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# Obstacles to and opportunities for protecting human rights at the city level: The case of Madrid City Council Human Rights Plan (2017–2019)

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## ABSTRACT

This article focuses on the concept idea of ‘human rights city’ and explores its practice. It starts from the concepts of human rights cities and subsidiarity to explain what a human rights city is and delves into the existing literature identifying the challenges to guarantee human rights in local contexts, such as the legal framework, education and training, the institutional structure, and the resources. Our article is based on an empirical-based study of Madrid Human Rights Plan (2017–2019). We carried out semi-structured interviews, focus group, and participant observation to grasp the obstacles that civil servants encounter in the implementation of the Plan. We identify five types of obstacles that we classify as conceptual, ideological, legal, organisational, and budgetary. Our study questions the idea that the local context, just because of its proximity to the citizenry, is the best equipped level of government to guarantee human rights. Without proper training and resources human rights can be lost in translation. Through the identification of such obstacles in a specific case study, we contribute to the academic debate on human rights in practice with the aim of fostering its guarantee in local contexts.

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## 1. Introduction

The concept of ‘human rights city’ is based on the recognition of cities as key players in the promotion and protection of human rights. This concept refers, broadly, to a city ‘whose local government and local population are morally and legally governed by human rights principles’.<sup>1</sup> The concept of a human rights city envisions a shared human rights governance where local government, civil society, the private sector and other stakeholders cooperate to improve the quality of life for all people in the spirit of partnership based on human rights standards and norms.<sup>2</sup>

The increasing interest in the role of local authorities in the protection of human rights is linked to the gradual move from standard setting at the international level

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that started with the adoption of Universal Declaration of Human Rights (UDHR) in 1948<sup>3</sup> to the actual implementation of international human rights norms, especially in the field of social and economic rights.<sup>4</sup> The concept of ‘human rights city’ shifts the attention to the capacity of lower levels of governance, including cities, in guaranteeing human rights.<sup>5</sup> A parallel trend that buttressed the role of cities in safeguarding human rights is the decentralisation and the delegation of governmental powers that have bearing on human rights to local authorities. This is evident in the field of economic and social rights, where local authorities are on the frontline in the provision of services, infrastructures and resources necessary for the fulfilment of the human rights of their residents.

International organisations recognise the role of cities as guarantors of human rights due to their proximity to the daily needs of citizens. Cities are confronted, daily, with problems that are intimately tied to the enjoyment of human rights.<sup>6</sup> Education, housing, health care, social services and policing are clear examples of areas where decision-making at the city level directly affects the human rights of the residents.<sup>7</sup>

According to Barber, cities have proved that they could do better than States, in terms of pragmatism and problem-solving, when confronting cross-cutting problems such as climate change, pandemic disease, immigration, terrorism and so forth. Universal human rights too could be better served by cities. Migrants’ rights and LGBTQ rights are examples of how cities have managed to provide better protection for their beneficiaries compared to States.<sup>8</sup>

International migrations, in particular, demonstrate the pivotal role of big cities in the protection of human rights. Migration has transformed cities into heterogeneous societies composed of diverse cultural, linguistic and religious communities.<sup>9</sup> Such diversity creates opportunities, but it can also lead to social exclusion and vulnerability.<sup>10</sup> It is not surprising, then, that the first UN Summit on Refugees and Migrants received a strong support from the mayors of New York, London and Paris, who published a joint op-ed in the *New York Times* calling for a more decisive response at the international level while pledging to do their part to continue to stand for inclusivity through their services and programmes.<sup>11</sup>

Although the concept of human rights cities is relatively new, the recognition of the role of small societal groups, in the protection of human rights could be traced back to the UDHR and subsequent human rights treaties. Subsidiarity, which some authors argue is embedded in UDHR, affirms the primacy of institutions closest to the individual in the implementation of human rights, leaving national or international actors for those situations in which smaller entities are incapable of intervening adequately.<sup>12</sup>

While most academic research on human rights and the principle of subsidiarity addresses the role of supranational institutions vis-à-vis States,<sup>13</sup> the concept of human rights cities shifts the emphasis to the role of regional or local authorities vis-à-vis national or international institutions. The concept of a human rights city not only recognises the role of local governance in implementing international human rights norms, but it also recognises the contributions of cities to the interpretations of those rights. This suggests that a micro level of construction and reconstruction of human rights resides in the city.<sup>14</sup>

Empirical studies are needed to identify both the obstacles that cities could face in guaranteeing human rights and the useful measures to overcome them. Yet, few cases

exist and studies in the field are emerging. Our socio-legal empirical-based study aims at filling this gap by focusing on the case of Madrid City Council and its Human Rights Strategic Plan (2017–19).<sup>15</sup> The aim of our study is to analyse the challenges associated with the implementation of the Human Rights Plan in the city of Madrid, to advance the debate on human rights cities with empirical-based evidence and provide insights on how to improve the implementation of human rights at the local level. The successful implementation of a human rights plan, like the one adopted by Madrid City Council, represents a fundamental step for greater social justice in the city. Such a plan is a key instrument for promoting the effective protection of human rights and, in particular, of gender equality at the intersection with other axes of inequality. Making these rights effective would be beneficial not only for those who are in a situation of special vulnerability, but for all the residents of the city. The purpose of our study is to offer insights on how to enhance the promotion of human rights in local contexts, and identify the existing problems that hinder the effective protection of human rights in the city in the current context of growing inequality caused by the post Covid-19 pandemic and economic recession.

Our study is composed of two parts. In the first part, we offer a theoretical and legal framework to understand the concept of human rights cities. In this part we delve into the principle of subsidiarity, which is considered a structural principle of international human rights law, upon which the concept of human rights cities could rest. To finalise the first theoretical part, we give an account of the pillars of Madrid Human Rights Plan. In the second part, we explain the methodology we adopted to conduct our empirical study. We then explain the results of our research, analyse the implementation of the Plan, and identify obstacles to and opportunities for fostering human rights in Madrid. Given the lack of empirical research on the implementation of human rights plans at the city level, the results of this study aim to contribute to the academic interdisciplinary debate on how to effectively respect and promote human rights in the praxis of local authorities.

## **2. Human rights cities: a legal framework**

### ***2.1. The principle of subsidiarity***

While the focus on the role of cities in the promotion of international human rights norms is recent, the idea that cities could serve as key actors in the protection of human rights is not new. The concept of a human rights city could be understood as an exemplification of the principle of subsidiarity, embedded in the UDHR. Paolo Carozza defines subsidiarity as a principle according to which ‘each social and political group should help smaller or more local ones accomplish their respective ends without, however, arrogating those tasks to itself.’<sup>16</sup> Only when smaller groups are unable to protect the common good pursued by human rights standards, bigger groups have the obligation to intervene.

The principle of subsidiarity helps to understand that broad principles of human rights should be distinguished from their instantiation in a specific set of contingent circumstances. The instantiation of a universal human right norm in a specific context always depends on ‘accidents of culture, language, history, institutional and political

circumstances, economic organisation, and myriad other differences that separates any one society from another'.<sup>17</sup> As the ECtHR judge Spano emphasises, 'the principle of subsidiarity is an express manifestation of the diversified character of the implementation of human rights guarantees at national level'.<sup>18</sup>

Studies on subsidiarity as a structural principle of international human rights law focus primarily on the relationship between domestic institutions and international institutions,<sup>19</sup> paying less attention to the role of regional and local governance in protecting human rights. The Council of Europe, which is the principal European regional organisation dedicated to the protection and promotion of human rights, assigns a central role for the principle of subsidiarity in its legal regime. A strong manifestation of the role of subsidiarity is found in the doctrine known as 'margin of appreciation', developed by the European Court of Human Rights (ECtHR). This doctrine establishes that domestic authorities are usually better equipped to make assessments on the appropriateness, necessity or reasonableness of national domestic measures, since they are more familiar with national particularities, traditions, sensitivities and debates.<sup>20</sup> It assumes that balancing the rights protected by the European Convention of Human Rights with legitimate public interests involve weighing difficult and controversial issues. National authorities are in a better position to obtain and assess local knowledge on such complicated issues, which the ECtHR may either lack or misjudge.<sup>21</sup> In the context of the European Union (EU), the protection of human rights is also based on the notion of subsidiarity. In the Charter of Fundamental Rights of the European Union,<sup>22</sup> the principle of subsidiarity seems to mediate between two seemingly conflicting goals, fostering common European values on the one hand, and respecting the diversity of European societies on the other.<sup>23</sup> Michael Ignatieff observes that 'human rights has gone global by going local'.<sup>24</sup> The concept of human rights city perhaps is the ultimate expression of universal human rights norms going local.

Subsidiarity requires local authorities to engage in a thoughtful and informed way with the interpretation and application of international human rights norms at the local level. According to the ECtHR,

subsidiarity and the effective protection of rights at the national level are two sides of the same coin. In order for subsidiarity to be fully operative, it is necessary for the domestic authorities to effectively protect human rights at the domestic level.<sup>25</sup>

For the local authorities to effectively protect rights, they need to possess a deep understanding of the essence of the rights entrusted to them.

The role of cities in protecting and ensuring human rights is no longer theoretical. Given the global tendency to decentralise governmental responsibilities, local authorities acquired more and more responsibilities in implementing human rights policies and in providing various public services, necessary for the realisation of human rights.<sup>26</sup>

## **2.2. What are human rights cities?**

When a State adheres to an international human rights treaty, it acquires the obligation to respect, protect and fulfil the rights protected in that treaty. The national government bears the primary responsibility for the protection of human rights, while local governments have a complementary role, depending on the powers delegated to them.<sup>27</sup>

However, from an international law perspective, the State constitutes a single entity regardless of its internal administrative division. Therefore, unlawful acts of any public authority, including cities, are attributable to the State, even when a lower-level authority exceeds its competence or contravenes national legislation.<sup>28</sup> Therefore, certain human rights obligations are applicable to municipalities, even in the absence of specific local human rights plans. Municipalities are called to take human rights into consideration in the exercise of their functions since their action directly impacts the rights and freedoms of their residents.

The UN Human Rights Council recognises the complementary role of cities in the protection of human rights, given their proximity to people. After all, the local government is the institution that ‘addresses local needs and priorities related to the realisation of human rights at the local level’.<sup>29</sup> The role of local governance in protecting and promoting human rights is recognised by various instruments in the European framework for the protection of human rights. The European Charter of Local Self-Government,<sup>30</sup> adopted by the Congress of Local and Regional Authorities of the Council of Europe (the Congress), recognised as early as 1985 the role of communities as the first level in the exercise of democratic governance.<sup>31</sup> The Council of Europe Commissioner for Human Rights highlights the important role and responsibility of regional and local governance in the implementation of human rights, and referred to education, housing, health care, social services and policing as clear examples of areas where local decision-making processes can have a direct impact on the enjoyment of human rights.<sup>32</sup> Moreover, rights such as political participation (including freedom of expression, assembly and association), access justice, education, work, health, social welfare and housing depend in various ways on local governance for their realisation.<sup>33</sup> The Congress reaffirms that ‘Europe’s local and regional authorities play a key role in the day-to-day application of the fundamental values of democracy and human rights’.<sup>34</sup> The Congress further recognised that

[r]esults on protection of the rule of law and fundamental rights can only be achieved if all political levels work together, are appropriately networked and play their part, based on their competences and responsibilities, and if they coordinate their various contributions.<sup>35</sup>

The recognition of the role of cities in promoting human rights is further fostered by the European Union Agency for Fundamental Rights (FRA) that started a project to support the implementation of human rights at the local and regional level with concrete tools.<sup>36</sup>

The human rights obligations of local authorities have been recognised also by *supra*-national courts. In *Assadnize v. Georgia*, the ECtHR ruled that the

authorities of a territorial entity of the State are public-law institutions which perform the functions assigned to them by the Constitution and the law [...]. Where powers are distributed along decentralized lines, it [governmental organization] refers to any national authority exercising public functions.<sup>37</sup>

The term human rights city was first introduced in the late 1990s by People’s Movement for Human Rights Learning (PDHRE),<sup>38</sup> an international non-governmental organisation (NGO) based in New York.<sup>39</sup> PDHRE claimed that the effectiveness of international human rights norms depends on the citizen’s understanding of human rights as a framework for the sustainable development of their communities. PDHRE

brought together local governing bodies and law enforcement agencies, public sector employees, religious groups, NGOs and various communities and organisations working on human rights issues to design a strategy for implementing human rights in the city.<sup>40</sup>

In 1997, the city of Rosario, in the province of Santa Fe (Argentina), became the first city to proclaim itself a human rights city.<sup>41</sup> After Santa Fe, more cities followed. Other initiatives emerged at the international level to support the concept of human rights city. For example, in 2000 the 'Coalition of Cities for Human Rights' launched the European Charter for the Safeguarding of Human Rights in the City.<sup>42</sup>

The assumption that the commitment to human rights at the city level gives more visibility to the human rights obligations has received a growing support. The Gwangju Guiding Principles for a Human Rights City (Gwangju Principles) recognise the importance of integrating human rights into municipal policies, and the need to apply a human rights-based approach to municipal administration and governance, including in planning, policy-formulation, implementation, monitoring and evaluation.<sup>43</sup> The institutionalisation of human rights cities is reflected in the emergence of new strategies, including the creation of a human rights council or other city-level monitoring bodies; emphasising human rights in the municipal budget; focusing on one or more rights, such as non-discrimination, racism, and people with disabilities; adopting human rights instruments in local policies; and ratifying human rights treaties.<sup>44</sup> In cities that followed the PDHRE model, the civil society played a major role by organising a variety of activities such as human rights days, training sessions or human rights festivals.<sup>45</sup>

The concept of 'human rights city' brings about an epistemological change in the way municipal services and their recipients are conceived by public institutions. Cities are not merely services providers; they are institutional actors obliged to respect and ensure human rights. As Hammarberg puts it:

There is an added value in treating persons as holders of rights instead of merely trying to meet their needs. The human rights approach empowers patients, pupils, the elderly, the homeless and everybody else to claim their rights and, thereby, improve their situation. This in turn requires adequate procedures for claiming rights and addressing violations to be put in place.<sup>46</sup>

This paradigm shift has important legal, theoretical, and practical implications. While reducing services and goods can be justified for organisational, budgetary or other administrative considerations, human rights violations cannot be justified by invoking such grounds. Moreover, the introduction and use of the human rights terminology empowers the beneficiaries to claim their own *rights* as opposed to services.

### **2.3. Challenges for human rights cities**

Past experiences of local governments in incorporating a human rights approach to their daily functions show certain communalities in the challenges they face in delivering their promise.<sup>47</sup> One central challenge is the lack of perception of human rights as relevant frameworks for the daily work of local governments. Human rights are not discussed as a goal for local governments, and civil servants do not classify their work as related to human rights.<sup>48</sup> Public institutions tend to focus on issues that require immediate solutions, overlooking human rights implications. The human rights perspective implies



paying attention to the structural elements that causes human rights violations and, thus, clashes with a generalised reductionism and incrementalism of public policies and the tendency of public institutions to demand rapid, short-term, and low-budget policies, which have little impact on reducing structural inequalities.<sup>49</sup>

Local governments have difficulties in framing their action within human rights frameworks. However, even punctual problems cannot be solved without taking human rights into consideration. Local authorities usually identify four levels of human rights obligations that are relevant for their action: (a) human rights have to be respected, that is, they cannot be violated or down-prioritized; (b) human rights have to be protected through the prevention of violations; (c) human rights have to be fulfilled by creating and sustaining adequate systems; and (d) human rights have to be intensively promoted by using human rights language in everyday work and by education as a transformative tool.<sup>50</sup> However, local authorities pay more attention to the duties to respect and to protect, and less attention to creating and sustaining an adequate systems for the promotion and fulfilment of human rights in the city. These obligations are viewed as falling under the competence of the national government. Cities perceive their role in the narrow sense as being limited to not violating rights and preventing others from doing so.<sup>51</sup>

The lack of sufficient awareness on the importance of human rights to the daily work of cities created a scholarly consensus on the need to invest in human rights training at the local level.<sup>52</sup> Organising human rights training, on a systematic basis, for elected representatives and civil servants is needed to foster an institutional human rights culture at the local governance level. Training enhances sensitivity and fosters civil servants' personal commitment towards new policy approaches.<sup>53</sup> It is especially needed for legal services in those contexts where formal and outdated approach to equality and non-discrimination remains dominant. Besides, training increases the interpretative flexibility in identifying cases of human rights violation and fosters creativity in the use of existing legal tools.<sup>54</sup> It also contributes to neutralising practitioners' racial, classist, and gender prejudices that bias interpretations and even nullify the efficacy of equality legislation and policy planning.<sup>55</sup>

Existing challenges also include the institutional impediments that are 'baked into the governance structure'.<sup>56</sup> For example, in the US, both the federal and the state government can preempt municipal laws in different areas. A recent example is the intervention of the federal government and some States to preempt cities from the adoption of sanctuary policies – as a measure against the deportation of certain groups of migrants based on international human rights norms – due to conflicts with federal or State law.<sup>57</sup>

Budget constraints are a common challenge that local governments face in promoting human rights. Local resources are limited –and continue to decrease– while the obligations of the local governments continue to increase.<sup>58</sup> Data are a fundamental resource for the effective implementation of local human rights plans. The use of equality indexes as a point of departure for human rights policies has been recommended by international institutions including the Congress.<sup>59</sup> The UN Committee on the Elimination of Racial Discrimination stated that to collect

data which have been categorized by race or ethnic origin, and which are then disaggregated by gender within those racial or ethnic groups, will allow the States parties and the



Committee to identify, compare and take steps to remedy forms of racial discrimination against women that may otherwise go unnoticed and unaddressed.<sup>60</sup>

The Human Rights Office of the United Nation, within the frame of the sustainable development goals, calls upon States to publish data in a format that allows identifying and analysing multiple and intersecting discriminations, while ensuring the protection of individuals' privacy against data security threats at every stage of data management.<sup>61</sup> Such indicators are key elements for implementing local human rights plans. Additionally, the effective implementation of such plans depends on the evaluation of the outcomes. Statistics and qualitative studies on the impact of existing laws and policies are pivotal for evaluating human rights achievements or lack thereof.<sup>62</sup> The lack of statistical data is a shared difficulty that local institutions confront when trying to respect, protect and promote human rights in the city.

### **3. The study case: Madrid Human Rights Plan**

#### **3.1. The context**

In 2017, the municipality of Madrid became the first Spanish city to adopt a Human Rights Plan. The main goal of this Plan is to mainstream human rights, gender and intersectionality in municipal policies and services. It seeks to enhance the municipal action against human rights violations, linked to social inequalities that exist in Madrid, particularly those affecting women, LGBTBI individuals, religious or ethnic minorities (including Romani and afro-descendants); migrant and refugee population; persons with disabilities; elderly persons, children and teens; and the homeless. The Plan was elaborated on the base of an extensive participative process that involved the local government team, the different political groups, representatives of all the departments of the City Council,<sup>63</sup> civil servants, the districts' representatives, civil society and NGOs, and the citizenry.<sup>64</sup>

The competences of Madrid in the field of human rights are multiple. For example, the Security and Emergencies Department deals with public health and municipal police. The Department of Culture, Tourism and Sports is responsible for cultural activities; archives, libraries and museums; sports facilities and events. The Environment and Mobility Department is responsible for green areas, mobility, and transport infrastructures. The Urban Development Department deals is responsible for the housing policy. The Social Welfare Department is responsible for social services (kindergartens, day centres, home assistance, etc.), immigration, education, gender equality, and promotion of diversity.<sup>65</sup> These services have human rights implications. Very often these implications are direct, such as the case of accessing protected housing, security in public spaces, accessing public events and public spaces and so forth. In other cases, the implications are indirect. For instance, care services for individuals in a situation of dependency, prevent the burden from falling on women due to traditional distribution of gender roles.

The Human Rights Plan foresees specific measures for achieving its goal. For example, in order to protect the right of persons with disability to a life free of discrimination and violence, the Plan envisions specific measures aimed at guaranteeing the accessibility of persons with disabilities to polling stations.<sup>66</sup> Other measures include the promotion of

accessible, inclusive and integrative cultural, sportive and leisure activities for persons with disabilities, in particular children and teens.<sup>67</sup> The Plan also establishes additional resources to the Management of Diversity Unit of the Local Police, and prioritise the investigation of hate crimes. It also includes the adoption of an identification and body search protocol, in accordance with international human rights standards on prohibition, prevention and control of racial profiling.<sup>68</sup> Other measures aim at encouraging the free association of city residents by making municipal spaces available without discrimination, especially against women and other vulnerable groups.<sup>69</sup> In order to guarantee the right to freedom of conscience, religion, and expression, the Plan calls for the adoption of a protocol for the engagement with religious entities and associations that defend non-theistic beliefs. The promotion of the right of people belonging to ethnic minorities and people on the move (migrants, refugees, victims of trafficking) to a life free from discrimination and violence includes the implementation of specific measures to guarantee access for migrant women, especially those in irregular administrative situation, to municipal services and programmes. Likewise, the Plan foresees the adoption of a protocol of reception for asylum seekers and refugees. For the promotion of the right of LGBTQI individuals to a life free of discrimination and violence, the Plan establishes the progressive adaptation of the institutional documents and forms to incorporate an inclusive LGTBI language.

### ***3.2. The pillars of Madrid Human Rights Plan: gender equality and intersectionality***

Gender equality and intersectionality are the two key conceptual and legal pillars of International Human Rights Law upon which the Madrid Human Rights Plan is built. The Plan is based on multiple sources, including international and European human rights treaties ratified by Spain, soft law standards developed by international and European human rights bodies, and the commitments adopted by Spain in the context of the sustainable development goals.<sup>70</sup>

#### ***3.2.1. Gender discrimination as a legal concept***

Since its inclusion into the international legal lexicon at the Beijing Conference in 1995, UN agencies have adopted some definitions for the notion of gender. While those definitions vary in their articulation, three common denominators appear in most of them: (a) gender is a socially constructed concept; (b) the construction of gender is complex and is influenced by cultural factors relating to the different roles of men and women in each society and the relationships among those roles and their social value; (c) gender is not a static structure, it varies within and among cultures, and transforms over time.<sup>71</sup>

For example, the Office of the Special Adviser on Gender Issues and Advancement of Women adopts the following definition of gender:

Social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man

in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age.<sup>72</sup>

The concept of gender is centred on the rejection of stereotypes based on biological determinism, allowing to understand that the distinctions based on sex are socially constructed.<sup>73</sup> Gender stereotyping produces two types of harm: lack of recognition of individual dignity and worth of women,<sup>74</sup> and distributive harm, that is the unfair allocation of public goods between men and women.<sup>75</sup> Yet, the notion of gender has become a synonym for women. Putting gender on the agenda has been frequently translated to 'head count'.<sup>76</sup> Gender perspectives were equated with paying attention to women's assumed vulnerabilities. This approach fails to properly address the power relation between men and women and obscures the way in which gender shapes the world.<sup>77</sup> Moreover, gender has been considered a homogeneous category that does not take seriously the differences among women determined by their class, age, race, ethnicity, religion, sexual orientation and disability.<sup>78</sup>

### ***3.2.2. Intersectionality as a legal concept***

In the last two decades, international human Rights law has echoed the debate initiated by Black activists and academics on the interconnections between different systems of discrimination.<sup>79</sup> At the Expert Meeting on Gender and Racial Discrimination celebrated in Zagreb in 2000, Kimberlé Crenshaw introduced in the UN language the term intersectionality to highlight 'differences that make a difference' in the ways various groups of women experience gender discrimination.<sup>80</sup> These differences are related to class, caste, race, colour, ethnicity, religion, national origin and sexual orientation, and they particularise the way in which gender discrimination is experienced. These differences exacerbate the effects of gender discrimination suffered by women belonging to vulnerable groups, who could experience discrimination in different ways.<sup>81</sup> Since then, international human rights bodies have recognised that women experience human rights violations in different ways shaped by 'the intersecting forces of a woman's location in a particular country and culture with its particular hierarchies of religions, races, classes, ethnicities, [and] sexualities'.<sup>82</sup> Understanding gender as part of a broader socio-cultural context, encompassing class, race, poverty level, ethnic group and age<sup>83</sup> allowed international human rights bodies to recognise the unique vulnerability associated with belonging to various marginalised groups.<sup>84</sup>

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) refers to pregnancy, motherhood,<sup>85</sup> and nationality<sup>86</sup> as additional axes of discrimination. It also recognises 'rural women' as a group of women<sup>87</sup> that encompass intersectional discrimination experienced on the basis of age, ethnicity, caste, and indigeneity.<sup>88</sup> The CEDAW Committee recognises that certain groups of women may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. These forms of discrimination affect women primarily, or to a different degree or in different ways compared to men.<sup>89</sup> Therefore, States are requested to take 'specific temporary special measures'<sup>90</sup> to eliminate intersectional discrimination against women and its

compounded negative impact on them.<sup>91</sup> The CEDAW Committee specifically requests States to 'legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them'.<sup>92</sup>

Other international human rights bodies have followed the footsteps of the CEDAW Committee and recognises that women experience distinct forms of discrimination due to the intersection of gender discrimination with other factors such as race, colour religion or language, resulting in compounded disadvantage.<sup>93</sup> For example, the Committee on the Elimination of Racial Discrimination (CERD)<sup>94</sup> emphasises that certain forms of racial discrimination target women specifically because of their gender. Those include sexual violence in the context of an armed conflict, committed against women members of racial or ethnic groups; the forced sterilisation of indigenous women; and the abuse of foreign women employed as domestic workers.<sup>95</sup>

CERD also observes that treating gender and racial discrimination separately makes their combined effects invisible, an omission that particularly affects Afro-American, indigenous, and migrant women.<sup>96</sup> The Committee on the Rights of People with Disabilities (CRPD) recalls that women with disabilities are 'among those groups of persons with disabilities who most often experience multiple and intersectional discrimination'.<sup>97</sup>

Since systems of discrimination are mutually reinforcing, intersectionality calls for addressing the interconnections between gender, race, class and other axes of discrimination, and how these connections shape the experiences of individuals exposed to multiple injustices.<sup>98</sup> Intersectionality is not a merely descriptive or an analytical concept, it is also a normative term that requires designing remedies capable of addressing the harms of multiple and interlocking discriminations.<sup>99</sup> In other words, intersectionality 'encourages a human right remedy that encompasses all forms of subordination simultaneously'.<sup>100</sup> Therefore, international human rights bodies have also embraced intersectionality as reparatory concept by recognising that intersectional discrimination deserves particular consideration and remedying.<sup>101</sup>

The notion of intersectionality has been incorporated into the human rights governance at the local and regional levels in Europe. The Congress of Local and Regional Authorities specifically addressed intersectionality as a desirable framework for respecting and guaranteeing human rights at the local and regional levels:

Work to improve an overall human rights situation are generally focused on one or more so called vulnerable groups, such as national minorities, children, persons with disabilities etc. While this kind of targeted approach may be just right for the situation, a special challenge is to keep in mind the intersectional character of all individuals belonging to all such groups.<sup>102</sup>

Yet, the implementation of intersectionality is still incipient and weak with very few exceptions where courts resorted to intersectionality to address situations of multiple discrimination. Scholars and practitioners explain some of the obstacles that hinder the implementation of an intersectional approach to multiple discrimination.<sup>103</sup> First of all, the focus on individuals and subgroups makes it difficult to understand how intersectionality can inspire laws and policies capable of protecting general interests.<sup>104</sup> Indeed, the concept emerged in the context of African American activism and critical race theory, criticising the jurisprudence on the employment discrimination of Black women in the US.<sup>105</sup> Second, intersectionality is an analytical category that can help in identifying the most vulnerable groups that deserve greater attention. However, it lacks the practical

tools for actual implementation.<sup>106</sup> Third, its development as a reparatory category is still incipient since law practitioners still struggle to find formulas for ‘specific reparations that meaningfully address the root causes of inequality and power imbalances’.<sup>107</sup> Such obstacles are linked to the current structures of national anti-discrimination laws and of the international regime for the protection of human rights. The adoption of separate thematic antidiscrimination treaties focusing on a marginalised group such as women, people with disabilities or racial groups, with their own separate monitoring body hinders the ability of individual victims to fully exploit the potential of intersectional discrimination and remedy it.<sup>108</sup>

### **3.3. Methodology**

In this article we use a qualitative methodology that includes the techniques of in-depth interview, group discussion, and participant observation. In our field work – carried out between 2018 and 2020 – we conducted 28 semi-structured interviews with the drafters of the Plan, civil servants from different departments, personnel of the gender equality unit of the municipality, and external experts. One focus group has been conducted with the personnel of the gender equality unit. Participant observation has been carried out in 13 events, including the Human Rights Forum, Madrid City Council training sessions, and academic events on topics related to the Human Rights Plan.<sup>109</sup> Madrid Action Plan, city friendly to the elderly (2017–19).

The semi-structured interviews made it possible to unravel the meanings that civil servants attribute to human rights from the perspective of gender and intersectionality, and subsequently identify the obstacles for the implementation of the Plan. The focus group and participant observation made it possible for us to explore the collective and interactive dimension of the production of discourses and the process of negotiation and co-construction.<sup>110</sup> Seeking a participatory approach, we involved key actors in the study, establishing a collaborative relationship that aimed to break the traditional division between subject and object of research.

The objective of our study is twofold. First, to analyse the discourses of the civil servants on the relevance of human rights for their work and its relationship with gender equality and intersectionality. Second, to identify the existing obstacles that hinder the implementation of the Human Rights Plan in the city of Madrid. To achieve these goals, our study analyses both subjective factors (meanings attributed to the concepts, visions, biases or resistances) and institutional factors (organisational and legal structures). We considered the framework of the municipal competencies and considered international human rights obligations assumed by Spain. Although the research field of human rights cities is expanding<sup>111</sup>, the identified strengths and weaknesses that have been identified in theory still need to be explored in practice. Our study aims to advance this line of research that explores the implementation of human rights, especially focusing on respecting, protecting, and promoting gender equality and intersectionality at the local level.

## **4. Obstacles for the implementation of Madrid human rights plan**

Our case study provides empirical material to identify the obstacles for the implementation of international human rights in local contexts. Some interviewees show a deep

understanding of the pivotal role of municipalities in respecting and promoting human rights, given their proximity to residents of the city, and also because they provide various human rights related services (19B19, 16E19 and 27E19). Some of them also attach a great importance to international human rights standards in understanding the human rights obligations of the city (27E19). However, understanding the important role of local governance in the protection and realisation of human rights was not translated into a smooth implementation of the Human Rights Plan. Our fieldwork reveals five types of obstacles encountered in the phase of implementation that we categorise as (i) conceptual; (ii) ideological; (iii) legal; (iv) organisational; and (v) budgetary.

#### **4.1. Conceptualisation**

Conceptual obstacles relate to two difficulties: difficulties in understanding the concept of gender equality and intersectionality, and difficulties in translating abstract human rights standards into concrete measures for action. Uncertainties were evident in relation to understanding the relevance of human rights from an intersectional perspective. Some interviewees stated outright that they do not understand the concept of intersectionality (06C20); others believed that the Plan should have included a clear definition of it (08D19).

Interviewees held different understandings of intersectionality. Some viewed it as an integral element of gender mainstreaming, others believed that gender mainstreaming must be achieved first before an intersectional perspective can be adopted in the implementation process (04F19). Others equated intersectionality with respecting and protecting human diversity, treating it in an additive fashion. This view fails to capture the essence of intersectionality, which lies in identifying how the intersection of different structures of power can create unique forms of vulnerability.<sup>112</sup>

Inconsistencies in understanding intersectionality are not surprising, since this concept was introduced more recently to the corpus of International Human Rights law through the interpretative functions of treaty-based human rights bodies.<sup>113</sup> Additionally, the absence of a state law or domestic jurisprudence incorporating intersectionality into Spanish law opens this concept to contestation and misinterpretation.

Difficulties in translating abstract human rights standards into concrete measures for action emerged, for example, in a training session, where one participant stated that a better understanding of the theoretical foundation of human rights would help employees understand human rights norms more profoundly and would facilitate the implementation of the Plan (27E19).

Even when civil servants are familiar with the key concepts of the Human Rights Plan, translating abstract notions into an operative plan remains challenging (27F19). For example, in one interview, a member of the legal services stated that ‘from my point of view, it is not very clear what I have to apply, especially what I have to implement’. The same interviewee emphasised the need to translate abstract concepts into concrete measures, adding that ‘everyone agrees on the underlying concept, but we have not received any concrete instructions on how it should be translated’ (08D19).

Such difficulties were evident in relation to gender equality, even though it has a longer trajectory at the local level (22C19). In some departments, civil servants still struggle with assessing the gender impact of municipal policies. One interviewee claimed that ‘on



budget issues, it has been difficult to define what is the gender impact' (05D19). A similar argument was expressed by a staff member of the legal service, who emphasised that law practitioners, in general, lack training in gender impact assessments (27B20).

The interviewees were comfortable with identifying direct discrimination, such as the lack of gender inclusive language (08D19). However, they lack the capacity to identify *indirect* discrimination:

If there was a very clear issue, [for example] people of a certain ethnic group do not have the right to such a thing, that jumps out. But if you do not talk about something very specific, you do not perceive if there may be a problem. We don't have information or instruments to know how to put it into practice (08D19).

The importance of training was mentioned in several interviews as a key tool for improving the implementation of the Human Rights Plan. The lack of sufficient training and its voluntary character were viewed as obstacle to its implementation (06C20, 07F19 and 19B19).

The results of our study demonstrate that training is needed not only to raise awareness on the relevance of human rights for the daily work of cities, as some literature suggest, it is also needed for understanding the essence of those rights and how city-level interpretations of universal human rights standards should be carried out as part of a broader context.

In his capacity as an independent expert of the UN, Alston warned as early as 1993 about the growing inconsistencies in the interpretation of the central human rights norms, due to their proliferation. These inconsistencies could have serious implications for the universality of human rights.<sup>114</sup> The only way to minimise this risk is through the engagement of all those tasked with interpreting and implementing human rights in a continuous dialogue and mutual learning processes where international, regional and local actors and institutions interact with each other.

Civil servants at the city-level do not simply apply or translate previously established legal norms but rather re-work and redefine human rights in the context of their daily activities.<sup>115</sup> To make sure that their interpretation is consistent with that of international institutions, intensive training programmes on the development, interpretation and implementation of international human rights norms are needed before civil servants embark on implementing the local human rights plans. Continuous educational programmes are also needed to follow up new developments. Likewise, channels of communication and dialogue between municipalities and supra-national institutions should also be created to foster the integrative approach to implementing international standards at the city-level.

Knowledge on human rights education must also be made available to the residents of the city, so they can be empowered to demand their rights. As Oomen emphasises, 'the connection between human rights cities and human rights education is a close one.'<sup>116</sup> She identifies the most common educational activities organised by human rights cities. Those include human rights cafés, human rights film festivals, human rights weeks, human rights education programmes, conferences, debates and training sessions.<sup>117</sup> Yet, such events generally focus on human rights violations abroad. Implementing human rights in everyday institutional praxis requires giving more visibility to local human rights challenges.



## 4.2. Ideologization

One of the obstacles that hinder the effective implementation of the Human Rights Plan is the emergence of ideological resistance. Ideological resistance refers to personal views held by the civil servants who believe that human rights norms are contestable. Ideological resistance also includes situations in which human standards are not contested *per se*, but the need to elaborate a diagnosis of human rights violation in the city is. According to this view, Madrid is a violation-free city; human rights violations happen somewhere else, especially in developing or post-conflict countries. As one of the drafters of the Plan puts it:

But why human rights [they ask]? They believe that human rights are needed in Saudi Arabia, in Syria, in conflict zones. [Trainee's role is] to put the glasses on them [civil servants] because they told me: here no black person is discriminated against, nor is he or she prohibited from entering the bus (30D19).

The other drafter explains that some municipal police officers deny that police abuses exist and label information on police abuses as fake news. Some police officers perceive themselves as the most discriminated collective in Madrid due to such accusations (22C19). However, important changes are taking place within the police force that could counterbalance such attitudes. As the same interviewee explains, the 2008 economic crisis led to the incorporation of police officers with higher levels of education, seeking a steady job. This resulted in more openness and willingness to reflect on the relevance of human rights to the police daily work (22C19).

A different type of resistance is reflected in the perception of the Human Rights Plan as an additional burden to the heavy responsibilities that the staff already have. The existence of overlapping plans that duplicate the reporting requirements that each department must meet could trigger such a resistance (07F19 and 13E19).

This kind of resistance is manifested in the reluctance of civil servants to recognise the importance of human rights in their daily work (22C19). The administrative personnel usually understand their functions from a service provider perspective, instead of treating the beneficiaries as rights' holders (22C19). As a member of the gender equality unit of the municipality points out, the aim of the Plan is to change the institutional culture in the municipality, i.e. the culture of perceiving the residents as aid seekers. This is why the Human Rights Plan generates so much resistance (19B19). One of the drafters explains:

One of the key elements of the human rights, gender and intersectionality approach is how the city council's policies contribute not only to the enjoyment of human rights, but also to the fact that rights holders can demand those rights, which has a lot to do with enforceability, with the capacity of people to be able to present complaints, to be able to evaluate the policies of the city council, it has to do with transparency, information (27E19).

Ideological resistances could be detected at the institutional level as well. One example that came up in the interviews was the fierce opposition of a leading political party to the establishment of an independent ethics committee to review police misconduct (22C19). The detractors accused the Human Rights Plan of being biased and called for its reexamination, even though the Plan follows the UN recommendations to establish an independent complaint body to address claims of ill-treatment.<sup>118</sup>

In line with studies in gender and politics, focusing on overt or covert resistances towards gender equality<sup>119</sup>, ideological resistance was particularly evident in relation

to gender equality. Gender equality is viewed by some civil servants as a sectarian ideology. One interviewee from the gender equality unit stated ‘they treat us as if we were ideologizing. As if social workers [and others] do not ideologize, only we, the feminists, ideologize’ (19B19). An additional layer of resistance to gender equality is reflected in the belief that gender discrimination is prevalent in marginalised communities and does not constitute a general problem. For example, one of the drafters explains that:

There are still prejudices such as that [gender-based] violence occurs in the most disadvantaged layers when it is not like that, when we find more and more cases, well, as there always have been, among women with university degrees, judges, etc. (16E19).

To tackle this type of ideological resistance, framing gender equality as a human right issue could be helpful. For example, a member of the gender equality unit of the municipality emphasises that:

The rights of women are human rights; it is forgotten that the rights of women are human rights... This should be the starting point... Because if you base politics on a rights’ approach, you change perspectives (05F19).

One of the drafters of the Plan emphasised that applying a human rights approach to gender violence would enhance the reparations available to victims, and would foster institutional accountability (16E19). Yet, resistance to human rights is also manifest in the idea that human rights plans are just a new trend that would eventually fade out like other trends, hence, there is no need to engage with it seriously (13E19).

### **4.3. Legal gaps**

Legal gaps constitute another major obstacle for the execution of the Human Rights Plan. Such gaps should be understood within the context of a multilevel legal system for the protection of human rights, composed of municipal regulations, Autonomous Community of Madrid legislation, State law and international treaties. Legal gaps emerged especially in relation to intersectionality, since the Spanish legislation and jurisprudence have not incorporated it yet into the national legal order.<sup>120</sup>

The absence of a national legal framework incorporating intersectionality makes it harder for those in charge of implementing the Human Rights Plan at the city-level to find the necessary guidance from higher national institutions. Municipal legal services adopt a formalistic approach when assessing the compatibility of the municipality’s laws with national and regional legal frameworks. International human rights standards are of little relevance for their work, since legality is assessed exclusively on the basis of national and regional legislation. However, the Spanish Constitution treats international treaties ratified by Spain as part of the internal legal order.<sup>121</sup> It stipulates that ‘the principles relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain’.<sup>122</sup>

The gap between national or regional law and a municipal human rights plan could also limit the ability of the local authorities to design remedies for human rights violations. This could discourage the municipality from making a human rights diagnosis or adopting a reparatory framework that exceeds what has been recognised so far by

the laws of the Autonomous community or the State. The inconsistency between the provisions of the Constitution and the praxis of law practitioners can be attributed to lack of adequate training.

#### **4.4. Institutional structure**

The organisational structure of the public administration at the local level constitutes an additional obstacle. The lack of permanent mechanisms of coordination between the different departments of the municipality hinder the implementation of the Human Rights Plan (13E19). One interviewee describes the structure of municipal institutional as follows:

One of the problems has to do with architecture of the institutions, and the distribution of competencies, departments that look like siloes [...]. There is also a lack of culture, that is, the organization is like a house containing many rooms, where people are isolated in their rooms, and don't think about going out or about creating a room to get together (19B19).

This is particularly problematic for implementing a human rights plan that is based on intersectionality. An intersectional approach to human rights requires, by definition, a multi-focal analysis of the axes generating vulnerability. Such an analysis could fall under the competence of more than one department, making coordination a key factor for the implementation of the Plan. The lack of coordination was also weak at inter-institutional level, especially since the Autonomous Community of Madrid was governed by a different party at that time (16E19). Given that the municipality has a shared or a residual competence in many human rights issues, the coordination with higher levels of governance is critical for an effective implementation of the Human Rights Plan.

This is a general challenge that public institutions must confront to guarantee human rights effectively. Although Spanish municipalities have exclusive competence in relation to the realisation of certain human rights<sup>123</sup>, they share competences with other levels of government in relation to other rights. Policing is one area where coordination between different levels of government is necessary, due to the multi-level structure of police corps in Spain. Under the Human Rights Plan, the municipal police is responsible for providing a specialised assistance to victims of hate crime, especially LGBTIQI individuals, ethnic minorities, migrants, refugees, homeless, children or adolescents.<sup>124</sup> Similarly, the Plan foresees the adoption of a protocol to provide adequate assistance to victims of violence that takes into account the type of crime denounced, and the special vulnerability of the victim.<sup>125</sup> As the Plan highlights, the success of both initiatives depends on the effective coordination of national and local police.<sup>126</sup> The absence of such coordination jeopardises the efficiency of such plans.

#### **4.5. Budgetary constraints**

The absence of resources is identified as an additional obstacle for the implementation of the Madrid Human Rights Plan. Some interviewees believe that the Plan broadened the scope of competences of the different municipal departments, but this expansion was not accompanied with additional budget (19B19 and 04F19). However, budgetary constraints

are exploited to disengage from the Plan. According to one of the drafters, civil servants claim that they are not able to implement the Human Rights Plan due to lack of resources (22C19). Yet, 'it is not a question of budget, it is a question of perspectives, it is a question of what questions you are asking yourself, what diagnosis you make, and how you allocate resources' (22C19).

Many interviewees point to the lack of data needed for designing, implementing and evaluating the Plan. Some participants attribute this lack of data to budgetary constraints. The absence of essential data was viewed by many interviewees as a serious problem. Many interviewees highlighted that the implementation of the Human Rights Plan from an intersectional perspective requires the collection of disaggregated data, without which it would be impossible to make integrated analysis of interconnected inequalities suffered by the city's residents (30D19, 19B19, 22C19, 08D19, and 27E19). Currently, only sex-disaggregated data is collected. There is no available data on other relevant factors such as ethnicity, religion, disability or sexual orientation. This could have serious implication for the effective implementation of the Plan. For example, the absence of disaggregated data on ethnicity and religion conceals the unique vulnerability and discrimination experienced by Roma and Muslim women (22C19, 30D19, and 28D20). Likewise, excluding other important variables, such as possessing a residency permit or being responsible for children or other care-dependent persons (04F19 and 05F19), hinders the ability to identify different forms of intersecting inequalities. Alleged incompatibility with data protection laws is used as a pretext to justify the refusal to collect data (22C19, 30D19, 27E19, 04F19, 05F19, and 01G19). Despite the UN recommendation (2018) to adopt data management systems for the analysis of intersecting discriminations, many civil servants still worry about privacy breaches (13E19). Nevertheless, good practices in Canada <sup>127</sup> and the United Kingdom <sup>128</sup> demonstrate that it is possible to manage disaggregated data without violating privacy rights.

The lack of specialised staff for collecting and analysing disaggregated data also constitutes an additional problem. Some civil servants perceive data collection as an additional burden, which creates resistance towards the Human Rights Plan (14N18, 14C19, and 30D19). Although allocating budgets for data segregation or for the implementation of the Plan could be a solution, some interviewees argue that a successful implementation of the Plan depends on epistemological changes and the reorganisation of existing resources more than the increase of budgets (13E19 and 16E19). Some interviewees agreed that standardising data collection and data sharing could substantially enhance the implementation of the Human Rights Plan at low or no-cost (19B19 22C19, 08D19, and 01G19). It is worth emphasising that disaggregated data management is an essential but not a sufficient measure for planning, implementing and evaluating city-level human rights plans. Public institutions should combine quantitative and qualitative analysis and be aware of biases in knowledge production that could reproduce the same exclusionary power dynamics that the Plan intends to eradicate. Qualitative methodologies are also needed to learn about the lived experiences of city residents, and the impact of municipal policies on their lives. Such studies are essential for realising accurate diagnoses of the human rights violations in the city, and to adopt informed measures tailored to the needs of different communities and individuals.

## 5. Conclusions

The concept of ‘human rights city’ carries a great potential for promoting the human rights of city residents. For starters, human rights cities give more visibility to the existing human rights obligations of local governance. Additionally, they encourage cities to adopt more creative and efficient solutions to human rights challenges, by building on their first-hand knowledge that higher levels of governance may lack. Most importantly, the notion of a human rights city enhances the universality of human rights by bringing them closer to the individual. International Human Rights Law is a central component of the myriad of instruments establishing human rights cities.<sup>129</sup>

Human rights cities could be understood as one more manifestation of the principle of subsidiarity. Subsidiarity emphasises the primacy of the lowest level of implementation in the protection of human rights, while national or international actors should intervene only when local actors are incapable to do so.<sup>130</sup> Subsidiarity also recognises that the universality of human rights does not necessarily lead to a uniform way in the application of universal standards, instead it recognises that local political, historic, and economic particularities could give rise to different ways of respecting the common good protected by international human rights standards. Within this context, the concept of ‘human rights city’ envisions a greater role for cities not only in respecting human rights of their residents, but also in introducing more adequate measures for their promotion.

However, with potential comes risk. While our study identifies a similar set of obstacles to those identified in the specialised literature, our findings highlight one new dimension that has bearing for the universality of human rights. The common obstacles we identified, such as lack of resources, lack of data, and lack of understanding of how human rights are relevant to the daily work of local authorities, could render local human rights plans ineffective and inoperable. Inoperable human rights plans end up devaluing human rights and play into the hands of those who show resistance to human rights discourses, and they make it easier for detractors to label them as a trend or ideology that is of no service to people.

Additionally, presenting local human rights plans as a political commitment on the part of the local government could work as a smokescreen obscuring the legal obligations of cities in the field of human rights. Most importantly, cities may inadvertently hamper the universality of human rights by designating civil servants as the new guardians of subsidiarity, when the latter have no access to ongoing dialogues between international, regional and state institutions on the interpretation of international human rights norms. When civil servants embark on the task of interpreting and implementing abstract human rights norms in an isolated fashion, detached from international frameworks, they could adopt erroneous interpretations of universal rights that hamper their universality.

Our study cast some doubts on the basic assumption of subsidiarity, according to which the authorities closest to the individuals are naturally better suited to protect and promote the right of those individuals. The proliferation of human rights norms, the gradual elaboration of their content, and the diversification of actors responsible of their implementation require greater effort for maintaining the consistency and coherency of the international regime for the protection of human rights. Inconsistencies could have serious implications for the universality of human rights.<sup>131</sup> The only way to

minimise this risk is the engagement of all those tasked with interpreting and implementing human rights in a continuous dialogue and mutual learning processes where international, regional, and local actors and institutions interact with each other.

This requires continuous educational programmes for civil servants. It also requires opening channels of communication and dialogue between municipalities and supra-national institutions, to foster an integrated interpretation of international human rights standards. Otherwise, local human rights plans end up achieving the opposite result of what they purport to do, i.e. enhancing the universality of human rights by bringing them closer to home.

## Notes

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18. Spano, *supra* note 11.
19. *Ibid.*; see also Van den Berg and Oomen, *supra* note 2.



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109. We anonymised the references to the participants in the interviews and focus group using a coded system of numbers and letters. After obtaining participant's consent, we digitally recorded interviews and the focus group. We literally transcribed the recording for its subsequent content analysis. We used the Atlas.ti software for the comparison, segmentation and reassembly of fragments of the transcribed material according to a set of codes and dimensions developed by the whole research team composed, in addition to the authors of this article, by ANONIMISED.
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