

# **The potential role of the Italian Constitutional reform on environmental protection in enhancing migrants' livelihood<sup>1</sup>**

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## *Abstract*

The Italian Constitutional reform on environmental protection also in the interest of future generations paves the way for deep reflections upon the relevance of these instruments in promoting the protection of people migrating (or wishing to do so) in the context of climate and environmental changes. At the same time, one could wonder what impact environmental protection, including the right to a healthy environment, could have on migrants who are already onto the Italian territory. To answer these questions, this paper first provides an overview of the protection of the environment in Italian domestic law and case law, which follows a consolidated trend of increasing climate awareness at the international level. Afterwards, it outlines the main policy and legal developments on environmental protection and migration in the context of climate and environmental changes recently adopted at the supranational level, which will prove helpful to understand the role of the Italian constitutional reform on environmental protection in enhancing migrants' livelihood in their countries of origin and of destination.

*Keywords: Right to a Healthy Environment, Migration, Environmental Protection, Climate Change, Italy, International Law.*

La riforma costituzionale italiana sulla tutela dell'ambiente, anche nell'interesse delle generazioni future, apre la strada a profonde riflessioni sulla rilevanza di queste

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previsioni nel promuovere la tutela delle persone che migrano (o desiderano farlo) nel contesto dei cambiamenti climatici e ambientali. Allo stesso tempo, ci si chiede quale sia l'impatto che la tutela dell'ambiente, compreso il diritto a un ambiente sano, può avere sui migranti già presenti sul territorio italiano. Per rispondere a queste domande, il contributo fornisce innanzitutto una panoramica della tutela dell'ambiente nel diritto interno e nella giurisprudenza italiana, che segue una tendenza consolidata di crescente consapevolezza climatica a livello internazionale. Successivamente, vengono delineati i principali sviluppi a livello politico e giuridico in materia di tutela ambientale e migrazione nel contesto dei cambiamenti climatici e ambientali recentemente adottati in ambito sovranazionale, particolarmente utili per comprendere il ruolo della riforma costituzionale italiana in materia di tutela dell'ambiente nel migliorare le condizioni di vita dei migranti nei paesi di origine e in quelli di destinazione.

*Parole chiave: Diritto ad un ambiente sano, Migrazione, Protezione ambientale, Cambiamento climatico, Italia, Legge internazionale.*

*1. The upsurge of the right to a healthy environment in international hard law and soft law.*

Since the 1972 United Nations Conference on the Environment, the attention towards climate change and its impacts on societies has been on the rise. The proliferation of hard law and soft law instruments at the international level concerning environmental protection or promoting the recognition of a right to a healthy environment confirms such a dedicated focus by the international community. The first binding treaty on the matter was adopted in 1992 and refers to the UN Framework Convention on Climate Change (UNFCCC), which provides for the fundamental international framework to address climate change issues. To date, 168 out of 197 parties to the UNFCCC have ratified it, among which are the EU and all its Member States. Other key international environmental treaties include the 1997 Kyoto Protocol, which aimed to reduce greenhouse gas emissions through mitigation and reduction mechanisms, the 1998 Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, and the 2015 Paris Agreement on Climate Change. These treaties have over time made States responsibilities in the field of environmental protection more stringent, with a view to limiting the cascading effects of climate change on societies, while reinforcing their resilience against environmental threats. In particular, the 1998 Aarhus Convention aims «[...] to contribute to the

protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being».<sup>2</sup> In correlating the right to health and wellbeing of present and future generations to an adequate environment, the Aarhus Convention provides public and environmental non-governmental organisations with a wide range of procedural environmental rights to empower and raise awareness of State Parties' communities in the field of environmental policy decision-making.<sup>3</sup> In so doing, the Aarhus Convention may be considered as the first international environmental agreement that recognises the tangled relationship between the protection of the environment and the protection of human rights. As noted by the EU Court of Justice Advocate General Jääskinen, the Aarhus Convention is not a mere administrative agreement, rather the expression of «a human right to the environment in its most solemn form».<sup>4</sup> For its part, the Paris Agreement, which substitutes the Kyoto Protocol, acknowledges the relationship between the environment and human rights, especially the right to health and to development, both strictly related to the right to a healthy environment. In its Preamble, State Parties acknowledge that climate change is a common concern of humankind, and therefore

should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.<sup>5</sup>

The widespread importance of the right to a healthy environment is additionally confirmed at the regional level, where most regional human rights conventions give clear expression to the right to a healthy environment. Among others, the African Charter on Human and People's Rights stipulates the right of all people to a general satisfactory environment favourable to their development, a provision deemed as being the first binding international obligation relating to the

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<sup>2</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, United Nations, Treaty Series, vol. 2161, p. 447, Article 1.

<sup>3</sup> For an analysis of the procedural environmental rights enshrined in the Aarhus Convention, see L. Lanceiro, *The Review of Compliance with the Aarhus Convention of the European Union*, in E. Chiti, B.G. Mattarella (eds), *Global Administrative Law and EU Administrative Law Relationships, Legal Issues and Comparison*, Springer 2011, pp. 359-383.

<sup>4</sup> CJEU, *Council of the European Union and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, Case C-401/12 P, Opinion of Mr Advocate General Jääskinen, 08 May 2014, para. 89.

<sup>5</sup> Paris Agreement on Climate Change, Decision 1/CP.21, in COP Report No. 21, Addendum, at 2, U.N. Doc. FCCC/CP/2015/10/Add.1, 12 December 2015, preambular para. 11.

right to a healthy environment.<sup>6</sup> Moreover, the 2003 Protocol to the African Charter on the Rights of Women in Africa ensures to women the right to live in a healthy and sustainable environment. Moving to other regions, the 2004 Arab Charter on Human Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) respectively establish the right to a healthy environment.<sup>7</sup> In Asia, the Human Rights Declaration adopted by the Association of South-East Asian Nations recognises the right to a safe, clean and sustainable environment as part of the right to an adequate standard of living. Although not legally binding, the Declaration still marks the existence of a shared vision towards the right to a healthy environment. Altogether, these regional arrangements, either legally binding or non-binding, demonstrate a strong sensitivity towards environmental protection and unity towards the proclamation and implementation of a right to live in a healthy environment.

Despite the European continent has long tackled the threats posed by climate change on human rights in several internal and external policies, three of the main regional human rights instruments, namely the European Convention of Human Rights and the European Social Charter within the Council of Europe and the EU Charter of Fundamental Rights as per the EU, do not recognize a right to a healthy environment and, according to Lambert, this is «what makes the European human rights instruments less satisfactory than all the other regional instruments».<sup>8</sup> However, as explained elsewhere, these bodies have contributed to sketching the boundaries of State responsibility to prevent and protect people under their jurisdiction from environmental harm, where the risk is known or ought to be known, as well as the negative and positive obligations to ensure both environmental and human rights protection in that context.<sup>9</sup>

In the EU legal order, environmental targets gained progressive importance since the Maastricht treaty. Since 1992, environmental protection has been at the core of an independent EU policy sector (Articles 191-193 TFEU) with cross-cutting impacts on all other policies of the EU, as first established in Article 130R of the 1987 Single European Act and then in Article 11 TFEU, stipulating that

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<sup>6</sup> R. Zetter, *Unlocking the Protracted Displacement of Refugees and Internally Displaced Persons: An Overview*, in «Refugee Survey Quarterly», n. 4, 2011, p.11.

<sup>7</sup> For an excellent analysis of the right to a healthy environment in the jurisprudence of the Inter-American Court of Human Rights, please see T. Zhunussova, *Human Rights and the Environment before the IACtHR*, in E. Chiti, A. di Martino, G. Palombella (eds), *L'età della Interlegalità*, Il Mulino, 2021.

<sup>8</sup> E. Lambert, *The Environment and Human Rights, Introductory Report to the High-Level Conference Environmental Protection and Human Rights*, 2020, p. 10.

<sup>9</sup> C. Scissa, *The principle of non-refoulement and environmental migration: a legal analysis of regional protection instruments*, in «Diritto, Immigrazione e Cittadinanza», n. 3, 2022; C. Scissa, *The Right to a Healthy Environment as an EU Normative Response to COVID-19: A Theoretical Framework*, in P. Czech, et al. (eds.) *European Yearbook of Human Rights*, Intersentia, 2021.

environmental protection requirements must be integrated into the definition and implementation of all Union's policies and activities. Article 37 of the EU Charter of Fundamental Rights restates the importance of progressively increasing the level of safeguards of the environment, while Articles 3 and 21(d,f) TEU enshrine the protection of the environment and the achievement of sustainable development within and beyond the Union's borders as core objectives of the EU.

Climate and environmental goals also represent a core priority of the present Commission. The Green Deal, set forth by the European Commission in late 2019, outlines the Union's new growth strategy both to tackle climate change and to protect the health and well-being of EU citizens from environmental threats, by promoting a fair transition in a just and inclusive manner.<sup>10</sup> With the ultimate aim to «reach climate neutrality and a healthy environment», the Green Deal sets ambitious targets to revolutionize the Union's economy, production and labour markets.<sup>11</sup>

Beyond the international and regional level, the debate upon the need to recognize a right to a healthy environment has gained particular attention at the national level, with remarkable results. Currently, 156 States worldwide have somehow recognised the right to a healthy environment, either by making express reference in their Constitution (and this is the case for 100 States out of 156) or domestic law or derived by national case law, although with different nuances.<sup>12</sup> Interestingly, at least 12 national courts worldwide have found the right to a healthy environment being an essential component of the right to life. At the EU level, 16 Member States have expressly integrated the right to a healthy environment into their national constitutions and legislation, and have also ratified relevant international treaties.<sup>13</sup> The supreme courts of six other Member States have found the right to a healthy environment being implicitly present in their constitutions, deriving it from other fundamental rights provisions, such as the right to health and to the protection of the environment.<sup>14</sup>

These normative outputs have been also reflected at the quasi-judicial level, where international human rights treaty monitoring bodies have over time acknowledged that State Parties obligations in the field of human rights must inform and guide their obligations under international environmental law. In other words, human rights and the environment are so closely interconnected that the protection of the former depends on the protection of the latter and *viceversa*. Perhaps most

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<sup>10</sup> COM(2019) 640 final, *The European Green Deal*, 11 December 2019.

<sup>11</sup> Ivi, p. 13.

<sup>12</sup> UN Human Rights Council, *Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, Report of the Special Rapporteur, UN Doc A/HRC/40/55, January 2019, para. 13.

<sup>13</sup> A.G. González, *The Right to a Clean and Healthy Environment: GMOs in Mexico and the European Union*, «Mexican Law Review», n. 2, 2019, p.100.

<sup>14</sup> UNGA Annex VIII, *Recognition of the Right to a Healthy Environment in Constitutions, Legislation and Treaties: Western Europe and Others Region*, UN Doc A/HRC/43/53/Annex VIII, 14 February 2020.

importantly, the Human Rights Council, an inter-governmental body within the UN system responsible for the promotion and protection of human rights worldwide, expressly proclaimed the existence of a human right to a clean, healthy and sustainable environment to which all human beings are entitled.<sup>15</sup> In a landmark resolution, the Human Rights Council posits that the protection of the environment promotes human well-being and allows for the enjoyment of human rights, whereas environmental damage engenders direct and indirect human rights threats, disproportionately affecting people in vulnerable situations, such as indigenous peoples, children, the elderly, and persons with disabilities. It therefore stresses State obligation to respect, protect and promote human rights in all actions undertaken to address environmental challenges, and reminds that additional measures should be taken for those who are particularly vulnerable to environmental threats. Shortly after, the UN General Assembly also recognized the right to a clean, healthy and sustainable environment as a human right.<sup>16</sup>

Similarly, the UN Human Rights Committee, the quasi-judicial body supervising State Parties' compliance with the International Covenant for Civil and Political Rights (ICCPR), has long established that

the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include [...] degradation of the environment, deprivation of land, territories and resources of indigenous peoples, [...] widespread hunger and malnutrition and extreme poverty and homelessness.<sup>17</sup>

With regard to the obligations to respect and ensure the right to life and life with dignity, the Committee includes, *inter alia*, measures

to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to

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<sup>15</sup> Human Rights Council, *The human right to a clean, healthy and sustainable environment*, Resolution 48/13, 8 October 2021. [See also its previous resolutions on human rights and the environment, including resolutions 45/17 of 6 October 2020, 45/30 of 7 October 2020 and 46/7 of 23 March 2021.](#)

<sup>16</sup> UN General Assembly, *The human right to a clean, healthy and sustainable environment*, A/76/L.75, 26 July 2022.

<sup>17</sup> UN Human Rights Committee, *General Comment n. 31 on the nature of the general legal obligation imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights*, 29 March 2004, para. 26.

information on environmental hazards and pay due regard to the precautionary approach.<sup>18</sup>

Since *Portillo Cáceres et al. v. Paraguay*, the Human Rights Committee has been providing stronger and undoubtable recognition of the threats posed by climate change impacts on human rights, stipulating that «environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life».<sup>19</sup> Most recently, it had the occasion to dive into the climate-related threats to the human rights of indigenous Torres Strait Islanders at heightened risk of displacement. In *Billy et al. v. Australia*, in fact, the Human Rights Committee found Australia responsible for not adequately protecting against the adverse impacts of climate change, thus violating the indigenous claimants' rights to enjoy their culture (Article 27 ICCPR) and be free from arbitrary interferences with their private life, family and home (Article 17 ICCPR).<sup>20</sup> In particular, the Committee acknowledged that extreme events, including severe floods, storms and sea level rise, have caused loss of their traditional economy and livelihood, have destroyed part of their ancestral land, and damaged their cultural identity.<sup>21</sup>

As seen, climate and environmental changes are global in nature, and its adverse impacts are recognized as disproportionately affecting the most vulnerable, including migrants. In light of the foregoing, it seems useful to reflect upon the relevance of these instruments in promoting the protection of migrants whose flight is associated with, or caused by, environmental factors. At the same time, one could wonder what impact environmental protection, including the right to a healthy environment, could have on migrants who are already in the territory of a hosting State whose legislation provides for environmental safeguards in the context of human rights. The Italian constitutional reform on environmental protection constitutes an emblematic example in this regard and will be particularly explored in this contribution. To that end, this paper first provides an overview of the protection of the environment in Italian domestic law and case law, which follows a consolidated trend of increasing climate awareness at the international level.

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<sup>18</sup> UN Human Rights Committee, *General Comment n. 36 on the right to life*, CCPR/C/GC/36, 3 September 2019, para. 62.

<sup>19</sup> UN Human Rights Committee, *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), 20 September 2019, para. 7.4.

<sup>20</sup> Human Rights Committee, *Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 21 July 2022.

<sup>21</sup> However, it denied a violation of the right to life. Please see, V. Büchi, *Tiptoeing Around the Right to Life: Climate Change and the Right to Life After the Torres Strait Islanders Decision*, «Völkerrechtsblog», 04 October 2022; M. Cullen, 'Eaten by the Sea' Climate Change and Remote Subnational Minority Communities: A Case Study of the Torres Strait Islands and the Communications Procedure of the UN Human Rights Committee, «Journal of Human Rights and the Environment», 2018.

Afterwards, it outlines the main policy and legal developments on environmental protection and migration in the context of climate and environmental changes recently adopted at the supranational level, which will prove useful in understanding the role of the Italian constitutional reform on environmental protection in enhancing the fundamental rights of migrants in their countries of origin and of destination.<sup>22</sup>

## 2. *The protection of the environment in Italian law and case law: An overview.*

Originally, as noted, the Italian Constitution did not make any explicit reference to the environment, delegating its protection to general provisions enshrined, among others, in the Italian civil code.<sup>23</sup> In a Presidential Decree of 1977, the protection of the environment is first taken into consideration in some of its different “dimensions” inasmuch as, in defining the administrative functions in the areas of agriculture, forests and urban planning, the Decree refers to the establishment, protection and safeguard of woods, forests, parks and nature reserves as well as the activities of forest production and of pastoral heritages, among many others.<sup>24</sup> With the Law 349/1986, the Ministry of the Environment was established for the very first time with the duty to ensure the promotion, preservation and recovery of the environment in accordance with the fundamental interests of the community and the quality of life, as well as with the conservation and enhancement of the national natural heritage and the defence of natural resources from pollution.<sup>25</sup> This law is of utmost importance in the historical relevance of the environment in Italian law, as although not providing a definition of environment, it qualifies it as autonomous dimension and value.

Importantly, after the Constitutional reform adopted through Law 3/2001, a formal reference to the environment and the ecosystem has been embedded in the Constitution, whose safeguard has been attributed to the exclusive competence of

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<sup>22</sup> This contribution endorses the notion of «migration in the context of climate and environmental changes» in keeping with the Task Force on Displacement under the UNFCCC.

<sup>23</sup> M. Greco, *La dimensione costituzionale dell'ambiente. Fondamento, limiti e prospettive di riforma*, «Quaderni costituzionali», n. 2, 2021, p. 284. By the same author, please also see, *Tutela dell'ambiente e degli animali in Costituzione: una riforma necessaria?*, «La sfida dell'ecologia integrale. Ambiente e diritti fondamentali, riforme economico sociali e transizione ecologica», pp. 21-39, forthcoming.

<sup>24</sup> Presidential Decree No. 616 of 24 July 1977, Articles 66 and 80.

<sup>25</sup> Among others, see E. Cristiani, A. Di Lauro, E. Sirsi, *Agricoltura e costituzione. Una costituzione per l'agricoltura*. Pisa University Press 2019; E. Cristiani, C. Certomà, *Tutela dell'ambiente tra scienza e società*, «I quaderni di Locus, Rivista di cultura del territorio», 2009.

the State.<sup>26</sup> The Italian case law has played a key role in the formulation of environmental protection in Italian domestic law, which has taken different shapes. At first, both scholars and judges had different opinions regarding the pure nature of the subject to be protected. According to some, the environment constituted a self-standing right of the person, independent from the right to health or to property.<sup>27</sup> For others, the environment had to be considered more as a core value of the society than a public or private good.<sup>28</sup> Similarly, the Constitutional Court has over time defined the environment as a constitutional value, as fundamental right of interest for the whole community, as common good, and as dynamic system of interrelation between animated and unanimated subjects.<sup>29</sup> Currently, most of the scholarship is persuaded that the environment corresponds to a fundamental constitutional value to be respected in all policy sectors.<sup>30</sup> To be preserved is not just the natural landscape surrounding human beings but also, as posited by the Constitutional Court, the

biosphere, taken into consideration not only for its various components, but also for the interactions among them, their balances, their quality, the circulation of their element etc. The environment as a system, considered in its inherently dynamic aspect, and not only from a static and abstract point of view.<sup>31</sup>

Therefore, the environment is broadly considered as the combination of all different human, chemical, economic, climatic, cultural and agricultural aspects, beyond the pure anthropogenic vision limiting the protection of the environment to the extent necessary to fulfil human needs. The comprehensive conceptualization of the environment promoted by the judiciary leads part of the scholarship to put the need for an explicit recognition of a right to a healthy into question, at least in the Italian context. As Grassi stressed, the dynamic, mutable, and global nature of the

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<sup>26</sup> It is relevant to note here that the reference to the environment has been introduced in the framework of the division of legislative competences between State and Regions, as detailed in Article 117 of the Constitution. The engine that spurred the inclusion of the environment at that time did not have to do with the system of values and principles at the core of the Italian Constitution, rather the overall discussion on the different levels of governance and competence within the Italian State.

<sup>27</sup> M. Comporti, *Tutela dell'ambiente e tutela della salute*, «Rivista giuridica dell'ambiente», 1990; M.S. Giannini, *Ambiente: saggio sui diversi suoi aspetti giuridici*, «Rivista trimestrale di diritto pubblico», 1973.

<sup>28</sup> B. Caravita, *Diritto pubblico dell'ambiente*, Bologna 2001, p. 3.

<sup>29</sup> *Ex multis*, Constitutional Court, judgement n. 210/1987 of 28 May 1987; Constitutional Court, judgement n. 641/1987 of 17 December 1987; Constitutional Court, judgement n. 407/2002 of 10 July 2002; Constitutional Court, judgement n. 378/2007 of 5 November 2007; Constitutional Court, judgement n. 126/2016 of 19 April 2016.

<sup>30</sup> M. Cecchetti, *Osservazioni e ipotesi per un intervento di revisione dell'art. 9 della Costituzione avente ad oggetto l'introduzione di una disciplina essenziale della tutela dell'ambiente tra i Principi fondamentali dell'ordinamento costituzionale*, «DPERonline», n. 1, 2020.

<sup>31</sup> Constitutional Court, judgement n. 378/2007, cit. para 4. Author's translation.

environment as well as the myriad non-human factors characterizing it make the formulation of that right a hard exercise.<sup>32</sup> In other words, precisely in light of all the non-human components characterizing the environment, the confinement of the environment into a human right was considered a bit of a stretch. The Italian case law, however, has promoted a quite different interpretation of the right to a healthy environment. The Italian Court of Cassation and the Constitutional Court adopted an extensive interpretation of key Constitutional rights, leading both to discern environmental protection by Article 32 on the right to health of the Italian Constitution read in conjunction with other key provisions.<sup>33</sup> For instance, protecting the environment is, at minimum, found to be constitutionally relevant under Article 9 of the Italian Constitution that, as it stood before the Constitutional reform n.1/2022, dealt with the safeguard of the natural landscape. In 1973, the Constitutional Court referred, for the very first time, to Article 9 by explicitly declaring that «the protection of natural beauty which form the landscape is by Article 9 included among the fundamental principles of the Constitution, together with the protection of historical and artistic heritage as belonging to the entire national community».<sup>34</sup> Over time, the notion of landscape as mere aesthetic connotation is abandoned to embrace a more social dimension, which is shaped by «the conscious and systematic action of the human community settled there, intensively or extensively, in town or country, acting on the land, producing signs of its culture».<sup>35</sup>

In a 1979 judgment, the Court of Cassation affirmed the existence of a subjective right to a healthy environment in light of Article 32, whereby it protects human health in absolute and unconditional terms as does Article 2 of the Constitution, which recognizes and guarantees the fundamental rights of the human being and stipulates the Italian Republic obligation to achieve political, economic, and social solidarity.<sup>36</sup> In the judgement 210/1987, the Constitutional Court maintained that the conjunction between these two fundamental rights «attributes to the right to health a content of sociality and safety, such that it does not only imply a mere right to life and physical safety, but a true and proper right to a healthy environment that not even the public administration may sacrifice or restrict».<sup>37</sup>

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<sup>32</sup> S. Grassi, *Problemi di diritto costituzionale dell'ambiente*, Milano Giuffrè, 2012, p. 20.

<sup>33</sup> For a reference in this regard, please see R. Luporini, *The 'Last Judgment': Early reflections on upcoming climate litigation in Italy*, in «Questions of International Law», n. 8, 2021; D. Porena, *'Ambiente': complessità di una nozione giuridica*, «Ambiente Diritto», n. 3, 2020, pp. 387-403; R. Montaldo, *Il valore costituzionale dell'ambiente, tra doveri di solidarietà e prospettive di riforma*, «Forum di Quaderni Costituzionali», n. 2, 2021.

<sup>34</sup> Constitutional Court, judgement n. 9/1973 of 6 February 1973, para. 5. Author's translation.

<sup>35</sup> A. Crosetti, R. Ferrara, F. Fracchia, N. Olivetti Rason, *Diritto dell'ambiente*. Laterza, Bari 2008, p. 65. Author's translation.

<sup>36</sup> Court of Cassation, judgement n. 5172/1979 of 6 October 1979.

<sup>37</sup> Among others, see also Court of Cassation, judgement n. 5172/1989 of 6 October 1989.

Moreover, it has been argued that the State obligation to achieve political, economic and social solidarity as demanded by Article 2 inevitably includes a State obligation to environmental solidarity, insofar as preserving the ecosystems is a core precondition for granting the fundamental rights it enshrines.<sup>38</sup> In addition, in its judgement n. 641/1987, the Constitutional Court found that the protection of the environment is a key component of the quality of life and that it is imposed by Constitutional provisions, such as Articles 2, 9, and 32 as mentioned, as well as Articles 3 and 41 among others. Indeed, an extensive interpretation of Article 3 of the Italian Constitution, which stipulates the principle of equality and social dignity, facilitates the inclusion of the right to a healthy environment among those essential rights enabling the achievement of such key principles, whereas the previous version of Article 41 declared that the economic initiative shall not be in contrast with social utility or damage security, liberty and human dignity. Again, the Constitutional Court has repeatedly intervened in the debate, affirming that the protection of the environment surely falls within social utility, therefore constraining those economic initiatives that may cause, or contribute to cause, environmental damage.<sup>39</sup>

### *3. Recent policy and legal developments on environmental protection and migration in the context of climate and environmental changes.*

After a brief overview of the most relevant legal and policy developments in the field of environmental protection at the international and national levels, attention is now drawn to similar international developments in migration governance, which also brought significant improvements in the management of migration in the context of climate and environmental changes. As a matter of fact, from 2015 onwards, the impacts of environmental and climate factors on human mobility gained considerable attention and were included in key international soft-law agreements. For instance, the 2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change encourages States to identify measures for the protection and assistance of people who are displaced beyond national borders due to disasters, while the 2030 Agenda on

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<sup>38</sup> G. Morbidelli, *Il regime amministrativo speciale dell'ambiente*, «AA.VV., Scritti in onore di Alberto Predieri», Milano Giuffrè, 1996, p. 1121; L. Violini, G. Formici, *Doveri intergenerazionali e tutela dell'ambiente: riforme costituzionali e interventi della giurisprudenza*, «Il diritto dell'economia», 2021, pp. 32-54; F. Gargallo di Castel Lentini, *L'ambiente come diritto fondamentale dell'uomo*, «Diritto Ambiente», 2014.

<sup>39</sup> M. Cecchetti, *Le politiche ambientali tra diritto sovranazionale e diritto interno*, «federalismi.it», n. 7, 2020, p. 109; Constitutional Cort, judgement n. 85/2013 of 9 April 2013; Constitutional Court, judgement n. 58/2018 of 7 February 2018.

Sustainable Development and the 2016 New York Declaration for Refugees and Migrants stress the importance of including migration in development strategies to protect the rights of all migrants to leave no one behind.<sup>40</sup> They therefore call on States to provide adequate solutions to climate change and to protect people affected by it, both within and across their territories. The Global Compact on Safe, Orderly and Regular Migration (GCM) and on Refugees, adopted in 2018 by the majority of UN States, both refer to adverse environmental and climate conditions as triggering factors of cross-border migration. Remarkably, the GCM encourages the extension of existing national and regional practices that provide for humanitarian admission and stay to migrants who cannot make safe and durable return in their country of origin due to disasters and other environmental threats.<sup>41</sup> This difficulty has been also acknowledged by the Global Compact on Refugees, which endorses that climate, environmental degradation and natural disasters are not themselves pure causes of refugee movements, but they may interact with refugee drivers. All EU Member States have endorsed these soft-law instruments, and 18 out of 27 EU Member States have currently signed the GCM. These non-binding arrangements are nevertheless relevant as they demonstrate States' shared commitment in addressing environmental and climate factors propelling mixed migration movements and in finding solutions for those on the move, a common objective further restated in the Progress Declaration adopted on the occasion of the first International Migration Review Forum of the GCM.<sup>42</sup> Other instruments of this kind are, among others, the 2018 Sydney Declaration of Principles on the Protection of Persons Displaced in the Content of Sea Level Rise, which explains that while climate change and related disasters could not amount to persecution *per se*, they may exacerbate pre-existing causes of serious harm.<sup>43</sup>

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<sup>40</sup> The Nansen Initiative, *2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, December 2015; UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, 25 September 2015; UN Summit for Refugees and Migrants, *New York Declaration for Refugees and Migrants*, 19 September 2016.

<sup>41</sup> UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, 11 January 2019; UN General Assembly, *Global Compact on Refugees*, A/RES/73/151, 17 December 2018. See, T. Volker, M. Garlick, *Addressing Displacement in the Context of Disasters and the Adverse Effects of Climate Change: Elements and Opportunities in the Global Compact on Refugees*, «International journal of refugee law», n. 3, 2019, pp. 389-399; S. Martin *et al.*, *The Global Compacts and Environmental Drivers of Migration*, «KNOMAD Policy Brief», n. 11, July 2018; J. van der Vliet, F. Biermann, *Global governance of climate migrants: A critical evaluation of the global compacts*, in S. Behrman, A. Kent (eds) *Climate refugees: global, local and critical approaches*, Cambridge, Cambridge University Press, 2022.

<sup>42</sup> UN General Assembly, *Progress Declaration of the International Migration Review Forum*, Resolution 76/266, 7 June 2022.

<sup>43</sup> Committee on International Law and Sea Level Rise, Resolution 6/2018, 19–24 August 2018. See, J. McAdam, *Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement*, «American Journal of International Law», 2020, p. 5.

That climate change engenders human rights threats compelling migration has been also recognized by the UN Human Rights Committee. In *Teitiota v. New Zealand*, the complainant brought New Zealand before the UN Human Rights Committee lamenting a violation of his right to life pursuant to Article 6 ICCPR upon his return to the climate-affected island of Kiribati. More into detail, Mr. Teitiota argued that climate change and its dire effects on global warming and sea level rise have made life in his country of origin impossible and compelled him and his family to move from Kiribati to New Zealand. Here, national authorities rejected his asylum claim and removed him and his family back to Kiribati. Before the Human Rights Committee, Mr. Teitiota argues that New Zealand failed to properly assess the life-threatening risks underpinning his removal to a country where climate change has been significantly worsening water scarcity, land disputes, malnutrition, and unemployment, while exacerbating the intensity and frequency of extreme weather events and coastal erosion. Although the UN Human Rights Committee denied that Mr. Teitiota was facing an irreparable risk to his right to life upon return, it is still relevant to draw attention on key passages of the case, where the Committee asserted for the very first time that «without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant [the ICCPR], thereby triggering the non-refoulement obligations of sending states».<sup>44</sup> Moreover, it acknowledged that «both sudden-onset events (such as intense storms and flooding) and slow-onset processes (such as sea level rise, salinization, and land degradation) can propel cross-border movement of individuals seeking protection from climate change-related harm».<sup>45</sup>

These relevant achievements have not arguably found consistency at the EU level, where in September 2020 the European Commission set forth the New Pact on Migration and Asylum in order to give a fresh, new start to migration and asylum management.<sup>46</sup> Although the New Pact repeatedly mentions climate change as one of the major global challenges that shapes present and future migration flows, the Commission confines the nexus to a cursory reference in a non-binding recommendation.<sup>47</sup> A subsequent Staff Working Document specifically deals with displacement and migration related to disasters, climate change and environmental degradation.<sup>48</sup>

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<sup>44</sup> Human Rights Committee, *Teitiota v. New Zealand*, Communication No. 2728/2016, Views of 24 October 2019.

<sup>45</sup> Ivi, para 9.11.

<sup>46</sup> COM(2020) 609 final, *The New Pact on Migration and Asylum*, 23 September 2020.

<sup>47</sup> Idem, pp. 1 and 17.

<sup>48</sup> SWD(2022) 201 final, *Addressing displacement and migration related to disasters, climate change and environmental degradation*, 22 July 2022.

4. *The role of the Italian constitutional reform on environmental protection in enhancing migrants' livelihood.*

The Constitutional Law n. 1 of 11 February 2022 on environmental protection approves the reform of Articles 9 and 41 of the Italian Constitution. As for the former, it introduces the protection of the environment, biodiversity, and ecosystems, also in the interest of future generations, among the fundamental principles of the Italian Constitution. This seems to be in keeping with international policy developments such as the 2030 Agenda on Sustainable Development, whose Goal 15 advocates for integrating ecosystem and biodiversity values into national and local planning, with a particular view of reducing poverty and enhancing development.<sup>49</sup> As for the latter, it imposes additional limits on private economic initiative that, along with security, freedom and human dignity, shall not damage human health and the environment. Whether the Constitutional reform will have some tangible impacts on the protection of migrants whose causes of flight are associated to environmental factors is a topic that has already been deeply explored by other contributions in this Special Issue.<sup>50</sup> What can be said in the present analysis is that the constitutionally protected principle of environmental protection along with Italy's commitments at the EU level can prove essential to support the protection of human rights of 1) migrants who are in their countries of origin, 2) migrants who wish to move or are on the move, and 3) migrants who are already in Italy.

With regards to the first aspect, dealing with the role of the principle of environmental protection in migrants' countries of origin, it is relevant to note that, as known, the impacts of climate change are unequally felt worldwide and will disproportionately affect certain regions, countries, and communities according to objective and subjective circumstances, including the socio-economic condition, the level of marginalization in society and in the international order, the absence of adequate legal and policy solutions tackling climate change, among many other factors. The International Labour Organization suggests that by 2030, 80 million

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<sup>49</sup> UN General Assembly, *Transforming our world: The 2030 Agenda for Sustainable Development*, A/RES/70/1, 25-27 September 2015, Goal 15.9.

<sup>50</sup> For an overview of the current protection statuses due to environmental threats available in Italian migration law please refer to E. Rossi, *Novità in tema di permessi di soggiorno e protezione speciale nel d.l. n. 130 del 2020*, «Forum di Quaderni Costituzionali», n.1, 2021; F. Perrini, *Verso una tutela internazionale dei migranti ambientali*, Editoriale Scientifica 2018; C. Scissa, *The Climate Changes, Should EU Migration Law Change as Well? Insights from Italy*, «European Journal of Legal Studies», n.14, 2022; P. Bonetti, *La protezione speciale dello straniero in caso di disastro ambientale che mette in pericolo una vita dignitosa*, «Lex Ambiente», n.2, 2021; C. Scissa, *La protezione per calamità: Una breve ricostruzione dal 1996 ad oggi*, «Forum di Quaderni Costituzionali», n.1, 2021.

full-time jobs will be lost to high temperatures, especially in developing countries.<sup>51</sup> Enhanced poverty, combined with instability and lack of opportunities, may prompt people to migrate, especially the youth. Therefore, the recognition of environmental protection in the interest of present and future generations, as enshrined in the Italian Constitution, may be promoted not only on the national soil, but also in external policy actions, recognizing that climate change has global effects and needs global countermeasures. In the double attempt to support the improvement of environmental protection in third countries and migrants' livelihood, Italy may act to reduce the impacts of dire environmental conditions in migrants' countries of origin.

Through partnership, development co-operation, financial and human support in migrants' climate-affected countries of origin, Italy may alleviate environmental stressors of migration, helping combat socio-economic inequalities resulting from climate change, while increasing local communities' resilience to climate change. Italy could invest in programs enhancing third countries' climate change mitigation and adaptation strategies as well as preparedness and assistance in case of disasters, as suggested by the European Commission in its Joint Communication on a Strategic Approach to Resilience in the EU's External Action and in its follow-up Concept for an Integrated Approach on Climate Change and Security.<sup>52</sup> This implies supporting third countries in the development of climate change resilience strategies, the integration of displacement into disaster preparedness and risk reduction planning as well as in humanitarian response plans, and the promotion of inter-state cooperation in case of migration in the context of climate and environmental changes. All these actions are also in line with the EU Green Deal.<sup>53</sup>

The second aspect refers to migrants who wish to move out of dire environmental conditions or are on the move. In this case, the Constitutional principle of environmental protection could again leverage solutions envisaged at the EU level, i.e. by encouraging the adoption of external actions, including the creation of legal pathways to attract migrants to work in national (green) sectors, as recommended under the New Pact. In fact, the Talent Partnerships launched by the European Commission aims to support regular migration and mobility with key

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<sup>51</sup> International Labour Organization, *Working on a warmer planet. The impact of heat stress on labour productivity and decent work*, 2019, p. 13.

<sup>52</sup> JOIN(2017)21 final, *A Strategic Approach to Resilience in the EU's External Action*, 7 June 2017; EEAS(2021)770, *Concept for an Integrated Approach on Climate Change and Security*, September 2021.

<sup>53</sup> For instance, the Green Deal commits the EU to «work with all partners to increase climate and environmental resilience to prevent these challenges from becoming sources of conflict, food insecurity, population displacement and forced migration, and support a just transition globally». COM/2019/640 final, cit., p. 21.

third countries.<sup>54</sup> The aim is to better match labour and skills needs in the EU by supporting mobility schemes for work or training. Boosting ecological education, training and skill upgrading of foreign students, researchers, and workers would be beneficial to the Union and Italy's green ambitions and support environmental protection. It would also respond to the Green Deal's need to mobilize further research, while strengthening migrants' skills and capabilities. According to the Commission, fully integrating migrant workers into the national labour market could generate large economic gains, including fiscal profits, contributions to national pension schemes and national welfare.<sup>55</sup> Similarly, if combined with the Green Deal's objectives, the recently revised Blue Card Directive under the New Pact could play a key role in supporting the achievement of environmental protection and sustainability by granting access to migrant workforce to the EU and Italy. It applies to highly qualified third-country nationals and to their family members, including highly skilled beneficiaries of international protection, to enter and stay in the EU Member States. In implementing the Blue Card scheme, Italy could support foreign professionals to research and develop new climate-smart technologies, sustainable solutions and green disruptive innovation at the national level. At the same time, enabling faster and simpler access to the Member States' labour markets to high-skilled migrants coming from climate-affected countries can boost climate resilience in their community of origin through the generation of remittances, knowledge and skills transfer, and the development of networks that can lead to entrepreneurship and job creation.

As for the last aspect, pertaining to environmental protection for migrants already in Italy, fully integrating migrant workers into the green labour market could contribute to enhancing migrants' livelihood while supporting national ecological transition. Also in this regard, the Green Deal plays a key role at the national level. Through the Just Transition Mechanism, the Green Deal aims to ensure a fair and just transition towards a climate-neutral economy for all.<sup>56</sup> The Mechanism will mobilize around 100 billion euros over the period 2021-2027 to support the EU regions most affected by the transition. It is estimated that the ecological transition will create roughly 1.2 million new jobs in the EU by 2030 but, as the New Pact admits, the domestic workforce is not sufficient to address all present and future labour and skills shortages.<sup>57</sup> Migrant workforce results therefore crucial to achieve EU climate and labour goals. The inclusion of migrant workers who are already in Italy in the green labour market is particularly crucial not only to comply with EU policies, but also to address the phenomenon of over-qualification of migrant

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<sup>54</sup> COM(2020) 609 final, cit., p. 23. See also, COM(2022) 657 final, *Attracting skills and talent to the EU*, 27 April 2022.

<sup>55</sup> COM(2020) 758 final. *Action plan on Integration and Inclusion 2021-2027*, 24 November 2020.

<sup>56</sup> COM/2020/22 final, *Proposal for a regulation of the European Parliament and of the Council establishing the just transition fund*, 14 January 2020.

<sup>57</sup> COM(2020) 609 final, cit., p. 24.

workers. In 2020, over 50% of migrant workers in Italy were overqualified in terms of education and skills for the job they were doing, compared to 20.8% average in the EU.<sup>58</sup> Hence, redirecting migrant workers to greener sectors would meet the goal of responding to the increasing demand of skilled workforce, while providing migrants with concrete education and job opportunities. This could be achieved by fostering migrants' access to vocational and re-skilling programmes, to jobs in new economic sectors, and to pertinent green services.

Moreover, environmental protection should also be embedded in instruments that both deal with climate and migration issues, such as the Piano Nazionale di Ripresa e Resilienza (PNRR) at the domestic level. The related 200 million euros fund to address irregular settlements and tackle labour exploitation in the agricultural sector proves particularly relevant for migrants in Italy, whereby the fund quotas are distributed according to the number of migrants present at risk in targeted municipality.<sup>59</sup> Many studies, in fact, point to the rooted exploitation of (irregular) migrant workers and international protection-seekers in Italian agriculture, where they face degrading and violent conditions, in some cases without access to fundamental rights and basic services.<sup>60</sup> Inspired by the principle of environmental protection and combined with other PNRR-related actions in the field of ecological transition and social inclusion, this national measure could prove essential to move (irregular) migrants and international protection-seekers out of webs of exploitation, while making the agricultural sector more sustainable from a socio-economic and environmental viewpoint. Concurrently, effectively including migrant voices from the agricultural sector in relevant policymaking is essential to enhance the full compliance with the human rights of migrant agricultural workers in Italy as well as to denounce related violations. More broadly, Italy may facilitate the full participation of communities coming from climate-affected third countries into relevant policy making, such as plans for migrant inclusion and climate action plans, to promote the enjoyment of environmental protection for migrants already in Italy.<sup>61</sup> The Special Rapporteur on the promotion and protection of human rights in the context of climate change has, in fact, recently reminded that «the voices of those most affected must be heard and the losses and damages they are suffering

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<sup>58</sup> Eurostat, *Migrant integration statistics - over-qualification*, July 2021.

<sup>59</sup> Ministero del Lavoro e delle Politiche Sociali, *Decreto del 29 marzo 2022 Riparto Missione 5 - Inclusione e coesione, Componente M5C2 - Infrastrutture sociali, famiglie, comunita' e terzo settore, Ambito di intervento 2 Rigenerazione urbana e housing sociale Investimento, Investimento 2.2.a Piani urbani integrati - Superamento degli insediamenti abusivi per combattere lo sfruttamento dei lavoratori in agricoltura - Piano nazionale di ripresa e resilienza*, GU Serie Generale n.108, 10 May 2022.

<sup>60</sup> L. Palumbo *et al.*, *Migrant Labour in the Agri-Food System in Europe: Unpacking the Social and Legal Factors of Exploitation*, «European Journal of Migration and Law», n. 2, 2022, pp. 179-192.

<sup>61</sup> For a deep overview of integration policies in Italy, see F. Biondi Dal Monte, *Le politiche di integrazione*, in M. Giovannetti, N. Zorzella (a cura di) *Ius migrandi. Trent'anni di politiche e legislazione sull'immigrazione in Italia*, FrancoAngeli, Milano 2020, pp. 367-390.

must be understood and accounted for» in relevant policymaking and in judicial processes, in line with the Aarhus Convention.<sup>62</sup>

## 5. Conclusion.

This contribution sought to answer to the question: What impact could the Italian Constitutional reform on environmental protection have on migrants who are in their countries of origin, wish to move out of dire environmental conditions, and who already reside in Italy? To frame the discussion, this contribution first outlined the main regulatory and policy developments in the field of the right to a healthy environment and migration in the context of climate and environmental changes at the international and national levels. From the analysis it can be inferred that climate change and its adverse impacts on human mobility options need to be comprehensively addressed in order to limit further exacerbation of vulnerability and severe human rights violations.

The reform of Articles 9 and 41 seems to fit in this global trend, whereby the protection of human rights and of the environment are set as key limits to human activities. The principle of environmental protection combined with the inherent global nature of climate change and Italy's migration and climate commitments under EU law may encourage Italy to pursue environmental protection both through internal and external policy measures. *Inter alia*, Italy could reduce migrants' vulnerability to climate change in their countries of origin, create legal migration pathways for green job and education purposes, as well as to redirect the workforce of over-qualified migrants who are already in Italy in more appropriate sectors, including those referring to the ecological transition. At what extent the constitutional principle of environmental protection will effectively enhance migrants' livelihood ultimately depends upon the use that decisionmakers will make of it. What can be said as a conclusion of this paper is that the impacts of climate change on wellbeing and livelihood are global and cross-cutting. Climate change goes beyond the present generations and beyond national borders. States efforts to counteract climate change global impacts should go beyond the national level, and comprehensively apply to nationals and non-nationals for environmental protection to be effective and responsive and, ultimately, to leave no one behind.

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<sup>62</sup> Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, *Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation*, A/77/226, 26 July 2022, para. 75.