Submission to the UN Special Rapporteur on Human Rights and the Environment on *Healthy and Sustainable Food: Reducing the Environmental Impacts of the Global Food System on Human Rights*

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This submission aims at providing inputs that may contribute to the drafting of a thematic report on human rights obligations related to the adverse environmental impacts of the global food system, especially focusing on human rights obligations that applies to the activity of agribusiness, drawing from soft-law instruments such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multi-national enterprises (OECD Guidelines).

It is well-known that, in the last decades, the growing industrialization of global food production had adverse impacts on the environment and related human rights protected at regional and universal level, e.g. in the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR). Still, negative effects of global food system on environment mainly lies at the agricultural stage, rather than in subsequent phases of the production cycle (OECD Report, *Making better policies for food systems*, 2021, para. 1.4). The use of pesticides, agrochemicals and other toxic substances, both for plantations and for machineries, the prevailing use of monocultures and consequent loss of biodiversity and soil fertility, as well as cultural heritage, water scarcity and bad quality, GHG emissions and consequent climate change impacts, are only some of the main sources of human rights adverse impacts related to the global food system. The range of environmental impacts of food production is however wider (Hannah Ritchie, Max Roser, *Environmental impacts of food production*, 2020, available at *OurWorldInData.org*, last accessed 28th April 2021) and heavily impacting on global environmental concerns: according to recalled data, agri-food system nearly covers one third of global GHG emissions.

Furthermore, the recent pandemic made it clear that spillovers of viruses and consequent diseases spreading from wildlife to humans is triggered by human activities in the intensive food production and especially the agricultural or livestock farming expansions, causing disruption of forests and wild areas and commodification of wild animals. Similarly, antimicrobial resistance is often driven by intensive livestock farming, which not only is directly causing health issues in human beings, but even indirectly by polluting soil and waters (see *ex multis*, Volpato et al, *Baby pangolins on my plate: possible lessons to learn from the Covid-19 pandemic*, in Journal of Ethnobiology and Ethnomedicine, 2020).

The relationship between environmental adverse impact of business activities and human rights violations (**question no. 1**) has been extensively recognized before regional human rights courts, especially in relation to the right to life and the right to privacy, home and family life (see Inter-American Court of Human Rights, *Advisory opinion on the environment and human rights* OC-23/17 of November 15, 2017; European Court of Human Rights, *ex multis*, in cases *Cordella et al v. Italy*, 24 January 2019; *Fadeyeva v. Russia*, 9 June 2005; *Budayeva v. Russia*, 20 March 2008; *Tatar v. Romania*, 27 January 2009; *Oneryildiz v. Turkey*, 30 November 2004; African Commission on Human and Peoples’ Rights, *SERAC et al v. Nigeria*, Communication no. 155/96, 27 October 2001). Human rights monitoring bodies have recently expressly addressed impacts of agricultural activities specifically (see Communication no. 2751/2016 and the adoption of view from the Committee under article 5.4 of the Optional Protocol on exposure of farmers to agrochemical dispersed by extensive cultivation of genetically modified soybeans, UN Doc. CCPR/C/126/D/2751/2016, 20 September 2019) on the right to life (art. 6 ICCPR), recognizing that the use of toxic agrochemicals has impaired the right to life of the complainants through contamination of rivers used for fishing, drinking water, fruit trees, crops and farm animals due to large-scale fumigation (*ibid*., par. 7.5); while the right to a life with dignity and the right to adequate standard of living and the right to food are usually implied in recognition of a violation of the right to life, the same activities have been recognized as impairing the right to privacy, family life and home (art. 17 ICCPR).

Due to the relative scarcity of specific food production-related claims before international human rights courts, the praxis of non-judicial bodies, such as National Contact Points established under the OECD Guidelines, is particularly relevant in shedding lights of human rights impacts of environmental degradation due to agribusiness. The following are some of the relevant cases recently brought before National Contact Points:

* *Nitta Gelatin India Limited Action Council and Jananeethi v. Nitta Gelatin Inc. and Nitta Gelatin India Limited*, specific instance of 22 December 2020, OECD NCP Japan: complainants claim severe pollution of water and soil caused by the Indian branch of the multinational Nitta Gelatin INC, producing gelatin for pharmaceutical and food applications and other products for agribusiness. The instants claim the absence of efficient waste management, causing increasing health issues on the surrounding community, pollution of the local Chalakudy river used for drinking, bathing and agriculture, contamination of wells and loss of agricultural lands.
* *Public Eye et al v. Syngenta AG*, specific instance of 17 September 2020, OECD NCP Switzerland: complainants claim health related issues due to the sale and use of hazardous pesticides causing poisoning of hundreds of Indian farmers in 2017, reporting temporary blindness, unconsciousness among other symptoms. Economic and social impacts of the agribusiness were also raised, as well as women rights concerns.
* *KTNC Watch et al v. POSCO International et al*, specific instance of 12 December 2019, OECD NCP Korea: complainants claim that the activity of palm oil plantation run by POSCO International is causing deforestation and loss of biodiversity, violating human rights of indigenous people in Papua together with the right to water due to pollution of the local Bian River.
* *Millieudefensie Friends of the Earth Netherlands et al v. ING,*19 July 2019, OECD NCP Netherlands: complainants claim that the activity of the Dutch bank is directly linked to environmental impacts of palm oil sector ending in deforestation and loss of biodiversity, especially in relation to plantations in Indonesia.
* *Jamaa Resources Initiatives v. a US Company’s Kenian subsidiary*, OECD NPC United States of America, 18 October 2016: complainants claimed that the operations of the subsidiary ended in loss of lands and livelihoods of local farmers, used toxic pesticides in aerial spraying harming the right to health of local communities.

The content of States’ positive obligations to regulate the activity of business actors, where they may cause adverse impacts on human rights, is equally well-established by the recalled case-law before international Courts (**question no. 3**). States have substantial obligations to provide for a coherent legislative and administrative framework, adopting all appropriate measures to effectively protect human rights from hazardous business activities, together with the procedural obligation to provide effective remedies to victims when such violations occur. The same standard of States’ due diligence is provided in UNGPs (on the concept of ‘due diligence’ within UNGPs, see Jonathan Bonnitcha, Robert McCorquodale, *The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights*, European Journal of International Law, 2017).

Particularly important in relation to global food system is the duty to regulate the activity of corporations abroad, recognizing the need for an extraterritorial reach of human rights obligations to regulate private corporations. As for States’ obligations, General Comment No. 24 on *State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities* (UN Doc. E/C.12/GC/24, 10 August 2017) expressly dealt with States’ obligations to regulate business activity extraterritorially. The second draft of a Legally Binding Instrument to Regulate, in International Human Rights Law, the activities of Transnational Corporations and other Business Enterprises (OEIGWG Chairmanship second revised draft, 6th August 2020) goes in the same direction in stating that States should provide means to ensure the accountability of companies abroad.

As for the responsibility of business (**question no. 3 and 11**), companies should take all the necessary step to prevent harmful effects of their activity on human rights and the environment, together with the duty to mitigate when such harms cannot be fully eliminated. In this sense, carrying out appropriate risk-based impact assessment, through a process of ongoing human rights and environmental due diligence is requested by both the UNGPs (Principle 18: “…identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationship”) and the OECD Guidelines. In relation to the latter, OECD-FAO *Guidance for Responsible Agricultural Supply Chains* (OECD Publishing, 2016) specifically states the need to avoid or minimize the potential for community exposure to water-related, vector-borne and communicable diseases that could result from operations, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups; consider observing global food safety standards, such as the Codex Alimentarius, and global animal health standards, such as OIE standards; promote traceability to ensure food as part of the due diligence process in agribusiness.

Considering the peculiarities of global food systems, where long supply chains are often employed and where few big companies controls the whole market, further responsibilities are worth to be highlighted. Both the UNGPs and the OECD Guidelines provides for the duty to use “leverage” when the adverse impact on human rights is not directly caused by a company but nonetheless linked to the activity of its business partner, over which influence can be exercised to halt or change the negative impact of business activities along the supply chain. Leverage exists when “where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm” (OECD Guidelines, par. 19-20 Commentary to Chapter II, General Principles, A.11, A.12; par. 42-43 Commentary to chapter IV, Human Rights, 2, 3). In this sense, the concept of ‘leverage’ may be crucial to tackle the role played by big supermarkets at the top of the global food chain. The influence of large distributors over the food value chains has been recognized also by the Special Rapporteur on the right to food in its Report related to Italy country visit (A/HRC/43/44/Add.5, par. 34), underlying the importance to allow small-scale producers to be paid the right price for food, in order to avoid the choice of lowering environmental and social costs of food production or remain within the main food distribution channel.

As for the recognition of a specific right to a healthy environment and its impact on the global food system (**question no. 5**), it is worth to note that according to *Recognition of the Right to a Healthy Environment in Constitutions, Legislation and Treaties: Western Europe and Others Region* (A/HRC/43/53/Annex VIII, 14 February 2020) Italy is one of the 156 UN Member States that recognizes the right to a safe, clean, healthy and sustainable environment. Although formally part to international Conventions providing for right to safe, clean, healthy and sustainable environment, such as the ECHR, the ICCPR and ICESCR and several specific treaties recognizing such a right and related obligations (e.g. the Aarhus convention), no explicit reference is made in Italian Constitution in this sense, despite several attempts to amend the text of article 9 (so to include, *inter alia*, the right to healthy environment, the protection of ecosystems and sustainability). The right should therefore be implicitly derived by combined interpretation of article 9 (on the safeguard of natural landscape) and article 32 (on the right to health). Such a lack of explicit reference and implementation in national legislation seem to currently prevent the possibility of such right to fully operate and provide a positive impact on food production system. Absence of explicit obligations results in impossibility of prevention, while it only can have an impact at remedy level before a court, providing compensation where possible.

Specific examples of legislation, good practices and initiatives that address environmental impacts caused by global food systems (**question no. 6**) may come both from European and national level. As part of the Farm to Fork Strategy (COM(2020)381 of 20th May 2020, for a comment see Schebesta et al, *The European Union Farm to Fork Strategy: Sustainability and Responsible Business in the Food Supply Chain*, in European Food and Feed Law Review, 2020), within the broader EU Green Deal, a project to draft a Code of conduct for Responsible Business and Marketing Practices has been put forward, which should be available for signature and endorsement in June 2021. Furthermore, the European Commission has committed to adopt an instrument providing mandatory due diligence for European-based companies, thus including agribusiness, which goes in the same direction.

In the meanwhile, the EU Directive on Unfair Trading Practiced (Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 *on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*) may be crucial to address sustainability in food supply chain, by ensuring that the right price is paid to agricultural products. Indeed, social and environmental costs of food production are the only voices that can be reduced when lowering the price of food. As a consequence, setting the right price, by banning unfair practices such as double auction for food products may contribute to allow sustainable food production. The Directive is already in force and time to adopt relevant national legislation will expire in May 2021.

At the national level, the 2020 Report of the Special Rapporteur on the right to food following her visit to Italy (recalled above), highlighted the existence of specific legislation in support of young farming and agroecology (see *ex multis*, Migliorini P. et al, *Agroecology in Mediterranean Europe: Genesis, State and Perspectives*, in Sustainability 2018, 10(8), 2724).

Furthermore, specific initiatives are raising to involve consumers in sustainable food production. As a way of example, “Chi è il padrone? La marca del consumatore”(<https://lamarcadelconsumatore.it/>) is a private association whose aim (according to article 3 of its Statute) is to call for consumers to actively take part in defining crucial aspects of production such as composition, origin and price of the food they are buying.

The above-described scenario shows how instruments to properly foster a human right-based approach to global food production are still underway and the framework is fragmented. In this sense, proper use of general instruments such as the UNGPs and the OECD Guidelines for Multinational enterprises as applied to the agribusiness may be a cornerstone in moving towards sustainable food production.