

THE RIGHT TO FOOD IN ITALY BETWEEN PRESENT AND FUTURE

background research

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IMPLEMENTING THE RIGHT TO FOOD IN AN 'ADVANCED ECONOMY'

The present report originated as a reaction to the increase in poverty and food poverty in Italy caused by austerity policies, delocalization and the broader legal, economic and political environment. Every day, almost two million families and 4,7 million people face significant problems obtaining access to adequate food.¹ Dramatically, this figure has increased by 57% since 2007 and more than one million are children. If the basic definition of the right to adequate food is that it is “realized when every man, woman and child alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement,”² there was little doubt that poverty and food poverty in Italy needed to be assessed and discussed.

However, we wanted to go beyond a basic understanding of the right to food as having properly fed people and enrich our analysis by adopting a holistic conception of the right and asking specific questions concerning the Italian context. Therefore, we based our investigation on a systemic, interconnected and transformative understanding of the right to food, which derives from the combination of the international legal framework, the CESCR General Comment No. 12,³ the 2004 FAO Voluntary Guidelines and the work realized in the last ten years by the former and current Special Rapporteurs on the Right to Food Olivier De Schutter⁴ and Hilal Elver⁵. These instruments and contributors expanded the scope of the right to food, strengthening the essential role it plays in the quest for the enjoyment of all rights.

Once the theoretical framework was set, we realized that if we wanted to talk about the right to food in Italy we had to keep in mind that Italy is the world's ninth biggest economy, the world's 10th largest exporter and 11th largest importer, a member of the G7, part of the Eurozone and one of the funding countries of the European Economic Community (then European Union).⁶ If it is true that ‘the most appropriate ways and means of implementing the right to adequate food will inevitably vary significantly from one State party to another’,⁷ it is thus essential to embed the analysis in both the economic and political context in which the Italian State (Executive, Legislative and Judiciary) operates at the moment. This has strong local roots but is inevitably connected with the European and global context. Such approach provides the opportunity to investigate the root causes of the ongoing violations⁸ and assess whether the lack of a proper implementation may thus be more a matter of unwillingness than inability.

¹ Istat, La povertà in Italia, Anno 2016, July 13, 2017.

² General Comment No. 12: The Right to Adequate Food (Art.11 of the Covenant) of the UN Committee on Economic, Social and Cultural Rights (CESCR) of 12 May 1999, contained in Document E/C.12/1999/5, par. 6. [Hereinafter GC No. 12].

³ Paragraph 6 of General Comment No.12 is clear in stating that “The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.” CESCR General Comment No. 12: The Right to Adequate Food (art. 11), E/C.12/1999/5.

⁴ We looked with particular attention at the last report on the transformative potential of the right to food, Final report drawing conclusions from his mandate, presented to the 25th Session of the UN Human Rights Council.

⁵ We were particularly inspired by the Special Rapporteur's work on the right to food and access to justice, the right to food and climate change, gender and the right to food and agricultural farmworkers.

⁶ Focus Economics, June 26, 2018. Available online.

⁷ GC No. 12 of the CESCR, above n 2, para 21.

⁸ S. MARKS, Human Rights and Root Causes, in 74 Modern Law Review 1, (2011).

We did not want to forget that human rights stretch beyond the territorial boundaries of countries. Italy is, on the first hand, an international donor and a partner in developing projects all over the world. On the second hand, it is part of bilateral agreements with third parties that directly or indirectly impact the right to food of foreign people. Finally, it is both a global buyer and a global exporter, a condition that has an impact on food production and food availability everywhere in the world. Therefore, in line with the CESCR General Comment No. 12 para 36⁹, the European Parliament resolution detailing an EU policy framework to assist developing countries in addressing food security challenges (2010/2100(INI)), art. 208 of the Treaty on the Functioning of the European Union on Policy Coherence for Development, and the Sustainable Development Goals (SDGs) and the Maastricht Principles on Extraterritorial Obligation (ETOs), we also decided to pay attention to the way in which policies, laws and decisions adopted in Italy have transnational effects on the protection, respect and fulfilment of the right to food.

This report thus adopts a holistic understanding of the right to food and combines it with the ideas of policy integration and coordination and with an extraterritorial perspective. It thus aims to produce a report that is not limited to individual situations that happen on the Italian territory but assesses the overall coherence of the Italian legislative and political framework vis-à-vis the full implementation right to food, identify positive examples and highlight the areas that require intervention. Eventually, we aim to set the stage for a legal and political conversation around what it means to implement the right to adequate food in a developed country of the European Union, taking into consideration both the domestic and international nature of human right obligations.

Within the limits of a desk-review and a limited number of interviews, we have decided to divide the report into three parts:

- Section I introduces the idea of a holistic approach to the right to food and then offers an overview and a critique of the numerous regulatory and legislative tools that have transposed the right to food into the Italian context. In particular, we look at the Constitutional, regional and local level and present some of the most interesting interventions that have been realized in terms of food and food policies. Are these documents, we ask, such to recognize, implement and fulfil the right to food in its strong and holistic meaning, or there is a gap to be filled?
- Section II builds on the theoretical and regulatory framework to offer a preliminary assessment of the state of the right to adequate food in Italy by engaging with concrete cases of violations and best practices. In order to be systemic, coherent and interconnected, the Section presents a multiplicity of examples that depict a grey picture of the state of the right to food in Italy. On the one hand, Italy appears as a country where the right of food of marginalized groups is significantly violated (destitute people, children, migrants and agricultural farmworkers). On the other hand, we also recognize that some forms of national support have been enacted, in particular with regards to the distribution of surplus food, the criminalization of gangmaster practices (*caporalato*) and the challenge to unfair commercial practices that favour the most powerful actors in the food chain. The second part of the

⁹ GC No. 12, above n 2, par. 36: “States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required”.

section is therefore dedicated to the assessment of these interventions through a right to food-based perspective, so to highlight their merits and suggest possible improvements.

- Finally, Section III shifts the focus from the local to the international and sheds light on way in which some policy decisions and legislative interventions made at the national level may impact the right to food of people and communities living outside of the Italian territory. From the perspective of policy coherence for development (PCD) and interconnectedness, we thus investigate a portfolio of actions that are directly or indirectly connected with the extraterritorial obligation of the Italian State to respect, protect and fulfil the right to food. Once again, the picture is ambivalent. On the one hand, we appreciate the way in which Italian development cooperation adopts a right to food-based approach and is positively supporting the diffusion of agroecological practices. On the other hand, we flag the fact that agricultural subsidies, incentives to internationalization of agricultural production, bilateral and multilateral trade agreements, the support to climate smart agriculture and the participation to the New Alliance on Food Security may go in the opposite direction.

In conclusion, this report is a preliminary but substantiated reflection on what does it mean to implement the right to food in an 'advanced economy' with global interconnections. By adopting a holistic approach to the right to food and presenting concrete examples, our aim is to favour a conversation around the right to food that goes beyond the idea of providing nutritional food and that crosses national boundaries. The arguments and ideas developed in the report are thus an invitation to thinking at the obligations on the Italian State through in a way that is coordinated, interconnected and not purely quantitative. As a matter of fact, we believe that the implementation of the right to food in Italy must be based on the recognition of interdependency and intersectionality: policies and laws that affect the right to food are not only those that directly shape the food system; similarly, the lack of a sustainable access to food cannot only be addressed through the angle of making food available but must be understood in the broader socio-economic and cultural context.

For us, the right to food is a matter of social justice, as stated by the CESCR in 1999. In a context of economic possibility, the legal framework requires interventions and policies that go beyond the satisfaction of basic human needs (although the latter remains crucial) the importance of active participation of CSO (particularly small-scale farmers) in the design of the Right to Food Policies is a crucial factor for their success, also in terms of accountability and justiciability therefore a step in the direction of food democracy. Rather, public authorities should adopt the "appropriate economic, environmental and social policies, both at the national and international levels, oriented to the eradication of poverty" and to the establishment of a food system that is based on the right to quality food, and is therefore sustainable on its production, consumption and post-consumption sides. Italy may not be in a right to food emergency yet. However, it is important to prevent possible degenerations by adopting a systemic, democratic and structural approach to the right to food as the legal core of policies, and regulatory and monitoring interventions. Whereas it means a framework legislation, an accountability procedure or a mandatory right to food-assessment of unilateral and multilateral decisions, it is not to us to decide. Time is ripe for having a serious and collective conversation around the right to food in Italy. This report aims to be the first step in that direction.

I. THE RIGHT TO FOOD IN ITALY: RECOGNITION AND GOOD PRACTICES

The right to food has been recognized as a human right since the Universal Declaration of Human Rights in 1948. Later, it has been contained in several binding international treaties, most notably the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR, art. 11), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989) and the Convention on the Rights of Persons with Disabilities (2006). Although it may seem that the right to food is inherently connected to situations of extreme vulnerability and marginalization, General Comment 12 on Article 11 of the International Covenant on Economic Social and Cultural Rights, provides an expansive definition of the right to food that:

“... imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil (facilitate and provide) the right. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.”¹⁰

As with other human rights, the duties to protect, respect and fulfil (facilitate and provide) the right to food are thus the term of reference to be used to assess the conduct of State and their compliance with the international legal framework. To evaluate the current state of the right to food in Italy, it is thus essential to define what these obligations mean, what is their scope and what are their interconnections.

Often, the right to food is interpreted as the right to be free from hunger. In this sense, the 1996 Rome Declaration on World Food Security that was issued at the 1996 World Food Summit made clear the centrality of “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.”¹¹ However, a series of interventions and reflections conducted at the national and international level have contributed to the elaboration of a broader and more systemic understanding of the right to food.

Our terms of reference are the CESCR General Comment No. 12,¹² the 2004 FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security,¹³ the Communication from the Commission to the Council and the European Parliament on ‘An EU policy framework to assist developing countries in addressing food security

¹⁰ GC No. 12 of the CESCR, above n 2, par. 15.

¹¹ Rome Declaration on World Food Security and World Food Summit Plan of Action of the FAO, Rome, of 13-17 November 1996.

¹² GC No. 12 of the CESCR, above n 2.

¹³ 2004 FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security of the FAO, adopted during the 127th Session of the FAO Council November 2004.

challenges' (COM(2010)0127) adopted on 31 March 2010,¹⁴ the European Parliament report on an EU policy framework to assist developing countries in addressing food security challenges (2010/2100(INI)),¹⁵ the work of the Special Rapporteurs on the Right to Food, the Agenda 2030,¹⁶ the Sustainable Development Goals (SDGs) and the Italian National Strategy for Sustainable Development.¹⁷ These milestones provide a picture of the right to food that is intertwined and inherently connected with all the other essential human rights and that is not limited to the is not relevant only in cases of marginalization or emergency and that goes well beyond accessing food and consuming it. To paraphrase the words of the former Special Rapporteur on the Right to Food Olivier De Schutter, the fulfilment of the right to food currently means that States must focus on the socio-environmental sustainability of both consumption and production, respect the planetary boundaries and the rights of future generations, act to eradicate poverty and inequality, and establish a strong system of legal entitlements secured by accessible accountability mechanisms.¹⁸

Although SDG 2 does not mention the right to food,¹⁹ we can see an integration between its holistic approach to hunger and malnutrition and the systemic understanding of the right to food. To achieve SDG 2 in 2030, we are told by the United Nations themselves, it is necessary to think about the whole food system. It means, for example, to support "agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs."²⁰ States must "ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality."²¹ They must also "Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round" and "maintain the genetic diversity of seeds, cultivated plants and farmed and domesticated animals and their related wild species."²²

A modern and systemic understanding of the right to food, we believe, is the perfect tool to support the transformative aspirations of the SDGs with the strength and accountability of a legal framework. Because the duties and points of intervention concern not only the access to food, we believe that a right to food approach to public policies is equally relevant in the Global South and the

¹⁴ Communication from the Commission to the Council and the European Parliament on 'An EU policy framework to assist developing countries in addressing food security challenges' (COM(2010)0127) adopted on March 31, 2010.

¹⁵ Report on an EU policy framework to assist developing countries in addressing food security challenges of the European Parliament, (2010/2100(INI)), July 19, 2011, A7-0284/2011.

¹⁶ Resolution adopted by the General Assembly of the United Nations, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, September 25, 2015.

¹⁷ Ministero dell'Ambiente e della Tutela del Territorio, Strategia Nazionale per lo Sviluppo Sostenibile, October 2017.

¹⁸ Final report: The transformative potential of the right to food, of the Special Rapporteur on the right to food Olivier De Schutter, A/HRC/25/57, United Nations, Geneva, 2014. [Hereinafter: The transformative potential of the right to food by O. De Schutter].

¹⁹ J. L. VIVERO POL, C. SCHUFTAN, No right to food and nutrition in the SDGs: mistake or success? In *BMJ Global Health*, 2016. Available online.

²⁰ Resolution 70/1 of the UN General Assembly of the seventh session of 25 September 2015 on Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, Goal 2.3.

²¹ *Ibidem*, Goal 2.4.

²² *Ibidem*, Goal 2.5 – 2.a.

Global North. In the following part of this report we thus look at whether the Italian legal and political framework recognizes the right to food, what kind of understanding is adopted both at the national and local level and if justiciability is ensured. In particular, we begin with the Constitution (1.a) and then look at the way in which the legal and administrative competences that concern the right to food are allocated to multiple authorities operating at different levels (1.b). In this complex framework, we present cases of direct recognition of the right to food at the level of Regions and cities (1.c) and then focus on of public intervention that may contribute to the implementation of a holistic understanding of the right (1.c). We have selected three areas out of the multiple ones that are certainly relevant: first of all, we look at access to land and water and at the tension between urbanization, large-scale energy infrastructures and the preservation of agricultural land (1.c.a); then we analyse two cases where public procurement for school canteens is defined on the basis of health, social and environmental considerations.

1.a The right to food in the Italian Constitutional Framework

The Italian Constitution of 1948 does not make any express reference to the right to food. However, there are several legal reasons to affirm that such right has constitutional value in the Italian context and that any law and regulation must respect it and be informed by it. Since 2001, the reformed article 117 establishes that ‘Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations’. As a consequence, the obligations to implement the right to food contained in the international treaties indicated above, all of which have been signed and ratified by the Italian Parliament, must be considered binding and hierarchically superior to any internal legislative act.

However, the national reception of international obligations poses two problems: a) the right may not be implemented and enforced; b) even if enforced, the right to food may be interpreted in a narrow way that does not reflect the complexity of analysis that has been offered in other national contexts and at the international level. While Section II of this report focuses on the first point, the sole Constitutional case concerning the right to food that the authors were able to find offers an insight on what may be the interpretative preference of Italian courts.

In 2010, the Constitutional Court was asked to decide whether the Italian government could legitimately introduce the ‘social card’ a form of social support aimed to help families in the aftermath of the economic crisis of 2008. In its judgment, that mainly concerned the technical allocation of competences between State and Region, the Constitutional Court upheld the social card and based its decision on the State’s duty to intervene and provide support in cases of extreme necessity where the basic social rights of citizens were affected, in particular their right to food.²³ At first sight, it could thus be said that the Constitutional Court has not yet embraced the holistic and systemic understanding of the right to food that we discussed above. However, this does not mean that such interpretation could not be deduced from the text.

According to Maria Bottiglieri, a balanced interpretation of the Constitutional Chart and its socio-economic provisions would reveal that the multiple dimensions of the right to food are already recognized and protected – although not explicitly.²⁴ Whether through the right to work, to human and social dignity or to education and public welfare, Bottiglieri concludes that the principles and dispositions of the Italian Constitution support a systemic understanding of the right to food that

²³ Judgment n. 10/2010 of the Italian Constitutional Court.

²⁴ M. BOTTIGLIERI, The Protection of the Right to adequate food in the Italian Constitution, paper presented at the Colloquium 2015 Right To Food, Peace And Democracy, 19 September 2015. Available online.

goes beyond the simple act of guaranteeing access to adequate food and equally considers the achievement of sustainable production and consumption, the role of the right to food in the fight against social inequality, the provision of equal protection of citizens and foreigners, and what the CESCR would define the duty to “actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihoods”.²⁵

Whether through the reception of international obligations or by means of holistic interpretation of the Constitutional Charter, it should thus be concluded that the systemic interpretation of the right to food has space in the fundamental document of the Italian legal system. As such, national, regional and local interventions (both legislative and administrative) should be compliant and could be judicially abrogated if in conflict. However, no case is known where the unconstitutionality of a primary and secondary source was challenged in front of the Constitutional court. This may be a matter of procedure (because the Italian legal system does not recognize the possibility of a direct constitutionality challenge), but also of awareness and legal culture. One possible ally in the implementation of the right to food may be represented by the recent increase in regional and local statements that make reference to it, including the first law at the European level.

1.b The recognition of the right to food at the regional and local level: shared but confused responsibilities

When assessing whether the Italian legal system is shaped in a way that facilitates the implementation and achievement of the right to food for all, we must be aware that almost 70% of the Italian legislation is directly or indirectly defined by the content of EU Directives and Regulations. However, it is still important to look at the way in which national authorities intervene in the production of laws and how this may affect the implementation of the right to food. This is particularly true in the case of Italy because of the way in which legislative and administrative competences have been distributed both vertically (State, Region and cities) and horizontally (each region and each city).

The starting point is Title V of the Italian Constitution, which is dedicated to the distribution of powers, rights and responsibilities between the central State, Regions, Provinces and Cities. The section, which was the object of a broad reform in 2001 and at the centre of numerous political campaigns in the following years, is based on the recognition that the legislative power is co-exercised by the State and the Regions and exercised based on the subject matter: unless the Constitution expressly allocates the competence to the State or to the State and the Regions together, it is for the Regions to enact laws and implement them. At the same time, administrative functions (i.e. the management of the daily life of citizens and the implementation of the national and regional legal framework) are exercised by cities and metropolitan cities (conglomerates of cities).

The fragmentation of legislative competences between Regions and the tensions that often arise between Regions and the State can have significant impacts on the implementation of a holistic understanding of the right to food. As a matter of fact, the area of *‘alimentazione’* (which could be translated as food or diet) belongs to the concurrent competence of States and Regions (art. 117). As such, each region should have the autonomy to define their own legal framework, but the State should determine the fundamental principles. However, a systemic understanding of the right to food requires to think of the other sectors and who has the authority to legislate them. For example, the central State has exclusive competence over immigration (art. 117b), social security (art. 117o)

²⁵ GC No. 12 of the ICESCR, above n 2, para 15.

and the protection of the environment, ecosystems and cultural heritage (art. 117s). On the other hand, it is for the State and the Regions together to legislate on protection and security of labour, health, government of the territory, promotion of cultural and environmental goods, rural banks, credit providers for agriculture and research and development.

According to the Constitutional distribution of legislative and administrative powers, it appears therefore that the implementation of the right to food in Italy is closely linked to the actions of all levels of authority, from the State to the city councils. This should not represent a problem per se. As highlighted by the Human Rights Council in 2015, “the principle of shared responsibility of different tiers of government for the protection and promotion of human rights has been on several occasions underlined by the United Nations human rights treaty bodies.”²⁶ This requires a strong coordination from the centre, which may assume the form of a National Observatory on the Right to Food, an inter-ministerial table or the introduction of a new ‘service’ in the list of topics that are discussed by the Permanent Conference for the relationship between the State, Regions and the Autonomous Provinces of Trento and Bolzano. Such level of multi-level and cross-sectorial coordination would resonate with the advice that the Committee on Economic, Social and Cultural Rights gave in the General Comment No. 4 on the right to adequate housing, where it noted that States parties to the International Covenant on Economic, Social and Cultural Rights should take steps “to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant”.²⁷

One of the most interesting examples is represented by the decision of the Lombardia Regional Council (based in Milan) to issue a law that makes explicit reference to the right to food and to its implementation. The law on the “Recognition, Protection and Promotion of the Right to Food” was approved in November 2015 and embraced a systemic understanding of the right to food, both in terms of substance and democratic procedures of definition of policies and implementation. In particular, the law recognises the multifaceted nature of the right to food and its interaction with several regulatory areas (health, education, public procurement, etc). This is indeed a positive approach as it highlights the need to take into consideration other domains (education, school kitchens, urban policies, public procurement, etc.) if we aim to a more long-term, sustainable, effective and universal right to nutritious food. However, almost three years after the enactment of the legislation, its content has been poorly implemented, with no substantial changes in the space that the right to food plays in the definition of policies and in its actionability through bottom-up actions and legal challenges. Of all the flaws, the absence of coordination and integration of the different regional policies²⁸ and the non-implementation of the Regional Food Council for the

²⁶ Final report of the Human Rights Council Advisory Committee on the Role of local government in the promotion and protection of human rights, A/HRC/30/49, August 7, 2015. [Hereinafter Final Report on the Role of local government].

²⁷ Committee on Economic, Social and Cultural Rights General Comment No. 4, the right to adequate housing (art. 11 (1) of the Covenant), para. 12, adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 13, 1991.

²⁸ In 2017, the Region required an assessment of the implementation of the law, which concluded that efforts had been made to improve different parts of the food system, but without a systemic and coordinated mechanism of governance and organization. Consequently, the framework appears fragmented and incapable of achieving the results that the law pursued. See Regione Lombardia, Comitato Paritetico di Controllo e Valutazione, Esame della Relazione n.105 del 2017 “Relazione sullo stato di attuazione della legge regionale 6 Novembre 2015, n. 34 ‘Legge di riconoscimento, tutela e promozione del diritto al cibo’.

promotion of the Right to Food (*Consulta Regionale per la promozione del diritto al cibo*) as a multi-stakeholder space for participatory dialogue and confrontation appears the most evident.²⁹

There is no doubt that it is the central government which has the primary responsibility for the promotion and protection of human rights. However, regional and local governments have a complementary role to play. For sure, regional and local authorities are equally bound to the obligations and duties that Italy has assumed at international level and with the content of the Constitution. This has been highlighted by the Human Rights Council, which in its final report on the 'Role of local government in the promotion and protection of human rights' concluded that "Local authorities are actually those who are to translate national human rights strategies and policies into practical application."³⁰ The existence of a regulatory framework like the law of the Lombardia region provides a binding term of reference that can be used to assess, value and challenge decisions that may be in conflict with the right to food.

Hilal Elver, Special Rapporteur on Right to Food, underlined in a recent speech (Hilal Elver, 2017) that the quality of any legislative intervention should be assessed by taking into consideration three key dimensions: the contents of the law, the process which brought to its adoption and the implementation. Through these three key areas, is possible to measure what is the transformative potential of the institutionalization of the right to food and to identify conflicts and recommendations.

Regarding the content, the law contains the indication of principles that clearly recognized the link between the establishment and promotion of sustainable local food system and the realization of the right to adequate food. In the law, the need for an integrated approach covers multiple policies and sectors like health, agriculture, professional training, rural development, trade, food procurement Horizontal governance. However, the law mentions only few areas of intervention, among which food waste linked up to food redistribution and food education (the original legislators' intention was just to regulate the incentive to food waste activities). Further, the law has provisions for setting up a multi-stakeholder forum called the Regional Food Council for the promotion of the Right to Food (*Consulta Regionale per la promozione del diritto al cibo*). If the democratic control and more participation in policy-making joined with the transition to relocalized food systems are among the most important policy asks for those movements that have been advocating for food sovereignty and right to food, the regional law may be look as a step in that direction.³¹ Unfortunately, the recognition of the importance of relocalized food systems is contained just in the principles section of the law, without any immediate consequences in term of policies.

In relation to participation and implementation, the establishment of the Consulta illustrates important challenges that emerge when real and meaningful participation of all actors of the food system is sought and to the conflicts that may emerge when open spaces must be filled with interests. The identification of stakeholders was a politically dense and long process where the limited number of sits available (15) collided with the will to represent multiple instances and, in particular, to provide space for those voices that are often unheard or silenced. Different visions of the food system were trying to use the Consulta as the space where to get their perspective

²⁹T. FERRANDO AND R. SENSI, What can we learn from the European Union's first right to food law?, in Blog, the BMJ, 20 January 2017. Available online.

³⁰ Final Report on the role of local government in the promotion and protection of human rights, above n 26.

³¹P. CLAEYS, Via Campesina's struggle for the right to food sovereignty: From above or from below?, in N. C. S. LAMBEK, P. CLAEYS, A. WONG AND L. BRILMAYER (EDS.), Rethinking Food Systems: Structural Challenges, New Strategies and the Law (pp. 29-52).

represented and it created a long period of stall. It was only after almost two years, in April 2017, that the Regional Council adopted a regulation needed to start the Consulta Regionale. Unfortunately for the supporters of a bottom-up idea of the food system and of the Consulta as a place where to give voices to most marginalized realities of the food system, the Council decided to include just main agri-food chain actors, not listening the recommendations raised by different civil society organizations and academia to include all the food actors (including, for example, smallholder farmers organizations, youth, migrants associations) and to allow the mechanism of self-candidature instead of calling them directly with any public scrutiny for their selection. Finally, in the process of the law adoption, the Agricultural Commission of the Regional Council gave limited space to the contribution of all territorial food actors just involving the supermarkets, local charities and food banks.

Overall, the Regional Law of Lombardia had the merit to be the first express legal recognition of the right to food in the Italian context. However, without properly integrating different levels of government (from the international to the local) and without establishing a solid horizontal dialogue among actors operating in different areas (food safety, health, procurement, trade, etc), it has achieved little. On the contrary, the implementation of the law has missed the opportunity to open spaces to those realities otherwise less visible and to orient the conversation towards alternative and visions of the food system based on a holistic conception of the right to food as a matter of sustainable production and consumption. However, something may have started changing at the cultural level. As some of the events that took place in Lombardia in the recent year and that are discussed in Section II reveal, although little may have changed among public administrations, civil society organizations and common citizens have internalized the right to food and become campaigning around it. Before moving to these examples, a look at what some Italian cities have done so far may help the reader connecting the dots of the different level of governance that affect the daily practice of the right to food.

1.c Cities and the Right to Food: Some Positive Italian Examples

“Urbanization is one of the most important global trends of the 21st century. Today more than half of the world’s population lives in urban areas, and by 2030 this is expected to rise to 60 percent. In the same period 90 percent of the world’s population growth will take place in cities, particularly in Africa and Asia.”³² Propelled by climate change, the industrialization of agriculture and the transformation of the rural landscape, the growth of cities is evident and – for someone – unstoppable. Such concentration of people often goes hand in hand with the creation of more slums, increase in inadequate living conditions, greater disparities, inequalities and discrimination. When it comes to food security and the right to food, the FAO (2009) clearly pointed out that

“[a]s cities expand, so do the food needs of urban families. While impacts of the food and financial crisis affect both rural and urban populations, the urban poor have been among the hardest hit. Urban consumers are almost exclusively dependent on food purchases and variations in food prices and income directly translate into diminished purchasing power and rising rates of food insecurity, thus compromising dietary quantity and quality. Changes in lifestyles have further contributed to increased urban malnutrition and diet-related chronic diseases (p.2).”³³

³² UN Human Rights Office of the High Commissioner, Urbanization and Human Rights, available from <https://www.ohchr.org/en/issues/urbanization/pages/urbanizationhrindex.aspx>.

³³ FAO, Food for the Cities Initiative, FAO, 2009, available from <http://www.fao.org/fcit/fcit-home/en/>

Cities deprive poor and marginalized people of the direct access to food that they may have had in the rural context, but also of the support of families and connections that can help at the time of financial and personal trouble. In Italy like elsewhere, urban poverty is a growing phenomenon and cities are at the forefront of its social, regulatory, political and financial implications. However, not all cities are the same and challenges vary depending on contemporary and historical patterns. The area of Milan, for example, is on average better off than the area of Naples, with Rome sitting in between. Moreover, each city has areas with higher or lower intensity of poverties. In terms of food, this internal fragmentation is often made visible by the presence of food deserts and the unequal distribution of farmers market and organic shops in more affluent areas. On these last points, the lack of clear statistics and assessments with regards to the Italian situation represent gaps that should be promptly filled.

Yet, the FAO and the United Nations consider that urbanization processes based on the full respect and promotion of human rights have the potential to transform this phenomenon from one in which people's rights are too often ignored or denied into a force that contributes positively to the lives of most of the world's population. As a matter of fact, cities all over the world have been among the first public authorities to think in terms of food policies, food councils, the construction of self-sufficient food chains, circular economy (e.g. Transition towns), the introduction of accessible mechanisms of participation, monitoring and grievance. Moreover, cities have been experimenting with the strategic use of public procurement to achieve pre-defined socio-economic goals, including healthy diets for children and the support of local production.

In the Italian context, the link between cities and food was particularly influenced by the Universal Exposition of 2015 (EXPO) which was held in Milan and was inspired by the idea of "Feeding the Planet, Energy for Life." Food, in all its forms and perspectives, was thus at the centre of several months of cultural, social, political and legal conversations. In 2015 alone, the Lombardia Regional Council (sitting in Milan) passed a law on the 'Recognition, Protection and Promotion of the Right to Food' and two other regions (Piemonte and Abruzzo) amended their Regional Charters to introduce a reference to the right to food. Moreover, several city councils began discussing the possibility of implementing urban and metropolitan food policies.

Among others, the link with EXPO gave Milan the possibility to be at the forefront of the revival of 'Italian food talks': in 2015, after a one-year consultation, its administration launched the 'Milan 2015-2010 Food Policy Guidelines' and was also the place where the Milan Charter (Carta di Milano) was signed, a document realized by the Feltrinelli Foundation and supported by the Italian government which opens with "clear commitments concerning the right to food"³⁴ as a fundamental human right. Although the Charter can be considered as a pure political document which has not led to any concrete practices, it is a sign of the thriving political atmosphere that has been characterizing Italy in the last years. Not by chance in the same year the city hosted the signing ceremony of the Milan Urban Food Policy Pact, an "international protocol, engaging the largest number of world cities for the development of food systems, based on the principles of sustainability and social justice,"³⁵ which plays a central role in setting the vision of cities at the forefront of the fight for food security and the right to food. Thanks to its systemic vision and its attempt to create coordination among cities around clear pillars of a common policy framework, the Milan Urban Food Policy Pact is a political document that is having a bigger practical impact than the Charter, mainly because it constitutes a much more concrete basis to which the cities' administrations that have

³⁴ Milan Charter of the Feltrinelli Foundation with the support of the Italian government, 2015.

³⁵ UN System Standing Committee on Nutrition speaking about the Milan Urban Food Policy Pact.

joined it can refer to and because of the work realized by the Secretariat. Finally, 2015 was also the year when the City of Milan, together with the Lombardia Region, contributed to the establishment of the Milan Center for Food Law and Policy, whose President Livia Pomodoro received the UNESCO Chair on the right to food in 2018.

In addition to these documents, Milan has also been one of the first cities in Italy to adopt a Food Policy. The City of Milan itself can thus be taken as an example of a coordinated attempt to engage systemically with food and the multiplicity of sectors that contribute to the construction of a sustainable and resilient food system. However, from a right to food perspective the picture is less bright: references are present, although they are not central and are not framed in a holistic way. On the one hand, the Milan Food Policy Guidelines state that “in its policies, the Municipality describes the guiding principles and orientations encoded at international level on issues related to the right to food, to develop a food system that is able to ensure healthy food and drinking water in sufficient quantity and equally accessible to everybody, resilience and sustainability articulated in its social, economic and environmental components.”³⁶ On the other hand, Priority 1 of the same document affirms that “The municipality is aware of the importance for the citizens to have “physical, social and economical [sic] access to drinking water as a human right, to sufficient, safe and nutritious food that meets their needs and preferences in order to lead an active and healthy life,”³⁷ a definition taken from the 1996 World Food Summit and more focused on individual consumption rather than systemic transformation.

The use of different notions and understanding of the right to food highlights the importance of assessing the implementation of the policies rather than their appearance, and acts as a reminder that substantial interventions may take place even in the absence of public statements that connect them with the right to food. As far as the former is concerned, the right to food has still some difficulties in making its way into formal policies, even if it is the first objective of the Milan Food Policy. On the other hand, Milan has developed many practices that enrich the substantial point of view (reduction of the waste taxes, Piano Periferie, School canteens etc) that are not labelled as implementations of the right to food but move in that direction. Of course, the multiplicity of the initiative and the lack of a clear and overarching framework may create confusion, contradictions and incoherence that affect the long-term validity of any intervention. All city councils and local authorities should thus think about overlapping and possible conflicts of policies.

As discussed below, local interventions in support of the right to food and the use of local authority may also happen outside of the context of a food policy and not require any statement. In our opinion, the case of Milan and the other experiences count the story of cities that may be moving towards the idea of a “human rights city,” i.e. the recognition that cities are key players in the promotion and protection of human rights and they should follow a human rights-based approach to local governance which includes the “principle of democracy, participation, responsible leadership, transparency, accountability, non-discrimination, empowerment and rule of law.”³⁸ If applied to the right to food, this idea would thus strengthen the importance of food councils and food democracy, seen as “tools to secure the broad participation of all actors and stakeholders, in particular marginalized and vulnerable groups, and the importance of effective and independent human rights

³⁶ Milan Food Policy Guidelines 2015-2020 of the City Council of Milan, 2015, p.13

³⁷ Ibidem, p. 14.

³⁸ The notion that was originally promoted by the People’s Movement for Human Rights Education and contained in the Gwangju Declaration on Human rights City adopted at the 2011 World Human Rights Cities Forum.

protection and monitoring mechanisms to which all people have recourse.”³⁹ Of course, in Milan, Rome and all the other cities that have begun shaping policies around food (like Turin and Parma) or actively engaged in the definition of their food system, there is still a long way to go in order to fully implement the vision of a right-based (and right to food-based). Milan, in particular, has been praised for its participatory approach to urban policy elaborations and for the way in which its food policy was developed in four stages (analysis of Milan’s food system and its actors; public consultation; approval of the identified objectives from municipal institutions; selection of a number of pilot projects).⁴⁰

Despite the lower level of media attention and visibility, there are also a lot of experiences that emerged from small and medium towns of South of Italy. Most of them were not framed in formal acts, enacted by laws or formally approved through regional rules. However, local authorities have been taken initiatives in favour of redistribution of common land to local farmers, have promoted the participation of families in the provision of the service in school canteens, have supported local and alternative systems of food distribution, have introduced an innovative and commons-based interpretation of civic uses so to strengthen the link between the community and the city. Some of these examples have already been mentioned and others are discussed below. Overall, the diversity of local experiences illustrates the existence of convincing remedies. However, the process could be strengthened by mapping and exchanging positive examples, maybe in line with the *Atlante del Cibo di Torino Metropolitana* (Food Atlas of Turin Metropolitan City).⁴¹ Once the bottom-up right-based approaches to the food system were fully mapped, it would be possible to create a national food council in representation of central and territorial realities, a significant step towards a democratic and collective national food policy that should not be missed.

a. Public Procurement

Another interesting intervention at the level of Italian municipalities is represented by the Roman school meals system that was implemented in 2000 and that is perfectly presented by Roberta Sonnino in her work. In the attempt to improve the quality of food consumed in public schools’ canteens, the city of Rome introduced procurement policies that created an ‘economy of quality’ and were capable of delivering the economic, environmental, and social benefits of sustainable development.⁴² The attempt by the Rome city council, then abandoned by subsequent city councils, shows that Public Procurement is one of the key tools that cities have at their disposal to shape the food system in a more sustainable and equal way. Following and improving the Roma’s attempt to have a “school meals revolution,” city councils can use canteens (of schools, hospitals and other public institutions) not only to improve the nutritional quality of citizens’ diets, but also to develop of the organic market in the region, as well as in the whole country. The value of the market (350 million for three years in the sole case of Rome’s school canteens) is an indication of the potential.

³⁹ Gwangju Declaration on Human Rights City, Gwangju, Republic of Korea, 2011 Human Rights Cities Forum 16-17 May 2011. Available online at https://www.uclg-cisd.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf

⁴⁰ On the participative approach adopted by the City of Milan, see Milan – Participatory Approach to Urban Food Policy Elaboration.

⁴¹ *Atlante del Cibo di Torino Metropolitana*.

⁴² R. SONNINO, Quality food, public procurement, and sustainable development: the school meal revolution in Rome, 2009, in 41 *Environmental and Planning A*, pp. 425-440.

As discussed by Sonnino, Rome city council introduces a bidding policy according to which:

“catering companies were required to provide fresh organic fruit and vegetables during the first year of contract and to add organic legumes, bread, baked products, pasta, rice, eggs, and canned tomatoes during the second year. An exception was made for vegetables with a short harvesting season, such as peas, green beans, and spinach, which could be supplied frozen. In addition, the tender introduced a set of very innovative award criteria that aimed to stimulate bidders to further develop the socioenvironmental quality of the products and services offered.”⁴³

In addition to the parameters, “A permanent roundtable was established to ensure dialogue between city authorities and contracted suppliers, who were encouraged to improve the sustainability of their products, including the use of fair trade products and the introduction of food education initiatives, through various award criteria.”⁴⁴ Ten years after the choice was made, 14% of the food served in the city’s schools was certified as fair trade, 26% was local, and 67.5% was organic.⁴⁵ The decision of the Rome city council to use of public procurement to buy social justice, a phrase coined by Christopher McCrudden, does not represent a novelty. However, as Olivier De Schutter recognized in a 2014 briefing note,⁴⁶ public procurement was not commonly associated with the human right to adequate food and still is seldom interpreted through these lenses.

b. Farmers’ markets

A further form of local intervention that can be considered a practical implementation of a holistic notion of the right to food is represented by the promotion of public markets and, more precisely, of farmers’ market. These measures can be read as a recognition by public authorities of what the 2016 recommendations approved at CFS on “Connecting Smallholders to Markets” made clear, that “globally more than 80% of smallholders operate in local and domestic food markets. These highly diverse markets, in which most of the food consumed in the world transits, can range from local to transboundary to regional and may be located in rural, peri-urban or urban contexts or span these contexts, and are directly linked to local, national, and/or regional food systems. [...] Local markets perform multiple functions beyond commodity exchange, acting as a space for social interaction and exchange of knowledge. Despite their importance, these markets are often overlooked in data collection systems, which impacts negatively on the evidence base for informing public policies.”⁴⁷ If almost 80% of the food that is purchased in Italy is shelved along the alleys of large retail centres, boosting the consumption of food that is locally produced and (although not always) produced by small-scale farmers, represents an important form of support for more sustainable food systems. The +67% increase in purchases from farmers’ market that took place in 2013 and that was reported by Coldiretti⁴⁸ may offer some indications of a trend, but it would be a mistake to rely on the data

⁴³Ibidem, p. 430.

⁴⁴O. DE SCHUTTER, The power of procurement: Public purchasing in the service of realizing the right to food, in Briefing Note 08 – April 13, 2014.

⁴⁵K. MORGAN AND R. SONNINO, The School Food Revolution: Public food and the challenge of sustainable development, Earthscan, London/Sterling, 2008 ; K. MORGAN AND R. SONNINO, Rethinking School Food: The Power of the Public Plate, in THE WORLDWATCH INSTITUTE, 2010 State of the World - Transforming Cultures : From Consumerism to Sustainability, 2011, pp. 69-74. Available online.

⁴⁶The power of Procurement of Olivier De Schutter, above n. 41.

⁴⁷S. KAY for the Civil Society Mechanism Working Group of the Committee on World Food Security, Connecting smallholders to markets, 2016, p. 2. Available online.

⁴⁸In Italia e’ farmers market mania, Coldiretti +67% acquisti nel 2013, in Adnkronos, March 1, 2014. Available online.

without considering the socio-economic conditions of consumers and how representative they are of all classes.

In terms of regulation of the farmers' market, Decree 301 of 2007 of the Minister of the Environment recognizes a high level of flexibility to city councils, which establishes and authorizes farmers' market, defines where they can take place, monitors them and act as promoters.⁴⁹ A comparative analysis of municipal regulations on farmers' market realized in 2011 by Vendita Diretta provides the opportunity to identify virtuous examples of cities that have used their authority in order to promote a social and ecological sustainable food chains based on the direct interaction between consumers and farmers. For example, the city of Bologna has established 12 farmers' markets, 7 of which in public spaces, 2 in private areas and one self-managed by the local film library. The city council does not participate in the management of the markets, the choice of the areas was left to each neighbour, there is no direct financial support from the city council and products can be sold as zero-km if they are produced within the Region. In the case of Cervignano del Friuli, near Udine, the sole farmers' market has been established with the support of Slow Food and organized according to their rules in terms of commerce, production, denominations and maximum distance of production (maximum 40 km). Differently from Bologna, the city council actively participated in the promotion of the farmers' market and obtained regional funds to set up the market.

At the beginning of 2017, Rome introduced its Farmers' Market regulation, which aims to foster citizens' purchase of products of quality, connecting with a short supply chain, with low environmental impact and traceable.⁵⁰ The pillar of the regulation is represented by the mechanism of public auctions to allocate concessions and the use of public spaces. Farmers will be free to apply, and they will be given a score. The farmers with the highest scores will have the possibility to sell their products in the market. A study of the link between the scores and the size of the farms would be particularly important from the point of view of social sustainability of the food system and equal opportunities.

The identification of the area, the financing, the promotion, the definition of standards - included sanitary and phytosanitary rules - and the management of conflicts with other food realities represent some of the main challenges that city councils and farmers face (in Italy as elsewhere) in the construction of short food chains and direct sale. The examples mentioned above, along with several other cases that we could not report, offer the opportunity to learn, compare and think about the role that public authorities can and must play in order to support local forms of production and consumption. However, it is crucial to understand that the success of farmers markets and alternative food system depends on factors like income, accessibility, cost and existence of mainstream retail competitors. From the point of view of a systemic right to food, a policy in support of farmers' market would thus be totally inefficient if the same city council was to increase the number of concessions for large-scale supermarkets and shopping malls or distributed the markets in a way that does not take into consideration the risk of food deserts and food poverty. Similarly, the democratization of farmers' markets may be prevented by the absence of structural interventions concerning basic income, food stamps and other forms of centralized and delocalized welfare state.

c. Urban Gardens

⁴⁹ G.U. 29 December 2007, n° 301, implementing art. 1, section 1065, of law 296/2006.

⁵⁰ Farmer's Market, il primo Regolamento per i mercati a vendita diretta degli agricoltori of the, August 2, 2017, of the Municipality of Rome.

Another way in which cities (both in terms of citizens and city councils) may engage in the construction of a right to food-based food system is through the establishment, promotion and consolidation of urban gardens. Urban gardens are considered one of the possibilities that cities have to socially revitalize the urban landscape, help citizens taking back abandoned urban areas and favour a reduction of the cost of food for families with financial problems.

An important process of legitimization and regulation of urban gardens has been taking place in the city of Rome and is carried out by the Orti In Comune network. In the coming months, the city council is expected to publish a municipal regulation of urban gardens. The network is animated by enthusiastic horticulturists and citizens, and, through a constructive and constant dialogue with the Capitoline administration and with representatives of the various municipalities, it has been cooperating in the writing and facilitation of political processes that should lead to the imminent introduction of a municipal regulation of urban gardens. In addition, the association is active in awareness campaigns, training days and cultural activities, substantially contributing to public debate related to issues of public green spaces and the production of food. In the context of this report it is important to point out that the movement enjoyed the momentum triggered by some large scale projects on vegetable and urban gardens (such as Sidig-Med and Ru:rbán), which contributed to an evolution of the debate and the sharing of international experiences. The importance of public funding in supporting this type of associations is crucial, since associative visions are often reluctant to open to private actors and engage with private-public partnership (Lucciarini, 2016). However, because the dependence on public funding is central to most of the projects, it often implies an increase in the level of expertise required of by each association to compete for calls for the allocation of funds on specific lines of intervention. However, if competition may represent a limit in terms of funding, it is also contributing to the increase in the quality of the debate and the refinement of regulatory and governance instruments.

The value of these experiences is not going unnoticed. As a matter of fact, an ever-increasing number of Italian cities is experimenting with the management of urban gardens within their urban policies, following a broader integrated approach to planning a urban food systems and strengthening the relationships between food production and the city. The Polytechnic University of Turin, in collaboration with the Metropolitan City, has recently drafted the Atlante del Cibo of Torino Metropolitana, an initiative of analysis, representation and communication of the urban metropolitan food system (Dansero et al., 2016). In the document, urban gardens are considered as an important contribution to the green spaces of Turin and to multiple socio-cultural dynamics. Similarly, the Guidelines of the Milan Food Policy 2015-2020 identify a specific commitment of the Municipality to "promote and facilitate different forms of agriculture and urban horticulture", as well as to "define with the organized realities of urban horticulture shared guidelines to city level for the promotion and management of horticulture both on public and private land, ensuring that a percentage of public land is destined for vegetable gardens for low income people "(Municipality of Milan, 2015).

In other instances, city planning and urban gardens enter in conflict, often because the latter are used by the local communities to oppose redevelopment projects and the sealing of agricultural land. This is the case of the Orti in via Goito (Gardens in Via Goito), which were established in 2013 in Livorno on land that had been long abandoned and has been transformed into a space for food production and, more importantly, a socio-cultural aggregator and an opportunity to reconstruct lost ties among people and with the land. Paradoxically, in a city with 4200 empty apartments and very few green areas, the city council decided to construct new flats and get rid of the gardens. This despite the international, European and national call to reduce soil consumption and protect green

areas discussed above. In the absence of clear criteria and mandatory hierarchy of uses that prioritize the achievement of the SDGs and the National Strategic Objectives, situations like Livorno may not be uncommon in the future. Therefore, we believe that practices of urban gardening that are fully compatible with a systemic understanding of the right to food cannot be based on mere civic desire and citizens' initiative, but have to be institutionalized, protected, respected and promoted by local and national authorities within the context of their regulatory and financial power.

Another example of how urban gardens can substantially influencing the realization of the right to food of a certain population are the community gardens in Lampedusa (Sicily), or also called "P'orto di Lampedusa", an initiative developed by the environmental non-profit organization Terra! Onlus and the civil society of the island itself. Situated to the South of Sicily, in the heart of the Mediterranean Sea, much closer to Tunisia than Italy, Lampedusa is mainly known for being at the centre of migratory flows coming from Africa, due to the large number of foreigners landing on its coasts. The inhabitants are a community of 6000 people, who make themselves responsible for providing first aid and reception to the refugees coming by the sea, without receiving any type of institutional support and recognition in return. This an island where the main source of economic revenue, such as fisheries,⁵¹ has been rapidly replaced by intensive and seasonal tourism; where shores and inner lands have been abandoned to enable infrastructures to be built; where there are no spaces other than cafes and betting corners to gather and being in relationship with each other; where the increase in obesity and overweight is an established fact, particularly among the youngest and most vulnerable individuals, as supermarkets selling standardized and pre-packaged products, restaurant and itinerant salesmen are the only source of food. In such a difficult context, community gardens have been thought to support a small community of people in overcoming geographical and institutional isolation while regaining their identity and cultural roots. Born to be places of interactions, exchange and meeting, as well as recovering autochthonous biodiversity, P'orto di Lampedusa represents a starting point to nurture a fragile social and environmental ecosystem, as the one of the island generally is. Fresh products, ancient seeds and local recipes have been rediscovered, positively contributing to build a new vision for the island, where youth, women and men can regain their connection with Earth. The message enshrined in this project is loud and clear: "Lampedusa"⁵² is not only migration, nor sea and tourism. Through the work done by extremely committed people in developing small-scale and ecological agriculture, Lampedusa is an island that is experiencing a process of self-knowledge, as essential ingredient to overcome any kind of marginalization and build resilient communities and environments.

d. The right to food through food-producing commons and food as Commoning in the Italian Context

A final item for consideration is the increasing role that the notions of food-producing commons and commoning are acquiring in the context of the Italian food systems.⁵³ The core element of these two notions is that they recognize and strengthen a special relationship within communities and between communities and food, which is believed can contribute to the establishment of sustainable food systems both from the point of view of the respect of fundamental human rights

⁵¹ The presence of large vessels makes almost impossible the small-scale fishing.

⁵² Ancient name of the island.

⁵³ T. FERRANDO, *Il Sistema cibo bene comune*, 2016, in A. QUARTA AND M. SPANÒ (EDS), *Beni Comuni 2.0*, Mimesis; J. L. VIVERO POL, T. FERRANDO, O. DE SCHUTTER AND U. MATTEI (EDS), *The Routledge Handbook of Food as a Commons*, Routledge, forthcoming; G. PETTENATI AND A. TOLDO, *Il Sistema alimentare è un bene comune?* in *Quaderno Labsus*, 2016. Available online.

and the environment. Without entering too much into the details, the two notions can be explained as follows:

- The idea of food-producing commons refers to the possibility that the means of food production (eg. land, seeds, water) and the practices of food production (e.g. agricultural production, traditional knowledge, seafood collection, fishing, hunting and wild gathering) are managed and governed by the community (the commoners) in a way that is compatible with the needs of the members of the community, the ecological limits of the planet and the rights of future generations. food-producing commons can be classified as customary and contemporary, with heritage and history being the main cleavage although they share values, institutions, priorities and forms of governance. Contemporary food-producing commons (community-based, mostly urban, nurturing innovative social or technological practices) are mostly urban led or peri-urbanlocated. They are formed by innovative and disruptive initiatives that re-invent traditional methods of governing commons or design new commons that did not exist before, using internet, communication technologies and hyper-connectivity (Ferrando and Vivero-Pol, 2017).
- Slightly dissimilar, the idea of commoning does not refer to specific items or practices, but to the way in which the community organizes itself and the way in which it distributes values, opportunities and power in a way that is inherently democratic, equitable, just, and historically informed. Commoning is thus a process, the individual and collective act of engaging with food and the food system to improve it, strengthen it, distribute the utility that is generate and facilitate its reproduction.

Both ideas became popular in Italy after the referendum on water as a commons (see below) and have been utilized to describe very different situations that involve the attempt to reimagine the food system through the perspective of collective dignity and ecological limits. Informal examples of food communing in Italy span from the simple *caffé sospeso* (suspended coffee), the fact of buying a coffee to someone who may not afford it and is not present in the bar but may be there later, to the experience of Food not Bombs, where unregistered associations collect unsold food from street markets, cook vegan meals and distribute them to rough sleepers and hosts in shelters. The examples of Mondeggi Bene Comune discussed below and the Orti di Via Goito discussed above may also be considered manifestations of these phenomena.⁵⁴

These forms of collective engagement with food are characterized by a strong sense of belonging to the community, the respect of ecological limits (both via Goito and Mondeggi are based on agroecology, while Food not Bombs only cook vegan meals) and the sense that food is more than a mere commodity. However, it is true that their voluntary nature and unpredictability do not make them fully aligned with a strong and holistic understanding of the right to food as an entitlement and a corresponding obligation. Beyond the informality of pure bottom-up processes, the idea of food producing commons has also been experimented by city councils, some of which have elaborated and concluded Pacts of shared administration of food-producing commons. Among several examples, the city of Turin established it as a frontrunner with the pact for the first food-producing

⁵⁴ On Mondeggi Bene Comune and other struggles for access to land as a commons, see C. MAUGHAN AND T. FERRANDO, *Land as a Commons: Examples from the UK and Italy*, 2018, in J. L. VIVERO POL, T. FERRANDO, O. DE SCHUTTER AND U. MATTEI (EDS), *The Routledge Handbook of Food as a Commons* Routledge, 2018. Available online.

commons, the *Hortus conclusus*, an urban garden managed by an association with the support of the broader community and for the utility of the community.⁵⁵

Supported by the work of Labsus,⁵⁶ the 'Regulations of the commons' have been diffusing throughout the country. Some of them concern the food system, such as the twenty-three urban gardens of Ostuni, a multicultural kitchen training for children in Cinisello Balsamo⁵⁷ and the collaboration pact on 'Good Land: proximity connection' that was launched in Adelfia by the city council, Action Aid, several local associations and the women employed in agricultural production. Of all the examples, the one in Adelfia presents the most interesting characteristics, mainly because of the recognition of the interconnected problems that characterized women farmworkers, from the constraints of childcare to the importance of accessing land and becoming farmers. Through the combination of several local actors, the whole link between community, farmworkers, land and agriculture is discussed and reconceived in order to give visibility to hidden stories, promote different values and create new connections among people and farmland.

Although the link between the right to food and these pacts is not clear, the vocabulary and practices of the commons can contribute to produce the cultural and social transformation that is required to fully understand the extent of the right to food and the interconnected nature of food systems. In particular, these forms of community-based engagement with the food system offer the possibility to cut across silos and reflect on the multiple interconnections between human rights, environment, food sovereignty, agroecology and redistribution. It is now up to the people and the public administration to prove that this reflection is not only possible but implementable.

1.d Access to land and water as vehicles to the fulfilment of the right to food

The examples provided above reveal that the right to food is slowly trickling into the Italian legal system. However, the impression is that legislators, courts and politicians are still anchored to a minimalist understanding of the right as the duty to feed those who are starving, with too little dialogue happening around the multiple implications of the right to food and the importance of a systemic approach to it. In order to open new spaces of coordination and confrontation, this section draws inspiration from the 2004 FAO Guidelines and the recent work of the UN Special Rapporteurs on the Right to Food to discuss what has been done with regards to circumstances and elements that are not connected to an essentialist vision of the right to food but with the broad interpretation presented above. We also consider important to highlight at the outset of our reflection that Italy voted in favour of the FAO Voluntary Guidelines on Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security. Instrument of soft law, the Guidelines are based on the recognition of the centrality of land to development by promoting secure tenure rights and equitable access to land, fisheries and forests and contains clear indications on how to improve tenure governance.⁵⁸ Although they may be less relevant internally, the Tenure Guidelines assume

⁵⁵ Hortus Conclusus, pact of collaboration between the City of Turin and the Innesto Association, January 24, 2017. More information on the pact are available online.

⁵⁶ D. CIAFFI ET AL., *Cibo, cittadini e spazi urbani. Verso un'amministrazione condivisa dell'Urban food policy* di Torino, 2016, in *Quaderno Labsus*. Available online.

⁵⁷ Labsus, *Beni Comuni e Amministrazione Condivisa*, available from <http://www.labsus.org/category/beni-comuni-e-amministrazione-condivisa/patti-collaborazione/page/3/>

⁵⁸ *Voluntary Guidelines on Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security of the FAO*, 2012.

more importance when we talk about the actions of Italian public and private actors abroad (See Section III).

In order to assess where Italy is standing in the realization of the comprehensive conception of right to food, we thus look at access to land and water through multiple lenses: the condition of small-scale farmers and the concentration of land (1.e.a), soil consumption, land sealing and impermeabilization (1.e.b), large-scale infrastructural projects (1.e.c) and the possible tensions between the use of water for agriculture and the human right to water (1.e.d). Overall, we came across some interesting measures and interventions that should be strengthened and reproduced, but also flaws and policy weaknesses that must be amended. To be more specific, the lack of coordination and the incoherence that characterizes the different level of government are the main obstacles to the full compliance with the State's obligations. By raising these tensions and pointing at the grey areas, we thus hope to stimulate further debate and a multi-sectorial conversation that goes beyond the 'sylosed' approach of most policies and recognizes considers what it really means to respect the right to food of people.

The starting point of the following sections is point 8.1 of the 2004 FAO Guidelines, according to which the full realization of the right to food also means that:

"States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources."⁵⁹

Although this statement may sound more appropriate in a different context than the one of a G7 economy, the recent history of Italy demonstrates the opposite. This is true both for land and water, two essential resources for agriculture that are increasingly under threat. In the next sections, we discuss four struggles that characterize the link between land, water and the full implementation of the right to food in Italy. Firstly, we look at the concentration of existing farms, the disappearance of small-scale farmers and the privatization of public farmland. In addition to these problems, which characterize the whole European continent, the last decades have been characterized by two important phenomena, each one directly connected to the exercise of public authority: a) the expansion of cities and the urbanization of farmland; b) the realization of large infrastructures that 'eat' agricultural land and impact the availability of water. Finally, we highlight the interdependent and often contentious relationship between access to water and agriculture. It is impossible in a short report to provide detailed information about these three trends, which are not unique characteristics of the Italian context. However, by raising attention over these three aspects of the current Italian framework we aim to stimulate further investigations and debate on the impact that land and water policies have on essential human rights.

1.d.a Land concentration and the depesantization of Italy

⁵⁹ Right to Food Voluntary Guidelines, above n 13 , Guideline n 8.

Article 44 of the Italian Constitution states that:

“For the purpose of ensuring the rational use of land and equitable social relationships, the law imposes obligations and constraints on private ownership of land; it sets limitations to the size of property according to the region and the agricultural area; encourages and imposes land reclamation, the conversion of latifundia and the reorganisation of farm units; and assists small and medium-sized properties.”⁶⁰

Despite the content of the Charter, facts on the ground show that equitable use and social relationships may be at risk. The Italian agricultural sector is at the same time highly fragmented and concentrated. On the one hand, 58.7% of holdings have less than 5 hectares and the average farm size of 12 ha is smaller than the average EU-28 holding with a size of 16.1 ha⁶¹. However, a 2016 report on ‘Land grabbing and land concentration in Europe’ realized by Hands on the Land, shows that Italy lost 68% of its small-scale farms (less than 10ha) between 1990 and 2013.⁶² Few holdings are large, and the rest is very small. This is a sign of tremendous and rapid land concentration, which reflects what has been happening throughout Europe. To give some data, in 2016 there were 15,100 holdings larger than 100ha, which represent the 1.5% of the total. However, if we consider the utilised agricultural area, they controlled almost 26,7% of it.⁶³ In addition, the same report estimates that the top 0.8% of the beneficiaries of the Common Agricultural Policy in 2013 received 26.3% of the full amount of resources disbursed in favour of the whole Italian agricultural sector.⁶⁴ More interestingly, the 0,001% of the farms (150 in total) received around 6% of all the direct payments aimed from Brussels to the sector. The remaining 94% of farms shared just 39.5% of all CAP subsidies.⁶⁵

In light of the importance that access to land plays in the construction of a sustainable food system and, therefore, the realization of the right to food, it is important to pay attention to the measures that have been taken (at all level of government) that have intensified the trend and those that have gone the opposite way. Decree n. 1 of 24 January 2012, also known as ‘Decree Save Italy’, belongs to the first category. In the context of austerity and increasing financial pressure on the country (mainly alimented by private sector speculation and the bailouts of banks), agricultural land became an opportunity to fill public coffers. According to article 66, the government would have begun selling land belonging to the state and used the revenues in order to repay public debt (art. 66.9). The idea of selling unused land to new farmers was warmly welcomed by Coldiretti, the largest association of farmers in Italy and one of the largest in the European Union. However, some criticisms were immediately raised: Slow Food, Campi Aperti, Crocevia, Libera and other associations immediately raised concerns against the decision to favour the privatization of public land and proposed the establishment of a system of preferred rural renting for young perspective farmers.

⁶⁰ Art. 44 of the Italian Constitution.

⁶¹ EUROPEAN COMMISSION, CAP in your country. Available online.

⁶² S. KAY, Land grabbing and land concentration in Europe, a research brief, Hands on the Land, December 2016. Available online. See also J. D. VAN DER PLOEG, J. C. FRANCO & S. M. BORRAS JR, Land concentration and land grabbing in Europe: a preliminary analysis, 2015, in *Canadian Journal of Development Studies / Revue canadienne d'études du développement*, 36:2, pages 147-162; A useful source of information is contained in M. CONTI AND A. ONORATI, *Terra e agricoltura, Il caso italiano, Crocevia*, 2012. Available online.

⁶³ Ibid.

⁶⁴ Source: European Commission (2015), ‘CAP expenditure in 2013 by MS’, Member States Factsheet - European Union. Available online.

⁶⁵ A. ONORATI AND C. PIERFEDERICI, Land Concentration and Green Grabs in Italy: The Case of Furtovoltaico in Sardinia, 2013 in J. FRANCO AND S. BORRAS (EDS), *Land Concentration, Land Grabbing and People's Struggles in Europe*, pp. 76–99, Amsterdam, Brussels: Transnational Institute, European Coordination Via Campesina.

In response, the Government highlighted that section 3 of article 66 gave priority to young farmers as buyers of the land so to offer new opportunities and reduce the average age of Italian farmers.⁶⁶ However, the organization Genuino Clandestino immediately raised the point that the age of farmers should not represent a justification to privatize public land, that access to capital represented a significant obstacle that could only be overcome by farmers already owning enough resources and that other forms of land management were possible and already in place throughout Italy.⁶⁷ To protest against the decision of the government, the association Campi Aperti and participants to Genuino Clandestino also organized occupations of public land under the slogan of land as a commons. This happened in Mondaggi, near Florence, and in the cases of Cooperativa Agricola Co.R.Ag.Gio⁶⁸ and Cooperativa Arvaia. In all these cases, access to land and its management are presented in connection with agroecological production, short-chains, local markets, direct engagement with local communities, dignity of labour and collective governance.⁶⁹

Despite the critiques and the actions, the sale of agricultural land has been going on. In 2017 the government offered 630 hectares, after having offered almost 900 in the previous years. Auctioned land has been of any size, from 0.016 to 19 hectares, without particular attention to redistribution and with no indication of the kind of agriculture that has to be practiced.⁷⁰ In the coming months, an intensification of the sale process may occur due to the establishment of the first national Bank of Agricultural Land (*Banca delle Terre Agricole*), which was announced on March 15, 2017 along with the news that 8000 hectares of land owned by the Istituto di Servizi per il Mercato Agricolo Alimentare.⁷¹ However, the Bank is still operating without the introduction of quality and quantity requirements of production and part of its assets are farms worth more than 100,000 Euro, which are unobtainable to young people without a strong personal financial backup.

In 2014 the then SR on the Right to Food Olivier De Schutter wrote that “the objective of guaranteeing access to adequate food for all is closely intertwined with supporting small-scale food producers’ ability to produce food sustainably, improving employment opportunities in all sectors and strengthening social protection.”⁷² Given the agricultural history of the country and the challenges of unemployment, climate change and food security, the Italian Government and the Italian Parliament seem to have realized the importance of incentivizing a return to the land. However, data and procedures are not appropriate to the intensity and urgency of the problems discussed in this section. If we also consider the amount of land that is lost every year to give space to cities and infrastructures, the picture is even less positive and the need for a holistic intervention even higher.

⁶⁶ Italy is characterized by rather old farmers, with only 4.5 % of the Italian farmers who are under 35 years old compared to 5.9 % in EU-28. Furthermore, the country is witnessing an ongoing rural depopulation.

⁶⁷ GENUINO CLANDESTINO, La vendita delle terre di proprietà pubblica deve essere fermata, February 4, 2012. Available online.

⁶⁸ For info, see <http://www.terraonlus.it/wp/cooperativa-coraggio/> and

<https://www.terranuova.it/News/Agricoltura/C-e-una-coop-che-si-chiama-Coraggio-e-che-lavora-la-terra>

⁶⁹ C. MAUGHAN AND T. FERRANDO, Land as a Commons: examples from the United Kingdom and Italy, 2018, in J.L. VIVERO POL, T. FERRANDO, O. DE SCHUTTER AND U. MATTEI (Eds), *The Routledge Handbook on Food as a Commons*, 2018. (forthcoming). Available online.

See also <http://wordpress.assorurale.it/comunicato-stampa-laccesso-alla-terra-non-puo-passare-dalla-vendita-dei-terreni-pubblici/>.

⁷⁰ A. CAPPARELLI, Dal Demanio nuova offerta di terra per I giovani: nel 2017 sono 630 ettari, in *Il Sole 24 Ore Italia*, March 21, 2017. Available online.

⁷¹ Mipafft, Nasce la Banca delle Terre Agricole. Martina: prima 8 mila ettari con agevolazioni per i giovani, March 15, 2017. Available online at

<https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/10940>.

⁷² The transformative potential of the right to food by O. De Schutter, above n 18.

1.d.b Land take and soil sealing

Data about Italy show that agricultural land and soil are slowly disappearing. This is not only because of the realization of large-scale infrastructures like solar farms or railways, but also because of land take and soil sealing connected with the expansion of urban conglomerates and commercial activities. According to the Superior Institute for Environmental Protection and Research (ISPRA) 2018 report on 'Soil consumption, territorial dynamics and ecosystem services', agricultural land is increasingly impermeabilized and made unproductive. In 2017 alone, 54 square kilometres of land have been covered and sealed: this means an average of 15ha per day, 2 square meters of soil every second.⁷³ If the trend was to continue until 2030, Italy would lose 1.672 km² more of land. However, if economic growth and soil consumption were back to the pre-2008 level, the country would lose around 7.500 km² of land. Even the progressive transition towards zero consumption in 2030 would result in an increase in hard land, calculated by ISPRA in 818 km²⁷⁴. In all the scenarios, the right to food and the establishment of a sustainable food system would result compromised.

Independently on the right to food, the loss of agricultural land and soil is happening despite (or in conflict with) art. 9 of the Constitution and the indication that the Republic "safeguards natural landscape and the historical and artistic heritage of the Nation,"⁷⁵ the recommendation to halt soil consumption by 2050 contained in Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well within the limits of our planet', the 2013 recommendations of the European Commission (2013) on tackling the impermeabilization of soil, and the multiple targets contained in the Sustainable Development Goals that make reference to the protection of soil and the reduction of its consumption (UN, 2015). Given the inherent connection between agricultural land, access to farmland, sustainable production and the right to food, it is thus essential to understand the trends, map the regulatory framework and think about possible forms of intervention.

Estimate of soil consumption at national level, as a percentage of the overall surface and in squared kilometres. Elaborated by ISPRA (ISPRA, 2018)			
	2016	2017	Diff. 2016-2017
Soil consumption (national %)	7.63	7.65	
Soil consumption (National %, excluding areas covered in water)	7.73	7.75	
Soil consumption (Km2)	23.010,4	23.062,5	
Net soil consumption (Km2)			52.1

The ISPRA is clear in identifying that the slowdown of the last ten years may be over and that the Italian landscape is now witnessing an expansion of the agricultural areas that are covered in tarmac and cement, buildings and factories, streets and infrastructures, commercial areas and new residential neighbourhoods (often with low density of inhabitants).⁷⁶ As the graph by the European Environment Agency reveals, this is not a homogenous phenomenon, but rather unevenly distributed along the peninsula and more evident in the North rather than in the South. Given the geographical distribution of land taking and soil seizing and that the situation on the ground is

⁷³ISPRA, Consumo di suolo, dinamiche territoriali e servizi ecosistemici, 2018 Edition. Available online.

⁷⁴ Ibidem

⁷⁵ Art. 9 of the Italian Constitution.

⁷⁶ISPRA, op. cit., p.14.

affected by the international, national, regional and local regulatory framework, any investigation on the link between the loss of agricultural land should be multi-scalar and take into consideration the way in which institutions, practices and substantive decision define the mechanism of governance.

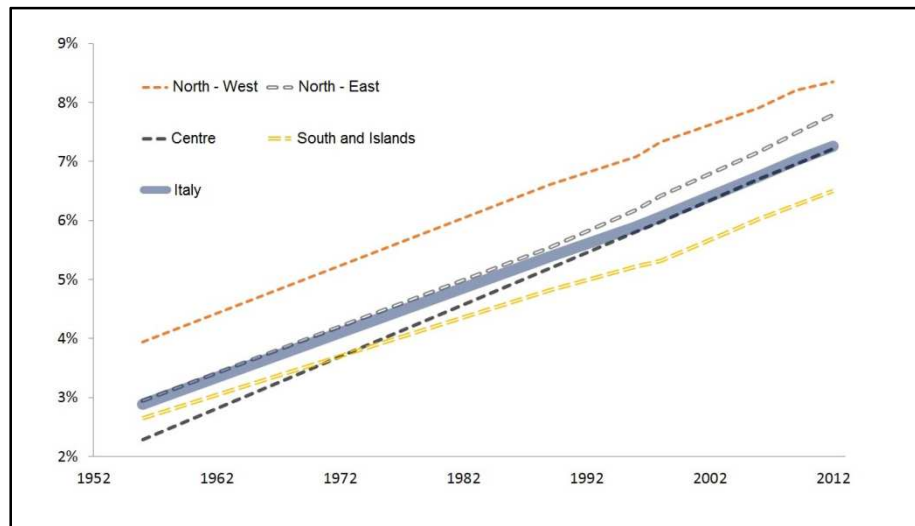


Figure 1 Trend of Soil Consumption in Italy. Source European Environment Agency. Available from <https://www.eea.europa.eu/soer-2015/countries/italy/figura1inglese.jpg/view>

In the context of the present report, the authors would like to highlight the possibilities and limits of the current national framework, with particular attention to the 2017 National Strategy for Sustainable Development 2017-2030 (SNSvS)⁷⁷ and regional legislations. Despite the bills that were discussed in 2012 and 2014, in fact, Italy lacks a national regulation on land taking and soil sealing. The National Strategy is the document adopted by the executive power to transpose into the Italian context the objectives and targets of the Agenda 2030. Therefore, it is strongly influenced by the SDGs and the concept of multi-scalar and multi-stakeholder governance. However, it is not prescriptive but programmatic. Despite the non-binding nature of the strategy, national strategic objective II.2 of ‘halting soil consumption and desertification’ could be taken as the starting point for the adoption of a mandatory legal framework that implements international standards and limits exceptions, introduces clear definitions, identifies binding targets of reduction, defines a system of monitoring and verification, and elaborates a set of adequate penalties and incentives. A source of inspiration could be the 10 points elaborated by the National Forum ‘Save the Landscape’ which recognizes the urgency of the matter and the importance of both preserving agricultural land and recuperating land that was previously sealed.

If a national regulation is non-existent, the regional framework is chaotic and insufficient. As discussed in the ISPRA report, several regions have embraced the idea of reducing or restraining soil consumption, but the adoption of weak definitions of ‘soil consumption’ and the existence of numerous exceptions are such that most of the measures have been ineffective. On the one hand, Veneto and Lombardia have legislated the idea that soil represents a common good whose preservation concerns both present and future generations. Other regions have introduced norms and targets, but not often sufficient. Recently, the legislative proposal of the Emilia Romagna regional council was hardly criticized for the lack of ambition of its targets and the existence of too

⁷⁷ Strategia Nazionale per lo Sviluppo Sostenibile (SNSvS) 2017-2030, of the Ministero dell’Ambiente e della Tutela del Territorio e del Mare, October 2017.

many exceptions. On the other hand, there are cases where the consumption of soil is only marginally mentioned, with very little indications of concrete steps to take.

It is the opinion of the authors that the differences among regional and local interventions and the impact that the different legislative choices have in terms of right to food and international obligations should be an area of investigation, analysis, comparison and political engagement. Moreover, the content of the SDGs and the existence of European recommendations could represent an incentive to look elsewhere at positive examples of soil preservation and requalification that have been successful. The multi-stakeholder and multi-scalar dialogue around the National Strategy for Sustainable Development 2017-2030 could represent an important venue where to integrate these different voices and visions. Of course, paying attention to the questions of power, representation and legitimacy that multi-stakeholder platforms always reserve.⁷⁸

1.d.d Large-Scale Infrastructures and the Impact on Agricultural Land

Throughout the peninsula, several large-scale infrastructures have been accused of infringing on the rights of farmers and grabbing agricultural land and water that would otherwise be used for food production. The realization of the High-Speed Train in Val di Susa, for example, has been under the spotlight because of the expropriation of agricultural land and the impact on water that was used both domestically and to farm. However, similar incidents characterize the whole peninsula, from North to South. Of those that happened more recently, we want to flag the case of the solar plant of Narbolia, in Sardinia, and the Transatlantic Adriatic Pipeline in Puglia.

The case of Narbolia concerns one of the largest, if not the largest solar plant in the world, with 1614 greenhouses covered in solar panels, for a total of 64 hectares of land.⁷⁹ In our opinion, the project is important for three reasons: a) because it is evidence of the existing tension between the achievement of sustainable growth (more green energy) and the use of land for farming and food production; b) because the decision of covering 64 ha of land with solar panels was taken in the context of an island, Sardinia, which is net food importer; c) because the authorization from the City Council of Narbolia, issued in 2009, was opposed before the Italian administrative courts for lack of proper consultation and assessment of its social and environmental impacts. In the intention of the committee that opposed the project, “land had to be given to those who work for the general wellbeing and the realization of similar infrastructures intensifies the abandonment of the countryside and reduces the productive capacity of the Sardinian food system.”⁸⁰ Suspended by the Regional Administrative Court of Sardinia for procedural incompliances concerning the way in which the Environmental Impact Assessment had been conducted and on its substantive lacks,⁸¹ the project was given another green light by the highest judicial court in administrative matters in 2016.

One of the most interesting aspects of the suspensive judgment is the reference to the Aarhus Convention, an international agreement adopted on 25 June 1998 and ratified by Italy which a number of rights of the public (individuals and their associations) with regard to the environment,

⁷⁸N. MCKEON, Are equity and sustainability a likely outcome when foxes and chicken share the same coop? critiquing the concept of multistakeholder governance of food security, 2017, 14 *Globalizations* 3, pages 379-389.

⁷⁹C. PIERFEDERICI AND A. ONORATI, op. cit.

⁸⁰Ibidem, p. 41.

⁸¹ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of the United Nations Economic Commission for Europe (UNECE), June 25, 1998.

including the right to environmental information that is held by public authorities (access to environmental information), the right to participate in environmental decision making (public participation in environmental decision-making) and right to review the procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general (access to justice). According to the Administrative Court, the way in which the project in Narbiola had been developed was not in line with the notion of effective information that is promoted by Article 6 of the Convention: the complexity of the project, the Court concluded, was such that an effective information is actually provided only when all interest parties have a detailed understanding of all its phases and have not only been informed by making the project public.⁸²

Despite this, when the authors interviewed Pietro Porcedda, president of the Committee “S’Arrieddu per Narbiola” that has been fighting to stop the project, there was a clear sense that the Committee had achieved some victories. First of all, because it raised public awareness in the territory. However, the real victory is represented by the establishment of a network of local and small farmers that focuses on food sustainability, food auto-determination and the creation of a peasant law for Sardinia. Despite the outcome of the court case, the resistance against the Narbiola solar plan has created a political space to think about the long-term socio-environmental sustainability of the local food system and to organize around it. With the support of the FAO Land tenure voluntary guidelines (which have been translated in Italian and Sardinian), the peasant movement is working hard to raise awareness and pride, and collectively create a food system that is ecological and sustainable both for producers and consumers.

The second large-scale project that deserves some attention is the Transatlantic Adriatic Pipeline (TAP) in Puglia, a gas pipeline that would connect the Greek coasts with the Italian coast of Puglia through the Albanian sea. Like the case of Narbiola, the project in Puglia is connected with energy consumption and has a directly impact on agricultural land. Differently from Sardinia, however, the TAP would not be about ‘green energy’, but rather easier access to fossil fuels. Since 2011, three years before the authorization by the Minister of the Environment, local groups started organizing against a project that was considered useless, dangerous for local realities and people living in the region and anti-democratic.⁸³ In particular, the movements began pointing at the hundreds of olive trees that were going to be uprooted to give space to the pipeline and then replanted. On April 2017, 70 mayors wrote a letter to the President of the Republic and the President of Congress to save the trees, whose cultural and economic value is essential to the region. Despite the protests and the opposition by both the Minister of Cultural Goods and the Region Puglia, the project and the uprooting continued. The TAP, a 2.7 billion Euro project which may now go through a new phase of environmental impact assessment, proves the tensions and conflicts that arise when conflicting political objectives are at stake. This can happen between Ministers, but also between Ministers and local authorities. Prioritizing the realization of the right to food as essential to any other right would thus mean, at least in theory, to reduce the conflict by identifying a clear direction.

In both cases, public authorities were involved through the issuance of the Environmental Impact Assessment (*Valutazione di Impatto Ambientale - VIA*), which is a prerequisite to all those projects that ‘can have a significant and negative impact on the environment’ (art. 20 D.L.vo 152/2006). From the perspective of the right to food and the international obligations of the State and local authorities, the VIA is the legal and political space where conflicting interests and objectives are

⁸² Il Tribunale Amministrativo Regionale per la Sardegna, (Sezione Prima), See N. 00599/2014 REG.PROV.COLL.

⁸³ COMITATO NO TAP, 10 Ragioni per dire no al gasdotto TAP, July 24, 2014. Available online.

confronted. Until 2017, the Italian discipline was framed within the context of Directive 85/337/CEE of 1985 and was constructed around the regions, provinces and city councils as competent authorities depending on the size and quality of the project. The concepts of prevention, integration, dialogue, participation, sustainable development and delocalization represented the pillars around which the VIA was procedurally and substantively conceived. The cumulative impact on humans, fauna, flora, soil, water, air, climate, material goods and cultural heritage had to be taken into consideration and projects framed in order to guarantee the most appropriate solution. Despite the aims of the 'environmental code', the cases of the Val di Susa, Narbolia and the TAP reveal that projects were cleared despite their impact on soil and water.

Interestingly, the implementation of Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, has led to a significant change in the discipline of the VIA in the area of energy-related projects. Without entering too much into the details, it is important to highlight how the desire to attract investments and the recognition of energy infrastructure as national priorities have been translated into substantive and procedural changes that may reduce even more the possibility to validly oppose socio-environmental concerns. First of all, the competence in case of energy projects and infrastructure has been centralized to the executive power, a solution that politically detaches the decisions from the ground. Secondly, the legislative decree 104/2017 introduces the mandatory term of 390 days for issuing the VIA (previously, it could take between 300 days to 8 years) and subjects the managers of the competent offices to penalties in case of failure to comply. Thirdly, the current law has reduced the level of details required for the preliminary studies to be presented and has homogenized the national discipline, therefore depriving the local authorities of the possibility to require higher standards than the minimum national and European threshold. Finally, an element of concern from the perspective of the right to food (and any other social consideration) is represented by the decision of the legislator to authorize the dismissal of negative opinions expressed by other Ministers in case they are not provided on time (art.14 D.lgs 6/2017).

The solar farm in Narbolia and the TAP are both energy-related projects that reveal the political and material space that this kind of infrastructures is currently playing in Italy. And there are billions of euro waiting to be invested in this sector.⁸⁴ Both projects obtained a VIA according to the previous procedure and they were both characterized by conflicts on the ground once their construction began. In light of the new discipline and the direct tension between large-scale infrastructures, the preservation of agricultural land and the continuation of agriculture, the authors of this report suggest that more attention should be paid to this area. In particular, it would be crucial to engage with national and local authorities in order to make sure that the needs of investors and the thirst of energy do not frustrate the efforts that are taking place on the ground to construct a sustainable food system based on the full implementation of the right to food.

1.e.eRight to Water and Right to Food: Complementarity and Conflicts

When the right to food is discussed, the importance of water is often forgotten. However, there is no clearer connection than the one between the two: water is essential to the survival of human beings (even more than food) but also a central element in the production of food. Without the appropriate access to water, people, animals and plants would all die. A systemic approach to the right to food must thus take into consideration the essentiality of water both for drinking and for

⁸⁴P. Ficco, La nuova Via riporta i progetti energetici allo Stato, July 9, 2017, in *Il Sole 24 Ore*. Available online.

production and the fact that the multiple uses of water (including the industrial use) make it particularly scarce and intensify conflicts around access. This implies considering the overall water footprint of a country, i.e. the amount of water that is contained in the food that is consumed in a country, independently from the fact that it is produced nationally or abroad. When we talk about food production and consumption, land sealing, large-scale infrastructure, expansion of industrial agriculture, etc., we should thus always ask what impact these phenomena have on the right to water as much as the right to food.

The need for a combined and interdependent action around water and food is evident in some international treaties and documents. For example, Article 24.2 of the Convention on the Right of the Child clearly reveals the connection between food, drinking-water and nutrition by stating that States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution. Moreover, the ICESCR 'right to adequate standard of living' has been interpreted as a recognition of both the obligation to protect, respect and fulfil the right to water and the right to food. In addition, the General Assembly passed a resolution in July 2010 which explicitly "declares the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights".⁸⁵ Italy was one of the countries that supported the resolution. More recently, the Human Rights Council affirmed the right to water and sanitation as human rights⁸⁶ and the Sustainable Development Goals 6 was issued to stress that "Access to safe water and sanitation and sound management of freshwater ecosystems are essential to human health and to environmental sustainability and economic prosperity."⁸⁷

With regards to the importance of water for farming and production, the relationship between the right to food and the right to water may be a conflicting. As a matter of fact, recent history is full of examples where – in the absence or in violation of legal constraints and requirements - drinking-water was utilized to produce food and raise animals, often because of the higher commercial value of production over the cost of water paid by individuals. For example, a 2015 US Congressional Report by Renée Johnson and Betsy A. Cody revealed that the shift from annual to orchard crops (almonds, walnuts, pistachios, raisins, etc) had an impact on the total amount of water demand in California, a country that faced a severe drought in 2016.⁸⁸ On the contrary, the draught of 2017 that hit Italy and its agricultural sector produced around 2 billion of damages for loss crops and production.⁸⁹

The impact that food production has on water availability must be taken into consideration, as much as the risks that the lack of water generates in terms of farmers' livelihood and right to food. A mention to the balance between water and agricultural investments is contained in the Preface to

⁸⁵ Resolution 64/292 of 2010, on Human Right to Water and Sanitation of the UN General Assembly.

⁸⁶ Resolution A/HRC/15/L.14 of the Human Rights Council.

⁸⁷ Resolution 70/1 of the UN General Assembly on Transforming our world, above n 20, Goal 6.

⁸⁸ R. JOHNSON AND B. A. CODY, California Agricultural Production and Irrigated Water Use, June 30, 2015, in Congressional Research Service: Report 7-5700. Available online.

A similar study was realized by Larissa Watkins on the change in agricultural land and water usage in California's central valley recognizes that the increase in almond production was lucrative but ecologically unsustainable given the high amount of water needed and the inefficient system of irrigation. See L. WATKINS, Monitoring Change in Agricultural Land and Water Usage in California's Central Valley, 2016, in University Presentation Showcase Event. Available online.

⁸⁹ Siccità, Coldiretti: 2 miliardi di perdite per l'agricoltura, July 17, 2017, in SkyTG24 News. Available online.

the FAO Voluntary Guidelines on responsible land tenure, which highlights that ‘[i]t is important to note that responsible governance of tenure of land, fisheries and forests is inextricably linked with access to and management of other natural resources, such as water and mineral resources.’⁹⁰ Similarly, General Comment No. 15 discusses the possible conflict of uses and states that: “[...] priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligation of each of the Covenant rights.”

However, the conflict may not only be between agriculture and drinking, but also between different forms of food production and between the provision of water for human needs and water for farming: if left to the market, the allocation of water may favour those large undertakings who have the financial capacity to pay high prices for water or cities over the rural context. In response, General Comment No 15 paragraph 7 makes an explicit reference to the link and possible tensions between the right to food and the right to water, and notes:

“the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see general comment No. 12 (1999)). Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.⁹¹

According to the UN framework, the right to water for food production should not be enjoyed equally by all farmers. On the contrary, situations of marginalization and disadvantage should receive a stronger level of protection by the State and public authorities. Rather than being a rivalrous resource allocated according to market mechanisms, water should thus be distributed on the basis of rights, necessity and equality. Any assessment of the state of the right to food must, therefore, consider the interdependence and the possible tensions with the right to water and with different expressions of the right to water.

For what concerns Italy, the state of water is particularly worrisome. According to the Barilla Food Sustainability Index, Italy is sixth in the world for availability of water. However, the National Institute for Statistics (ISTAT) reported in 2017 that the amount of water that was transported by rivers and other water courses in 2017 was 39.6% lower than the average amount of water transported between 1981 and 2010. In the same year, one family every ten had irregular access to water in their houses, and the 30% declared that they did not trust water coming from the tap.⁹² Moreover, despite the fact that every year almost 27% of the water is spilled, Italy is the country in the EU with the highest pro capita consumption of water, almost 25% higher than the EU average and 66% than the world average.⁹³

Overall, agriculture is the thirstiest economic sector with the major percentage of the water footprint, 85%, followed by industry (8%) and domestic use (7%). Fortunately, the Italian agriculture

⁹⁰2012 FAO Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of National Food Security of the FAO, Rome, 2012, p. iv Preface.

⁹¹ General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) Adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, January 20, 2003, Document E/C.12/2002/11.

⁹² ISTAT, Giornata mondiale dell’acqua. Le statistiche dell’Istat, March 22, 2018. Available online.

⁹³ Ibidem.

mainly uses rainwater. What this means, is that “about 96 % of the water footprint of consumption is thus ‘invisible’ for the consumer: it relates to the water consumption and pollution behind the products that consumers buy in the supermarket or elsewhere.”⁹⁴ However, “[a]griculture is the sector mainly responsible for changing the ecological and hydrological cycles. 41% of Italian cultivated land is located in only four regions: Emilia-Romagna, Lombardy, Sicily and Puglia. In the lowland Po plain, the main crops include maize, winter wheat, rice, barley, oats, rye and sorghum, pastures, tomatoes and sugar. 17 billion cubic meters per year of water, representing approximately 50% of the annual Po river discharge, is used for irrigation. Due to the presence of irrigation canals and dams for hydroelectric power, drought has become a regular event in some reaches of the Po, in particular during summer.”⁹⁵ Between excessive consumption, draughts, conflicting uses, spills, privatization and impermeabilization, the Italian scenario appears particularly complicated and deserving a stronger right-based assessment than the one we can propose here.

If we look at the current legal framework, the case of Italy appears particularly contradictory. On the one hand, it is the country where a referendum on water as a commons was held in 2011 which received 27 million votes against the privatization of the water infrastructure and a minimum return on the investment for private managers of water supplies.⁹⁶ Before and after the referendum, people gathered around the Movement of water as a commons and some cities (in particular Naples) experimented with the possibility of a fully transparent and democratic management of the resource. On the other hand, very little has been done at the national level to improve access to water, its management according to principles of public interest and equality, and the quality of the water that is distributed. When measures have been taken or proposed, they have often been contradictory. Recently, a water bill was presented in the Parliament that contains the recognition of the access to drinking-water as a human right. However, both the Italian Forum for Water Movements and Legambiente publicly opposed it because of the implementation of an efficiency-based approach to water management that would rely on market actors and betray the spirit of the referendum.

Of all the perspectives that can be adopted to discuss the link between a holistic understanding of the right to food and the right to water, we believe that the notions of ‘virtual water’ and ‘water footprint of food’ represent the most interesting one. In the context of global food chains, the food that is consumed is often the expression of resources (land, water, etc) that belong to other geographies. Introduced by Tony Allan, the concept of virtual water has been combined by Professor Arjen Y. Hoekstra with the notion of water footprint and the idea of global food chains.⁹⁷ According to Professor Hoekstra:

“The international trade in agricultural commodities at the same time constitutes a trade with water in virtual form. Water in external areas has been used to produce the food and feed items that are imported. The water footprint of a good or a service is the total amount of water, external and internal, that is required to produce it. The concept can be used to calculate and compare the strain on water resources resulting from different options. It can also be extended to provide water budgets for whole nations or continents.”⁹⁸

⁹⁴A. Y. HOEKSTRA, *The water footprint: the relation between human consumption and water use*, 2015, in M. ANTONELLI AND F. GRECO (EDS), *The Water We Eat*, Springer Water, 37. Available online.

⁹⁵E. ALESSI ET AL, *Water Footprint of Italy*, 2014. Available online.

⁹⁶ The abrogative referendum was held in Italy on June 12-13, 2011 for repealing the laws concerning the privatization of water. In particular, about 95.4% of the population voted in favour of repealing the law that assigned the management of local public services to the privates.

⁹⁷A. Y. HOEKSTRA, *The water footprint of food*, *Water for Food*, 2008, 48.

⁹⁸*IBID.*

The classic example is that of the footprint of beef. “In an industrial beef production system, it takes on average three years before the animal is slaughtered to produce about 200 kg of boneless beef. The animal consumes nearly 1,300 kg of grains (wheat, oats, barley, corn, dry peas, soybean meal and other small grains), 7,200 kg of roughages (pasture, dry hay, silage and other roughages), 24 cubic metres of water for drinking and 7 cubic metres of water for servicing. This means that to produce one kilogram of boneless beef, we use about 6.5 kg of grain, 36 kg of roughages, and 155 litres of water (only for drinking and servicing). Producing the volume of feed requires about 15,300 litres of water on average. The water footprint of 1 kg of beef thus adds up to 15,500 litres of water. This still excludes the volume of polluted water that may result from leaching of fertilisers in the feed crop field or from surplus manure reaching the water system.”⁹⁹

On the basis of available data, the WWF in 2014 calculated that: “Italy’s total water footprint of national consumption is 132,466 Million m3 of water per year. This amount is equal to 6,309 litres per person per day.”¹⁰⁰ While water for domestic purposes constitutes 4% of the daily water footprint and industrial products amounts to 7%, food consumption alone (including both agricultural and animal-based products) contributes to 89% of the total daily water footprint of Italy. Not surprisingly, Figure 3 below extracted from the WWF reveals that almost 32% of the water footprint of national consumption between 1996 and 2005 is due to meat. Adding the 10% of milk and the 2% of animal fats, more than 44 %of the water footprint of the Italian diet is linked with livestock products.¹⁰¹Wheat, olive oil, coffee, bovine meat, milk and pig meat reach 50% of the Italian water footprint consumption.

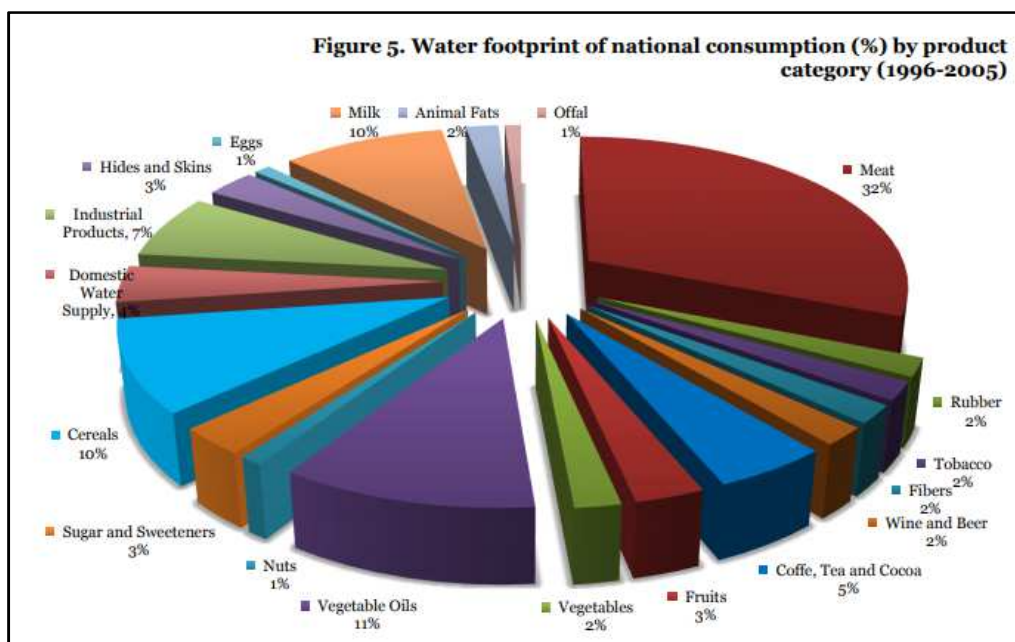


Figure 2: Source Alessi et al, based on Mekonnen and Hoekstra 2011

More interestingly, the WWF points out that of the total water footprint of Italian consumption, only 39.3% is related to water that is sourced locally and used to produce the goods and services

⁹⁹ Ibidem, p. 49.

¹⁰⁰ E. ALESSI ET AL., op. cit., p. 52.

¹⁰¹ This datum does not take into consideration the difference that exists in terms of water consumption of intensive and non-intensive livestock production. Further studies should be realized to assess the responsibilities of different forms of animal farming and have a clearer sense of what policies should be improved or adopted.

consumed in Italy. On the contrary, 60.7% of the virtual water that is consumed in Italy is external, i.e. extracted elsewhere¹⁰². As clearly stated by Alessi et al, “This means that Italy relies mainly on foreign water resources to meet its internal demand, which are accessed in the global market through the imports of agricultural, livestock and industrial products.”¹⁰³ A further study should assess the impact on the right to water and the right to food of the people who leave where this water is extracted and embedded in the food consumed by Italians.

If the fulfilment of the right to food requires to construct and maintain systems that are ecological and socially sustainable both in terms of production and consumption, it is essential to understand what is the impact that the eating habits of Italian people have on water resources located elsewhere and, indirectly, on the environmental sustainability of the food system and the right to food and water of all the people whose needs may have been satisfied if the water contained in the food had been used differently. Moreover, if obligations are universal and transcends the national boundaries (as we discuss in section III on the Extraterritorial Obligation to implement the right to food), the strong dependency of the Italian food system on water extracted elsewhere requires scrutiny and attention.

¹⁰²E. ALESSI ET AL., op. cit.,.

¹⁰³E. ALESSI ET AL., op. cit., p. ?

II. RIGHT TO FOOD FROM BELOW: ASSESSING THE STATE OF THE RIGHT TO FOOD IN A COMMODITY-BASED ECONOMY THROUGH THE EYES OF THE MOST MARGINALIZED

“The right to food is the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations.”¹⁰⁴ In order to satisfy their right to food, it is self-evident, people must have access to it. Simple as it sounds, the situation is complicated by the fact that we live in a cultural and legal context where food is treated as a commodity exchangeable for a price. People who do not produce their own food and who do not want to steal, have two only options to access it: a) earning incomes from employment or self-employment; (b) public support and social transfers. If fulfilling an essential right depends on the amount of money that individuals earn or on the possibility to qualify for social protection, the right to food in the context of a market-based economy must be understood as fully dependent on the existence of decent jobs in the industry and services sectors and/or a strong and reliable welfare state. In the words of Olivier De Schutter: “The right to food overlaps in this regard with the right to work and the right to social security, guaranteed under articles 6 and 9 of the International Covenant on Economic, Social and Cultural Rights.”¹⁰⁵

An assessment of the right to food in a commodity-based economy like Italy needs to take access seriously and to look at whether availability of food is also matched by accessibility. In light of this, we believe that the best way forward was to structure this section of the report around the experiences of people who live in condition of marginalization, deprivation and socio-economic struggle. In order to be systemic, coherent and interconnected, we thus present a multiplicity of examples that depict a grey picture of the state of the right to food from below, i.e. from the point of view of individuals for whom the cost of food represents an obstacle to the satisfaction of their right. However, we also recognize that some forms of national support have been enacted and that private and public initiatives have been launched to tackle the increase in food insecurity. Unless countries take seriously their duties towards the most marginalized, and the essential role of legal entitlements in ensuring that the poor have either the resources required to produce enough food for themselves, a purchasing power sufficient to procure food from the market or a satisfactory support from the State, any effort at increasing production shall change little to their situation. Because, as stressed by Amartya Sen and later by De Schutter, people are not “hungry not because there is too little food: they are hungry because they are marginalized economically, and powerless politically”¹⁰⁶.

On the one hand, Italy appears as a country where the right of food of marginalized groups is significantly violated: the conditions of destitute people and the criminalization of food poverty, the malnutrition of children and the collapse of the school canteens, the exploitation of farmworkers and the treatment of migrants all over the country depict a grim scenario that requires a strong institutional reaction. On the other hand, we recognize the potential of the recent interventions with regards to the distribution of surplus food (*Legge Gadda*), the law against gangmaster practices (*caporalato*) and the legal challenge to unfair commercial practices that favour the most powerful actors in the food chain. The second part of this is therefore dedicated to the assessment of these

¹⁰⁴ GC No. 12 of the CESCR, above n 2, paras. 6 and 7.

¹⁰⁵ The transformative potential of the right to food by O. De Schutter, above n 18. par. 3.

¹⁰⁶ Sen A., *Ingredients of Famine Analysis: Availability and Entitlements*, 96 *The Quarterly Journal of Economics* 3, 1981.

new policies through a right to food-based perspective, so to highlight their merits and suggest possible improvements.

We also recognize the existence of an underlying problem that makes our enquire, and any similar enquire, harder than it should be. This is the lack of a clear definition, in the context of the Italian system and throughout Europe, of a specific indicator of food insecurity, as well as a sufficiently comprehensive definition of "food poverty" capable of intercepting the multidimensionality of the phenomenon, capable of linking the lack of financial resources to social, cultural and environmental factors. As a matter of fact, food insecurity is calculated with regard to the demand for food assistance from non-high marginal population groups. However, this criterion remains bound to a size of income and says very little about people living in situations where food is not provided by the third parties but by friends or acquaintances. In addition, the interpretation of food insecurity as having access to food disregards central aspects such as the adequacy of food consumed, which a fundamental dimension of the right to food and nutrition. In the absence of a definition, indicators and statistics, it is therefore hard to offer a detailed assessment of the current scenario. But it is also harder to imagine, draft and implement food poverty response policies that are effective and comparable.

Overall, food poverty is a marginal target of social policies that are more interested in treating the consequences rather than the symptom of poverty. Because of the – often – superficial approach, contrast measures appear fragmented, characterized by different intervention models and with a variety of actors involved. For these reasons, in the section on the Legge Gadda below we question the ability of the different forms of food assistance operating in Italy to achieve an effective level of food security in the medium to long term and to contribute to the realization of the human right to adequate food. Most of these interventions appear to be more in line with a "need-based" approach than "right-based".¹⁰⁷ Needless to say, there is plenty of space for improvement. A first step could be the adoption of a strategic approach to problem that starts from the lack of definitions and statistics and that recognize the complexity of food poverty.

The fight against food poverty would thus look both at the immediacy and at the long term. For example, it would mean increasing the quality and quantity of food assistance by working on a larger one qualification of the supply chains against a constant increase in demand; it would look at promoting education food operators and assistants in order to improve the quality of service and consumption patterns of families with positive consequences on the health of the assisted; it would monitor the impacts of the services provided and improve the relationship and coordination with public welfare systems; it would recognize the importance of providing health and mental health support, aid with energy bills and help finding a job. These forms of support could all be gathered in the same space and be linked with social activities and the possibility for people not to feel marginalized. The idea of the Food Hub (half community supermarket and half community café) that Feeding Coventry and the Coventry City Council in the United Kingdom have made public in 2017 could provide an interesting term of reference.¹⁰⁸

2.a Food Poverty in Italy and the criminalization of starvation

¹⁰⁷S. ARCURI, F. GALLI, G. BRUNORI, F. BARTOLINI, The Role Of Food Assistance In High Income Countries: A Critical Literature Review, 2015; M. CHILTON, D. ROSE, A Rights-Based Approach to Food Insecurity in the United States, 2009; Welthungerhilfe, World Hunger Report 2016, 2016.

¹⁰⁸Feeding Britain, Feeding Britain wins big lottery funding to roll out citizens' supermarkets. Available online.

In 2017, every day almost two million families and around 5.058 million people faced significant problems obtaining access to adequate food.¹⁰⁹ This represented the 8.4% of the Italian population and the 6.9% of the families, the highest number registered since 2005. Dramatically, this figure increased by 57% since 2007 and of almost 400 thousand individuals since 2016 (from 7.9%).¹¹⁰ What this data represents is the ability of families and individuals to have enough resources to buy a basket of goods and services that is considered essential for a decent standard of life. Along with housing, the access to an adequate and nutritional diet is taken by the national institute of statistics as one of the essential needs of people. Families and individuals who do not reach that threshold fall in the category of people living in absolute poverty.

The distribution of food poverty is not homogenous across the country and appears to be closely connected with the background of the families, their size and the age of the individuals. According to the 2016 statistics by the Italian Institute for National Statistics (ISTAT) the South of the country is the area with the highest concentration of absolute poverty, where around 10.3% of families (from 8.5% of 2016) and 11.4% of individuals (from 9.8%) live in extreme conditions (Figure 3 below). Gender is also an important element to take into consideration, given the fact that almost 2.472 million of people living in extreme poverty are women (8% of all the women in the country). In terms of age, 1.208 million of people living in extreme poverty have less than 18 years (12.5% of the whole cluster, in significant surge compared to the 3.9% of 2005). Moreover, 1.112 million have between 18 and 34 years and 611 thousand have more than 60 years (compared to 510 thousand in 2016). Finally, the ISTAT is also reporting that families with at least one foreign member are those suffering the most, which in 2016 represent 34,5% of the families living in extreme poverty (compared to 31.9% of 2016).

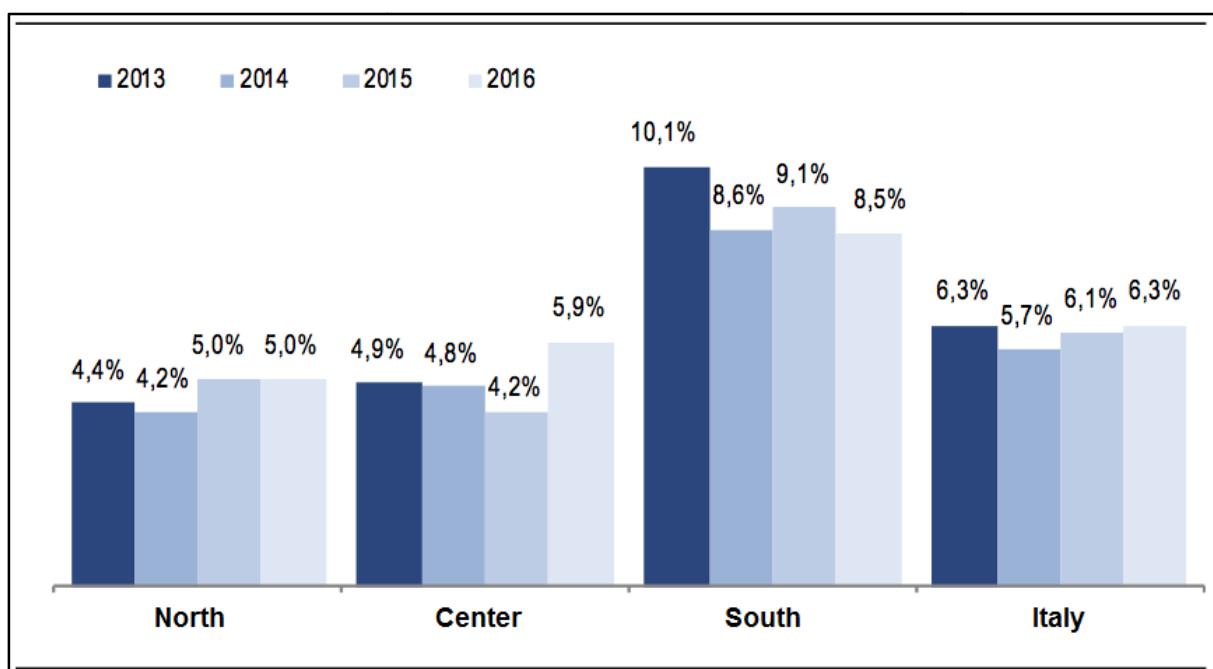


Figure 3: Geographical and Cronological Distribution of Extreme Poverty in Italy 2012-2015. Source: ISTAT

¹⁰⁹ ISTAT, La povertà in Italia, Anno 2017, July 2018. Available online at <https://www.feedingbritain.org/Blog/feeding-britain-wins-big-lottery-funding-to-roll-out-citizens-supermarkets>.

¹¹⁰ V. SANTARPIA, In 4,6 milioni in povertà assoluta, a rischio stranieri e famiglie numerose, in Corriere della sera, July 14, 2016.

A similar picture is depicted by the 2014 on poverty and exclusion in Italy redacted by Caritas Italiana, which is part of Caritas Internationalis, a confederation of 165 Catholic relief, development and social service organisations operating in over 200 countries and territories worldwide. Caritas Italiana carries out research on the causes of poverty, prepares analysis of those in need and is directly involved in the provision of services and support to migrants and people in conditions of extreme poverty.¹¹¹ Through data gathered on the ground, Caritas concluded of all the people who utilized the services provided 54,4% were women, 61.3% unemployed and 61.8% foreigners. More than half of the people who accessed the service did it because of their economic condition. However, a higher percentage of Italians seem to suffer for economic marginalization compared to foreigners (65.4% of the total of Italians compared to 55.3% of foreigners). Origin, gender and working condition are, therefore, among the main drivers of socio-economic exclusion.

In this context, food poverty is the consequence of the lack of resources to satisfy all basic needs: without sufficient resources, “people renounce to grocery shop and accept the support provided by the association, because they need to save money for other uses like paying utilities, mortgages and rent.”¹¹² At the same time, Oxfam has recently pointed out that the wealthiest 20% of the Italian population detained more than 66% of the national net wealth in 2017, while the gross income of the poorest 10% has decreased by 23,1% between 2006 and 2016.

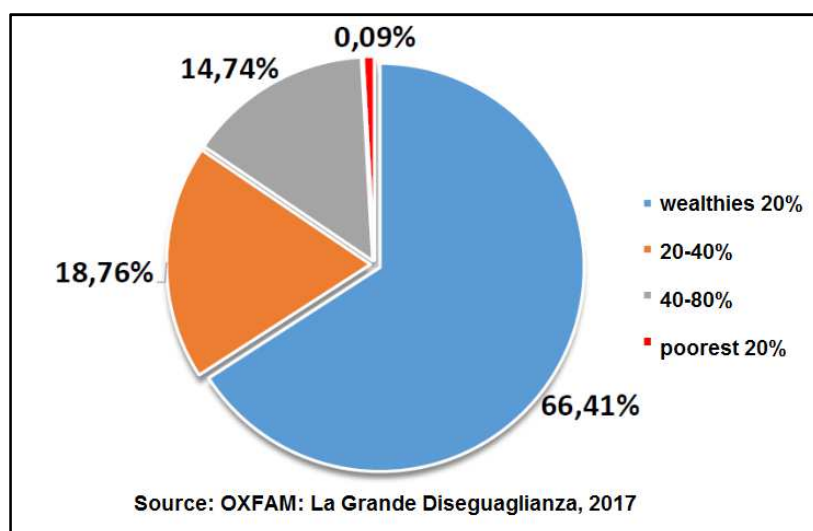


Figure 4: Distribution of Wealth Across the Italian Population in 2017¹¹³

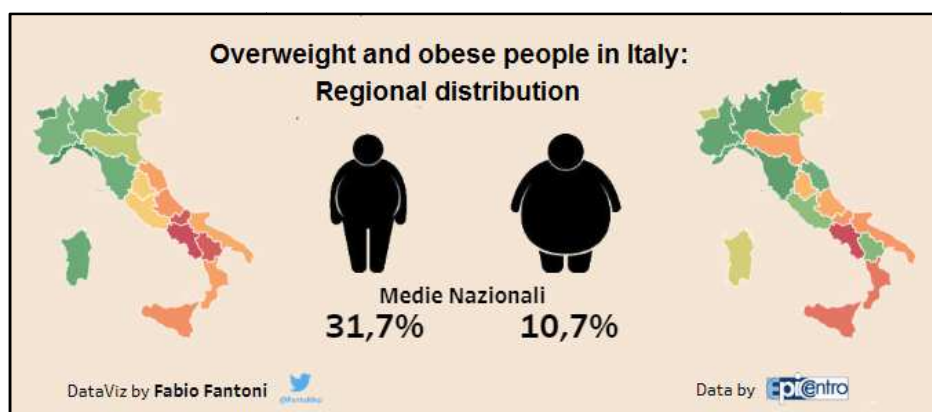
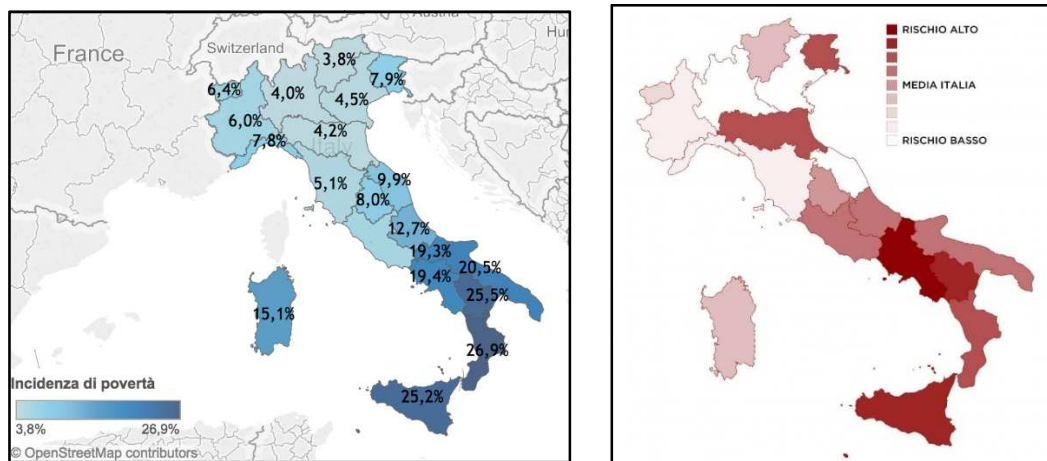
It is not the aim of this report to offer a thorough analysis of the general conditions of the people living in Italy. However, we believe that the distribution of poverty in terms of geography, gender, age and origin must inform any attempt to understand the causes and to address the issue. In particular, the data collected by ISTAT offers a useful picture of those groups that are most marginalized and whose right to food may be most affected: the deteriorating condition of children, women and family with foreigners raises strong concerns and influenced the considerations contained in this report.

¹¹¹Caritas, Europe, Italy. Available online at <http://www.caritasitaliana.it/>.

¹¹² Ibid, 18.

¹¹³OXFAM, Disuguaglianza. I dati sulla disuguaglianza economica in Italia, inserto del rapporto Ricompensare il lavoro, non la ricchezza, January 22, 2018. Available online.

If economic marginalization is the root cause of food poverty, an interesting way to approach this link is by looking at the accesses to Banco Alimentare. If an increase number of individuals and families do not have enough resources to purchase food, it should not come as surprise that the data on poverty and inequality are reflected by a continuous increase in the access to food banks. At the national level, the *Banco Alimentare* distributed 91.235 tons of food to 1.584.271 people in 2017. At the regional level, the Banco Alimentare of Piedmont (one of the most active) recorded 6.325 tons of food and 12,6 million meal equivalents in 2016,¹¹⁴ with an increase of almost 2 million meals compared to 2014,¹¹⁵ when it distributed 5.100 tons of food and 10.200 million meal equivalents.¹¹⁶ As discussed in Section 2.e below, the role of food banks in implementing a strong conception of the right to food has been widely criticized, in particular after the *Legge Gadda* has promoted a system of distribution of surplus food based on voluntarism and fiscal incentives. However, in the absence of a strong and reliable system of public support against food poverty, food banks represent one of the few options for people living in conditions of extreme poverty. In this context, a historical and detailed analysis mapping of the operations of food banks in Italy, currently unavailable, would represent an extremely precious tool to provide a stronger critique of the state of the right to food in Italy and would be particularly welcomed by the authors of this report.



Another element that requires attention and research is the existence (if any) of a clear link between economic marginalization, malnutrition and non-communicable diseases (NCDs). According to the WHO, in fact, in 2017 there were 573.000 deceases for NCDs, around 92% of the total deaths. In the

¹¹⁴ Banco Alimentare del Piemonte Onlus, Bilancio Sociale 2014. Available online.

¹¹⁵ Banco Alimentare del Piemonte Onlus, Bilancio Sociale 2016. Available online.

¹¹⁶ A meal equivalent is a portion of 500 grams of food.

absence of clear data that offer a three-dimensional interpretation of these interactions, we propose below a comparison between three regional breakdowns: the distribution of absolute poverty in 2014; the percentage of overweight and obese people; the risk of cardiovascular diseases.

If in the context of a market-based economy food poverty is a matter of entitlement and accessibility, it is equally important to stress the role of private property over food as a commodity. As previously discussed, if food is considered a tradable good, it can be freely accessed only by those who own it because they bought it or produced it (although farmworkers and employees in the food sector do not own the food that they produce), or by those who receive it for free (as in the case of food banks). In a context where owners can exclude everyone else from their own, any attempt to freely access food that is not owned or received would amount to stealing and to a criminal sanction. Unfortunately, it is not possible to provide a detailed and clear analysis of the link between hunger and thefts, and data are contradictory.

Although the Global Retail Barometer reports that thefts by clients and employees in Italian supermarkets amounted to around 1.7 billion between 2014 and 2015,¹¹⁷ a study elaborated by *Il Sole 24 Ore* in 2017 combining unemployment with number of thefts and concludes that there is not a direct correlation between the two.¹¹⁸ An evidence would be, according to the researchers, that the Province of Rimini registered the highest number of thefts in 2016 (18.328) despite 11,08% of unemployment, whereas in the Province of Crotona, where unemployment reached 28.31%, there were 1.219 thefts in the same year. However, several arguments could be used to criticize the outcome. Firstly, the ISTAT data and the trends presented by the Caritas report highlight that unemployment is only one of the reasons behind extreme poverty. Secondly, Rimini is a very popular holiday destination, which increases the 'attractiveness' for this kind of actions. Thirdly, making reference to reported crimes does not take into consideration that only 20% of the thieves are caught while still in the supermarket,¹¹⁹ and that employees may not report subtractions of food when they realize that this is done by people living in dire conditions.¹²⁰ Finally, a newspaper from Rimini reported that shoplifting in food retailers increased by 10% in the city, providing a different picture than the one of the *Il Sole 24 Ore*.

From the point of view of law, the conviction of any person stealing food to satisfy their essential need to eat or that of people they are responsible for may be questioned on the basis of the duty of the state to protect and respect the right to food. A similar case could also be advanced with regards to supermarkets and food retailers that are increasing the level of security around the food that they throw away so to make it inaccessible even after its disposal.¹²¹ In the last year, the existence of an exception when 'food' is taken for reasons of hunger has been at the centre of a series of judicial cases, some of which created particular discomfort because of the entity of the condemn compared to the underlying action. For example, the argument of state of necessity was advanced in 2013, when an 80-year old widow in Genova was denounced for stealing food of the value of 20 Euro. After the trial, she was sentenced to 2 months and 20 days of prison.¹²² In the same year, a 64-year

¹¹⁷ The Global Retail Theft Barometer 2014-2015, in The New Barometer. Available online.

¹¹⁸ R. SAPORITI, *Furti Disoccupazione*, October 14, 2017. Available online

¹¹⁹ T. TORRI, *Boom di furti nei supermercati, in un anno sono aumentati del 10%*, in Rimini Today, September 27, 2013. Available online.

¹²⁰ C. DONELLI, *Furti per fame: viaggio tra chi ruba per necessità nei supermercati*, in Parma Today, August 9, 2016. Available online.

¹²¹ Supermarkets and retailers spent around 2.8 billion Euro in security between 2014 and 2015. Source: New Barometer.

¹²² *Anziana ruba pane e carne per fame: condannata a due mesi di carcere*, in Genova Today, June 16, 2013. Available online.

old retired man in Imperia was denounced and trialled for having added extra 4 Euro of apples after having already weighted the bag and stuck the receipt.¹²³ In Carpi, a woman with a non-EU passport was caught taking a pack of biscuit and a sausage: given her nationality, she was detained in a Temporary Detention Centre and repatriated.¹²⁴

In 2016 the possibility to frame hunger as an exceptional state of necessity was heard by the V Criminal Section of the Italian Supreme Court (*Corte di Cassazione*), whose members were asked to adjudicate the case of Roman Ostriakov, an Ukrainian citizen and homeless who had been caught signalled by a customer to the security of a supermarket in Genova and caught with a package of sausages and two pieces of cheese in his pocket when he was paying for other food he had taken from the shelves. The value of the food was of 4 Euro. The court of first instance had recognized the existence of the necessity motive (art. 54 criminal code) but had equally condemned Ostriakov to 100 Euro of fine for the attempted theft (he had not left the supermarket). Appealed by the public prosecutor, the case reached the Court of Appeal of Genova, which sentenced Ostriakov to Euro 100 and six months of prison. Against this decision, the General Attorney required the intervention of the Supreme Court and claimed that the attempted nature of the action, the modest value of the goods and the state of necessity were such that no crime could be identified. Recognizing the validity of the General Attorney's argument, decision No. 18248 of the Supreme Court concluded that 'given that the condition of the defendant and the circumstances of the action demonstrate that he appropriated the food to respond to the immediate and inescapable exigence to feed himself, he was acting in state of necessity'.¹²⁵ Consequently, no crime was recognized and the case dismissed.

Defenders of the sanctity of private property may consider this decision to be subversive and antagonistic to the certainty of law. However, art. 54 of the Italian penal code contains an exception (state of necessity) that excludes the enforceability of the law against a person whose "actions were forced by the necessity to save oneself or others from an imminent and severe damage that the actor has not willingly caused and that could not be avoided otherwise, provided the actions were proportionate to the offense." In the interpretation of the Court, the proportionate violation of the property right over small amounts of food that is forced by the necessity to feed oneself or to feed someone else is deprived of criminal relevance. A possible solution to the conflict between property and not dying of hunger that emerges in the context of a market-based society is thus provided by the criminal system. However, too little has been done to think about the proper interpretation of article 54 of the criminal code through the lenses of a holistic understanding of the right to food. In particular, the future use of article 54 in similar cases may be limited by the Courts' interpretation of the concept of proportionality, necessity, willingness and inevitability.

The Ostriakov case and the Supreme Court's refusal to sanction who takes small amounts of food to satisfy their human necessity can thus be considered a first step towards the introduction of the right to food in the criminal system. However, the recent case of Jonela S. tells a very different story and reinforces the need for a legislative intervention that orients the judges in cases concerning thefts of food and the state of necessity. In 2014, Jonela S. (a homeless non-Italian citizen) was

¹²³ Pensionato ruba frutta al supermercato – Denunciato per 4 euro, in Magazine Pausa Caffè, November 5, 2013. Available online.

¹²⁴ Furto per fame, la donna sarà espulsa, in Repubblica. Available online.

¹²⁵ Penale Sez. 5 Num. 18248 Anno 2016 of the Corte di Cassazione, January 7, 2016. "La condizione dell'imputato e le circostanze in cui è avvenuto l'impossessamento della merce dimostrano che egli si impossessò di quel poco cibo per far fronte ad una immediata ed imprescindibile esigenza di alimentarsi, agendo quindi in stato di necessità."

caught by the supermarket's security with six pieces of Parmesan cheese hidden in her purse while she was paying for other products. The market value of the cheese was Euro 82. Brought to court for attempted theft, the woman defended herself claiming the state of necessity exemption and that she had been moved by hunger. Both the judge of first instance and the Court of appeal condemned her to two months of prison and a 400 Euro fine. Despite the Ostriakov case, that had been already decided by then, the Supreme Court declared the circumstances of the case were such that the urgency to feed herself did not justify the violation of private property.¹²⁶ More interestingly, the Court stated that if the intention of the woman was to feed herself, she could have avoided stealing and accessed the services provided by Caritas Italiana.

Although it may be questioned whether 82 Euro of Parmesan cheese respond to the immediate necessity to eat, the Court's argument appears particularly problematic from the perspective of the right to food. The argument against the reasoning is at least threefold. Firstly, Caritas Italiana is a private and religious charity which operates throughout the country but is not connected with the Italian State and does not operate on the basis of the entitlement of people to receive food. Secondly, the Court did not consider the level of shame and discomfort that is often triggered by 'standing in line with the poor for some food'. For the Court it appears obvious that anyone would seek for charitable support, without considering the intensification of the state of social marginalization that often discourages people. Thirdly, the quick-fix of referring to the Caritas is based on a simplistic understanding of food poverty that does not take into consideration the material conditions of the person nor their cultural and social background. Therefore, if the legal obligation to protect and respect the right to food is borne by the State and its public authority, and if the Court recognized the state of marginalization and deprivation of Jonela S., it appears incorrect to claim that the obligations can be satisfied by relying on the services provided by a charity that relies on the voluntary participation of people and food donations. Surely, a lot more can be said about the clash between criminal law and private property over food, starting from the premises and objectives of both legal institutions. Yet, given the degeneration of life conditions that is increasingly affecting the Italian population and given the (at least for some reports) surge in thefts moved by hunger, a nation-wide discussion and a parliamentary intervention to properly integrate a holistic understanding of the right to food in the criminal system appear inevitable.

2.b Malnutrition among children and the crisis of school canteens

From the point of view of the realization of the right to food in Italy, an area of particular concern is represented by the situation of extreme food poverty and malnutrition that affects millions of children. Statistics are cruel: 1.208 million children of less than 18 years of age live in condition of absolute poverty, i.e. in contexts where they have access to less money than needed to purchase a basket of essential goods and services. This represents almost a quarter of the whole population who is experiencing this form of marginalization and 12.5% of all the children living in Italy. Each day of the year, more than one child every ten struggles to have access to food. Rather than improving, the situation seems to be spiralling downward: in 2005 the percentage of children living in extreme poverty represented the 3.9% of the total. It was 10,3% in 2012, almost twenty percent lower than 2018.¹²⁷

¹²⁶F. CRAVERO, *La Cassazione: "Rubare è sempre reato, anche quando si ha fame"*. Il caso a Torino, in *Repubblica*, February 16, 2017.

¹²⁷ISTAT, *La povertà in Italia, Anno 2017*, above n 109.

Along with absolute and relative poverty, the condition of several Italian children is also characterized by diffused malnutrition, mainly in the form of inappropriate nutritional value of meals that lead to overweight, obesity and non-communicable diseases. A 2013 survey conducted by ISTAT and Unicef on 'Children and teenagers between nutrition and malnutrition' looked at different elements of the daily diet of children, from breastfeeding to consumption of fruit and vegetables, and draw important conclusions on the state of the country and the link between education, socio-economic conditions and nutrition.¹²⁸ For example, in the context of 9.9% of children who do not have an adequate breakfast (i.e. they do not eat but only drink coffee or tea), lower levels corresponded to families that considered themselves as having optimal or adequate resources, while a higher percentage (10,7%) characterized families with scarce or insufficient resources. Another interesting datum is the consumption of nutritionally poor junkfood, which in 2013 was part of the diet of 14,2% of Italians of less than 18 years, with higher consumption among teenagers (17,4% of people between 11 and 17 years of age declared to consume it). Geographically, the consumption of junk food is highest in the South (19,4% of daily consumption) but also particularly high in the North-West (16,3%) compared to the 8,9% of the Centre. Finally, 63,2% of those surveyed declared to eat less than three portions of fruit and 4.7% to drink more than half a litre of soda per day. In both circumstances, the survey suggests that a higher level of education of the parents is associated with better dietary behaviours, with the children of mothers with a higher education diploma who eat at least 4 portions of fruit per day to double the national average.

Unhealthy eating habits have a clear repercussion on the impact of overweight, obesity and non-communicable diseases. Since 2008, the Ministry of Health conducts a survey of the health condition of primary school children(8-9 years) every two years. The data of the *Okkioalla Salute* (Pay attention to health) report, provides therefore the opportunity to chronologically and territorially map whether or not the Italian food system is contributing to the growth of healthy children. Of the 48.900 children surveyed in 2016, 21.3% resulted overweight (compared to 31,7% of the overall population), while 9.3% was considered obese (compared to 10,7% of the national population). Overall, the impact of obesity among young children went down by 12% of 2008 and there are 8% less overweight children than ten years ago. However, the number of overweight children grew (almost insignificantly) since last measurement (see Figure 5 below) and Italy is one of the top three countries in the European Union with the highest rate of child obesity according to the 2015-2017 Childhood Obesity Surveillance Initiative of the World Health Organization.¹²⁹

¹²⁸ ISTAT AND UNICEF, *Bambini e adolescenti tra nutrizione e malnutrizione*, 2013. Available online.

¹²⁹ WORLD HEALTH ORGANIZATION, *Childhood Obesity Surveillance Initiative, Preliminary Data*, 2017. Available online.

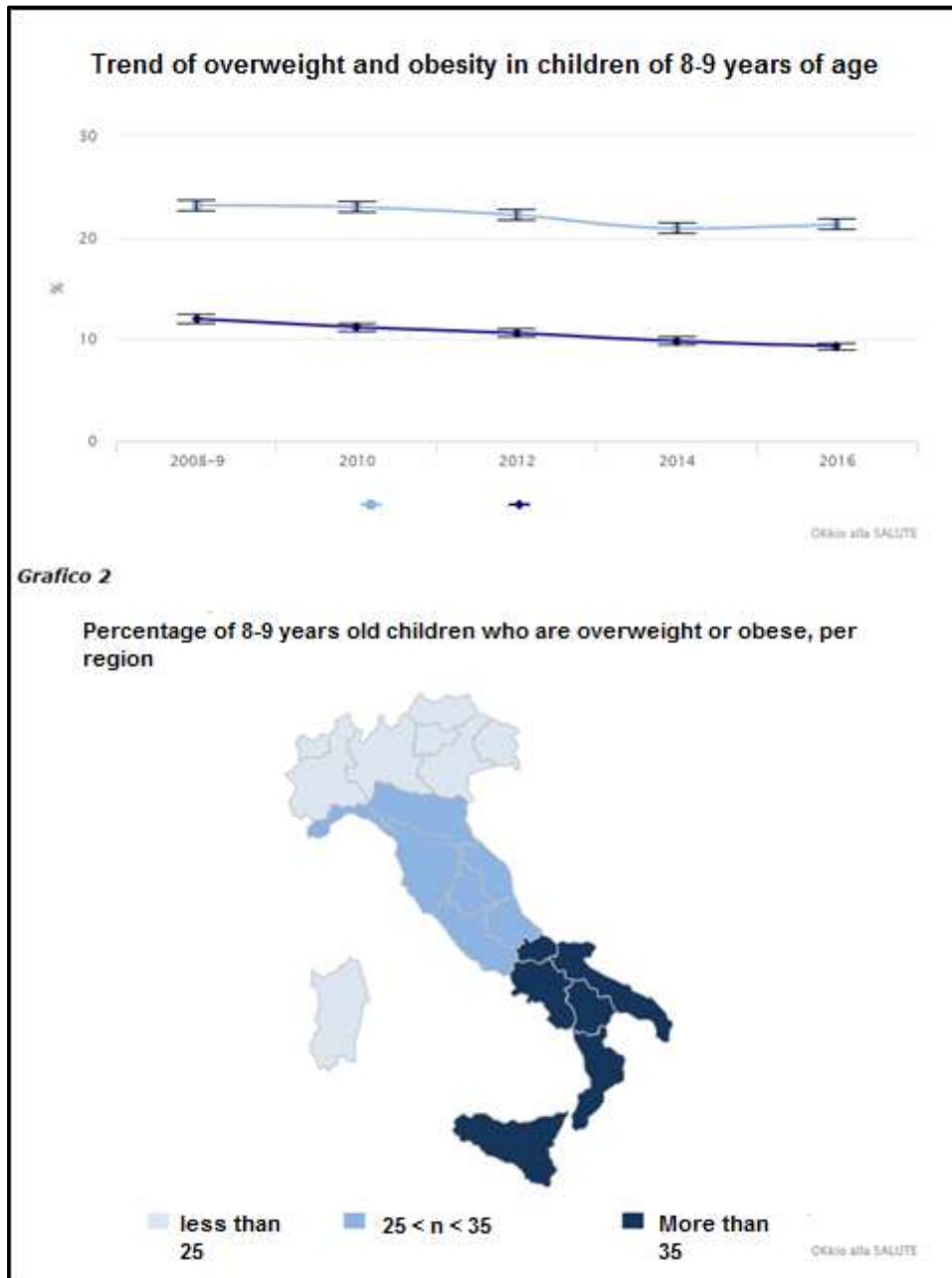


Figure 5: Trend and distribution of obesity and overweight among children aged 8-9

A right to food-based approach to the dietary condition and behaviours of children requires to take into consideration the central role that schools play in terms of education to healthy habits, the production and consumption of sustainable food, the provision of healthy food and the possibility for the parents to leave their children at school while they work. Moreover, there are correlations between access to school canteens and lower levels of the rate of early school leavers.¹³⁰ As a matter of fact, in 2017 there were 2.752.969 students enrolled in primary schools in Italy: if we think also at the case of Rome and the use of public procurement to implement sustainable and healthy diets, we immediately realize that the health, educational and sustainability potential is extremely significant.

¹³⁰In Italy, this datum is 14%, which is higher than the EU average of 11%. SAVE THE CHILDREN, Futuro in partenza?, Save the Children Italia, April 2017, p. 19. Available online.

However, the 2017/2018 rating of schools' menu suggests that pupils in Italy are served too many proteins, too much red meat, an insufficient variety of vegetables, too many eggs, not enough pulses and too many sweets.¹³¹

In the context of our engagement with a holistic and modern interpretation of the right to food, it is important to recognize the close and interrelated link that school canteens create between the right to education and the right to food. If this is the case, as we believe, assessing the availability, accessibility and quality of school canteens means determining whether both rights are implemented. Eating in common spaces with friends and peers represents a crucial moment for the growth of pupils, a unique educational experience in terms of promotion of healthy diets, nutritional education and socialization. As an example of this interconnection, a 2018 report by Save the Children stresses that the improvement of the life conditions of Italian children will inevitably require the increase in the number of schools that offer full time options (so that children stay at school in the afternoon) and free school meals for those who cannot afford it. With the adoption of national nutritional standards and a series of public investments, the document concludes, the Italian State would adopt a coordinated and effective strategy against food and education poverty of Italian teenagers, which often go hand-in-hand.¹³²

Unfortunately, a full map of the overall state of school canteens, of their services and of their impact on students' education and health is not available.¹³³ The Open Data online portal launched by the Minister of Instruction in 2016, *Scuola in Chiaro* (Clear School) has been criticized for being inaccurate and incomplete. The data that we are using derives from a report issued by Save the Children in 2017, '*(Non) tutti a mensa*' ((Not) everyone eats'),¹³⁴ and based on a survey conducted in 45 cities with more than 100,000 inhabitants. The document, which is the fourth in a row, depicts a picture that stands in neat contrast with the aspiration. Figures are dire: in eight regions out of twenty, more than 50% of the pupils do not eat in school canteens and almost 40% of the schools do not have a canteen. More dramatically, similarly to the data of poverty and malnutrition, the country is divided: only 29% of the schools in Sicily have a canteen, so that 80,04% of the pupils in primary school do not have the service. On the contrary, more than 90% of schools in Piemonte have the service and the percentage of students not using it is equal to 28.85%. Moreover, the last years have seen an increase in circumstances where religious dietary requirements in schools have become an opportunity for xenophobic and anti-Islamic conducts by mayors and some parents.¹³⁵

Austerity and the condition of public finance play a crucial role in determining the availability and accessibility to the service. However, this would not be the case if the provision of food in school canteens and the access to it was recognized as an essential public service, i.e. a service that the state and local administration must guarantee to every single pupil. The role of canteens as essential service has been recognized by a first instance court,¹³⁶ the Consiglio di Stato (highest administrative

¹³¹Foodinsider.it, 3° Rating dei menu scolastici 2017/2018. Available online.

¹³²C. MORABITO ET AL, *Nuotare Contro Corrente*, Save the Children, May 2018. Available online.

¹³³ MP Palese in a Parliamentary interrogation asked the competent Ministers to conduct with urgency the mapping of the state of school canteens, region by region, city by city, in order to understand how bids take place, what are the standards, what the protocols of control and what the instruments in support of low-wage families. See <https://parlamento17.openpolis.it/atto/documento/id/299679>

¹³⁴SAVE THE CHILDREN, *(Non) tutti a mensa 2017*, Save the Children Italia Onlus, Roma, October 2017. Available online.

¹³⁵W. BUKOWSKI, *La sacra crociata del porco*, Quinto Tipo, 2017.

¹³⁶ Sent. n. 559 April 11, 2013 of the TAR Toscana.

court) and the IV National Plan for Infantry in 2016.¹³⁷ In the case of the Consiglio di Stato,¹³⁸ school canteens have been considered ‘an essential service, functional to supporting and guaranteeing the pedagogical activity of the school’ and ‘instrumental to the overall process of education’. However, cuts in budgets and the privatization of public services that has been taking place in the last decades has contributed to a change in the way in which eating in schools is considered, so that now it is mostly seen as separated from both the right to education and the right to health. Receiving food in public schools is thus seen as an individual and private service that is provided by cities. Who gets to eat and what becomes, therefore, a political decision of city councils with full discretion in deciding whether to guarantee the service and how to provide it, but also full responsibility with regards to budget and funds.

Because of the decentralization of the competence over school canteens, the sole way to assess whether the right to education and the right to food coexist or not is to look at the situation in individual cities. The data produced by Save the Children talk of a divided country with clear examples of price disparity, discrimination and exclusion. As reported by Save the Children, city councils with little or no financial resources have cut school canteens, with the city of Messina, among others, that did not provide any service in the 2016/2017 academic year because of the lack of budget. Among those cities that invest public funds in education, significant diversity exists in the levels of contributions towards canteens, school buses and pedagogical support: the city of Verona, for example, contributes to primary education with 99.49 Euro per student, while the city of Padova transfers only 14.46 Euro per student.¹³⁹ The differences in public support are also reflected in a discrepancy in the minimum and maximum costs of the service that families have to bear: while the maximum cost in Ferrara is 7,28 Euro, it is 2,3 Euro in Catania. On the other extreme of the spectrum, minimum contribution in Rimini is 6 Euro while it is of 0,3 Euro in Palermo. In terms of full exemption for low-income families, this is not required by law and 11 of the 44 cities surveyed by Save the Children declared not to have one.

In a context where food is a commodity and school canteens are not an essential service, the education and life experience of several students across Italy has been affected by an increase in the exclusion from the canteens or the service. Pupils whose families could not pay, who had been late with payments or would not qualify for a total exemption (if any) have been forcedly kept outside of school canteens and deprived of the possibility to have a ‘free meal’. Between 2014 and 2016, the cities Brescia, Foggia, Modena, Novara, Palermo, Salerno, Sassari, Siracusa, Taranto, Ancona and Reggio Calabria, for example, had a policy in place to sanction the children of parents who were late with the payment of the fees, including the prohibition to access the service, the suspension of optional services and, in the case of Ancona in 2015/2016, the impossibility to enrol for the following year.

In Branzate, Gignod, Covenago di Brianza, San Giovanni in Persiceto, Ardea and Ello, hundreds of students have been denied the access to the canteen or, in some case, allowed to the same room but without the possibility to be served any food.¹⁴⁰ One of the most infamous cases was that of Corsico, a city near Milan with the lowest pro-capita income of the area, where the city council issued a directive denying access to the canteen to children of parents who had defaulted on the payment of the canteen’s fee. Against the implementation of the directive, which began after the

¹³⁷Parliamentary question presented by Rocco Palese on Wednesday 9, November 2016, session n. 704.

¹³⁸ Consiglio di Stato, Sez. V, November 5, 2012 n. 5589, in line with Cons. di Stato n. 6529 of September 10, 2010.

¹³⁹ Quanto spendono I comuni per mense e scuolabus, in Openpolis, 2016. Available online.

¹⁴⁰ Save The Children, (Non) tutti a mensa 2017, above n 134.

2015 Christmas break, a case was filed against the school before the administrative court, aimed to obtain the recognition that the provision of food in school canteens and its access represent an essential service that cannot be dependent on the contribution of the user. In January 2018 the administrative court issued a judgment that contradicts the precedents of the Consiglio di Stato and did not recognize the essential nature of the service, neither as expression of the obligation to respect the right to food of children nor as expression of their right to an adequate education. Rather, the court considered that the lunch break does not form part of the school's hours, and therefore does not fall under the provision of education as a universal service. Contrary to the idea of interconnected and interrelated rights, the court fragmented the experience of the students and did not consider the health, social and moral implications of denying one or multiple students from having access to the food served in the canteen. An appeal to the Consiglio di Stato could be filed by the claimants, in the hope that the favourable precedents are confirmed also in the case of Corsico. However, relying on judicial interventions on a case-by-case scenario could hardly lead to a systemic reform of the way in which the relationship between education and the right to food is conceived, the service is provided, and children access it.

The existence of negative examples and the current tendency towards privatization, commodification and exclusion from the service are particularly worrisome. However, throughout the country there have been several cases of positive practices and active engagement of the city councils that have understood the strong potential behind school canteens and have tried to improve the participation of teachers, children and their families. Of these projects, the authors are familiar with the 'Participatory Menu', which was launched by the City of Turin in 2013-2014 that has involved more than 750 students in the first three years of life.¹⁴¹ The initiative, managed by the Educational commissioner of the City (which stresses the link between education, food and sustainability) aimed to train teachers to the principles of a sustainable and healthy diet, provide them with pedagogical tools to be used in their classes, and support the education of the students (and their families) to the importance of healthy diets and build all together a participatory menu (including by visiting the main farmers market of Turin).¹⁴² Although not centred around the right to food, the project aimed to promote a diet based on energy efficiency, sustainable production and distribution, short chains, social cohesion, cultural diversity and active citizenship, all concepts that could be connected with the holistic understanding of the right to food discussed in this report.¹⁴³ Along similar lines, the Fondazione Monte Paschi di Siena and the Barilla Center for Food and Nutrition Foundation (two private entities) launched in 2016 the sCOOL FOOD project, an initiative aimed at providing primary schools' students with the notions and the tools to become sustainable citizens and the future professionals (educators, politicians, journalists, etc) who will draft innovative policies and change the rules of the game.¹⁴⁴ The fact that both public and private actors have understood the importance of educating to sustainable food practices and to strengthen new generations' understanding of the food system, gives hope for the future.

¹⁴¹Città di Torino, Alimentazione, consumatori, territori transfrontalieri. Programma ALCOTRA 2007-2013, progetto n. 121, le buone pratiche in materia di ristorazione collettiva, Menu partecipato Il progetto "il menu l'ho fatto io" Un modello replicabile. Available online.

¹⁴²M. CONTINISIO, Il Menù l'ho fatto io, in *Torinoclick*, April 22, 2016.

¹⁴³Città di Torino Provincia di Torino Regione Piemonte - DorS MIUR - Ufficio Scolastico Regionale del Piemonte Camera di Commercio di Torino Laboratorio Chimico Camera di Commercio Torino ASL TO1 - Dipartimento di Prevenzione, "Il menù l'ho fatto io" Un percorso partecipato sull'Educazione Alimentare, Presentation, Available online.

¹⁴⁴FONDAZIONE MONTE DEI PASCHI DI SIENA, sCOOL FOOD, educare ad un consumo consapevole, 2016. Available online.

Two bills have been proposed to ask the Italian Parliament to abandon the individualist approach to school canteens and recognize the essential nature of the service. Such change of direction would significantly benefit from a clear reference to the link between the right to education and the right to food and from the recognition that financial constraints cannot be opposed to the realization of essential rights. In 2014, the proposal entitled *“Disposizioni per garantire l’eguaglianza nell’accesso dei minori ai servizi di mensa scolastica”* (Dispositions to guarantee that minors have equality of access to school canteens) was submitted by MP Scuvera in order to recognize access to school canteens among the essential services that the State must provide to all its citizens according to Article 117.2 m) of the Constitution.¹⁴⁵ In 2015, MP Pignedoli deposited as first signatory the proposal entitled *“Disposizioni in materia di servizi di ristorazione collettiva”* (Dispositions on services of catering): similar to the 2014 proposal, the 2015 document makes reference to L. 146/1990 on the safeguard of the rights constitutionally recognized to ask the Parliament to recognize the provision of food in school canteens as an essential service.¹⁴⁶ In both cases, the proposals have only begun the parliamentary procedure. Given the urgency of the matter and the intensification of the pressure over pupils and their family, the authors believe in the necessity to launch an open, transparent and comprehensive debate capable of assuring the full realization of the obligations assumed by the Italian state at the international, European and national level.

2.c Legge Gadda and the State action against food loss and waste

At a time of food poverty, hunger and excessive production, redistribution of surplus food has been increasingly seen as an opportunity to feed the citizenship. Italy was the second European country to approve a legislative intervention to specifically tackle the issue of food waste, although the Lombardia Region had already approved a law on the protection, respect and fulfilment of the right to food that originated from the desire to tackle food waste. Passed a few months after the conclusion of EXPO 2015, the law is generally known as 'Legge Gadda' because of the name of the Member of Parliament Maria Chiara Gadda who proposed the bill. The intervention was targeting the 149kg of food that is wasted every year – on average and per person – in the *Bel Paese*.

The goal of the law is to favour and facilitate the collection and donation of food surplus before it becomes waste, but also to promote reuse and recycling and contribute to research, information and awareness-raising activities both of the consumers and the institutions.¹⁴⁷ In order for these objectives to be reached, the law establishes some modalities through which the donation of surplus is made easier. Those who operate in the food sector (so-called *“Operatori del settore alimentare”*) can donate their surplus to those non-profit entities, public or private, that realize activities such as distribution of food to the canteens (the so called *“Soggetti donatori”*).¹⁴⁸ The latter will be the responsible for the collection and withdrawal operations¹⁴⁹.

¹⁴⁵ Atto camera: 2308 based on Law Proposal SCUVERA et al. : *“Disposizioni per garantire l’eguaglianza nell’accesso dei minori ai servizi di mensa scolastica”* (2308) presented on April 16, 2014.

¹⁴⁶ Atto Senato n. 2037, *Disposizioni in materia di servizi di ristorazione collettiva*, 2015.

¹⁴⁷ L.166/2016, *“Disposizioni concernenti la donazione e la distribuzione di prodotti alimentari e farmaceutici a fini di solidarietà sociale e per la limitazione degli sprechi”* (16G00179), entered into force on September 14, 2016, art. 1.

¹⁴⁸ *Ibidem*, Art. 3

¹⁴⁹ *Ibidem*, Art. 3 and 4

The law also aims at establishing a national fund for innovative projects finalized at the reduction of waste and it encourages donations through a reduction in the waste taxes for those who donate their surplus, according to how much they give away. Since it was implemented, the law has been received with enthusiasm from the political world and the public opinion too. Moreover, one year after it entered into force, an additional 21% of waste's recovery had been registered, along with an increase in the recovered products' variety and in the donors' number.¹⁵⁰ The law is favouring distribution over waste and therefore is helping feeding people. From a food security perspective, it seems that the law is a success. However, is it in line with a holistic and strong understanding of the right to food? After we present some of its key elements, we provide our (negative) answer.

An interesting aspect of the law is represented by the adoption of a chain approach to food waste as Article 1 specifies that the aim of the law is to reduce waste at the level of 'production, distribution and provision'. In terms of actors and the objects of the law, the provision aims to reduce both food surplus and food waste and to be implemented by anyone 'operating in the food sector', meaning public and private entities, for profit or not, which undertake any phase of production, packaging, transformation, distribution and provision of food. Rather than focusing on large-scale retailers, like in the case of France, the discipline is omni-comprehensive and recognises the specific role of public authorities, which can be actively involved in the reduction of food waste by introducing adequate criteria in their public procurement notes but also through the establishment of educational projects, funds and other forms of intervention.

In comparative terms, it has been noticed by some food operators that the distinctive character of the Italian solution is represented by the idea of a systemic approach to food waste. Instead of only engaging with retailers as crucial hubs in the food chain, the law recognises the complexity of the network and the need to intervene at different levels and through multiple approaches. However, the Italian solution differs significantly with the French model in its idea that the State is not a disciplining entity that sanctions the production of food waste but a facilitator of social transformation. Instead of using fees and convictions, the State is presented as the source of authority that can relax food safety requirements and change the discipline around labelling and food safety, establish multi-stakeholder platforms, identify ad hoc educational programmes, favour innovative research and development in the area, and provide fiscal incentives to reuse.

For example, Article 4 of the Legge Gadda introduces an exception in terms of expiration dates and cession of food: even if the food is expired, the actors operating in the food chain can transfer it to beneficiaries who will then utilise it to feed the animals or to produce energy. If the donor can guarantee the state of preservation of the food and its packaging, this can be transferred for free to the recipient: after that moment, the responsibility for the safety of the food is taken away from the donor and transferred to the receiver, which is then to consumers rather than professional food providers. Through the enforcement of a lower standard for charities and the relaxation of the requirements for the donors, the legislator provides an answer to food operators' fear of being sued and considered accountable for food poisoning.

Another characteristic of the law is the introduction of a scheme of financial rewards and bonuses to incentivise food donations. This represents a crucial difference with the French model, but also a one

¹⁵⁰E. RIZZO NERVO, A che punto è la lotta allo spreco alimentare in Italia? Intervista all'On. Gadda, *Il Giornale del Cibo*, February 5, 2018. Available online.

of its main technical weakness. According to Article 17 of the law, non-domestic entities that produce or distribute food and that give it away for free to support human or animal needs, may benefit from a proportional reduction of the waste tax that they pay. Without entering too much into the debate around the limited impact of a measure whose respect is completely voluntary, it is interesting to stress the risk that lies behind the existing incentive mechanism. The rationale is that the waste tax is paid on the amount of waste generated, and therefore a reduction in the waste produced should be accompanied by the reduction of the tax. However, some basic law and economics principles teach us that an appealing incentive should be such to cover the benefit that businesses receive when they throw food away (for example the fact that consumers are forced to buy it) and the cost (in terms of organisation and logistics) of organising a distribution platform. Therefore, it may be the case that the central government established a system of bonuses that requires city councils to promise more than the sole reduction in the waste tax dependent on the lower amount of discarded food, and therefore suffer an overall loss. In alternative, the system of incentives will not be appealing enough to change existing practices and conducts.

Overall, the LeggeGadda adopts some interesting and innovation approaches to food loss and waste (in particular, the chain-based approach and the focus on education and dialogue). However, can we say that the LeggeGadda is in line with a strong understanding of the right to food? If we look at the way in which Olivier de Schutter has discussed distribution programs like the one introduced by the LeggeGadda, the answer should be negative. Firstly, de Schutter considers that schemes dependent on donations and good will do not offer a reliable source of food and therefore are inconsistent with the duty to respect and fulfil people's right to food. This is even more the case given the voluntary nature of the LeggeGadda. Secondly, he stated that the reliance on the market and on voluntary work to gather and distribute food has the effect of shifting responsibilities away from the government rather than putting its human rights obligations at the centre of the food system. In addition, we also think such approach dismisses the long-term transformative aspirations of human rights approach, i.e. the importance of using human rights to improve life conditions of people once for all and achieve equality, rather than simply providing temporary relief and what is enough to survive. Moreover, the provision of food without a planning and an appropriate nutritional consideration fails to recognise that the right to food can be said to be fully satisfied only when the food that is available is also appropriate for health and nutritious, and not only when a sufficient quantity of food is available or accessible. How can we guarantee that objective is achieved when procurement is dependent on the private sector and planning is unlikely?

Although it is true that some of the regulatory interventions of the law try to adopt a broader and more encompassing attitude towards food waste and the construction of a sustainable food system, we believe that the legislator failed in addressing the inherent paradox of increasing the link – and dependency – between food security and surplus/waste. On the contrary, a right to food-based approach towards food waste should reject redistribution as a valid long-term strategy and focus on the consolidation of other forms of interventions capable of addressing the systemic flaws of the food system rather than offering false solutions. If states want to build food systems where sustainably produced food is accessible, adequate and available, they should not be satisfied with redistributing left overs, but rather use public procurement to reward virtuous conducts, sanction un-ecological and anti-social actions at all levels of the food chain, educate future generations, provide financial support to families and individuals, invest in common kitchens as places of solidarity and participation, and put food at the centre of its political agenda. As a matter of fact, having access to food should not be a privilege, but the fulfilment of everyone's human nature in

respect of the principles of ecology, the right to food and the long-term sustainability of the whole food system.

Finally, the increasing attention the political spectrum and the civil society pose to the waste reduction, even if rightful and extremely urgent, carries with it the risk of moving the focus from the access to food as a real entitlement to the access to food as an act of charity. From here, the risk is that the fight against the real causes of the food poverty is neglected: unemployment, social exclusion, inefficient systems of distribution etc.

Independently from the compatibility with a strong interpretation of the right to food, it cannot be dismissed the fact that the Gadda Law is already conducting to some changes at the city level. In Rome, the current waste regulation is being reviewed. In addition, the officials are undertaking an accurate mapping of the real demand for surplus food as well as a data certification process. Finally, the city has established a working table with charities and nonprofit organisations which have dealt with food donation for decades (e.g. Banco Alimentare). The tax reduction, which may generate up to 30% savings for subjects supporting the initiative, will obviously be proportional to food donated, and should be operational between 2019 and 2020. In addition, the City has launched a pilot project on local “food markets” (the so called zero impact markets). The project will be key not only as it will involve a plethora of public and private actors but most of all because it will help to collect significant data to eventually launch the reduction of waste taxes (TARI), which should be replaced by a completely new system. In 2018 the City of Milan introduced a new TARI regulation that offers a fiscal incentive to corporations that donate surplus food before it becomes waste. The reduction, which is progressive, can reach 20% of the TARI and is linked to the amount of food that is donated to no-profit associations.¹⁵¹ Because 2018/2019 is the first year of application of the regulation, a systemic study of participants, implementation and impact would be particularly useful.

2.d Migrants and their right to food

The violence, stress and risk that migrants suffer during their journey to the Italian shores is well documented. Public opinion and media have been paying attention to it and focussed on several ways in which migrants are affected by the implications of restrictive policies and impermeable borders. Increasingly, non-governmental organizations, civil society movements and some policy makers have highlighted the existence of severe problems with the way in which migrants are treated once they reach the peninsula and how their basic rights are upheld. This is the case both for migrants that are detained in a centre for identification and expulsion, those who are travelling through Italy with the hope to reach other destinations and those who are working in the food sector (as other sectors). From the perspective of the right to food of migrants in Italy, the authors want to flag the lack of a systemic and coordinated reconstruction of the way in which it is (or not) protected, respected and fulfilled. Although several reports contain indications of individual violations, grievances and shortcomings, in particular with regards to the identification centres and the agricultural sector (see below) a thorough and systemic investigation would be welcome and particularly useful. The starting point of our reflection is paragraph 18 of CESCR General Comment No.12:

¹⁵¹Comune di Milano, Milano Food Policy, Informativa per gli Operatori del Sistema Alimentare: Riduzione Tassa sui Rifiuti TARI per il Dono del Cibo contro lo Spreco Alimentare.

“any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of race, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect to nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitute a violation of the Covenant.”

In light of these premises, the role of the State in securitizing the permanence of several migrants and the condition of deprivation in most of them live while in the country, a holistic assessment of the state of the right to food in Italy that cannot dismiss the role that the State and other public authorities have with relationship to this basic human right. In this report we cannot provide such level of analysis but aim to identify three main areas of concern: a) the right to food of migrants in the identification and expulsion centres; b) the right to food of migrants who are travelling to other countries; c) the right to food of migrant farmworkers.

2.d.a The right to food in the Italian ‘identification and expulsion centres’

“As the main European destination for asylum seekers and undocumented migrants crossing the Central Mediterranean by boat, Italy confronts considerable migration challenges. It has responded by ramping up its domestic detention system, implementing the controversial “hotspot” approach to process maritime arrivals, boosting interdiction efforts, and adopting new legal measures that restrict avenues for asylum.”¹⁵² As discussed in Section III of this report, the country has also been instrumental in supporting European Union programmes equipping and training the Libyan coastguard to intercept trafficking boats.

Without a proper investigation, it is impossible to assess the quality and effectiveness of the right to food of those migrants who are kept in the identification and expulsion centres. Migrants are kept in these centres, identified and then authorized to stay in Italy or repatriated. During their permanence, they are not able to feed themselves because they cannot produce food, they have access to very limited resources and they cannot work. Because their condition is that of people who are not able to feed themselves with their own means, like people who are involved in an armed conflict, natural disaster or who are in detention, the Office of the High Commissioner for Human Rights clearly states that the State must provide food directly.¹⁵³

In terms of regulation, article 4 d) of the 2015 Ministerial decree containing the criteria for the management and organization of the centres for identification and expulsion (“Regolamento per l’organizzazione e la gestione dei centri di identificazione ed espulsione”) indicates that the canteen service must be guaranteed in any centre, which takes into consideration the different dietary regimes and medical needs. No reference is made to the quality of food, the nutritional value and the amount of food that each person should receive. On the contrary, the decree contains a clear indication of the possibility for the contractor to temporarily modify the modalities of the service if it is required by reasons of order and security. Similarly, art. 4 g) makes reference to a 5 Euro voucher that people would receive every two days to buy goods and services like phone cards, snacks, non-alcoholic drinks, cigarettes, etc.

¹⁵²Global Detention Project, Italy Immigration Detention Profile, January 2018. Available online at <https://www.globaldetentionproject.org/countries/europe/italy>.

¹⁵³Office of the High Commissioner for Human Rights, The Right to Adequate Food, Fact Sheet No. 34.

In this context, the accounts that have been gathered through the years tell stories of poor quality, inappropriate conditions, riots and significant violations. In Lampedusa, for example, the hotspot did not include a canteen and the food, of very poor quality, had to be consumed standing or outdoor. In some instances, the contractor did not provide sensitive menus adapted to cultural and religious needs. In general, the lack of adequate places where to eat and share meals, poor and same food every day of the week, the impossibility of complaining, are facts found in many CAS and CPR of the peninsula, whose management is entrusted to social cooperatives and private companies. Several testimonies collected by Amnesty International indicated that police officers denied basic assistance to individuals, including medical care, food and water, as a means to coerce them into giving their fingerprints.¹⁵⁴

“Shawgi¹⁵⁵ stated that upon disembarkation in Catania he was not given food or water until he accepted being fingerprinted. “It was midnight. We had not received any food or water, while those giving fingerprints had been given sandwiches and water. We were afraid the situation would worsen... At that time we are so hungry, we need to eat. So all started giving their fingerprints... Then they put us on a bus and gave us a sandwich with cheese and a bottle of water.” Salah,¹⁵⁶ who was kept in a police station in Cagliari, said: “We were detained there for two days, about 20 people in the same room, unable to go anywhere. We were given no food or water for two days, we could only drink in the toilet.” Djoka¹⁵⁷ also stated: “I didn’t want to give my fingerprints, so they took me to another room, alone. I had to stay there for three days, no food and no water, for three days. After three days they came and gave me food and water, then they took me again to the ‘electricity room’.” Ishaq,¹⁵⁸ who described the torture he suffered in Turin, went on to explain that after the beating he was kept in police custody for one day: “They shackled me and brought me to a cell, where I was kept for one day without food. The day after they freed me and I took the train to come here in Ventimiglia.”

In 2016, the campaign *LasciateCIEntrare* accessed the centre of Brindisi Restinico and “described the centre as being divided into three blocs, each bloc surrounded by a steel barrier with a steel net placed at a height of 10 meters. Each bloc has a communal room comprised of a concrete table with concrete chairs and a television. The delegation observed that at the time of the visit almost 15 out of the 46 detainees were given psychiatric drugs. The detainees interviewed complained of terrible hygienic conditions, poor food quality, and insect infestations.”¹⁵⁹

Savings and profit-maximization aimed by external supply companies, make frequent and justified the abuses by the centres’ staff towards migrants, as happened in the CPR Regina Pacis of Lecce, where a group of North Africans was beaten, humiliated and tortured by military police and the churchman, as well as director, of the centre, who made them forcefully swallow, with the help of batons, raw pork in disregard of Muslim religion.¹⁶⁰ The acts of severe and cruel violence, which were confirmed by a sentence of the Tribunal of Lecce and the Court of Appeal, led to a condemn for the director of the centre, six operators, six carabinieri and two doctors to detention periods of two

¹⁵⁴ Amnesty International, *Hotspot Italy: How EU’s flagship approach leads to violations of refugee and migrant rights*, Amnesty International, 2016, p. 22.

¹⁵⁵ *Ibid*, interviewed in Ventimiglia on August 11, 2016.

¹⁵⁶ *Ibid*, interviewed in Ventimiglia on July 7, 2016.

¹⁵⁷ *Ibid*, interviewed in Ventimiglia on July 7, 2016.

¹⁵⁸ *Ibid*, interviewed in Ventimiglia on July 7, 2016.

¹⁵⁹ *LasciateCIEntrare*, “#20GiugnoLasciateCIEntrare,” October 2016. Available online.

¹⁶⁰ Bukowski, *op. cit.* .

years and eight months. Prescription, however, intervened and none of the defendants spent one day in prison. No evidence of compensation was found.

Another aspect to be taken into consideration is(that) the connection between the poor management of the Italian reception system with forms of serious labour exploitation run by organized crime is now evident. In the most isolated areas of the Italian countryside, where the vast majority of reception structures rise, many of the migrants there hosted are recruited by local gang masters to work as seasonal agricultural workers, paid very little money for many hours of work, in the absence of any basic service, right and freedom. In other instances, the connection between organized crime and identification centres is such that centres lied on the number of migrants living at the centre or serve small portions of out-of-date food. In the case of the Sant'Anna migrant facility in Capo Rizzuto, Police "believe the clan ... was awarding contracts, including for food supplies, to other members of the 'Ndrangheta syndicate, as well as setting up its own associations."¹⁶¹

At the international level, there is little doubt that the provision of food to people in detention represents an unavoidable obligation of the State and that the use of starvation as a means of obtaining information, confessions or breaking down people in detention is a violation of basic human rights. This is not only guaranteed by the ICESCR, but also by art. 10 para 1 of the International Covenant on Civil and Political Rights, which recognizes the right of detained persons to be treated with humanity and dignity (which also means that force-feeding prisoners on hunger strikes has been recognized as coercion or torture).¹⁶² As the Human Rights Committee observes:

It should be noted that these are minimum requirements which the Committee considers should always be observed, even if economic or budgetary considerations may make compliance with these obligations difficult.¹⁶³

In its jurisprudence, the Committee has dealt with both individual and collective claims that the right to food and the dignity of detainees had been violated. As reported by the FAO:

in *Mukong vs. Cameroon*, the Human Rights Committee found that the conditions of detention of Mr. Mukong, who had been denied food for several days, constituted cruel, inhumane, and degrading treatment.¹⁶⁴ In *Lantsova vs. Fédération de Russie*, the Human Rights Committee ruled that the conditions of detention of Mr. Lantsov, who died in an overcrowded detention center without access to adequate food or health services, had violated his right to be treated with humanity and dignity.¹⁶⁵ In both cases, the Committee concluded that the State should pay compensation and ensure similar violations are not repeated, notwithstanding the potential related costs of such measures.¹⁶⁶

At the regional level, the conditions of economic migrants in reception centre reached the European Court of Human Rights in 2016, with the case of *Khlaifia and Others v. Italy*.¹⁶⁷ The applicants, three Tunisian economic migrants, on the island of Lampedusa, were initially placed in a reception centre, subsequently confined on board of two ships moored in Palermo harbour, and eventually removed

¹⁶¹9 BBC, "Mafia controlled Italy migrant centre, say police," May 15, 2017. Available online.

¹⁶²C. ELKAYAM-LEVY, Facing the Human Rights Challenge of Prisoners' and Detainees' Hunger Strikes as the Domestic Level: Guidance for Policy-Makers, Government Officials, and Legal Advisors in the Management of Hunger Strike, in 57 Harvard International Law Journal Online, 2015.

¹⁶³ Decision of the Human Rights Committee concerning Mukong v. Cameroon, 1994, paragraph 9.3.

¹⁶⁴ Ibidem.

¹⁶⁵ Decision of the Human Rights Committee concerning Lantsova c. Fédération de Russie, 2002, paragraph 9.1

¹⁶⁶ Mukong v. Cameroon, 1994, paragraph 11; Lantsova c. Fédération de Russie, 2002, paragraph 11.

¹⁶⁷ Decision no. 16483/12, of the ECHR concerning Khlaifia and Others v. Italy [GC], 2016.

to Tunisia in accordance with a simplified procedure under an agreement between Italy and Tunisia of April 2011. The applicants complained under Articles 3, 5 and 13 of the Convention and Article 4 of Protocol No. 4. Article 3 concerns the prohibition of torture and inhuman or degrading treatment and punishment. In their depositions, the applicants complained that when they were confined on the ships “they had been placed in a seriously overcrowded lounge and that they had only been allowed outside in the open air, on small decks, for a few minutes each day. They had been obliged to wait several hours to use the toilets and meals had been distributed by throwing the food on the floor.”¹⁶⁸

In response to the Article 3 complaint, the Government argued that due account should be taken of the exceptional humanitarian emergency: according to the Government, the exceptional and urgent nature of the situation was such that a inhumane or degrading treatment of migrants should not be considered in violation of the Convention. Moreover, the Government pointed out that when the migrants were accommodated in the centre, they had been able: (a) to move around freely inside the facility; (b) to have access to all the services available (medical assistance, clothing, food, water and sanitary facilities).

Although the Grand Chamber eventually decided that no direct violation of Article 3 of the Convention had taken place while the three migrants were kept in the centre and on the boats, it is important to highlight that the judges dismissed the exception raised by the Italian Government. The Court recognized that the “State was confronted with many problems as a result of the arrival of exceptionally high numbers of migrants and that during this period the Italian authorities were burdened with a large variety of tasks.”¹⁶⁹ However, it concluded reiterating “its well-established case-law to the effect that, having regard to the absolute character of Article 3, an increasing influx of migrants cannot absolve a State of its obligations under that provision (see *M.S.S. v. Belgium and Greece*, cited above, § 223; see also *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 122 and 176, ECHR 2012), which requires that persons deprived of their liberty must be guaranteed conditions that are compatible with respect for their human dignity.”¹⁷⁰ Moreover, the Court also pointed out that “even treatment which is inflicted without the intention of humiliating or degrading the victim, and which stems, for example, from objective difficulties related to a migrant crisis, may entail a violation of Article 3 of the Convention.”¹⁷¹

To conclude, the authors are aware that the arrival of migrants to the Italian shores represents one of the hottest political topics of the moment. With a lot of media and political attention to what happens at sea and in the countries on the other side of the Mediterranean, both the public and Italian policy makers seem to have diverted their attention away from the conditions of the identification and expulsion centres. People who live in these centres do not have the possibility to produce their own food and cannot work, which makes public provision the sole opportunity to access food. Moreover, the link between the right to food, the dignity of detainees and humane treatments is set in stone in both international and regional jurisprudence. As such, responsibilities, duties and accountabilities should be even clearer than in all the other circumstances described so far. However, facts on the ground tell a story of deprivation, abuses and systemic uses of food as a form of physical and mental violence. If reports and visits by MPs and non-governmental organizations are not enough, a fact-finding mission by the Special Rapporteur on the right to food and a further attempt to bring the case before a national or international court appear inevitable.

¹⁶⁸ Ibidem, par. 145.

¹⁶⁹ Ibidem, 183.

¹⁷⁰ Ibidem, 183.

¹⁷¹ Ibidem, 184.

2.d.b. Migrants' right to food outside of the information and expulsion centres

The previous section suggests that the right to food is not ensured to those people who have just arrived in Italy and end in an identification and expulsion centre. However, a similar destiny is experienced by those migrants who have no intention to stay in Italy but want to continue their journey to other countries. Given the decision of some European governments to close their borders to migrants without the appropriate documents, frontiers have slowly become spaces where migrants gather and live, often for months, waiting for the right moment to cross the border. This happens especially at the French border, where the help of Italian and French volunteers is essential to guarantee water and food to incoming and outgoing migrants. Camps are built and food is provided by non-for profit associations, but the situation is often very distant from what basic rights would require. Ventimiglia and Bardonecchia are the two cities where this phenomenon is most visible.

From January to April 2018 there were 4,231 adult and minor migrants passed by Ventimiglia (16,500 from August 2017). They came mostly from Eritrea, Afghanistan and Sudan, particularly from Darfur. At the moment, however, the only reception facility is at Roja camp, with 444 places, where assistance is subordinated to be fingerprinted and where the massive police presence is highly visible. The other informal field on the Roja, without baths and drinking water, was vacated before the beginning of Summer 2018. As a result, an increasing number of migrants, including many children, is sleeping outdoors.¹⁷²

From the perspective of the right to food, the case of Ventimiglia is noticeable because of the ordinance issued by the mayor on August 11, 2016, where he introduced a fine against any form of food distribution that was not realized by authorized volunteers within the Roja camp and at the Caritas centre in the Sant'Ambrosio church. According to the mayor, health and safety reasons and the risk of food poisoning were such to require an immediate suspension of the informal distribution of food that had been going on for several months. Few months later, in March 2017, three French volunteers were denounced to the police for distributing food to a group of migrants outside of the authorized areas. Eventually the ordinance was suspended on April 2017, mainly thanks to the pressure that was exercised through a petition and a large march in the city centre.¹⁷³

In this scenario, two points arise: firstly, the fact that the ordinance refers to a charity (Caritas italiana) as the executor of an obligation that is public in nature. Secondly, the use of food as a form of blackmail, if not as a form of psychic and physical violence. This is because the access to food is subordinated to the registration of guests and their fingerprints being taken, but also because of the limited number of beds and meals available in the Roja camp, insufficient to satisfy the needs of all migrants. The issuance of the ordinance, the reliance on private providers of food and shelters, and the prosecution of volunteers clash, therefore, with some of the basic elements of the right to food that have been discussed so far: basic human rights, public obligation to protect the right with no discrimination, obligation to feed people who are incapable of providing for themselves and prohibition to starve them.

¹⁷²Ventimiglia, la denuncia di Oxfam: "La polizia francese taglia le scarpe ai bambini migranti", in Repubblica, June 15, 2018.

¹⁷³T. MACKINSON, Ventimiglia, vietato dare cibo e acqua ai migranti. Solo la mobilitazione costringe il sindaco Pd a revocare l'ordinanza, in Il Fatto quotidiano, April 23, 2017.

The decision by some neighbour countries to close their borders to migrants has produced a series of consequences that have significantly impacted both the life of people who try to cross the frontiers and the communities where they are hosted. People have died crossing the border, others have starved, others are living outdoors and begging (or working without a regular contract) in order to satisfy their basic needs. In this part of the report, we could only focus on the responsibility of Italian public authorities (and city councils in particular) in guaranteeing the right to food and water of whoever happens to be under their jurisdiction. However, extraterritorial impact of the decision to prevent the transit of people could also be questioned under the notion of Extraterritorial Obligations to protect human rights that we discuss in the third part of this report.

For what concerns Italy, the authors believe that migrants who are camping at the borders waiting to cross it are in circumstances of socio-economic marginalization and impossibility to provide for oneself that require an adequate public intervention to protect and respect their human rights. On the contrary, the limited nature of the service, the reliance on private providers of food (Caritas), the subordination of food provision to the taking of fingerprints and the criminalization of unregulated food donations are circumstances that stride even with a basic understanding of the right to food as clearly recognized at the international level. Moreover, the judgment of the European Court of Human Rights in the case of the three Tunisians could equally apply to what is happening in Ventimiglia, Bardonecchia and other Italian localities:¹⁷⁴ the exceptional wave of migration and the intensification of the issue are not excuses that can be utilized by countries to avoid their responsibilities. If the right to food of migrants who try to reach other destinations is violated by both foreign and national decisions, the situation of thousand migrants working in the Italian agricultural sector is equally problematic.

2.d.c. Exploitation in the farms and an unsustainable food system – the right to food of foreign farmworkers

In Section I, we have presented Olivier De Schutter's argument according to which the fulfilment of the right to food means that States must focus on the socio-environmental sustainability of both consumption and production, respect the planetary boundaries and the rights of future generations, act to eradicate poverty and inequality, and establish a strong system of legal entitlements secured by accessible accountability mechanisms.¹⁷⁵ The effective enforcement of the right to food requires, therefore, to consider production as much as consumption. If the former takes place in violation of human rights and the environment, the argument goes, the satisfaction of the human need to eat cannot be considered compatible with the right to food. In this section we thus look at the state of the basic human rights of the men and women who are at the beginning of the food chain. With the support of the vast Italian academic literature on the topic,¹⁷⁶ reflection on existing case studies and

¹⁷⁴ Khlaifia and Others v. Italy [GC], above n 167.

¹⁷⁵ The transformative potential of the right to food by O. De Schutter, above n 18.

¹⁷⁶ C. COLLOCA, A. CORRADO, *La globalizzazione delle campagne*, Milano, Franco Angeli, 2013; E. NOCIFORA, *L'avvento del lavoro paraschiavistico e le trasformazioni del mercato del lavoro in Italia*", in *Quasi schiavi, paraschiavismo e super-sfruttamento nel mercato del lavoro del XXI secolo*, Santarcangelo di Romagna, Maggioli Editore; M. OMIZZOLO, *Migranti e diritti*, Tempi Moderni, Macerata, Ed. Simple, 2017; M. OMIZZOLO, "Tratta internazionale nell'area del Mediterraneo e sfruttamento lavorativo: il caso della comunità indiana in provincia di Latina", in S. BALDIN AND M. ZAGO, *Europe of Migrations: Policies, Legal Issues and Experiences*, Biblioteca della Società Aperta –Studi e Ricerche, Eut edizioni –Edizioni Universitarie di Trieste, 2017; M. OMIZZOLO, *Il sistema bicefalo del mercato del lavoro italiano e il grave sfruttamento lavorativo: tratta internazionale, caporalato e doping dei braccianti indiani dell'Agro Pontino in Padroni e caporali –dopo la legge n. 199/2016*, e-book in "Il diritto in Europa oggi".

investigative reports, we highlight that there may be profound and severe violations of the basic rights of farmworkers, particularly of undocumented foreigners.

A 2018 report by Oxfam and Terra! Onlus goes beyond the data on land and offers a clear reconstruction of the whole agricultural chain and the way in which it impacts people and practices on the ground. If we are interested in farmworkers and their human rights, we thus have to understand the overall supply chain and the way in which different legal and economic decisions (including migration law and competition law) shape their lives, their rights and their opportunities. According to their analysis:

“The agricultural sector in Italy, especially in the south, has been severely affected by corporate concentration – i.e. the expansion of retailers, processors and distributors by swallowing up smaller players to increase their market share and power – both ‘upstream’ (e.g. inputs and services) and ‘downstream’ (e.g. processors and retailers further along the supply chain) of farming. In this context, under growing pressure from large production and distribution systems, many local agricultural producers cut their costs by turning to employment of a low-paid labour force. This results in the exploitation of the more vulnerable categories of daily-waged farm workers: namely women and migrants. ‘Irregular’ or undocumented migrants, mostly from Africa, provide a significant and growing pool of cheap and vulnerable labour in Italy. Being in Italy without regular immigration status (i.e. without a valid visa and work permit) is a criminal offence, and the lack of alternative opportunities forces many migrants to accept inhumane working and living conditions.”¹⁷⁷

In the context of an economic and food system that thrives out of the poor living conditions of farmworkers, figures are emblematic. In 2015, the Research Council on Agriculture and analysis of Agricultural Economy (CREA) reported that 405,000 foreign people were regularly employed as farmworkers.¹⁷⁸ However, estimates from Placido Rizzotto Observatory showed that in the same year there were around 430,000 workers who were “somehow irregularly employed in agriculture in Italy”.¹⁷⁹ Of these, 80% were foreign workers and about 100,000 were identified as being at high risk of food insecurity. Women farm workers comprised 42% of irregular farm workers. According to the report, women are usually overrepresented in unpaid and seasonal work and they are often paid less than men for the same work. This currently happens throughout the country, from the North to the South of Italy, often out of sight and political attention.

The same research by Oxfam and Terra!Onlus reveals the harsh conditions of women and men exploited in seasonal harvesting:

- The systematic violation of working-time rules, including failure to grant daily breaks, weekly rest periods and annual holidays
- Wages for working 8–12 hours a day without a break often total around €22–30 per day – half of the legal minimum wage.¹⁸⁰
- The illegal use of piece rates is common, meaning that workers can earn as little as €3–4 for picking nearly 300kg of tomatoes;

¹⁷⁷OXFAM AND TERRA! ONLUS, Human Suffering in Italy’s Agricultural Value Chain, Oxfam and Terra! Onlus, 2018, p. 2.

¹⁷⁸CREA, *Annuario dell’Agricoltura Italiana 2015. Consiglio per la Ricerca in agricoltura e l’analisi dell’Economia Agraria* (CREA), Rome, 2015. Available online.

¹⁷⁹OBSERVATORY PLACIDO RIZZOTTO, *III Rapporto Agromafie e Caporalato*, 2016. ISBN: 978-88-230-2015-3.

¹⁸⁰#FilieraSporca, Spolpati. *La crisi dell’industria del Pomodoro Tra sfruttamento e insostenibilità. Third campaign report*, 2016.

- Excessive control of workers' lives by employers, including the use of surveillance, or other abuses that exploit workers' legal and social vulnerability.
- Non-payment of wages, as well as delayed and/or partial payment, is also very common;
- Women typically earn 20–30% less than men for similar jobs, and are particularly vulnerable to blackmail and sexual abuse.¹⁸¹

Evidence and reports reveal that women and men in seasonal fruit and vegetable production are forced in horrendous working conditions that violate several basic rights. They have to live in disused buildings or factories in rural areas, without running water or heating. For the Placido Rizotto Observatory, around 60% of exploited migrant workers do not have access to clean water or sanitation.¹⁸² In the camps (or 'ghettos') abuses, sexual violences,¹⁸³ blackmails,¹⁸⁴ rapes and abortions have been recorded throughout the years, but seldom led to any improvement.¹⁸⁵ As reported by the Modern Slavery Index 2017, the situation in Italy is among the most worrisome in the EU. Due to the geographic shift in migrant sea arrivals, the producers of the index expect "the risk of modern slavery to worsen in Italy over the next year, with agriculture a sector of concern and the agricultural sector plays a central role in this direction" (Figure 6 below).



Figure 6: Source: Verisk Maplecroft - Modern Slavery Index 2017

In addition, they are often sweltering in greenhouses during the summer while inhaling toxic pesticides, a condition that the Special Rapporteur on the Right to Food Hilal Elver has exposed in one of her report, inviting governments and the international community to intervene in defence of farmworkers, in particular of seasonal and migrant workers who are in condition of particular

¹⁸¹ Oxfam and Terra, note 177, p. 3.

¹⁸² Ibidem.

¹⁸³ A. MANGANO, Violentate nel silenzio dei campi a Ragusa. Il nuovo orrore delle schiave romene, in L'Espresso, September 15, 2014. Available online.

¹⁸⁴ A. MANGANO, «Se tua moglie non sta con me non vi pago» Romene nel ragusano tra ricatti e sorpresi, in L'Espresso, October 8, 2014. Available online.

¹⁸⁵ A. MANGANO, Sfruttamento, stupri e aborti: le braccianti rumene in Sicilia vivono ancora come schiave, in L'Espresso, June 5, 2017. Available online.

vulnerability because “they may work at various agricultural sites, multiplying their exposure risk to pesticides.”¹⁸⁶

Even from a narrow understanding of the right to food, the condition of farmworkers appears particularly problematic. Oxfam’s food insecurity survey in three Italian regions (Sicily, Campania and Apulia) found that 50% of the women and men surveyed were classified as severely food insecure and a further 36% as moderately food insecure.¹⁸⁷ In addition, 75% of surveyed women workers on fruit and vegetable farms said they or a family member had cut back on the number of meals in the previous month because their household could not afford sufficient food.¹⁸⁸ This has certainly to do with the very low wages, the long working hours and the distance with centres where workers can buy food for them and their families. Paradoxically, hunger is common among people who produce food that feeds most of the country.

Overall, farmworkers and migrant farmworkers in particular live in marginalization, invisibility and public indifference. As Antonello Mangano wrote on *L’Espresso* in June 2018, Italian farms are like a ‘Spoon River’ a graveyard of untold stories of people who died without notice. In the last six years, more than 1.500 farmworkers lost their life, including as a consequence of a fire outbreak in one of the ghettos near Rosarno in 2018, of could, killed by the police, killed by a private citizen while scavenging some metal parts in an abandoned plot of land,¹⁸⁹ because of the long hours of work, or smashed by a tractor.¹⁹⁰ Many of the 1500 were Italians, most were working without a contract, denied basic insurance, basic human rights and protection.

Before we look at the way in which the Parliament and the legal framework have tried to redress the serious violations of human rights that affect hundreds of thousand women and men employed in the Italian agricultural system, it is important to go back to the beginning of this section and the analysis offered by Oxfam and Terra!Onlus. When we look at the facts on the ground and the material deprivations in which farmworkers have to live, we associate the violation with the immediate perpetrator, the gangmaster or the landlord who profit of cheap labour and cheap lives. This is certainly the case. However, the analysis cannot stop there, because it would ignore the root causes of the problem and take responsibilities away from actors and practices that create the conditions for exploitation. The cheapness of labour, Patel and Moore tell us,¹⁹¹ is one of the requirements for the economy to reproduce itself. In the specific case of the food system, cheap labour is needed in order to have cheap food which is accessible by people whose purchasing power is increasingly limited. If we think at the human rights violations associated with cheap labour, we thus have to think about cheap price and all those practices and institutions that keep price cheap: competition law and consumers’ welfare, online double-race auctions,¹⁹² concentration of the retail

¹⁸⁶ Report of the Special Rapporteur on the right to food Hilal Elver at the Human Rights Council Thirty-fourth session February 27-24 March 24, 2017, A/HRC/34/48, p. 6.

¹⁸⁷ R. WILLOUGHBY AND T. GORE, *Ripe for Change: Methodology note*, 2018. Available online.

¹⁸⁸ OXFAM, *Ripe for Change. Ending Human Suffering in Supermarket supply Chains*, 2018, p. 14. Available online.

¹⁸⁹ A. CANDITO, *Migrante ucciso in Calabria a colpi di fucile: era un attivista del sindacato*, in *La Repubblica*, June 3, 2018. Available online.

¹⁹⁰ A. MANGANO, *La strage silenziosa dei campi, dove italiani e migranti muoiono insieme*, in *L’Espresso*, June 15, 2018. Available online.

¹⁹¹ R. PATEL, J. W. MOORE, *A History of the World in Seven Cheap Things: A Guide to Capitalism, Nature, and the Future of the Planet*, 2017.

¹⁹² Before the harvesting season, supermarkets communicate by email a ‘first-race’ auction to receive processing companies’ first price for a certain quantity of produce. After approximately 20 days, a second round is opened on the basis of the lowest bid received. Processing companies now have to bid on the basis of that lowest price. According to the report #Filerasporca, “this mechanism strongly affects the entire value

sector, unfair trade practices, and the increase remuneration of financial investors are all elements that increase significantly the pressure on land, natural resources and – inevitably - labour. Thus, when thinking about the construction of a right to food-based food system where both production and consumption are sustainable, and poverty is addressed, we must not narrow our focus on what happens on the ground. On the contrary, we need to think broadly and across the whole chain. Including at the purchasing power of a population that, as we discussed before, are increasingly facing relative and extreme poverty.

2.d.e The Legal Reaction against the Caporalato System (gangmaster)

In October 2016, Italy took a step to crack down on the widespread mistreatment of farm workers by approving a new law against labour exploitation and *caporalato*. *Caporalato* is one of the ways in which workers are exploited and forced into precarious lives. Currently, it is widely used in many seasonal fruit and vegetable value chains, such as tomatoes, oranges, strawberries and wine grapes. It is not new to the context of Italy (South African refugee Jerry Masslo, who was working as a seasonal tomato picker was killed in 1989),¹⁹³ but it is increasing in numbers and intensity. In 2015, inspections by the union FLAI-CGIL of 8,862 agricultural companies in more than 80 territories found 6,153 irregular workers and 713 cases of caporalato.¹⁹⁴

The report by Oxfam and Terra!Onlus mentioned before highlights that in the context of the caporalato system:¹⁹⁵

gangmasters (*caporali*) arbitrarily decide who can be part of their teams. Because there are often more workers than jobs and because the workers do not have means of transportation, the *caporale* takes advantage of workers' fragile socio-economic status and illegally profit by directly deducting money from workers' daily wages. For each day of work, some workers must pay the *caporale* a fee of €5 for transportation to the farm; workers may be also forced to buy food and water from the *caporale* at a higher price than it would cost at the local supermarket (e.g. €1.50 for 50ml water and €3.50 for a sandwich). At the end of the day, a sum up to €10 per worker – one-third of a worker's daily wage – could be illicitly earned by the caporale and his or her team.

Estimates by Placido Rizzotto Observatory, based on a monthly tomato harvest season, indicate that a team of *caporali* can make up to €225,000 per month.¹⁹⁶ Overall, the same report suggests that the caporalato system is connected with an economy whose value is between 14 and 17.5 billion euro.

The 199-2016 law modifies the existing framework and introduces new measures aimed to eradicate the phenomenon. The previous discipline, contained in article 603-bis of the criminal code, sanctioned the participation to organized intermediation accompanied with violence and intimidation with detention between 5 and 8 years and fines between 1000 and 2000 Euro.

chain, both because of the speed with which it takes place and because companies are forced to agree sales well before production quantities and costs have been determined. Having pre-sold at very low prices, processing companies therefore have to negotiate the lowest possible prices with producers, who must in turn make savings by hiring the cheapest possible labour or breaking their contractual obligations to farm workers." See #FiliereSporca. (2016). Spolpati. La crisi dell'industria del Pomodoro. Tra sfruttamento e insostenibilità. Third campaign report. Available online.

¹⁹³ Filiere. Dietro l'Etichetta, Terre Libere. Available online at <https://www.terrelibere.org/filiere/>.

¹⁹⁴ Federazione Lavoratori AgroIndustria – Confederazione Generale Italiana del Lavoro FLAICGIL.

¹⁹⁵ OXFAM AND TERRA! ONLUS, Human Suffering op. cit., 2018, p. 6. Available online.

¹⁹⁶ Observatory Placido Rizzotto, III Rapporto Agromafie e Caporalato op.cit. , 2016. Available online.

Differently from the past, the law simplifies the identification of the crime and does not focus exclusively on the role and responsibility of the gangmaster. On the one hand, it recognizes as a crime the fact itself of having 'supplied' exploited workers and taken advantage of their condition of need: there is no need to demonstrate that there was violence, threat or intimidation. On the other hand, it sanctions also the employers who are using this labour force and therefore benefitting from the system. A series of indicators defines the meaning of exploitation (wages that are significantly lower than the national collective contracts, repeated violation of the working hours, exercise of control and surveillance, and degrading housing conditions) and other instances are considered as aggravating (recruiting more than three workers, recruiting minors and exposing workers to serious danger).¹⁹⁷ Because the crime can be also committed by the employer, the law introduces the possibility of seizing the land.

On the other hand, article 9 identifies the duty for the Ministry of Labour and Social Policies to present an intervention plan discussing logistic measures and forms of public support aimed to improve the living and working conditions of seasonal farmworkers. Several indications of possible measures in support of farmworkers were contained in the *Protocollo Sperimentale Contro il Caporalato e lo Sfruttamento Lavorativo in Agricoltura (Experimental Protocol against caporalato)* that was signed by the Italian Government, several regions and third parties (Caritas, Coldiretti, Red Cross, etc) in May 2016. The document, that some of the signatories have used as term of reference to implement regulatory and governance interventions, makes clear reference to the importance of providing health care, increasing workers' awareness of their rights and the employers' obligations, creating spaces for integration and de-marginalization, along with the construction of alternative schemes of temporary work that avoid relying on intermediaries. In this framework, the Social Associationism Fund (Fondo per l'Associazione Sociale) is identified as the source of resources to launch pilot projects and strengthen the network.

Before and after the law was issued, proposals and political statements have been advanced to tackle the problem of *caporalato*. Some regions have been implementing projects in line with the Experimental Protocol, organizations have been suggesting mandatory labels that attest the lack of any form of modern slavery in the food chain, and media have paid more attention. Initiatives like "Filiere. Dietro l'etichetta"¹⁹⁸ (Food Chains. Behind the label) have been launched to increase consumers' awareness and rely on their purchasing decisions in order to improve the condition of farmworkers on the ground. However, the situation on the ground does not seem to have improved and the latest reports and investigations realized in the ghettos tell stories similar – if not worse – than those of the last years.¹⁹⁹

For some, the law represents a positive step in the right direction. However, several organizations working on the ground recognize that something more has to be done in order to address an urgent issue that affects the life of hundreds of thousands of people. The reinforcement of the previous

¹⁹⁷ Law 199-2016: Disposizioni in materia di contrasto ai fenomeni del lavoro nero, dello sfruttamento del lavoro in agricoltura e di riallineamento retributivo nel settore agricolo. (16G00213), entered into force on November 4, 2016.

¹⁹⁸ Filiere. Dietro l'Etichetta, Terre Libere, above n 193.

¹⁹⁹ The intermediation in the labour market represents a thorny sector that has been at the centre of several regulatory interventions around the world. Whereas Italy is trying to tackle the phenomenon by implementing stricter discipline and higher sanctions, the United Kingdom decided to operate a licensing scheme for labour providers operating in the regulated sectors. The Gangmasters (Licensing) Act 2004 established the Gangmasters Licensing Authority and created the offences of acting as an unlicensed gangmaster and using an unlicensed gangmaster. Gangmasters (Licensing) Act 2004.

discipline put in the spotlight the structural marginalization of workers in rural areas characterised by fragile local authorities and where the level of legal implementation is generally poor. Accepting that something must be done, the real issue is what can be done and how should it be done. According to the Minister of Internal Affairs Matteo Salvini, the law should be reformed because it “complicates things.”²⁰⁰ Against the idea of simplifying the law (probably in favour of less controls and less risks for employers) several unions and associations working with migrants and on organized crime have suggested that the Government should allocate enough resources to effectively implement the law and its sanctioning regime.

For others, including the authors, the law still needs to be combined with preventive measures dealing with the root causes and the specific contexts in which such situations come from: for sure, the law helps focusing on the connections between *caporalato*, organised crime and profit-seeking. However, its narrow approach obliterates two crucial elements that contribute to the existence of *caporalato*: the rules around migration play a central role in allowing the reproduction of abuses; lead firms such as large-scale retailers, discounts and food processors exercise power and pressure down the supply chain to lower costs and increase their own margins. As long as migrants have an uncertain, irregular and fragile legal status, they will be exposed to abuses and exploitation by people and organizations who know that they have no alternative and cannot complain. In addition, the lack of full recognition of migrants’ civil rights and the absence of labour rights for them may have a domino effect on the wealth of farmers and workers along the agricultural production chain. The presence of exploited and under-paid human beings depresses salaries in the sector, negatively impacts the distribution of value across the value chain and creates a vicious circle that also affects regular workers. Whereas this cannot be proven, it is believed that franchisement of migrant workers and the recognition of full labour rights may thus mitigate the shadow economy in the Italian agricultural sector and have a positive effect beyond the life of migrants.²⁰¹

Similarly, as long as cheapness of food represents the superior goal of the value chain, cheapness will characterize the whole value chain. In this context, negative externalities are generated by mistreating workers, polluting the environment, reducing quality, affecting biodiversity, etc. The real cost of food is thus paid by someone else (Figure 7 below) and lead firms continue increasing their turnout.²⁰² A human rights-based approach to the chains where *caporalato* is present (tomatoes first of all) and a human-rights approach to the condition of (migrant and not-migrant) workers appear to be the unavoidable steps that Italy should take in order to fulfil its international and constitutional obligations. This would certainly require investigating the conditions of farmworkers but also require significant interventions at the level of bargaining power, unfair trade practices and public procurement. As long as discounts and lead firms can push farmers into double-race auctions, there is little space for improvement because there is often no financial alternative for farmers. Enforcing laws is thus essential, but it must be associated with a redefinition of bargaining power and an attention to the way in which value is distributed across the value chain: we increasingly hear that consumers do not pay enough, but we do not hear about the amount of wealth that retailers and lead firms accumulate.

A first step would be represented by a proactive and rights-based approach to public procurement: if States and local authorities have the obligation to respect, protect and fulfil the right to food, the

²⁰⁰M. PUCCIARELLI, La Lega contro la legge sul caporalato, in La Repubblica, June 14, 2018. Available online.

²⁰¹M. TORNARI, Which Diversity divides? The impact of Immigration and Birth-place Diversity on Redistributive Policies, University of Turin, Mimeo, 2018, p. 28.

²⁰²R. PATEL, The Value of Nothing, How to reshape Market Society and Redefine Democracy, 2009.

purchase of products that are tainted by *caporalato* and exploitation would be in violation of these obligations. To respect international obligations, we thus recommend that existing laws on *caporalato* are improved and enforced, that migratory policies are changed, and disenfranchised migrants provided with full labour rights and that a strong market for legal products is created by public authorities through public procurement.



Figure 7: What's the cost? How Much you pay? Who really pays. Source: #ASTEnetevi

2.d.f Food as an alternative to exploitation: bottom-up experiences of migrants' integration in Italy

Adopting a holistic approach to the right to food means also combine the Italian legislative and political framework with the universe of positive examples put in place by civil society actors, who are embedded in specific contexts and try, day after day, to involve the most affected in a path of change. Italian territory offers a broad range of bottom-up projects that work to provide concrete and pragmatic alternatives to work exploitation, starting from those areas where situations of oppression are more evident. Built on transparency, care and legality, these experiences progressively let the workers get aware of their conditions and retake possession of their own rights, including the right to have access and provide adequate, healthy and culturally appropriate food indeed, as well as the right to work in safe environment, housing, have a proper wage and access high-quality social and health services. A coherent and systemic understanding of the right to food looks, in fact, transversally to other human rights, going beyond the simple idea of providing nutritional food and focusing also on who produces that food.

- Canelli and Saluzzo²⁰³ (Piedmont), respectively notorious to be two centres of excellence for the fruit and vegetable and wine sectors, every year continue experiencing a quantitative

²⁰³I. IPPOLITO, I braccianti di Saluzzo #5, Melting Pot, October 2017.

increase in the number of migrants coming for the harvest season, then victims of local gang masters and isolated in ghettos and slums on the town's outskirts²⁰⁴. It is precisely in this area that in 2014 "**Maramao**" was born, a project whose aim is to engage asylum seekers and beneficiaries of international protection hosted in the SPRAR network²⁰⁵ in the Province of Alessandria (Piedmont) in establishing an agricultural start-up run by migrants themselves for producing, transforming and selling organic fruit and vegetables. Maramao now covers 15 hectares on which a dozen migrants coming from Central Africa and two Italians work under conditions of legality and transparency.

- Promoting social inclusion of refugees and asylum seekers is the same goal of "**Bee My Job**", an initiative started in 2015 by the Association for Social Promoting Cambalache²⁰⁶ (Alessandria, Piedmont) and the financial endorsement of the UNHCR. Two needs are here combined: first, the demand of refugees to build up their own future in the country of destination; second, the exigency of giving new lifeblood and perspectives to the bee-keeping sector, which, especially in Piedmont, is struggling to find skilled labour to transfer knowledge and traditions. Refugees and asylum seekers are thus involved in a two stages learning path. A first educational phase in which theoretical beekeeping and agricultural classes alternate with manual trainings; a second one where refugees and asylum keepers are involved in experiences of recruitment and job placement in beekeeping and agricultural farms.
- After years of surveys and campaigns directly targeted to raise awareness on the transparency of food value chains²⁰⁷ and labour exploitation in agriculture²⁰⁸, in July 2018 the environmental association Terra! Onlus launched a concrete project of social inclusion for migrant workers in Capitanata, an area of Puglia sadly known for the phenomenon of *caporalato*. "**In Campo! Senza Caporale**"²⁰⁹ provides grants and employment programmes for foreign workers within certified organic enterprises. Supported by a team of experienced teachers, beneficiaries are included in theoretical and practical trainings and informed regarding the current legislation on labour contracts and residence permits.
- Not only agriculture, but also gastronomy offers a broad range of projects to transform role of migrants from victims into actors of change. This is the case of "Le ricette del dialogo. Cibo e storie per l'intercultura e l'integrazione", an initiative promoted by Slow Food with the contribution of the Italian Agency for Development Cooperation, where participants are given the opportunity to tell their stories through recipes and seasonal products, as well as to master the Italian legislation on health and hygiene for opening their own economic activity. A similar objective is pursued by "Food for inclusion"²¹⁰: launched by the collaboration between the University of Gastronomic Sciences and the UNHCR, the

²⁰⁴ A. MANGANO, La vendemmia della vergogna, in L'Espresso, December 3, 2013. For more information, please visit the website, <http://www.ecolifestyles.eu/it/news/maramao-i-rifugiati-fondano-una-start-agricola-tra-le-vigne-dei-migranti-sfruttati>. Last access in May 2018.

²⁰⁵ Acronym for the Italian Protection System for Asylum Applicants and Refugees Network.

²⁰⁶ For more information, please visit the website, <https://www.cambalache.it/cosa-facciamo/accoglienza/>, last access in February 2018.

²⁰⁷ For more information, please visit the website, <http://www.filierasporca.org/>, last access in August 2018.

²⁰⁸ Oxfam and Terra! Onlus, op. cit., 2018.

²⁰⁹ For more information, please visit the website, <http://www.terraonlus.it/component/k2/item/599-terralancia-in-campo-senza-caporale-un-alleanza-tra-aziende-sostenibili-e-lavoratori-migranti-contro-il-caporalato>, last access in August 2018

²¹⁰ For more information, please visit the website, <https://www.unisg.it/comunicati/food-for-inclusion-a-pollenzo-un-progetto-con-lunhcr-per-fornire-competenze-e-strumenti-lavorativi-nel-campo-della-gastronomia-per-i-rifugiati/>, last access in August 2018

programme aims to give value to the skills and talents of refugees and asylum seekers, by proving them empowerment-working tools.

These are only some examples²¹¹ of how a counter paradigm has been developing in places where gang masters, piecework pay, multiple human rights violation and undeclared work survive. Each of them has its own features in terms of history, context and organization. Nevertheless, they all share the same ingredients, such as the willingness of promoting social inclusion, information, participation and ecological methods, put together by respecting nature and placing people at the core, both producers and eaters.

2.e Unfair Commercial Practices, Competition Law and the Right to Food

Because of the role that bargaining power and market power play in the distribution of price across the food chain and the extraction of value from farmers and farmworkers, one final consideration should be made to the importance of thinking at the link between competition law, unfair trade practices and the right to food. This report is not the place where the connection can be fully elaborated, but it is important for public authorities, civil society organizations and also for the any food chain actor to be aware of the role that competition law plays in favouring or obstructing imbalances of power along the food chain. To find clear evidence of this and have a better sense of the level of the current discussion, the 2017 IPES report *Too Big to Fed* and the paper on 'The Hunger Games' by Amber Darr and Ioannis Lianos represent two useful sources.²¹²

In the context of this report, we would like to highlight two measures at the EU and national level whose implementation we believe should take into consideration the impact that unfair trade practices have on the right to food of farmworkers and farmers, not only consumers. On the one hand, the EU Commission in April 2018 advanced the proposal for a directive on unfair trade practices in the food chain that address some of the main concerns raised in terms of party autonomies, economic dependency, imposition of unfair conditions and the like. From the point of view of mainstream competition law, however, there are only few authors who have suggested that competition law should adopt a holistic approach to value chains and address issues that go beyond consumers welfare. Outside of mainstream competition law, proposals have been advanced to integrate (or redefine) the neoclassical approach of econometrics and mathematical considerations with contractual and socio-economic considerations that look at the whole food chain and at the long-term implications that a change in the distribution of power may have on all the actors (including those several tiers away from the retailer). Others have proposed the territorialisation of the food chain as an effective alternative to concentration of power based on the principles of food sovereignty.²¹³ Regional and national authorities implementing the directive (if approved) should thus make sure to interpret it through the lenses of the right to food and challenge those conducts (like double-race auctions) that have clear consequences on the conditions of workers.

On the convergence between contract law and competition law, the Italian legislator introduced Article 62.8 of the law 27/2012 which provides the Italian Antitrust Authority (ICA) the power to

²¹¹ Particularly noteworthy are Funky Tomato (Campania, Puglia, Basilicata), Sfrutta Zero (Campania, Puglia), Barikamà (Lazio), Caritas Progetto Presidio (throughout Italy), Contadinazioni (Sicily), SOS Rosarno (Calabria), Altrove Ristorante (Rome, Lazio), Gustamundo Ristorante (Rome, Lazio), the multi-purpose centre of Bella Farmia (Lazio).

²¹² A. DARR & I. LIANOS, *The Hunger Games: Competition Law and The Right To Food*, Available online.

²¹³ S. KAY, E. MATTHEINSEN, N. MCKEON, A. MORAGUES FAUS, *Public policies for food sovereignty*, 2017. Available online.

punish a conduct resulting in “an unwarranted exercise of bargaining power on the demand side at the expense of suppliers.” Therefore, in addition to its power to intervene in cases of abuses of dominant position, the ICA can now intervene in commercial relationships of a vertical nature in the agro-food industry, even in the absence of a dominant position, provided that the contract produces an appreciable adverse effect on the market. In particular, Article 62.8 prohibits the stronger contracting party from imposing unfair conditions on the counterparty.

So far, no case of unfair trade practices has concerned the impact on farmworkers and their rights. In the first ever case, on July 9, 2015, the ICA concluded the first procedure based on the application of Article 62.8 against the retailer Eurospin, for allegedly imposing upon its suppliers the half-yearly payment of two unjustifiably large sums which did not correspond to any service provided to them by the group.²¹⁴ The ICA concluded, however, that the business conduct put in place by Eurospin did not constitute an infringement of Article 62.8b because they had been fairly negotiated and not imposed. Moreover, the ICA observed, the relative costs were proportioned to the service offered by Eurospin. Interestingly, Eurospin and other discounts are at the centre of an investigation conducted by Stefano Liberti and Fabio Ciconte, two Italian journalists, on the link between unfair trade practices, double-race auctions and the condition of farmworkers in the Italian countryside.²¹⁵

From this first example, it seems that the national authority is still fully embedded in the notion of costs, price and autonomy of the parties, all concepts that are challenged by the distribution of bargaining power and the existence of non-accounted externalities. In the future, the hope is that the ICA will follow the indication contained in Article 3 of the Treaty on the EU and interpret the notion of unfair practices, and competition law in a general, in a way that contribute to the creation of an internal market that “work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.”²¹⁶ Without an understanding of the interconnectedness of rights and obligations, and without a proper consideration of the role that different institutions (legal, economic, financial, political, cultural) play in producing and reproducing violations of the right to food, the journey to its full realization appears almost a chimera.

To conclude our analysis, in the next Section we consider the positive and negative impact that some Italian national legal and political decisions and actions have or may have on the right to food of people who do not live within the national borders. The implementation of a holistic conception of the right to food, we believe, cannot be limited to the national jurisdiction but transcends its borders following the extraterritorial obligations of states contained in the Maastricht Principles.

²¹⁴ Decision No. 25551 of 9 July 2015 of the Italian Competition Authority, Eurospin Italia S.p.A.

²¹⁵ S. Liberti and F. Ciconte, *I discount mettono all’asta l’agricoltura italiana*, in *Internazionale*, July 25, 2018. Available online.

²¹⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community, December 13, 2007, 2007/C 306/1, Art. 3.3.

III. ITALY AND THE INTERNATIONAL: POLITICAL SPACES, EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS AND POLICY COHERENCE FOR DEVELOPMENT

In an increasingly globalized world, activities of both state and non-state actors can have impacts well beyond national borders. Decisions concerning borders, unilateral trade measures, the distribution of development aid, support to national corporations operating abroad, the definition of products' standards, the control (or lack of control) over citizens and national corporations' operating abroad, and the regulation of the banking and financial sector are all only some of the ways in which national (and European, in the case of EU competences) authorities can affect the life of people living outside of their jurisdiction.²¹⁷ In addition, international political spaces and international organizations play an ever growing role in addressing challenges that cut across borders and that must be tackled with coordinated efforts and interventions.

Hence, a systemic assessment of Italy's implementation of the obligation to the protection, respect and fulfilment of the right to food must transcend the borders of national jurisdictions and investigate both the role of Italy in international political spaces whose decisions affect the right to food and the way in which decisions made by Italian public actors may have positive or negative consequences on the right to food of people living outside of the country. We thus open this last section with a reflection on the role that Italy plays, has played and may play in international spaces where food security, food policies and the right to food are discussed and transformed into concrete commitment. We refer here to the United Nations Committee on World Food Security, the G7 and the European Union, specifically the European Food and Nutrition Action Plan. In each of these framework, and in other frameworks that we do not have time to engage with (e.g. the negotiations of Economic Partnership Agreements and Trade Agreements, the participation in the drafting of the Declaration on the Rights of Peasants and the definition of the Common Agricultural Policy and the disbursement of subsidies to Italian farmers that may distort competition with farmers from outside the EU), Italian representatives participate and contribute to the definition of policies, guidelines, declarations and recommendations that may have an impact on the universal recognition of the right to food or its obliteration.

In the second part of the section, we discuss extraterritoriality and international cooperation from the different and unexplored perspective of the link between the right to food obligations and the responsibilities of States. We believe that there are (at least) two legal reasons why Italian authorities should pay attention to what happens outside their borders and make sure that the right to food – among other human rights – is properly supported and implemented abroad. The first one is the notion of Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, which were for the first time systematized by the 2011 Maastricht Principles but that are inherent to a modern conception of international human rights law (including the International Covenant on Civil and Political Rights and the European Convention on Human Rights).²¹⁸ The second reason is expressed by the concept of Policy Coherence for Development (PCD), a notion that was originally integrated in EU fundamental law in 1992 and further reinforced in the Treaty of Lisbon (Art. 208 TFEU).²¹⁹ The reason why PCD is connected with the extraterritorial reach of human rights, we discuss it below, is that it aims to minimize contradictions between policies so that pro-

²¹⁷D. DANIELSEN, *Local Rules and a Global Economy: An Economic Policy Perspective*, 1 *Transn'l Legal Theory* 49, 2010.

²¹⁸H. KING, *The Extraterritorial Human Rights Obligations of States*, in 9 *Human Rights Law Review* 4, 2009.

²¹⁹European Commission, *Policy Coherence for Development*, https://ec.europa.eu/europeaid/policies/policy-coherence-development_en.

development projects and measures are not frustrated by conflicting decisions taken at the local or regional level.

In light of Italy's participation in international arena, ETOs and PCD, we have organized this section around some preliminary considerations how to expand a right to food-based approach to national policies to what happens outside of the national boundaries and why this is legally and politically relevant. We begin with the role of Italy in promoting the right to food in the global and regional context, with particular regard to the CFS, the G7 and the EU Food and Nutrition Security action plan. We assess some of the projects that have been promoted and the transformations that have been occurred in the last two decades and highlight the need to bring back a strong consideration of the right to food in these venues and for the implementation of a reliable and effective system of monitoring. We then introduce the concept of Policy Coherence for Development as a possible way to improve the quality and effectiveness of Italian and European international cooperation. Through the examples of the New Alliance on Food and Nutrition Security and the Global Alliance for Climate Smart Agriculture we then discuss the risks and limits faced by the Italian cooperation when it supports conflicting objectives. Finally, we discuss the link between Extraterritorial Obligations of States and the Right to food, paying particular attention to two aspects: the support that Italian public authorities have provided to corporations allegedly involved in cases of land grabbing abroad (and the consequent breach of the obligation to protect the right to food of people living outside of the Italian jurisdiction from the actions of Italian citizens) and the link between migration policies and the right to food of people who are not allowed to disembark in Italy or who are kept in 'hot spots' financed with Italian resources and established in third countries on the basis of international agreements.

3.a Global and regional context: the role of Italy in promoting the RTF

The initial reflections of this section are dedicated to three international policy spaces where Italy operates and whose decisions have had – and will have – a direct impact on the right to food. These three spaces have different characteristics, are populated by different actors and are governed by different system of governance that lead to more or less engagement with non-State actors. Although a synthesis, the reconstruction below aims to flag these three spaces as opportunities to intensify the dialogue around the holistic understanding of the right to food that we have presented in this report. In some cases, we believe this will be easier. In others, we are aware that political pressure and interests may represent a high obstacle to the instauration of such dialogue. By shading light on the possibility and stressing what are the current limits, we hope to show where improvements can be made and the way in which the Italian delegations should be engaging in the future.

3.a.1 Italy in the United Nations Committee on World Food Security

The United Nations Committee on World Food Security²²⁰ (CFS), reformed in 2009 following the food price crisis, constitutes a particular example of inclusive, participatory, transparent and democratic governance. It aims at achieving policy coherence and promoting accountability around the right to food.²²¹

In an era of “multi-stakeholderism” in which State governance is ever more distrusted and narrowed due to lack of funding and a generalized push for privatization, organs such as the CFS are crucial in

²²⁰S. KAY ET AL., *op. cit.*

²²¹N. MCKEON, *Global Food Governance. Between Corporate Control and Shaky Democracy*, in *Global Governance Spotlight 2*, 2018, p. 2.

making sure that the voice of those affected by policies are heard. Multi-stakeholder platforms (MSPs) indeed often fall short of representing civil society properly, let alone to take their opinion into account, limiting the board of stakeholders to ‘the private sector’, understood restrictively as the big economic players that are able to leverage significant amounts of money. Moreover, when they are included in MSPs, small-scale producers, civil society and big agribusinesses come together in the same room, and under the same status. Such a neutralized approach does not allow for correcting the power imbalances that exist between these groups in real life, nor distinguishing between their diverging roles, interests, rights and duties²²².

In the CFS, participants are grouped according to their status: governments retain their decision making role, which allows for retaining their accountability too, while those most affected by food insecurity are given priority. They are indeed considered, in the human rights terminology relevant for this report, as right holders. The governments are their reciprocal duty holders. The rest of the participants is grouped into ‘other parties’, in order to highlight the fact that their position should be ancillary to those who are seeking the respect of their rights, and those who are responsible for protecting them.²²³

Of course, such an inclusive position is threatened by corporate interests. The shrinking space for both civil society representatives and human rights based approach is coupled with the corporate capture of policy spaces and a development narrative that presents external private actors as the most efficient, relevant and reactive partners of development projects.²²⁴ The generalized push for Public-Private Partnerships (PPPs) is a stark symptom of this trend.²²⁵

Italy is an active member of the CFS and has been implicated in defending its inclusive, rights-based approach²²⁶. Italy is currently the Vice-Chair of the Bureau, the executive arm of the CFS. While it is active within the CFS, Italy could however do more outside of it, especially by promoting the CFS as being the reference point for the right to food and food security, amongst a constellation of organs, guidelines and framework that, unlike the CFS, do not focus on the right to food. For example, the oft-cited and referred to SDGs do not incorporate the right to food, nor the human rights approach.²²⁷ Italy could also make use of its membership to the EU to strengthen the EU CFS delegation’s defense of the right to food, especially against two consistent attackers of the right to food in the CFS, the US and the Russian Federation.²²⁸

A particular instance in which Italy might be of particular support to the CFS will be the upcoming plenary session of the CFS in October 2018, which will have to deliberate on the future of the reformed CFS, following an evaluation undertaken in 2017. Strong government support will be crucial, especially in the light of the pressures that civil society is facing.

²²² Ibidem, p. 3.

²²³ Ibidem, p. 3.

²²⁴ N. McKeon, Right to Food in Italy: Food security Policy and development cooperation (Interview), interview by Lidia Mahillon, Telephone, July 26, 2018.

²²⁵ CONCORD, MIXING MEANS AND ENDS: What Role for (Which) Private Sector in Agriculture and Food & Nutrition Security?, 2017, p. 14.

²²⁶ N. McKEON, Right to Food in Italy, cited above n 223.

²²⁷ SDGs, “Sustainable Development Goals,” accessed May 25, 2018.

²²⁸ N. McKEON, Right to Food in Italy, cited above n 223.

3.a.2 Food Security and the role of the G7

As mentioned before, Italy is a member of the G7, the “Group of Seven” countries that, at the time of the creation of the group, constituted the seven largest advanced economies in the world. It is composed of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. A representation of the EU is also present in the G7. Together, these countries represent more than 62% of the global net wealth (\$280 trillion), more than 46% of the global gross domestic product (GDP) based on nominal values, and more than 32% of the global GDP based on purchasing power parity.²²⁹

Given its composition, the G7 represents the position and the interests of the wealthiest economies, and hence of the most powerful. Such perspective feels inherently antithetical with the defense of the right to food and the battle against food poverty that is contained in the international obligations assumed by Italy and that can be traced in the idea of Policy Coherence for Development and in the New European Consensus on Development. Its mode of operation – meeting annually on economic summits – is none of the inclusiveness of the CFS. The G7 approach is exclusively economical, and financial institutions such as the IMF are its preferred mechanism for solving ‘economic challenges’ – the framing under which the G7 pins social, food, political or other type of crises²³⁰.

With the launch of the 2009 L'Aquila Food Security Initiative (AFSI), the G7/G8 started again to talk about food security and agriculture. In that occasion (when the Global Alliance for Food and Nutrition Security was conceived) the G8 countries committed themselves for the next three years to allocate 22 billion dollars, 6.2 billion of which are additional to the commitments already adopted, in the development cooperation for security food. Italy had committed itself with a total of 428 million dollars in three years (2009-2011), of which only 180 million were actually additional resources. Up to 2013, it has respected the disbursement times, slightly exceeding the figure (517.4 million euro²³¹ and 618.2 in 2013²³²). In line with the position adopted with regards to the New Alliance, Italy is one of the members which pledged the lowest amount of money and also recorded a decreasing trend compared to the previous period (2006-2008).

In 2013 there was talk of food and nutrition security at the British Lough Erne summit, defining the Global Nutrition Growth Compact, a multi-stakeholder initiative that committed signatories to bring the theme of development to the centre of the development agenda. Italy did not join. At the same summit, with the Communiqué final, a series of partnerships were started (Land Partnerships) with African countries (Nigeria, Senegal, Burkina Faso, Tanzania and Namibia) to improve transparency in large-scale land transactions across the Land African Union Policy Initiative and support for the implementation of the Voluntary Guidelines for Governance Responsible for Land, Fisheries and

²²⁹ Sawe, Benjamin Elisha (25 April 2017). "Group of Seven (G7) Countries". World Atlas. worldatlas.com. Retrieved 8 June 2018; "Global Wealth Databook". Credit Suisse. credit-suisse.com. 2017. Table 2-4, "Wealth Estimates by Country (mid-2017)", p. 101-104. See values of "Share of Wealth, %" for G7 countries: Canada, 2.6; France, 4.6; Germany, 4.9; Italy, 3.9; Japan, 8.4; United Kingdom, 5.0; and United States, 33.4 (total: 62.8%). Retrieved 8 June 2018; "Report for Selected Countries and Subjects", <http://www.imf.org/external/pubs/ft/weo/2018/01/weodata/weorept.aspx?pr.x=34&pr.y=14&sy=2016&ey=2023&scsm=1&ssd=1&sort=country&ds=.&br=1&c=156,158,132,112,134,111,136&s=NGDPD,PPPGDP&grp=0&a=>

²³⁰ Van Houten, Leo (September 2004). "Rethinking IMF Governance" (PDF). Finance & Development. International Money Fund. p. 18. Retrieved 25 March 2014.

²³¹ G8, Camp David Accountability Report. Actions, Approach and Results, May 2012, p.24.

²³² G8, Lough Erne Accountability Report. Keeping our promises, 2013.

Forests in the context of National Food Security, adopted by the Committee for World Food Security (CFS).²³³

In 2015, during the German summit of Schloss Elmau, in the framework of the new 2030 development agenda, the countries of the G7 committed to mobilizing public and private resources (without however taking on specific commitments) to pursue the ambitious goal of 500 million people are hungry by 2025. The document attached to the final declaration speaks of a "Broader Food Security and Nutrition Development Approach" which includes "greater attention to effectiveness, to the improvement of impacts and to the mobilization of resources". Overall, the approach proposed by the G7/G8 can be summarized with the following priorities: dynamic transformation of rural areas, responsible investment and sustainable agriculture, nutrition, food security and nutrition in areas of conflict and crisis. Within these areas there are many different initiatives, including some strongly criticized by civil society organizations such as the New Alliance and the Global Alliance for Climate Smart Agriculture (see below). On the other hand, the G7/G8 recognized the "CFS as the most inclusive platform for the definition and coordination of policies."

However, the accountability system introduced in L'Aquila to monitor the allocations is characterized by a strong lack of transparency that makes it difficult to monitor the actual disbursements and their comparison among the different countries, as well as by the excessive discretion of valuation left to individual countries. In response, the Japanese Ise-Shima summit of 2016 led to the adoption of a new vision document, the "G7 Vision for Action on Food Security and Nutrition", which contained a new accountability framework and also aimed to identifying clear priority areas: female empowerment, improvement of nutrition through a people-centered approach and sustainability and resilience within agricultural and food systems. The new accountability framework that the Japanese government has undertaken to elaborate should allow greater data transparency (disaggregating them for specific vulnerable groups) to define common accounting criteria and a weighting system among the different G7 members. In particular, it should require an annual reporting system (today it is carried out every three years) and timing for the disbursement of commitments related to the objectives assumed.

At the end of 2017, the Italian presidency of the G7 published the financial reports on the AFSI commitments of the G7 countries with reference to the year 2015. At the aggregate level, 8.8 billion dollars were spent, of which 3.7 billion directed to the strengthening of agricultural systems. As for Italy, the total resources were 105.58 million euro. The data diffused by the Italian Presidency show a decidedly irregular trend quite in line with that of the Italian contributions. With reference to Sub-Saharan Africa, the region with the highest percentage of hungry on the total population (22.7%), we note on the one hand how the trend follows the overall AFSI, however, in percentage to the total AFSI, rarely has gone above 50% with significant fluctuations, for example, between 2015 and 2016. A PCD approach to the G7 and its policies should thus aim at exposing these internal contradictions to the Aquila framework but also, and more importantly, showcase the tensions that exist between the commitment to food security and the other policy decisions adopted by the wealthiest countries in the world.

3.a.3 The EU Food and Nutrition Action Plan

²³³Committee on World Food Security, Voluntary Guidelines for Governance Responsible for Land, Fisheries and Forests in the context of National Food Security, available at <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

At the European level, Italy could have a crucial role in promoting and fulfilling the right to food. This would be in line with the national and international obligations that the country has assumed but also contribute to the achievement of development coherence and the establishment of an effective use of resources and international efforts. The way in which Italy could increase its voice at the European level is by more strongly and actively engaging with the Food and Nutrition Security Policy Framework.

In March 2010, the EU published the EU policy framework to assist developing countries in addressing food security challenges or Food Security Policy Framework ('FSPF' or 'Framework').²³⁴ The document was endorsed by the European Council and constitutes some of the EU's response to the food price crisis of 2008.²³⁵ It was framed under a Right to Food lens, and with a specific emphasis on small scale producers as the pillar around which building a resilient and sustainable food system.

According to the framework, the EU and its Member States had to go through a process of biennial reporting of the implementation, which started in 2014. Thorough and regular monitoring of policies is very important in order to assess impacts properly and adjust future policies according to those, so in that sense the experience was successful.²³⁶ However, the reporting also revealed that there was a noticeable shift in the framing of the FSPF through the different phases of its implementation. This transition away from the right to food was immediately spotted by civil society, with CONCORD that published a report on the 'divergence' between the Framework and its implementation plan.²³⁷ Few points are worth mentioning, because they represent the areas where Italy's intervention would be particularly helpful and effective.

Firstly, the FSPF stated an overt support to the right to food and to small scale producers and smallholders - specifically those most marginalized such as women and those cultivating under nonproprietary land rights.²³⁸ Despite this commitment, the implementation plan and reports gradually dismissed these priorities to promoting the role of the private sector and agribusiness investment in agriculture and food security. The 2013 European Commission implementation plan²³⁹ changed the word 'ecological' that was contained in the FSPF priorities to 'sustainable', and most of all put a stronger focus on Public-Private-Partnerships (PPPs): 'as the central instrument for achieving objectives. PPPs were referred to in the Framework, but with qualifications. Where the Framework mentioned "national policies, strategies and legal frameworks", the implementation document only mentions PPPs'.²⁴⁰ As we have seen in the case of the G7's New Alliance, PPPs are a

²³⁴ European Commission, Communication from the Commission to the Council and the European Parliament: An EU policy framework to assist developing countries in addressing food security challenges. COM(2010)127 final. Brussels, EC, 31 March 2010. (Hereafter, 'FSPF, op.cit.')

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0127:FIN:EN:PDF>

²³⁵ CONCORD, "Monitoring a Moving Target: Assessment of the Implementation Plan of the EU Food Security Policy Framework," Briefing Paper, January 2017, <https://concordeurope.org/wp-content/uploads/2017/01/Assessment-of-the-implementation-plan-of-the-EU-Food-Security-Policy-Framework.pdf?ac2091>.

²³⁶ CONCORD, cited above n 234, p 3.

²³⁷ The European NGO confederation for relief and development.

²³⁸ FSPF, op.cit.<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0127:FIN:EN:PDF>; pp. 2 to 5.

²³⁹ European Commission, Commission staff working document: Boosting food and nutrition security through EU action: implementing our commitments. SWD(2013) 104 final. Brussels: EC, 27 March 2013. https://ec.europa.eu/europeaid/sites/devco/files/working-paper-food-nutrition-security-swd2013104-20130327_en_5.pdf

²⁴⁰ CONCORD, "Monitoring a Moving Target: Assessment of the Implementation Plan of the EU Food Security Policy Framework," cited above n 234, p 8.

flawed tool to foster food and nutrition security. They are of utmost detriment to host countries, on all levels – economic, social, environmental. Value chains got included in the priorities, and public domain research was obliterated.

The 2014 first biennial report²⁴¹, however, underlines again the importance of the right to food and the strengthening of civil society and farmers organizations, as well as their involvement in decision-making and implementation of programs. Despite the focus, performance criteria are mostly quantitative instead of qualitative, which leaves little room to assess the real and long-term impacts of the policies. Moreover, the report refers more to the implementation plan than to the FSPF, and while it mentions the right to food, the right to food loses the centrality that it held in the FSPF. The EU Council responded to the report by recognizing the methodological shortcomings and asking the Commission to correct them for the next report, notably by focusing on the assessment of two priorities.²⁴²

The 2016 report was even more concerning.²⁴³ The Commission picked the two priorities but only the first one was among the list of FSPF's priorities (enhance nutrition). The second one, prioritizes 'inclusive agrifood chains and systems' was not in the FSPF nor the implementation plan. As CONCORD states, 'this reinterpretation is problematic in itself because it reflects a significant change in the strategic vision of how to fight food insecurity and improve rural livelihoods. Whereas the vision that underlies the 2010 Framework was the subject of broad discussion, this subsequent evolution has not been a matter of public debate. The reinterpretation also enables the report to use case studies that do not focus on smallholder livelihoods holistically, but instead look only at long production and market chains connecting to international trade and consumer markets in the global north (...).'

The identification of inclusive agribusiness as a priority raises concerns from the point of view of policy coherence for development, with a focus on long chains that contrasts with both the idea of small-scale farming and food security that was put at the core of the original FSPF and with the policy recommendations on 'Connecting Smallholders to Markets' recently adopted in the CFS with the support of the EU.²⁴⁴ EU development cooperation policies are also contradicting one another, contrary to what article 208 of the TFEU aims to achieve. Italy is thus a member of international political spaces that are promoting contrasting policies, but as a Member of the EU is also confronted with incoherence and contradictory regional decisions. Such blurring of priorities and precedence comes at the detriment of a rights-based approach – and the case of FSPF is even more of an example, as its very implementation phases contradict the framework itself.

Throughout the years, Italy tried to secure a serious monitoring of the FSPF and to change the assessment of EU development cooperation so to include not only top-down ODA but also civil

²⁴¹ EC, Report from the Commission to the European Parliament and the Council: Implementing EU food and nutrition security policy commitments: first biennial report. COM(2014) 712 final. Brussels, EC, 2 Dec 2014. https://ec.europa.eu/europeaid/sites/devco/files/communication-eu-food-nutrition-commitments-first-biennial-report-com2014-712-20141202_en.pdf

²⁴² Council of the European Union, Outcome of the Council meeting: 3391st Council meeting: foreign affairs, development. Brussels, EU, 26 May 2015, p7. <http://www.consilium.europa.eu/en/workarea/downloadAsset.aspx?id=40802196949>.

²⁴³ EC, Report from the Commission to the European Parliament and the Council: Implementing EU food and nutrition security policy commitments: second biennial report. COM(2016) 244 final. Brussels, EC, 6 June 2016. <http://bit.ly/2eS1vwW>

²⁴⁴ CONCORD, cited above, n 234, p 10.

society initiatives.²⁴⁵ However, efforts were not successful. The failure is coupled with an almost inexistent voice within the EU on priorities like agroecology, or of the distortive negative impact on EU development cooperation that arises from blocking migration,²⁴⁶ as well as an increased support of private investment.²⁴⁷ The conflicts and divergences that characterize the EU international operations, the need for a new right-based approach to international development, the lack of a proper dialogue with civil society organizations and communities' representatives, and the risks behind a superficial engagement with global challenges are particularly visible in the case of migrations that is extensively discussed below. The situation is very well described by Concord, according to which:

'the EU's declared efforts to address 'the root causes' of the current wave of Europe-bound migration are partially misdirected. Today's migration from the Sahel has its roots in decades of policies which have impoverished rural economies and dispossessed small-scale producers. Over the past two decades rural people have strengthened their organizations and developed their action to ensure dignified and remunerative livelihoods in rural areas, based on the model of family farming that occupies the majority of the Sahelian population. Yet in developing its recipes to deal with migration the EU has made insufficient effort to dialogue with their organizations, including the regional network ROPPA (West African Network of Peasant and Agricultural Producer Organizations) which is [a] key interlocutor on all issues concerning agricultural and food security policy and rural development. The EIP and, more generally, the current emphasis on using ODA to 'crowd in' private investment by European enterprises, promotes instead the very model of industrial agricultural production and agribusiness-led value chains that has contributed to weakening territorial socio-economic textures and fueling migration.'²⁴⁸

As we explored earlier in this report, for Italy, which sits at one of the gates of Europe in terms of migration from the African continent, the link between development and migration is topical. We reaffirm the importance for Italy, as a member state of the European Union, to be firm in supporting a right-based approach to EU's different policies, to remind the centrality of policy coherence for development and the extraterritorial reach of human rights obligations, and to ensure that there are no discrepancies between EU policies, or between European policies and its national policies.

3.b International Aid and Policy Coherence for Development

²⁴⁵Nora McKeon, Right to Food in Italy: Food security Policy and development cooperation (Interview).

²⁴⁶Aidwatch 2018. Aid and migration in https://concordeurope.org/wp-content/uploads/2018/03/CONCORD_AidWatchPaper_Aid_Migration_2018_online.pdf?56c6d0&56c6d0; Aidwatch2018 Security Aid, https://concordeurope.org/wp-content/uploads/2018/02/CONCORD_AidWatchPaper_Securitisation_2018.pdf ;The Impact of EU policies in the World, https://concordeurope.org/wp-content/uploads/2017/11/IAPaper_full_nov17_2p.pdf?56c6d0&56c6d0 ...

²⁴⁷Nora McKeon, Right to Food in Italy: Food security Policy and development cooperation (Interview).

²⁴⁸Concord, "MIXING MEANS AND ENDS: What Role for (Which) Private Sector in Agriculture and Food & Nutrition Security?". On this subject, please see, among others, Castillejo C. (2016), The European Union Trust Fund for Africa: a glimpse of the future for EU development cooperation, German Development Institute https://www.die-gdi.de/uploads/media/DP__22.2016.neu.pdf;

Through Policy Coherence for Development, “the EU seeks to take account of development objectives in all of its policies that are likely to affect developing countries”²⁴⁹: any national and European policy that is likely to affect developing countries should thus be confronted with the obligations to promote development and strengthen the realization of human rights. Although originally centred around the European Commission, PCD has been increasingly been discussed by the Council and the European Parliament.

Already in 2005, the EU agreed to follow up on progress in PCD in twelve policy areas, namely trade, environment, climate change, security, agriculture, fisheries, social dimension of globalisation, employment and decent work, migration, research and innovation, information society, transport and energy. All these areas, according to the vision of policy coherence for development, should be aligned in order to multiply the development effect of policies, reducing tensions and improve the efficiency of EU efforts.²⁵⁰ In 2009 these 12 areas were clustered in five PCD challenges (1- Trade and finance; 2- Addressing climate change, 3- Ensuring global food security, 4- Making migration work for development, and 5- Strengthening the links and synergies between security and development in the context of a global peace building agenda).²⁵¹ In 2010 the Policy Coherence for Development Work Programme 2010-2013 was released with the aim to act as “a tool for all EU institutions and Member States, to guide their reflection and decision-making across the broad range of decisions that affect developing countries' opportunities, including development cooperation but going beyond it.”²⁵²

In June 2017, the European Union and its Member States signed a strategic blueprint outlining the future of European development policy, the “New European Consensus on Development” which provides a collective vision and plan of action to eradicate poverty and achieve sustainable development.²⁵³ At the centre of the new document there is the desire of the EU to align its development policy with the Sustainable Development Goals and the Agenda 2030. From the point of view of the right to food, the notion of PCD represents an interesting entry point because all the clusters have connections with the right to food. Thus, the attempt by the EU to create convergences between sectors that may be in strong tension, such as trade, finance and food security, and the fact that migratory policies, climate change and food security have to be aligned, opens spaces for political and legal engagement. What has been said before about subsidies,

²⁴⁹ European Union, Policy for Development, Policy Coherence Approach, https://ec.europa.eu/europeaid/policies/policy-coherence-development_en

²⁵⁰ See EUROPEAN COMMISSION, Communication COM(2005) 134 final - Accelerating progress towards attaining the Millennium Development Goals (MDGs) and related 2005 Conclusions of the Council and the Representatives of the Governments of the Member States Meeting within the Council (9036/05 DEVGEN 87 RELEX 235 ONU 55 FIN 151).

²⁵¹ See EUROPEAN COMMISSION, Communication COM(2009) 458 final - Policy Coherence for Development - Establishing the policy framework for a whole-of-the-Union approach and related 2009 Council conclusions on Policy Coherence for Development (PCD) 2974th EXTERNAL RELATIONS Council meeting Brussels, 17 November 2009.

²⁵² European Commission, Policy Coherence Development Work Programme 2010-2013, A twelve-point EU action plan in support of the Millennium Development Goals, SEC(2010) 421 final, 21.4.2010.

²⁵³ European Union, International cooperation and Development, The new European Consensus on Development – EU and Member States sign joint strategy to eradicate poverty, 07 June 2017, available from https://ec.europa.eu/europeaid/news-and-events/new-european-consensus-development-eu-and-member-states-sign-joint-strategy_en.

unilateral measures, embargoes, and the condition of migrants within and without Italy, clearly falls under the umbrella of PCD and inconsistencies should be challenged.

In Italy, PCD is a legal commitment since August 2014, when the new Law on Development Cooperation (Law n. 125/2014) entered into force. Article 2 of the new Law states that Italy shall endeavour to ensure that its own policies, including those not directly related to development cooperation, are coherent with the fundamentals and the objectives of the Law on development cooperation, therefore all policies should contribute to reaching common development goals and objectives. Moreover, the same Law foresees several coordination mechanisms in order to ensure the coherence of public policies with the national cooperation objectives.²⁵⁴

The Law established an Inter-ministerial Committee for Development Cooperation (CICS) with the aim of ensuring coordination of development policies and programs as well as coherence of domestic policies with the objectives and targets of development cooperation. The Committee is chaired by the President of the Council of Ministers and is composed by representatives of the Ministry of Foreign Affairs and International Cooperation, Interior, Defence, Finance, Economic Development, Agriculture, Environment, Infrastructure and Transport, Welfare, Health, Education. The Committee adopts a Three-year Strategic and Planning Document, that outlines the development cooperation strategy, priorities and actions (which has to be respected not only by the Ministry of Foreign Affairs and International Cooperation, but by all public stakeholders), and is then responsible for verifying the coherence of development cooperation activities and domestic policy making. The Law also establishes the National Council for Development Cooperation (composed by the main public and private, profit and non-profit stakeholders, including Ministries, local authorities (regions, provinces, municipalities), CSOs, universities, voluntary and philanthropic organizations, private companies, trade institutions). The Council is the main participatory tool for sharing proposals and ideas on issues related to development cooperation, mainly on the coherence and on the effectiveness of political decisions, strategies, plans and actions.

The Commission has monitored progress on PCD in the EU and its Member States in biennial EU Reports on Policy Coherence for Development since 2007. This happens through a questionnaire that countries have to fill and submit. The most recent report was published in August 2015.²⁵⁵ The report covers both cross-cutting and thematic issues and presents examples of progress on Policy Coherence for Development across different policy areas. One of the ways in which we can assess the way in which Italy has been dealing with PCD is through the questionnaire that it submitted in 2015. However, a stronger analysis would require a broader engagement of the coherence and implications of policies and actions that are not contained in the questionnaire and a qualitative assessment of the impact that the measures mentioned in the questioner had on the right to food of the target groups. A first look at the Italian responses to the questionnaire reveals that section C. dedicated to Food Security was left blank.²⁵⁶ However, some examples of PCD are directly related to food (security) and offers a snapshot of the way in which Italian cooperation is involved in strengthening agroecology.

²⁵⁴ Questionnaire for EU-PCD Report : Contributions from Member States, Italy, 2015, available from <https://ec.europa.eu/europeaid/node/100982>.

²⁵⁵ (SWD(2015) 159 final)

²⁵⁶ Questionnaire for EU-PCD Report, cited above n 253.

Among the projects, the document mentions that “the Italian Cooperation also funds NGOs involved in the implementation of several initiatives in Palestine and, among them, founded a Conference in March 2014 entitled ‘Agrobiodiversity in Palestine: Lessons Learned and challenges for the future’, which was an opportunity to share good practices and lessons learned about agrobiodiversity among experts, decisions makers and international stakeholders, to strengthen the coherence of the interventions in the food security sector and achieve sustainable development.” A follow-up assessment on the implications of the Conference and its ability to favour the sharing of existing good agricultural practices rather than the implementation of exogenous ones would be useful. From a PCD perspective, it would be also important to assess how the push in favour of agroecology in Palestine is coherently supported by the policies that the Italian government adopts vis-à-vis the presence of Israeli settlements in the Palestinian Occupied Territories and Occupation as a whole. From a right to food perspective, it would be important to assess if the Conference and the push for agroecology are also improving the condition of the right to food of the Palestinians.

Another example is that of the MoU between the Italian Ministry of Agricultural Food and Forestry Policies and the Egyptian Ministry of Agriculture and Land Reclamation (signed in January 2015) on cooperation in the field of Agriculture. The MoU appears to adopt a broad understanding of food security and focuses on multiple aspects that characterize a sustainable food system and the fight against poverty: sustainable agricultural production systems, preservation of agro-biodiversity, reduction of post-harvest losses, monitoring of climate changes, recycling of agricultural wastes, organic farming, job creation and rural development. The MoU includes collaborations between Research Centres, the Italian Council for Agricultural Research (*Consiglio per la Ricerca e Sperimentazione in Agricoltura – CRA*) and the Egyptian Agricultural Research Centre and Desert Research Centre, as active supporters and promoters of the cooperation among both countries. A follow up from the point of view of the right to food would be useful.

A more contentious point raised in the responses to the questionnaire is the role of Italy (through the Ministry of Environment) as chair of the Global Bioenergy Partnership (GBEP), hosted by FAO in Rome, a forum where around 70 governments, intergovernmental organizations and other partners work to find a consensus on some issues regarding sustainability of bioenergy. GBEP is actively working to advance bioenergy for sustainable development, climate change mitigation and food and energy security. GBEP has defined a set of voluntary, science-based indicators for bioenergy in order to inform policy-makers about the environmental, social and economic sustainability aspects of the bioenergy sector in their country and guide them towards policies that foster sustainable development. Given the criticalities and the risks that bioenergy has raised in the past (in particular with regards to land and conflict with food production), it would be important to enter into the details of the 2011 Global Bioenergy Partnership Sustainability Indicators for Bioenergy and their implementation.²⁵⁷ A preliminary observation of the Indicators shows the lack of any reference to the right to food and (also because of chronological reasons) to the FAO Tenure Guidelines.

Overall, PCD provides a useful scheme to systemically engage with areas of intervention that may easily be in conflict. This is particularly the case of trade and food security, which have long been in a contentious relationship, and the policies that are implemented in terms of climate change, because a non-sufficient engagement with the issue may result in a strong impact on migration, development

²⁵⁷http://www.globalbioenergy.org/fileadmin/user_upload/gbep/docs/Indicators/The_GBEP_Sustainability_Indicators_for_Bioenergy_FINAL.pdf

and food security. Because of the limited scope of this report, we cannot discuss the details of all other policies and actions that Italy has been implementing in the area of international cooperation and development. Similarly, we must consider that the Common Commercial Policy (i.e. international trade) is mainly of competence of the European Union. Overall, voices and experiences gathered from the actors involved on the ground talk about fluctuation and incoherence of Italian development cooperation from viewpoint of the right to food, mainly due to lack of transparency. In particular, there is a sense that Italy is slowly embracing the narrative of a 'stronger role for the large scale private sector' (rather than small-scale farming) and the idea of public-private partnerships as the best way to address development issues in third countries. Similarly, a PDC approach to the current migration policies (discussed above) shows that Italy is at the forefront in the promotion of the 'migration-development-security' nexus but is paying inadequate attention to right to food and to structural causes of migration, i.e. may be acting incoherently and inefficiently. The next subsections look at two initiatives that we consider having problematic implications on the full realization of the right to food in third countries: the Global Alliance for Food Security and Nutrition and the FAO Global Alliance for Climate Smart Agriculture.

3.b.1 The Global Alliance for Food Security and Nutrition

After the 2008 Food crisis, the G7 (former G8) met during the 2009 L'Aquila Summit and decided that the global food supply would become one of their stream of work, for which they pledged to disburse \$22 billion. In 2012, the G8 launched the New Alliance for Food Security and Nutrition, a development project aimed at feeding 10 food insecure countries in Africa. The project was highly controversial, in all its aspects. The framing of the issue was considered by many to be incorrect and based on wrong objectives. Firstly, the 10 countries that were selected were not the most insecure, but the most promising African economies. Secondly, the approach to development and food security was a modern spin on the 'green revolution' method – but this time by directly leveraging the private sector's money.

Taking the form of a Public-Private Partnership (PPP), the New Alliance's objectives are to secure an investment-friendly environment for private investors, in the hopes that those investments would trickle down to the local markets and fill the local plates. This of course never was the result, and early assessments of the New Alliance's impacts on local food security were negative.²⁵⁸ Although its goal is to achieve "sustained and inclusive agricultural growth in Africa" and "bring 50 million people out of poverty by 2022", no mention of the Right to Food appears in the New Alliance documents and the individual Agreements concluded by the States or by the action plan that they have been presented to describe how and who will be developing their agricultural production.

For many, The New Alliance for Food Security and Nutrition is an example of the problems that initiatives aimed at promoting food security may actually cause to recipient countries. Italy has agreed to pledge, although not using additional resources, 63 million dollars: in 2015 it had only disbursed 12, that is 19% of the pledge, highlighting a limited interest of Italian cooperation in this initiative, despite participating in three countries: Ethiopia, Senegal and Mozambique. In terms of volumes, the US has paid the largest amount (\$ 1.3 billion) and Italy has paid the lowest amount (\$ 12 million). On the whole, donors have provided significant funding to African countries to support

²⁵⁸SUN, SUN Report 2015 - Ghana, 2015, available at http://scalingupnutrition.org/wp-content/uploads/2015/10/SUN_Report2015_EN_Ghana.pdf.

political reforms in the agricultural sector, also demonstrating a commitment to respecting the timing of allocation as shown by the high rate of disbursement.

If we think at the New Alliance through the lenses of PCD, there are many limits that emerge with regard to the cooperation agreements concluded between countries (including those concluded by the Italian government). For example, there is no consideration on the need for an agro-ecological transition of production models;²⁵⁹ they remain absolutely vague on the definition of responsible investments; they encourage a sudden process of land titling that does not take into adequate account the risks associated with the creation of land rights markets, especially for poor small farmers;²⁶⁰ they promote the privatization of seeds; do not give adequate attention to the dimension of nutrition and the close relationship that exists between agricultural production, food and health in support of healthy and diversified diets. Finally, ActionAid estimated that the investments of the New Alliance put 1.8 million hectares of land at risk at land grabbing in Senegal, Tanzania, Nigeria and Malawi.²⁶¹

One of the investments realized under the New Alliance is that of the Swedish company, EcoEnergy, which has been awarded a 99-year license on 20.347 hectares of land to grow sugar cane in Tanzania. The project was supported by the African Development Bank (AfDB), the International Fund for Agriculture Development (IFAD) and the Swedish International Development Cooperation Agency (Sida).²⁶² The project area is located 70 kilometers north of the capital Dar Es Salaam, in the district of Bagamoyo. Because of this investment, 1,300 people were threatened to lose their land and 300 to lose their homes, while several hundred others would have suffered the same fate in the later stages of the investment. The people affected by the EcoEnergy project would have been mostly small farmers who produce corn, rice, cassava and fruit. With the concession of land to EcoEnergy, the Tanzanian government did not recognize the land use rights of local communities. The investment was eventually never realized (because of the bottom-up and international pressure on the Government and EcoEnergy, or, for someone else, because of the changed economic contingencies that made the company desist).

Not having realized its project, EcoEnergy triggered the bilateral investment agreement between Sweden and Tanzania and launched an investment arbitration against the Government (regulated by the International Centre for Settlement of Investment Disputes (ICSID) rules). This represents the first case of investment arbitration connected with a post-2008 large-scale agricultural investment and poses serious questions that should be addressed in the future. Although it is not clear the amount of money that EcoEnergy has asked in compensation, this would be in the order of the hundreds of million dollars. If the Government of Tanzania was condemned by the arbitral tribunal and decided to pay, it would have to divert significant resources from its budget to compensate a private investor for a project that had never seen the light. This would have a strong impact on the capacity of the Tanzanian government to deliver public services, including essential services and to guarantee the respect of the human rights of its people. In that case, should Sweden, as the government that signed the bilateral investment treaty underlying the claim be held responsible for a breach of its extraterritorial obligation to protect the human rights of the Tanzanian people? We believe that this link could be made and that similar (although less evident) connections could also be drawn with the members of the G7 that created the political, legal and economic framework for the EcoEnergy investment to take place.

²⁵⁹ European Parliament, The New Alliance for Food Security and Nutrition in Africa, Directorate-General For External Policies, Policy Department EP/EXPO/B/DEVE/2015/01 EN November, 2015.

²⁶⁰ ActionAid Italia, Tolleranza Zero al land grabbing . 4 azioni chiave per fermare l'accaparramento di terra da parte di governi e imprese, Maggio 2015.

²⁶¹ Ibidem, p.35.

²⁶² EcoEnergy, White Paper on the Bagamoyo EcoEnergy Project in Tanzania, available from http://www.ecoenergy.co.tz/fileadmin/user_upload/Ecoenergy_whitepaper.pdf.

The case of EcoEnergy shows some of the long-term implications of the New Alliance for Food Security and Nutrition. These have been clearly identified by several voices that strongly rejected the New Alliance,²⁶³ including that of the former UN Rapporteur for the Right to Food, Olivier De Schutter, who wrote a report for the European Parliament, denouncing the risks that the project bore and calling for a withdrawal from the Alliance.²⁶⁴ The EU Parliament upheld the findings.²⁶⁵ In February 2018, France announced its withdrawal from the New Alliance.²⁶⁶

The limits and criticalities of the New Alliance have reached the Italian Parliament, where both the Commission for Foreign and Community Affairs (3rd Commission) and the Commission for Productive Activities, Trade and Tourism (10th Commission) of the Italian Chamber of Deputies expressed, through two separate parliamentary resolutions, deep concern with reference to several of the most controversial aspects mentioned above. In particular, in the parliamentary resolution "On the acquisition of large-scale land" ("Sull'acquisizione di terreni su larga scala") issued by the two Commissions of the Chamber of Deputies stated that the Italian Government should commit to "consider the future terms of participation in the activities of the aforementioned New Alliance, in the light of the risks of land grabbing and the changed development framework with the adoption of the Agenda 2030 and, consequently, contribute to the adoption of guidelines on agricultural cooperation, continuing to support the direct investments of small farmers, women, and sustainable production, increasing the resources allocated to these projects."

Italy is still a participant of the New Alliance, in which he took part under pressure from the G7 governments.²⁶⁷ Even though the New Alliance is practically at a dead point today,²⁶⁸ the G7 rhetoric sparked a wave of PPPs that are extremely detrimental to the Right to Food and food democracy worldwide. It is opinion of the writers that Italy should adopt a coherent and right-based approach towards international cooperation and therefore openly distance itself from the New Alliance. In particular, given the historical characteristics of the Italian agricultural production system analysed in section 1, we believe that Italy can put itself forward as the promoter of another model of rural development and development cooperation for its partner countries in the Global South. If Italy is trying (with unclear results) to strengthen the internal role of small scale agriculture, food localism, farmers' market, urban agriculture, community-based food systems, sustainability and the creation

²⁶³ActionAid, "New Alliance for Food Security and Nutrition: A Turning Point?," accessed May 14, 2016, <http://www.actionaid.org/2015/12/new-alliance-food-security-and-nutrition-turning-point>; Nora McKeon, "The New Alliance for Food Security and Nutrition: A Coup for Corporate Capital" (Amsterdam: Transnational Institute (TNI), May 2014); Claire Provost, Liz Ford, and Mark Tran, "G8 New Alliance Condemned as New Wave of Colonialism in Africa," *The Guardian*, February 18, 2014, sec. Global development, <http://www.theguardian.com/global-development/2014/feb/18/g8-new-alliance-condemned-new-colonialism>; Wolfgang Obenland, *Corporate Influence through the G8 New Alliance for Food Security and Nutrition in Africa* (Aachen/Berlin/Bonn/New York: Bischöfliches Misereor, Brot für die Welt, Global Policy Forum, 2014); ACF France, CCFD-Terre Solidaire, and Oxfam, *Hunger, Just Another Business - How the G8's New Alliance Is Threatening Food Security in Africa*, 2014.

²⁶⁴Olivier De Schutter, "The New Alliance for Food Security and Nutrition in Africa" (Brussels: European Parliament's Committee on Development, November 16, 2015).

²⁶⁵Cécile Barbière, "European Parliament Slams G7 Food Project in Africa," *The Guardian*, June 8, 2016, sec. Global development, <https://www.theguardian.com/global-development/2016/jun/08/european-parliament-slams-g7-food-project-in-africa>.

²⁶⁶GlobalAgriculture.org, "France Withdraws from New Alliance for Food Security and Nutrition," *Weltagrarbericht*, accessed June 25, 2018, <http://www.globalagriculture.org/https://www.globalagriculture.org/whats-new/news/en/33010.html>.

²⁶⁷Nora McKeon, *Right to Food in Italy: Food security Policy and development cooperation* (Interview).

²⁶⁸ActionAid, "The Collapse of the New Alliance," ActionAid USA, accessed June 25, 2018, <https://www.actionaidusa.org/blog/new-alliance-threat-food-security/>.

of food processing systems that satisfy the need and right of people, the same should happen internationally.

3.b.2– Financing the Global Alliance for Climate Smart Agriculture

One of the initiatives advanced by a coordinated effort of countries is the Global Alliance for Climate Smart Agriculture. "Climate Smart Agriculture" (CSA) refers to an approach to agriculture that is widely accepted both among the agribusiness companies responsible that thrive out of the industrial model of agriculture and its high emissions and numerous agencies and multilateral development banks. CSA is a catchy slogan that proposes shared objectives such as, for example, the promotion of practices that integrate the sustainable management of soil and water, the conservation of genetic varieties of plants and the reduction of the use of pesticides.

Italy has joined the international coalition in 2014, when the Ministry of Environment signed a memorandum of understanding with the FAO to support the Global Alliance dedicated to Climate Smart Agriculture (GACSA). Italy is actively engaged in the study and implementation of Climate Smart Agriculture. According to a declaration given in January 2018 by Federica Matteoli, project Manager at FAO Climate Change and Environment Division, "Italy is currently at the forefront of promoting research and developing scientifically supported policies related to climate change adaptation and mitigation measures, promoting the application of the principles of CSA to locally building resilience throughout the food system." Italy, Matteoli concluded, "has promoted conservation agriculture, no tillage practices, climate-smart production systems and knowledge transfer which have collectively been called the Italian Blue Agriculture."²⁶⁹

The role of Italy is particularly visible in the production and dissemination of information around the GASCA. Under the MoU, Italy pledged a total of 2 million dollars for projects to be completed by 2017. A considerable level of attention was given to the possible preparation of pre-feasibility studies aimed at building design opportunities that respect the CSA approach, with particular reference to some countries including: Ethiopia, Botswana, Ecuador, Kyrgyzstan and Tajikistan.²⁷⁰ In addition, the Ministry of Environment, Land and Sea, through FAO's International Alliance on Climate Smart Agriculture project funded a webinar and a brief on 'Enabling Advisory Services for Climate-Smart Agriculture' whose main message was that "Implementing Climate-Smart Agriculture (CSA) practices requires changes in the behaviour and strategy of millions of farmers. Rural Advisory Services (RAS) can play a crucial role in transitioning to CSA and help build resilient agrifood systems if a conducive environment for their effective functioning is created."²⁷¹

The ideation, adoption and diffusion of Climate Smart Agriculture has been strongly opposed by small-scale farmers organizations all over the world, and in particular by La Via Campesina. One of the main concerns is that CSA uses " 'sustainable intensification' (i.e. increasing productivity without

²⁶⁹ The declarations are contained in an article by Busani Bafana, Policy Support Gap for 'Climate-Smart-Agriculture, Inter Press Service, 9 January 2018, available from <http://www.ipsnews.net/2018/01/policy-support-gap-climate-smart-agriculture/>.

²⁷⁰ Ministero dell'Ambiente e della Tutela del Territorio e del Mare, "La Global Alliance on Climate Smart Agriculture (GACSA)," accessed June 17, 2018, <http://www.minambiente.it/pagina/la-global-alliance-climate-smart-agriculture-gacsa>.

²⁷¹ GACSA, FAO, Enabling advisory services for climate-smart agriculture Key elements to foster farmers' adoption of CSA practices, Policy Brief, 2013, available from <http://www.fao.org/3/a-bs940e.pdf>

compromising the current and future use of resources) to replace the peasant and small-scale agriculture model with one of an industrial and conventional type which expands its markets by imposing patented "climate ready" seeds and their agricultural technologies, shielded by the powerful rhetoric of sustainability, to consolidate business as usual.²⁷² This appears clear, for example, when we look at the content of the Report that was financed by the Italian Ministry and the aim to replace existing practices as they were the problem when it comes to climate change adaptation and mitigation. As stated by La Via Campesina, 'Climate smart agriculture begins with deception by not making a differentiation between the negative effects of industrialized agriculture and the real solutions offered by traditional sustainable peasant agriculture which has contributed to alleviating poverty, hunger and remediation of climate change. To the contrary, climate smart agriculture equates and equally blames all forms of agricultural production for the negative effects that in fact only industrialized agricultural and food production has caused, and fails to recognize and accept the differences between "agri-cultures" and agricultural production methods. The agricultural activity that has most contributed to greenhouse gas emissions has been industrial agriculture, not smallholder sustainable agriculture."²⁷³

Beside the more theoretical issues, Climate Smart Agriculture poses also material concerns from the point of view of the right to food, extraterritorial obligations and policy coherence for development. According to La Via Campesina 'Climate smart agriculture will lead to further consolidation of land, pushing peasant and family farmers towards World Bank Projects, the Food and Agriculture Organization (FAO) and other institutions, creating dependency on so-called new technologies through their complete packages that include prescriptions of "climate smart varieties", inputs, and credit, while ignoring traditional tried and true adaptive farming techniques and stewardship of seed varieties in practice by farmers."²⁷⁴ If these concerns were confirmed, the investments and the support that Italy is giving to CSA would be in contrast with some of the basic elements that compose the vision of the right to food that we have adopted in this report, but also with other policies that the Italian government and Italian cooperation are promoting in various geographies. If decisions and actions linked to the Italian State must be coherent with an idea of sustainable development and in line with the obligation to protect, respect and fulfil the realization of a food system based on sustainable production, sustainable consumption and fight against poverty, the participation in the Global Alliance on Climate Smart Agriculture should be the object of attention. For sure, the premises and consequences of the actions should be scrutinized through the lenses of the right to food and of the coherence of both national and international actions.

3.c Italy, ETOs and the right to food

"Despite the universality of human rights, many States still interpret their human rights obligations as being applicable only within their own borders. This attempt to limit obligations territorially has led to gaps in human rights protection in various international political processes and a lack of

²⁷² See, e.g. The African Development Bank, Climate-Smart Agriculture Programme for Food Security, Adaptation and Mitigation in Africa. Synergies and partnership for implementation, GCSA Annual Forum 2017, 14 December 2017, available from <http://www.fao.org/3/a-bu458e.pdf>

²⁷³ La Via Campesina, UN-masking Climate Smart Agriculture, Press Release, 23 September 2014.

²⁷⁴ Ibidem.

adequate regulation for the protection of human rights.²⁷⁵ Efforts that are conducted nationally, especially in countries of the Global North like Italy, may not be capable of grasping with the interconnected nature of the global economy and with the extraterritorial impact of decisions made by Italian authorities or actions made by actors that are under the control of the Italian authority. Focusing on the right to food of people living within the Italian frontiers without worrying about the conditions of people whose rights are affected by actors directly connected with Italy, would thus be legally inadequate and insufficient. In addition, because Italy is one of the main destinations for migrations that cross the Mediterranean and because the recent governments have been internationalizing the Italian migratory policy and extended its territorial reach, a nationalistic approach to the right to food and migration would also be politically wrong.

It is increasingly recognized that States' action transcends their borders, including by the European Union.²⁷⁶ It is equally accepted that States (and local authorities that are emanations of the States) have the obligation to protect, respect and fulfil human rights extraterritorially.²⁷⁷ Finally, there is growing consensus around the fact that States' obligations extend to "the interconnected and multi-layered nature of global economy is such that "defining the parameters of extraterritorial obligations as a legal concept has become ever more important."²⁷⁸ In order to provide some essential elements to understand the connection between the right to food and the extraterritorial obligations, we have decided to rely on the Maastricht Principles, "an international expert opinion, restating human rights law on ETOs" that were agreed by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs of the United Nations Human Rights Council.²⁷⁹ The Maastricht Principles do not establish new international law but identify already existing extraterritorial obligations on the basis of the current system of international public law.

In light of the limited space, we will focus on three elements: a) what are extraterritorial obligations (as a matter of fact, not everything that happens outside of the Italian territory can be considered an extraterritorial obligation of Italy); b) what is the content of these obligations; c) what is the link between extraterritorial obligations (ETOs) and the right to food. We will then offer two concrete examples to clarify our point.

3.c.a What are ETOs?

The Maastricht Principle are based on the assumption that each state has the obligation to realize economic, social and cultural rights for all persons within its territory, but also the obligations to respect, protect and fulfil the same rights of people who do not reside within the national jurisdiction. There are two ways in which the ETOs may surge: because an act and omission of a State, within or beyond its territory, has (or may have) an effects on the enjoyment of human rights outside of the State's territory (Principle 8.a) or because of obligations of global character that are set out in the Charter of the United Nations and other human rights instruments and that require to

²⁷⁵ Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Maastricht, ETO Consortium, 2013.

²⁷⁶ Policy Department DG External Policies, The Extraterritorial Effects of Legislation and Policies in the EU and US, EXPO/B/DEVE/FWC/2009-01/Lot3/03, May 2012.

²⁷⁷ See F. Coomans and M.T. Kamminga (eds) *Extraterritorial Application of Human Rights*, 2004; S.I. Skogly, *Beyond National Borders: States' Human rights Obligations in International Cooperation*, 2006; Hugh King, *The Extraterritorial Human Rights Obligations of States*, 9 *Human Right Law Review* 4, 2009.

²⁷⁸ Claire Debucquois and Kaitlin Cordes, *Extraterritorial Obligations of States and the Right to Food*, *Encyclopaedia of Food and agricultural Ethics*, Springer (2014)

²⁷⁹ Maastricht Principles, supra n 274.

take action to realize human rights universally (Principle 8.b). Following on Principles 8.a and 9, we can conclude that States (and public authorities) have the obligation to protect, respect and fulfil the right to food not only in those situations where they exercise authority or have effective control (including occupied land), but also in situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory. A State that does not take into consideration a foreseeable human rights violation that is consequence of its acts or omissions would be in breach of its extraterritorial obligations.

3.c.b Respect, Protect and Fulfil?

The Maastricht Principles are based on the tripartite construction of human rights obligations as the obligation to protect, respect and fulfil.

- Respect: Principle 20 and 21 refer to the obligation to protect and clearly affirm that states must refrain from conducts that directly or indirectly affect human rights. Avoiding direct interference is interpreted as refraining from any “conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories.” More interestingly, indirect interference concerns both the case of impairing the ability of another State to comply with its obligations and the case of aiding, assisting, directing, controlling or coercing another State to breach that State’s obligations.

- Protect: Principles 23-27 unpack the obligation to protect human rights extraterritorially and refer to the obligations that state have to intervene in order to avoid that non-State actors which they are in position to regulate (private individuals and organisations, and transnational corporations and other business enterprises) nullify or impair the enjoyment of economic, social and cultural rights (Principle 24). The central element of this provision is represented by the idea of ‘being in the position to regulate’, a notion that is discussed by Principle 25 under the rubric ‘bases for protection’ with the aim to identify which connections between States and non-State actors are such to trigger the obligation to intervene to prevent or to sanction in case of violations. According to Principle 25, States must adopt and enforce measures to protect economic, social and cultural rights when the harm or threat of harm originates or occurs on its territory or where the non-State actor has the nationality of the State concerned. When the non-State actor is a corporation, the ETOs state that the obligation of the State arises any time the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned, or where there is a reasonable link between the State concerned and the conduct it seeks to regulate, including where relevant aspects of a non-State actor’s activities are carried out in that State’s territory. The definition contained in the Principle opens to a series of interesting considerations with regards to the actions committed abroad by Italian corporations and their subsidiaries or by corporations that have a reasonable link with the Italian territory, despite the nationality of the corporation. The existence of a direct responsibility of the home state in cases of violations committed abroad by private non-State actors represents one of the most contentious areas of international public law. The content of the Maastricht Principle suggests, however, that efforts in that direction may not be completely vane. One of the case studies below focuses on this point.

- Fulfil: the third prong of the ETOs, the obligation to fulfil, may be associated with the idea of policy coherence for development, i.e. with the idea that countries have the obligation to cooperate for the universal realization of human rights but also to “create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation” (Principle 29). Whenever the State operates in the international space, it should not only be aware of its obligations and avoid affecting human rights but also take concrete steps in the direction of their universal fulfilment. A decision that does not breach human rights but does not go as far as supporting their full implementation, may be considered in breach of the obligation to fulfil.

3.c.c. What is the link between ETOs and the right to food?

In light of the content of the ETOs, there is no doubt that several connections can be found between the existence of extraterritorial obligations of states and the right to food. First of all, States must ensure that their policies and practices do not lead to violations of the right to food, either directly or indirectly, for people living in other countries, as well as their own citizens. A clear evidence of the existence of the obligation to respect the right to food is contained in general comment No. 12, which notes that “food should never be used as an instrument of political and economic pressure”.²⁸⁰

Concretely speaking, this means that “States should [...] refrain from implementing food embargoes or similar measures that endanger conditions for food production and water supply, and access to goods and services essential for securing the right to food” but also that States should not act in any way that aids, assists, directs, controls or coerces another State to breach that State’s obligations (see Section 3.a.2 below and the second case study). Similarly, States should not give support to another State that uses food as a political tool, or blockades food deliveries for political reasons. Moreover, food aid should be provided in a non-discriminatory way and could not benefit only certain groups. Finally, subsidies and decisions around market access (including the Common Agricultural Policy, unilateral trade policies, bilateral and multilateral trade agreements) should not endanger the livelihood of people in third countries.²⁸¹

When it comes to the obligation to protect, the obligation to protect the right to food extraterritorially would mainly concern the obligation of the State to avoid that national non-State actor nullify or impair the right to food of people. This could be the case of large-scale land investments (discussed below), mining operations, environmental contamination, but also the pressure exercised on farmers by means of superior bargaining power, strict standards of production, etc. It may also concern the actions of NGOs and other non-business organizations who are based in one country but engage in activities in third states. In all these cases, it could be said that the action of an Italian non-State actor has a negative impact on the right to food of people

²⁸⁰ Committee on Economic, Social and Cultural Rights, general comments No. 12, para. 37, and No. 15 (2002) on the right to water, para. 32. See Ziegler et al., *The Fight for the Right to Food* (Basingstoke, UK: Palgrave Macmillan, 2011), p. 81.

²⁸¹ This has been confirmed in research carried out by Wouter Vandenhoele, who finds that ‘subsidies – both direct ones and cross-subsidies – for structural overproduction of sugar, which is then exported to the South at dumping prices to the detriment of local farmers, are in violation of the third state obligation to respect the right to an adequate standard of living’. See W. Vandenhoele, ‘Third State Obligations under the ICESCR: A Case Study of EU Sugar Policy’, *Nord. J. Int’l L.* 76 (2007), 73.

living abroad and that the Italian state has the obligation to take concrete steps to prevent it or redress the damage. Access to justice,²⁸² the recognition of jurisdiction over violations committed by national abroad and the implementation of voluntary commitments like the CFS Tenure Guidelines or the OECD codes of conduct for multinational enterprises are steps in this direction.²⁸³ The Transnational Corporate Accountability and Human Rights Treaty, if properly implemented, could be also seen as a representation of States' engagement with their obligation to protect the human rights of people living in third countries by regulating, prosecuting and sanctioning national corporate actors engaging in activities abroad. Signing such Treaty and ratifying it would thus be in line with the ETOs of Italy.²⁸⁴

Finally, General Comment No. 12, paras 36 and 37 establish that governments have also a duty to support and cooperate in ensuring the fulfilment of the right to food in poorer countries, while para 38 states that developing States that do not possess the necessary resources for the full realization of the right to food are obliged to actively seek international assistance, and wealthier States have a responsibility to help. Moreover, the FAO Right to Food Guidelines request that assistance be provided by States in situations of emergency or widespread famine (Section III, International Measures, Actions and Commitments).²⁸⁵

3.c.d Large-Scale Investments in Land, internationalization of Italian food production and ETOs

An area where we believe the link between the Italian extraterritorial obligations to respect, protect and fulfil the right to food should be explored is that of large-scale investments in land realized by Italian corporations or with the support of Italian finances. A premise should be that Italy voted in favour of the FAO Voluntary Guidelines on Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security and that Italy is also part of the OECD and has implemented the Guidelines with the establishment of the National Contact Point.²⁸⁶ Although both instrument are of soft law, the subscription of the Tenure Guidelines can be interpreted as Italy's commitment to recognize the centrality of land to development by promoting secure tenure rights and equitable access to land, fisheries and forests and contains clear indications on how to improve tenure governance. Similarly, the creation of the National Contact Point represents a step towards a broader and easier access to justice (although on a voluntary basis and not-binding) for people who are affected by the action of Italian companies operating abroad. Furthermore, the way in which Italy is negotiating at the international level and structuring its international aid (See Section 3.b below) provide extra evidence to discuss whether the country is respecting its obligation to fulfil the right to food.

However, the possible breaches of the obligations to respect and protect are what we consider more important. As discussed before, the State must respect the right to food by ensuring that its policies and practices do not lead to violations, either directly or indirectly, of the rights of people living in

²⁸² Human Rights Council, Report of the Special Rapporteur on the right to food, Hilal Elver, Access to justice and the right to food: the way forward, A/HRC/28/65, 12 January 2014.

²⁸³ OECD Guidelines for Multinational Enterprises, 2008.

²⁸⁴ Transnational Corporate Accountability and Human Rights Treaty; available at https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/LegallyBindingInstrumentTNCs_OBEs.pdf

²⁸⁵ FAO, 2004 FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, Adopted by the 127th Session of the FAO Council November 2004 available from <http://www.fao.org/3/a-y7937e.pdf>

²⁸⁶ National Contact Point for the diffusion of the OECD Guidelines on Corporate Social Responsibility, <http://pcnitalia.sviluppoeconomico.gov.it/en>

other countries (as well as their own citizens). Although the Special Rapporteur on the Right to Food has offered an interpretation of this obligation from the point of view of embargos and sanctions,²⁸⁷ we believe that this principle could also be used to refer to the investment of public resources to support projects (private or public) that determine a violation of the right to food. With regards to the obligation to protect, the Maastricht Principles and academic literature agree in identifying the obligation of the state to avoid that national non-State actor nullify or impair the right to food of people: this is translated both in terms of duty to control and guarantee access to justice to victims of the violations, but also, connected to the duty to respect, the obligation not to support non-State actors' commission of violations of the right to food.

The introduction of an ETO perspective offers the possibility to look at large-scale investments in land differently. If the traditional attitude in case of violations of human rights would be that of challenging the operations of the corporations operating on the ground, the ETO framework gives the opportunity to question the role of State and other State actors in facilitating the investment, making it possible or not intervening to avoid foreseeable violations of the right. When we look at investments and projects realized outside of the Italian jurisdiction by Italian companies (their subsidiaries or companies with a significant connection with Italy) we should thus enquire on the role of the State behind it. Few examples concerning jatropha plantations help clarifying the picture:

- In 2013 Cassa Depositi e Prestiti S.p.A., a joint-stock company under public control whose majority shareholder is the Italian Ministry of Economy and Finance,²⁸⁸ allocated 25 Mn EUR to an Italian corporation for the development of their international activities, including the development of jatropha plantations in Ghana and Mozambique . On 15 July 2013, ARTĒA (*Agenzia Regionale Toscana Erogazioni Agricoltura*, Regional Agency of the Tuscany Region for subsidies to the agricultural sector) awarded 276,272.50 EUR to a company focused on the developing of new technologies for processing jatropha seeds.²⁸⁹
- In 2012, a company investing in jatropha oil production was supported by the Italian Cooperation in Ghana, an entity linked to the Italian Ministry of Foreign Affairs, which financed with favourable credit terms in order to buy Italian machinery, in particular for the squeezing out (of jatropha seeds) obtained from a plantation of 540 ha.²⁹⁰
- In March 2010, Sace (a joint-stock company wholly owned by *Cassa depositi e prestiti*, offers a wide range of insurance and financial products: export credit, investment protection, financial guarantees, surety bonds and factoring) awarded a guarantee for 15 Mn EUR to a company which aimed to obtain an anticipation of green certificates from the Italian Energy Manager Company for renewable energy produced in the Fri-El biomass plant located in Acerra (Naples).²⁹¹ During 2012 the company used palm oil for 90.44 Mn EUR mainly from an Indonesian supplier which has been repeatedly accused of land grabbing and deforestation in Indonesia and Liberia.²⁹²

²⁸⁷ Human Rights Council, see above n 282.

²⁸⁸ Cassa Depositi e Prestiti, Company Info, available at <https://en.cdp.it/about-us/company-info/company-info.kl>

²⁸⁹ ARTĒA, Agenzia Regionale Toscana Erogazioni Agricoltura, Settore Fondi Strutturali e attuazione programmi regionali in materia di sviluppo economico, Decreto n. 1368 del 15/07/2013, 15 July 2013

²⁹⁰ Cerved (Italian Companies Register), Futuris Spa, annual report at 31 December 2012

²⁹¹ Sace, Sace con Fri-El Green Power per la più grande emissione preventiva di certificati verdi, press release on 11 March 2010

²⁹² Greenpeace, Greenpeace welcomes Golden Agri-Resources progress towards a 'no deforestation footprint' for palm oil, press release, 6 June 2012

- In September 2013, the peasants of the village of Cabiri in the municipalities of Icolo and Bengo (Province of Luanda, Angola), protested against the Quinimha agricultural project accusing an Israeli company of usurping Angolan land.²⁹³ Three Italian companies (New Holland - Fiat Group, agricultural machinery -, Ideal Plastic - based in Brescia, plastic pipes for irrigation- and Tecnidro -based in Genua, water engineering) had supplied their products thanks to the support of Sace, the Italian financial guarantee company.

These examples represent a limited part of the large-scale agricultural projects that were implemented by Italian companies or that were realized thanks to the provision of material, equipment and know-how by Italian companies. They are particularly interesting because they all saw the participation of the Italian State, whether with direct financial support or through the operations of publicly owned companies. If violations of the right to food were ever associated with these projects, an ETOs perspective would offer the opportunity to question the responsibilities of the country and to potentially denounce that the active participation in these projects represents (if the violation of human rights was foreseeable) a breach of its international obligations (See 3.a.3 below).

3.c.2 *Impact of Italian migration policy outside its jurisdiction*

On February 2, 2017, the Italian government signed a Memorandum of Understanding (MoU) with the Libyan government and agreed that Italy would work with Libya's military and border control forces "to stem the influx of illegal migrants", thereby preventing migrants – as well as refugees – from reaching Europe.²⁹⁴ The Italian strategy was part of a broader European approach, and indeed was endorsed the very next day by European leaders in the 'Malta Declaration'. The MoU contains clear indications of the way in which the Italian government is cooperating with Libya by providing support and finance both development programmes and the technical and technological means for the fight against irregular migration (Article 1). In particular, Article 2 refers to Italy's role in financing the local reception centres and their completion 'in compliance with the relevant provisions', supplying medicines and necessary equipment to meet the health needs of the migrants detained there, training of Libyan personnel working in such centres with a special focus on their ability to deal with clandestine immigration and human trafficking; supporting international organisations operating in the migration field in Libya; and investing in development programmes in the region, particularly in projects for job creation.

Since the MoU, the Italian government and the EU have provided the Libyan Coast Guard with boats, training and other assistance to patrol the sea and pull back refugees and migrants desperately trying to sail to Europe. In 2017, about 20,000 people were intercepted by the Libyan Coast Guard and taken back to Libya's 'hot-spots'. In the aftermath of the MoU, programmes for the 'assisted voluntary return' of migrants stranded in Libya have been expanded: 19,370 people returned to

²⁹³ Canal SOS Habitat Angola, Cabiri: Tahal-Angola continuar a usurpar terra, Youtube video: <http://www.youtube.com/watch?v=JXWAC9-Tc4I>

²⁹⁴ Odysseus Network, Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf

their country of origin in 2017. Smaller pilot projects for the resettlement of a few hundred refugees to France and Italy have also been successfully implemented.²⁹⁵

As Anja Palm from the Istituto Affari Internazionali wrote in 2017, Cooperation with Libya on migration and border control is not a new policy choice for Italy: during the 2000s numerous agreements focused on curbing migratory flows and enhancing readmission were concluded with the then Gaddafi regime.²⁹⁶ However, the partnership had been suspended in 2012 as a result of both the collapse of the Libyan government and Italy had been condemned by the European Court of Human Rights for violating the principle of non-refoulement (intercepting migrants in the high sea and taking them or escorting them back to the country where they had left) and the prohibition of collective expulsions.²⁹⁷ Rather than what was happening in Libya, the policy had thus been challenged because of the actions that Italy had put in place in the high sea and within its own territory.

An ETO approach to the 2017 MoU would look things differently and would try to highlight human rights responsibilities of Italy for aiding, assisting, directing, controlling or coercing Libya's breach of its human rights obligations. An ETO approach to the MoU and the right to food would thus look at the condition of the right to food of the migrants who are kept in hot-spots in Libya and involved in 'assisted voluntary return' programs. An ETO approach would look at the 'reception centres' that are mentioned in the MoU and that Italy has assumed the obligation to finance and whose personnel it is training, to determine whether the rights of the people who are kept there are respected, protected and fulfilled. At the moment, only few data and accounts are available. Some of them report of physical abuses, tortures and – more interestingly for this report – deprivation of food and water.²⁹⁸ According to Doctors without Borders, the 800 migrants who are kept in the camp of Zuwara have spent months with little or no water and food.²⁹⁹ In the absence of stronger evidence, it cannot be said whether violations of the right to food of migrants are happening in Libya with the support of Italian finances and personnel. If this was the case, we believe that the direct link between the reception centres and the Italian government, Italian public authorities, and the MoU signed by Italy would offer a strong opportunity to raise an ETO case.

3.c.3 Remedies for breaches of ETOs

Once the breach of an ETO is established, the Maastricht Principles require Italy to provide effective remedies and reparation. This means, first of all, that "States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where

²⁹⁵ Amnesty International, A year after Italy-Libya migration deal, time to release thousands trapped in misery, 1 February 2018, available from <https://www.amnesty.org/en/latest/news/2018/02/a-year-after-italy-libya-migration-deal-time-to-release-thousands-trapped-in-misery/>

²⁹⁶ Anja Palm, The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?, 2 October 2017, EU migration law blog, available from <http://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>

²⁹⁷ European Court of Human Rights, Hirsi Jamaa and Others v. Italy (Application no. 27765/09), Judgment, 23 February 2012, <http://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509>.

²⁹⁸ Save the Children, Le terribili condizioni di vita per i migranti in Libia, available at <https://www.savethechildren.it/blog-notizie/le-terribili-condizioni-di-vita-i-migranti-libia>

²⁹⁹ Repubblica, Libia, in condizioni disumane 800 migranti sotto trattenuti nel centro di detenzione di Zuwara, 4 maggio 2018

necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim” (Principle 37). In terms of effectiveness, the Principles consider that “Remedies, to be effective, must be capable of leading to a prompt, thorough and impartial investigation; cessation of the violation if it is ongoing; and adequate reparation, including, as necessary, restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. To avoid irreparable harm, interim measures must be available, and States must respect the indication of interim measures by a competent judicial or quasi-judicial body. Victims have the right to truth about the facts and circumstances surrounding the violations, which should also be disclosed to the public, provided that it causes no further harm to the victim” (Para 38).

In addition, an ETO approach to large-scale investments and the condition of migrants who are kept away from Italy because of bilateral conventions concluded with countries of origin, may also be transformed into a complain before the European Court of Human Rights (ECtHR). The possibility to hold States accountable before the ECtHR for actions committed outside of their jurisdiction has been at the centre of numerous cases and has not found a clear answer. The jurisprudence of the Court vaguely recognised that “acts of the Contracting States [...] producing effects [...] outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1” (obligation to respect human rights).³⁰⁰ Outside of the context of military operations and direct control over a territory, the Court has never applied it as a standalone basis to establish that actions occurring extraterritorially fall under the jurisdiction of the State and therefore these can be the object of an action led against the State. Accountability in such situations stems from the fact that Article 1 cannot be interpreted so as to allow a State Party to perpetrate violations of the Convention on the territory of another State which it would not be permitted to perpetrate on its own territory.³⁰¹ The example of the Inter-American Court of Human Rights offers an alternative approach that would clarify the existing doubts and expand the possibility to obtain redress for States’ breaches of human rights. In an advisory Opinion given in 2017, the Court accepted the existence of its jurisdiction “when the State of origin exercises effective control over the activities carried out that caused the harm and consequent violation of human rights” (para. 104(h)). In addition to jurisdiction based on effective control over territory/persons, the Court recognized its authority to adjudicate where there is “causal” nexus between conducts performed in the territory of the State and a human rights violation occurring abroad (paras. 95, 101-102).³⁰² This is, we could say, the recognition that ETOs exist and have judicial teeth. The role of law in supporting the protection, respect and fulfilment of the right to food could thus go beyond the current imaginary.

³⁰⁰ Antal Berkes, A New Extraterritorial Jurisdictional Link recognised by the IACtHR, EJIL Talk, 28 March 2018, available from <https://www.ejiltalk.org/a-new-extraterritorial-jurisdictional-link-recognised-by-the-iacthr/comment-page-1/>.

³⁰¹ European Court of Human Rights, Mohamed Ben El Mahi and Others v. Denmark, 11 December 2006, https://menneskeret.dk/sites/menneskeret.dk/files/2006-12-11_5853.06_ben_el_mahi_and_others_v_denmark_0.pdf.

³⁰² I/A Court H.R. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23.

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