

The Environment and Human Rights: The 'Right to Remain in Your Own Homeland' as a Tool for Sustainable Human Development (Evidence From the 2011 Fukushima Disaster and the Italian 2016-17 Marche Region Seismic Events)

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Abstract:

The intricate bond between an individual's environment and their personal and economic development is profoundly affected in the aftermath of natural disasters. Seismic events, such as those witnessed in Italy's Marche region between 2016 and 2017 and Japan's Fukushima disaster in 2011, disrupt the foundational connection between individuals and their surroundings. This study delves into the nuanced implications of these disruptions by examining the reconstruction process of temporary shops—a tangible consequence of the need for commercial activities to adapt to the altered landscape. The empirical and comparative evidence drawn from these instances serves as a crucial backdrop for a comprehensive exploration of the international legal framework. From the foundational 1945 United Nations Charter to more recent developments like the TC2 Meeting in Bonn in 2023, the study meticulously scrutinizes a spectrum of international instruments. The primary objective is to ascertain the recognition and protection of the 'right to remain in your homeland' within the global community. In this contemporary context, the study asserts that safeguarding the right to one's homeland has become imperative. This assertion aligns with the overarching goal of preserving the intrinsic bond between individuals and their territories, as underscored by the United Nations 2030 Agenda for Sustainable Development. Consequently, the study advocates for heightened awareness and specialized strategies within the international community to ensure the robust realization of these emergent rights in a global context.

Keywords: Homeland, Human Rights, Right to Remain, Disaster Law

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1. Introduction

In early May 2023, a flood struck the entire Emilia-Romagna region (Italy), causing many fatalities and necessitating the reconstruction of entire cities.¹ Less than a year prior, in September 2022, another flood hit the Marche coasts of Ancona, Pesaro, and Urbino (Italy),² affecting areas previously ‘spared’ by the devastating seismic events of 2016-2017.³ Over the past two years, more than fifty natural disasters have occurred worldwide. However, likely due to climate change, this number does not seem to be decreasing.⁴

The focus of these pages is to understand that whenever extraordinary events like the ones described occur, affected areas face the challenging task of reconstruction, with significant consequences for citizens' lives and their environments.⁵ Secondly, to fully grasp the significance of this right, we will conduct a comparative analysis of the temporary relocation of commercial activities during the 2016 seismic events in the Marche region and the 2011 Fukushima disaster. The objective of this article is to demonstrate, through examples from Japan and Italy, the critical importance of this new fundamental right for future generations.

2. Disaster, loss and place attachment

Individuals affected by a disaster experience two profound traumas,⁶ in addition to hard-to-repair physical and psychological damage. The first

¹ Paolo Biondani, “Alluvione Emilia-Romagna, l'allarme Inascoltato degli Esperti: ‘Metà Regione è a Rischio’ [Emilia-Romagna Flood, the Unheeded Alarm of Experts: ‘Half the Region is at Risk’],” *L'Espresso*, May 19, 2023, <https://lespresso.it/c/attualita/2023/5/19/alluvione-emilia-romagna-lallarme-inascoltato-degli-esperti-meta-regione-e-a-rischio/2975>. The floods in Emilia Romagna occurred within a few weeks of each other. The first, taking place between May 1st and May 4th, 2023, witnessed rainfall accumulations exceeding 200 millimeters in just 48 hours, particularly in the areas of Bologna, Forlì, and Cesena. The second flood, started on the night of May 15 and continued relentlessly until May 17, causing the overflowing of 21 rivers and widespread flooding in 42 municipalities. For more information, see: International Federation of Red Cross and Red Crescent Societies (IFRC), “Italy Flood 2023 DREF Operation MDRIT004,” accessed June 10, 2023, <https://reliefweb.int/report/italy/italy-flood-2023-dref-operation-mdrit004>.

² “Alluvione Marche, i Dati di Monitoraggio del Cnr-Irpi [Marche Flood, the Monitoring Data from Cnr-Irpi],” *Il Giornale della Protezione Civile*, September 17, 2022, www.ilgiornaledellaprotezionecivile.it/a/alluvione-marche-i-dati-di-monitoraggio-del-cnr-irpi.

³ Istituto Nazionale di Geofisica e Vulcanologia (INGV), “Sequenza in Italia Centrale: Aggiornamento del 28 Aprile [Seismic Sequence in Central Italy: Update of April 28],” Accessed September 30, 2023, <https://ingvterremoti.com/2017/04/28/sequenza-in-italia-centrale-aggiornamento-del-28-aprile>.

⁴ United Nations Office for Disaster Risk Reduction, *The Human Cost of Disasters: An Overview of the Last 20 Years (2000-2019)* (UNDRR: 2020), 13; According to which, in the last twenty years, a total of 7,348 natural disasters have occurred worldwide, causing 1.23 million deaths and affecting the work, property, and health of approximately 4 billion people. Consequently, this has led to a loss of 2.97 trillion dollars to the global economy.

⁵ Kees Boersma et al., “The Dynamics of Power in Disaster Response Networks.” *Risk, Hazards and Crisis in Public Policy* 12, no. 4 (2021): 419. <https://doi.org/10.1002/rhc3.12218>.

⁶ Sarah Nettleton, “Losing a Home Through Mortgage Repossession: the Views of Children,” *Children and Society* 15, no. 2 (2001): 82, <https://doi.org/10.1002/chi.608>; K.A.S. Wickrama and K.A. Thulitha Wickrama, “Family Context of Mental Health Risk in Tsunami-affected Mothers: Findings From a Pilot Study in Sri Lanka,” *Social Science and Medicine* 66, no. 4 (2008): 994, <https://doi.org/10.1016/j.socscimed.2007.11.012>; C. Rollero and N. De Piccoli, “Does Place

occurs moments after the disastrous event, when they realize that everything built over a lifetime has been destroyed in mere moments, resulting in both economic and psychological harm.

The second arises at the start of the reconstruction process and persists until its completion. In this latter scenario, the desire to return to normalcy, to see rebuilt landscapes without interruption,⁷ is deeply felt among the victims.⁸ Thus, evacuees rarely accept⁹ the idea of abandoning¹⁰ - either voluntarily or

Attachment Affect Social Well-being?" *Revue Européenne de Psychologie Appliquée* 60, no. 4 (2010): 233, <https://doi.org/10.1016/j.erap.2010.05.001>; S. Craig Rush, Rick Houser, and Ashley Partridge, "Rebuilding Sustainable Communities for Children and Families after Disaster: Recommendations from Symposium Participants in Response to the April 27th, 2011 Tornadoes," *Community Mental Health Journal* 51, no. 2 (2015): 132, <https://doi.org/10.1007/s10597-014-9780-1>.

⁷Matteo Clemente and Luca Salvati, "'Interrupted' Landscapes: Post-Earthquake Reconstruction in between Urban Renewal and Social Identity of Local Communities," *Sustainability* 9, no. 11 (2017): 2015, <https://doi.org/10.3390/su9112015>, introduce the concept of "interrupted landscapes," referring to areas that are consistently subjected to the stress of natural disasters and are repeatedly reconstructed following their destruction. The authors specifically connect the notion of landscape to both a physical and immaterial significance, shaped by social, identity, and historical values as a result of long-term anthropogenic transformations and latent socioeconomic processes.

⁸ Consider all the committees and associations that emerged in the aftermath of the seismic disaster in 2016, actively working to expedite the reconstruction process. One such organization is "IO NON CROLLO [I Don't Collapse]," (available at: <https://www.iononcrolllo.org>, accessed June 9, 2023). Established in Camerino shortly after the seismic events of October 2016, the association aimed, on the one hand, to assist homeless individuals in finding temporary shelter and, on the other hand, to position itself as an advocate for the interests of the affected population. In addition to associations and committees, blogs have also emerged, sharing the firsthand accounts of those who have lost everything. In the face of immense challenges, these individuals strive to reclaim their lives and sense of normalcy. One notable example is "Diario di Bordo di una Terremotata [Diary of a Earthquake Survivor]" by Lorella Pettinari, who daily shares her experiences and anecdotes to convey the profound emptiness she, especially in the immediate aftermath of the events, has endured. See: Lorella Pettinari, "Diario di Bordo di una Terremotata," Facebook, accessed June 9, 2023, <https://www.facebook.com/rinascita.it>.

⁹ The stories of Giuseppina Fattori and Enzo Rendina are emblematic in this regard, as both have gone viral in order to avoid leaving their homes and land. Regarding Giuseppina Fattori's story: "È Morta Nonna Peppina, la Donna Simbolodel Terremoto 2016 Aveva 98 Anni. Dallo Sfratto Alla Vittoria: la sua Battaglia per la Casa [Grandma Peppina, the Woman Who Symbolized the 2016 Earthquake, Has Died at 98. From Eviction to Victory: Her Fight for Her Home]," *Il Fatto Quotidiano*, November 19, 2021, <https://www.ilfattoquotidiano.it/2021/11/19/e-morta-nonna-peppina-la-donna-simbolo-del-terremoto-2016-aveva-98-anni-dallo-sfratto-alla-vittoria-la-sua-battaglia-per-la-casa/6398531>. On the story of Rendina see: "Terremoto, Convalidato L'arresto Dello Sfolato che non Vuole Lasciare Arquata. Il Legale: 'Assurdo' [Earthquake, Arrest of Evacuee Who Does Not Want to Leave Arquata Is Validated. The Lawyer: 'Absurd']," *Il Sole24 Ore*, February 1, 2017, <https://www.ilsole24ore.com/art/terremoto-convalidato-l-arresto-sfolato-che-non-vuole-lasciare-arquata-legale-assurdo-AEGLL5L>.

¹⁰ Alessandro Chiappanuvoli, "Gli Sfolati del Terremoto tra Disagio e Voglia di una Vita Normale [Earthquake Evacuees Between Discomfort and the Desire for a Normal Life]," *Internazionale*, December 17, 2016, <https://www.internazionale.it/reportage/alessandro-chiappanuvoli/2016/12/17/terremoto-marche-sfolati-accoglienza>.

forcibly,¹¹ for an indefinite period¹² - a place considered as 'sacred' as their own home or land. From the above, it becomes clear that the relationship often established between a home and its owner is not solely based on the ownership of the property but also encompasses the intangible and emotional bond between them.¹³ This phenomenon is called 'place attachment'.¹⁴

On this matter, European civil doctrine discusses the concept of 'plural property' rather than 'singular property'.¹⁵ It seems that today, one can assert that property rights have a four-dimensional nature as this absolute right involves: the relationship between the object of the right, public order, and the social function it serves;¹⁶ the direct relationship between the owner, property, and third parties;¹⁷ the material relationship between the owner and

¹¹ As for the Italian situation post the earthquake of 2016, the relocation of both commercial activities and private residences has occurred within regional borders. Many times, displaced individuals did not even have to move outside their municipality of residence. For an overview of the national legislation on relocation, see: Ivan Allegranti, "Delocalizzazione Commerciale in Località Colpite da Calamità Naturali: uno Sguardo Comparatistico fra Italia e Giappone [Commercial Relocation in Areas Affected by Natural Disasters: A Comparative Look between Italy and Japan]," in *Solidarietà ed Emergenze*, ed. Carlotta Latini (Napoli: Editoriale Scientifica, 2022), 175-184.

¹² Allegranti, "Delocalizzazione Commerciale," 175-184.

¹³ Chiara Tenella Sillani, "I Diversi Profili del Diritto di Proprietà nel XXI Secolo: Brevi Spunti di Riflessione [Various Aspects of the Right to Property in the 21st Century: Brief Reflections]," *Rassegna di Diritto Civile*, no. 4 (2013): 1060; according to whom today there is a gradual separation between the concepts of ownership and possession.

¹⁴ Chen Qing et al., "Stay in Risk Area: Place Attachment, Efficacy Beliefs and Risk Coping," *International Journal of Environmental Research and Public Health* 19, no. 4 (2022): 2375, <https://doi.org/10.3390/ijerph19042375>; according to whom attachment is 'a positive emotional bond between people and a particular place.'

¹⁵ Peter Häberle, "Vielfalt der Property Rights und der verfassungsrechtliche Eigentumsbegriff [The Diversity of Property Rights and the Constitutional Concept of Property]," in *Rechtsvergleichung im Kraftfeld des Verfassungsstaates: Methoden und Inhalte, Kleinststaaten und Entwicklungsländer* (Berlin: Duncker and Humblot, 1992), 496, which states that, "Es gibt insofern nicht 'das' Eigentum im Singular, es gibt vielmehr verschiedene Arten vom Eigentum Privater 'schon' auf Verfassungsebene: Eigentum im Plural" [translation: "in this regard, there is not 'the' property in the singular; rather, there are different types of private property 'already' at the constitutional level: Properties in the Plural"]; and Pietro Perlingieri, *Introduzione alla problematica della proprietà* [Introduction to the Issues of Property] (Naples: Edizioni Scientifiche Italiane, 2011), 6; for whom "'personal property' [...] is not identified nor to be confused with individual, selfish ownership. Rather [added by the author], the adjective 'personal' should be understood in the sense of pertaining to the human person, in other words, to realize the dignity of the individual."

¹⁶ Benedetta Sirgiovanni, "Dal Diritto sui Beni Comuni al Diritto ai Beni Comuni [From the Right over Common Goods to the Right to Common Goods]," *Rassegna di Diritto Civile*, no. 1 (2017): 240; which underlines that 'the use of the property does not follow, not straightforwardly, the ownership of the right, but rather the particular function for which the property is intended. The distinction between public and private property takes on new nuances where a good becomes 'common,' for collective use, as it is suitable for realizing personal development. Moreover, as clarified by the Constitutional Court, 'discussing in terms of the mere dichotomy of public and private property means, in a partial manner, limiting oneself to the mere identification of property ownership, neglecting the inescapable fact of their classification based on their respective function and the associated interests.'

¹⁷ Consider, in this regard, Articles 833 and 844 of the Italian Civil Code, which prohibit the owner from engaging in acts of emulation and from causing emissions of smoke, sounds, odors, and heat that exceed normal tolerance, effectively causing harm to third parties. For a

the property,¹⁸ and, finally, the inner (emotional) bond that ties the owner to the property.¹⁹

In the following pages, employing an evolutionary and systematic interpretation of international conventions, the principles from which the existence of a "right to remain in one's homeland" can be deduced will be explored. Among the aim of this new right, there is the enabling of the sustainable development of the human being.

3. International Instruments and the Connection between Territory and Local Communities

The first international instrument to (partially) govern "the right to remain in one's homeland" is the Universal Declaration of Human Rights of 1948,²⁰ whose Article 13 establishes the freedom of movement and residence of every individual within the borders of each state, as well as the right of every human being to leave any country, including their own, and to return to it later.²¹

commentary on these two articles, see, without any claim of exhaustiveness: Francesco De Martino, "Beni in Generale-Proprietà [Goods in General-Property]," in *Commentario del Codice Civile: Della Proprietà (artt. 810-956)*, ed. A. Scialoja and G. Branca (Rome: Foro Italiano, 1946), 122; Cesare Massimo Bianca, *Diritto Civile, Vol. 6: La Proprietà* [Civil Law, Vol. 6: Property] (Milano: Giuffrè, 2021), 131, 159. Regarding the present analysis, it is necessary to focus attention on the effects of emulative acts or emissions on the property. Therefore, to preserve the balance of relationships between neighbors, it will be necessary to strike a balance between the conflicting interests of the parties, evaluating the proportionality between the benefits obtained by one and the harms caused to the other. See: Pietro Perlingieri, *Manuale di Diritto Civile* [Manual of Civil Law] (Naples: Edizioni Scientifiche Italiane, 2020), 235; C. Lorenzetti, "In Tema di Immissioni e di Normale Tollerabilità [On the Subject of Emissions and Normal Tolerance]," *Giurisprudenza Italiana* 120, no. 2 (1968): 653; Antonino Procida Mirabelli di Lauro, "La Proprietà Come Rapporto. A Proposito Dell'interpretazione Unitaria e Sistemica Dell'art. 844 C.C. [Property as a Relationship. On the Unified and Systematic Interpretation of Article 844 of the Civil Code]," *Rassegna di Diritto Civile*, no. 2 (1998): 364, 366. which underlines that, in matters of emissions, the subject of the regulation is the legal situation, which must be balanced between the conflicting interests of the owners of neighboring properties. In regards to emulative acts See: Filippo Vassalli, "Il diritto di proprietà [The Right of Property]," in *Studi giuridici*, vol. 2 (Milano: Giuffrè, 1939), 475; which emphasizes how the powers of the owner can only be exercised in relation to the social function performed by the property, 'otherwise the owner does not use, but abuses the right, committing a deviation of the right from its purpose.'

¹⁸ To be the rightful owner of the immovable property.

¹⁹ Pietro Perlingieri, *La personalità umana nell'ordinamento giuridico* [Human Personality in the Legal System] (Camerino: Università degli Studi di Camerino, 1972), 155; according to whom: "economic initiative, property, or their protections are functionalized for the realization of the human person, which is the primary value."

²⁰ United Nations General Assembly, Universal Declaration of Human Rights, Paris, December 10, 1948, A/RES/217(III).

²¹ The international law doctrine is still divided on whether to understand the right to emigrate and immigrate as a legal 'endiadi' (a figure of speech in which two words are joined by a conjunction). In this regard see: Guilherme Marques Pedro, "The Human Right to Leave: But Where to?" (Doctoral Thesis, Uppsala University, 2022), 64 ff. At the European level, the freedom of movement is regulated by both Article 13 and Article 2, Protocol 4, ECHR (Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, November 4, 1950, 213 U.N.T.S. 222); as well as, European Union, Charter of Fundamental Rights of the European Union, 2012/C326/02, Article 45.

The "right to remain in one's homeland" therefore falls under rights concerning an individual's freedom to move within a given state.²² Specifically, the right to enter, stay, and leave a particular nation are closely related and indivisible rights, with significant implications for many other fundamental rights and freedoms outlined in the Declaration.²³

Following this, on December 16, 1966, the General Assembly adopted the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the Covenant on Civil and Political Rights.²⁴ In particular, Article 12 of the Covenant on Civil and Political Rights establishes the right to freedom of movement and choice of residence within a state for every person legally residing in that territory. Furthermore, according to the article in question, every human being has both the right to leave any country (including their own)²⁵ and the right not to be arbitrarily deprived of the right to enter their own country.

Later, the 1967 International Convention on the Elimination of All Forms of Racial Discrimination against Women²⁶ included in Article 5 the express obligation for the Convention's states parties to guarantee equality before the law for everyone, without distinctions of race, color, national or ethnic origin, regarding the enjoyment of the right to leave any country (including their own) and return to it.

In the early days of modern international treaty law, "the right to remain in one's homeland" was understood as providing the individual: a) the freedom to choose, within a state of which they are a citizen, a place of residence; b) the freedom to move freely within a specific national territory of which they are a citizen (without being detained arbitrarily or subjected to inhumane and degrading treatment or torture)²⁷; c) the right to enter and return to their state of residence; and d) finally, the right to emigrate.

²² Rosalyn Higgins, "The Right in International Law of an Individual to Enter, Stay and Leave a Country," *International Affairs* 49, no. 3 (1973): 342, <https://doi.org/10.2307/2616836>.

²³ The article 13 of the Universal Declaration of Human Rights is closely related to the following rights: the prohibition of discrimination on the grounds of sex, race, political opinions, and social status (article 2); the right to personal freedom (article 3) and the prohibition of slavery (article 4); the prohibition of arbitrary arrest, detention, or exile (article 9); the right to seek asylum for political reasons and the prohibition for a State not to accept the persecuted individual (article 14); the right to change nationality (article 15), and finally, the right to property (article 17).

²⁴ United Nations General Assembly, International Covenant on Civil and Political Rights, December 6, 1966, 999 U.N.T.S. 171.

²⁵ Article 12(3) of the International Covenant on Economic, Social and Cultural Rights provides the only limitation on the exercise of the rights mentioned therein are restrictions prescribed by law and necessary to protect national security, public order, public health, or morals, or the rights and freedoms of others. (United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, December 16, 1966, A/RES/2200A(XXI))

²⁶ United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, 1249 UNTS 13.

²⁷ Higgins, "The Right in International Law," 342.

However, it is with the adoption of the Rio Declaration,²⁸ the Millennium Development Goals (MDG),²⁹ Hyogo Framework,³⁰ the Paris Agreement,³¹ the subsequent Sendai Framework for Disaster Risk Reduction³² and the 2030 Agenda³³ that the international community lays the groundwork for a more modern and human-centric reflection on human rights, property rights, and the surrounding environment.

4. The Conceptual Evolution of the Bond Between Territory and Local Communities

The international instruments now examined shed light on the importance of the near-indissoluble bond established between a territory and the local community inhabiting it.

Firstly, the Rio Declaration of 1992 stipulates that humans have the right to live in harmony with nature.³⁴ Similarly, sustainable development should equally meet the needs related to the environment and the development of present and future generations.³⁵ Thus, achieving sustainable development implies that environmental protection will form an integral part of the development process and cannot be considered in isolation from it.³⁶

Then, the Millennium Development Goals (MDG) marked a permanent shift in the UN's approach to the world population, drawing closer and uniting with it.³⁷ The MDG mandates all states to respect the territorial integrity of every nation, which naturally encompasses the territory-resident community nexus.³⁸

In contrast, the Hyogo Framework seeks to protect individuals in their territories where they reside, especially after the occurrence of a natural disaster. Consequently, post-disaster reconstruction must ensure the

²⁸ United Nations General Assembly, Rio Declaration on Environment and Development, Rio de Janeiro, 1992, A/CONF.151/26/Rev.1 (vol.I).

²⁹ United Nations General Assembly, Millennium Development Goals, New York, September 18, 2000, A/RES/55/2.

³⁰ United Nations, Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters, Hyogo, January 22, 2005, A/CONF.206/6.

³¹ United Nations Framework Convention on Climate Change, Adoption of the Paris Agreement, COP21, Paris, December 12, 2015, FCCC/CP/2015/L.9/Rev/1.

³² United Nations General Assembly, Sendai Framework for Disaster Risk Reduction 2015–2030, Sendai, 2015, A/CONF.224/L.2.

³³ United Nations General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, New York, October 21, 2015, A/RES/70/1.

³⁴ United Nations General Assembly, Rio Declaration, Principle 1.

³⁵ United Nations General Assembly, Rio Declaration, Principle 3.

³⁶ United Nations General Assembly, Rio Declaration, Principle 4.

³⁷ The provided text discusses the use of the pronoun 'we' throughout the declaration, which not only creates guidelines for future generations but also makes the international community and its institutions active and participative in changing the status quo. It also touches on the necessary anthropocentric approach of the international community and institutions see: Ivan Allegranti, "Un approccio antropocentrico per superare la crisi del multilateralismo [An Anthropocentric Approach to Overcome the Crisis of Multilateralism]," *OSORIN Working Papers 2 (2022)*: 61.

³⁸ United Nations General Assembly, Millennium Development Goals, Preamble 4.

protection of the "territory-people" bond, viewing them as inseparable concepts.³⁹

A paradigm shift, however, occurred with the Paris Agreement. This instrument recognizes the "territory-person" duality as a fundamental human right.⁴⁰ In doing so, it compels states, while addressing the climate crisis, to adopt an approach for each action aimed at achieving the Agreement's goals that takes into account the fundamental human rights, including the relationship between individuals and the territories they inhabit. Hence, the climate neutrality and the Agreement's objectives cannot be achieved without upholding the essential human rights, especially preserving the bond that ties a population to the territory it inhabits.

The Sendai Framework further broadens the operational scope of this right by establishing the principle of Building Back Better (reconstructing better than before).⁴¹ This principle introduces both a new obligation (that anyone involved in future construction must meet) and a contemporaneous objective evaluation method.⁴² Therefore, any new construction anticipating human settlement must not only respect the pre-existing bond between territory and community, but also introduce structural improvements over what previously existed.⁴³

³⁹ United Nations, Hyogo Framework for Action, 3, in which the importance of protecting people in their territories for the years 2005-2015 is emphasized (note that the preposition 'on' in the English version of the treaty underscores the connection between people and the place where they live).

⁴⁰ Whose preamble establishes that the signatory States, in promoting measures to address climate change, must consider their respective obligations regarding human rights, such as the right to health, the rights of indigenous peoples, local communities, migrants, children, people with disabilities, and individuals in vulnerable situations, as well as the right to development, gender equality, women's empowerment, and intergenerational equity.

⁴¹ Elizabeth Maly, "Building Back Better With People Centered Housing Recovery," *International Journal of Disaster Risk Reduction* 29 (2018): 84. <https://doi.org/10.1016/j.ijdr.2017.09.005>.

⁴² United Nations General Assembly, Sendai Framework, par. 20. The slogan "Building Back Better" emphasizes the need for an integrated approach to reconstruction, ensuring that the rebuilding process is technologically advanced, sustainable, and preserves the connection between people and their territories. The concept originated in the context of disaster risk reduction and has been adopted in various initiatives, including the United Nations' Sendai Framework for Disaster Risk Reduction. It has been applied to diverse areas, from physical infrastructure to social systems, with the goal of creating a more resilient and equitable society: Elizabeth Maly, "Rethinking 'Build Back Better' in Housing Reconstruction: A Proposal for 'People Centered Housing Recovery'," *IOP Conference Series: Earth and Environmental Science* 56 (2017), <https://doi.org/10.1088/1755-1315/56/1/012025>.

⁴³ In this regard the civil law doctrine has discussed about the concept of resilience regarding property law. See: Elsabe Van der Sijde, "What Can (south African) Property Lawyers Learn from Resilience Thinking? an Exploratory Note on the Aftermath of the Covid-19 Pandemic," in *Property and Pandemics: Property Law Responses to Covid-19*, ed. Z. T. Boggenpoel et al. (Cape Town: Juta, 2021), 352. The author particularly highlights how resilience can also have a transformative character, in that it is understood as 'the capacity of individuals, social groups, or socio-ecological systems... not only to coexist with changes, disturbances, adversities, or disasters, but also to adapt, innovate, and transform into new, more desirable configurations'. From this perspective, the concept of resilience also takes on a normative character, suggesting to the legislator tools to enable it to come into being. Therefore, for property rights to be resilient,

Lastly, the 2030 Agenda, with Sustainable Development Goals 11 (make cities and human settlements inclusive, safe, resilient, and sustainable)⁴⁴ and 13 (take urgent action to combat climate change and its impacts),⁴⁵ along with their respective targets and studied indicators, lays the framework for implementing measures globally. These measures aim to uphold this newly recognized right, which seeks to protect the often unbreakable bond between a territory, its community, and its inhabitants.⁴⁶

they must address global challenges such as climate change, loss of biodiversity, and inequality. This resilience should not only protect the status quo but also adapt in a transformative way to climate change and the constant danger of natural disasters that could annul the very existence of the right. Furthermore, property rights must resist positions that seek to maintain the current system at all costs, as they must be able to facilitate change in line with the times and human needs instead of hindering it.

⁴⁴ Francesca Abastante, Isabella M. Lami, and Marika Gaballo, "Pursuing the SDG11 Targets: The Role of the Sustainability Protocols," *Sustainability* 13, no. 7 (2021): 2. <https://doi.org/10.3390/su13073858>. The authors particularly highlights how resilience can also have a transformative character, in that it is understood as 'the capacity of individuals, social groups, or socio-ecological systems... not only to coexist with changes, disturbances, adversities, or disasters, but also to adapt, innovate, and transform into new, more desirable configurations'. From this perspective, the concept of resilience also takes on a normative character, suggesting to the legislator tools to enable it to come into being. Therefore, for property rights to be resilient, they must address global challenges such as climate change, loss of biodiversity, and inequality. This resilience should not only protect the status quo but also adapt in a transformative way to climate change and the constant danger of natural disasters that could annul the very existence of the right. Furthermore, property rights must resist positions that seek to maintain the current system at all costs, as they must be able to facilitate change in line with the times and human needs instead of hindering it. See also: Francesca Abastante, Isabella M. Lami, and Beatrice Mecca, "How Covid-19 Influences the 2030 Agenda: Do the Practices of Achieving the Sustainable Development Goal 11 Need Rethinking and Adjustment?," *Valori e Valutazioni* 26 (2020): 15. <https://doi.org/10.48264/VVSIEV-20202603>. The authors highlight that both the European Union and Italy have not provided suitable indicators to assess Sustainable Development Goal 11.5 (making cities resilient to disasters and protecting communities through a holistic approach to post-disaster reconstruction as outlined in the Sendai Framework). The search results provide access to the full text of the report "L'Italia e gli Obiettivi di Sviluppo Sostenibile Rapporto ASviS 2022 [Italy and the Sustainable Development Goals: ASviS Report 2022]," by the Alleanza Italiana per lo Sviluppo Sostenibile [Italian Alliance for Sustainable Development], which may contain further details on this topic.

⁴⁵ Joyeeta Gupta and Courtney Vegelin, "Sustainable Development Goals and Inclusive Development," *International Environmental Agreements: Politics, Law and Economics* 16, no. 3 (2016): 441. <https://doi.org/10.1007/s10784-016-9323-z>. The authors analyze the inclusive development of the Sustainable Development Goals (SDGs), evaluating whether the textual design effectively aims to ensure that development focuses on both social and ecological issues and the political tools necessary to achieve the intended transformation. In particular, the authors, by including Goals 11 and 13 among the objectives aimed at inclusive environmental development, emphasize how the 2030 Agenda continues to emphasize the component of economic growth in its interpretation of sustainable development. Although eleven goals address ecological issues, the actual quantitative and qualitative commitment is lower, as they mainly focus on technology transfer and scientific solutions, rather than the need to redefine the concept of growth based on the availability of limited ecological space and the need to improve human well-being.

⁴⁶ Pietro Perlingieri, *Il Diritto Civile Nella Legalità Costituzionale* [Civil Law in Constitutional Legality], vol. 3 (Naples: Edizioni Scientifiche Italiane, 2020), 77; Roberto Gambino and Massimo Sargolini, "La Rigenerazione Di Nuclei E Borghi Storici Dell'italia Centrale Danneggiati Dal Sisma Del 2016 [The Regeneration of Historic Hamlets and Villages in Central Italy Damaged by the 2016 Earthquake]," *Ri-vista. Ricerche per la progettazione del paesaggio*

From the analysis of these international instruments, it is clear that there is a universal acknowledgment of the bond that forms between a specific territory and its community. This bond is not just rooted in the objective fact that a certain house was built in an particular physical location. It requires more. As demonstrated by property rights, it's also essential to establish an emotional connection with the territory in question.

5. A New Concept of Home

In light of what has been discussed so far, a home⁴⁷ is not just a mere physical shelter protecting humans from the elements⁴⁸ but also lays the foundation for an individual's development within a particular territory.⁴⁹

From infancy, a home provides warmth and protection against factors that could lead to premature death. As a child, the home becomes the foundation from which everything - good memories, bad memories, learning abilities, and more - originates. During adolescence, the home plays a similar role, minus the protective aspect that an infant requires. For adults, a home is a platform for achieving dreams within society, for society, and through society. And in old age, a home is a place of final rest.⁵⁰

15, no. 2 (2017): 223, <https://doi.org/10.13128/RV-22011>. In this perspective of response to natural disaster, attention to good building reconstruction becomes, together with real job opportunities, the primary motivation 'to ensure the survival of communities and their own identity roots.'

⁴⁷ The author already intends the 'home' in an evolutionary sense, that is, as 'adequate housing/shelter.' For further details, please see: United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), December 13, 1991, E/1992/23, para. 2, that defines the concept of 'Adequate shelter' as a place in which 'adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost.'; See also: CESCR, General Comment No. 4, para. 7 and 8; which specifies the seven criterias that need to be considered in order to evaluate the adequacy of a shelter. Those criterias are: 1. Legal security of tenure, including legal protection against forced evictions; 2. Availability of services, materials, facilities and infrastructure; 3. Affordability; 4. Habitability; 5. Accessibility for disadvantaged groups; 6. Location; 7. Cultural Adequacy.

⁴⁸ Lorna Fox, "The Meaning of Home: A Chimerical Concept or a Legal Challenge?," *Journal of Law and Society* 29, no. 4 (2002): 581. <https://doi.org/10.1111/1467-6478.00234>. means house as an 'instrument of social engineering'; Lorna Fox O'Mahony, "The meaning of home: from theory to practice," *International Journal of Law in the Built Environment* 5, no. 2 (2013): 161, <https://doi.org/10.1108/IJLBE-11-2012-0024>. for whom house is a physical place in which everyone lives the house as a safe space.

⁴⁹ Juhani Pallasmaa, "Identity, Intimacy, and Domicile - Notes on the Phenomenology of Home," in *The Home: Words, Interpretations, Meanings and Environments*, ed. David Benjamin (Aldershot: Avebury, 1995), 135, which underlines the process of auto identification with the house, as this becomes 'a collection and concretization of personal images of protection and intimacy, which help one recognise and remember who one is'; Farhan Samanani and Johannes Lenhard, "House and Home," in *Open Encyclopedia of Anthropology*, ed. Felix Stein (2019), for which 'home plays an inescapable role in defining who we are'.

⁵⁰ United Nations Human Settlements Programme (UN-HABITAT), *The Right to Adequate Housing*, Geneva, November, 2009, ST/HR(05)/H8/No.21(Rev.1), 9.

Thus, a home embodies both rights⁵¹ and obligations,⁵² independent of the state it's located in, the nationality of its owner, their income, religion, gender, race, or health status.⁵³ A home represents hope, even if that hope is shattered within moments due to a natural disaster.⁵⁴

With the international community's acknowledgment of the current dire state of our Earth - the very home of all humans - the "right to remain in one's homeland" has now become intrinsic to the same "values and fundamental freedoms" as proclaimed in the 1948 Declaration. Moreover, this newly recognized right encompasses the right to adequate housing. Therefore, if this right isn't upheld, both the right to live in appropriate accommodations and the right to reside in a chosen territory where an individual can achieve sustainable human development are undermined.⁵⁵

Furthermore, failing to recognize this right is tantamount to denying the principle of self-determination, especially in communities affected by natural disasters.⁵⁶ Traditionally, within a nation, different groups of citizens choose to settle in various parts of the state.⁵⁷ This decision aims at fostering socio-economic and cultural development for that population segment.⁵⁸ If, due to external factors, the bond between the people and their territory breaks, those affected should be granted the right to remain in that place, as it's their chosen

⁵¹ UN-HABITAT, *The Right to Adequate Housing*, 6.

⁵² An example can be the homeowner who must not carry out emissions that exceed normal tolerance according to art. 844 of the Italian Civil Code is given again.

⁵³ United Nations General Assembly, *Millennium Development Goals*, Preamble 4.

⁵⁴ In this regard, the Santiago Network for Loss and Damage, established at COP 25 in Madrid and developed by the UNFCCC, allows for the interconnection of entities from developed countries and entities from vulnerable countries, whereby the former assist the latter in the development of post-reconstruction strategies, thus initiating a knowledge exchange among peoples. For further details, please see: "Santiago Network," United Nations Framework Convention on Climate Change (UNFCCC), accessed June 10, 2023, <https://unfccc.int/santiago-network>. Similarly, in preparation for COP 28 in Dubai, the Transnational Committee is currently developing a new global fund to assist any nation affected by the catastrophic impact of a natural disaster. For further details, please see: "Second Meeting of the Transitional Committee (TC2)," UNFCCC, accessed June 29, 2023, <https://unfccc.int/event/tc2>.

⁵⁵ UN-HABITAT, *The Right to Adequate Housing*, 6; CESCR, *General Comment No. 4*, para. 2.

⁵⁶ United Nations General Assembly, *Charter of the United Nations and Statute of the International Court of Justice*, June 26, 1945, article 1(2) rules the principle of self-determination. For a panoramic overview of the principle of self-determination See: Simona Rodriguez, "Le Sfide degli Stati Contemporanei fra Auto-determinazione e Separatismi Europei [The Challenges of Contemporary States Between Self-Determination and European Separatism]," *Nomos – Le Attualità Nel Diritto*, no. 2 (2019): 1; and the literature cited by the Author. See also: United Nations, *International Covenant on Civil and Political Rights*, Art. 12, which recognizes the right of individuals to choose their place of residence within the territorial borders of a state.

⁵⁷ UN-HABITAT, *The Right to Adequate Housing*, 8, which distinguishes the right to adequate housing from the right to land by stating that access to land is a precursor to a subsequent right to adequate housing, and not the other way around.

⁵⁸ United Nations General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, December 14, 1960, A/RES/1514 (XV).

location to spend their lives. Such situations, as described above, must be safeguarded by the international community.⁵⁹

6. Human Sustainable Development

The protection by the International Community of the "right to remain in one's own homeland" allows people who live in a certain territory to continue their settlement in the chosen place, both by carrying out work and productive activities⁶⁰ and by building relationships and social ties with fellow citizens located there, thus preserving their cultural roots.⁶¹ In this way, the bond between person and territory is not broken, but rather, is strengthened, thus achieving the development of the human person.⁶²

⁵⁹ Giuseppe De Vergottini, "L'auto decisione negata [Self-Determination Denied]," *Ricerche Sociali* 22 (2015): 97-106. Within the framework of community law, the 'right to remain in one's own land' has been recognized in the judgments of the European Court of Human Rights under Article 8 of the Convention. For further details, please see: Lécia Vicente, Lucia Ruggeri, and Kozue Kashiwazaki, "Beyond Lipstick and High Heels: Three Tell-tale Narratives of Female Leadership in the United States, Italy and Japan," *Hastings Women's Law Journal* 32, no. 1 (2021): 1, and Ivan Allegranti, "'The Right to Remain and Produce in your Homeland' in Light of Article 8 of the European Convention on Human Rights, The European Court of Human Rights Case Law and the Italian Constitution," *Athens Journal of Law* 8, no. 3 (2022): 349-360. Recently, Pope Francis I, in the Angelus of September 24, 2023, stated the need 'that every man and woman be guaranteed the possibility of living a dignified life in the society in which they find themselves. Unfortunately, poverty, wars, and the climate crisis force many people to flee. Therefore, we are all called to create communities that are ready and open to welcome, promote, accompany, and integrate those who knock on our doors'. See: Pope Francis, "Angelus, Piazza San Pietro, Sunday 24th September 2023," La Santa Sede, accessed September 24, 2023: <https://www.vatican.va/content/francesco/it/angelus/2023/documents/20230924-angelus.html>.

⁶⁰ *Fernández Martínez v. Spain*, no. 56030/07 [2014] ECHR, par. 109, in light of which 'restrictions on an individual's professional life may fall within Article 8 where they have repercussions on the manner in which he or she constructs his or her social identity by developing relationships with others. In addition, professional life is often intricately linked to private life, especially if factors relating to private life, in the strict sense of the term, are regarded as qualifying criteria for a given profession, Professional life is therefore part of the zone of interaction between a person and others which, even in a public context, may fall within the scope of 'private life''. See also: Ivan Allegranti, "L'attualità di un caso 20 anni dopo (Nota a Durini c. Italia, Corte edu, 12 gennaio 1994, n. 19217/91) [The Relevance of a Case 20 Years Later (Note on Durini v. Italy, ECtHR, January 12, 1994, no. 19217/91)]," *Rivista Giuridica dell'Edilizia*, no. 6 (2023). According to the Author, the 'right to remain in one's own homeland' also includes the right to work the land chosen by the individual or groups of individuals who have decided to settle in a particular place.

⁶¹ Allison M. Dussias, "Does the Right of Self-determination Include a Right to Homeland?" *Syracuse Journal of International Law and Commerce* 31, no. 1 (2004): 92, which underlines that: 'the right of self-determination must guarantee the right to a homeland, in which an indigenous nation can seek to preserve and develop its culture. If it does not, then the right of self-determination, whether voiced in International Law or US Law will fail to live up to its promise.'

⁶² In this regard let's think of the policies adopted in rural areas in order to avoid the depopulation. See: United Nations Housing Rights Programme, *Housing Rights Legislation: Review of International and National Legal Instruments*, Nairobi, 2002, HS/638/01E, 54, which states the principle that 'international law increasingly views the right to return as encompassing not merely the right to return to one's country of origin, but to return to one's original home'. See also: Council of Europe Parliamentary Assembly, *European Charter for Rural Areas: Draft Recommendation*, March 20, 1996, Doc. 7507, 1, according to which the European Union recognizes the importance of adopting resolutions that keep rural Europe inhabited and active.

Human sustainable development aims to create a favorable environment where all people can enjoy long, healthy, productive, and creative lives.⁶³ In this sense, human sustainable development can be understood as the ability to expand and enlarge people's choices⁶⁴ and is defined as a process of promoting and expanding human capabilities (opportunities), where the term "sustainable" refers to environmental and social sustainability.⁶⁵

Therefore, any development process should aim to reduce poverty, inequality, and conflict, as well as promote inclusion, participation, and consider environmental stress and ecological conditions. To achieve sustainable development, four criteria must be met: a) the individual must be central in economic decisions focused both on long-term goals and on environmental respect; b) new technologies must be environmentally rational; c) the environmental safeguard criterion must be adopted in all political decisions made; d) decisions must be made together with local communities as they are the "guardians" of local traditions and best know their territories.⁶⁶ The right to personal and social development, as stated by the UNDRTD, concerns human autonomy, gender equality, equitable growth, participation, and poverty reduction.⁶⁷

However, it is thanks to the 2030 Agenda that the indissoluble relationship between the human being and the surrounding environment is deemed

⁶³ Mahbub ul Haq, *Reflections on Human Development* (New York: Oxford University Press, 1995), 95.

⁶⁴ Koen De Feyter, *Towards a Framework Convention on the Right to Development* (Geneva: Friedrich-Ebert-Stiftung, 2013), 1; Sakiko Fukuda-Parr, "Human Rights and Politics in Development," in *Human Rights: Politics and Practice*, 3rd ed., ed. Michael Goodhart (Oxford University Press, 2016), 198-215; compare with: United Nations General Assembly, Declaration on the Right to Development, New York, December 4, 1986, A/RES/41/128, Article 1, for which 'The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized'.

⁶⁵ Mario Biggeri and Vincenzo Mauro, "Towards a More 'sustainable' Human Development Index: Integrating the Environment and Freedom," *Ecological Indicators* 91 (2018): 221. <https://doi.org/10.1016/j.ecolind.2018.03.045>.

⁶⁶ Jan Pronk and Mahbub ul Haq, "Desarrollo Sostenible: del concepto a la acción [Sustainable Development: From Concept to Action]," *El Trimestre Económico* 59, no. 4 (1992): 804-805. The Authors state that without the implementation of these four principles, sustainable development remains purely theoretical and not practical. See also: United Nations Development Programme, *Sustainable Human Development: Concepts and Priorities*, Sudhir Anand and Amartya Sen, New York, 1994, DP(05)/O2/no.8, 5; Jan Pronk and Mahbub ul Haq, *The Hague Report: Sustainable Development: From Concept to Action* (New York: United Nations Development Program, 1992), 6, according to which sustainable development requires an integrated approach in its implementation, as it encompasses a multitude of facets of human life. Similarly, the Authors emphasize that sustainable development must be funded with the resources already available, thus avoiding individual nations from creating debts that future generations will have to pay.

⁶⁷ James Gustave Speth, "Capacity Development and Sustainable Human Development," in *Encyclopedia of Life Support Systems (EOLSS)*, vol. 1 (Oxford: Eolss Publishers, 2009), 256; United Nations Development Program, *Human Development Report 1995* (New York: Oxford University Press for the United Nations Development Program, 1995), 11.

necessary.⁶⁸ Therefore, a person, in their being, can develop sustainably if the earthly balance between the (healthy) environment and the population is not broken.⁶⁹ In the context of the human development paradigm, there are four main elements that emerge as fundamental to achieve the actual development of the human person.

Firstly, productivity plays a crucial role as individuals must be enabled to increase their productive capacity and actively participate in the process of income generation and paid employment: economic growth is a dimension inherent in human development models. A second element is equality, with the idea that every individual must have access to equal opportunities. To this end, any barrier preventing access to economic and political opportunities must be eliminated, so that all people can participate and benefit from such possibilities. Moreover, as a third element, the sustainability of human development is manifested by access to opportunities not only for current generations but also for future ones.⁷⁰

This requires the renewal of all forms of capital - be it physical, human, or environmental - to be preserved over time. Lastly, the enhancement of development should not only be conceived as a process for people but must be driven by them.⁷¹ Active participation of people in decisions and processes that affect their lives is essential to promote both individual and collective autonomy.⁷² However, to achieve human sustainable development in terms of property rights and the “right to remain in one's own homeland”, it cannot be refrained from being expressed to the extent that this right, on the one hand, allows local communities to remain in the chosen place, but at the same time allows them to rejuvenate these places, often threatened by natural disasters or already devastated by them.⁷³ This is the social perspective,⁷⁴ thanks also

⁶⁸ United Nations General Assembly, The 2030 Agenda for Sustainable Development, preamble, specifies that the States that have adopted the Agenda ‘are determined to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfill their potential with dignity and equality in a healthy environment’.

⁶⁹ Perlingieri, *Il Diritto Civile*, 77.

⁷⁰ Erblin Berisha, Caterina Caprioli, and Giancarlo Cotella, “Unpacking SDG Target 11.a: What Is It About and How to Measure Its Progress?” *City and Environment Interactions* 14 (2022). <https://doi.org/10.1016/j.cacint.2022.100080>.

⁷¹ In this regard, Principle 16 of the Rio Declaration, emphasizes that environmental and human development must occur in a way that does not cause harm to international finance. In doing so, the concept of financial sustainability and inclusivity is underscored, becoming an essential element for sustainable human development. On this matter, See: Rajiv Prabhakar, *Financial Inclusion: Critique and Alternatives* (Bristol: Policy Press, 2021).

⁷² Berisha, Caprioli, and Cotella, “Unpacking SDG target 11.a,” 13.

⁷³ Gregory S. Alexander, *Property and Human Flourishing* (Oxford: Oxford University Press, 2018), 55, for which ‘in order for me to be a certain kind of person – a free person with the basic capabilities necessary for human flourishing – I must be in, belong to, and support a certain kind of society – a society that supports a certain kind of political, social, and moral culture and that maintains a decent background material structure and that recognizes that in doing so we need to keep within the planetary boundaries so that not only we but also the planet can flourish’.

⁷⁴ Paul James, “The Social Imaginary in Theory and Practice,” in *Revisiting the Global Imaginary: Theories, Ideologies, Subjectivities*, ed. Chris Hudson and Erin K. Wilson (London:

to contemporary international instruments, which encourages and further pushes for a radical, resilient, and sustainable change in property rights,⁷⁵ understood in its fourfold representation and ready to face the challenges of tomorrow.

7. Conclusion

In light of what has been said in these pages, it has emerged that the International Community also recognizes, within its treaties, the "right to remain in one's own homeland". In particular, it should be noted that this right falls within the rights pertaining to a citizen of a state to move freely within its territory.⁷⁶ By implementing an evolutionary and systematic interpretation of international conventions, it emerged that the territory-community link is indissoluble and, as in the theory of Italian property law, we have come to speak of a "plural property", also in this case, we can speak of multiple ties. These are the types of relationships that are created between the owner and the good, between the owner and the surrounding community, the state and the owner, and finally between the owner, the good, and third parties.

Finally, also because of recent international instruments and the same configuration of home according to international law, it emerged that this right is also an expression of the principle of self-determination of peoples as per Article 1 of the United Nations Charter. This statement is based on the fact that it is the will of those people, to implement economic, personal, and social development, to move to that particular territory. It is as if it were the expression of the will of a part of the sovereign people of a State recognized by the International Community. Thanks to the framework offered by international conventions, it is possible to perceive how the "right to remain in one's own homeland" allows the human being to develop their existence in the places chosen by them and to make them flourish in virtue of the new apparatus constituted by the right to property which on the one hand remains anchored in its material dimension but at the same time is transformed thanks to the new vital force offered by the social perception that requires the necessary protection of the earthly heritage.

Palgrave Macmillan, 2019), 34.

⁷⁵ Bram Akkermans, *Sustainable Property Law Reckoning, Resilience, and Reform* (Hague: Eleven International Publishing, 2022), 16.

⁷⁶ United Nations General Assembly, Universal Declaration of Human Rights, Article 13.

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