otherwise invisible from the data available to local governments. Additionally, Southern Italian cities register refugees when explicitly prohibited by national government to avoid Dublin obligations. There is a vast amount of social science literature on the contestations of citizenship that is impossible to include in this paper. See Maurizio Ambrosini, Manlio Cinalli and David Jacobson (eds.), *Migration, Borders and Citizenship* (Palgrave Macmillan 2019); Willem Maas (ed.) *Multilevel Citizenship* (UPP 2013); Rose Cuison Villazor, 'Sanctuary Cities and Local Citizenship' (2010) 37 Fordham Urban Law Journal 573.

257 Term used by Aust in 'Das Recht der Globalen Stadt' (n 196).

norms that their States have not expressed consent to be bound by, that were however established in traditional State-centric ways. These latter two attempts will often go unnoticed by the conservative international lawyer.

There are many types of engagement that substantially challenge the fundaments and functioning of international law, creating *alternative or complementary understandings* of what human rights and international law are, and how they should be realised. For instance, in the *Contestation of Human Rights* local governments challenge the State-centricity of law-making and the capacity to enter into obligations, the State-centric understanding of citizenship, as well as the overreliance on the legal status of individuals for the protection and realisation of their human rights. Accordingly, some local governments and networks of local governments have produced serious amounts of norms[258] in order to protect and realise human rights in their localities to a better extent than national governments. Though State-dominated processes such as the work of UNHRC have addressed this engagement in passing, there is yet no thorough unpacking of what the quasi-legal norm-creation and commitments by local governments means for legal theory.[259] Local governments engaging with human rights will often not choose between the two strategies but instead resort to both seeking involvement in traditional international legal processes and also to creating their parallel body of practice on 'human rights in the city' – focussing more on the latter when there is higher frustration and impatience regarding the expectation towards the State-centric system to recognise and include them.

Second, how the international lawyer interprets local government engagement will depend on the observer's subjectivity. If the observing international lawyer has a more traditional or conservative understanding of the international legal system, some few forms of engagement may catch this observer's attention, who might at most consider such questions as legal personality or human rights accountability for local governments. Most local government engagement will however be pushed outside the strict borders of international law under this observer's perception, and will develop *in parallel* to international law, perhaps even into a separate normative order that could be titled 'human rights in the city'. As discussed in Section 2, legal pluralism has different conceptualisations in different disciplines. While the common definition with its sociological roots refers to the parallel existence of more than one normative order in a given space and time, scholars of international law and relations, such as the New Haven Scholars have also used the term to describe a single normative order – the international legal order for instance – that was nevertheless pluralist in its nature.

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258   See Sections 4 and 5.6 above for a fraction of these norms.
259   HRC (n 167) also see Durmuş and Oomen (n 250) for a forthcoming analysis.

Excluding local government engagement from the scope of international law would thus reflect the classical, sociological definition of legal pluralist describing multiple parallel normative orders. An international lawyer understanding the 'international legal system' as more inclusive and pluralist however, may prefer the New Haven School approach, recognising that local governments (together with city networks, local NGOs and other actors working on the relationship between local governments and international law) have become a norm-generating community. This article supports this second approach, as then the complete array of local government engagement with international law can be taken into account as opposed to being dismissed as too radical or 'non-law'. Even seemingly radical contestations of human rights carry important and valid criticism for international law. Additionally, even if the observer considers current local human rights engagement to fall outside the scope of positive international law, there are already instances in which local government activities have seeped into more mainstream international legal processes and the work of central international organisations.[260]

7. Conclusion

While mapping city engagement with human rights is challenging, it is nevertheless not as challenging as attempting to provide a summary representing of all possible implications of and perspectives of analysis for this engagement. Many important questions remain unasked or unanswered. Empirical inquiries into how much human rights influence local government behaviour, or into the extent to which local governments' engagement with human rights improves effectiveness of rights realisation on the ground are both highly topical. One could also scrutinise the imbalance of legal, financial and political power among different local governments and their capacity to engage with and influence the development of the growing body of norms which can be called 'human rights in the city', discuss whether (state) consent in international law is decaying[261] and local governments' contribution to it, or the significant role of academia and civil society in influencing the choices of action and eventual commitments of local governments.

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260 HRC (n 167); CESCR (n 248); Participant Observation in the World Human Rights Cities Forum, October 2018, Gwangju, in which an official from the Secretariat of the Advisory Committee of UNHRC stated that 'a lot of the input was drawn' from the former outcome documents of the World Human Rights Cities Forum, for the 2015 report that the Committee drafted on the role of local governments in the promotion and protection of human rights.

261 Nico Krisch, 'The Decay of Consent: International Law in an Age of Global Public Goods' (2014) 108 American Journal of International Law 1.

The clearest lesson to be taken away by scholars of human rights and international law following this article is the following: local governments have become actors relevant and important for the protection and promotion of human rights. When they engage with human rights, they pose a critique to traditional international law and human rights, whether this is done by seeking to engage with this normative system by participating within its own terms, or by challenging the norms of belonging and norm-generation in the first place. Whether we take a stricter legal positivist perspective when looking at this engagement, or a broader socio-legal lens, local engagement with human rights has implications for both the content of human rights – in the creation of a body of norms that could be called 'human rights in the city' – and also for participation in international law. Even if the growing body of norms and practices making up 'human rights in the city' is not considered international law, there have already been instances of their influencing traditional international legal processes and thus positive international law, such as the content of Human Rights Council resolutions, the right to housing codifications and CESCR Country Reports.[262]

Local governments engaging with human rights are best understood as a norm-generating community as Berman of the 'New' New Haven School describes, creating norms and jurisdictions, with or without official authority to do so, to contest both their position in the system of international law and also the content and creation of the norms at stake. The complex pluralism in normative engagement 'poses a particular challenge for law because law often seeks certainty and tends to assume fixed boundaries between those who are within and those who are without.'[263] However, norms in the international legal system have always been challenges and propositions at some point in time, put forward by persons or entities falling within or outside the body of the 'State'. As such, discarding the norms, practices and principles that constitute 'human rights in the city' will keep hidden from eyes the factors, processes and actors behind the development of international law, as well as the contestations that fail to become the dominant position in the law. It will be highly interesting to continue observing what influence this normative engagement by local authorities will have on the general development of human rights and international law.

II

262 See (n 259).

263 Berman, *Global Legal Pluralism* (n 139) 323.

CHAPTER III

Transnational City Networks and their Contributions to Norm-Generation in International Law: The Case of Migration

Elif Durmuş[a] and Barbara Oomen[b]

[a] University College Roosevelt, Middleburg, The Netherlands; [b]Faculty of Law, Economics and Government, Utrecht University, Netherlands

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This Chapter was originally published as an article in *Local Government Studies*, as part of the Special Issue titled "City Networks Activism in the Governance of Immigration" edited by Anouk Flamant, Aude-Claire Fourot and Aisling Healy. The Chapter below is an unabridged version of that text, except for the author's contact information, which has since changed. Please note that publications which were forthcoming at the time may already be published. While we have worked together with my supervisor Barbara Oomen on this article, the main bulk of the writing was my part, with Prof Oomen writing the sections on the Mayors' Marrakech Declaration (p. 61-62) and the proposal of a fourth function of norm-generation by transnational city networks: the integrating function. I have received feedback and reviews on the skeleton and earlier versions of the paper by both my supervisors Barbara Oomen and Moritz Baumgärtel (which I am very grateful for, and has helped improve the quality of this article). Nonetheless, this piece is eligible to constitute part of my PhD as I was the primary author responsible for a substantial part of the writing in the article.

Abstract

Though international law and the governance of migration have traditionally been state-centric, recent decades have seen a pluralisation of both the actors participating and the types of norms generated, moving more towards multi-stakeholderism and towards soft law. Local governments and their transnational city networks (TCNs) have been participating in this proliferation and pluralisation, generating norms concerning international law, including those governing migration. This article looks at how TCNs have generated norms by identifying two main ways in which they have done this: participation in mainstream state-centric processes; and generation of norms in large local-government conferences. With the help of four examples, this article identifies four functions of jurisgenerative activity. The external function of norm-generation is to bring local government interests and expertise to the attention of the international community, using the language of international law in an effort to influence international normative developments. The internal function of norm-generation is to regulate local governments' behaviour towards their own citizens by creating standards and upholding them through accountability mechanisms. Third, as a horizontal function, local governments rally around normative documents that offer a compact and crystallised expression of their interest and use these to recruit peers to their cause,. Lastly, the integrating function enables local governments to bring together different, fragmented topics and issues of international law and governance in more unified, practical toolkits for their own use. In all these cases, TCNs challenge state-centric international law, and their traditional exclusion from it, by demonstrating competence and fluency in their handling of a matter of international law: global migration governance.

Keywords:

1. Introduction

At the closing ceremony of the 2018 World Human Rights Cities Forum, in Gwangju, South Korea, the moderator asked the large international audience how they had benefitted from the conference. The microphone was offered to a United Nations (UN) official from the Secretariat of the Advisory Committee to the UN Human Rights Council (HRC) who stated that 'a lot of the input was drawn' by the HRC from a previous session of the same Forum (the 2015 report that the HRC drafted on the role of local governments in the promotion and protection of human rights).[264] This statement clashes starkly with the traditional assumption that international law is created by states, and states alone. The Forum is only one of the places that enable local governments and their associations to connect, discuss, inspire, but also to formulate documents which sometimes hold normative statements and commitments as well as foreseeing follow-up and implementation mechanisms – in short, all that which concerns norm-generation.

The growing activity of local governments and the transnational city networks ('TCNs') that they create at the global legal and political stage has received increasing attention in the literature (Davidson et al. 2019; Oomen and Baumgärtel 2018; Aust 2015) and is at the core of this special issue. As also discussed in other contributions to this special issue (such as Bendel a. o.), there are many potential outcomes of such engagement, both practical (sharing information, seeking (financial) support) and symbolic (showcasing, story-telling, shaming national governments) (Oomen 2019). One striking outcome discussed less often, however, is *jurisgenerative*, and involves the setting of standards, often in the form and language of international law. Whereas TCNs have been active in generating norms in a plethora of fields – sustainability, culture, human rights, health, inclusion – many of these fields converge in the governance of migration. This article therefore explores how and why TCNs engage in *jurisgenerative* (norm-generating) practices in the governance of migration that resemble international legal practise. What are the purposes of such behaviour, how does it contest traditional international law-making and what does it lead to?

To tackle these questions, this article first (Section II) introduces the notion of norm-generation in international law by explicating recent changes and trends in international law- and policy making, including its pluralisation. Next, Section III introduces the two modes by which TCNs seek to contribute to international law and governance: (1) by seeking inclusion in state-centric processes and by creating quasi-legal local-centric norms, and (2) the concrete contestations to international law this

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264 Participant Observation conducted at the World Human Rights Cities Forum 2018, October, Gwangju, South Korea.

entails. In this section, we zoom in on migration and human rights in three instances: The UN Habitat Programme, the European Charter for Safeguarding Human Rights in the City, and the Mayors' Marrakech Declaration in relation to the Global Compacts for Refugees and Migration. The final section (IV) moves from the *how* to the *why* of this type of norm-generation by TCNs, discussing, on the basis of the illustrative case of the Cities for Adequate Housing Declaration**,** the possible external, internal, horizontal and integrating functions behind norm-generation by TCNs as well as the cross-cutting contestation it constitutes to state-centric international law.

The analysis in this article flows from a mixed-methods approach to data collection and analysis, combining a legal analytical reading of normative documents and findings from field research in TCNs. In terms of terminology, we follow the special issue choice for a focus on Transnational *City* Networks (TCNs) even if networks often represent urban and rural populations as well as a range of other actors, which explains why some scholars have opted to speak of Transnational *Municipal* Networks (Kern and Bulkeley 2009; Oomen 2019). For the purposes of this article, we use the acronym 'TCNs' to refer to both institutionalised networks as well as conferences of local governments shaped around a common purpose such as the adoption of a charter or declaration. With this broader definition, we seek to capture norm-generation processes by local governments in different degrees of organisation and institutionalisation, as well as the dialectic effects between the acts of collectively generating norms and organising around institutionalised networks.

2. Norm-Generation in International Law

Traditionally speaking, the term international law is used to describe the body of rules and principles that govern the legal relations between nation-states (Shaw 2014, Aust 2010). States have long been considered as the only holders of legal personality, that is to say, the only entities with the capacity to have rights and to bear duties and to make and enforce the law (Klabbers and Wallendahl 2011). This condition, however, was not a given before the consolidation of the so-called 'Westphalian order' nor does it reflect the reality today (Nijman 2016). Starting in the 1950s with the inclusion of international organisations ('IOs') into the elite club of 'subjects of international law', the international legal arena has become much more complex, with diverse actors holding varying degrees of influence and a fragmented body of rules and practices.

Just as actors have diversified (with IOs, NGOs, armed groups and more), so have the sources of international law. Classic international law recognizes only treaties, custom, and general principles of law as sources (Art. 38, Statute of the International

Court of Justice). However, the recent decades have seen a shift from the usage of these traditional forms of binding law to the tendency to make and follow so-called 'soft law': rules and principles that, while not designed to be binding, still hold a normative power over international actors (e.g. Chinkin 1989; Hillgenberg 1999; Guzman and Meyer 2010). This shift to softer and non-binding law has developed parallel to the generation of international norms becoming more inclusive of other actors of the international society. For instance, the Sustainable Development Goals (SDGs) adopted in the Agenda 2030 were constructed, negotiated, debated and finally adopted with the inclusion of a wide array of actors: States, international organisations, NGOs, businesses and sub-national authorities. The SDGs are not binding and cannot be used to hold governments accountable before court, but they nonetheless shape the normative perspectives and behaviour of actors across the field. This represents a preference for multistakeholderism in international relations well as an appreciation for governance through partnerships (Kunz, 2013) and principles (Black, 2008).

Another aspect of the complexity of the international legal arena is that the distinction between binding law and 'soft law' is not absolute. Non-binding instances of policy, principles or guidelines, such as the Universal Declaration of Human Rights, have lain the groundwork for future binding laws by kick-starting advocacy, domestic legislation, and socialisation (Buergenthal 2006). Legal positivist critics of the trend towards soft law point out the lack of coercive force of these types of regulations, which they consider a *sine qua non* requirement for any norm to be considered law (Weil, 1983). On the other hand, international law, as opposed to domestic law, lacks a central enforcement mechanism altogether and depends on its persuasive power to be upheld by states and other actors. Scholars of the New Haven School of Law have gone a step further to look beyond the dichotomy of binding vs non-binding and seen a complex system of norms which are created, interpreted, challenged and enforced by competing norm-generating communities with varying persuasive power and authority (Berman, 2007). These norms travel among international actors and governance levels in a constant multi-directional process that influences, challenges, counters and alters them (ibid.). This process, in turn, informs the identities and perceived interests of the actors in a community (ibid.), i.e., by 'socialising' them into following the norms. Normative claims brought forward by actors also open up debates offering higher chances for error correction, bringing a wider field of legal imagination to the attention of others and granting some successful candidates the status of binding law (Berman 2007, 303). This is the understanding of norm-generation that we will apply in this article, as we look at norms--binding or non-binding--formulated in an international context and exerting a 'normative pull' (Franck 2006). We will not be engaging in the empirical question of whether these norms are followed or in the legal doctrinal question of whether

the cities generating these norms have the authority to do so but only with the socio-legal observation of the processes of their creation, the contestation they constitute to traditional state-centric law, and their purposes.

3. Two Modes of International Norm-Generation by TCNs

Local governments have been increasingly active both in migration governance, in particular (Ahouga 2018), and in international normative processes worldwide, in general (for human rights, see Durmuş 2020). Their normative engagement has constituted a contestation to international law in three fundamental ways:[265] the demand for the inclusion of local governments in multilateral *jurisgenerative* processes developing mainstream international norms, the negotiation of the boundaries of local competences vis-à-vis central and regional governments through reference to international law (see Oomen et al, forthcoming), and the assertion of local governments' autonomous capacity to create norms. These contestations will become tangible in the analysis of the case studies below.

Our case studies focus not on all normative engagement by local governments but practices in their non-state and autonomous rather than sub-state character (as state organs) (Nijman 2016, Durmuş 2020). This autonomous, contesting normative engagement of local governments remains underexamined in literature and by IOs whereas the sub-state character is increasingly recognised (See HRC 2015).

Another demarcation concerns our emphasis on the *jurisgenerative* aspect of local governments' normative engagement (Berman 2006). There are many instances of local governments acting in their autonomous capacity, sometimes in actual defiance of central government policies, taking steps in relation to instruments of international law which are already constituted as binding law, though perhaps not for their respective State, such as San Francisco's ratification of the Women's Convention (Davis 2016). These practices, though valuable and autonomous, do not generate new international norms, and are thus outside the scope of this article.

The instances we will focus on instead in this article are the UN Habitat Programme and the development of the Right to Housing, the European Charter for Safeguarding Human Rights in the City, and the Mayors' Marrakech Declaration and the Cities for Adequate Housing: Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City (hereinafter 'the Housing Declaration'). The thematic

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265   We would like to thank the anonymous reviewer for this suggestion.

variance in these cases, all of which relate to migration in their content and application, is an illustration of the fact that laws and regulations governing migration are not found neatly in a single document governed by a single institution. Laws and policies governing migration are located in an intersection of different international legal regimes such as human rights, development, humanitarian law, refugee law, and EU law – being an exemplary (international) regime complex (Alter and Raustiala 2018). The cases presented were selected from an initial pooling and mapping of 21 normative documents and TCN charters relating to migration for their variation in terms of temporal placement, degree of institutionalisation of the network of local governments, and the (aspired) legality of the norms generated thus enabling broad exploration of the *jurisgenerative* engagement of TCNs.

The UN Habitat, for one, forms the most institutionalised participation avenue for local governments in established international governance. Local governments have acquired UN accreditation and seats at UN bodies through this process, thus contributing to the codification of the human Right to Housing - one of the earliest substantive entry points for local governments in the subject-matter of international law. They have also organised their own institutionalisation in parallel to the international processes, demonstrating the 'rallying' function of norm-generation, which will be discussed below. The European Charter is, on the other hand, the most well-recognised and influential law-like normative document drafted autonomously by local governments, characterized by the legal solidness of its structure. The Charter had an influence from Gwangju to Montreal (Garcia-Chueca 2016, Frate 2016, 70) and is drafted with intentional legal value. The Marrakech Declaration, finally, perfectly demonstrates the interplay between seeking inclusion in state-centric processes and TCNs generating their 'own' norms (in this case, the Declaration). This Declaration, as the most recent document selected for analysis, also explicitly deals with migrants and refugees and seeks to contest and contribute to the latest developments in the global governance of migration and asylum. These first three instances (UN Habitat, the European Charter, the Marrakech Declaration) will be analysed in the present Section as dissimilar cases showing the spectrum of *jurisgenerative* TCN activities, particularly demonstrating the two modes of norm-generation: seeking inclusion in state-centric processes and creating local-centric norms. The last instance, the Cities for Adequate Housing: Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City (hereinafter 'the Housing Declaration') will be used in Section IV to illustrate the cross-cutting findings on the external, internal, horizontal and integrating functions of norm-generation by TCNs in migration governance.

III

The findings below are based primarily on desk research into policy documents and a close legal analytical reading of normative documents complemented by field research, in particular, in Marrakech at the adoption of the Mayors' Marrakech Declaration.[266] Desk research was further complemented through participant observation (attended at times as an observer, at times as participant) in *jurisgenerative* meetings of TCNs such as the 2018 World Human Rights Cities Forum, a 2018 UN HRC session in which local governments were invited to discuss their role concerning human rights, the 2018 Barcelona Cities for Rights Conference, and the Human Rights Cities meeting at the 2019 Fundamental Rights Forum as well as three in-depth interviews.[267] Data were analysed in QSR-Nvivo.

3.1 Seeking Inclusion in State-Centric Law-Making Processes

As discussed, local governments increasingly seek involvement in both processes of law-making and decision-making in regional and global governance (Aust 2015; Blank 2006), with TCNs as an important vehicle. Representing their constituent local governments, TCNs have sought inclusion in important global norm-generation processes thus contributing to the creation of binding as well as soft law. Local governments' engagement in the process leading to the adoption of Agenda 2030 and their rigorous and successful lobbying for the inclusion of SDG 11 on safe, inclusive and sustainable communities provides an example of a process of generating non-binding but nevertheless highly meaningful norms (Aust and de Plessis 2018). This recognition of SDG 11 has also provided an entry point for local governments to localize the SDGs and voluntarily report on their local progress highly relevant to, for instance, migrants (de Visser 2018). On the other hand, local governments and the TCNs that amplify their voices have also been involved in the processes of development of hard law such as the Paris Climate Agreement (Aust 2018, Tollin 2015).

The inclusion of TCNs and thus local governments is often encouraged by international organisations, which find in them helpful partners to implement their international objectives at the local level, at times even seemingly circumventing the national level which might, at the time, be advocating for more isolationist policies (for the case of migration, see Ahouga 2018). The varying degrees of appreciation international organisations demonstrate for addressing local governments is often reflected in the strength and quantity of the institutional structures in place for an ongoing inclusion

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266 12 formal interviews, as well as participant observation during the Mayoral Forum and the Intergovernmental Conference to Adopt the *Global Compact* for Safe, Orderly and Regular Migration, Marrakech, 8 – 10 December 2018.

267 With two anonymous key figures in TCNs focusing on human rights and cities, and one high-level official of an active local government.

of local governments in both law-making and decision-making processes. Whilst most UN organisations remain conservative and strongly oriented towards states, the UN Habitat Programme forms an exception, opening up to include local governments and TCNs, allowing them to be continuously involved in the generation of norms relevant for migration and human rights, such as the Right to Housing.

3.1.1 The UN Habitat Programme

The UN Centre for Human Settlements (later, the Habitat Programme) has over the years offered the most reasonable, practical and necessary entry point and testing ground for local governments' engagement with the United Nations system, as well as a process for local governments to organise around. The need for a more coordinated global movement and organisation for local governments was first formulated during the 1992 UN Conference on Environment and Development in Rio de Janeiro (Habitat AGRED 2004, para.3). Then, in 1996, the first World Assembly of Cities and Local Authorities constituting of national and international associations for local governments took place during the Habitat II Conference in Istanbul, with a focus on adequate shelter for all and sustainable human settlements (Habitat II 1996, 139, para.8). The agenda points of adequate housing for all and sustainable human settlements were strongly advocated by local governments and successfully added to the conference agenda despite vehement protest by countries such as the US (Future Cities and Habitat II 1996, 3).

The World Assembly of Cities and Local Authorities, which would later become United Cities and Local Governments (UCLG) – the largest and most representative organisation of local governments today – gathered in meetings parallel to the conference and decided to 'institutionalize the coordination mechanisms that had been established to prepare for the Conference' (Habitat AGRED 2004, para.8). The Assembly also committed 'to pursuing closer partnerships with the United Nations in the implementation of the Habitat Agenda and to continuing their efforts in pursuit of a global charter for local self-government' (Habitat II 1996, 139, para.11.). This partnership would 'continue in the form of regional, national and international processes and networks that would continue after Habitat II.' (Ibid, para.9)

While Habitat II was an important milestone for the efforts to codify the right to adequate housing for all, Habitat III in Quito (Ecuador) was truly the step towards developing the international law in the field, especially with regards to the laying out of the elements for the security of tenure (Marcenko 2019). The explicit local government involvement with the New Urban Agenda that was adopted at the conference resulted in the inclusion of 'the Right to the City' as a new concept in international law: a collective right that considers cities as commons for the realisation of all human rights including

environmental rights (Habitat III 2017). The notion, which is continuously contested and developed, was clearly promoted by TCNs with the interests of migrants in mind. UCLG, for instance, points out how it includes 'multicultural and welcoming cities, which value the richness of migration' (Habitat III 2017).[268] When the former centre became the UN Habitat Programme, its Rules of Procedure included an official accreditation clause for local governments that allowed them to directly engage in the United Nations for the first time without prior permission of their national governments.[269] The UN Habitat Programme now also encompasses the United Nations Advisory Committee for Local Authorities in which heads of different TCNs represent the local governments of the world, and many Habitat campaigns and projects have had local governments or TCNs directly in their executive positions (Habitat AGRED 2004, paras. 5-6).

3.2 Facilitating Local-Centric Norm-Generation

A focus on the *jurisgenerative* activities of TCNs, however, also reveals another mechanism of norm-generation. This second mode of norm-generation constitutes a larger challenge and contestation to international law and established assumptions, both substantively and formally.

Part of this local-centric (led primarily by local governments, as opposed to state-centric) norm-generation constitutes generation of norms that substantively fit within the subject-matter of international law but are created for and by a single locality. The declarations and related political and institutional innovations brought forward by Human Rights Cities form one example of these processes that are deeply relevant to the position of migrants in cities worldwide (Oomen, Davis, and Grigolo 2016). This article will, however, deal with local-centric norm-generation that has been conducted not within and for a single local territory but through TCNs (both permanently institutionalised TCNS as well as those loose networks gathered around an ad hoc *jurisgenerative* objective) and designed to be applicable for multiple localities. Two cases with particular salience to migration, the European Charter for the Safeguarding of Human Rights in the City and the Mayors' Marrakech Declaration, illustrate how TCNs offer innovation to existing positive international law and how interrelated local-centric norm-generation is with the mode discussed above..

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268 https://www.uclg-cisdp.org/en/activities/right-to-the-city/Habitat-III/new-urban-agenda
269 Rules of Procedure of the UN Habitat Programme, adopted December 2003, Rule 64.

3.2.1 European Charter for the Safeguarding Human Rights in the City

The European Charter for the Safeguarding of Human Rights in the City is the first human rights charter drafted by local governments collectively, adopted in Saint Dennis, France, in 2000, following a succession of two-yearly meetings in different European cities (European Charter 2000, Address). The Charter explains its own raison d'être in addressing 'the men and women of the city'. It acknowledges that there is the Universal Declaration of Human Rights, as well as the European Convention on Human Rights, which provides legal, justiciable human rights protection, but points out that the effectiveness of these rights on the ground is unsatisfying and that citizens find it difficult to access through 'the labyrinth of legal and administrative procedures', which is where the City comes in (Ibid). Additional reasons given for a separate Charter are the urbanisation of the world, with increasing rural-urban migration into cities, as well as 'above all, for those foreigners who arrive seeking freedom and new experiences and looking for employment, to live here temporarily or permanently, it is clear that the city is now where the future of mankind lies' (Preamble, 1), bringing about a need for a practice of city-based 'cityzenship' (Vrasti and Dayal 2016, Oomen 2020). In terms of the content of human rights norms, the Charter states that urban life requires, on the one hand, rights to be *redefined within the urban context*, such as is the case with employment and mobility, and on the other hand, *for new rights to emerge from the urban context*, such as a respect for the environment, the guarantee of sound food, tranquillity, possibilities of social interchange and leisure, etc.

A striking element of the Charter is the legal format, the legal language and the intended legal value. The drafters intended to write a binding document and used strong legal language and the formatting of an international treaty. Similar to traditional international legal texts, the Charter's Preamble lists the UDHR and international and regional treaties whose creation local governments have not been a part of (Preamble, para.1). In addition to this, the Preamble refers to and places itself within the framework of former local-centric normative documents, endorsing the European Charter of Local Autonomy and the Barcelona Agreement (1998), adopted at the European Cities Conference on Human Rights. Readers with a background in international law notice how the documents created in the process of the TCNs also possessed increasingly binding legal titles implying a gradual increase of normativity: 'Agreement' first and 'Charter' later.

The main body of the Charter is divided into Articles as they are in international treaties and their text addresses the 'signatory cities', 'local authorities' or 'the municipality' in third person plural - similar to the terms 'signatory States' or 'State Parties' in international treaties. The tense used is simple present, or the imperative form, which

strengthens the sense of obligation. For example, 'The signatory cities develop policies designed to improve the access of the citizens to Law and Justice.' (Art. XXV, para.1) – strengthens a sense of obligation. Under the section titled 'Final Provisions – Legal Significance of the Charter and mechanisms for its Application', the Charter becomes one of the rare so-called 'soft law' documents to address the question of its own legal status. The Charter does not foresee an explicit date or condition for its entry into force. However, it stipulates that when it is 'passed' it will remain open for the signature of localities 'which want to endorse its aims' (Final Provisions, para.1.). While the Charter refers to 'signatory cities,' the terms 'passing,' 'endorsing,' and aims' are indicative of an intention to create soft law and cannot be found in the Vienna Convention on the Law of Treaties, as the formal acts by which an actor is bound by a legal text. These choices could be accepted as signs of the draftinglocal governments' recognition of the fact that local governments still do not have the competences to fully become 'party' to a 'treaty' and to possess 'obligations' following 'ratification'.

Nevertheless, the drafters do clearly intend the Charter to be implemented, by, for instance,requesting signatory cities to 'incorporate into their local ordinances the principles and standards and guarantee mechanisms contemplated in this Charter and mention it explicitly in the legal reasoning for municipal actions' (Final provisions, para.2). They also refer to the Charter in all ordinances 'as the primary legal standard binding the city' (para.4). In addition, the signatory cities are also pushed to 'recognize the *irrefutable legality* of the rights stated in the Charter' and to 'undertake to reject and terminate all legal transactions, particularly municipal contracts, the consequences of which would militate against the implementation of those rights, and to act in such a way that all other legal entities will also recognize the legal significance of these rights' (para. 3.) As an internal monitoring mechanism, the signatory cities are to create a (local) commission to assess the application of the Charter every two years and publicly announce the results (Final Provisions, para.5).

The Charter also places its drafters and City-parties within a multi-level constitutional structure (Preamble, para.4). This principle is explicated in the main text as the Principle of Subsidiarity which regulates the division of labour between the central, regional, and local governments, and should be agreed upon in a way that will prevent the central and regional governments from both neglecting their obligations in the locality and also from trespassing into municipal competence (Art. VII). This acknowledges local authorities' limited and diverging constitutional competences across the map while arguably increasing the maturity of the normative document. Recognition of this multi-level constitutional structure also places the document within a wider system of legal commitments entered into by different levels of government, thus giving the document a

realistic and decent chance of implementation in different contexts. The determination of what local government competences per country are is then left for the individual signatory cities.

Concerning the norms generated, and thus the substantive contestations and innovations vis-à-vis existing established international law, there are, for instance, the reaffirmation of the Right to the City, as a cross-cutting principle applicable to all the rights contained in the Charter. In addition, the principle of equality and the right to non-discrimination are to be upheld for all persons 'who inhabit the signatory cities, independently of their nationality' (Arts. I-II). This contrasts with international law and legal practice which often allows for states to provide different levels of rights protection for persons of different status, especially national citizenship. The way in which the Charter underlines the absolute universality of the rights it enshrines contests a state-centric notion of citizenship and replaces it with a local-centric 'cityzenship' promising the highest possible level of equality amongst inhabitants of the locality (Oomen 2020, Vrasti and Dayal 2016).

Another very interesting substantive innovation vis-à-vis international human rights law is the Duty of Solidarity enshrined in Art. V of the Charter. In international human rights law, Art. 29(1) of the UDHR mentioned the general duties that everyone has towards the community, but this was never worked out in binding law. The Charter, in contrast, bestows this duty upon the local community towards its own members (including the local governments which participate in this duty by 'promoting the development and quality of public services') and is foreseen to be carried out by local associations and networks of solidarity. In addition, an article on International Municipal Cooperation (VI) obliges cities to 'undertake to cooperate with regional and local authorities from developing countries in the areas of infrastructure, protection of the environment, health, education and culture, and to involve the maximum number of citizens' at the same time that it urges ' financial agents' of developing cities to participate in financing programmes while enabling access of as many of their citizens to the said funds. Therefore, a duty of solidarity and cooperation both within the territory of the locality and across its borders is explicated and specified with greater detail than it is in international human rights law.

When it comes to the main body of the Charter--the substantive rights--the Charter's division into parts demonstrates a perfect example of local governments' awareness and appropriation of the systemic categories of international law in combination with their contestation. Next to the classic division of civil and political rights vis-à-vis economic, social and cultural rights, the Charter introduces a new category of rights: Rights Relative to the Local Democratic Administration, which include the articles on 'Efficiency

of Public Services' and the 'Principle of Transparency'. These are supplemented with a whole range of new substantive rights, such as a General Right to Public Services of Social Protection, the Right to the Environment, the Right to Harmonious and Sustainable City Development, the Right to Circulation and Tranquillity in the City and the Right to Leisure. Even under Articles containing rights already existing in international law, local government drafters of the Charter have placed deliberate contestations of the content of those rights. To cite a few examples amongst many, Article XVI stipulates the Right to a Housing. This right to a 'proper, safe and healthy housing', ensured by the municipality by creating an appropriate offer of homes and district amenities for all without distinction on the basis of persons' resources, recognises the special needs of the homeless, women who are victims of violence, those attempting to flee prostitution, as well as the rights of nomads 'to stay in the city in conditions which are compatible with human dignity'. , the article is more elaborate than its equivalent in the ICESCR (where it is hardly individually recognised) and more socially progressive in its terminology. This is visible in the obligations that it imposes upon the municipality and its defragmentation and integration[270] of different areas of international law (e.g.: women's rights, rights of nomadic peoples such as the Roma).

In all, no article in the Charter is a simple copy and endorsement to a right that is currently, in the same wording, established in international law. In contrast, all content of the Charter includes some level of contestation and intention to progressively develop the rights and their protection mechanisms for all who live in the city, including migrants.

3.2.2. Mayors' Marrakech Declaration

Another example of norm-generation within TCNs, geared specifically towards migrants, is the Marrakech Mayors Declaration. This 2018 Declaration was drawn up by the Mayors Migration Council, an initiative closely related to three TCNs: C40 Cities, the UCLG and the Global Taskforce of Local and Regional Government.[271] This Council was formed at the 5th Mayoral Forum on Human Mobility, Migration and Development meeting in the margin of the large UN Intergovernmental Conference on the Global Compact for Migration (GCM), in Marrakech in December 2018. Cities had already contributed by means of side events and input documentation to the New York Declaration for Refugees and Migrants that formed the basis for the two Global Compacts discussed at

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270　Fragmentation refers to international law branching out ever further in specialised sub-fields that become detached from each other and start regulating similar factual circumstances with different norms. See (Young, 2012).

271　https://www.mayorsmigrationcouncil.org/

the Conference, ensuring that the UN recognised both the needs of local authorities as the 'first receivers of migrants' as well as the need for a multi-stakeholder approach in developing migration policy (New York Declaration 2016, paras.54, 69).

In Marrakech, mayors from all over the world, some from countries that withdrew from the UN process, such as Italy and the United States, met in the Mayoral Forum in the days preceding the conference to draw up their own commitments pertaining to migration.[272] The result of this process was a Declaration which contains local government commitments and calls to action directed towards the international community, national government and the private sector, but also a number of underlying norms. It was read out by Toronto Mayor Valérie Plante in between statements from NGOs and other UN organizations, in a conference tent set up next to the tent in which governmental representatives read out their commitment to the Global Compact. This was a vivid illustration of the awkward position that local governments hold at international conferences – neither fully state, nor non-state actor.[273]

In terms of its contents, the Marrakech Declaration differs from the two UN documents that were discussed by UN member states, in parallel, in terms of both its objects and its substance. In terms of the object of norm-generation, the mayors recognised that the legal binary between refugees and migrants is artificial and often not helpful in terms of policy making. Instead, they issued one Declaration, committing to advancing 'the principles and objectives of both compacts in unison', a testimony to what Benjamin Barber dubbed the 'pragmatic politics' of local government (Barber 2013). In addition, before listing their commitments, they iterated their commitment under the wider objective of 'inclusive, safe and sustainable societies' (SDG11), thus subtly shifting the focus from the regular, safe and orderly migration that was the object of the documents produced by the UN member states. The norm thus put forward (a right to inclusion, to security, to sustainability) might be closely related to the existing human rights and the SDGs, but are - at present - not laid down in the binding instruments of international law. In addition to highlighting these overall norms, signatories of the Marrakech Declaration also committed to 'accelerate our efforts to advance four priority objectives': addressing and reducing vulnerabilities, providing all migrants with safe access to essential services, empowering migrants to realise full inclusion and social cohesion and eliminating discrimination (MMC 2018, 3-4).

<div style="text-align:right">III</div>

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272 Observations and interviews with mayors (of Malaga, Rabat, Kampala, Montreal, Los Angeles) and the vice-mayor of Athens and Milan in Marrakech, 8-10 December 2019
273 Personal observation by the 2nd author, 10 December 2019

The Marrakech Declaration also demonstrated local governments' strong interest in a roadmap for being included in the **formal and informal** monitoring and follow-up mechanisms of the Global Compacts, seeking to help ensure their realisation in case national governments lose their enthusiasm. These efforts led to the next (6th) Mayoral Forum on Mobility, Migration and Development (subtitled: 'City Leadership in Implementing the Global Compacts') to be included for the first time in history as an integral part to the Global Forum on Migration and Development[274] in Quito 2020. As part of this mechanism, cities could sign a city action pledge with a strong emphasis on local action, national, and international advocacy.[275] In this manner, the Mayors' Marrakech Declaration of 2018 and its follow-up form a perfect example of how interrelated the two modes of norm-generation by TCNs are, as cities seek the highest possible inclusion into the state-centric processes of the Global Compacts and seek to influence the outcome documents (GCM, GCR) but at the same time issue their own normative document with their uncensored vision on what international law on the topic as well as what their own role in realising it should be.

4. Exploring the functions of international norm-generation by TCNs

It is clear, by now, that TCNs adopt both the form and language of international law, (co-) generating new norms both in mainstream state-centric processes as well as their own local-centric gatherings and organisations. The question is, however, why TCNs would frame their normative ideals in the form and language of international law. Here, an analysis of the documents generated and the processes around them reveals four main functions of *jurisgenerative* practises in the field of international law: an external, an internal, a horizontal, and an integrating function. These functions, deduced from empirical analysis of these documents, in turn, reflect the characteristics of norm-generation and the qualities of the norm-generating community that is the international legal order. Let us illustrate these four functions of norm-generation through the example of a normative document highly relevant for migration that very clearly

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274 The GFMD is an informal, non-binding and state-led framework born, from an proposal by former UN Secretary-General Kofi Annan, that promotes practical, evidence-based outcomes and cooperation between governments as well as non-government stakeholders. http://gfmd.org/process/background

275 UCLG, MMC, IOM, Call to Local Action on Migration: Cities Working together for Migrants and Refugees (2019), https://gfmd.org/files/documents/mm_call_to_action_on_local_migration_flyer_final_v1.pdf

encapsulates all of them: the 'Cities for Adequate Housing: – Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City' (2018) ('the Housing Declaration').

Let's begin with the *external* function of norm-generation. Local governments seek to inform and influence the global agenda, (or the mainstream, State-centric international law-making processes), whether these concern soft or binding law. By crystallising ideals in the compact legal form of the normative, TCNs add legitimacy to the expressed interests and values and also demonstrate competence and fluency in the legal language which is necessary to meaningfully participate and be taken seriously in the international norm-generation process. In this manner, they are both empowered by the pluralising and 'softening' international legal order as gradually recognised stakeholders or 'actors' seek to improve and cement their position therein. When they are taken seriously, they can arguably help create better norms internationally, those which include the local interests, experience and creativity. To do this, we distinguished two different modes: local governments' quest to be included in the ongoing state-centric law-making processes and to help shape them, as well as their generation of international norms in alternative, local-led platforms that do not involve their central governments. This reflects the 'error-correction' function of pluralist and inclusive norm-generation according to the New Haven School (Berman 2006, 303). The addressee of a normative document produced through the second mode of norm-generation often reveals the degree to which the drafters carried such an external intention. The Housing Declaration primarily targets national governments and international organisations. It demands for local governments to be endowed with more public authority to regulate the private housing sector in order to realise the Rights to the City and the Right to Adequate Housing. This demand can only be realised by domestic legislative changes within their States while international organisations and their pressure can encourage the process. The Housing Declaration also lists some core elements of the signatory cities' understanding of the content of the two rights, endorsing the perspectives of local governments on the currently-developing law. The Declaration can thus be understood as the advocacy of a normative proposal, competing with other proposals of varying degrees of persuasive authority in the international realm as the New Haven School observes.

At the same time, the Housing Declaration reveals the *internal (regulatory)* function of achieving on the ground results concerning social justice within the TCNs' constituencies. This is the core function of norm-generation in general, as expressions in the imperative form intend regulation and demand compliance (Onuf 1985). But how could this be, when local governments are not legal subjects of international law

with official law-making capacity? The answer is that while positive international law seeks to freeze in time conditions of being an 'insider' to international relations, this does not stop officially excluded actors from generating their own norms, with just as much *jurisgenerative* intention. This is what the legal analytical reading of normative documents reveals, when these refer to substantive rights, obligations, commitments, enforcement mechanisms, and legal value. While not as clearly mimicking the language of international law as the European Charter, the regulatory internal function of the Housing Declaration is seen in specific practical demands or commitments that – when realised – are expected to increase the well-being of local residents. Signatories of the Housing Declaration, for instance, demand 'more legal and fiscal powers to regulate the real estate market *in order to fight against speculation* and *guarantee the social function of the city*' (Housing Declaration 2018, 1) and commit to 'planning mixed, compact and polycentric cities where housing (...) *contributes to the social, economic and environmental sustainability of the urban fabric*' (Ibid., 2).

Simply having been assigned this regulatory function in no way guarantees generated norms persuasive power, compliance, and finally, on-the-ground change. Instead, the power of these documents in generating change lies in the premise that normative engagement increases actors' ownership of the norms that they create or endorse, compared to those imposed upon them (Ryngaert 2008). Koh argues that engagement with (binding) law and its contestation is both an identity-building and interest-building process (1996). When local governments come together, through TCNs, to engage with, negotiate, and formulate norms that they can stand behind, this process constitutes them in return, and contributes to their identity – such as 'Cities for Adequate Housing' or 'Cities Against Racism'. Participation in these norm-generative processes also shapes local governments' understanding of what is in their interest, according to what others believe is in their interest. Thus, ownership develops.

There is also a third, *horizontal* function to TCNs crystallising their interests in the compact legal form of normative documents. Norm-generation processes can be both a rallying means and a rallying end. Local governments come together around the formulation of normative texts, both when the said texts are products of State-centric international legal processes and when they are local-centric norms. When local governments gathered in parallel to the Habitat II and created their first World Assembly, they sought to inform and influence the Habitat process. At the same time, that first worldwide gathering functioned as a starting point for further organisation and institutionalisation. When it comes to the Housing Declaration, the website of UCLG, the largest TCN worldwide, explains how 'at the initiative of the City of Barcelona, UCLG initiated the process for a declaration *aimed at rallying local governments*

worldwide to fight the financialization of cities.'[276] The Declaration, which itself includes the statement 'We also propose joining forces to call for more resources and powers from both national and international supra-municipal bodies' (Housing Declaration, Point 5) was launched 'during the first Forum of Local and Regional Governments ever held within the framework of a UN's High-Level Political Forum (HLPF)'[277] with the intended purpose to serve as a compact communication of the signatories' interests vis-à-vis other potential allies (external function).

One last noteworthy function is the *integrating* function of TCNs' norm-generation. Local governments demonstrate a significant knowledge on the fragmentation in international law, which is the process of international law branching out and specialising further and further into a more complex system (Brems and Ouald-Chaib 2018; Oomen 2014). Local governments, arguably to make the system more foreseeable for themselves and to be able to consult fewer sources and documents containing obligations and commitments to different legal fields, seek to bring together fragmented aspects of international law and connect them into an integrated system. One example of this process is the defragmenting and integrating effect of the European Charter as described above. In the Charter, consumer rights, rights of nomads, rights of women, rights of migrants, refugees, foreigners, the urban poor, and other groups are incorporated into one single text, as opposed to the international legal system which addresses most of these vulnerable groups in separate legal texts. In the Housing Declaration, issues around housing, inclusion of refugees and migrants, economic equity, and sustainability are harmonised into one crystallised ideal.

5. Conclusion

Amongst their multitude of activities, TCNs generate norms, including those that relate to migration and human rights, packing them in the language and the form of international law. They do so in two distinct modes and institutional settings: by seeking inclusion in mainstream State-centric international law-making processes and by creating local-centric norms in processes without the inclusion of States that, however, look, feel, and seek to work like international law. This norm-generation leads to a three-fold contestation by pushing for the recognition of local governments as actors in international norm-generation, using international law to protect and (re-)negotiate local competences and autonomy, and asserting local governments' capacity to generate

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276 https://www.uclg.org/en/media/news/cities-adequate-housing-call-action-ensure-right-housing
277 Ibid.

norms. Such new norms often emphasise inclusion and the relevance of rights to all who live in the local authority, thus holding important promise for migrants and for the realization of social justice more broadly.

As discussed above, the choice for norm-generation seems to have four distinct functions. Externally, TCNs seek to inform and influence the agenda and development of international law and policy. Internally, such norm-generation seek to shape and regulate the local governments' behaviour towards their own localities, contributing to rights-realisation and social justice on the ground, with the added 'stick' of follow-up and monitoring mechanisms agreed upon in the TCN context. The horizontal function of norm-generation is that of rallying local governments around similar interests and values crystallised within a compact set of norms expressed in legal language. Both the process of norm-generation and the formulated norms can help bring local governments together. The fourth integrating function of local governments' norm-generation is the effort to make the complex and fragmented system of international law easier to apply, seeking to defragment and harmonise different norms and sub-fields of international law with each other. All this TCN activism in the legal field thus – transnationally – critically contributes to international law and underlying objectives of global justice. At the same time – sub-nationally – the generation, contestation and invocation of international norms serves as an important bridge towards local justice in fields like housing and inclusion of migrants. In the Special Issue context of TCN activism in the governance of migration, this research, above all, constitutes an initial analysis of some *jurisgenerative* activities of TCNs and offers valuable insights. The full potential of such TCN activity can, however, only be understood through a wider and deeper empirical research into all norm-generation conducted by TCNs. This includes an assessment of TCNs normative power (how (much) they influence actors), and their longitudinal influence on the development of international law.

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CHAPTER IV

How Human Rights Cross-Pollinate and Take Root: Local Governments and Refugees in Turkey

Elif Durmuş[278][*]

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278 [*] PhD Researcher in Project Cities of Refuge (VICI), Utrecht University. www.citiesofrefuge.eu Contact: elif.durmus@uantwerpen.be @_Elif_Durmus @UUCoR

Abstract

The human rights regime — as law, institutions and practice — has been facing criticism for decades regarding its effectiveness, particularly in terms of unsatisfactory overall implementation and the failure to protect the most vulnerable who do not enjoy the protection of their States: refugees. Turkey is the country hosting the largest refugee population, with around 4 million at the end of May 2020.[279] As an administratively centralised country, Turkey's migration policy is implemented by central government agencies, but this has not proved sufficient to guarantee the human rights of refugees on the ground. Meanwhile, in connection with urbanisation, decentralisation and globalisation, local governments around the world are receiving increasing attention from migration studies, political science, law, sociology and anthropology. In human rights scholarship, the localisation of human rights and the potential role of local governments have been presented as ways to counter the shortcomings in the effectiveness of the human rights regime and discourse. While local governments may have much untapped potential, a thorough analysis of the inequalities between local governments in terms of access to resources and opportunities is essential. The Turkish local governments which form the basis of this research, operate in a context of legal ambiguity concerning their competences and obligations in the area of migration. They also have to deal with large differences when it comes to resources and workload. In practice, therefore, there is extreme divergence amongst municipalities in the extent to which they engage with refugee policies. This Chapter seeks to answer the question *why and how certain local governments in Turkey come to proactively engage in policy-making that improves the realisation of refugees' rights.* Exploratory grounded field research among Turkish local governments reveals four main factors that enable and facilitate the engagement of local governments in refugee policies: (1) the capacity of and institutionalisation in local governments; (2) the dissemination of practices and norms surrounding good local migration and rights-based governance through networks; (3) the availability of cooperation and coordination with other actors in the field, and (4) political will. Collectively, these factors illustrate how a new norm – the norm that local governments can and ought to engage in policy-making improving the rights of refugees – is cross-pollinating and taking root among Turkish local governments. This understanding will provide valuable insights into how norms are developed, travel and are institutionalised within social and institutional networks, and how differences in access, capacity, political and cooperative opportunities may facilitate and obscure the path to policies improving human rights on the ground.

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279 https://www.unhcr.org/tr/wp-content/uploads/sites/14/2020/06/UNHCR-Turkey-Operational-Update-May-2020.pdf

1. Introduction

The gap between legal standards applicable to the protection of refugees in Turkey and the on the ground rights fulfilment mirrors two shortcomings that human rights have been facing regarding their effectiveness, since their codification in international law. The first of such shortcomings, the so-called 'enforcement gap' relates to the discrepancy between the requirements of human rights regulations and the situation on the ground.[280] The second shortcoming concerns the effectiveness of human rights when it comes to protecting the most vulnerable who do not enjoy the protection of their States, sometimes referred to as the 'citizenship gap'.[281] Turkey hosts the highest number of refugees worldwide – around 4 million people – of which around 3.6 million are Syrian refugees under the domestic legal regime of 'temporary protection'.[282] Legislation on temporary protection is operationalised in a highly centralised manner, and there is no national long-term policy for those under 'temporary protection', nor any official integration policy.[283] There is no dispersal system that allocates refugees to provinces and municipalities, no public housing scheme, and no language courses offered by the State. The central government has established regulations for the basic protection of the human rights of Syrian refugees, such as access to free health care, wide-scale schooling of children, and opportunities to work in regularised manner with work permits.[284] However, the reality on the ground is that an overwhelming majority of the working refugee population are working irregularly, that the percentage of children attending school is only 50%, and that access to basic rights remains problematic.[285] Most refugees (98,2%) do not live in government-run refugee camps, but in urban settlements.[286] However, local governments in Turkey have no official competences in providing services to refugees under temporary protection.[287] The Law on Municipalities contains contradictory clauses on whether or not local governments are obliged or even permitted to include non-citizens in their service provision, creating an atmosphere of legal ambiguity.[288] Despite this lack of law's coercive force, many local governments

280 Kennedy 2002; Hopgood 2013; Donoho 2007; Posner 2014; Hafner-Burton and Tsutsui 2005.

281 Brysk and Shafir 2004; Kennedy 2002.

282 UNHCR Turkey: https://www.unhcr.org/tr/wp-content/uploads/sites/14/2020/06/UNHCR-Turkey-Operational-Update-May-2020.pdf. Latest 2020 numbers from the website of the Directorate General of Migration Management: https://www.goc.gov.tr/gecici-koruma5638.

283 Temporary Protection Regulation, adopted by Council of Ministers Decision No: 2014/6883, 22/10/2014 No: 29153, pursuant to Law No 6458. The only long-term solutions foreseen for Syrians under temporary protection are voluntary returns and departures to third countries.

284 Kayaoglu and Erdogan 2019.

285 Korkmaz 2017; Erdoğan 2017.

286 Erdoğan 2017, p.42.

287 See next Section for detailed analysis. Erdoğan 2017.

288 Ibid. p.40.

in Turkey have opted to engage extensively in policies and practices that improve the human rights of refugees on the ground, but which also require time, energy, personnel and resources.[289] Why and how is this happening?

This article will address the question: ***Why and how do certain local governments in Turkey come to engage proactively in policy-making that improves the realisation of refugees' rights?*** This empirical question also corresponds to a niche in literature. In response to the enforcement gap and criticism towards a legalistic understanding of how to close it, socio-legal scholars have been drawing attention to the localisation of human rights – the cultivation of locally sensitive understandings of human rights and increasing ownership – as a solution.[290] At the same time, migration scholars have been discussing a 'local turn' in migration governance, with a focus on local authorities.[291] In both research areas, local governments in non-Western countries, in centralised settings, are underexplored. Common research cases include cities such as Barcelona, Milan, Utrecht, all of which operate in a context of (increasing) decentralisation.[292] Research in the Turkish context complements and furthers such research. First, as Turkish municipalities generally host far larger numbers of refugees than Western municipalities; this research will demonstrate the pitfalls of decentralisation and localisation when a comparatively lower capacity and higher burden are coupled. Second, non-involvement in human rights and migration policy-making is a common and acceptable approach in the Turkish context of legal ambiguity, political uncertainty and centralised governance.[293] Researching *why* those municipalities that engage, *do* indeed engage, and *how* that has come to be, is therefore expected to provide important insights. Using grounded empirical insights from field research, this chapter argues that four factors enable/facilitate the engagement of local Turkish governments with policies that improve the rights of refugees: their capacity, the dissemination of norms on human rights and their role therein, the availability of cooperation, and political will. Collectively, these factors illustrate how the notion that Turkish local governments ought to contribute to the realisation of the rights of refugees is becoming a norm, is *cross-pollinating* and is *taking root* amongst Turkish local governments. These findings are derived from the Turkish context but may also shed light on structural and cultural factors that underlie the normativisation and socialisation of human rights elsewhere.

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289 Erdogan 2017; Adiguzel and Tekgoz 2019; Durmuş 2020.

290 Merry 2006; De Feyter et al. 2011; Oomen and Baumgärtel 2018; Oomen and Durmuş 2019; Hoffman 2019; Goodhart 2013.

291 Zapata-Barrero et al 2017; Bendel et al 2019; Caponio et al 2019; Caponio and Borkert 2010.

292 Oomen and Baumgärtel 2018; Oomen et al 2016; Sassen 2001.

293 Erdoğan 2017 p. 40.

On the path to these findings, Section II of this article will provide a brief legal overview of temporary protection, local governments and ambiguity. Section III will then explore the question of human rights effectiveness, in its formalist and sociological evaluations, and how local governments and this study relate to them. After describing the methodology and grounded theory approach, the four main factors that have been found to determine whether a local government will engage in policy-making for refugees will be presented and discussed: (1) its capacity and level of institutionalisation, (2) whether the ideas and practices of refugee-welcoming or human rights-friendly municipalities have reached them through networks or other means of dissemination, (3) the available coordination and cooperation with other complementary actors in the multi-level governance of migration, and (4) the presence of political will. Finally, a number of concluding remarks will address the contribution of these factors and their collective illustration of a norm's cross-pollination and taking root, to existing literature.

2. Syrian Refugees, Local Governments, and Legal Ambiguity

Having ratified the 1951 Geneva Convention on the Status of Refugees with a geographical reservation, Turkey does not grant asylum to people fleeing to the country from outside of Europe asylum in the country.[294] In this Chapter, however, Syrians under temporary protection are be referred to as refugees, as international law dictates a declaratory rather than a constitutive character to the determination of the refugee status.[295] The regime provided by the Turkish Law on Foreigners and International Protection ('YUKK')[296] for situations in which 'immediate'[297] protection is needed by mass entries into the country (rendering individual assessment impossible), is the 'temporary protection' regime.[298] This regime is not considered as international protection and does not offer any durable solution.[299] In October 2013, the Council of Ministers adopted the Regulation on Temporary Protection in accordance with this law, declaring that all persons entering Turkey from the Syrian Arab Republic as of 25 April 2011 will be granted

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294 Ibid, Art. 61.

295 Hathaway and Foster 2014.

296 Law No. 6458, 'Law on Foreigners and International Protection' ('YUKK'), entered into force 11 April 2013, Unofficial English translation by the Department of Communication for Foreigners, Directorate General of Migration Management, Ministry of Interior Affairs, Turkey. https://yimer.gov.tr/EN/Legis/215f1c4c-5384-47f9-9ac2-dc2575b4d48f

297 Ibid. Art. 91.

298 Ibid.

299 Art. 7(3): 'Persons benefiting from temporary protection shall not be deemed as having been directly acquired one of the international protection statuses as defined in the Law.' Regulation, *supra* note 281, Art. 91.

temporary protection.[300] This would be operationalised by the national Directorate General of Migration Management ('DGMM'), in accordance with the 'Temporary Protection Regulation' enacted by the Council.[301] Here, the conditions of reception centres are regulated in detail, while the only long term solutions referred are voluntary return and resettlement in a third country.[302] As such, 'harmonisation', the preferred term for integration in Turkey, is not the goal of temporary protection.[303] However, today 98.2% of Syrian refugees live in urban areas (rather than in reception centres in border regions), trying to survive economically and socially in densely populated metropolitan areas.[304] Despite this, local governments do not appear in the Regulation, and only minimally in the YUKK, among a list of actors that the DGMM *may* consult when drawing up harmonisation policies.[305] Local governments are thus not assigned any duties in the reception and integration of Syrian refugees.[306] Nonetheless, as Syrians constitute the largest group of migrants in Turkey, most of the local government practices on migration revolve around them, and so they will be the main focus of this Chapter.

The final domestic legal source to consult on the relationship between local governments and refugees, the Law on Municipalities,[307] is inconsistent on the question of the *beneficiaries* of local services. On the one hand, Article 13 holds that anyone who resides in the territory of a local government is that locality's '*hemsehri*' (fellow citizens/townspeople) and is therefore 'entitled to participate in local government's decisions and services, to be informed about local government activities and benefit from the material aid of the local government.'[308] The local government is then entrusted with 'conduct[ing] activities as are necessary for the development of social and cultural relationships between fellow citizens and for the protection of cultural values'[309] and with 'ensuring the participation of universities, professional associations with public organ status, unions, civil society organisations and experts'[310] in these activities. This is the legal basis for all local government activities which benefit all migrants, including refugees and undocumented migrants.[311]

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300   Ibid, Provisional Art. I.

301   Ibid.

302   Ibid, Part 9, Arts. 42-45.

303   YUKK, *supra* note 294, Art. 96.

304   DGMM Website: https://www.goc.gov.tr/gecici-koruma5638

305   YUKK, *supra* note 294, Art. 96.

306   Erdoğan 2017, p. 42.

307   Law No 5393, 'Law on Municipalities', entered into force through publication in the Official Gazette: 13/7/2005 under Number 25874.

308   Ibid, Art.13(1).

309   Ibid, Art.13(2).

310   Ibid.

311   Erdoğan 2017, p. 40; Interviews Sultanbeyli, Maltepe, Zeytinburnu, Keçiören.

On the other hand, Article 14, titled 'Functions of Local Governments' lists all the services that local governments may or should provide, stating that these should be provided to 'nationals' (*vatandaslar*). This then creates legal ambiguity for local governments as to whether or not they are now obliged to, or even permitted to provide these services to non-nationals.[312] The fact that local governments receive their share of the central budget according to the number of nationals residing in their territory further complicates this matter.[313] As such, in extreme cases, such as Kilis, a local government could be serving a refugee population that is as large as the number of nationals registered as residents of the municipality, yet only receive a budget based on the Turkish population.[314] The expenditure of local governments in Turkey, as in all public organs, is scrutinised by the *Sayıştay* (the Court of Cassation). Interviews and conversations at local government conferences revealed that some local governments, especially those run by opposition parties, held concerns about being held accountable for spending towards non-nationals by the *Sayıştay*, perhaps disproportionately so in the case of opposition-governed municipalities.[315] One large district municipality governed by the CHP in a metropole, stated that *Sayıştay* examinations sometimes last 'many months and up to a whole year' in their municipality, while AKP-led municipalities receive visits from Court officials for only one day.[316]

This environment of legal ambiguity, among other factors, helps to explain the extreme divergence amongst Turkish local governments in terms of their engagement with refugee policies. The discretionary spaces for local governments to act in, are shaped both by laws on their competences and legal ambiguities around these laws.[317] The way in which such discretionary space is used by Turkish local governments ranges from doing absolutely nothing in the area of migration to addressing the needs of refugees by mainstreaming local services, including access for refugees,[318] setting up NGOs and community centres targeting refugees,[319] offering language courses,[320] free local healthcare,[321] vocational

312   Erdoğan 2017, p. 40.
313   Ibid.
314   Ibid.
315   Anonymous Interviews #1 and #2.
316   Anonymous Interview #2.
317   Oomen et al (Forthcoming).
318   Interview Zeytinburnu.
319   Presentation on Gaziantep during International Migration and Integration Symposium, Istanbul. Interview Sultanbeyli.
320   Interviews Zeytinburnu, Bağcılar, Sultanbeyli, ABB.
321   Interviews Sultanbeyli and Anonymous #1.

training,[322] mobilisation projects to increase schooling rates,[323] free childcare,[324] free anonymous STD testing,[325] psychological support,[326] legal support,[327] disability support[328] and even political participation.[329]

3. The Effectiveness of Human Rights: From Formalist to Sociological Perspectives

When thinking about the theme of this book, the effectiveness of human rights, it is helpful to first pose the questions: 'Effectiveness *of what*?' and 'Effectiveness *for what*'?[330] When we understand human rights as a sub-field of international law, Taki's definition of effectiveness as 'the efficacy (actual observance) of law as distinguished from the validity (binding force) of law'[331] provides guidance. Like other sub-fields of international law, human rights suffer from the lack of a central enforcement system.[332] While there are international bodies institutionalising the human rights regime, they nevertheless rely on the consent and compliance of States and other institutions.[333] In addition, due to the state-centricity of international law, individuals who are not (or no longer) able to enjoy the protection of their own States, such as refugees and stateless persons, are often deprived of the effective human rights protection that nationals of States enjoy in their own country. This is referred to as the 'citizenship gap'.[334] To increase the effectiveness of human rights as law, scholars have demanded formalist steps such as codification, ratification and the legal incorporation of human rights treaties into domestic law.[335]

This formalist approach has however attracted criticism for not adequately explaining norm compliance.[336] Both the 'enforcement gap' and the 'citizenship gap' do not materialise equally and identically in different places. The literature assessing the

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322   Interviews Sultanbeyli, ABB, Zeytinburnu, Bağcılar.
323   Interview Bağcılar.
324   Interview ABB.
325   Anonymous Interview #1.
326   Interview Sultanbeyli.
327   Interviews Sultanbeyli, Keçiören.
328   Interview Zeytinburnu.
329   Anonymous Interview #1, Presentation by Gaziantep in International Migration and Integration Symposium, March 2018, Istanbul.
330   Brysk 2019.
331   Taki 2013, para.1.
332   Ibid.
333   Ibid.
334   Brysk and Shafir 2004.
335   Hoffman 2019; Hathaway 2005.
336   Fraser 2019; Helfer 2002; Simmons 2009. Cf. Hathaway 2005.

effectiveness of the international human rights regime has yielded conflicting results.[337] If the preferred indicator of effectiveness is not a formal one, such as treaty ratification, but rather the situation on the ground, reliance on interdisciplinarity becomes almost inevitable. An answer to the question of why some (States, regions, etc) comply more than others is found in the sociology and anthropology of law: the *ownership* a community develops for a norm.[338] Legal incorporation constitutes a formalist, top-down approach that does not focus on cultivating ownership for human rights, especially in places where these norms are considered foreign.[339] Socio-legal scholars, especially social constructivists, argue that a top-down legalist perspective will not lead to human rights ownership among diverse communities. and that, a process of contestation involving relevant stakeholders in society should take place instead.[340] As such, social constructivists often inquire about the effectiveness (or rather relevance) of *human rights as an idea, value, practice, and as such a social construction*, rather than as law alone.[341] The responses to the questions 'effectiveness *of what*?' and 'effectiveness *for what*?' then become 'the effectiveness of human rights as a societal norm' and 'the effectiveness of human rights in influencing the behaviour of actors.'

Risse and Sikkink explain that materialist answers alone fail to explain how state identities, interests and preferences develop: 'Material factors and conditions matter through cognitive and communicative processes, the "battleground of ideas," by which actors determine their identities and interests and to develop collective understandings of the situation in which they act and of the norms guiding their interactions.'[342] Béland and Cox demonstrate that different ideas in this 'battleground',[343] of which the notion of human rights is only one, can also constitute 'coalition magnets' that actors rally around for a common cause.[344] Berman and the 'New' New Haven School of Law[345] also observe the world as a battleground in which ideas, values and propositions of what constitutes the law are contested, with 'norm-generating communities' proposing their own versions of what law ought to look like.[346] Human rights are presented as a successful example of how a normative ideal can become accepted by the dominant actors

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337 Brysk 2019, p.2

338 Merry 2006; Oomen et al 2016; Griggolo 2016; Soohoo et al 2008; Finnemore 1993.

339 Hoffman 2019; Fraser 2019.

340 An-Na'im 2010; Engle 2000; Freeman 2013, Merry 2006, Oomen and Durmuş 2019; Fraser 2019; Helfer 2002.

341 Griggolo 2017.

342 Risse and Sikkink 199, p. 7.

343 Ibid.

344 Béland and Cox 2016.

345 Berman 2007; Levit 2007; Koh 2007.

346 Berman 2007.

and institutions and come to constitute official law.[347] Constituting official law, however, is not the end of the road for a norm. Still, this norm must be advocated, contested and negotiated to maintain its relevance, provide opportunities for the correction of errors,[348] and reaffirm its ownership amongst communities. Brysk explores 'pathways of influence' such as interdependence, diffusion, legalisation, framing and shaming – through which human rights permeates the consciousness of nations and communities and gain such ownership.[349] Merry analyses the 'people in the middle' who travel between the 'local' and the 'transnational', who can speak both the language of the international rights regime and the local culture, and who 'vernacularise' international human rights norms.[350] Babul, in her research into human rights localisation among the Turkish police and judiciary during the EU accession process, explicates the complex and multi-directional nature of human rights contestation and dissemination between – and amongst – 'insider' and 'outsider' actors. She argues that (the effects of) these normative processes continue long after 'projects' and 'trainings' have been completed by local, national and 'foreign' stakeholders.[351] In sum, ownership, and thus arguably the effectiveness of human rights, is increased through localisation, contestation and dissemination of the norms concerned with(in) the communities on the ground.[352] For the purposes of this Chapter, these processes are summarised through the metaphor of human rights 'cross-pollinating', i.e. being contested, disseminated and vernacularised through networks that form a battleground of ideas, and 'taking root', which refers to the process of institutionalisation (both formal and social) of the norms into sustainable governance practices.

Local governments become important in this context with their role as the 'lowest' tier of public administration, closest to the people.[353] Local governments have been enjoying widespread scholarly attention from, for example, migration studies, international relations, political science, law, sociology and geography.[354] While increased urbanisation, globalisation and decentralisation caused local governments to become implicated with more human rights issues, they have also emerged as a political actor cooperating with peers and demanding more voice in national, regional and international politics, in contestation of the view of the State as monolithic.[355] From Barber's 'If Mayors Ruled

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347   Ibid.

348   Ibid.

349   Brysk 2019, p.1

350   Merry 2006.

351   Babul 2017.

352   Risse and Sikkink 1999, p. 6.

353   United Nations Human Rights Council Advisory Committee Report, The Role of Local Authorities in the Protection and Promotion of Human Rights, A/HRC/30/49, para.1.

354   Sassen 2001; Barber 2014; Zapata-Barrero et al 2017; Bendel et al 2019; Hoffman 2019; Marx et al 2015; De Feyter 2011; Oomen et al 2016; Durmuş 2020.

355   Nijman 2016; Aust 2015; Oomen and Baumgärtel 2018.

the World'[356] to Nijman's 'Renaissance of the City',[357] Aust's 'Shining Cities on the Hill'[358], and Oomen and Baumgärtel's 'Frontier Cities'[359], research has focussed on how local governments contribute to solutions of glocal problems such as climate change and migration management. Constitutional lawyers joined the discussion, exploring local governments' increasing claims for greater autonomy, powers and competences.[360] For human rights localisation, cities have been described as agents (norm entrepreneurs), actors with human rights obligations, as well as arenas in which different stakeholders come together, generating localised understandings of human rights.[361] In previous work I have mapped local governments' engagement with the 'formation', 'implementation', 'defence', 'coordination', 'dissemination' and 'contestation' of human rights.[362]

This Chapter is a case study for examining these broader processes and their shortcomings. Looking at Turkish local governments and their proactive refugee policies is relevant to both formalist and sociological views on human rights effectiveness. In a formalist sense, local policy has the capacity to objectively and measurably improve the human rights realisation of refugees on the ground, reducing both the enforcement gap and the citizenship gap. From a sociological perspective, I argue that the precursor to this outcome-oriented effectiveness of human rights is the success of the underlying societal norm (that local governments ought to improve refugee rights) in influencing the behaviour of municipalities. The national reality is legal ambiguity in which it is perfectly acceptable for local governments not to engage in refugee policies. Where some local governments are proactive with regard to refugee policy, regardless of legal coercion, it is possible to observe the developmental stages of a societal norm, perhaps one of good-governance or human rights duties of local governments. Ideas and practices constituting this norm travel (cross-pollinate) and are institutionalised (take root) among the community of local governments, increasing the effectiveness of the norm. The four factors I will present below that facilitate/enable this 'cross-pollination' and 'taking root' are grounded findings answering the question of why these processes are successful in some municipalities and not others in the Turkish context. The four factors are thus the novel, grounded theoretical contributions to the collection of theories on norms and socialisation.

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356 Barber 2014.

357 Nijman 2016

358 Aust 2015.

359 Oomen and Baumgärtel 2018.

360 Hirschl 2020. See also the upcoming Special Issue of the *European Yearbook on Constitutional* Law on local governments.

361 Oomen and Durmuş 2019.

362 Durmuş 2020.

Let us now briefly problematise the notion of effectiveness. In both formalist, outcome-oriented assessments of rights realisation on the ground and the socio-legal assessment of influence on behaviour of decision-makers, conclusive determination of causality between the results and human rights (as law or as social construction) is difficult. When we track the dissemination and socialisation of a norm within a community, the actors may not consider themselves to be acting under influence of that norm, and/or will be acting in the 'battleground of ideas' influenced by a myriad of them. When actors do not motivate their decisions with a direct reference to human rights, the risk of 'hineininterpretierung', or of reading human rights into motivations where they are not expressed, is high. This problem arises especially when the research participant refers to motives such as humanitarianism, non-differentialism, ethics, or morals, which are normative motivations related to human rights, but which are difficult to distinguish from each other. Regardless of our conception of effectiveness, establishing a direct link proves highly problematic. With these disclaimers, this Chapter will be very modest in making statements about effectiveness. Leaving aside the challenges above for now, this Chapter will consider human rights effectiveness as *the cross-pollination and taking root of the norm that local governments in Turkey, despite the lack of coercive force, ought to provide services to refugees and improve their human rights realisation*.

4. Grounded Theory Approach and Methodology

Grounded theory methods are 'systematic, yet flexible guidelines for collecting and analysing qualitative data to construct theories "grounded" in the data themselves'.[363] The process of grounded theory involves seeking data, describing observed events, posing fundamental questions, and systematising responses thereof and other patterns emerging from data in theoretical categories.[364] Data is collected until such theoretical categories are saturated, i.e. when additional data does not produce any new categories or theoretical insights on the emerging grounded theory.[365] Emerging grounded theories do not exist in a theoretical vacuum, and '*refine[...], extend[...], challenge[...]* or *supersede[...]* extant concepts.'[366] In reviewing literature and earlier theories, the grounded theory should be positioned in, challenge, extend and complement existing theories and their gaps.[367] The proposed original concepts/theoretical categories must be explained in terms of their content, efficacy and significance.[368] An emerged grounded theory that

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363   Charmaz 2006, p.2.
364   Ibid, p.25.
365   Ibid, pp.96.
366   Ibid, p.169.
367   Ibid, p.167-169.
368   Ibid.

demonstrates credibility, originality, resonance and usefulness[369] can not only explain and interpret a localised reality (in this case, the Turkish local governance context), but also have cross-cutting relevance for the understanding of related phenomena across disciplines.[370] As Charmaz explains, 'A contextualised grounded theory can (...) end with inductive analyses that theorize connections between local worlds and larger social structures.' This is exactly what this research aims to do; to conceptualise the processes and factors that facilitate/enable local governments to go out of their way to improve the rights of refugees. A close look at these factors and processes in a high-burden, low-capacity institutional context can have cross-cutting relevance and explanatory power for how norms travel and take root in multidirectional processes within different and/or larger social and institutional contexts, starting with the local government communities of other countries with low local institutional capacity and legal autonomy.

This Chapter is based on empirical field research conducted in Turkey between November 2018 and February 2019 as part of the Cities of Refuge Project.[371] The research was guided by the main research question of Cities of Refuge, namely the relevance of human rights in how local governments (in Turkey, Switzerland, Italy, Greece, the Netherlands, Germany, and transnationally) receive and integrate refugees. In addition, a useful concept researched was local governments' *engagement* with human rights and/or refugee policy.[372] The desk research consisted of analysing literature on the subject, information on the websites of municipalities and external reports on the work of municipalities for refugees. The field research included participant observation[373] and nineteen interviews. These interviews were conducted with officials from eight municipalities, three city networks, three NGOs and two international organisations, and with two academics. The interviewees were selected using snowball and theoretical sampling,[374] starting with local governments participating in the Human Rights Cities project and local governments that had received recognition in the media or among other stakeholders in the field for their proactive engagement with refugee policy. Of the selected governments, three had a proactive approach to the implementation of refugee policy, two were selected as Human Rights Cities that were not engaged in refugee policies, and three were proactively engaged in policies related to human rights in general and to refugees in particular. To protect their privacy, the names of interviewees

369   Ibid, p.182-183.

370   Ibid, p.153.

371   The Cities of Refuge Project is funded by the VICI grant of the Netherlands Scientific Organisation (NWO). http://www.citiesofrefuge.eu/

372   Durmuş 2020.

373   Migration and Integration Symposium, April 2018, Istanbul; International Human Rights Cities Conference, November 2018, Istanbul; Association of Municipalities, Sultanbeyli; Zeytinburnu AKDEM; Ankara Refugee Vocational Training Centre; Kecioren Migration Service Centre (One-Stop-Shop).

374   Charmaz 2006, pp.96.

are anonymised in this Chapter. The names of municipalities are provided, unless the participants requested to remain anonymous or if anonymisation is required for safety reasons. The data collected in Turkey was analytically complemented by the author's research in the transnational field, consisting of three interviews[375] and participant observation in several conferences.[376] During participant observation, field notes were taken, memos were drafted as part of the reflection on findings, and the interviews were coded using NVivo. The four factors below and the concept they collectively illustrate – the cross-pollination and taking root of a new norm regarding local governments and their role in realising the rights of refugees – arose as theoretical categories and concepts in this *iterative* process of data analysis (coding), additional data collection (theoretical sampling) and theoretical reflection.

5. Factors Facilitating the Cross-Pollination and Taking Root of Human Rights as a Norm in Local Governance

a. Institutional Capacity in Local Governments

Against the backdrop of a centralised governance regime and legal ambiguity, capacity is one of the most important factors indicating whether a local government is likely to engage in refugee policy. Within this framework, capacity can be defined by finances, institutional structure (i.e. departments and branches), quantity and quality of personnel, the availability of data, and the level of institutionalisation. In this context, institutionalisation represents the organisational professionalism and the capacity for – and practice of – medium and long term, systematic, accountable, assessable decision-making.

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375   With officials from two municipalities, Gwangju and Sao Paolo, and one official of UCLG.

376   2017 Metropolis Conference, The Hague; 2018 Human Rights Cities Workshop, Graz; 2018 World Human Rights Cities Forum, Gwangju; 2018 Cities for Rights Conference, Barcelona, 2018 Fundamental Rights Forum, Vienna.

i. Budget

The budgets of Turkish municipalities consist of income from the central government (determined on the basis of population size and an urban development score), and direct income of the local government from local taxes and its business transactions.[377] While the budget of Istanbul Metropolitan Municipality competes with that of some European countries, less populated, less developed semi-urban or rural municipalities will be dealing with far smaller numbers.[378] The budget calculated and assigned by the central government only takes into account the number of Turkish nationals and not the number foreigners (or refugees).[379] This is a serious problem and creates inequalities between local governments and their workload, combined with the consequences of the lack of a national dispersal system allocating refugees to particular localities, disproportionate refugee populations between localities, and different levels of access to resources. One blatant example of this is Kilis, which is both a province and a municipality on the southern border of Turkey. Over the past three years, Kilis has been hosting around as many refugees as registered Turkish residents. As a result, the beneficiaries of the municipality's services have doubled while the budget has remained the same.[380] Consequently, while local governments in metropolitan areas such as Ankara and Istanbul can 'afford' to create employment, education and social inclusion policies to facilitate refugee integration, municipalities such as Kilis are struggling to provide the most basic municipal services, such as clean tap water and waste and sewage management.[381] Although the Turkish government has received a large sum of money under the EU-Turkey agreement, the municipalities have not received any share of those funds. Furthermore, the lack of funding dedicated to services for refugees has contributed to social tension within local communities among persons who believe that the local government are spending their 'rightful' taxpayer money on refugees.[382]

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377   Adiguzel and Tekgoz 2019, p.62: 'there seem to be basically two sources: (1) allocation by central government, shares from revenues of national taxes, financial assistance by central government, loans and grants and (2) taxes, fees and user charges, contributions to infrastructural investments, income from municipal assets, revenues from entrepreneurial activities, and other income. Certain criteria such as population, acreage number of villages in the city, rural population and city development index are taken into account for transferring allocation from budget to local governments.'

378   Anonymous Interview #3; Anonymous Interview #4.

379   Erdogan 2017; Interview Sultanbeyli; Anonymous Interview #4.

380   See number of Syrian refugees under temporary protection registered by provinces at the website of the DGMM: https://www.goc.gov.tr/gecici-koruma5638; Interview TBB.

381   Yasar 2014.

382   Adiguzel and Tekgoz 2019, p.62

The problem of funding can be managed in several ways: local governments can use funding allocated in their budgets for expenditure on 'the elderly, sick and the poor' which mayors, according to the Law on Municipalities, may use at their discretion.[383] Another possibility is to continue spending from the existing municipal budget (often the budget of the social services departments) and to argue that Article 14 of the Law on Municipalities allows – or even obliges – local governments to include co-citizens living within their territory in their governance and service provision.[384] This option may work legally, but can be problematic because of the increasing social tensions in the Turkish host community or simply by creating budget deficits. A third option that municipalities have resorted to is writing project applications to apply for funds from international organisations ('IOs') or non-governmental organisations ('NGOs'). Among the most popular partners in such projects are the EU, UNHCR, IOM, UNICEF, Save the Children, GIZ (the German Society for International Cooperation) which provide funding, a normative framework, a human rights-oriented set of goals and indicators, as well as, at times, personnel.[385] This collaboration will be further developed in Section V(c) below. A final option for local governments is cooperating with local NGOs that provide services for refugees.[386] Local NGOs are observed to fill the gaps in the provision of services and the realisation of rights where local governments are unable or unwilling to serve refugees.[387] However, this creates a circular effect, as we observe some local governments remain passive in the field of migration and human rights policy-making, due to a highly active civil society in their locality already providing crucial services.[388] A highly creative local government, Sultanbeyli, has circumvented funding problems by setting up an NGO and applying for funding as an NGO to provide services for refugees in the locality.[389] This way, Sultanbeyli can circumvent both the discomfort of foreign institutions concerning directly funding Turkish public bodies, and the discomfort of the local Turkish population in seeing their local government use municipal funds for refugees.[390]

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383   Law on Municipalities, *supra* note 305; Erdogan 2017, p. 40-42.
384   See Section II above for details.
385   Interviews Anonymous #1, Zeytinburnu, Maltepe, Sultanbeyli, Bağcılar, MBB, TBB, Keçiören, ASAM, IOM.
386   Anonymous Interview #1; Interview Keçiören; Interview ASAM.
387   Field Notes #3. Anonymous Interview #1, Interview Keçiören, Interview ASAM.
388   Interview ASAM, Interview Keçiören.
389   Interview Sultanbeyli.
390   Ibid.

ii. Personnel

A prevalent reference in relation to capacity that emerged in the interviews was the importance of personnel. While the expertise of personnel seemed to be the most important issue for the interviewees,[391] other key issues concerned the number of personnel in relation to the workload, and problems arising from arbitrary top-down replacements and reallocations of personnel that disrupted the growth and the embedding ('taking root') of certain practices within the local government. An interview with officials from the Turkish Union of Municipalities (TBB) revealed how in a the event of a change of government following local elections, even if the new mayor had been elected from the same political party, personnel faced risks of being replaced by new staff in whom the new mayor trusted more closely, or of being relocated to a different department, outside their area of expertise.[392] If the relocated or replaced official was the main (or only) person who knew 'how to get the job done' in that department, accumulated knowledge and expertise is lost.[393] This phenomenon can be considered both a cause and a consequence of the lack of institutionalisation in Turkish municipalities. Because of the lack of institutionalisation, leaders can reshuffle personnel as they see fit. Simultaneously, institutionalisation is slowed down when this causes work in some departments to fall apart because the core personnel has left, especially if practices were not (yet) embedded into institutional tradition for future generations.[394] On the other hand, the institutionalisation acquired by local governments often develops through years of experience in shorter projects, trainings, cooperation with external organisations, and through the dissemination of norms and practices through networks of actors in the field of local governance.[395] This is in line with Babul's findings within the Turkish police and judiciary.[396] These processes also depend on individual agency, as individuals from different organisations who know each other and have already worked well together successfully tend to be more inclined to work together again and thus further develop local governance expertise.[397] When personnel, who had in her/his person accumulated knowledge, experience, ownership and socialisation of certain norms of good local governance, is relocated to a field outside their expertise, the

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391   Interview Maltepe, Interview TBB, Anonymous Interview #5.

392   Interview TBB.

393   Ibid.

394   Anonymous Interview #1, Interview Şişli, Fieldnotes #1, example Şişli and the fate of the Department of Migration that lost its director and most of its employees.

395   Anonymous Interview #5.

396   Babul 2017.

397   See Chapter VI in this thesis for the relevance of individual agency in the introduction of human rights to local governance.

chances of institutionalisation are also reduced for the local government, which could have instead benefitted from the knowledge of the individuals working for it, to embed that knowledge within institutional structures.

iii. Data

A key element of capacity and institutionalisation in the case studies seemed to be the availability of data on the inhabitants of a specific locality. As one interviewee put it: "You can't do anything without data."[398] Data is needed for institutionalised governance, as it allows public bodies to prioritise and make decisions based on the needs of the unique composition of their constituency. Data allows for the creation of projects that meet the needs of the population.[399] In addition, data is used to put together project proposals to apply for funds from international organisations and INGOs,[400] and to justify municipal expenditure that is already controversial due to legal ambiguity. Data on refugees within the locality also enables coordination between different stakeholders providing financial or material aid to refugees, in order to avoid double or triple coverage, but also to ensure efficiency and to reach those most in need.[401] Statistical data is mainly collected by the Turkish Statistics Agency (TUIK) in the centralised country.[402] Local governments are not obliged to collect and keep data, nor is there a mainstream data collection method for local governments that want to go the extra mile. Local governments generally have information on the number of Turkish citizens registered as residents in their territory, and perhaps also on their age and gender,[403] but not necessarily more.

When it comes to migrants and refugees, the situation is even more bleak. For Syrian refugees, there is no other central allocation system to determine where they will live, except for the Dublin-esque[404] requirement that they reside in the provinces in which they first registered with the local offices of the DGMM. In other provinces, Syrian refugees have no access to otherwise freely available services such as health care. As such, only the Turkish police (which falls under the jurisdiction of the central government) and the DGMM have (limited) data on where Syrian refugees reside.

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398 Interview Sultanbeyli
399 Ibid.
400 Ibid.
401 Ibid; Interview Çankaya
402 Interviews Zeytinburnu, Maltepe.
403 Interview Maltepe.
404 Dublin Regulation in EU also envisages asylum seekers to be returned the first EU country of arrival. https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en

Turkish local governments diverge in the amount and quality of data they have, ranging from no data at all to data collected by individual social workers in the field, from data only on Turkish residents, to data only on individuals contacting the municipality with requests. While Bağcılar, Zeytinburnu, Sultanbeyli,[405] and the IOM-led one-stop-shop 'Migrants' Centre' in Keçiören collected quantitative data from the individuals who contacted and requested support from the municipal facilities, Şişli collected only qualitative data through field visits.[406] Although Şişli was referred to by many interviewees as an exemplary local government successful in the field human rights and migration policies, there seemed to be a lack of systematic data. This appeared to be related to the lack of personnel invested in these policies (at the time of the interview), as there were initially only three, and later only one employee in the Department of Migration. Zeytinburnu supplemented the available data with large amounts of data collected through their 'Family, Women, and Disabled Centre', which also offered migrant integration services, with qualitative data from field visits.

Sultanbeyli has developed a database called 'SUKOM' as part of the Refugee Association they founded, in which the disaggregated[407] data on 19.000 Syrian refugees is registered. Municipal officials estimate that this data is more accurate and up-to-date than that of the central government, as refugees are often registered in the province of their first registration, even though they have already moved to a different locality.[408] With highly disaggregated data on both the composition of the local population as well as on their economic, educational, financial and social situation, Sultanbeyli was able to adapt a project initially carried out in a municipality in Germany to the local reality. Sultanbeyli looked at the number and percentage of refugees in the locality of working age who were unemployed and available to participate in training internships with local small businesses two days a week.[409] One interviewee stated that 'In Turkey, not even the DGMM has a database like ours.'[410]

Regardless of whether they had attempted and/or succeeded in collecting satisfactory levels of data on which to base their policy, all interviewees expressed problems and frustration about having access to data which they know are held by central government

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405 Sultanbeyli has a 'SUKOM' system in which 19.000 Syrian refugees are registered. The municipality estimates that this number is more accurate and up-to-date than those held by the central government. Interview Sultanbeyli.

406 Anonymous Interview #1.

407 Information on the individuals includes education level, age, gender, employment status, whether they receive financial support from an institution. Interview Sultanbeyli.

408 Interview Sultanbeyli,

409 Ibid.

410 Ibid.

authorities such as the DGMM and the police.[411] This shows how much more efficient use can be made of the time, money and efforts of public institutions, with a better appreciation for cooperation and coordination between the main actors in a given area. In Section V(c) below, this Chapter will discuss the importance of cooperation and coordination for local governments and the importance of local governments in collaborations.

i. Project-Based Governance: An Indicator of Low Institutionalisation?

An unexpected finding of the field research was the ubiquitous reference to the word 'project'. While Cities of Refuge colleagues who conducted research in countries such as Italy and Netherlands investigated 'policy', interviewees in Turkey repeatedly referred to 'projects' as means of local government engagement for refugees. This finding held similarities with observations from other countries, such as Greece, and was thus arguably grounded in similar reasons such as: a centralised governance regime, lack of clear competences and allocated funds for local governments in relation to migration, and the ubiquitous presence of international organisations and INGOs in the field due to these countries being considered 'frontline' or 'hot-spot' countries in terms of hosting refugees.[412]

Project-based governance, which appears to be very common in the Turkish context, refers to most local governments opting for short-term projects rather than long-term institutionalised policies. Most proactive municipalities develop projects themselves targeting refugees on their own and apply for external funding, or participate in projects designed by external actors such as UNHCR, IOM, and local and international NGOs such as Yereliz,[413] the Raoul Wallenberg Institute,[414] Save the Children,[415] and the German Development Fund ('GIZ')[416]. Closely linked to the 'Cooperation and Coordination' factor that will be discussed in the next section, many local governments both benefit from cooperation with – and are valuable partners for – other important (non-State) stakeholders in the field. Even when there is no particular framework for a 'project', a practice by local governments seeking to improve the human rights of refugees often develops spontaneously and without reference to a policy of strategic planning and budgeting.[417]

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411 Interviews Zeytinburnu, Sultanbeyli, Maltepe; Anonymous Interview #1.
412 OECD 2018, pp. 138.
413 Interview Zeytinburnu, Anonymous Interview #5.
414 Interview Maltepe, Zeytinburnu; Anonymous Interview #5.
415 Interview Zeytinburnu.
416 Interview Maltepe.
417 Interview Zeytinburnu.

There are many examples of project-based governance. For instance, the Ankara Metropolitan Municipality carried out[418] a project in cooperation with the UNHCR that consisted of the construction of a large facility in the outskirts of Ankara that would serve as a comprehensive vocational training centre offering integrated language courses, psychological support, and day care.[419] In a collaboration between municipalities and international organisations, 'one-stop-shops' for the support of migrants were created in the municipalities of Adana, Keçiören and Şanlıurfa, together with the IOM. Run with the help of both IOM funding and personnel hired by IOM, these one-stop-shops located inside municipal facilities serve as a 'first responders' rather than a service provider for all needs. When migrants (including refugees) register with the one-stop-shop, they are guided through a registration process that collects data on their needs and wider situation. They are then forwarded to specialists in education, employment, psychological or legal support, who guide the migrant in the larger system of actors and stakeholders and assist them in resolving their problems. The project aims to serve as a learning and transition experience for local governments to adapt to providing basic human rights-related services to refugees. Sultanbeyli's 'Association for Refugees' is an NGO coordinated by the municipality's 'Strategic Planning and Project Writing' Department. Similarly, employees of Maltepe Municipality's Strategic Planning Department were also those participating in the conferences and training sessions of the pilot project 'Human Rights Cities' that the municipality was part of. Looking at municipalities such as Bağcılar, Sultanbeyli and Zeytinburnu that did have more institutionalised policies and facilities for refugees, we see a common trend; they evolved from earlier projects and enjoyed a Mayor and/or Vice Mayor, as well as other high-level municipal decision-makers who were invested in the purpose of this project.[420] Şişli, in a rare example where an entire department is dedicated to migration, did not seem to be able to conduct wide-ranging projects or programmes. This was mainly due to a lack of institutional stability (especially with frequent personnel changes due to political reasons) and a lack of support from higher-level decision-makers. That being said, even municipalities with more established services for refugees,[421] such as long-standing community centres or the 'Association of Refugees', continued to implement and refer to short-term 'projects' which then might or might not be continued in a more institutionalised format.[422]

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418 The current situation on this project is not known, as the municipality changed (political) hands in the last local elections, and it is not known whether the previously nationalist new Mayor has permitted continuation of the project.

419 Interview ABB and Participant Observation in the facilities.

420 Interviews.

421 Zeytinburnu Interview

422 Interview Bağcılar, Interview Sultanbeyli

The appeal of projects and project-based governance is not difficult to understand. For most local governments, the provision of services to refugees only became part of the local government repertoire after the arrival of Syrian refugees in 2011. Local governments do not have as much experience in this field as they would in ensuring – say – local infrastructure and water systems are in place. Legal ambiguity, discussed in detail above, is another obstacle. As such, local government officials may not want to, and at times cannot, establish long-term policies for refugees as no budget has been allocated for this specific group in the five-year strategic plans and thus expenditure and institutionalised policies are not easily justified. Moreover, and more importantly, the regular income of local governments is calculated on the basis of number of Turkish nationals in the territory and often cannot be stretched far enough to cover the costs of social policies for refugees. Due both to such budgetary concerns and the lack of experience in this field, local governments opt for experimental projects that provide external funds and know-how from other actors in the field, but which can be discontinued when the project does not seem sustainable, appropriate or effective in the locality.

As an important side effect, interviewees from the Union of Municipalities stated that projects often facilitated sustainable learning and improved institutionalisation within local governments. One example was a project that 'taught' municipalities to collect aggregated data.[423] One interviewee, who now leads a project on local governments and human rights in Turkey for an international NGO, provided an account based on her experience working with the Union of Municipalities and a district municipality. She explained that that the EU accession process and the decentralisation (the strengthening of local governance), which accompanied a new wave of negotiations at the start of the 2000s, provided a good basis for projects and cooperation with the foreign unions of municipalities who were eager to share their know-how on local governance.[424] The interviewee also explained how in the district municipality of her previous employment, a project carried out with a UN agency and local women's rights NGOs on gender mainstreaming, and the creation of gender-sensitive policies measured against gender-sensitive benchmarks, was a crucial step in teaching the municipality key tools of institutionalised governance. Interviews with current staff from the same district municipality revealed that although they had no policies for refugees, they were very open to and familiar with the idea of drafting institutional human rights plans, conducting human rights-sensitive budgeting and measuring policy outcomes based on human rights indicators.[425] This was closely linked to their previous experience in

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423 Interview TBB, about the project ISKEP and its influence in the municipality of Kars, a remote, urban locality.
424 Anonymous Interview #5.
425 Interview Çankaya.

the field of gender equality.[426] Such outcomes closely reflect Babul's findings on human rights projects funded by the EU in Turkey's police forces and judicial establishments.[427] The projects described in Babul's work also improved the capacity of institutions and introduced norms, practices and standards of human rights into the normative consciousness of individuals, institutions and governance regimes.[428]

Interviewees also pointed out important shortcomings of project-based governance. One of the most common problems related to projects was their lack of sustainability and resilience to change in political leadership.[429] The future of the IOM's 3-year one-stop-shop projects became precarious in the run-up to the local elections of April 2019, as it was feared that new mayors and the newly appointed vice-mayors would shut the projects down due to mistrust, unfamiliarity, or simply lack of knowledge or shared values about its usefulness.[430] Even before the local elections, however, the high-level leadership in Şanlıurfa municipality changed, causing the project with the IOM to falter and almost fail.[431] Following this development, our interviewee from the Union of Municipalities reported that the IOM representatives approached the Union to seek their support and mediation in this process, and subsequently, the municipality of Şanlıurfa was persuaded to continue the project. This was arguably thanks to the mediation of the Union, which was considered more as an 'insider': a 'national/local' actor.[432]

b. Networks and the Dissemination of the Developing Norm that Local Governments Can/Should Improve Refugee Rights

This leads us to another very important factor facilitating local governments' engagement with migration policies aimed at improving the human rights of refugees. In line with literature on how ideas travel, are contested and become norms that socialise the behaviour of members of a community,[433] this section will describe the networks through which the potential new norm, namely that local governments can and ought to work for the improvement of refugee rights, is disseminated. Local governments (globally) have been characterised as part of a 'norm-generating community' developing the norms on 'human rights in the city'.[434] In the Turkish context, ideas, practices and discourses on the role of local governments in improving the realisation of refugee rights

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426   Ibid.
427   Babul 2017.
428   Ibid.
429   Interviews TBB, Keçiören.
430   Interviews TBB, IOM, Keçiören.
431   Interviews TBB, IOM.
432   Interview TBB.
433   Berman 2007; Koh 1996; Levit 2007; Brysk 2019; Risse and Sikkink 1999; Durmuş 2020.
434   Durmuş 2020.

have been observed to be travelling amongst actors who are institutionally placed in local governments, local NGOs, foreign NGOs, international organisations, city networks, and academics working closely with practitioners in the field. As such, norms of 'good governance' and 'human rights duties' concerning local refugee policies are contestants within the 'battleground of ideas'[435] that Risse and Sikkink described, struggling for increased attention and ownership among members of the community of stakeholders active in migration governance. In this battleground, this new norm travels and arrives at their municipal destinations via local 'pathways of influence' similar to those mapped by Brysk in the global context.[436] These local 'pathways' include conferences, seminars, workshops targeting local governments, cooperation with international organisations and NGOs, the dissemination of norms through city networks, and non-institutionalised interpersonal connections.[437] Individuals are crucial to these processes (see Chapter VI in this book in the role of 'individual agency'), including Merry's 'people in the middle', who speak both the language of the local and the transnational.[438] All actors collectively participating in this processes can be considered to constitute a 'norm-generating community'.[439] This general process can be referred to, more visually, as *cross-pollination*.

An example of non-institutionalised cross-pollination can be found in an anecdote by an interviewee from Zeytinburnu about how the current Mayor of Gaziantep – Fatma Şahin – once visited the community centre of Zeytinburnu in her previous role as national Minister of Family and Social Policies.[440] The 'Centre for Supporting the Family, Women and the Disabled (AKDEM)' of the municipality of Zeytinburnu was unique in its kind at the time.[441] The interviewee stated that Fatma Şahin was so impressed by the centre that in her later years as Mayor for Gaziantep, she founded the 'Gaziantep Centre for the Support of the Family (GADEM)'.'s The activities of these community centres in Gaziantep expanded and continued primarily through GADEM and through other similarly structured centres aimed at integrating refugee beneficiaries into municipal social services.[442] The Municipality of Gaziantep went on later to become one of the most celebrated and widely publicised 'best practice' examples internationally, in the context of local refugee reception and integration. Following these developments, Fatma Şahin was invited to deliver a number of speeches at the UN in Geneva.[443] Zeytinburnu's AKDEM

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435   Risse and Sikkink 1999, p.7.

436   Brysk 2019.

437   See again, 'Interactions Between Individuals' in Chapter VI of this thesis.

438   Merry 2006.

439   Berman 2007.

440   Interview Zeytinburnu.

441   Interview Zeytinburnu.

442   Presentation in Metropolis 2017 Conference by Sarah Kristen Biehl on her field research in Gaziantep.

443   Anonymous   Interview   #4.   http://www.gantep.bel.tr/haber/fatma-sahin-bmde-suriyelilerin-sorunlarini-anlatti-3472.html

also has a 'Department of Integration to the City', which provides guidance, registration, language courses, and mainstreamed access for refugees (including undocumented ones) to the municipality's social services provided in the AKDEM centre.[444]

Slightly more institutionalised pathways of cross-pollination can be city networks, projects, trainings and conferences. Conferences at the international level, such as the World Human Rights Cities Forum, and the UCLG World Congress, both enjoying wide participation from local governments around the world, can act as 'hives' for the dissemination of developing norms on 'good local governance'.[445] During one of the conferences observed through participant observation in Turkey, the International Migration and Integration Symposium (April 2018), the municipalities of Bağcılar and Gaziantep extensively presented their local migration policy, accompanied by researchers, a representative of the Marmara Municipalities' Union (with a presentation of the Migration Working Group of the Union) and even the Director General for Migration Management and the Deputy Minister of Interior Affairs. Speakers shared valuable experiences, knowledge and insight into cutting-edge (local) migration policies. Among the audience were many civil servants of other local governments, such as those from Şişli, another municipality known in the field as being 'active'[446] in the field of migration policy. As such, it can be said that municipalities participating in such conferences may be already invested in – and convinced by – the relevance of the newly developing norm.

However, previously convinced municipalities are not the only ones who will be exposed to such newly developing norms. Another conference that was attended, the International Human Rights Cities Conference (November 2018, Istanbul), was part of the Human Rights Cities Turkey pilot project developed by Research Worldwide Istanbul (RWI) and the Union of Municipalities of the Turkic World (TDBB) with eight municipalities of different political colours.[447] Turkish and international researchers working on 'human rights in the city' were invited to speak, alongside the local NGO 'Yereliz' (translated 'We are Local'), whose objective is the 'localisation of civil society and the civilisation of local government'.[448] The conference also had features of a teaching conference, given that local level human rights indicators – developed by a team of academics, the project coordinator and municipal officials – were introduced to municipalities participating in the pilot project, with the aim of receiving feedback from them.[449] The collaborating

444   Interview Zeytinburnu.

445   Durmuş 2020.

446   Interview MBB; Interview Yereliz #1; Interview Yereliz #2.

447   Participant Observation in the International Human Rights Cities Conference, November 2018, Istanbul.

448   Yereliz Twitter Description: https://twitter.com/yerelizdernegi (own translation)

449   Participant Observation in the International Human Rights Cities Conference, November 2018, Istanbul

academics were also recently invited by the RWI to a workshop in Graz, where the municipality of Graz (a human rights city) and experts from academia and the Swedish Association of Local Governments (SALAR) shared comprehensive information on the operationalisation of the human rights city.[450] The coordinator of the Turkish human rights cities project and one of the project's Turkish academic advisors also participated and presented at the World Human Rights Cities Forum in Gwangju (2018), where they could gain deeper insights from other human rights cities such as Barcelona, Vienna, and Gwangju.[451] This process demonstrates the impressively interconnected and complex nature of the dissemination of developing norms amongst actors from a variety of institutions and geographic locations. As such, the idea of the 'human rights city' can certainly be considered a 'coalition magnet' in Béland and Cox's terms, both transnationally and in the Turkish context, mobilising different stakeholders around a common ideal.[452]

The Human Rights Cities project in Turkey foresees all participating municipalities to adopt, through an act of their municipal legislative, a human rights city declaration in which principles such as equality and non-discrimination are recognised and committed to.[453] In addition, municipalities choose priority target groups from a list of five vulnerable groups, including refugees.[454] It can therefore be reasonably argued that the project was an 'arena' and a collection of processes in which the notion that refugees are legitimate beneficiaries of municipal services –just like other vulnerable right-holding group – and that their rights also implicate local government competences or obligations, was advocated, contested and in some cases internalised (also referred to as socialisation.)

c. Coordination and Cooperation between Local Governments and Other Actors

The third factor that emerged from the grounded data as an element facilitating the development by local governments of policies that improve the rights of refugees, was the availability and quality of cooperation and coordination with other actors.[455] This element is intimately intertwined with other factors discussed above. For instance, the human rights cities project discussed earlier should also be considered as an example of

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450 Participant observation in the Workshop in Graz, March 2018.

451 Participant observation in the WHRCF, October 2018.

452 Béland and Cox 2016.

453 Participant Observation in the International Human Rights Cities Conference, November 2018, Istanbul.

454 Ibid.

455 See 'Coordination of Human Rights' in Durmuş 2020.

cooperation. However, these two factors, while having overlapping qualities, cannot be equated with each other. While dissemination can take place in hierarchical structures and one-way interactions, cooperation requires a commitment by two of more parties to collectively seek to address common objectives and concerns.

International organisations ('IOs') such as the UNHCR and IOM have the interests of refugees in mind and seek to realise their goals through individual as well as cooperative efforts. While cooperation with central governments is important and necessary, it may not meet all the needs and objectives that these IOs have in the field.[456] For instance, where national policy-making and civil servant training at the DGMM is the objective, cooperation with the central government will be crucial for an IO.[457] However, for the objective of urgently improving the rights of refugees on the ground, IOs often prefer to work with local governments, as around 98% of Syrian refugees in Turkey reside outside reception centres in urban areas.[458]

Local governments also cooperate with and through regional, national and international city networks; with academics; with local and foreign NGOs (at times sharing service provision tasks or applying for funding together) and lastly with members of their local community. For example, a project jointly developed by Ankara Metropolitan Municipality and the UNHCR enabled the of a refugee vocational training centre.[459] The municipality, in accordance with its role as facilitator/coordinator within their locality,[460] consulted with various actors in the industrial and entrepreneurial sectors, to identify the employment needs in the locality.[461] Based on this information, and with funding and the sharing of expertise by the UNHCR, the municipality identified a location for the centre, built the facilities, and started providing two stages of trainings for selected refugees who had applied to follow the certificated course.[462] The first stage involves language education, and a second stage vocational training in fields where especially the industrial sectors of Ankara needed qualified personnel.[463] Having acquired commitments from companies and entrepreneurs active in Ankara on employing refugees who had received certification from the municipality, the municipality set out to train refugees (up to 600 at a time), accompanied by services that were deemed necessary in course of the

456 Thouez 2018; U.N. 2017.
457 Interview IOM.
458 Erdogan 2017; Interview IOM.
459 Interview ABB.
460 Durmuş 2020.
461 Ibid.
462 Ibid. Participant observation at the facility and focus group with the employees of the facility, January 2019.
463 Interview ABB; Ibid Participant Observation at facility and focus group with employees.

project, such as free day care, psychological support, and social services.[464] The facilities employ many sociologists, teachers, social workers, lawyers and translators, including those with a refugee background.[465] The examples given in the section 'Project-Based-Governance' above, including the 'one-stop-shops' run by IOM in cooperation with the municipalities of Keçiören, Şanlıurfa and Adana, are also illustrative of valuable access to cooperation, which can change the municipality's status on service provision with regard to refugees from non-existent to genuine commitment and experience.[466]

There are, of course, some risks and shortcomings. First, for many municipalities such cooperation seems not only helpful, but also essential. Budgetary constraints and legal ambiguity push local governments to cooperate with external actors through projects that are both temporary and externally funded. While such projects can play as essential role in the transfer of practical and technical knowledge as well as norms relating to the practice,[467] they can also showcase a dependence of the municipality on external funding and know-how. The lacuna in capacity and institutionalisation is attempted to be filled by such cooperation.[468] This is not necessarily a bleak predicament, but an unsustainable reality that legislators, human rights researchers and policymakers need to be aware of.

This leads us to the second concern that emerges from the reliance on cooperation: the inequalities in access to such cooperation. When interviewing persons in city networks, IOs and NGOs that develop and coordinate projects with local governments, it became clear that previous engagement of the local government was a factor for these individuals to be inclined to choose to contact – and work with – such local governments again.[469] Such previous engagement – more specifically, proactive engagement in fields such as migration and human rights on a scale *beyond* the national average amongst local governments was assumed to be an indicator for likelihood of success, including sustainable results from these short-term projects that always have an explicit or implicit objective of 'capacity-building' in them.[470] In one instance this issue was acknowledged and sought to be addressed. According to interviewees from the Turkish Union of Municipalities, when the IOM contacted them about the 'one-stop-shops' that they intended to develop with local governments, the Union representatives encouraged the IOM official to carry out the project with Şanlıurfa Municipality. This was a municipality

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464 Ibid.
465 Ibid.
466 Interview IOM; Interview TBB; Interview Keçiören.
467 Babul 2017.
468 Interview Sultanbeyli.
469 Anonymous Interview #5; Interview IOM; Interview TBB; Interview MBB.
470 Anonymous Interview #5.

that had not previously committed itself to providing services to refugees or to other institutionalised human rights projects. However, there was a great need for such policies, due – among others – to a large refugee population.[471] The Union interviewees indicated that the IOM official was somewhat surprised by this unusual request: other candidate municipalities were all amongst those who had shown some initiative or institutional 'project experience'.[472] Ultimately, however, IOM officials opted to follow this advice and carry out the project with Şanlıurfa Municipality, in addition to the Adana Metropolitan and Keçiören Municipalities.[473] Interviewees from both IOM and the Union later indicated that they had experienced difficulties in the process with Şanlıurfa, stating that the context was 'very different', implying that there were cultural differences and a greater dependence on personal relationships rather than institutionalisation.[474] This experience shows the validity of some of the concerns of external actors initiating projects for and with local governments.

d. Political Will

As a final factor, as conceptually vague as it is, political will remains an important variable. Political will does not exist in a lacuna. An actor's interests and identities, as Koh,[475] Brysk,[476] as well as Risse and Sikkink[477] describe, are developed and constructed in a process that is strongly influenced by the above-mentioned factors of cross-pollination, in particular the dissemination of norms and cooperation with external actors. However, this section discusses 'political will', mainly as an attempt to explain why certain highly developed, institutionalised and well-connected local governments with resources will not engage in policies regarding refugees. When we look at what unites such municipalities that are otherwise very proactive (for instance, in the areas of gender equality, children's rights and the environment), we can see that there is a political concern at the leadership level that holds the personnel back from developing policies.[478] This political struggle may result from the perception of the mayor and other leaders that the 'refugee issue' is the problem of Erdogan and the AKP, and that they

471   Interview TBB.

472   Ibid.

473   Interview TBB; Interview IOM.

474   Interview TBB; Interview IOM; Interview Murat Erdogan.

475   Koh 1996.

476   Brysk 2017.

477   Risse and Sikkink 1999.

478   Interview Cankaya.

(who belong to the main opposition party) should not have to deal with it.[479] However, this political struggle can also take place between different factions within the same political party that have a power struggle over decisions and departments within the same local government.[480] In one district municipality, the office working on migration was reduced to a single member of staff, with the leader of the department relocated to a different position.[481] Conflicts among the current Mayor and the previous one as well as employees loyal to each of them – lead to the opening, closing and reopening of departments, to personnel being shuffled around and to the reallocation of funds.[482] The Migration Department did not seem to receive consistent support or attention from the mayor(s), vice-mayors, or other strategic partners, such as colleagues from the planning and project-writing departments.

Finally, certain localities have constituencies who are particularly opposed to the presence of – and service provision – to refugees in the country, which might result in any refugee policies of that local government to be political suicide.[483] In some such cases, municipalities prefer to offer urgent and essential services in secrecy.[484] Some mayors and municipal governments also struggle because they have been elected within a party that is very nationalistic and whose voter-base is openly opposed to refugees.[485] In such cases, even though municipalities may have humanitarian or pragmatic rationales for providing services, this will be highly risky and is better conducted in secrecy.[486]

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479   See for instance these (Turkish language) news from the website of the municipality of Izmir including speeches of the former Izmir Mayor Aziz Kocaoglu following visits of European diplomats, indicating that he sees his role as the Mayor of Izmir (which is at the Aegean Coast, close to Greece) as assisting to hold back the refugees who want to cross to Greece. https://www.izmir.bel.tr/HaberArsivi/16084/ara/tr https://www.izmir.bel.tr/HaberDetay/17155/tr

480   Anonymous Interview #1.

481   Ibid.

482   Ibid.

483   Amongst these municipalities are particularly those who have been elected from the nationalist parties MHP or Iyi Parti.

484   Fieldnotes #2.

485   Interview Çankaya.

486   Fieldnotes #2; also see Oomen et al (forthcoming), example of Gazipasa.

6. Conclusion

Human rights have been widely criticised for their perceived lack of effectiveness. One of the most relevant of such criticisms is related to the failure of human rights to protect those who have lost the protection of their States (such as refugees). Another criticism is the worldwide disparity between the legal obligations committed to by States and the disheartening human rights violations on the ground. This Chapter has discussed how research on human rights effectiveness has been shifting away from a legalist perspective foregrounding the importance of legal incorporation of international legal commitments into domestic law and an assessment of effectiveness based on formal criteria – such as treaty ratification – to more empirical, socio-legal assessments. This Chapter advocates for this latter sociological study of the effectiveness of human rights, by following the cross-pollination and taking root of human rights, that is to say, their development, travel, contestation, and institutionalisation as norms within communities of actors. Together, the cross-pollination and taking root of human rights can bring about an ownership of human rights in communities and actors who may be – legally speaking – already bound by them. Such a study is particularly useful in contexts of low institutionalisation where legal obligations for State and sub-State actors may not be clearly fleshed out, where divisions of labour are unclear, and where human rights needs and demands on the ground are high and urgent. In such contexts, demands of international human rights law may not resonate as much as hard practical needs on the ground and the new norms (consisting of ideas, practices and discourses) claiming to address these practical realities, disseminating and diffusing within the community of actors.

This Chapter presented the findings of research grounded in a context of high human rights demands on the ground, legal ambiguity for local governments on their competences and obligations concerning these demands, and insufficient and unequal levels of institutionalisation and access to external resources. Field research was conducted through interviews with, and participant observation amongst, Turkish local governments and other actors working with local governments on the development of policies that further the human rights realisation of refugees. An extreme divergence was found in how much – if at all – local governments engage with policies related to refugees. This was arguably due, at least in part, to the large discretionary space that was created by the legal ambiguity regarding their obligations and competences. Nonetheless, four factors were identified that facilitate the engagement of local governments with policies furthering the human rights of refugees: (1) the capacity and level of institutionalisation of the local government; (2) access to networks and dissemination of the norm that local governments can and ought to create policies that aim to improve the rights of refugees; (3) access to cooperation and coordination with external actors; and (4) political will. The first factors of capacity and institutionalisation

IV

included the following elements: budget, personnel, data and the prevalence of project-based governance as a sign that indicates potential shortcomings in institutionalised long-term policy development. Together, these factors illustrate the cross-pollination and taking root of human rights amongst public actors not previously familiarised with them. While factors (2) and (3) on dissemination and cooperation may focus largely on cross-pollination, factor (1) on capacity and institutionalisation corresponds to norms taking roots engrained in institutional culture and practice. Factor (4) seeks to explain external, non-generalisable factors that prevent local governments from engaging in policies that improve the rights of refugees for political reasons.

These findings both reaffirm the important hands-on role of local governments in addressing human rights challenges on the ground, but also warn against tales of 'The X City'[487] as the ultimate all-powerful actor that is always best suited to realise and localise human rights. For local governments to reach their full potential in localising and realising human rights on the ground, they need to enjoy some basic capacities and opportunities that will allow them to become players in the field. Such basic factors may make the difference between a proactive and inactive municipality, especially in countries where local governments do not enjoy clear, well-established and wide competences and autonomy. As such, this research also encourages the scholarship on local governments and human rights to more proactively consider and study contexts in developing countries, where the needs are higher, and resources are lower than the usual suspects of localisation literature: European and American cities. These findings are also relevant to developments at the international level regarding the documentation and codification of the formal legal role of local governments in the protection and promotion of human rights. International organisations, as well as large-scale city networks that claim democratic representation of local governments worldwide, must reach out to less privileged local governments and consider less-institutionalised contexts when making (quasi-)legal pronouncements on local governments categorically.

These findings complement previous research on how human rights cross-pollinate through 'pathways of influence'[488] and take root through socialisation,[489] localisation[490] and acculturation.[491] The factors that that have emerged as theoretical categories of this grounded theorisation may be relevant and applicable to other institutional contexts (local, national and international; public or private) and processes of cross-pollination

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487 X being an impressive, catchy adjective, see for instance 'Shining Cities on the Hill?' by Aust 2015; 'Frontier Cities' Oomen and Baumgärtel 2018; 'Accelerating Cities' Oomen et al. (forthcoming).

488 Brysk 2019; Risse and Sikkink 1999.

489 Risse and Sikkink 1999; Risse et al 1999; Risse et al 2013; Haglung and Stryker 2015; Simmons 2009.

490 Merry 2016; De Feyter et al 2011; Oomen et al (eds.) (2016).

491 Goodman and Jinks 2004.

and taking root of norms therein. Recommendations for further research include normativisation[492] (the development of ideas into norms) in specific contexts, with a particular focus on the delineation of the norm in the development phase. The questions 'When can a practice be understood and classified as a "human rights practice" if there is no explicit reference to human rights?' and 'What reasons behind a behaviour or practice can be considered as "human rights norms"?' were ongoing and unresolved questions in the research underlying this Chapter, relating to and answerable only by tackling broader questions about the philosophical as well as empirical 'essence' of human rights.

If we leave aside wider questions of 'what human rights is' for the time being, the findings from Turkish local governments show that casuistic legal pronouncements on human rights law and the competences of local governments are not a *sine qua non* condition for local governments to engage with policies aimed at improving the human rights of refugees. This local engagement with activities in new territories set a standard and create expectations for their own future activities as well as for other local governments, effectively expanding norms on what local governments ought to do.[493] One expert interviewee explained this 'development of the law on local governments' by describing that when one municipality takes a step, if there is no reaction, they continue, allowing the practice to potentially spread.[494] If the *Sayıştay* (Court of Cassation) or other domestic courts seek to restrict or penalise them for this practice, they might fight and stand their ground legally and discursively.[495] If they challenge the decision and win, or if no one opposes the new practice, this is how the law on local governments (particularly the norms on what local governments can and ought to do) is developed.[496]

In sum, for isolated instances of (human rights) engagement to become new norms, ideas, practices and discourses constituting the norms (such as their content, usefulness, legitimacy or necessity) have to cross-pollinate and take root. Cross-pollination effectively relies on the dissemination, contestation and development of norms through institutionalised and non-institutionalised networks. Taking root will require institutionalisation both in terms of its technical elements – budget, personnel, long-term policies as opposed to short-term projects, data – and in terms of creating an institutional culture within the norm-generating community, one that socialises (new) members into accepting the norm as their own. In conclusion, for Turkish local governments, the establishment of policies that improve the human rights of refugees on the ground constitutes a norm in development. The fact that a significant proportion

492   Onuf 1985.
493   Interview Yereliz #1.
494   Ibid.
495   Ibid.
496   Ibid.

of interviewees indicated that they consider the local government as an actor responsible for human rights, while some interviewees do not (yet) share this opinion, supports this observation.[497] It remains to be seen to what extent this norm will develop into a fully-fleshed rule in the national context, further similar norms that are proposed and in contestation in the international context, and perhaps even find its way into national and/or international law.[498]

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[497] Interview Yereliz #1, Yereliz #2, Şişli, Anonymous #5, MBB, TBB, Sultanbeyli, Maltepe, Zeytinburnu, Çankaya, Anonymous #1, Keçiören, ABB

[498] The international development of the norm 'human rights in the city' is described in for instance Durmuş 2020.

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IV

CHAPTER V

Exploring the Role of Regulation in Urban Citizenship Practices: Looking at Swiss and Turkish Cities

Elif Durmuş[499][*]

Author's Note:

This Chapter has not been published yet, but I have been invited to consider its inclusion in two different special issue proposals for academic journals.

499 [*] Postdoc Researcher at Antwerp University, Faculty of Law, Department of Law and Development, iBOF project "Human Rights Accountability", Belgium. www.citiesofrefuge.eu Contact: Elif.Durmuş@uantwerpen.be _Elif_Durmuş @UUCoR

1. Introduction

As most national governments opt for increasingly securitised, externalised and exclusionary migration policies, the eyes of progressive academics and civil society have been turning towards the local level as a venue for alternative paradigms in the governance of migration and integration. One result of such a move has been the increased attention on the concept and practices of "urban citizenship". The definition and content of urban citizenship is still contested – but can provisionally be described as the bond between the locality (and/or its local government) with the people present or residing in its territory (*ius domicii*),[500] as well as an imagination of a polity at the local level, its members bound to each other and to the city through a kind of citizenship that is "emancipated"[501] from nationality and grounded in spatiality.[502] This focus on the local level and on urban citizenship has brought about multiple shifts in perspective: For instance, everyone present, or residing, in the territory of the locality can be thus *presumed to belong*, without the explicit consent of the pre-existing polity of local citizens; instead of granting belonging as a birth right to some and continuing from a *presumption of exclusion* for everyone else.[503] Such presumption of belonging and therefore presumption of rights that urban citizenship can bring about is also in line with the philosophy underlying human rights, especially with the principles of universality and inalienability. This is why many see urban citizenship as a pathway through which to achieve a higher realisation of human rights.[504]

Varsanyi, in her seminal piece, has been among the first to shine the spotlight on the potential of urban citizenship in offering citizenship to one of the most excluded groups of people: undocumented migrants.[505] Thus, the debate has expanded from discussions on giving foreigners the right to vote in local elections[506] and from claims to the "Right to the City" of the economically, socially and spatially marginalised,[507] to also include a

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[500] Varsanyi, 2006; Bauböck 2003; Bauböck and Orgad, 2020; Bauder, 2020; Beauregard and Bounds, 2000; Brodie, 2000; Oomen, 2019; Prak, 2018; Stahl, 2020; Purcell, 2003.

[501] Bauböck and Orgad, 2020.

[502] Varsanyi, 2006, p. 231 calls this "grounded, rather than 'bounded'" citizenship. While urban citizenship has received renewed attention in modern times, its history dates back far beyond that of nation states: See Prak, 2018.

[503] Varsanyi, 2006.

[504] Oomen, 2020.

[505] Varsanyi, 2006.

[506] Pedroza, 2019; Bauböck, 1994.

[507] LeFevbre, 1968; Bauman, 1999; Vansanyi, 2006.

consideration for the practices by local governments pushing the boundaries of their constitutional competences in order to create a welcoming and inclusive environment for the 'unwanted' of the State: refugees and (undocumented) migrants.[508]

As Bauder points out:

> (...)[I]f we rely solely on concepts (such as territorial citizenship) and structures (such as the nation state) that dominate our political life today, then we will only reproduce and not overcome the problems these concepts and structures inherently produce. What we can do, however, is to look at the urban struggles of sanctuary cities, solidarity cities, and other urban initiatives that **accommodate fellow inhabitants the nation state seeks to exclude**, and explore how the associated social and political practices can be enshrined into law and translated into new frameworks of governance. Urban citizenship, emancipated from national citizenship, is one of these practices.[509]

Such practices by local governments, in both their content and their limits – as shaped by the question of the constitutional competences of local governments – have been identified as a niche by scholars, who called for its urgent investigation.[510] This is because, as Varsanyi, among others, noted, local governments have a serious potential to improve the living conditions of undocumented migrants, whose lives are otherwise governed by precarity.[511] This potential gives the urban citizenship debate, which is at risk of becoming too abstract, on-the-ground societal relevance, as well as a practical testing ground:

> What is necessary (...) is to continue to build upon growing critiques of nation-state citizenship, to formulate alternate models of belonging at multiple scales including the sub-national or urban, and to document empirical examples of "citizenships" which challenge the status quo. However, in creating these visions and exploring these case studies, it is vital that the needs of the most marginalized residents of these cities—those without citizenship and legal status—be incorporated into these emerging visions of formal membership and belonging.[512]

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508 Varsanyi, 2006; Bauder, 2020; Bauder and Gonzalez, 2018; Gargiulo and Piccoli, 2020; Darling and Bauder, 2019; de Graauw, 2014; Oomen, 2019; Oomen, 2020.

509 Bauder, 2020, p. 23 (emphasis mine).

510 Varsanyi, 2006, p. 245

511 Varsanyi, 2006; Oomen, 2019; Bauder, 2020.

512 Varsanyi, 2006, p. 245.

Some scholars such as Aleinikoff have however argued that a discussion on local governments' practices in including traditionally excluded groups through urban citizenship is "useful (…) only to the extent that urban areas possess legal authority—some form of sovereignty—to rule by and for themselves."[513] This Chapter constitutes an attempt to tackle the relevance of this so-called "sovereignty", precisely *by looking at how the level of regulation in a domestic legal system shapes the discretionary spaces a local government enjoys in practicing urban citizenship, and the set of strategies she adopts at the face of different degrees of regulation.*

The actual practice and realisation on the ground of urban citizenship discourses and practices that seek to include traditionally excluded persons have been sporadic, controversial, and challenging, whether politically, legally, economically or socially.[514] Literature examining urban citizenship practices by local governments is plagued with the overrepresentation of the international "best practice" city which may enjoy all the best of circumstances.[515] Meanwhile, any exemplary value of such studies for other local authorities within or across state boundaries remains questionable due to the widely diverging domestic legal settings leaving them discretionary spaces of diverging shapes, sizes and flexibility to act in.[516] This Chapter will thus seek to answer the following question: *How do local governments develop proactive urban citizenship practices in favour of refugees and undocumented migrants in high- vs low-regulation contexts?* In the context of this Chapter, the scale of regulation, with 'high' on one end of the spectrum and 'low' on the other, is operationalised through the following empirical contexts:

i.   The presence of national (and regional, if that governance level is available) laws and regulations on the concrete competences and obligations of local governments in the realm of migration and integration, at times even concretised by benchmarks;

ii.   The presence of a clearly allocated and sufficient budget dedicated to the above-described competences and obligations;

iii.   The presence of a clear and structured division of labour between different branches and levels of government (local, regional, national) in the field of migration and integration.

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513   Aleinikoff, 2020, p. 52.

514   Marchetti, 2020; Gargiulo and Piccoli, 2020; Bauder and Gonzalez, 2018; Ambrosini, 2013; de Graauw, 2014; Orgad, 2020.

515   Ford, 2001; Hirschl, 2020; Kaufman and Strebel, 2021; Marchetti, 2020; Oomen et al, 2021b.

516   Gargiulo and Piccoli, 2020; Stahl, 2020; Marchetti, 2020; Oomen et al, 2021b.

To explore this question in a comparative manner, this Chapter draws from data collected through field research as part of the Cities of Refuge project in Turkey and Switzerland, with local governments that were particularly proactive, albeit in different manners and to diverging extents, in the provision of services to and facilitation of political participation of non-nationals. Local governments were selected on the basis of their reputation as welcoming localities, from among municipalities of different sizes and socio-economic standings in each national context, as well as to represent different administrative statuses and powers. This resulted in the inclusion of eight municipalities in Turkey, of which one is a metropolitan municipality; and five municipalities in Switzerland, of which two are City-States, two are large cities within larger Cantons that encompass rural areas, and one is a smaller town in a larger Canton. The City States – the Cantons of Geneva and Basel – are included in this research and included under the general term "local governments" because despite their different status and formal powers, they govern territories which constitute a single urbanity – a single city. Basel is the smallest Canton in Switzerland, encompassing only three municipalities, and while the Canton of Geneva encompasses more municipalities, all are in or immediately adjacent (as suburbanities) the urban area of Geneva.[517] While the UN defines local governments as the "lowest tier of general public administration in a State",[518] for the purposes of this Chapter, in order to widely explore the relevance of regulation, localities with administrations of different statuses, competences and applicable regulations were selected.

The country contexts of Turkey and Switzerland themselves also belong to those lesser researched, and at the same time, as national contexts, they represent two ends of the spectrum of regulation, with Turkish local governments functioning in an atmosphere of legal ambiguity and high informality,[519] while Swiss local governments function in a context of a highly structured division of labour between state organs, well-regulated competences and obligations in the field of migration and integration governance, as well as clearly designated financial resources to achieve pre-determined, often legally-binding benchmarks.[520] This setting allows for a comparative exploration of the role of regulation in whether - and if so, how – local governments take proactive and progressive actions in the field of migration and integration, or – in short – engage in the practice of urban citizenship.

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517 Kauffman and Strebel, 2021, o.8.

518 Human Rights Council, Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee, UN Doc. A/HRC/30/49, 7 August 2015, para 8.

519 Durmuş 2021, Erdogan, 2017.

520 Interview Renata Gäumann (Canton Basel) June 2021; Interview Yvonne Meier (Municipality Illnau-Effretikon), September, 2021; Anonymous Interview #12 (Canton Geneva), July 2019; Anonymous Interview #10 (Civil Society – Geneva), July 2019.

To take on this exploration, this Chapter will first (Section II) briefly introduce and discuss the concept of urban citizenship. Next (Section III), the concept of regulation will be elaborated upon, and placed within a larger conceptual framework including such notions as "legal ambiguity", "competence", and "discretionary spaces". The operationalisation of the spectrum that spans between "high-regulation" and "low-regulation" will also be explained and justified here. Following this section will be a brief background (Section IV) on the national contexts of Turkey and Switzerland, with a particular focus on the laws and regulations laying down the divisions of labour, competences, responsibilities and resources for local governments in the field of migration and integration. Section V will then engage in a tentative mapping exercise of four ways in which the different regulative frameworks might be influencing how local governments in Switzerland and Turkey engage in urban citizenship practices; namely, a) affecting *perceived* discretionary space and competences, b) affecting local governments' *choices in and between legal and extra-legal uses* of discretion, c) causing local governments to group inhabitants in *categories* and assign them rights accordingly, and d) affecting how local governments engage in *upwards, downwards, and horizontal forms of engagement* with urban citizenship. All in all, this Chapter will demonstrate that – as suspected – regulation *matters* in how local governments can and do engage with urban citizenship practices, and that further robust and comprehensive academic investigation is needed into this relevance.

2. Local Governments and the Practice of Urban Citizenship

The concept of urban citizenship has been developing in the last decades within different strands of literature in the social sciences and the legal field.[521] Varsanyi, in her seminal work from 2006, identifies three kinds of literature on urban citizenship: a) cosmopolitan/transnational citizenship, that has the city only as locus and transnational values as shapers of identity, b) urban citizenship as rescaling (or, as Bauböck calls it: "multilevel"[522] or "multiscalar" citizenship')[523] and c) agency-centred approaches to citizenship as identity contested through grassroots demands.[524] Varsanyi then proposes a fourth understanding of urban citizenship, one which focusses on what local governments are doing to challenge the lived realities of marginalisation and exclusion from nation-state citizenship for people without a legal status, present and/or residing

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521 Magnusson, 1996; Schuck, 1998; Bauman, 1999; Dagger, 2000; Soja, 2000; Scott, 2001; Isin, 2002; Bauböck, 2003; Purcell, 2003; Sassen, 2003; Bashevkin, 2005, Bender, 1999; Thom, 1999; Varsanyi 2006, Oomen 2019, Darling and Bauder 2019; Bauböck and Orgad (eds) 2020; Bauder and Gonzalez, 2021.

522 Bauböck 2020b.

523 Bauböck 2020a.

524 Varsanyi 2006.

in the city.[525] The recent blog forum held on the topic and edited by Bauböck and Orgad into a working paper demonstrates how far the literature has come since then, and to what extent migration, and especially the rights and inclusion of undocumented migrants have become one of the core topics of focus.[526]

Urban citizenship can be defined both as a legal/political status – often formalised and accompanied by rights and obligations – as well as a practice and process of contestation and identity-building.[527] Both definitions link the individual to a city (or locality, to be more inclusive of suburban and rural localities) with a presumption of belonging based on presence and/or residence (*ius domicii*).[528] This ground of belonging seems to be widely accepted by the majority of scholars and (local) practitioners on urban citizenship as a *sine qua non* requirement for the concept of urban citizenship to be meaningful and not simply a rip-off of national citizenship at a smaller scale.[529] The concept of "residence" being a source of belonging and rights goes back to Henri LeFevbre and his conceptualisation of the Right to the City, ("(…) right to the city is earned by living in the city"[530]), which is a concept closely related to contemporary understandings of urban citizenship. To clarify even further, *ius domicii* would include people "who overstayed their visas or work permits, failed refugee claimants who nevertheless remain in the city, and those who crossed the border without state permission".[531] In the words of the Mayor of Palermo, cited by Bauder: "If you are in Palermo, you are a Palermitan. I'm sorry, but you are a Palermitan. You can leave Palermo if you want. But as long as you are in Palermo, you are a Palermitan".[532] This is often contrasted to the understanding of citizenship at the nation-state level which is a formal legal status that grants rights and obligations deriving from belonging, based on the *ius sanguini* (having parents who are nationals) or the *ius soli* (being born on the soil of the state) principles. In Bauböck's words:

> *This is appropriate because the distinction between nationals and non-nationals is irrelevant from the perspective of local democracy. In order to safeguard the human right to free movement inside the territory of states, municipalities must have open borders and cannot control who takes up residence in their territory. They have to provide public services for local populations who select themselves into municipalities by taking up*

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525 Varsanyi 2006.
526 Bauböck and Orgad (eds) 2020.
527 Aust, 2020.
528 Bauböck 2003; Bauder 2014; Varsanyi 2006; Bauböck, 1994; Bauböck and Rundell, 1998; Beauregard and Bounds, 2000; Brodie, 2000; Ford, 2001, Purcell, 2003.
529 Bauder, 2020, p.22; Bauböck, 2020; Varsanyi, 2006; Oomen, 2019, Warren Magnusson, cited in Bauder 2020)
530 LeFevbre, 1968, p.590; Varsanyi, 2006, p.239-240.
531 Bauder 2020. p.22.
532 Ibid.

> *residence, by moving out or by staying. Urban citizenship must therefore be constructed in such a way that it integrates mobile populations into a common membership and this is achieved through deriving it from residence instead of territorial birth or descent.[533]*

Like Bauböck, many scholars argue that in today's globalised and pluralist world with an increasing number of individuals being mobile, migrating and having multiple coexisting identities and loyalties, the state-centric and "bounded"[534] (i.e. where the inclusion of an individual depends on the explicit consent of the polity) citizenship of the nation-state creates too many outcomes of exclusion, marginalisation as well as violations of human rights which are meant to be enjoyed universally and without distinction.[535] Some scholars have gone further to argue that the State does not enjoy any "natural"[536] or self-evident sovereignty to restrict the freedom of movement, especially concerning those persons already present in its territory, and has to often go out of its way to demonstrate or "perform"[537] sovereignty in order to exclude.[538]

It is however not only the differences in jurisdictional scales and pragmatic reasons that distinguishes urban citizenship from nation-State citizenship. In the words of one of our interviewees, Franziska Teuscher, the Director of Education, Sports and Social Affairs of the City of Bern, who refers to urban citizenship as a "vision"[539] "process"[540] "imagined society"[541] and "societal model"[542]: "(...) [M]y understanding is that a society consists of people who live together, work together, go to school together, have their free time together and not of people who have the same nationality or socio-economic background. My ideal is actually that everyone in Bern would be equal."[543] This reflects the scholarship in the field, which juxtaposes the "tangible urban community (...) defined by the physical space of the city and the way this space is used on a daily basis"[544] and the imagined nation, which is based on "cultural artefacts" of the nation-state.[545]

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533 Bauböck, 2020a, p.4.

534 Varsanyi, 2006

535 Brodie, 2000; Varsanyi, 2006; De Graauw, 2014; Bauder and Gonzalez, 2018; Oomen, 2019, Darling and Bauder, 2019; Kauffman and Strebel, 2021; Durmuş, 2021; Oomen et al 2021a; Oomen et al 2021b.

536 Bauder, 2020, p.23.

537 Brown, 2017, p.3 and De Genova, 2010, cited in Bauder, 2020, p.23.

538 Bauder, 2020, p.23

539 Interview Franziska Teuscher (Municipality Bern), November 2020.

540 Ibid.

541 Ibid.

542 Ibid.

543 Ibid.

544 Bauder, 2020, p.22.

545 Bauder, 2020, p.22; Anderson, 1991, p.4; de Shalit, 2020.

While all this sounds ambitious and beautiful, it is also abstract. What exactly would be the content of urban citizenship? What rights, obligations, or alternatively, practices and contestations fall within? This is a very contested question in literature, so I will only demarcate what content of urban citizenship I will be looking at in this Chapter and bring forward a glimpse of the debates on this topic.

To begin with, I will be applying the concept of urban citizenship strictly as practiced by local governments, and not as contested by the (potential) citizens. In this regard, this definition of urban citizenship is similar to the fourth type of urban citizenship Varsanyi proposed: one focussed on what local governments do in order to create a kind of citizenship that includes undocumented migrants and all other vulnerable groups.[546] My application in this Chapter of urban citizenship will include local governments' generation of (a) status rights such as the right to vote in local elections,[547] (b) symbols of identity and belonging such as city ID cards,[548] as well as (c) practices, policies and discourses created with a purpose to include the excluded, without leaving anyone behind.[549] Thus, while (a) and (b) are respectively the legal and discursive sides of rights deriving directly from being a member of a polity, (c) can relate to every other aspect of life in which equality can be strived for. From a human rights perspective, while civil and political rights would fall under (a), category (c) would include but not be limited to the realisation of economic, social and cultural rights. In practice, practices under categories (b) and (c) can eventually lead to status rights (a). For instance, the US Supreme Court argued that "local control over the educational process affords citizens an opportunity to participate in decision-making (...)."[550] Despite anecdotal evidence available, the success of urban citizenship practices in reaching a fair, equal and inclusive society will be outside the scope of this Chapter.

Finally, a few notes on terminology: The term urban citizenship, while almost all municipalities included in this research are urban, will be applied as meaning local citizenship. Therefore, rural and sub-urban localities can also practice urban citizenship as understood in this Chapter – the preference for the term "urban" is grounded mostly in its vastly wider prevalence in practice and scholarship. Additionally, reference will

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546   Varsanyi, 2006. See (also) p. 231, in which she chose 3 types of US sub-national government practices of urban citizenship: "(1) the contemporary struggle to reinstate local noncitizen voting, (2) the increasing acceptance of the matriculas consulares as a valid form of identification for undocumented Mexican residents, and the debates over whether or not states should (3) issue driver licenses to undocumented migrants and (4) allow undocumented students to pay in-state tuition for public colleges and universities."

547   Pedroza, 2019.

548   de Graauw, 2014.

549   Oomen, 2019.

550   Milliken v. Bradley, 418 U.S. 717, 742 (1974); Stahl, p.73, 2020.

be made to practices of "*migration* governance that align with urban citizenship". Here, what is meant is all practices by a local government that target, or at least seriously consider, the circumstances and inclusion of non-national residents. This includes migrants, refugees, undocumented migrants, and practices that fall within the field of migration as well as integration (the latter being more prevalent). While especially some Swiss interviewees were adamant on underlining the difference between competences in migration and integration, the term migration will be used in this Chapter as an umbrella term for the purpose of simplicity.

This lead us to the role of regulation, or, to be more precise, the role of higher-level laws and regulations bordering the spaces of competences of local governments, which, in Bauböck's words, is an issue "any conception of urban citizenship worthy of consideration must figure out"[551].

3. The Role of Regulation: Legal Ambiguity, Structure, and (the Perception of) Agency

In the conclusion of the most ambitious urban citizenship collaboration of the past years, Bauböck identified six general questions that ran through the debate among nineteen scholars who contributed to the volume. The third question was: "What is the connection between *empowering cities* and extending local citizenship to all residents?"[552] As we mentioned earlier, Aleinikoff had already pointed out his view that urban citizenship only has meaning insofar as the urban (the local government) has "legal authority – some kind of sovereignty".[553] In the same collaboration, Orgad pointed out a distinct direction that the empowerment of local governments could strive for: "a greater autonomy in constitutional interpretation of national laws. The overall idea is to grant local bodies (...) the power to deviate from mandatory national norms according to the composition of the local population, its social and cultural traditions, and its special interests and needs."[554] This confirms Motomura's position that uncertainty in higher-level laws and regulations creates room for manoeuvre – or discretionary spaces – for local governments.[555] In addition to scholarship on urban citizenship and legal ambiguity, literature on local government reforms from the fields of governance and public administration also points towards the importance of "autonomy".[556] According to

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551   Bauböck, 2020, p.3
552   Ibid., p.79 (emphasis mine).
553   Aleinikoff, 2020, p. 52
554   Orgad, 2020, p.78.
555   Motomura 2016, Oomen et al 2021b, p.2
556   Keuffner, 2017, Keuffner and Horber-Papazian, 2020; Debela, 2020.

this scholarship, many urban citizenship practices of local governments would qualify as local government reform, as they include characteristics of the latter, including but not limited to (i) institutional changes in the local government (such as the establishment of social cohesion, integration, or human rights departments), (ii) institution-wide cross-sectional policies (such as the mainstreaming of human rights, social cohesion or equality principles throughout the local government), (iii) the "intensification of intermunicipal cooperation" and (iv) changes towards more participatory and direct-democratic governance (such as trying to give non-national residents the right to vote)[557].[558] Again according to this scholarship, autonomy is a necessary factor in enabling local government reform.[559] Keuffner states that "(...) the institutional framework facilitates or restricts the behaviour of actors, [but] it does not entirely determine it."

Other relevant factors that enable or facilitate local government reform include crisis,[560] the agency of individuals within institutions,[561] access to cooperation with other actors,[562] institutional capacity (including budget, personnel and know-how),[563] the dissemination of norms and socialisation,[564] and political will.[565] It is thus crucial to underline that this Chapter does not pretend to conclusively explain through the concept of regulatory contexts why urban citizenship practices take place in certain localities, but that it instead aims to shed light towards this under-researched factor of regulation that seems to be the black box, or the dead-end at the end of many explanatory paths in urban citizenship and local migration policy scholarship. All this attention and advocacy for increased autonomy or "empowerment"[566] of local governments and the scope of their competences also allows us to observe the concept of citizenship where it is "fraying at the edges"[567] – contested and reshaped, where alternative imaginations for belonging are proposed, for the ultimate purpose of creating "possibility for those marginalised from

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557   This is what Zürich, among many other local governments, has been advocating for, for years. The event at the Zürich City Hall in September 2021 (in which I conducted participant observation) on giving non-national Zurchers the right to vote in local elections was very enthusiastic, passionate and heated, with discussions leading to theoretical arguments about abolishing the nation-state.

558   Keuffner, 2017, p. 432.

559   Ibid., p.427: "it is assumed that these [local government] reforms are influenced by the degree of autonomy that the local authorities have in carrying out their tasks.", citing Ladner, 2017 and Caulfield and Larsen, 2002.

560   Keuffner, 2017, p.428-429.

561   Sabchev et al, 2021 (also Chapter VI of this thesis).

562   Durmuş 2021 (also Chapter IV of this thesis), pp. 147.

563   Ibid., pp. 135.

564   Ibid., pp. 144; Sabchev et al, 2021, Risse and Sikkink, 1999; Goodman and Jinks, 2004; Haglund and Stryker, 2015; Brysk, 2019.

565   Durmuş, 2021 (also Chapter IV of this thesis) , pp.149; Keuffner, 2017, pp. 427.

566   Aleinikoff, 2020, p.52

567   Varsanyi, 2006, p.238.

its protection."[568] This Chapter will seek to do precisely that: explore the relationship between the powers local governments have, and their capacity to engage in urban citizenship practices that seek to include the marginalised.

As has already become visible, this discussion as well as this Chapter are resorting to many different terms – "authority" [569], "sovereignty"[570], "power"[571], "autonomy"[572], "competence"[573], "discretion"[574], "legal ambiguity"[575] to mean similar, interrelated, but yet not identical concepts. For the purpose of this Chapter, I will only be using the terms "regulation", "legal ambiguity", "competence" and "discretionary space", whose relationships to each other are illustrated in *Graph 1* below:
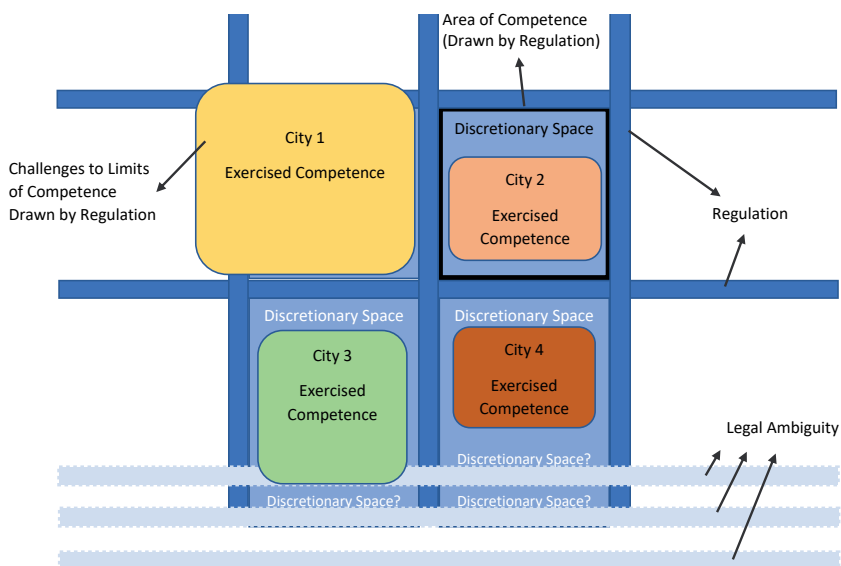
Graph 1: Interrelation between Regulation, Legal Ambiguity, Competence and Discretion.
The four boxes indicate different scenarios of local governments exercising authority within the space framed (dark blue borders) by regulation. Legal ambiguity is demonstrated by the lack of solid blue borders, and the presence of permeable light blue lines instead. Discretionary space is the room for manoeuvre drawn explicitly by regulation, as well as (though perhaps more precariously) that created by the presence of legal ambiguity.

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568 Varsanyi, 2006, p.238.
569 Aleinikoff, 2020.
570 Aleinikoff, 2020.
571 Orgad, 2020, p.78
572 Keuffner, 2017.
573 Durmuş 2020; Durmuş 2021.
574 Oomen et al 2021b.
575 Oomen et al 2021b.

As can be seen in *Graph 1*, I conceptualise *Competence Area* as the space in which the exercise of authority by the local government is foreseen by higher level laws and directives. The actual *Exercised Competence* is then the space in which the local government makes policies, discursively engages with issues, and where there is practice by "street level bureaucrats"[576]. *Regulation*, as an umbrella term for higher level laws and directives, can both explicitly oblige and permit local governments to take action in a certain subject-matter. Legal ambiguity, simplified for the purpose of this Chapter, will connote to a context shaped by laws and directives that are either non-existent, unclear, or insufficient to demonstrate the will of the legislator. Spaces left within the officially drawn *Competence Area* of local governments, as well as those created by legal ambiguity, are referred to as *Discretionary Spaces*, though the legality of the local government activity falling in the latter category will be more controversial.[577] Nonetheless, local governments can use their discretion to fill, or refrain from filling, *Discretionary Spaces*, often without serious (legal) repercussion and challenges on their *Exercised Competence*.

While Regulation is illustrated as a simple two-dimensional grid in *Graph 1*, it is in fact highly complex, with higher level norms at times conflicting with each other, creating larger and smaller areas of competence for cities in different States or even (especially in Switzerland) cities within the same (federal) State, and regulating (or refraining therefrom) the very exercise of competence within the *Competence Area* offered to local governments. We can visualise this latter point as a smaller grid within certain boxes of *Competence Areas*. Examples of this are benchmarks set by higher level laws and directives that need to be met by local governments in their exercise of authority on a certain issue, or even non-discrimination rules that need to be followed in providing services to citizens. As the complete set of norms applicable to the functioning of a local government are incredibly complex, *Regulation* will be operationalised by the following three elements for the purposes of this Chapter:

i.   The presence of national (and regional, if that governance level is available) laws as well as regulations on the concrete competences and obligations of local governments in the realm of migration and integration, at times even concretised by benchmarks

ii. The presence of a clearly allocated and sufficient budget dedicated to the above-described competences and obligations

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576   Lipsky, 1980.
577   Oomen et al 2021b.

iii. The presence of a clear and structured division of labour between different branches and levels of government (local, regional, national) in the field of migration and integration

The choice of these three elements for the operationalisation of the concept of *Regulation* is a result distilled from the outcomes of my field research both in Turkey and in Switzerland, particularly the answers of research participants to questions including (but not limited to) : "Do you think local governments in this country have sufficient legal competences?"; "What legal competences/regulations do you think should be afforded to local governments?"; "How much space do you think the legal framework in this country gives local governments to operate in?".

According to this approach to operationalising *Regulation*, a "high regulation context" will be identified as one in which the presence and strong representation of all three elements above are found both in grey literature and in interviews. In contrast, a "low regulation context" will connote to a context in which at least two of the three elements above are non-existent or surrounded by legal ambiguity. Of course, the axis of regulation is a spectrum, upon which different States can find themselves on different points in different moments in history. Between the years 2018-2021 in which the data for this research was collected, Switzerland can be classified as a high-regulation context, and Turkey as a low-regulation context. This classification will be elaborated on further in Section IV.

Moving to the last two concepts in the graph to be defined: While *Competence Exercised* within the *Competence Area* can be construed as the exercise or enjoyment of *Discretion*, actions by local governments that more or less clearly surpass the limits of competence foreseen by *Regulation* constitutes an explicit[578] challenge to such limits. In fact, our Cities of Refuge research team has theorised discursively explicit and implicit strategies of divergence practiced by local governments in migration governance as "deviation" (explicit – within the law) and "defiance" (explicit – extra-legal) and "deviation" (implicit – within the law) and "dodging" (implicit – extra-legal) respectively.[579] The present Chapter builds on that analysis by zooming in on the shape and role of the axis of legality that had served to distinguish the "legal" from the "extra-legal". That distinction of legality, as already problematised in that Chapter, is often imprecise or even impossible, due to the line separating the legal from the non- or extra-legal being fuzzy, vague, or non-existent, and largely contested in where it is socially and politically construed to lie. This is an indication of *Legal Ambiguity*.

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578   Oomen et al, 2021b.

579   Oomen et al, 2021b.

The proposal by Orgad mentioned above,[580] on focussing on the authority local governments (can) have in interpreting higher-level laws, is highly relevant here, as the presence of discretionary spaces concerning the interpretation of higher-level laws and regulations can be just as important as – if not more important than – the actual competences clearly prescribed to local governments by the constitutional division of labour, for their own perception of their autonomy.[581] In other words, when it comes to perceived competences, the absolute size of the *Competence Area* can be less significant than the presence of *Discretionary Spaces*. This will be elaborated upon in Section VI(a) below. Even if one puts aside the "perception of competence", the relationship between (the availability of) *Discretionary Spaces* for local governments and the absolute *Competence Area* local governments enjoy is complex are manifold. As we elaborated in 2021, high degrees of discretion in the regulatory system can on the one hand "reinforce legal uncertainty and confusion regarding responsibilities and 'divisions of labour' among policy actors, especially in perceived crisis situations,"[582] and on the other hand create discretionary spaces that are productive for the generation of innovative policies. In addition, the explicit challenges local governments exert towards the limits of their competence, can also lead to responses, both horizontally, as other cities explicitly distance themselves from, or start picking up the same practices and the exception slowly turns into a norm,[583] and vertically, if "higher-level" authorities welcome the proactive engagement, or attempt to stop the perceived transgression in explicit and legally formulated terms.[584] All these responses to the initial challenge can lead to a change in the majority-opinion concerning what then now the *Competence Area* actually covers. This way, an explicit challenge to competences may reduce *Legal Ambiguity* and even *Discretionary Spaces*, but potentially broaden the *Competence Area*.

Before we move on, an important nuance needs to be made explicit at this point: This Chapter does not argue that (wide) discretionary spaces are inherently good, or bad. High- and low-regulation contexts as defined in this Chapter can lead to both productive and damaging outcomes for the (sustainable) inclusion of marginalised people through urban citizenship practices. I do my best in this Chapter to make a critical evaluation of the interactions between the level of regulation and urban citizenship practices. This is not only because higher regulation can lead to both more and less successful ways of exercising agency, but also because competences and discretionary spaces can be used by

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580 Orgad, 2020, p. 78.
581 See Section VI(a) below.
582 Oomen et al 2021b, p. 2, citing Fontanari and Ambrosini, 2018.
583 Durmuş, 2021.
584 Oomen et al 2021a.

local governments for exclusion, discrimination and the creation of inequalities within and between localities as well as for inclusion, better human rights realisation and the creation of cities of refuge.[585]

Now, in order to concretise these abstract concepts, we will briefly discuss the country contexts of Turkey and Switzerland according to the framework visualised in *Graph 1* above and in this Section generally.

4. Local Governments, Migration Governance and the Level of Regulation in Turkey and Switzerland

a. Turkey

According to the conceptual framework laid out in the section above, Turkey is a low-regulation context. Until the Syrian Civil War starting in 2011 and the ensuing plight of refugees arriving at the borders of Turkey, Turkey's asylum policies consisted of assigning asylum seekers into "Satellite Cities" while their cases would be handled by the Turkish police in that locality.[586] With the income of previously unseen numbers of refugees from 2011 onwards however, the Turkish state first designated areas for refugee camps in border areas and worked with UNHCR, and later enacted new legislation – the Law on Foreigners and International Protection – that laid the legal framework for mass temporary protection to be declared for persons from a specific country entering after a specific date, by the Cabinet of Ministers.[587] Accordingly, the Cabinet announced in October 2013 that persons entering Turkey from Syria from 25 April 2011 onwards would be under the collective status of temporary protection.[588] During this time, their individual asylum cases would be handled by the UNHCR and they could be resettled in third countries. These persons were to be hosted in refugee camps along the border, and

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585 Ambrosini, 2013; Gargiulo and Piccoli, 2020; Marchetti, 2020.

586 AIDA, Country Report Turkey: Freedom of Movement, Asylum Information Database – European Council of Refugees and Exiles, last updated: 31.05.2021, [Available at: https://asylumineurope.org/reports/country/turkey/reception-conditions/access-and-forms-reception-conditions/freedom-movement/] (last accessed 09.01.2022)

587 Law No. 6458, 'Law on Foreigners and International Protection' ('YUKK'), entered into force 11 April 2013, Unofficial English translation by the Department of Communication for Foreigners, Directorate General of Migration Management, Ministry of Interior Affairs, Turkey. https://yimer.gov.tr/EN/Legis/215f1c4c-5384-47f9-9ac2-dc2575b4d48f.

588 Provisional Article I, Temporary Protection Regulation, adopted by Council of Ministers Decision No: 2014/6883, 22/10/2014 No: 29153, pursuant to Law No 6458. The only long-term solutions foreseen for Syrians under temporary protection are voluntary returns and departures to third countries,

not acquire refugee status (or not be considered under international protection)[589] under Turkish law – Turkey is a party of the 1951 Refugee Convention still with a geographical reservation, thus recognising only persons coming from Europe as "refugees".[590] Within this Chapter however, considering that the refugee status in international law is declaratory and not constitutive,[591] I will refer to people coming from Syria escaping the war, as Syrian refugees.

As is known to anyone familiar with the Turkish context, the refugee camps along the border have proven to be completely insufficient in hosting the large numbers of incoming Syrian refugees. Followingly, Syrian refugees have slowly dispersed themselves across Turkish cities, first closest to the refugee camps and the border, and later, over the years, throughout all 81 provinces of Turkey. Turkey does not have a dispersal regime for refugees or asylum seekers. Refugees only need to register at the governorate of the province they are in. The provincial and local governorates are organs of the national government and as such not decentralised self-governing bodies. Local governments themselves, who are locally elected and to some extent decentralised have no formal tasks allocated to them in the reception and integration of refugees by this national legislative regime. The Law on Foreigners and International Protection as well as the Directive on Temporary Protection enacted in 2013 give no reference to municipalities at all; they only seem to be an afterthought at the end of a long list of consultees in case the national government decides to develop integration policies.[592] Important to mention here, is that persons under temporary protection in Turkish law are not meant to integrate according to the legislation; the only durable solutions foreseen for them are third-country resettlement and voluntary returns.

On the other hand, the Law on Municipalities lists a variety of services that need to be provided by local governments in Turkey, which is still a relatively small Competence Area compared to their European (and most certainly their Swiss) counterparts. Turkish municipalities are mostly responsible for logistic and maintenance duties, on roads, the water system, garbage collection etc. They also have the obligation to build and maintain schools, but education itself is regulated at the national level. The municipalities have no tasks in healthcare, vocational training, unemployment, language courses or integration

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589   Ibid, Article 7(3): 'Persons benefiting from temporary protection shall not be deemed as having been directly acquired one of the international protection statuses as defined in the Law.'

590   Art. 61, Law No. 6458, 'Law on Foreigners and International Protection' ('YUKK'), entered into force 11 April 2013, Unofficial English translation by the Department of Communication for Foreigners, Directorate General of Migration Management, Ministry of Interior Affairs, Turkey. https://yimer.gov.tr/EN/Legis/215f1c4c-5384-47f9-9ac2-dc2575b4d48f.

591   Hathaway and Foster, 2014.

592   YUKK, Article 96.

of foreigners in general. They are obliged to create "Town Councils" consisting of stakeholders of the town if they are above a certain size, but there is no mention of non-nationals.

The most significant legal ambiguity arises from a terminological problem in this legislation. The Law on Municipalities states that everyone who lives in the territory of the local government is a "hemşehri" or (co-)citizen who is 'entitled to participate in local government's decisions and services, to be informed about local government activities and benefit from the material aid of the local government.'.[593] However, the long list of tasks of the local government are introduced by stating that the municipality needs to provide these services to "nationals".[594] What is largely believed to be a mistake in the drafting process of the legislation is now a cause of legal ambiguity, as it is unclear whether the non-national (co-)citizens have any right to the services of the local governments.[595] Is the local government obliged, permitted or even banned from providing services to non-nationals? This becomes especially significant in individualised services such as monetary support for the poor.

In addition to this, the most significant income source for local governments in Turkey is the allocation of resources from the central government, which is calculated on the basis of the number of "nationals" registered as living within the territory of the locality. As such, there is absolutely no sustainable income for municipalities to provide any services to non-nationals. As such, any service they provide comes from the budget allocated to nationals, and from external funding such as EU, UNHCR and IOM projects.

As a result, Turkish local governments,

i.   Have no clearly allocated competences in the realm of migration and integration, and operate in a thick fog of legal ambiguity with regards to their competence in providing services to non-nationals;

ii.   Have no budget for the non-nationals in their territory and are completely reliant on external resources; and,

iii.   If they do engage in policies of migration and integration (since it is not prohibited and many local governments find themselves in circumstances of necessity) are left in legal ambiguity as to their place in the highly centralised asylum and migration-

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593   Law No 5393, 'Law of Municipalities', Art. 13(1), entered into force through publication in the Official Gazette: 13/7/2005 under Number 25874.

594   Ibid, Art.14.

595   Erdoğan, 2017, p.40.

governance regime. They then often clash with organs of the national government because it is not even clear whether they can obtain statistical information on the number of non-nationals or specifically Syrian refugees under temporary protection are registered into their locality from the police (which is under national government jurisdiction).

As such, Turkey is clearly a context of low-regulation for municipalities engaging with urban citizenship practices.

b. Switzerland

In comparison to Turkey, Switzerland is a high-regulation context, a fact perhaps best introduced through the anecdotal evidence of an interviewee from the Swiss field research mentioning the word "mandate" without prior tempting seven times in a half-hour interview.[596] Keuffner has noted that "Switzerland is known for its stability, most certainly the result of a kind of cultural scepticism towards sweeping change and of system-inherent institutional impeding factors."[597] Furthermore, with regards to migration, Switzerland's geographical location as a "fortress"[598] within Europe far away from the conflict regions that Turkey neighbours, may have facilitated Switzerland's exclusive and restrictive policies in asylum and migration.[599] Surely not having to be confronted with the sheer presence and "rights of encounter"[600] vulnerable people create makes it easier for Switzerland to register, regulate, count and calculate every single person entering the State in a regular manner, as well as handling their asylum applications individually, as opposed to Turkey's collective temporary protection regime. Switzerland also benefits significantly from the Dublin procedure.[601] In line with this reality, reception and integration of asylum seekers and refugees are strictly separated in the Swiss context. While reception is a strictly federal responsibility, integration falls under the jurisdiction of cantons and municipalities.[602] Even in municipalities practicing

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596 Anonymous Interview #12 (Canton of Geneva), July 2019.

597 Keuffner, 2017, p. 427.

598 Mexi et al, 2021.

599 Switzerland has a much more widespread practice of restricting for instance the freedom of movement of refugees and migrants by obliging them to stay in asylum seeker or detention centres – often as distant from the urban centres as possible – whereas in Turkey there is widespread irregularity accompanied by a smaller presence of "the state" in the everyday lives of migrants. See also Interview Martenot (Solidarite Tattes - Geneva), July 2019: "So, yes, this all is a pretty story, but the only thing it is doing is its limiting the number of people staying. That is the goal of the confederation." (Translation by Natalia Burduli)

600 Mann, 2016.

601 Anonymous Interview #10 (Civil Society – Geneva), July 2019. Interview Martenot (Solidarite Tattes - Geneva), July 2019.

602 Anonymous Interview #10 (Civil Society – Geneva), July 2019. Flubacher, 2016.

inclusive urban citizenship, federal government-operated reception and deportation centres – often deliberately built outside urban centres and close to airport as an exclusionary bordering practice[603] – can exist in a regime of exclusion and deprivation, as an exception to the municipalities' territorial control.[604] In addition, there is a central dispersal system that allocates a specific number of persons proportionate to the Swiss population of each Canton.[605] In fact, municipalities and cantons who have tried to request hosting more asylum seekers and refugees have been declined, repeatedly, by the federal level. This has most recently become visible with the formation of an alliance of Swiss cities who volunteered to host resettled Syrian refugees from the infamous Moria camps, especially unaccompanied minor and persons affected by the fire in the camp in 2021.[606] The same alliance also expressed willingness and formally requested to host Afghan refugees following the Taliban's capture of Kabul. In both instances, the federal government rejected such proposals, and made it very clear that these decisions were under federal jurisdiction.[607]

The Swiss legal and administrative regime applicable to asylum and migration is notoriously complex.[608] The legal regime differs from canton to canton significantly, and there even tasks that fall within cantonal and municipal jurisdiction are regulated by higher (federal and cantonal) laws and regulations.[609] The latest adoption of the *Integrationsagenda Schweiz* (Integration Agenda Switzerland) (2019) is an excellent example for this. The Agenda, while increasing the budget per refugee by 200% to reach a whopping 18.000 Francs, also regulates strictly which benchmarks need to be met in the spending of

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603   Interview Martenot (Solidarite Tattes – Geneva), July 2019: "They do what they want there, that is horrible. They put them in those centers because they create a physical distance between them and the rest of the world. The government is letting them do this, letting them do what they want." (translation by Natalia Burduli)

604   Interview Thomas Schmutz #1 (former AOZ – Zürich), July 2021.

605   AIDA (Asylum Information Database), Country Report: Switzerland (updated 2020), Available, European Council of Refugees and Exiles, at: https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-CH_2020update.pdf (last accessed 13.01.2022).

606   Press Release of the City of Zürich, Department of Social Affairs, "Stadt Zürich fordert umgehend eine nationale Konferenz zur Direktaufnahme Geflüchteter", 10 September 2020, https://www.stadt-zuerich.ch/sd/de/index/ueber_das_departement/medien/medienmitteilungen_aktuell/2020/september/200910a.html (last accessed 20.02.2022); "Acht Schweizer Städte wollen Flüchtlinge aus Moria aufnehmen", TeleZueri, 10. Sep 2020, https://tv.telezueri.ch/zuerinews/acht-schweizer-staedte-wollen-fluechtlinge-aus-moria-aufnehmen-139100136 (last accessed 20.02.2022).

607   Bart Oertli, "Schweizer Städte wollen mehr afghanische Flüchtlinge aufnehmen", SRF, 19 August 2021, https://www.srf.ch/news/schweiz/staedte-kritisieren-bund-schweizer-staedte-wollen-mehr-afghanische-fluechtlinge-aufnehmen (last accessed 20.02.2022); Interview Anonymous #7 (Municipality Zürich), March 2021; Interview Christina Wandeler (Municipality Zürich), July 2021.

608   Keuffner, 2017, p.427.

609   Keuffner, 2017, p.427: "At the lowest level especially, Swiss municipalities have faced a number of challenges, such as the rising complexity and variety of tasks at a time when their capacity for action was falling"; Ladner et al., 2000.

this money ((see Annex I, the Cantonal Integration Plan Roster prescribed by the federal level; and Annex II, the corresponding Financing Roster). This stands in stark contrast to the complete lack of a centrally allocated budget for foreigners in Turkish municipalities, as well as the complete lack of regulation on benchmarks that need to be met in reception or integration. The intricate outcomes of this context will become clear in the following section, for instance in how Swiss municipalities' perception of their Competence Area was much more pessimistic than Turkish municipalities' perception, despite Swiss municipalities objectively having more official tasks and responsibilities within that highly-regulated system (see Section VI (a)).[610] Alongside these perceptions, it is important to note that Swiss municipal officials perceived the legal competences for municipalities to be extremely clear, indicating low or no degrees of legal ambiguity: "To be honest, the problems do not stem from the competences, the competences are very clear."[611]

In addition to the clear distinction between reception and integration mentioned above (or "migration vs integration" as my interviewees often adamantly distinguished) non-nationals in Switzerland are also divided into many different categories in the Swiss context. While such categorisation can also be seen in the Turkish context, too (and in many others, for that matter), the categorisation in the Swiss context surpasses that of the Turkish context, both in absolute number of categories designated in federal laws and the relevance of these categories in the practice of different spheres of government. Swiss municipalities and Cantons, as a result of strict regulation and differentiated budgeting, distinguish their services to different categories of people, which can be seen as a continuation of the nation-State's paradigm of the "presumption of exclusion" and seems to stand in conflict with the underlying presumptions of belonging, rights and inclusion that grounds urban citizenship philosophically.

Finally, and importantly, in the case studies selected for this research, the disparity between the engagement with urban citizenship practices of City-States (*Kantonstädte*)[612] and large urban municipalities within much larger, primarily rural Cantons, was glaring, which confirms earlier findings of Kaufmann and Strebel, who compared Zürich and Geneva.[613] Municipalities in City-States were much less active than municipalities in larger Cantons, as the Canton of the City-State inevitably had more regulative authority

610   Keuffner, 2017, p.427; Keuffner and Horber-Papazian, 2020; Debela, 2020.
611   Anonymous Interview #10 (Civil Society – Geneva), July 2019.
612   C.f. with the German Stadtstaaten: Fedtke J. (2021) A Tale of Three Cities—The *Stadtstaat* in German Constitutional Law. In: Hirsch Ballin E., van der Schyff G., Stremler M., De Visser M. (eds) European Yearbook of Constitutional Law 2020. European Yearbook of Constitutional Law, vol 2. T.M.C. Asser Press, The Hague. https://doi.org/10.1007/978-94-6265-431-0_7
613   Kaufmann and Strebel, 2020.

in (almost) the same territory.[614] For instance, Canton Basel-Stadt is responsible for only 3 municipalities including the municipality of Basel-City, and thus governs over a highly urbanised, dense population in a small territory. Meanwhile, the Canton of Zürich, of which the municipality of Zürich is the capital city, governs over 162 municipalities, most of which are rural as well as overrepresented in cantonal authorities due to historic voting advantages.[615]

Now, as an overview, let us briefly look into each of the three elements of the operationalisation of *Regulation* in the context of Switzerland:

i.   In Switzerland, there is an overwhelming repertoire of legal and administrative norms regulating migration, integration, asylum, and the competences of municipalities, often in a highly casuistic manner. In this context, cantons and municipalities have clearly allocated tasks, that are regulated with benchmarks that need to be met.

ii.   Accompanying these explicit (and implicit) competences, a clearly designated budget is allocated to the municipality per person/year. This budget both enables and regulates integration policies that can amount to urban citizenship.

iii. Finally, there is a highly regulated division of labour between different organs of the public administration, and especially between the different spheres of government. These spheres seem to be highly and perpetually aware of the scope and boundaries of their competences as well as challenges thereto.

In conclusion, answering all three of the questions above in the positive, Switzerland is a highly regulated context.

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614   Although an interviewee viewed this dynamic as going in the opposition, stating that the municipality of Geneva was much more influential than the municipality of, for example, Vaud (Anonymous Interview #10, [Civil Society – Geneva], July 2019) because it constituted a much larger portion of the Canton, but that statement was probably referring to the municipality's influence on the Canton rather than the municipality's progressive policies contesting higher public authorities.

615   Interview Thomas Schmutz #1 (former AOZ Zürich), July 2021. See also, on constitutional competences of megacities and their representative disadvantages in larger settings (regional, national etc) Hirschl, 2020.

5. The Relevance of Regulation in the Engagement by Local Governments in Urban Citizenship Practices

My epistemological and methodological approach to this research was social constructivism and iterative theorisation based on grounded theory. Departing from the understanding that norms and ideas matter, travel between and shape the identities and interests of individuals and institutions, I developed an understanding of the relevance of regulation on the engagement of local governments and the individuals behind, within and around them, through a grounded approach. While I had a research interest in the role decentralisation, especially in comparing the Swiss and Turkish contexts, the concept and central importance of regulation arose only after I had completed my second field research, in Switzerland. This idea was developed iteratively with further interviews, research trips and participant observation, including what turned out to be a mind-opening urban citizenship Workshop in La Chaux-de-Fonds. Through the cycle of further data collection, data analysis, and writing, the four tentative findings elaborated upon in this section, emerged.

In researching the influence of regulation in the engagement level, types, and direction of local governments with urban citizenship, data was collected and analysed from case studies in Turkish and Swiss municipalities. Data was collected through my field research for three months between 2018-2019) in eight urban Turkish municipalities in the provinces of Ankara and Istanbul, including one metropolitan municipality (Ankara Metropolitan Municipality) and in five Swiss municipalities, of which one medium-sized town (Illnau-Effretikon), two cities within larger, mostly rural Cantons (Zürich and Bern) and two City-States (Basel and Geneva).[616] The field research included, in total, 47 interviews (20 in Turkey, 27 in Switzerland) with local government, civil society, and international organisation officials; sessions of participant observation with local governments and civil society. In addition, desk research was conducted into Turkish and Swiss legal and administrative regimes pertaining to the cross-section of migration and local governments. For Switzerland, extensive public databases were available for desk research into municipal archives, which was mostly unavailable in the Turkish context.[617] References are made throughout this Chapter in footnotes to interviews, some of which (names and the municipalities they were affiliated to) are anonymised

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616 Field research for Geneva and Bern were collected by two (now former) students of University College Roosevelt: Natalia Burduli and Lea Joerg. Both Natalia Burduli and Lea Joerg conducted this research for their Bachelor's Theses, and were supervised by me in this process. I am deeply thankful for the pleasure of supervising their hard work and for their academic collegiality and generosity with regards to the data they collected as part of the Cities of Refuge research.

617 I would like to thank Margherita Goetze, another excellent graduate of University College Roosevelt, who scanned the online municipal archives of Zürich and Basel for me as a Summer job in July-August 2021.

based on the wishes of the interviewees. Informed consent was received for each of the interviews. As a shortcoming of this research, it should be borne in mind that small towns and villages, as well as rural localities in general, were not included into case studies. Nonetheless, as mentioned before, my understanding of "urban citizenship" would more accurately be referred to as "local citizenship", but the former term was selected for the ease of conceptual recognition. While this is a serious shortcoming that reflects the urban bias in most of migration research, it might be more acceptable in this context as the conceptual basis of this Chapter is urban citizenship. In addition, border cities were not included in the Turkish field research, as I suffered a mobility-restricting leg injury during my field research time and had to cut my field research short. Most importantly however, my Swiss field research was severely affected by the Covid-19 pandemic, as remote field work also proved very difficult.[618]

a. Perception of Competence Area and Discretionary Space

The first finding I observed in relation to the regulatory context has been the divergence in local governments' perception of their own *Discretionary Space* and *Competence Area*. Tentatively, my findings suggest that the more regulated the country context was, the less **perceived** *Discretionary Space* as well as *Competence Area* there was for local governments, regardless of the fact that the absolute *Competence Area* was higher in the higher-regulated context.

In the literature review, we already discussed how discretionary spaces are increased by legal ambiguity. This is somewhat a logical and straightforward finding. What is surprising however, is that the perception of the *Competence Area* and *Discretionary Space* also increases with legal ambiguity. Almost every interviewee in Switzerland mentioned at least once that local governments have few competences when it comes to migration and integration in general, or refugees or undocumented migrants in particular,[619] despite having many legally prescribed and permitted tasks, especially in the realms of integration and general service provision (education, transport, healthcare, vocational training etc).[620] In contrast, local governments in Turkey have highly ambiguous competences on refugees and migrant due to the ambiguity of the Law on Municipalities using different terminology ('nationals' and 'people living in locality') in a paradoxical

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618 This research would therefore not have been possible without the assistance of excellent graduates of University College Roosevelt, Natalia Burduli, Lea Joerg, and Margherita Goetze.

619 Interview Yvonne Meier (Municipality Illnau-Effretikon) September 2021; Interview Anonymous #7 (Municipality of Zürich), March 2021; Interview Renata Gaumann (Canton Basel), June 2021; Interview Christina Wandeler (Municipality Zürich), July 2021; Interview Thomas Schmutz #1 (former AOZ – Zürich), July 2021; Interviews Anlaufstelle für Sans-Papiers Basel, September 2021.

620 See also, on how local autonomy is generally considered high in Switzerland, Keuffner and Horber-Papazian, 2020.

way, simultaneously obliging and prohibiting local governments from providing services to non-nationals.[621] Despite this context, or perhaps specifically because of it, almost every interview participant responded to the question of "do local governments in Turkey have enough competences" to "local governments can do whatever they set their mind on".[622]

While interviewees from Turkish local governments, Turkish city networks and local NGOs expressed that local governments "could do anything", their Swiss counterparts expressed almost uncomfortable awareness of the limits of their competence, repeatedly referring to regulations and constitutional divisions of labour they are bound by.[623] While this perception can be informed by the highly regulated context in matters of local competences on migration, it also reflects findings on general trends concerning a reduction of perceived autonomy in Swiss municipalities.[624] In fact, this perception has been reported to be accompanied by a sense that "municipal performance has reached its limits in all areas except culture"[625]. This finding would amount to reaching the limits of the *Competence Area* and therefore perceiving less *Discretionary Space*, in our conceptual framework. Of course, this research cannot claim any direct causal link between the regulatory context and the perception of discretionary space and competence area, as the level of regulation is only one amongst many complex and intertwined factors, both structural and inter- and intrapersonal. This finding thus only aims to bring forth novel connections between the elements of an exploratory research, connections that would strongly benefit from further empirical research.

Moving on to our data, there were also exceptions to the majority opinions introduced above: Some interviewees in Turkey working in municipalities,[626] international organisations[627] and international non-governmental organisations[628] (the latter two perhaps therefore more inclined or able to compare Turkish local governments in the international context) highlighted that Turkish local governments' autonomy and capacity were not high enough, and had been going down since decentralisation reforms

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621   Erdogan, 2017; see also Section IV(b) above.
622   Anonymous Interview #1 (Civil society – Istanbul), December 2018; Interview Zeytinburnu Municipality AKDEM (Istanbul), December 2018; Interview Turkish Union of Municipalities, External Relations Department, January 2019; Anonymous Interview #3 (International Civil Society – Istanbul), December 2018.
623   Interview Yvonne Meier (Municipality Illnau-Effretikon), September 2021; Interview Renata Gäumann (Canton Basel), June 2021; Interview Anonymous #7 (Municipality of Zürich), March 2021.
624   Keuffner and Horber-Papazian, 2020.
625   Keuffner and Horber-Papazian, 2020, p.311.
626   Interview Sultanbeyli Municipality (Istanbul), December 2018.
627   Interview International Organisation for Migration, Turkey (Ankara), January 2019.
628   Interview Anonymous #3 (International Civil Society), December 2018.

peaked in the early 2000s.[629] Nonetheless, even those interviewees recognised Turkish local governments' ability to "get results really fast" on humanitarian and rights-based issues, even if those results may not have been sustainable.[630] Similarly, there were exceptions to the majority opinion in Switzerland, especially among generally optimistic and idealistic interviewees with entrepreneurial spirits who had already played key roles in urban citizenship and rights-based governance initiatives at the local level. Those individuals absolutely believed in the possibility of change through local governments, including the underlying assumption that local governments had the *Discretionary Space* to enact that change. For instance, Zürich's City Card initiative had triggered widespread debates on the legality of the proposal, and the question of the local government's competence to issue such ID cards.[631] Upon the return of two academic expert opinions requested by the City Council, the same persons interpreted the expert opinions as an unequivocal win for the cause, while other individuals in the campaign were much more hesitant about whether these opinions would actually hold before Court or persuade converse political actors.[632]

Nonetheless, the general trend of interviewees in Turkey expressing a sense of wide autonomy and power attributed local governments vs the general trend in Switzerland of interviewees making reserved, deferring statements and pointing repeatedly towards the boundaries of the competences of local governments and the tasks that fall outside them, was widely observable.

This finding can have importance for policy considerations. If proactive and engaged local governance and higher decentralisation and autonomy is wished for in a context, over-regulation should be avoided. While the second element of regulation, namely the availability of sufficient funds and budget for urban citizenship practices, is still necessary for engagement, if this income comes with micromanagement on its usage (such as through detailed benchmarks and limitations on how exactly the budget should/ may be spent), while it may achieve a higher minimum standard throughout the State, it may hold back those who wish to do more and for wider groups of beneficiaries (See Section VI(c) below). Explaining this phenomenon with a simple reductionism of regulation leading to less proactivity might be short-sighted. Rather, it is possible that legal ambiguity and a severe lack of resources, in combination with high and urgent needs on the ground, have contributed to pushing local governments towards more

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629 Interview International Organisation for Migration, Turkey (Ankara), January 2019; Interview Anonymous #3 (International Civil Society), December 2018.

630 Interview International Organisation for Migration, Turkey (Ankara), January 2019.

631 Interview Bea Schwager (Züri City Card Initiative – Zürich), September 2019; Participant Observation Urban Citizenship Workshop, La Chaux-de-Fonds, September 2021.

632 Participant Observation Urban Citizenship Workshop, La Chaux-de-Fonds, September 2021.

entrepreneurial, experimental solutions.[633] Thus, a desperation-induced productivity might not be a setting to be strived? for – although some governance scholars believe that institutional systems are so resistant to change that crises are necessary for reform.[634] Additionally, the overreliance in the Turkish context on individuals, especially the Mayor and the insufficient institutionalisation within local governments,[635] are risks for the sustainability and democratic basis of urban citizenship practices.[636] Notwithstanding, overregulation will almost certainly contribute to the reduction of perceived agency, as well as perceived *Discretionary Space* and *Competence Area*.

b. Legal vs Extra-Legal Exercise of Discretion

The second, and perhaps quite straightforward finding arising from this study on the relevance of regulation on urban citizenship practices, was whether the engagement with urban citizenship was clearly and completely foreseen within the boundaries of the law, or whether the action fell outside the types of acts and omissions described, prescribed, permitted or prohibited by the law.

In previous work, we had conceptualised the legal – extra-legal distinction as an axis of legality in our mapping of the strategies of divergence applied by local governments in their engagement with migration and integration.[637] As we had already disclaimed in that work, the line between acts and omissions that are permitted by law and those that are not can be very blurry in instances of legal ambiguity.[638] This is the reason why the term "extra-legal" was selected, as opposed to "illegal".[639] The term "extra-legal" thus includes actions that may well be perfectly legal, as long as they were not foreseen by legislators, and not widely interpreted as being part and parcel of the legal mandate of the municipality.

In Turkey, many urban citizenship practise fall in this "extra-legal" category. The risk associated with this is not considered high, as the political view in power has been favouring and enacting a refugee-welcoming policy, and thus not closely surveilling

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633   Sabchev, 2021; Durmuş, 2021.

634   Keuffner, 2017, p.429.

635   Anonymous Interview #1, (Civil Society – Istanbul), December 2018 (decisions are "between the two lips of the Mayor"); Anonymous Interview #3 (International Civil Society – Istanbul), December 2018; Interview Turkish Union of Municipalities (Ankara), January 2019; Interview Marmara Municipalities' Union (Istanbul), December 2018; Interview International Organisation for Migration, Turkey (Ankara), January 2019.

636   Durmuş 2021.

637   Oomen et al 2021b.

638   Oomen et al 2021b, p. 7-8.

639   Oomen et al 2021b.

potential local government activities going "too far" in welcoming and integrating refugees.[640] There have, for example, not been any instance of the Court of Cassation, the body responsible for monitoring public spending, shutting down any spending in favour of migrants and refugees.[641] This could almost be interpreted as an acceptance that providing services to non-nationals is indeed permitted within Turkish domestic law. Nonetheless, due to the lack of detailed regulation on competences and budgets of local governments, especially when it comes to non-nationals, local governments can often – of course, once they creatively find sufficient budget and expertise – provide services that could be understood as practices strengthening urban citizenship, in quite a diverse number of ways.[642] Such "extra-legal" practices can include the local government establishing an NGO to apply for foreign funding to provide services to refugees, negotiating problems and solutions with informally elected "Syrian Mayors" within Turkish cities, providing services to individuals without formal documentation (see Section V(c)) and cooperating with international organisations to launch vast vocational training centres or migrant one-stop shops within the facilities of the local government.[643] All this also means that Turkish local government practices do not enjoy much initial legal and political deliberation and are instead developed much more organically by the administrations. As one interviewee with extensive experience in local governments and founder of a pro-decentralisation NGO put it: "In Turkey, one local government does something. If the Court of Cassation says nothing, and it seems like a good practice, others pick it up because they don't want to be considered to have fallen behind. As more and more local governments do it, it has now become a local government competence."[644]

On the other hand, in Switzerland, the engagement of local governments with urban citizenship is overwhelmingly legal and regulated, often passing through the local legislative organ before becoming a practice or policy of the local executive, and continuously facing scrutiny and supervision from both local organs and mechanisms such as the city legislative, ombudsperson, or local referenda, as well as from external actors from the cantonal and national authorities, including courts.[645] Swiss local

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640   Interview Bağcılar Municipality (Istanbul), December 2018; Participant Observation in the International Migration and Integration Symposium, Istanbul, March 2018; Interview Zeytinburnu Municipality (Istanbul), December 2018.

641   Interview Anonymous #1 and Anonymous #2 (Civil Society – Istanbul), December 2018; Interview Çankaya Municipality (Ankara), January 2019; Interview Union of Turkish Municipalities (Ankara), January 2019.

642   See, for an in-depth overview, Durmuş 2021, also Chapter V of this thesis.

643   Ibid.

644   Anonymous Interview #1, (Civil Society – Istanbul), December 2018.

645   Interview Anonymous #7 (Municipality of Zurich); Interview Thomas Schmutz #1 and #2 (former AOZ, Zurich), June 2021 and September 2021; Interview Bea Schwager (Zueri City Card Initiative), September 2021; Participant Observation in the Urban Citizenship Workshop, La Chaux-de-Fonds, September 2021.

governments seem to need to undertake much more preparation before enacting urban citizenship policies and practices, researching in depth whether they are permitted to take the action and whether they have already passed necessary formal legal processes.[646] Even after receiving full authorisation, there is continued risk for legal challenges, as many political differences in the country seem to translate to legal battles.[647] This makes it much more difficult for Swiss local governments to push the boundaries of their *Competence Areas* unnoticed (see the Challenges to *Competence Areas* in *Graph 1*, above), and through the power of time and *de facto* realities obtain more playing room through initial transgressions. Perhaps the best example for this is the City Card processes ongoing in Zürich and Bern. To zoom in on the example of Zürich, the idea was introduced by a cultural project that led to the development of a grassroots platform of advocacy for a "Züri City Card" that could serve as an identification for every resident of the city, including undocumented migrants.[648] The city now boasts a thorough and deeply participatory and legalised process involving civil society, extensive deliberations in the city legislative, deep engagement, research and preparation by the city administration, a planned local referendum, and even input in form of expert opinions from the legal departments of the prestigious academic institution ETH.[649] Despite all this, the central government contests the legality of the initiative, as displayed in answers to multiple questionnaires by the federal legislative organ, the Bundesrat: "The "City Card" is an initiative of the City of Zürich that is not founded in federal law. (…) Such IDs would therefore not be legally binding and no lawful residence can be derived from them, The introduction of such a card as an identification instrument would therefore violate federal law."[650] This places the City Card initiative on the boundary between legal and extra-legal practices, perhaps leaning more towards extra-legal from the perspective of the central government. As the local government itself has conducted thorough legal research, political deliberative process and preparation to finally take the position that its position is lawful and within its competence however, the legality of

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646 Interview Anonymous #7 (Municipality of Zurich), March 2021; Interview Thomas Schmutz #1 and #2 (former AOZ, Zurich), June 2021 and September 2021; Participant Observation in the Urban Citizenship Workshop, La Chaux-de-Fonds, September 2021.

647 Interview Anonymous #7 (Municipality of Zurich), March 2021; Interview Thomas Schmutz #1 and #2 (former AOZ, Zurich), June 2021 and September 2021; Interview Bea Schwager (Zueri City Card Initiative), September 2021; Participant Observation in the Urban Citizenship Workshop, La Chaux-de-Fonds, September 2021.

648 Ibid.

649 Ibid.

650 "Fragen zur Züri City-Card", 24.02.2021, Answers to the questions 1-3 posed on the Züri City Card on 16.12.2020, by Bundesraetin Fiala Doris of the liberal party (FDP). https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20204528. Translation mine. Original: "Die "City Card" ist eine Initiative der Stadt Zürich, die sich nicht auf Bundesrecht stützt. (…) Solche Ausweise wären somit rechtlich nicht verbindlich, und es könnte daraus kein rechtmässiger Aufenthalt abgeleitet werden. Die Einführung einer solchen Karte als Identitätsausweis würde daher gegen Bundesrecht verstossen."

this urban citizenship practice is clearly a central topic of discourse, therefore further demonstrating the qualities of a highly regulated context. Thus, we could conclude that if Swiss municipalities would wish to test, challenge or expand the limits of their supposed limits of competence, they are unlikely to be permitted to continue in legal ambiguity, and their practice will quickly be moved to the realm of legal argumentation.

The regulated context in Switzerland also makes it more difficult for Swiss municipalities and Cantons to respond to crises. For example, in the Summer of 2015 when there was an increased flow of asylum seekers arriving in the city, Geneva decided to build accommodation centres, but by the time this decision had jumped through the many legal and bureaucratic loops, the asylum seekers were already in the City and in need of accommodation.[651] The Canton then decided to house these persons in underground bunkers designed to protect the Swiss from bombings, despite the fact that it was a hot summer as well as Ramadan.[652] Of course, almost all of these processes are necessary for a healthy democracy, the rule of law, checks and balances, as well as the natural results of institutionalisation. Finally, Swiss municipalities operate in an environment of so many norms – legal, administrative and policy-oriented – from national, cantonal, local organs as well as large canton-wide or nation-wide horizontal agglomerations of – for instance – local governments' social affairs departments, that they would have to be very creative to produce completely novel practices and policies that have never come up and been reflected in any of those regulations, reports and protocols.

What is noteworthy as a final point, was the perception among some interviewees from civil society, that the Cantonal administrations of the City-States Basel and Geneva who seem to try to uphold a face of strict abidance of the law and a tougher stance to irregular migration, were likely supporting irregular migrants on an individual or structural basis within their territories, for example by not pursing ID-checks and "looking the other way" frequently.[653] I have however not seen any formal evidence or confession by the Cantonal authorities of such a policy. If the rumours are true, this would reflect similar practices of avoiding "paper trails" among Dutch municipalities,[654] and indicate that extra-legal practices of urban citizenship might be pursued by Swiss Kantonstädte who feel the pressure of the self-identification with the State and the need to uphold regulations.

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651 Anonymous Interview #10 (Civil Society – Geneva), July 2019.
652 Anonymous Interview #10 (Civil Society – Geneva), July 2019.
653 Interview Thomas Schmutz #1 (former AOZ – Zürich), July 2021; Interview Martenot (Solidarite Tattes Geneva), July 2019.
654 Cities of Refuge, Interview Pim Fischer (human rights lawyer active in the Netherlands), March 2018.

c. Distinguishing Between Categories of Rights-Holders

Another result in migration management practices of the regulatory context was how local governments distinguished between different categories of people present in their territory, and therefore assigned them different sets of rights. In discussing the *Discretionary Space* for local governments and the thereby-resulting divergences across the map in Switzerland, Basel's Cantonal Director responsible for asylum policies, Renata Gäumann kindly explained to me how Cantons and municipalities can diverge on which legal categories of persons to cover with their social aid policies, who to spend money on. When I asked what Basel was doing, she said "We take everybody". When I asked if this meant undocumented migrants also, she said "No! That's a completely different topic. I am not responsible for that, that's a very different topic." In contrast, many Turkish municipalities in my field research provided services to "newcomers"[655] or "migrants"[656] or "refugees"[657] without examining their official legal status and distinguishing between those documented and undocumented. In Bağcılar Municipality, social aid in form of essential household furniture and food and financial support was given, accompanied by humanitarian and religious motives, to the families the local government had been made aware of, by neighbours or NGOs, without a check for legal status. The Municipality of Zeytinburnu in Istanbul had a "Welcome to the Town" Office, which determined what services the individual (language courses etc) would need for their integration, without asking for any official papers or status. The Municipality of Şişli had a health care centre that provided anonymous HIV-testing and basic healthcare.[658] The Municipality of Keçiören, Adana Metropolitan Municipality, and Sanliurfa Metropolitan Municipality cooperated with the IOM to establish "one-stop-shops" for "migrants" which offered support to non-nationals of every background and legal status.[659]

Similarly, the urban citizenship practices of Zürich and Bern, as well as to some extent the Municipality of Geneva (as opposed to the Canton) often proudly underlined the unapologetically inclusive principles, as well as the presumption of belonging, derived from urban citizenship,[660] even though Cantonal authorities in the city-states of both Basel and Geneva seemed much more aware of higher level laws and regulations, at times co-legislated by themselves, framing their permitted courses of action. As an

655   Interview Zeytinburnu Municipality (Istanbul), December 2018.
656   Interview Keçiören Municipality (Ankara), January 2019; Interview International Organisation for Migration (Ankara), January 2019.
657   Interview Sultanbeyli Municipality (Istanbul), December 2018.
658   Interview Şişli Municipality (Istanbul), December 2018.
659   Interview IOM (Ankara), January 2019; Interview Keçiören Municipality (Ankara), January 2019.
660   Interview Bernard (Municipality Geneva), July 2019; Anonymous Interview #7 (Municipality of Zürich), March 2021; Interview Thomas Schmutz #1 (former AOZ Zürich), July 2021; Interview Sarah Schilliger (Wir sind alle Bern – Bern), November 2020; Interview Christina Wandeler (Municipality of Zürich), July 2021.

interviewee from the municipality of Geneva expressed, the Cantons have "(...) not just a little bit, they have a lot of power to oppose. They are put in place to represent the population that lives in the Canton. They do not want to oppose, often also because they have other obligations."[661] These other obligations seemed to include having a stricter, tougher approach towards migration. While the Cantons of Basel and Geneva had many more pathways and formal competences to directly engage with federal authorities, both on generalised and individual cases of migration, they seemed more hesitant to act as rebelliously and unapologetically as their municipal counterparts governing almost the same population, as if the legal competences had brought about an obligatory "stateliness" and weight to their behaviour. Interviewees from cantonal authorities made more references to the "state" as an entity including them, showing ownership and self-identification with the state.[662] This seems to lead them to more loyally continue and implement the categorisations set by federal and cantonal laws in assigning differentiated groups of rights to persons inhabiting their territories.

This – of course – is also related to the much higher level of institutionalisation in Swiss Cantonal and also municipal governments, compared to many in the Turkish field research. Spending taxpayers' money especially needs to be strongly accounted for in democratic and institutionalised (local) governence. Swiss Federal and Cantonal laws as well as regulations are often extremely prescriptive as well as restrictive on the question of exactly what services would be delivered to which persons under which budget and where the money would come from. On the one hand, this can provide more security for persons who are eligible to receive a regular support from local authorities, as opposed to the "as long as the project continues/as long as we have the money/as long as the Mayor allows" approach of Turkish municipalities, which is shaped to an extent impossible to underestimate, by systemic problems concerning the municipalities' income and levels of institutionalisation and autonomy from political contexts. The latest *Integrationsagenda Schweiz* document adopted in Switzerland demonstrates this link between an increase in allocated resources (enabling sustainability of services) and reduction in discretionary spaces (enabling the exercise of agency): The budget per person per year to be given to the municipal authorities increased from 6.000 to 18.000 Euros, while the question of how this money would be spent also became more strictly regulated, in benchmarks see Annex I and Annex II). This does, however, also mean: "If you are an asylum seeker in in a federal centre, you got 3 Francs a day. If you were with the Canton, 15 Francs a day. If you were a recognised refugee, the Canton now has 18000 Francs to spend on you yearly.[663]

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661   Anonymous Interview #10 (Civil Society – Geneva), July 2019.
662   Anonymous Interview #12 (Canton of Geneva), Interview Gäumann (Canton Basel-Stadt), June 2021.
663   Anonymous Interview #10 (Civil Society – Geneva), July 2019.

A similar effect can be seen in the intended "capacity-building" and "institutionalising" side-effect of projects developed for/with local governments in Turkey by the EU, UNHCR, IOM and other external institutions. Often, while municipalities in Turkey want to use resources in ways that they best see fit with the aim of reducing political and social tension in the locality, such as by providing courses, activities etc for both Turkish and Syrian residents, while, as the Vice-Mayor of Bağcılar complained: "EU funds say you "have" to use the money "only" for Syrians, and you have to very strictly write it down and demonstrate it. But we know that it is better to have projects that target both Syrian and Turkish populations, for local cohesion. That's why we don't prefer EU projects."[664] Contrastingly, projects targeting both Syrian and Turkish inhabitants of the city, including by spending money on Turkish citizens alongside Syrian refugees, seem to have better success at simultaneously improving the education, employment, and livelihoods of said refugees, while at the same time contributing to integration and social cohesion. The vocational training centre project co-organised by UNHCR and Ankara Metropolitan Municipality thus trained Syrian refugees and Turkish citizens side-by-side for vocations that were most needed in the city's industrial production centres.[665] The success of that (ongoing) project, along with many others, is an additional point in favour of migration and integration policies developed in ways that don't contribute but seek to alleviate the artificial categorisations between groups of inhabitants.

d. Engagement with Urban Citizenship: Upwards, Downwards and Horizontal

Finally, the field research has shown that regulation can shape in which direction local governments engage with urban citizenship: upwards, downwards or horizontal. "Upwards" engagement refers here to the engagement of local governments (including city-states) with higher levels of government – the national, the federal, and if applicable, the regional – with an aim to influence higher-level laws and policies that regulate and limit their discretionary spaces and competence areas.[666] While local governance in its ideal form is horizontal and participatory, for the purposes of this Chapter, "downward" practices of urban citizenship are the engagement directed towards governing the locality and the inhabitants within. This includes all policies, discourses, administrative

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664 Interview Bağcılar Municipality (Istanbul), December 2018.

665 Interview and Focus Group Ankara Metropolitan Municipality, January 2019.

666 Notwithstanding the argument that local governments should not be construed as the "lowest" tier of government, as they are actually the most essential, the closest and most tangible to citizens. Some civil society groups, such as the Habitat International Coalition, reject the notion of tiers of government as diminutive and talk about spheres of government, in addition to advocating for the inclusion of a public-election-condition for the term 'local government' while 'local authorities' may include both elected and appointed officials. Interview with Habitat International Coalition – Housing and Land Rights Network officials, 20 August 2019.

practices that aim to directly realise the local government's understanding of urban citizenship in their locality. Second, local governments, as 'upward' practices of urban citizenship that aim to influence higher-level laws and policies that regulate and limit their discretionary spaces in practicing 'downward' urban citizenship. Finally, horizontal engagement refers to the engagement with urban citizenship with other local governments as addressees.

Swiss democracy and governance has a strong culture of deliberation, and Swiss local governments, even the specific departments such as the departments of social affairs, have their own conferences that take place regularly and set norms and standards to be applied by all. This practice that constitutes norm-generation in the subject-matter of urban citizenship adds to the rich, complex and layered regulatory system surrounding local government activity. Thus, "regulation", in its wider form, comes not only from above but also from local government collectivities. In addition to their obvious role in shaping downward engagement, these conferences also facilitate local governments' engagement upwards. For instance, the more ad hoc "Cities Alliance" that was formed in relation to the desire to relocate and welcome refugees from the infamous Moria refugee camp, also continued its activities in relation to the refugees fleeing Taliban's capture of Kabul in December 2021.[667] This Alliance was able to speak with a unified voice and call upon the Cantons and the central government to resettle much more significant numbers of refugees, especially to these localities that announced themselves ready to host said refugees.[668] This wish, nonetheless, was denied repeatedly, with the argument that migration was a federal task and cities had no jurisdiction on this matter.[669]

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667 Press Release of the City of Zürich, Department of Social Affairs, "Stadt Zürich fordert umgehend eine nationale Konferenz zur Direktaufnahme Geflüchteter", 10 September 2020, https://www.stadt-zuerich.ch/sd/de/index/ueber_das_departement/medien/medienmitteilungen_aktuell/2020/september/200910a.html (last accessed 20.02.2022); "Acht Schweizer Städte wollen Flüchtlinge aus Moria aufnehmen", TeleZueri, 10. Sep 2020, https://tv.telezueri.ch/zuerinews/acht-schweizer-staedte-wollen-fluechtlinge-aus-moria-aufnehmen-139100136 (last accessed 20.02.2022)

   Bart Oertli, "Schweizer Städte wollen mehr afghanische Flüchtlinge aufnehmen", SRF, 19 August 2021, https://www.srf.ch/news/schweiz/staedte-kritisieren-bund-schweizer-staedte-wollen-mehr-afghanische-fluechtlinge-aufnehmen (last accessed 20.02.2022); Interview Anonymous #7 (Municipality Zürich), March 2021; Interview Christina Wandeler (Municipality Zürich), July 2021.

668 Press Release of the City of Zürich, Department of Social Affairs, "Stadt Zürich fordert umgehend eine nationale Konferenz zur Direktaufnahme Geflüchteter", 10 September 2020, https://www.stadt-zuerich.ch/sd/de/index/ueber_das_departement/medien/medienmitteilungen_aktuell/2020/september/200910a.html (last accessed 20.02.2022); "Acht Schweizer Städte wollen Flüchtlinge aus Moria aufnehmen", TeleZueri, 10. Sep 2020, https://tv.telezueri.ch/zuerinews/acht-schweizer-staedte-wollen-fluechtlinge-aus-moria-aufnehmen-139100136 (last accessed 20.02.2022)

669 Bart Oertli, "Schweizer Städte wollen mehr afghanische Flüchtlinge aufnehmen", SRF, 19 August 2021, https://www.srf.ch/news/schweiz/staedte-kritisieren-bund-schweizer-staedte-wollen-mehr-afghanische-fluechtlinge-aufnehmen (last accessed 20.02.2022); Interview Anonymous #7 (Municipality Zürich), March 2021; Interview Christina Wandeler (Municipality Zürich), July 2021.

Perhaps this strict approach to the division of labour between public authorities and the national government's reluctance to ever give in to the wishes of migrant-friendly, diverse and progressive local governments, had been a factor in the cantonal administrations of city-states (in our case – Geneva and Basel) to choose to engage upwards, leveraging their power as cantonal authorities, rather than engaging downwards and be considered as "rebelling" against higher levels of government. For instance, while the local civil society of Basel expressed frustration with the cantonal authorities in their non-accessibility and non-cooperation with regards to the issues of undocumented migrants,[670] the Cantonal Director responsible for Asylum Issues of Basel had been very active in the drafting of the new *Integrationsagenda Schweiz* with other Cantonal and federal authorities.[671] This new nation-wide programme stipulated a 300% increase of budget for Cantons for integration purposes, as well as reducing divergence by increasing the nationwide minimum standard of services that were obligatory to be provided for persons in the asylum system by local governments and Cantons.[672] The Canton of Geneva on the other hand led the successful project "Papyrus" in order to assist in the regularisation of undocumented migrants, by obliging employers of undocumented migrants (rather than the sans papiers themselves) to report their undocumented employees, without being fined, for a limited period of time.[673] The Canton then used its exceptional competence to issue recommendations of regularisation to the central government for undocumented individuals reported to the Canton who fulfilled the criteria of the project.[674] This was a trailblazing project that the central government later had to admit was lawful and within the Canton's competence.[675] As alluded to above, these upwards engagements by Switzerland's City-States could be explained by the strict and clearly delineated division of labour between public authorities (the second element of the operationalisation of regulation), leading those few local actors: the *Kantonstädte* – to use some of their official competence to engage upwards rather than seek to dwell in legally unregulated or controversial territory. Swiss municipalities on the other hand use their horizontal engagement with each other to strengthen their voice in the larger system and upwards towards the central government, but face with clearly shut doors. Thus, what remains

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670 Interviews Kontaktstelle für Sans Papiers Basel, September 2021; Interview Anonymous #13 (Civil Society – Zurich), September 2021.

671 Interview Renata Gäumann (Canton Basel-Stadt), June 2021.

672 Interview Renata Gäumann (Canton Basel-Stadt), June 2021.

673 Interviews Kontaktstelle für Sans Papiers Basel, December 2021; Anonymous Interview #12 (Canton Geneva), July 2019.

674 Interviews Kontaktstelle für Sans Papiers Basel, December 2021; Anonymous Interview #12 (Canton Geneva), July 2019.

675 "Gesamthafte Prüfung der Problematik der Sans-Papiers - Bericht des Bundesrats in Erfüllung des Postulats der Staatspolitischen Kommission des Nationalrats vom 12. April 2018 (18.3381)", Bern, December 2020, p. 24.

for them is a limited discretionary space in downwards engagement, in which they seek to push the blurred lines of their competence explicitly and implicitly, without attracting the attention of the ever vigilant central government.

On the other hand, in the Turkish context, almost the only direction of engagement with urban citizenship was downwards. With the exceptions of the cooperation with international organisations, city networks, and local and international civil society – almost all of which were initiated by parties other than municipalities[676] – urban citizenship was only a practice directed towards inhabitants of the city, often quiet, implicit, without the necessity of serious legal engagement with the competences of the local government, and without intervention by the central government. This type of engagement often resulted in off-the-record services and policies for documented and undocumented migrants in the locality, as well as reduced sustainability of the practices. The Turkish municipalities also had no systems or facilities whatsoever in creating collective standards and norms amongst each other. Without the lack of any strong decentralised bodies like the Swiss Cantons and Canton-Cities, local governments only upward engagement constituted of practices such as inviting the Director of Migration Management of the central government for a conference they organised and expressing their struggles and requests addressed to these higher officials in such opportunities.[677] These practices had very limited reach and were only viable for local governments with the same political position as the central government.

6. Conclusion

Perhaps the most important conclusion of this research is that regulation *matters* in local governments' abilities and choices in engaging with progressive policies such as urban citizenship practices. The regulatory context affects how local governments perceive their own competence areas as well as their discretionary spaces, with an anti-proportional relationship between the level of regulation and this perception. This finding provides further evidence to the proposition that absolute autonomy and perceived autonomy are two very different concepts.[678] Regulation can also affect whether and to what extent local governments distinguish between different categories of persons present or residing in their territory, an issue which touches the essence of the concept of urban citizenship, as

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676   Interview IOM (Ankara), January 2019; Interview Anonymous #1 (International Civil Society – Istanbul), December 2018; Interview Anonymous #2 and Anonymous #3 (Civil Society – Istanbul), both December 2018.

677   This was what the Mayor of Bağcılar did in the 2018 International Migration and Integration Symposium co-organised by Bağcılar Municipality.

678   Keuffner and Horber-Papazian, 2020.

it implies a presumption of belonging and equality between inhabitants. Regulation also informs whether local governments chose to engage with urban citizenship in means that are foreseen by the law or not (legal or extra-legal) and what the direction of the engagement is (upwards, downwards or horizontal). A City-State like Basel might seek to negotiate with peers and higher levels of government by taking an active seat at the table and shaping the new Integration Agenda, while a cosmopolitan city like Zürich in a large and mostly rural Canton can opt more towards downwards, implicit and at times extra-legal ways of engagement, such as providing services for sans papiers even though it may clash with higher-level laws and regulations. The regulatory context thus shapes what options are possible, feasible, convenient, and effective. F

This leads us to the contributions of this Chapter to literature. The conceptual framework proposed in this Chapter proved to be quite helpful in dissecting and operationalising the concept and context of regulatory regimes. Against the backdrop of literature on urban citizenship struggling to settle on and utilise systematically concepts with clear definitions and sufficient specification, the conceptual framework visualised in Graph 1 above can provide a good and workable tool to further explore and communicate the role of regulation in how local governments behave. Such further research and exploration is essential for a proper understanding or regulatory contexts' relevance for local government behaviour both in the field of migration and other fields. As such, scholars of the legal and sociological fields, especially those exploring outstanding, progressive or reformist local governments, would do well to follow their suspicion that regulation (especially what local competences and discretionary spaces local governments have) matters, and move forward to exploring how and how much it matters. In such explorations, it is important to be nuanced in looking at local actors with statuses and competences,[679] municipalities and metropolitan municipalities in the Turkish context, city administrations and Cantonal administrations of City-States in the Swiss context.

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679   See for this, also Hirschl, 2020.

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Annex I: Swiss Integration Agenda - Cantonal Integration Plan Roster, p. 1

Nr.	Wirkungsziel (Outcome)	Eckwerte / Leistungen	Geplante Umsetzung / Massnahmen	Meilensteine	Überprüfung/Evaluation	Zuständigkeit und Beteiligte
	Alle VA/FL werden begrüsst und über ihre neue Lebenssituation, ihre Rechte und Pflichten informiert. Sie sind über den Integrationsprozess informiert, die gegenseitigen Erwartungen an den Integrationsprozess sind geklärt.	**Erstinformation** wird durch Begrüssungsgespräche/-veranstaltungen, dem Einsatz von interkulturell Dolmetschenden und zielgruppengerechtem Informationsmaterial sichergestellt.			Anzahl der Begrüssungsgespräche und der individuellen Information (KIP-Kennzahl).	
	Die Ressourcen der einzelnen Personen sind unter Berücksichtigung der persönlichen und familiären Situation sowie des Gesundheitszustandes erfasst.	Eine erste **individuelle Ressourcenabschätzung**, eine Sprachstandabklärung, sowie ein "Gesundheitscheck" sind gewährleistet. Entsprechende Kenntnisse und Erfahrungen, die VA/FL während dem Asylverfahren gewinnen konnten, sind bei der Planung der Integrationsmassnahmen miteinzubeziehen. Eine erste **Triagierung** in geeignete Integrationsmassnahmen findet statt.			Elementare statistische Aussagen zu Ressourcen und Potenzial der VA/FL im Hinblick auf ihre Integration.	

Annex II: Cantonal Integration Plan Budget Roster, divided by KIP (Cantonal Integration Plan) Goals for (see tabs in the excel file below) individual issues: Initial Information and Integration Needs Assessment, Counselling, Anti-Discrimination, Language and Education, Labour Market Adequacy, Translation, Living Together (Inclusion)

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CHAPTER VI

Human Rights Localisation and Individual Agency: From 'Hobby of the Few' to the Few Behind the Hobby

Tihomir Sabchev, Sara Miellet, Elif Durmuş[680]

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Author's Note:

This Chapter was originally published in the edited volume cited above, along with Chapter IV in this thesis. There are therefore more frequent cross-references between these two chapters of the thesis. Tihomir Sabchev, Sara Miellet and I wrote this chapter together in a highly integrated and interactive process. This Chapter therefore is not one of the required four publications required by Utrecht University for a PhD in articles, but is added in this thesis for its added value and content. This version is an unabridged version of the original publication, with only minor formatting and cross-referencing edits.

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680 All authors contributed equally to this work as part of their PhD research for the Cities of Refuge Research project.

Abstract

Human rights have been facing criticism on many fronts, including the challenges of the "enforcement gap" and the "citizenship gap", laying bare the shortcomings with regard to the implementation of human rights law as well as regarding its protection of highly vulnerable groups such as refugees. Research on the effectiveness of human rights, the "localisation" of human rights through invocations and practices on the ground, the increased engagement of local authorities with human rights, are all responses to such challenges to some degree. Based on empirical research conducted within municipalities in four countries, this article focuses on a missing piece of the puzzle in terms of conceptual and empirical research: the role of "individual agency". We adopt a socio-legal perspective on human rights and demonstrate that individual agency can make an important contribution to the effective implementation of human rights in the field of migration governance. Behind the black box of the state and local authorities, we find individuals who use human rights – as law, practice and discourse – in local policymaking, in circumstances where invoking human rights is not self-explanatory. Finally, we put forward the notion that reasons such as individual background, motivations, and interactions between individuals influence municipal officials' engagement with human rights, and we reflect on the conceptual and practical implications that result from this.

1. Introduction

Over the last decades, human rights have been widely criticised. Some of this criticism relates to the notion of effectiveness.[681] Those challenging human rights have focused, for instance, on the lack of enforcement of positive human rights obligations (the "enforcement gap")[682] and the inability of the human rights regime to protect the most vulnerable, such as refugees and stateless persons, despite claims of universality (the "citizenship gap").[683] The latter criticism also poses an opportunity for human rights to prove their relevance to non-citizens who might lack sufficient protection under domestic legislation and should – at least in theory – be protected by human rights.[684]

Partially related to this criticism, and in part because of their *de facto* engagement with human rights, local authorities have recently received considerable scholarly attention. They have been increasingly portrayed as being important actors that can influence – either directly or indirectly – the realisation of human rights on the ground.[685] More concretely, local authorities have been at the forefront of receiving and integrating refugees, and safeguarding their human rights; an issue which started gaining more attention following the increased mobility of Syrian refugees from 2015 onwards.[686] This article focuses on individuals and processes at the intersection of migration, human rights and local authorities. As such, this contribution provides valuable insights on a wide range of questions regarding the effectiveness of human rights. We adopt a socio-legal perspective on human rights and define them broadly, not only as international law, but also as a value, discourse, and "social construction and practice".[687] Individuals working within local governments are among the actors that engage in such social construction and practice. In line with the scope of this article, 'local authorities' refer to the lowest tier of administration in the public administrative organisation of a state, including its executive, legislative, and administrative organs.[688]

While local governments have been receiving attention from scholars concerning their role in human rights realisation, the more general question regarding the effectiveness of human rights has puzzled other scholars – albeit with inconsistent or conflicting results.[689] Bearing in mind the most important challenge to this scholarship – namely

681   Kennedy 2002.
682   Marx et al. 2015.
683   Shafir and Brysk 2006.
684   Baumgärtel and Oomen 2019.
685   Aust 2015; De Feyter 2011, Oomen and Durmuş 2019, Durmuş 2020.
686   Oomen and Baumgärtel 2018.
687   Grigolo 2017.
688   UNHRC 2015, para.1.
689   Brysk 2019.

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the difficulty of establishing a causal link between human rights and change on the ground – we have chosen to refer to the effectiveness of human rights in local migration governance as: *the generation, from within the local authority, of policies, practices and discourses inspired by human rights, that are designed to improve the well-being of refugees as a vulnerable group*. As such, we do not claim that any local policy, practice or discourse has succeeded in creating an empirically measurable improvement in the well-being of persons. In addition, this definition is a deliberate choice to focus on practical local outputs (policies, practices, discourses), instead of legal formalist or statist understandings of human rights effectiveness. Lastly, the adoption of human rights-inspired migration policies by local governments constitute a particularly useful case study for gaining insights into the effective implementation of human rights, as it represents an emerging trend, and certainly not a universal nor self-evident observation. As local authorities have been considered as human rights actors much more recently than states,[690] the effectiveness of human rights in this context – i.e. the success of human rights inspiring migration policies, practices and discourses – can be observed as it unfolds.

Within this context, our aim is to focus on individual agency – a missing element in the conceptual and empirical research on the local relevance and effectiveness of human rights. We use the concept of individual agency to examine how personal background and motivations, as well as interactions with others, can influence the actions of individuals involved in introducing human rights within local authorities. While the role of non-state actors and individuals in *claiming* rights has enjoyed attention in human rights scholarship,[691] the agency of individuals within the black box of the state,[692] its local authorities,[693] or other actors holding positive legal human rights obligations, has only recently been addressed. Drawing on scholarly and empirical evidence on the relevance of individual 'human rights users'[694] enacting local human rights-based practices[695], we explore *how the exercise of individual agency by public officials within local authorities contributes to the effectiveness of human rights in local migration governance*. Our findings – based on field research conducted in municipalities in Italy, Greece, Turkey and the Netherlands as part of the Cities of Refuge Project –[696] demonstrate the importance of individual agency for the adoption of local human rights-based policies, and suggest that the background, motivations and interactions of individuals can play a role in the extent to which local

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690   Oomen and Baumgärtel 2014; Oomen et al. 2016.

691   Merry 2006a; Widdows et al. 2015; Saeed 2015; De Feyter et al. 2011, Desmet 2014.

692   Brysk 2019, p.8.

693   ILC (2001), Art.4.

694   Desmet 2014

695   Shawki 2011, Ward 2016, Miellet 2019, Roodenburg 2019.

696   "Cities of Refuge" is a 5-year research project funded by the Netherlands Organization for Scientific Research, that explores and explicates the relevance of international human rights, as law, praxis and discourse, to how local governments in Europe welcome and integrate refugees https://citiesofrefuge.eu/.

human rights-based policies are adopted. In presenting these findings, we start with a discussion on the effectiveness and localisation of human rights in relation to local authorities in section 2, followed by a conceptualisation of individual agency in section 3, and a number of methodological considerations in section 4. Section 5 highlights the importance of individual agency for human rights effectiveness, also elaborating on the reasons why certain public officials engage with human rights in terms of local policy making. Section 6 considers the conceptual and practical value of individual agency in human rights research and practice, and lastly, section 7 outlines our conclusions and suggestions for future research.

2. Human Rights Effectiveness and the Role of Local Authorities: The Story thus Far

The question of human rights effectiveness is complex, and one that many human rights scholars have grappled with, addressing different objectives and using different methodologies.[697] Brysk suggests navigating this field by asking: "The effectiveness of what?"[698] Is effectiveness the codification of norms into law following ratification? Does it pertain to the success of a particular rights movement? Or perhaps to the on-the-ground fulfilment of minimum requirements of well-being by states accepting international norms? In those cases, the indicators that are measured are often results-oriented, structural, or formal/legal.[699] Scholars often analyse the response to "emerging channels of horizontal or dialectical international influence" of the so-called 'international human rights regime', consisting of laws, courts, institutions and professionals. The question of effectiveness of human rights is placed within the context of socio-legal and social science literature on ideas, how those ideas spread, how they gain ownership and become norms to which actors adhere.[700] Risse, Ropp and Sikkink have sought to empirically prove that a causal relationship exists between the idea of human rights and improvement of the standards of well-being on the ground.[701] However, such causal claims were met with widespread scepticism among social scientists, as attributing improvement to the adoption of human rights seems methodologically near impossible. This view was also accepted by the same authors in their subsequent publications.[702]

697 Brysk 2019, p.2; Hopgood et al. 2017.

698 Brysk 2019, p.2.

699 Council of Europe 2011.

700 Béland and Cox 2016, Berman 2007, Brysk 2019, Risse et al. 1999. Notwithstanding, some literature has approached the question from an instrumentalist rather than ideational approach: Hathaway 2002.

701 Risse and Sikkink 1999.

702 Risse et al. 2013; Simmons 2009; Haglung and Stryker 2015; Goodman and Jinks 2004.

The literature on human rights effectiveness has recognised the complexity and pluralism of "pathways of influence"[703] that lead to a change in identity, and of interest-building processes that shift the behaviour of an actor or individual.[704] However, this research has struggled to step away from the top-down state-centric understanding of what human rights constitute, by whom they are generated, and how they can best be realised on the ground.[705] Human rights are not only imposed top-down and translated from the international to the local level;[706] they are also developed and contested locally, by actors and individuals invoking or "using"[707] human rights without outside "international" pressure.[708] Rather than viewing the local relevance of human rights only as a top-down "translation"[709] of international law into local contexts, we focus on human rights that are invoked and practiced on the ground, by individuals who exercise their agency to introduce their own understandings of human rights.[710] The research on the localisation of human rights provides complementary responses to the shortcomings of the research regarding the effectiveness of human rights.[711]

The term 'localisation' has been used to examine a broad range of human rights practices, both from a descriptive and normative perspective.[712] Firstly, this term was used to describe the strengthening of local civil society and institutions, such as local authorities, *for* the protection of fundamental rights.[713] Secondly, it was used to describe the efforts made to develop human rights in a way that makes it more reflective of local concerns, and more accommodating to the claims of human rights users.[714] Lastly, it also forms part of a broader shift of perspective; away from the primacy of the nation state,[715] and towards a multi-stakeholder agenda that considers the role and responsibilities of a wider range of states and non-state actors.[716] Rather than neglecting the importance of states in realising individuals' human rights, the scholarship on localisation demonstrates the limits of state-centric approaches, and the importance of including non-state and sub-state actors in discussions on human rights effectiveness.

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703 Brysk 2019, p.2.
704 Koh 1996.
705 De Feyter 2011.
706 Merry 2006b.
707 Desmet 2014. Section III.
708 Oomen et al. 2016. Oomen and Durmuş 2019.
709 Merry 2006a.
710 Oomen and Durmuş 2019.
711 Marx et al. 2015.
712 Oomen and Durmuş 2019, De Feyter et al. 2011
713 Marx et al. 2015.
714 De Feyter 2011.
715 Meyer 2009.
716 Destrooper 2017.

In the literature on localisation, one phenomenon was recently highlighted for its potential to strengthen both social justice and the international human rights system itself – i.e. the 'human rights city'.[717] While some authors have proposed very broad and inclusive definitions of a human rights city[718], we adopt the one of Oomen and Baumgärtel: "an urban entity or local government that explicitly bases its policies, or some of them, on human rights as laid down in international treaties, thus distinguishing itself from other local authorities".[719] The explicit engagement of local authorities with human rights is indeed commonly viewed as a prerequisite for becoming a human rights city.[720] While local civil society initiatives can often be the ones that "make human rights the talk of the town", these cannot be sustained in the long run without the commitment of local administration, which is usually responsible for ensuring access to services such as education, healthcare, etc.[721]

The rise of human rights cities has often been presented as an opportunity to strengthen the effectiveness of international human rights through bottom-up initiatives and implementation at the local level.[722] Examples are plentiful and can be found all over the world. In the United States (US), for instance, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was already adopted as municipal law in San Francisco back in 1998, while Chicago has been using the Convention on the Rights of the Child to shape local policies since 2009.[723] Importantly, both treaties have not been ratified by the US government. In Europe, Graz has been applying human rights standards in monitoring local election campaigns and in designing anti-discrimination policies.[724] As a final example, the Korean city of Gwangju has developed a more comprehensive human rights approach over the past decade, which involves different rights, policy areas and stakeholders.[725] Rather than "empty promises", such actions by human rights cities can potentially directly and positively affect the everyday lives of their citizens through easier and universal access to basic services.[726]

The direct link between human rights cities and human rights effectiveness has been particularly visible in terms of migrants' rights, especially with regard to undocumented and forced migrants. An often-cited example is that of the city of Utrecht, which –

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717   Oomen et al. 2016.
718   Grigolo 2016, p. 227.
719   Oomen and Baumgärtel 2014, p. 710.
720   Goodhart 2019.
721   Van den Berg 2016.
722   Oomen and Baumgärtel 2018. See also Grigolo (2019).
723   Davis 2016, pp. 37-38.
724   Davis 2017.
725   Durmuş 2020, p. 48.
726   Hafner-Burton and Tsutsui 2005.

along with other Dutch cities – successfully used human rights to extend the provision of emergency 'bed, bath and bread' services to undocumented people.[727] New York, yet another human rights city, recently banned the use of the terms "illegal" and "illegal alien", and prohibited people from threatening to call the Immigration and Customs Enforcement on the basis of discriminatory motives. Breaking the new local law can result in fines as high as 250,000$.[728]

The contribution of cities to the realisation of migrants' human rights is, however, not limited only to those bearing the 'human rights city' label. Due to the recent process of decentralisation in many countries, local authorities have gradually acquired a number of competencies directly related to the reception and integration of immigrants.[729] As a result, municipalities play an important role in facilitating the access of migrants to local schools, hospitals, labour markets, etc. In addition, local authorities were at the frontline of protecting and fulfilling the human rights of refugees in the recent period of increased refugee arrivals to Europe – often acting at the boundaries of their legal competencies, or even overstepping them in order to guarantee reception services in line with international refugee and human rights law.[730] Cities such as Athens and Milan, to mention just two, provided shelter, food, basic healthcare services and information to tens of thousands of refugees in 2015-2016.[731] On many occasions, these municipalities and other local authorities explicitly referred to human rights to justify their assistance to refugees.[732] Thus, rather than being restricted to the category of human rights cities as the usual suspects, municipal engagement with human rights is a much broader phenomenon when it comes to defending and realising the rights of migrants.[733]

At the beginning of this section, we presented different arguments for moving beyond the state-centric and legal formalist approaches in studying the effectiveness of human rights. From the discussion so far, it has become clear that human rights cities – but also local authorities in general – can contribute significantly to the effective implementation of human rights in the field of migration governance. While states are shifting towards

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727   Oomen and Baumgärtel 2018.
728   NYC Commission on Human Rights. (2019). NYC Commission on Human Rights: Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin. Retrieved from https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/immigration-guidance.pdf.
729   Caponio and Borkert 2010.
730   Oomen et al. (2022). *Local Authorities, Law and Discretionary Spaces in Migration Governance*
731   Bazurli 2019. For Athens see OECD 2018.
732   See for example Resolution 432 (2018) of the Congress of Local and Regional Authorities (Council of Europe) available at https://rm.coe.int/border-regions-facing-migration-phenomena-cur-eirini-dourou/16808e2c9d Accessed 10 April 2020.
733   Miellet 2019.

the externalisation of border control and stricter asylum policies,[734] and hence moving away from their human rights obligations in relation to refugees, some local authorities increasingly refer to human rights – as law, practice and discourse – in order to justify progressive local policies designed to protect and safeguard the rights of refugees. Bearing that in mind, understanding the motives behind the use of human rights by local authorities becomes an important next step for both human rights scholars and practitioners. For scholars, answering the question as to why some cities actively engage with human rights in their approach to refugee reception, could reveal the driving force behind instances where human rights inspired effective local policy solutions. For practitioners, it could provide the key towards strengthening the effectiveness of human rights where those rights matter the most: at the local level.

3. The Missing Piece: Conceptualising the Individual Agency of Human Rights Users

Having already arrived at the local level, this section will introduce the concept of individual agency, which in our view constitutes one of the key drivers behind initiating, designing, enacting and implementing municipal human rights-based policies. Our argument is that the actor-based approaches used in human rights scholarship do not provide the tools to adequately capture the dynamics *within* local authorities. This carries the risk of overlooking the role of individual agency in "bringing human rights home" to the city level.[735]

Recent human rights research has contributed to the unpacking of the human rights city, revealing a diverse group of actors: researchers, civil society, local governments, central government agencies and social workers, to name a few.[736] The same is true for cities active in the reception and integration of refugees, where a multitude of local actors facilitates migrants' access to services.[737] Each one of these actors serves a separate (complementary or competing) function in the implementation of human rights within the city, following its own (human rights) agenda. Local mobilisation in the field of human rights is often seen as involving 'struggles from below' initiated by civil society actors and social movements.[738] As states are presented as monolithic entities, the role of individuals within local authorities remains somewhat of a 'black

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734 Polakow-Suransky 2017.

735 Soohoo et al 2008.

736 Grigolo 2017.

737 Hinger et al. 2016.

738 Chenoweth et al. 2017.

box'.[739] While municipal governments often contribute to human rights effectiveness, as described in the previous section, the motivations behind this contribution remain unclear. What makes some municipalities incorporate human rights in their local policies, and ultimately even regard themselves as human rights cities? Our view is that one important factor which triggers and navigates the process of enacting local human rights-based policies is individual agency *within* local authorities. Drawing on standard conceptions of agency, we associate individual agency with the capacity to act, and the performance of intentional and unintentional actions that derive from the former.[740] More concretely, by employing the notion of 'individual agency', we demonstrate that personal background and motivations, as well as interactions with others, underpin the actions of individuals involved in introducing human rights law, practice and discourse within local authorities.

Our approach to theorising the agency of these individuals draws on socio-legal scholarship, such as legal pluralism and legal anthropological perspectives, which shift the focus away from approaches that study human rights "in an abstract, doctrinal and depersonalised manner to a more grounded and contextual approach".[741] More specifically, our approach draws on recent scholarly work on theorising the involvement of different types of actors involved in human rights practices, also known as actor-oriented approaches, and concepts such as 'human rights users'.[742] Adopting an approach that focuses on the *users* of human rights implies that "the perspective from which the analysis is undertaken is that of the person, group, organisation or institution engaging with ('using') human rights - and thus not the perspective of a specific legal instrument, theme or right".[743]As Desmet argues, this 'user' approach also allows "a deeper insight in the human rights system, in how it is used, what its strengths and weaknesses are and will further provide reflection on how it can be improved".[744] This is partly due to the fact that the human rights 'user' approach recognises the complexities that result from the multi-layered nature of human rights law, and considers how human rights users may be "simultaneously confronted with a multiplicity of human rights norms, often both general and specific coming from different institutions".[745] Another factor is that it addresses other challenges to human rights – such as concerns about the effectiveness of human rights on the ground – from the perspective of its users (such as rights claimants).[746]

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739   Desmet 2014.

740   Schlosser, Markus, "Agency", The Stanford Encyclopedia of Philosophy

741   Desmet 2014, p.122.

742   Desmet 2014, Brems and Desmet 2014.

743   Desmet 2014, p.123

744   Ouald-Chaib 2018, p.4

745   [66] Desmet 2014, p.124

746   Desmet 2014, Baumgärtel 2014

Human rights scholars who look at actor-oriented approaches have recently raised concerns regarding the fact that many empirical studies focus on non-state actors and on rights-holders, rather than duty-bearers like states.[747] The human rights 'user' approach addresses this criticism by presenting an inclusive but differentiated approach to understanding the users of human rights, and by introducing categories that are empirical – and based on behaviour – rather than legal (rights holder and duty bearer).[748] This approach incorporates a broad spectrum of users, ranging from *direct* users ('rights claimers' and 'rights realisers') to *indirect* users ('supportive users' and 'judicial users').[749] Of these four types of users, rights realisers are the most directly relevant to this article, as this category includes actors who seek to give effect to human rights. This article draws on – and develops – these insights, by foregrounding how individuals within local governments exercise agency as they work towards 'bringing human rights home', and by adopting a broad understanding of human rights practice. Our understanding of the individual agency of human rights users is therefore also informed by scholarly work on human rights *practices*, understood as "the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, etc., the idea of human rights in its different forms".[750] However, we agree with Desmet that research on human rights practices tends to prioritise specific themes or rights, whilst actor-oriented perspectives – such as those focusing on human rights users – do not. As this article focuses on local engagement with human rights in the field of *migration* governance, it represents a middle way that borrows from both approaches.

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A question that needs to be addressed, however, is why this article refers to 'individual agency' of human rights users, rather than adopting more common terms such as 'actors'. We argue that this differentiation is necessary for three reasons. First, it serves to minimise confusion, as many legal scholars that have progressively examined cities and international law, refer to cities or local authorities as unified 'actors'. This strand of research, for instance, examines how the positioning of cities and local authorities in international law should be understood, and whether or not they can – and ought to be – understood as having a dual character as both state and as non-state actors that could obtain international legal personality.[751]

Second, we also use this term to avoid confusion with legal debates on the 'actorhood' of local governments in international law, and to challenge essentialist understandings of the state – at the local or national level – that obscure the agency of human rights users

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747   Destrooper and Sundi Mbambi 2017.

748   Desmet 2014, p.127

749   Ibid.

750   Goodale 2017, p. 24.

751   Durmuş 2020.

working *within* the state structure. Although such critical interrogations of essentialist understanding of the state have been particularly common amongst geographers[752], migration scholars[753] and sociologists[754], they also feature in the work of human rights scholars who similarly conceive of the state as a "complex construction of often competing agencies and individuals, at both the national and the local level".[755] This legal scholarship also highlights how this understanding of a state as consisting of different institutions and individuals requires us to examine "how norms in turn influence individual behaviour of state actors".[756]

Third and lastly, the scholarship that draws on actor-oriented perspectives to study human rights localisation or vernacularisation focuses primarily on corporate and civil society actors, without necessarily taking into consideration the role of individuals *within* them. To address this shortcoming, we also propose a conceptual differentiation between actor-oriented perspectives and individual agency, as theorised in this article. In doing so, we follow Desmet, who suggests that "the term 'human rights actor' and its categories thus do not make clear that the same actor may, depending on the situation, stand in a different functional relationship with human rights, i.e. make a different use of human rights".[757] A human rights 'user' approach enables us to theorise the involvement of street-level bureaucrats, local politicians and social workers, without assuming their static categorical identity (as state or non-state actors). Although we recognise that the term 'human rights users' – as developed and understood by Brems and Desmet – can still be used to refer to any individual *or* a composite entity who engages with human rights, we propose a more restrictive understanding of human rights users that renders visible hitherto more obscured perceptions, understandings and actions of *individuals* that shape local approaches to human rights.

By adopting the term 'agency' rather than by adopting the general description 'the role of individuals', we also signal that our analysis does not look at agency in isolation, but acknowledges that agency stands in a dynamic relationship with structure. Concretely, this means that we are also interested in examining structural conditions, or opportunity structures that enable individuals to act independently, whether individually or collectively with others. This becomes particularly visible with respect to *interactions*

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752   Meeus et al. 2019.

753   Gill 2010.

754   Verhoeven and Duyvendak 2017.

755   Desmet 2014, p.136.

756   Risse and Sikkink 1999, p.8.

757   Ibid.

between individuals (see Section 5, below) in which structural opportunities – such as networks and access to cooperation – interplay with the agency of particular individuals who disseminate and adopt norms, ideas and practices through these structures.

Having explicated *how* individual agency is conceptualised and having situated this notion within the scholarly literature, this discussion now turns to reflect on theoretically and empirically informed insights on *why* studying individual agency is relevant to debates on the effectiveness of human rights. Whilst much of the research on localising human rights initially focused on civil society 'actors', scholars have been increasingly focusing on the role of city councils, mayors and administration in processes of 'downward human rights diffusion'[758], emphasising that such diffusion relies on "strong collaboration *with* municipal authorities in adapting existing human rights norms to local settings". Other scholars have been paying increasing attention to collaborations between local stakeholders[759] and *within* municipal authorities.[760] Drawing on previous work by Merry,[761] Shawki, for instance, notes that "the initiative of translators, individuals and/ or community groups who are well-versed in the international human rights framework and discourse and at the same time very immersed in their local communities, is often the catalyst for local human rights initiatives".[762] This scholarship also hints at the motivations of individuals working within local authorities. As Martha Davis notes, "inspirational words without substantive impacts are unlikely to be embraced by these local actors. If they adopt human rights approaches, it is almost certainly because they believe that the approaches can do some real work for the community".[763]

In addition to these theoretical arguments suggesting the importance of individual agency within local governments in mobilising and enacting human rights, there are also practical examples pointing in this direction. In 2018, the United Nations Office of the High Commissioner for Human Rights (OHCHR) called upon local government representatives to identify "effective methods to foster cooperation between local governments and local stakeholders for the effective promotion and protection of human rights (...) and to indicate the major challenges and best practices in this regard".[764] The OHCHR report synthesised their contributions and identified more effective ways to promote – and protect – human rights at the local level. The report also highlighted

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758   Oomen and Van den Berg 2014.
759   Roodenburg 2019.
760   Miellet 2019.
761   Merry 2006b.
762   Shawki 2011.
763   Davis 2019.
764   OHCHR Call for contributions on local governments' initiatives to promote and protect human rights https://www.uclg-cisdp.org/sites/default/files/Letter%20Civil%20Society%20Organisations_EN_final%20%281%29.pdf

the role played by local stakeholders, such as mayors, in creating a local government culture that is open and oriented towards human rights.[765] Several indications of the link between localising human rights and individual agency come from the international forum "Focusing on Human Rights", which took place in 2015 in Graz – the first human rights city in Europe. The event gathered more than 100 experts from 25 European countries, all of whom were active in the field of implementation of human rights at the local level. Politicians and civil servants from human rights cities discussed – together with researchers, representatives of city networks and international organisations – the design, enactment and relevance of human rights for local policies. As Phillipp mentions in her summary of the forum's workshops, participants agreed that strategies for incorporating human rights into local policy-making usually depend on a "specific politician who prioritises human rights".[766] Importantly, the participants viewed this as a 'big challenge' for efforts related to local human rights-based policy-making – an issue that will be discussed in further detail later on. Another key point, also presented as a challenge by the participants, was that "people are alone in the field of promoting human rights, it depends on single persons".[767] As Leen Verbeek, former mayor of the Dutch city of Purmerend, pointed out in his presentation, human rights implementation at the local level was "the hobby of the few", which, through networking and collaboration, could eventually turn into "the responsibility of the many".[768]

Drawing on previous research, we initially outlined several arguments for moving from the macro-level of the state to the meso-level of the city in studying human rights effectiveness. Having introduced our conceptualisation of individual agency, we will now briefly discuss the methodology of our study, and then present the potential benefits of approaching the issue of human rights effectiveness from a micro-level perspective.

4. Methodology

To explore the relevance of individual agency within local authorities to human rights-based policies, and therefore to human rights effectiveness, we apply a qualitative case study research design.[769] The examples we present pertain to Turkey, Italy, Greece and the Netherlands, which allows us to study the role of individual agency in very different contexts, in terms of the administrative system (centralised-decentralised), the allocation of competencies and funds for refugee reception/integration (larger role

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765   Ibid
766   Philipp 2017, p.36.
767   Ibid. p. 37
768   Ibid. p. 35
769   Rohlfing 2012., See also Yin 2017.

of local authorities in Italy and the Netherlands and marginal in Greece/Turkey) and the number of refugees hosted. Moreover, we focus on local authorities that have proactively engaged with human rights (as law, practice and discourse) in regard to the reception and integration of refugees and undocumented migrants.[770] To protect our interviewees, we have not included the names of the municipalities discussed in the following section. The only exception is the case of Utrecht, in which the availability of a large amount of publicly accessible information made any efforts for city-level anonymisation futile.

Our case selection process was not guided by the ambition to obtain a representative sample – neither of human rights cities, nor of 'ordinary' cities using human rights – but rather by the aim to explore how the process of incorporating human rights in local policies start and evolve in different urban contexts, and within different local authorities.[771] Consequently, any generalisation to other instances of human rights localisation – within or beyond local authorities – on the basis of our research would be problematic. In any case, we believe that the variation that we sought to achieve with the following examples strengthens the value of our findings, and can serve as justification for future research on the link between individual agency and human rights effectiveness.[772]

In the next section, we present examples from several municipalities where we conducted field research, primarily consisting of interviews with local officials (politicians, top-level managers, administration, social workers) and representatives of NGOs, civil society and immigrant organisations, local experts, local offices of national/regional authorities and international organisations. By covering such a wide range of locally operating actors, we were able to identify the different steps in the enactment of human rights-based policies: the initial process of the 'arrival' of human rights to the city, the way local administrations started engaging with them, the (lack of) implementation, and finally, the (lack of) practical results for refugees and undocumented migrants. The field research took place between October 2018 and March 2020. In addition, the interview data was triangulated with secondary data obtained through desk research of municipal documents, reports, media publications, social media accounts and empirical evidence from scholarly literature – if available. All data was analysed using NVivo and following an open coding method.

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770 With the term refugees, we refer to forced migrants in general - be it asylum seekers, people who have obtained international protection status or "guest" in the case of Turkey.

771 Seawright and Gerring 2008.

772 See Chapter 3 in Rohlfing 2012.

5. The Individual Agency of Municipal Officials in Improving the Effectiveness of Human Rights

In this section, we will present examples that highlight the role of individuals as one of the driving forces behind the incorporation of human rights into effective local policy solutions to immigration-related challenges. Without underestimating the importance of local structural conditions and factors, we demonstrate that ultimately, it was specific individuals who initiated the human rights conversation, practice and even law to city halls and municipal offices, and that they did this for reasons that were often not self-evident results of their institutional role. We will start by presenting several examples of *how* individual agency mattered, and will subsequently focus on the issue of *why* individuals engage with human rights-based policy-making.

First and foremost, our data analysis revealed a strong link between individual agency within local authorities and the adoption of human rights-based local policies that provide refugees universal access to services. In all country contexts, we found specific public officials behind the design and adoption of these policies; these officials had either explicitly used human rights law, or had adopted a human rights perspective in the interpretation of ambiguous domestic legal frameworks. In one Greek municipality, human rights law was referred to in a local action plan to justify the adoption of inclusive policies for undocumented migrants. This came about as a result of the efforts of a single employee, who later advocated for universal access to a new municipal shelter for the homeless, which caused conflicts with representatives of the central government demanding that access shall only be granted to people with lawful residence.[773] Similarly, in Turkey, some municipalities opted to interpret the ambiguity in the domestic municipal law to treat all refugees and undocumented people present in the city as 'co-citizens'. As a result, they were provided access to free basic services and in some cases even to specialised ones, such as psychological support, vocational training and language courses.[774] Behind this approach were progressive political leaders and local policy makers, some of whom consulted with the UNHCR to discuss whether it was possible to consider refugees as falling under the ambiguous law.[775]

Moving to more detailed single-case examples, we start with an Italian city with an active local civil society, which for decades has been defending the rights of locally residing vulnerable groups, including immigrants. While in the past the local government had developed plenty of policies to protect and fulfil migrants' rights,

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773 Fieldnotes #2 Sabchev, 16/11/2018, Greece.
774 Interviews #1 Durmuş, 14/12/2018, Turkey; #4 Durmuş, 05/12/2018, Turkey; and #6 Durmuş, 24/01/2019 Turkey.
775 Interview #1 Durmuş, 14/12/2018, Turkey.

it was only a decade ago that it started actively referring to human rights – both in relation to migrants' rights and other policy areas. In this case, human rights emerged in a bottom-up manner within the local administration, and were only 'adopted' by the municipal political leadership in the second instance. More specifically, a civil servant with an education relating to human rights and former experience in an international organisation, intentionally introduced the human rights discourse and practice by involving the municipality in two externally funded projects.[776] In her own words, she did this because of her strong belief in the "added value of an approach based on human rights applied at the local entity level".[777] Under her leadership, the process of localisation of human rights within the local administration resulted in the gradual introduction of various new initiatives: theoretical and practical training on human rights in migration-related issues for municipal managers and service personnel, workshops for students and teachers in local schools, communication campaigns on migrants' human rights, baseline studies on discriminatory barriers affecting migrants' active participation in local community life, etc. This engagement with human rights received strong support from two important individuals from the local government: a deputy mayor and the mayor. Ultimately, a separate office working explicitly on human rights-related issues was established within the municipal administration. At present, the office designs and implements projects focused primarily on immigrant integration, in close collaboration with the municipal services.

In Utrecht, two senior policy advisors working on municipal policies for irregular migrants were among the first within the municipality to adopt a human rights perspective – long before the municipality adopted a more explicit and general approach as a 'human rights city'. In collaboration with municipal executives and council members, these policy advisors used human rights for policy development and innovation, including the development of the aforementioned 'bed, bath and bread' shelters for undocumented migrants. Together with a municipal councillor who proposed the development of an additional support programme,[778] these policy advisors further developed the municipal approach by providing legal support to – and personal development opportunities for – undocumented migrants. This approach, locally known as the 'fourth B' for 'Begeleiding' (Support/Guidance), has proven to be very successful, as "in their first ten years, Utrecht found solutions in 94% of cases in the form of a residence permit, voluntary return or restoration of the right to care within the federal asylum system".[779] Another example of their 'human rights-based policy development',[780] is the Utrecht-Refugee Launchpad which "enables an inclusive approach to facilitate

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776   The importance of such projects is discussed in Chapter IV in this thesis.
777   Interview #1 Sabchev, 19/12/2019, Italy
778   T. Scally. 2018 Initiatiefvoorstel Ontwikkelingsmogelijkheden voor Ongedocumenteerden
779   Sakkers and Baghi (forthcoming)
780   Presentation by I. Antonius, "Utrecht Refugee Launch Pad", 29.3.2017

integration of asylum-seekers in the municipality from day one".[781] This project, also known as 'Plan Einstein', aims to create a "combined learning and living environment for both refugees and the local community" that ensures a "future proof investment into the participants' lives, which could be built up in Utrecht or elsewhere if the asylum request is denied or when refugees may want to rebuild their home country when the war is over".[782] As explained by our interviewees, this project was inspired by human rights, and also highlights how human rights can be used to transform targeted projects for migrants into inclusive projects benefiting the local population at large. The same policy advisors are currently working on the development of a collective healthcare insurance and a city pass for irregular migrants staying in the municipal shelter, which will enable better access to healthcare and other services.[783]

In the Turkish context, a former employee of a prominent district municipality and the Union of Municipalities has been running a project that aims to develop the concept and practice of Human Rights Cities in the country.[784] The project is led by an INGO and a transnational city network that is known in Turkish municipalities. However, this particular individual and her pre-existing relationships – as well as the trust that she has gained in the field – have helped to make the relatively foreign concept of the human rights city more accessible, trustworthy and safe among municipal officials. Some interviewees who work in municipalities that participate in the project and in the Union of Municipalities, referred to the coordinator as "our (Name of Coordinator)",[785] despite the fact that she was employed by a foreign NGO. The project currently develops human rights indicators, trains municipal officials, and encourages member municipalities to pass local legislation announcing that they are human rights cities and to adopt human rights declarations. Even more important than these tangible outcomes, is the fact that this individual works to convince municipal officials from different localities across a wide political spectrum of the relevance, usefulness and the moral, ethical and legal value of human rights for local governance. The project includes a specialisation for refugees that many member localities voluntarily participate in, with the aim of applying the human rights city concept to their refugee policies.

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781   Website Compas Utrecht Refugee Launchpad https://www.compas.ox.ac.uk/project/utrecht-refugee-launchpad/

782   Project Website Utrecht Refugee Launchpad https://www.uia-initiative.eu/en/uia-cities/utrecht

783   Interview #1 Miellet 9/8/2019, Netherlands

784   Interview # 2 Durmuş, with the coordinator, 06/12/2018, Turkey; and Interviews #3 (04/12/2018, Turkey) and #4 (04/12/2018, Turkey) with officials of municipalities participating in the project.

785   Interview #5 Durmuş, 11/01/2019, Turkey.

Having outlined the importance of individual agency within local authorities, we move on to the question *why* the municipal officials from our examples decided to engage with human rights in the first place. Our analysis will further unpack why local government representatives and administrators 'use' human rights, highlighting reasons pertaining to individuals' background, motivations and interactions with others.

5.1 Individuals' Backgrounds

Firstly, human rights-related education, previous/ongoing professional affiliations or personal experiences were prevalent amongst those local government/administration officials who were most fervently championing greater respect, protection and fulfilment of human rights. In our example from Italy above, the civil servant who introduced human rights to the municipal administration and led the process of incorporating them into local policy-making, had obtained a Master in International Human Rights Law abroad, and collaborated with a human rights scholar widely known for his work as an activist.[786] Multiple local administrators in different district municipalities in Turkey had a background in working for women's rights organisations and NGOs before taking up positions within local authorities. Subsequently, they united in an NGO, while still being employed at their respective local authorities, aiming to realise their vision for a more institutionalised, participatory and rights-based local governance by providing training to civil society on how to engage with the local government and vice versa.[787] In Greece, municipal officials in key positions within the local government or administration were at the same time also active members of the Hellenic League for Human Rights – the oldest non-governmental human rights organisation in the country.[788] Finally, we also encountered cases in which, according to our interviewees, personal experiences with disability (e.g. developing impaired mobility or having a disabled child) had motivated local officials to incorporate a human rights perspective into municipal decision-making.[789]

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786 Interview #1 Sabchev, 19/12/2019, Italy; Fieldnotes #1 Sabchev, 21/01/2020, Italy.

787 Interviews #7 Durmuş, 23/12/2018, Turkey, #8 (15/12/2018, Turkey) and #9 Durmuş, 13/02/2019, Turkey/ United Kingdom. (Conducted with local officials of two municipalities from Istanbul who also have founded an NGO together to facilitate cooperation and interaction between civil society and local government).

788 Interview #2 Sabchev, 06/02/2019, Greece.

789 Interview #2 Miellet, 10/12/2018, the Netherlands, Interview #6 Durmuş, 24/01/2019, Turkey.

5.2. Individuals' Motivations

The background and experiences described above shaped how interviewees 'encountered' human rights, but they also pointed to other motivations. The interviewees used and valued human rights intrinsically and instrumentally. Some municipal officials perceived direct municipal human rights obligations, even if the nature of these obligations (shared/complementary/conflicting) was itself contested locally.[790] One Dutch policy maker explained that whilst the municipality's divergent approaches to irregular migrants were sometimes interpreted by others as stemming from "leftish humanitarianism" and featuring municipal disobedience, they perceived themselves as respecting a human rights obligation that is "binding for each and all". She explained that they therefore challenged being labelled as 'rebellious', and also learned that they would consequently be able to mobilise more support within the municipality for these local policies.[791] Human rights were also generally valued as a unifying force[792] that criss-crosses various policy domains[793] and political agendas[794], while several of our Turkish interviewees also saw it as beneficial to the professionalisation of local authorities.[795] One Dutch municipal councilor explained that human rights had helped her navigate gendered power dynamics within the municipal council, which she described as 'male-dominated', after some of her colleagues had accused her of being too emotionally involved. She explained that human rights provide a 'moral compass', but also a neutral and professional language to address difficult topics, such as the forced return of refused asylum seekers, without being accused of being too emotionally invested.

Finally, some of the municipal officials we interviewed expressed a keen interest in theorising human rights locally, because they had been – or were at the time – involved in research on localisation. In addition, some expressed 'ownership over human rights localisation'.[796] One civil servant, for instance, had engaged with human rights from both

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790 Interview #3 Durmuş 04/12/2018, Turkey; #3 Miellet, 21/11/2018 Netherlands, Interview #5 Miellet 7/6/2019, Netherlands.

791 Interview #1 Miellet 9/8/2019, Netherlands.

792 For a similar understanding of the potential of human rights, see in Hardy, Dave, and Renske Steenbergen. 2012. Goed bezig: de betekenis van mensenrechten voor gemeenten. VNG and Amnesty International (The Hague and Amsterdam).

793 Interview #4 Miellet 8/5/2019, Netherlands.

794 Interview #5 Miellet 7/6/2019, Netherlands.

795 Interviews #2 Durmuş 06/12/2018, Turkey; #3 Durmuş, 04/12/2018, Turkey; and #4 Durmuş 05/12/2018, Turkey.

796 Interviews #7 Durmuş, 23/12/2018, Turkey; #8 Durmuş, 15/12/2018, Turkey; and #9 Durmuş, 13/02/2019, Turkey/United Kingdom (with municipal officials who co-founded an NGO conducting research and advocacy on localisation (of human rights), expressing full ownership on the issue.

an academic and practitioners' perspective in the past, and perceived human rights as "her thing" within the municipality; she was strongly convinced that a "serious" approach to human rights implementation at the local level can produce positive results.[797]

5.3. Interactions Between Individuals

The third motive behind engagements with human rights of municipal officials and administrators consisted of interactions among individuals. Dependent not only on structural opportunities but also on chance and coincidence, individuals are able to find and connect with each other, combine their understandings of human rights and its local relevance, and initiate collaborations based on shared motivations, interests and values.

Interactions can take place both within a single municipality, between municipalities within the same country, or even transnationally, beyond state borders. Starting with interactions *within* a municipality, the 'story' of human rights incorporation into migration policies in the Dutch municipality of Utrecht illustrates how human rights perspectives are tied to personal background and motivations, but also altered through interactions with colleagues. One of the senior policy advisors working on introducing human rights perspectives into migration policies explained that for her, human rights were first and foremost a 'moral duty'. This was due to the fact that one of her relatives was involved in a renowned act of the Dutch resistance during World War 2, which, she explained, resulted in a 'heavy moral inheritance'. When a new colleague, a trained public international lawyer, joined their team, this colleague "gave them a piece of her own mind" regarding their understanding of human rights, and made them more attentive to human rights laws. This, in turn, strengthened the overall human rights basis of their approach to irregular migration.[798]

Moving on to interactions between individuals across municipalities, formal and informal networking as well as close personal connections allow individuals to encounter human rights as norm, value, or governance tool. When asked why certain municipalities are more proactive in developing human rights-inspired projects for refugees, interviewees from Turkey referred to a capacity development programme conducted in cooperation with Swedish and Dutch associations of municipalities during the EU accession process, in which a selection of Turkish mayors conducted educational visits to European localities.[799] A mayor that had been inspired by his visit decades ago, was still being referred to by his peers and municipal employees as a

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797   Interview #1 Sabchev, 19/12/2019, Italy.
798   Interview # 1 Miellet, 9/8/2019, Netherlands.
799   Interview #2 Durmuş, 06/12/2018, Turkey. This confirms key findings of Babul 2017.

"visionary".[800] The mayor went on to create the country's first municipal "community centre", which offered services tailored to the needs of vulnerable groups, in line with the principles of universal, free, equal access.[801] It is thus important to bear in mind the role of interactions between individuals who (re)introduce the relevance and utility of human rights – ranging from interactions in the close quarters of a single municipal department, to those across geographical, institutional and sectoral boundaries.

In summary, individual agency within local authorities mattered for the effectiveness of human rights in all country contexts that we studied. In most cases, local representatives and administrators brought human rights to the city level in the form of discourse or practice incorporated into municipal policy-making. In other cases, they applied human rights as a legal tool to justify their inclusive approaches towards refugees and undocumented migrants. Finally, our data suggests that the reasons behind the individual agency's mobilisation as a local human rights carrier may well originate from experiences and encounters distant in time and space – such as one's education, previous work experience, or even a single meeting at a conference abroad.

6. Discussion

The fundamental role that individual agency can play in opening a city's 'gates' and introducing human rights brings to the fore a number of opportunities and pitfalls, both in terms of strengthening human rights effectiveness and in terms of studying it. In some local authorities, such as in our example from Italy, an individual engagement with human rights eventually led to institutionalisation in the form of the adoption of strategies, and to the establishment of task forces or offices developing human rights-inspired migration policies.[802] In others, such as in the Greek and Turkish context, human rights practices remained ad-hoc and driven by a single or few individuals. Several Turkish interviewees, for instance, expressed their concern with the sustainability of human rights approaches in the field of migration governance, as decisions regarding institutionalisation were "between the two lips of the mayor".[803] Institutionalisation of human rights within local authorities thus varies greatly from one place to another. That

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800   Interview #4 Durmuş 05/12/2018, Turkey.

801   Ibid.

802   Interview #1 Sabchev, 19/12/2019, Italy.

803   Interviews #5 Durmuş, 11/01/2019, Turkey; #6 Durmuş, 24/01/2019, Turkey; and #8 Durmuş, 15/12/2018, Turkey.

said, concerns regarding the lagging institutionalisation of human rights were also seen as acute and raised by administrators in a Dutch municipality that explicitly adopted the 'human rights city' label.[804]

The potential consequences of such concerns remaining unresolved are yet to be understood. What happens when public officials grow tired of them and become frustrated with enacting human rights-based policies in an ad-hoc manner? Some have suggested that municipal human rights practices may start to dissipate in the face of such challenges.[805] Within trans-municipal networks[806] and during international workshops[807] on 'human rights in the city', the question of how to institutionalise human rights within the local administration and government remains a common theme.[808] It is important to note, however, that participation of municipal officials and administrators may be limited or enabled due to their personal background, (language) skills and agendas, and is also dependent on support and resources from the municipality.[809] Support towards facilitating such interactions between individuals is therefore not only important for the dissemination of local human rights-based policies, practices and discourses, but also for the contestation and development of the future relationship between local authorities and human rights.

The contribution of individual agency to the effectiveness of human rights at the local level – regardless of whether institutionalisation is achieved – merits attention as well. Individual agency can help change the perception of human rights as being something 'foreign', by ensuring more localised understandings of human rights, and therefore increasing the ownership it enjoys.[810] This local contestation of human rights also challenges human rights to be more reflective of local concerns.[811] In addition, individuals are the driving force behind the dissemination of ideas and practices in relation to human rights at the local level, increasing their prevalence and reach around

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804 Interview #5 Miellet, 7/6/2019, Netherlands.

805 Just 2018.

806 See for instance the expert session at the World Human Rights Cities 2019; expert opinion of Jeong Yeong-sun that addresses institutionalisation http://www.whrcf.org/bbs/download.php?bo_table=eng_p4_05&wr_id=137&no=0

807 See for instance: the workshop organised by the municipality of Cologne and Amnesty International: Menschenrechte in der Stadt', 12 & 13 December 2019

808 Efforts to institutionalise the Human Rights City have led to the creation of the "Human Rights Cities Network": See https://humanrightscities.net/

809 In Interview # 4 Durmuş, the municipal official expressed challenges with time (workload), language and access to be able to follow international and trans-municipal normative development on human rights and the city.

810 Journal of Legal Pluralism Special Issue Vol.51(2) 2019.

811 De Feyter 2011.

the world.[812] Human rights in the city, and human rights for local migration policies, thus become "coalition magnets"[813] bringing diverse actors and stakeholders together, mobilising them around a common agenda.

In cases where individual agency leads to higher institutionalisation, how does this affect the exercise of individual agency? It may seem a long way off, given that institutionalisation is generally lagging, and given that the concerns about the sustainability of local engagements with human rights loom large. However, it is important to examine how the local institutionalisation of human rights may shape the future involvement of practitioners, such as municipal human rights 'users'. What if human rights, instead of remaining a 'hobby of the few',[814] become increasingly embedded and mainstreamed into local policy-making? New local government officials and administrators would then enter a setting in which human rights already form part of the 'opportunity structure' in the form of established 'practices', such as previous experiences with human rights-based policy developments, institutions and artefacts, such as awards for past achievements in the field of human rights. To draw on Eleanor Roosevelt's metaphor of the curious human rights grapevine[815]: Human rights will always need individuals to carry their seeds to places and to nurture them as they grow and develop, but how will such acts of diffusion and localisation be altered when more people become involved, over a longer period of time? What this means in terms of the effectiveness of human rights requires further consideration. In this scenario, 'new' human rights 'users' may encounter the roots of previous (and perhaps failed) attempts to adopt a human rights-based approach, or alternatively, come across already flourishing grapevines and their 'caretakers', proudly and perhaps competitively watching over them. How this will shape future efforts, motivations and interactions between individuals within local authorities who are interested in contributing to the effectiveness and localisation of human rights, is a question that is best answered in conversation with these practitioners.

At the same time, the effect of such 'human rights residue' also brings us to the academic field, by raising questions regarding the limitations of the explanatory value of individual agency as a concept. It is therefore important that scholars who are interested in this debate reflect critically on the interactions between individual agency and structure, which could either facilitate or sabotage human rights localisation attempts. In focusing

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812 Brysk 2019, Risse & Ropp 1999, Durmuş 2020.

813 Beland and Cox 2016.

814 Philipp 2017, p.35.

815 Korey 1998. As Korey 1998 observes Roosevelt invoked the metaphor of a 'curious grapevine' in 1948. The political and institutional implications of this invocation have been a topic of debate on scholars researching the ethnography of transnational human rights norms.

on the level of the individual, we highlighted underlying elements such as background, motivations, and interactions with others that enabled individuals to come into contact and engage with human rights. However, a different level of analysis could reveal the macro and/or meso level actors, structural factors and corresponding "pathways of influence"[816] that operate in parallel with – and reinforce – bottom-up initiatives led by individuals. For instance, international institutions, transnational campaigns, and an active local civil society, among others, can strengthen the effectiveness of human rights at the local level by pressuring national and local authorities to adopt human rights-based policies.[817] In this sense, background, motivations and interactions underlying individual agency can be considered to constitute 'micro-pathways of influence' and complement the existing literature on the socialisation of human rights on a larger scale.[818]

Having clarified this limitation of our micro-level focus, we move on to the contributions of this study from a scholarly perspective as a final point in our discussion. Firstly, while our study is strictly exploratory, it seeks to move beyond the descriptive accounts of individual agency, such as those focusing on specific individuals like mayors.[819] By foregrounding the *actions* produced by these individuals, rather than their formal roles – as is common in actor-centred perspectives – we also acknowledge that their involvement is multifaceted, and that some of them have multiple affiliations (e.g. combining work in a municipal council with work in advocacy or for human rights organisations). In doing so, we follow the examples of Shawki (2011) and Desmet (2014), but also widen their scope in two ways: by examining the involvement of a broader range of individuals within local authorities, and by bringing to light the importance of micro-pathways of influence (based on experiences, motivations and interactions). In addition, the concept of individual agency facilitates attention to interactions, allowing us to investigate if individuals act independently and proactively, and whether they do so alone or with the support of strategic partners. By choosing this approach, we recognise that the environment *within* local authorities in which public officials operate is different than the one in civil society. This, in turn, calls for the development of a new context-sensitive concept, rather than for stretching already-existing concepts, such as human rights translators.[820] While acknowledging the added value of the alternative notion of human rights 'champions'[821], we consider its application to be narrower than

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816   Brysk 2019.

817   See Chapter IV.

818   Brysk 2019; Risse, Ropp and Sikkink 1999; Finnemore 1993; Ikenberry and Kupchan 1990; Schimmelfennig 1994.

819   Ward 2016.

820   Neubeck 2016.

821   Neubeck, 2016, p.63.

the one of individual agency. We also believe that it is linked primarily to the symbolic dimension of human rights, and by extension to discussions on the 'marketisation' of human rights.[822] Lastly, the focus on individuals working *within* local authorities complements previous studies[823] by showcasing that individuals matter, even – or perhaps especially – if they find themselves in positions of relative power, working for institutions that have formal human rights obligations. Regardless of any formal legal obligations, individual agency is a factor behind human rights gaining ownership, and behind increasing human rights effectiveness.

7. Conclusion and Future Research

The insights emerging from the recent scholarly interest in human rights cities serve as a good reminder that applying novel approaches and concepts in human rights research can yield promising results. The gradual shift in the study of human rights effectiveness – from the formalist and state-centric macro level to the more complex and pluralist meso level – should, in our opinion, continue on its present course to the next logical step: the micro level of the individual within concrete local contexts. The individual agency concept that we introduce in this chapter can be viewed as one of the steppingstones in that direction. Without underestimating the role of state, non-state and sub-state actors, as well as structural factors, we have argued that individual agency should be added as one of the elements that can contribute to human rights effectiveness – by incorporating human rights as law, practice and discourse into local policy-making. While providing a comprehensive theorisation of why certain individuals have engaged with human rights at the local level is beyond the scope of this paper, our analysis leads to the suggestion that the reasons thereof relate to a variety of experiences, motivations and interactions.

Furthermore, human rights have long been implemented and studied on the basis of frameworks characterised by a high level of generality and focused on state compliance. Only recently has this started changing through the process of human rights localisation. The assessment of effectiveness, however, necessitates socio-legal analyses to further unpack essentialist understandings of the 'state' and of 'local authorities'. In our view, individual agency serves as a bridge connecting the general and specific aspects – both from a theoretical and a practical perspective. As a concept, it adds a missing piece to the puzzle, by distilling the role of individuals in realising human rights, thus paving the way towards advancing our understanding of how human rights are invoked and

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822 Immler and Sakkers 2014.
823 Koh 1996; Berman 2007.

become relevant 'on the ground'. In practice, it navigates and contests human rights norms and ideas, transforming them into innovative policy solutions that can contribute to remedying the implementation gap.

Based on this twofold value of individual agency and in addition to the conceptual challenges already addressed in the previous section, we put forward several suggestions for future research. Firstly, we recommend that future studies shed light on any explanatory mechanisms linking individual agency and human rights effectiveness. Rather than just confirming the assumption that individual agency plays a role in the effectiveness of human rights, we suggest that scholars and practitioners also examine the consequences related to this finding – including the question of sustainability. Secondly, all but one of the municipalities incorporated in this study were urban. Additional research is needed to confirm or reject the relevance of individual agency for the implementation of human rights-based local initiatives in rural settings and in other policy areas (e.g. poverty alleviation, youth policies, etc.). Finally, we suggest that future studies provide a comparative perspective on the role of individual agency in strengthening human rights within highly institutionalised contexts at the local, national and international levels. Ultimately, this can contribute to revealing whether there are certain elements that make the local level a particularly fertile ground for the symbiosis between individual agency and human rights effectiveness highlighted in this paper.

VI

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VI

CHAPTER VII

CONCLUSION

The phenomenon of local government engagement with human rights and migration, in ways that would fall under the scope of engagement with international law itself, is ubiquitous. This research has shown that this engagement takes places in scales ranging from the micro of the individual level to the grand macro scale of the development of global norms. This engagement happens both in forms foreseen by the law, such as the implementation of international human rights law in the domestic context as state organs; and in forms not observable by legal methodologies alone, such as the defence, diffusion and contestation of the content, the observance of, and the adoption processes of norms on human rights and migration.

In answering the central question of how and why local governments engage with human rights and migration (as sub-fields of international law) in ways that break free from the confinements of a state-centric world order, this thesis has zoomed in on six sub-questions answered in six consequent chapters. First, Chapter II has answered the question of "SQ1: *How do local governments across the world currently engage with human rights and migration*?" by offering a general overview – in form of a typology – of local governments' engagement with human rights. The examples of engagement with human rights mostly fell in the field of migration, but human rights as a sub-field of international law was foregrounded with considerations towards the readership of the journal. This typology offered six ideal types of engagement. The first type, the *Formation of Human Rights*, reflected local governments' practices in participating in mainstream, state-centric forms of law-making at the international level. The second type, the *Implementation of Human Rights* in turn reflected the "law-taking" as opposed to "law-making" role of local governments, in realising the international human rights norms as part of their domestic sub-state obligations. The third type of engagement, the *Coordination of Human Rights*, demonstrated the results of a turn to horizontal forms of governance in the 21st century, pointing towards the central role of local government as a facilitator and convener of a local network of actors and stakeholders who then, through a deliberate or organic division of labour, take on tasks to realise human rights on the ground. The fourth type of engagement described was the *Defence of Human Rights*, in which fell behaviour of local governments that resembled civil society and non-governmental organisations – or their "non-state" character. Here, examples were offered on local governments at times voicing opinions against their own national governments' political and legal positions, prima facie in "defence" of human rights. The fifth type of engagement constituted the *Diffusion of Human Rights*, which crystallised the role local governments play in the advocacy, the spreading, the vernacularisation and the socialisation of norms, both of their own production and those already established and formulated in a certain form at the international level. Local governments fulfil this role at every level – international, transnational, regional, national and local – while individuals within and affiliated with local governments play this role at the micro level.

Finally, the fifth type of engagement identified was the *Contestation of Human Rights*, both in its primary and its secondary norms. Here, local government practices challenging the very fundaments of human rights, such as the actors involved in and the processes of its generation and the very content of internationally agreed upon or local government-authored new human rights norms found their place.

Chapter III consequently zoomed in on one particular way in which local governments engage with human rights and migration: norm-generation. In answering the question "SQ2: *How and why do local governments and their transnational networks engage in norm-generation in international law?*" the Chapter focussed on the collective jurisgenerative activities of local governments, both in their institutionalised transnational city networks and their less institutionalised conferences, independently from their respective national governments. This Chapter, in answering the "how" of its sub-question, identified two main *modes* of norm-generation by local governments: (1) (seeking) participation in mainstream state-centric law-making processes, and (2) making norms in their own local-government-centred fora (both more and less institutionalised settings). With the help of an initial mapping of the jurisgenerative activities of local governments as a background for this Chapter, three case studies were selected: the local governments' engagement in the UN Habitat programme and process (Mode 1), the European Charter for the Safeguarding of Human Rights in the City (Mode 2), and the Mayors' Marrakech Declaration in relation to the adoption of the Global Compact for Migration (Mode 2). Through the analysis of these three divergent forms of jurisgenerative engagement, four functions – or the "why" of norm-generation by local governments – were identified: The external function of such practice is to communicate to the rest of the international community the expertise and political position of local governments, while also demonstrating a fluency and competence in the form and language of international law – the lingua franca of global governance. The internal function of norm-generation is perhaps the primary function of all norm-generation: behaviour regulation. This function of norm-generation by local governments shows their ability and willingness to enter into quasi-legal commitments that would then shape – and limit – their future behaviour. The horizontal function of norm-generation by local governments on the other hand, focussed on the importance of normative processes in transmunicipal organising: normative processes and normative documents act as a "coalition magnet"[824] for local governments around which to rally. Normative documents expressed in the language of international law crystallise local governments interests in a succinct and at times manifesto-like manner, concretising the ideals, values and goals of the coalition. Finally, the integrating function of norm-generation unearths how local governments' norm-generation often draws from a diverging range of different sub-branches of

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824   Béland and Cox, 2016.

international law, integrating them into more practicable and simplified guidelines or toolkits for local governments, rather than the abstract, legalistic and fragmented legal sets of norms they might have previously seemed to be.

While Chapter II and III focussed on local governments engagement with human rights and migration at the transnational scale, Chapter IV finally moved our focus to the engagement at the local scale – notwithstanding interconnectivity and mutual influences between the actors and processes of the different scales. Chapter IV explored how norms and practices on human rights and inclusive local migration governance have spread and taken root among Turkish municipalities in a context of no legal coercion to engage with such policy-making, answering SQ3: *"Why and how do certain local governments in Turkey come to engage proactively in policy-making that improves the realisation of refugees' rights?"* In an environment of legal ambiguity, a lack of clear (or any) legal obligations with regards to non-nationals, high demands on the ground, and low capacity, numerous Turkish municipalities nonetheless engaged in policy-making in favour of refugees and undocumented migrants, effectively contributing to the on-the-ground improvement of their human rights situation. Chapter IV explored how this came to be and identified the following four elements which were determinant of whether or not a municipality would engage in such voluntary proactivity. The first factor was their institutional capacity, including available budget, data, personnel, and know-how on working with vulnerable groups or rights-based governance toolkits. Most engaged municipalities were those who had previous experience with projects, often funded externally, in which they engaged in more institutionalised policy-making, with results measured in benchmarks. The rare benefit of the availability of data, mostly self-collected by the municipality, on the refugees and undocumented migrants in their territories, also seemed to make a significant difference on whether they would engage in policy-making for this demographic. The second factor was the availability of cooperation with other actors. Often, city networks, Turkish and foreign NGOs or international organisations approaching the municipality in order to initiate a possible collaboration or participation in a larger project were municipalities' first moment of contact with rights-based governance or the norms and practices on the "good governance" of migration, reception and integration. The third factor making a local governments proactive engagement with refugees and undocumented migrants more likely was whether they had been at the receiving end of the information transfers taking place in the web of dissemination of the good and rights-based governance of the presence of refugees and undocumented migrants at the local level. Such dissemination pathways were, for instance, local NGOs or academics with ties with municipal officials, city networks the municipality was in, access to conferences and resources in the field. Notably, another important factor in having the privilege of being part of such dissemination networks was city networks, IOs, INGOs and other stakeholders preferring to reach out to

those local governments with previous experience and engagement in rights-based or otherwise proactive local migration policies, with new information, projects, trainings and developments. Thus, those who were already engaging became more embedded in dissemination and cooperation networks, while others often stayed in the dark.[825] – often due to previous engagement with them. In this aspect, it became clear that key individuals with ties to multiple organisations and networks were crucial to spreading such norms, practices, information and the arising culture of good and rights-based migration governance. Finally, some local governments, despite all other factors being favourable to their proactive engagement with policy-making in the field of refugee reception and integration, were observed to be hesitant if there simply was no political will for this engagement, especially at the top of the municipal administrative hierarchy. For instance, if the Mayor or Vice-Mayor believed refugees and other migrants were undeserving of municipal support and services, or if they believed such tasks to be strictly in the competence of national governments, they had the power to effectively hold back the entire municipal administration from providing any services other than those unavoidable, to the undesirables of the town. This happened even in some towns led by Mayors who presented themselves as "social-democrats" either directly or through party affiliation. This final point demonstrated the necessity of both a higher level of institutionalisation (and therefore also lesser reliance on the proactive leadership of the Mayor/Vice-Mayors in the municipality) and the necessity of clear national policies and laws that assign tasks to local governments, making it effectively impossible to completely ignore the refugees and migrants in their territories. Nonetheless, this Chapter demonstrated many factors that could have relevance not only in other centralised countries in the world, in which local governments have little to no obligations in the field of migration and integration, but also in country contexts with often larger-than-anticipated discretionary spaces available local governments in this field.

This leads us to the focus of the following Chapter (V). This Chapter, based on data collected from Turkish as well as Swiss settings, explored the role of national-level regulations in shaping the (in)activities of local governments in taking boundary-defying proactive steps in the field of urban citizenship. Sub-Question 4 was at the centre of this Chapter: "SQ4: *How do local governments develop proactive urban citizenship practices in favour of refugees and undocumented migrants in high- vs low-regulation contexts?*" This Chapter used the concept of urban citizenship for the purposes of distinguishing the many regulated tasks Swiss local governments had in serving the refugees and other migrants

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825   There were, of course, exceptions to this. IOM's project of "One-Stop Shops" for migrants at local government facilities purposefully targeted local governments more in need of knowledge and perhaps socialisation on rights-based and good local migration practices, rather than those already displaying know-how.

in their local governments who are recognised and more or less accepted within the nation-wide asylum or migration system, to their engagement in practices seeking to include and improve the rights-realisation of persons present in their territory who are undocumented or otherwise "unwanted" by the State. This Chapter also developed a theoretical framework of regulation (Chapter V, Graph 1) which included the concepts of discretionary space, competence area (of local governments), legal ambiguity, and regulation itself. This framework was used to identify the Turkish and Swiss contexts respectively as low-regulation and high-regulation contexts, on the basis of the following three measurements:

i. The presence of national (and regional, if that governance level is available) laws as well as regulations on the concrete competences and obligations of local governments in the realm of migration and integration, at times even concretised by benchmarks

ii. The presence of a clearly allocated and sufficient budget dedicated to the above-described competences and obligations

iii. The presence of a clear and structured division of labour between different branches and levels of government (local, regional, national) in the field of migration and integration

Chapter V then demonstrated how the high- vs low-regulation contexts of Turkey and Switzerland seemed to influence the engagement of local governments with urban citizenship in the following four ways: First, the regulatory context affected how local governments perceived the availability of their own discretionary spaces and the sizes of their competence areas. Regardless of how much competence they objectively had in the field of migration and integration, local governments seemed to perceive that they had smaller competence areas and available discretionary spaces if they operated in highly regulated contexts. One could say that if deeply regulated, local governments did not seem to appreciate or truly take up their competences in the field. On the other hand, the legally ambiguous Turkish context allowed for local governments to feel free and creative in developing policies in the field of migration and integration. Second, local governments in the highly regulated context seemed to prefer legal (meaning: foreseen by the legislator) forms of discretion rather than extra-legal ones (those in the grey zones between legally and illegality, falling under unforeseen types of the usage of discretion). The high regulation contexts forced local governments to take many measures in initiating, proposing, enacting, conducting and finalising policies, often engaging in elaborate legal argumentation. Third, local governments in the high-regulation context tended to engage in dividing and categorising individuals in their

territory according the legal status, often following the national and regional regimes. On the other hand, the low-regulation contexts were more conducive to the development of urban citizenship practices that included the provision of services to person without asking for or even knowing their legal or economic status. Finally, the direction of the engagement with urban citizenship seemed to be affected by the regulatory context. Municipalities in the high-regulation context of Switzerland often found that their best bet was to organise horizontally (and formally so) and then seek to make changes in the laws and policies of the higher levels of governments, than to just undertake boundary-defying practice within their territories at the local level. Meanwhile, local governments in the low regulation context of Turkey could often simply do what they desire without a need or interest in changing the regulations "above". This Chapter showed overall that (comparative) research into the different domestic regulatory settings within which local governments are operating is crucial as part of the enterprise of understanding when, how and why local governments engage in activities that seem to defy the boundaries of what is expected of them by international or constitutional lawyers.

Finally, Chapter VI zoomed in on the smallest unit of analysis within the scope of this research – the individual – tackling SQ5: "*How does the exercise of individual agency by public officials within local authorities contribute to the effectiveness of human rights in local migration governance and why do certain individuals exercise that agency?*" As hinted at above, the role of individual agency had arisen from my field research, just as it had emerged in the fieldworks of my fellow researchers from the Cities of Refuge project. Together, after demonstrating examples from our data of the *how*, we attempted to reach an initial understanding of *why* certain individuals within the local government administration became the triggers in the process of their local governments developing welcoming and rights-based policies for refugees and migrants. We identified that these individuals themselves were shaped by their (educational, professional, personal) backgrounds, their personal motivations, and the dissemination networks they were in, which then in turn enabled and encouraged that individual in becoming a norm entrepreneur or an initiative-taker within their organisation, leading to their local government becoming a more welcoming one or perhaps a "human rights city". For instance, individuals with disabilities or with disabilities in their families seemed more sensitive towards policies for vulnerable persons. Individuals with an education in human rights, or engaged in civil society or networks with a pro-social element were also likelier to apply or transfer their interests to the field of local migration governance. Individuals located in key positions with access to multiple scales of norm-generation and governance

(local; regional; national; trans-, inter- or supranational) or multiple types of sectors (government, academia, civil society, business etc) also acted as key "people in the middle"[826] disseminating norms and practices in their multiple habitats.

These chapters, together, showed *that* local governments engage with human rights and migration, notwithstanding these fields' traditional categorisation as matters of *international* law, and therefore not a concern of local governments. The chapters also illustrated *how* local governments engage; individually and collectively; legally and extra-legally; in their locality, in their regional and national collaborations, in their networks and in international conferences of city-centric and state-centric international law and governance mechanisms; through legislation, discourse, governance, politics, and diplomacy. The chapters demonstrated that local governments form and are parts of "norm-generating communities"[827], or "law-makers" as well as "law-takers"[828] (Chapters II, III and IV). The chapters showed some of the vast levels of awareness, eloquence, fluency and competence normative communities of local governments and those working closely with them can display in engaging with international law (Chapter III). The chapters have also garnered focus on the risks and shortcomings of assuming a natural competence and capacity of all local governments – everywhere – to be able to engage with human rights and migration with the level of fluency some individuals, communities and institutions display (Chapters IV and V). This thesis has critically engaged with the divergence of local government capacities, the access they enjoy to networks and resources, and the significant impact different domestic regulatory regimes can have on their engagement (Chapters IV and V). Finally, and perhaps most crucially, this thesis has explored why, especially in contexts of limited, ambiguous, or no legal coercion upon them, local governments, often through key individuals triggering them, *choose* to engage in progressive ways with human rights and migration, taking up responsibilities that could easily be left untouched, and as a result end up significantly improving the lives of people living in their jurisdiction (Chapters IV and VI).

There are however, between the lines of these conclusions, some further, perhaps more implicit, overarching takeaways that need further elaboration. The first of such overarching takeaways, is the relevance and efficacy of a combined application of interdisciplinarity and legal pluralism in legal, particularly international legal scholarship. This is because, I argue, there is value in looking at norms and normativities as a whole, without distinguishing between law and non-law. Of course, this is not to say that this distinction, and legal positivism, should be abandoned altogether. Rather,

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826 Merry, 2006b.
827 Berman, 2006.
828 Gal-Or et al, 2015.

in the relationship between law and society, and particularly in fields of law such as international law in which the distinction between law and non-law, subjects and non-subjects, and the (democratic) legitimacy of norms is even more blurry, there is such a rich world of actors and processes that formal positive legal norms and recognised subjects remain an even smaller portion of the whole picture. In addition, due to the lack of a central enforcement system in international law and the overall problematique of compliance, ownership of actors over the norms that we wish to govern the world and their voluntary engagement and compliance with them is highly valuable. What is more, the research field of local governments and international law is itself a developing area and the norms that govern the practice are less clear and binding, therefore more in the realm of the social sciences than the realm of law, upon the spectrum[829] of normativity. As binding, positive legal norms have their roots in earlier stages of proposal, advocacy, contestation and other social, political and discursive practices, observing these processes that fall perhaps more under the realm of social sciences allows legal scholars to notice early on the current and expected developments in the law of local governments and international law. Furthermore, when we take a step back and consider the euro-centricity of the scholarship on local governments and human rights, we will notice that a significant population of the world lives in centralised countries in which the competences of local governments are limited, especially in the field of human rights and migration. The majority of the world's local governments, I would argue, also enjoy much fewer resources and access to the latest developments in local migration and rights-based governance. Since they are more excluded from many policy and academic debates on the interrelationship between local governments, human rights and migration, there would be, in practice, fewer, or different norms governing their practice in this area. Meanwhile, the vast majority of refugees in the world are hosted in developing countries immediately bordering conflict zones, not in the West. It is precisely in these contexts, such as the Turkish one, of low resources but high demands on the ground, that experiments, new practices, and norms emerge, along with an important amount of governance and crisis-management experience, which can be an untapped resource of fresh knowledge produced on the norm of good local human rights and migration governance. Thus, it is perhaps just as valuable to hear the contributions and expertise of such local governments in the development of international or transnational norms on the local realisation of human rights or good local migration governance, as it is to hear from central governments and state-centric international organisations. For social scientists, such contexts of low-regulation and lower resources can be incredibly rich with diverse sets of norms and practices governing behaviour,

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829   Weil, 1983.

with most norms compelling, rather than coercing actors to act. This interdisciplinary research can contribute immensely to the legal philosophical and legal sociological debates on compliance, socialisation, and the value and effectiveness of law.

Moving the focus from interdisciplinarity to legal pluralism, this thesis has demonstrated that a rather uncommon, more minority understanding of legal pluralism advocated for and practiced by the scholars of the ("New") New Haven School[830] of international law and relations, which does not centre itself on the research of distinct and parallel legal or normative systems,[831] but on the pluralist normative worlds that show a single, complex, multi-faceted, diverse and multi-layered system of norm-generation. As such, this thesis connects insights from the old New Haven Scholars on international relations,[832] Koh's work on "transnational legal process",[833] Berman's understanding of "global legal pluralism"[834] and Levit's "bottom-up international law"[835] with the study of local governments, human rights and migration. I argue that this understanding of legal pluralism is very useful for international legal scholarship as it facilitates the understanding as relevant to the legal universe the norms in a given community in stages of proposal, contestation, development, negotiation, advocacy, crystallisation, legalisation and further contestation. This truly facilitates research on the "frontiers of international law", the most cutting-edge developments pluralising the community of "international actors" and the conglomeration of "international norms" as we know them. Research on these subject-matters is already quite common in international legal research, but often with anecdotal evidence and without the rigour of proper empirical methods. Interdisciplinarity and a deep understanding of legal pluralism can help us remedy that.

Another overarching takeaway from my research and from the findings of this thesis is that all local governments are equal, but some are more equal than others – to paraphrase George Orwell. As already mentioned in the paragraphs above, there are vast differences between local governments across the world: depending on the State in which they are based, the domestic legal regimes, their former legal status within their Status (fi Kanton-Städte vs cities in Switzerland, district municipalities vs metropolitan municipalities in Turkey), whether they have two (Sisli) or several tens of thousands (Vienna) of personnel working on human rights and migration, what data and information they enjoy, their proximity and ease of access to money, regional and

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830   Koh, 2007.
831   Merry, 1988, p. 870; von Benda-Beckmann, 1997, p.1.
832   Such as Myres McDougal, Harold Lasswell, and Michael Reisman.
833   Koh, 1996.
834   Berman, 2007.
835   Levit, 2007.

transnational city networks and international organisations, and many more factors. They may also have highly cosmopolitan and left-leaning constituencies (Zürich) or constituencies with a very high suspicion in public bodies, in an economic crisis, in poverty and highly xenophobic (almost all Turkish local governments currently). They may enjoy access and membership to dozens of transnational city networks, host a network or two, and therefore be able to ensure that the network(s) are aware of their particular interests and challenges (Barcelona), or they may have never heard of the networks that are meant to represent and support them. Stakeholders working in this field must work to become and remain aware of this incredible disparity between local governments, and put serious resources into work in order to reach the disadvantaged local governments and engage with, support, hear from, train and understand them, instead of continuing to engage within the echo chambers consisting of the same cities and the same individuals. Just as importantly, international legal scholars and practitioners, such as those in the United Nations Human Rights Council, the Council of Europe Congress of Local and Regional Authorities, and the EU Committee of Regions, need to be very aware of these disparities when reporting, making and proposing norms and policies, and especially obligations and standards towards "local governments as such". I have attempted to contribute to this by researching on the Turkish case in this thesis as well as sustaining a critical lookout for inequalities in access of opportunities throughout my research on the transnational arena. Nonetheless, the scholarship, including this thesis, remain extremely euro-centric. Engagement with and collective knowledge production should be encouraged between communities of scholars and practitioners in the field in Africa, Asia, the Americas and Europe. Currently, while there is a lot of practice among African cities, and a burgeoning practice in Asia led by South Korean and Indonesian cities, the dialogue between knowledge communities and international scholarship on these areas is highly limited.

Moving away from overarching takeaways into more specific conceptual and theoretical contributions of this work, I propose that the concept of "engagement", mapped in Chapter II in its different forms, is a valuable analytical tool in studying the relationship between local governments and international law as well as international legal fields and topics. "Engagement" allows for the inclusion of both legal and extra-legal relationships local governments form with social constructs that are often thought of as existing in an international plane.[836] This concept also allows the inclusion of the different kinds of relationships formed between local governments and international law in different scales, or outside of the scalar, dimensional, or "multi-level" governance altogether. For example, the "Contestation of Human Rights" as a type of *engagement* conceptualised in Chapter II includes the challenges local governments pose to the system of international

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836   Incidentally, this term is also used by Heffes, 2020, in relation to non-state armed groups.

law both from their activities in the local level and from the transnational arena. In fact, it does not matter, for the purposes of that context, where or at what scale the practice is taking place, rather the focus is on what it means and does to international law. This focus, which was in line with my research interests as an international lawyer, is only one of many rationales one pursue in conceptualising and utilising the concept of engagement.

A further contribution of this thesis is to the literature on socialisation, particular socialisation on and through human rights norms. Most of this earlier literature tends to be quite state-centric, focussing for instance in states being pressured to commit to and ratify international human rights treaties.[837] There is also, especially in earlier but most fundamental literature such as the Introduction[838] to Risse, Ropp and Sikkink's trailblazing "The Power of Human Rights"[839] a serious Western bias, almost a colonial attitude, with processes of socialisation being of concern seemingly only in non-Western countries, and what is more, only through the pressure of such Western countries.[840] Finally, there seems to be a majority understanding that the norms of relevance here are only the binding, positive international legal norms (especially formulated in treaties) which may only be "translated" in order to be acceptable or effective in a non-Western local context, but not contested, challenged or changed.[841] If we take a critical approach to this literature, the term "local" can even be seen to be used almost synonymously with "non-Western local".[842] This is, of course, very problematic. While positive international law is indeed created geographically (more) in the West and with disproportionate input of Western sources and participants, this is not an excuse to position Western local realities as having fully internalised and realised human rights, nor is it an excuse to position non-Western local contexts as only "law-takers".[843] Challenges to and contestations of these positive international norms, as well as proposals of different norms and different understandings of these norms by all local contexts everywhere, should be welcomed and closely considered. In looking at the full range of socialising effects of human rights, this thesis shows that not only do local governments need to be considered as actors who are socialised, but also the individuals working within the black-box of the state or local government, (individuals in and between) transnational city networks, experts, academics, civil society, international organisations and any other stakeholder that part in this jurisgenerative activity. Real socialisation thus does

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[837] Risse et al, 1999 ; Goodman and Jinks, 2004; cf. Brysk, 2019.

[838] Risse and Sikkink, 1999.

[839] Risse et al, 1999.

[840] Risse and Sikkink, 1999.

[841] Risse et al, 1999; Goodman and Jinks, 2004; Hathaway, 2005; Merry 2006a, 2006b.

[842] De Feyter, 2006; Merry, 2006a.

[843] Gal-Or et al, 2015.

not simply occur through external (Western) and internal (local civil society) pressure,[844] but through a complex combination of participation, interaction, agency, identity- and interest formation, contestation and finally: ownership.[845] This insight is important especially for contexts in which the norms can only be voluntarily committed to, and not imposed through compulsion.

This final point carries a lesson for practitioners who want to engage with local governments and contribute to their taking ownership of rights-based local (migration) governance. International organisations, NGOs and academia with an interest in local governments or with an interest in tackling glocal solutions in general should engage with local governments. This process can and should not be one-directional, but the aim of this engagement should be to include local governments and the individuals working within them in networks of information and norm-generation, in which they can take part in the proposal, negotiation, contestation of norms and practices, and therefore take ownership in the normative outcomes of the process. My research, especially with Turkish local governments, has shown that successful engagement with local governments by offering collaboration opportunities, funding, know how, inclusion into networks, training, but among all else also the recognition of their expertise and agency and creating participatory and mutual developments of projects, policies and practices, can create the most passionate advocates and realisers of human rights even without any legal obligation. Presumably, this engagement rather than creating passionate human-rights-realising local governments out of thin air, develops the existing potential and capacity for such activity. Nonetheless, the continuous cycle of identity and interest building on the one hand and engagement and action on the other hand is so iterative that it is neither possible nor perhaps necessary to know which comes first. What matters is that local governments, unlike traditional internal law might hold, are not mere implementers of the law, but also (co-)creators, improvers, realisers, and owners. And ownership, for local governments and with any other actor who is "bound" by norms in a regime without a central enforcement mechanism, is the key to compliance.

Linked to the theoretical point made above that the borders between law and non-law, as well as between actors and non-actors in international law as flexible and blurry, is a policy recommendation for local governments and their networks: If cities and local governments are seeking more recognition and a more secure and permanent place in international law and governance, they are engaging exactly in ways that pave the way for them to achieve that. Local governments have already proven themselves to

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844   Risse and Sikkink, 1999.
845   See also: Brysk, 2019.

be "internationally relevant actors"[846]. Whether or not local governments can ever be subjects of international law in the strict sense, independent from their respective nation-states, is a question that cannot yet be answered, but is perhaps also not the right one to ask. Cities and the local governments representing them contest their status as mere "state organs"[847] in international law and assert their own autonomous importance and relevance both by seeking and achieving to engage in mainstream state-centric international law-making and governance, and also by organising amongst each other in increasingly robust and versatile ways. This way, they continuously communicate to the international community that they are both capable and interested in "joining the club" but also continue to organise amongst each other to – without hindrance by the gateway chore of proving their worthiness first – develop ever better soft law and policies to regulate themselves, crystallise their positions in normative documents, seek collective solutions to global and local issues, and improve their knowledge on and strategies for further engaging with the rest of the international community. This way, local governments will continue proving their relevance in international law and governance to an ever larger audience, whether or not positive international law offers them a formal status as subjects. The same actions however can be used as evidence in the argument for a legal status for them in international law, as these actions and their implications reflect current international doctrine on the determination of international legal subjectivity.[848]

Finally, I would like to briefly make some recommendations for future research. The question of whether and how much the voluntary normative commitments of local governments, to pre-existing positive international law or through their own normative documents, was outside the scope of this research. Empirical legal scholarship studying the behaviour-altering power of normative documents local governments sign up to, would be extremely interesting and rich in implications. The extensive multi-year commitment Bogota has demonstrated in realising the Global Charter-Agenda for Human Rights in the City, and the assessment of their progress by the Committee of Social Inclusion, Participatory Democracy and Human Right of the city network United Cities and Local Governments could be a valuable in-depth case study for this purpose.[849] Another point of future research that was outside the scope of this work is the question of a possible right to local self-governance. Whether local governments around the world (or in a region) "deserve" a minimum level of autonomy that includes a minimum set of

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846 Aust, 2015.

847 UNGA, 2008, Art.4

848 Durmus, 2021; Bilkova, 2015a, 2015b; Bellal, 2015 ; Gal-Or et al, 2015.

849 UCLG-CSIPD "Monitoring report on Bogota's social inclusion policies with a view to Human Rights", 11/07/2016 [Available at: https://www.uclg-cisdp.org/en/news/latest-news/monitoring-report-bogota%E2%80%99s-social-inclusion-policies-view-human-rights]

competences or at least procedural protections from central governments, is a necessary point of legal analysis. An analysis of the European Charter for Local Self-Governance and the accumulating body of normative documents emphasising and protecting local (self-)governance could constitute a very interesting legal study on this question. Along the same lines, a socio-legal line of analysis could be which level of autonomy or how much and what kind of regulation enables or encourages local governments to govern in ways that achieve the best possible localisation of human rights and the optimal local migration governance.[850] A final and important question inviting future research would be the nature, in legal theoretical terms, of the voluntary normative commitments of local governments. Could they be construed as (legal) duties? Can or do they constitute international legal obligations? Or could they be relevant in domestic legal systems? Would a court consider these normative commitments as a source of obligations? All these and many more questions at the core of the quest for better (human rights) accountability are in dire need of academic and practical attention.

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850 Discussions on this question were held in Panel II of the Cities of Refuge Final Conference, 30-31 May 2022, full video available upon request to vici@ucr.nl.

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VII

APPENDICES

Academic Summary
Academische Samenvatting

Academic Summary

Breaking Free – Local Governments' Boundary-Defying Engagement with Human Rights and Migration

Local governments are not entities an international lawyer would usually think of when asked about the "actors of international law". In fact, local governments are considered irrelevant in classical international law, mere state organs whose actions can trigger the responsibility of the state, without any relevance or "actorhood" of their own to boast. This thesis is a theoretical and empirical demonstration of why this is not true, even if we look from the lens of traditional, Westphalian international law.

This thesis maps, in a manner grounded in empirical research in Turkey, Switzerland and the international arena, the different (both legal and socio-legal) ways in which local governments engage with human rights and migration, which are both traditionally considered fields of international law and thus outside the competence of local governments. Nonetheless, local governments (as well as the individuals within this "black box"; their local, regional, national and transnational networks; and other actors - academics, civil society, international organisations - working closely with local governments) have by now formed a norm-generating community, participating in the multi-level processes of proposal, advocacy, contestation, dissemination and adoption of norms of human rights and migration. Perhaps most importantly for positive international law, this engagement of local governments has been seen to actually shape positive international law, for example in the process concerning the determination of the content of the right to adequate housing.

This engagement of local governments in international law- and policy-making takes many forms. At times, local governments seek inclusion – often quite literally a place in the meeting room or a seat at the table – in traditional state-centric processes of international law- and policy-making. When this exclusion becomes too limiting however, they also take initiative and demonstrate fluency in international law by formulating their own norms and practices in local-centred fora, whether alone and with stakeholders in their localities or with peers in regional and transnational networks and conferences. Through the normative documents local governments produce, they seem to seek to influence global agenda-setting, contribute to rights-realisation and social justice at the local level, create toolkits for themselves that integrate fragmented pieces of international law into simpler singular documents, crystallise their interests and beliefs in a manner demonstrating competence and skill in international diplomacy, and find and rally allies around a common cause.

Locally, in Turkey, many local governments have been found to engage in inclusive human rights and migration policies and practices even without clear obligations or competences to do so. When examined, my research found that this phenomenon was a result of a combination of factors; including the capacity of local governments (including personnel, data, budget, and level of institutionalisation); the cooperation initiated by actors such as international organisations, academia, city networks and civil society organisations; the dissemination of norms they have been exposed to; and political will. In addition, the context of high-demand, low-capacity, available foreign funds and know-how, and legal ambiguity seems to have created a fruitful environment for creative local government engagement – though it may not have been the most sustainable engagement. This however contributed to a sense of agency local governments felt over their (albeit limited) competences and their activities in the fields of migration and human rights. Contrastingly, in Switzerland, the high-regulation context contributed to local governments distinguishing more rigorously between different categories of rights-holders (refugee, asylum seeker, person under temporary protection etc), having a lower perception of agency and autonomy, being forced to engage in open legal battles over the limits of their competences, and taking up more formal venues of consultation, lobbying and conflict resolution with their peers and with higher levels of government. Finally, at the individual level, the persons working within local governments who have successfully triggered and/or led processes of adoption of inclusive and rights-based local migration practices were found to do so due to their educational or professional backgrounds, due to their personal motivations (sometimes linked to a lived experience of vulnerability), and due to the networks and interactions they have been exposed to.

All in all, local governments today as well as the individuals working within them and the networks they form, constitute a normative community engaging deeply with human rights and migrations, legally and extra-legally, at the inter-personal, local, regional, national and transnational levels. They are thus crucial actors in the localisation of human rights and in the creation of a culture of human rights. They have also become actors in international law due to their engagements at the macro levels, which have already partially succeeded in influencing "bigger" actors such as states and international organisations, as well as affecting formulations in positive international law.

Academische Samenvatting

Losbreken – Grensverleggende Betrokkenheid van Lokale Overheden bij Mensenrechten en Migratie

Lokale overheden zijn normaliter geen entiteiten waar een internationaal jurist aan denkt wanneer gevraagd wordt naar de "actoren van het internationaal recht". Lokale overheden worden in het klassieke volkenrecht immers als irrelevant beschouwd; louter staatsorganen waarvan de acties onder de verantwoordelijkheid van de staat vallen, zonder enige relevantie of eigen "actorschap" om op te bogen. Dit proefschrift toont theoretisch en empirisch aan waarom dit onjuist is, zelfs als we kijken vanuit de lens van het traditionele, Westfaalse internationaal recht.

Dit proefschrift brengt, op basis van empirisch onderzoek in Turkije, Zwitserland en de internationale arena, de verschillende (zowel juridische als sociaal-juridische) manieren in kaart waarop lokale overheden zich bezighouden met mensenrechten en migratie, die beide traditioneel worden beschouwd als gebieden van internationaal recht en dus buiten de bevoegdheid van lokale overheden vallen. Niettemin hebben lokale overheden (evenals de individuen binnen deze "black box"; hun lokale, regionale, nationale en transnationale netwerken; en andere actoren - academici, maatschappelijke organisaties, internationale organisaties - die nauw samenwerken met lokale overheden) inmiddels een normgenererende gemeenschap gevormd, die deelneemt aan de processen op verschillende niveaus van voorstellen, bepleiting, betwisting, verspreiding en goedkeuring van normen inzake mensenrechten en migratie. Wellicht het belangrijkst voor het positief internationaal recht is dat deze betrokkenheid van lokale overheden daadwerkelijk vorm heeft gegeven aan positief internationaal recht, bijvoorbeeld in het proces betreffende de vaststelling van de inhoud van het recht op adequate huisvesting.

Deze betrokkenheid van lokale overheden bij de internationale wetgeving en beleidsvorming neemt vele vormen aan. Soms streven lokale overheden naar inclusie - vaak letterlijk een plaats in de vergaderzaal of aan tafel - in de traditionele staatsgerichte processen van internationale wetgeving en beleidsvorming. Wanneer deze uitsluiting echter te beperkend wordt, nemen zij ook het initiatief en tonen een goede beheersing van de taal van het internationaal recht, door hun eigen normen en praktijken te formuleren in lokale fora of in regionale en transnationale netwerken en conferenties. Via de normatieve documenten die lokale overheden opstellen, lijken zij invloed te willen uitoefenen op de mondiale agendabepaling, bij te dragen tot de verwezenlijking van rechten en sociale rechtvaardigheid op lokaal niveau, voor zichzelf toolkits te creëren die gefragmenteerde stukken internationaal recht integreren in eenvoudigere enkelvoudige
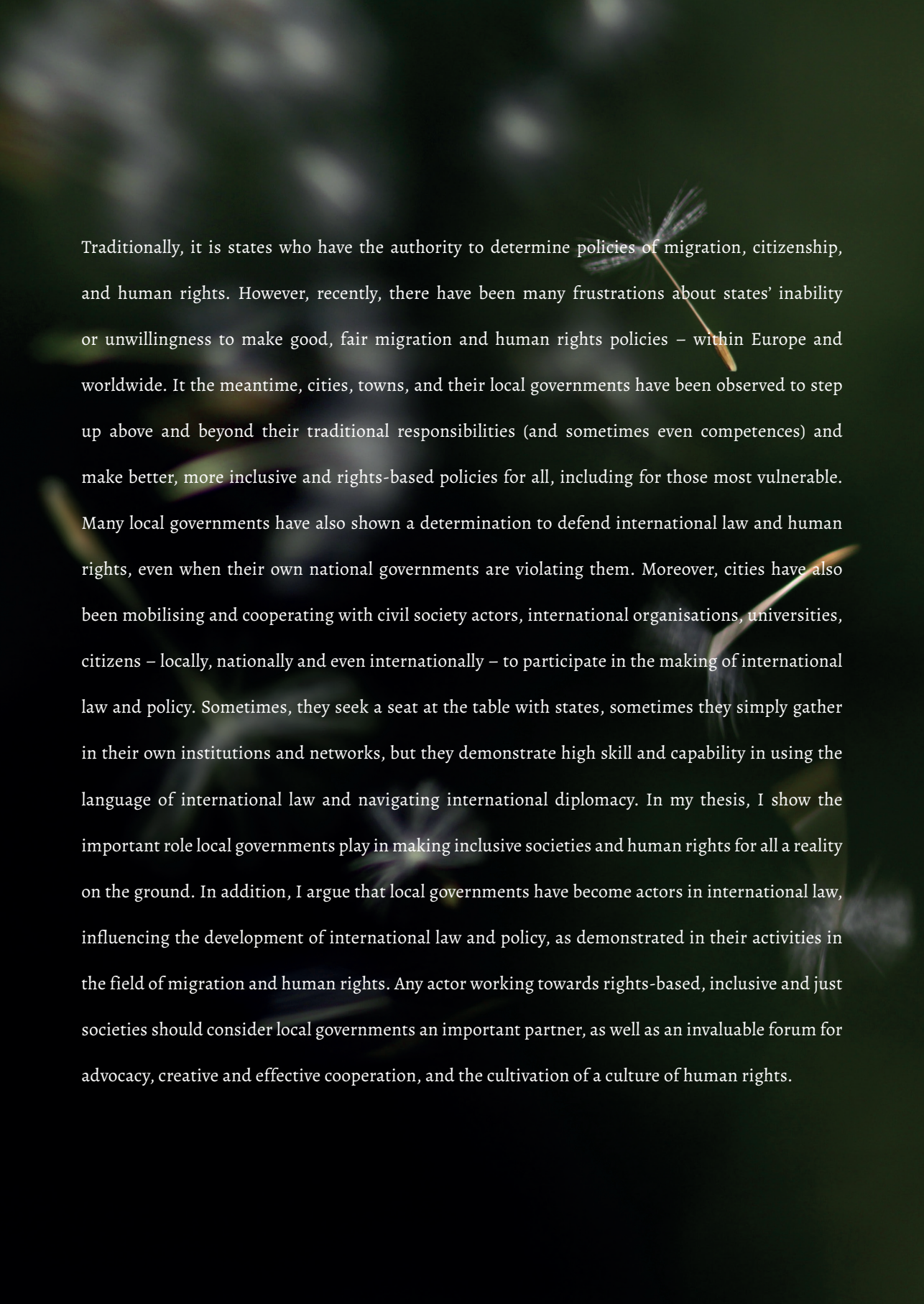
documenten, hun belangen en overtuigingen te kristalliseren op een manier die blijk geeft van bekwaamheid en vaardigheid in internationale diplomatie, en bondgenoten te vinden en te verenigen rond een gemeenschappelijke zaak.

Op lokaal niveau, blijkt in Turkije dat veel lokale overheden een inclusief mensenrechten- en migratiebeleid en -praktijken voeren, zelfs zonder duidelijke verplichtingen of bevoegdheden daartoe. Uit mijn onderzoek blijkt dat dit fenomeen het resultaat is van een combinatie van factoren; waaronder de capaciteit van lokale overheden (waaronder personeel, gegevens, budget en mate van institutionalisering); de samenwerking op initiatief van actoren zoals internationale organisaties, de academische wereld, stadsnetwerken en maatschappelijke organisaties; de verspreiding van normen waaraan zij zijn blootgesteld; en politieke wil. Bovendien lijkt de context van grote vraag, geringe capaciteit, beschikbare buitenlandse fondsen en knowhow, en juridische ambiguïteit een vruchtbare omgeving te hebben gecreëerd voor creatieve betrokkenheid van lokale overheden, hoewel het misschien niet het meest duurzame engagement was. Dit droeg bij tot een gevoel van agency bij de lokale overheden over hun (hoewel beperkte) capaciteiten en bevoegdheden en hun activiteiten op het gebied van migratie en mensenrechten. In Zwitserland daarentegen droeg de sterk gereguleerde context ertoe bij dat lokale overheden een strikter onderscheid maakten tussen verschillende categorieën van rechthebbenden (vluchteling, asielzoeker, persoon onder tijdelijke bescherming, enz.), een perceptie hadden van geringere agency en autonomie, gedwongen werden tot een openlijke juridische strijd over de grenzen van hun bevoegdheden, en meer formele vormen van overleg, lobbying en conflictoplossing aangingen met hun gelijken en met hogere overheidsniveaus. Op individueel niveau, ten slotte, zijn de personen die binnen lokale overheden werken en die met succes processen van inclusieve en op rechten gebaseerde lokale migratiepraktijken op gang hebben gebracht en/of geleid, daartoe gekomen door hun onderwijs- of beroepsachtergrond, door hun persoonlijke motivaties (die soms verband houden met een doorleefde ervaring van kwetsbaarheid) en door de netwerken en interacties waaraan zij zijn blootgesteld.

Al met al vormen lokale overheden, evenals de personen die er werken en de netwerken die ze vormen, vandaag de dag een normatieve gemeenschap die zich intensief bezighoudt met mensenrechten en migraties, juridisch en extra-legaal, op interpersoonlijk, lokaal, regionaal, nationaal en transnationaal niveau. Zij zijn dus cruciaal voor het lokaliseren van mensenrechten en de totstandbrenging van een mensenrechtencultuur. Zij zijn ook actoren in het internationaal recht geworden door hun engagement op macroniveau, dat er reeds gedeeltelijk in geslaagd is "grotere" actoren zoals staten en internationale organisaties te beïnvloeden, en door invloed uit te oefenen op formuleringen in het positief internationaal recht.

Traditionally, it is states who have the authority to determine policies of migration, citizenship, and human rights. However, recently, there have been many frustrations about states' inability or unwillingness to make good, fair migration and human rights policies – within Europe and worldwide. It the meantime, cities, towns, and their local governments have been observed to step up above and beyond their traditional responsibilities (and sometimes even competences) and make better, more inclusive and rights-based policies for all, including for those most vulnerable. Many local governments have also shown a determination to defend international law and human rights, even when their own national governments are violating them. Moreover, cities have also been mobilising and cooperating with civil society actors, international organisations, universities, citizens – locally, nationally and even internationally – to participate in the making of international law and policy. Sometimes, they seek a seat at the table with states, sometimes they simply gather in their own institutions and networks, but they demonstrate high skill and capability in using the language of international law and navigating international diplomacy. In my thesis, I show the important role local governments play in making inclusive societies and human rights for all a reality on the ground. In addition, I argue that local governments have become actors in international law, influencing the development of international law and policy, as demonstrated in their activities in the field of migration and human rights. Any actor working towards rights-based, inclusive and just societies should consider local governments an important partner, as well as an invaluable forum for advocacy, creative and effective cooperation, and the cultivation of a culture of human rights.