Labour conditions in the Italian tomato-growing sector

Background paper

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IL LAVORO NERO DÀ SOLO PESSIMI FRUTTI.

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¹ From the campaign "Buoni e Giusti Coop" (Good and Righteous) launched in March 2016.

Labour conditions in the Italy tomato-growing sector

This paper provides an overview of labour conditions in place in the tomato-growing sector in Italy, the laws that regulate it, and exploitative practices currently found. The paper seeks to draw together available information in both Italian and English, using predominantly web sources, supplemented by interviews with a small number of key stakeholders. The paper is divided into five sections. The first section provides an overview of exploitative practice within the agricultural sector in Italy, with a particular focus on the *caporalato* (or illegal gangmaster) system. Section two looks at formal labour recruitment options in Italy, including weaknesses in existing structures that help perpetuate the *caporalato* system. This is followed by a discussion of price setting in the agriculture sector, with a particular focus on the "double down" auction process, associated with low prices to famers and potential flow-on effects to the treatment of farm workers. The fourth section of the report identifies existing and emerging measures to address exploitative labour practice. The paper concludes with a summary of recommendations made by stakeholders within the sector.

Interest in addressing long-standing labour issues in the tomato-growing and wider agricultural sector is clearly increasing, among both the public and private sector. Since work first began on the paper in February 2017, there have been a number of developments, as described in the following pages. More change is likely to follow and, as such, this paper should be considered a snapshot of the situation as at the end of May 2017.

Background

Italy ranks alongside China as the world's second largest producer of tomatoes for processing (after the United States). Italy produces 14% of the world supply of tomatoes and 49% of the European market. Annual turnover is 3.1 billion euros. Outside of Europe, USA is the main buyer of Italian tomatoes, while a significant proportion are sold to parts of Africa.²

It is worth noting that the large part of the tomato harvest is actually mechanised, with manual harvesting coming into play depending on atmospheric conditions (in case of rain, the machines cannot work and there is a need to switch to harvesting by hand). Estimates on the extent of handpicking vary between a maximum of 25% (trade union data) and a minimum of 5% (producer data). The non-government organisation (NGO) Terra! considers that the real figure for manual harvesting is in the middle of this range, around 15%.³

Hand-picking is generally considered less efficient than the mechanical process. However, limitations in the latter – particularly related to the weather – mean that there remains a demand for manual labour, on an *ad hoc* piecemeal basis. In other words, the type of labour required to complement manual processes is, by its nature, highly susceptible to exploitative practice.

² For example, Ghana used to produced large quantities of tomatoes for the local market, but imports have increased by 650%, due to the lower cost of imported (Italian) product. In turn, this has contributed to a large number of former African farmers leaving their home country to come to Italy in search of work.

³ NGO Terra! #FilieraSporca "Spolpati - the crisis of the exploitation of tomatoes between exploitation and unsustainability", presented to the Italian Chamber of Deputies on 17 November 2016.

1. Exploitative labour practice in the agricultural sector

The caporalato system

The main method of recruitment in the agricultural sector in Italy is through "caporalato", in which teams of labourers are organised by gangmasters known as "caporali". The gangmaster is in charge of the recruitment and organisation of workers, including providing food, housing and transportation from their homes to the fields. The fee for the gangmaster is deducted from the wages of the labourer and the gangmaster also decides who works and who doesn't. This gives the gangmaster considerable power and places workers in a vulnerable position.

The use of *caporali* was made illegal in Italy in 2011 but still persists widely today, especially in Southern Italy. In the tomato industry, in which labourers employed in the hand-harvest are almost all foreigners (citizens of sub-Saharan Africa, Romanians or Bulgarians), and official recruitment options considered ineffective (see below), the *caporalato* is still often seen as the only viable means of labour recruitment. Its attraction to employers is highlighted by the following quote:

You need to tell me: how shall I put together in a day 30-40 labourers who don't even speak Italian? I call a person whom I know and he brings me the workers, who I assume regularly. That's a *caporale*? I call him *caposquadra* (team leader)"⁴ said a farmer who makes extensive use of the hand-picking technique. (Interview with Raffaele Ferrara, President OP La Palma, Hvar (FG), August 2016).

An estimated 430,000 workers each year are employed through *caporali*. In the main tomato producing region of Italy, Puglia, large settlements are built every summer providing a home to thousands of potential workers. The best known of these settlements is the "gran ghetto" (big ghetto) in Rignano Garganico, an illegal slum in a large vacant lot that is located in the Municipality of San Severo. Here – at the peak of the season – live 2000-2500 people, in self-built shacks of wood and corrugated iron. They wait to be recruited by *caporali*, to whom they also pay the cost of transport to the fields (from 2 to 5 euros). *Caporali* then get another percentage (20 to 50 cents) from the employer for each caisson picked by members of their team.

Developments in the past year have highlighted the different considerations at play. In 2016, the Governor of Puglia, Michele Emiliano, demanded action on the Rignano ghetto, after finding out that the land was owned by the Region. The site was made subject to seizure, but with "right of use" for the harvest period. "Public policy considerations prompted us to not act during the summer, but at the end of the season we will clear the ghetto of Rignano" Emiliano said. To date, several months after the harvest period, the field is still "active" with more than 500 people living there. On 7 February 2017, there was a big fire caused by some stoves lit by the labourers.

Box 1: Caporalato: A case study

The story of Francis, a migrant from Burkina Faso, provides insights into the *caporalato* system. Initially a labourer, Francis work changed when an existing gangmaster asked him for help, due to his having a driver's license. The gangmaster was afraid to come across the police and risk seizure of his van. Francis agreed and became a labour "recruiter", first with his boss and then slowly independently.

For four years, he woke at 5 am, went to different houses and chose the team to work that day. Every morning he transported up to 20 people to work, often sitting on each other's lap to fit into the 15-seater van. The labourers paid five euro per day, for the return journey. This was a flat rate, whether the journey

⁴ The term "Caporale" comes from the military world (corporal). In the manual labour context, the *caporale* is the link between the farmer in search of manpower and the labourer in search of work. The term "Caposquadra" is sometimes used in place of *caporale*. It means the same thing but, unlike *caporale*, the word is not specifically mentioned in the law.

was long (up to 50 km) or just a few kilometres. Francis oversaw the labourers in the field and worked alongside them. The van also carried water, bread, medicines (aspirin, painkillers, and bandages). In case of necessity, these were sold to team members or other workers. Everything had a cost. As Francis explains:

The money of the van ticket plus the sale of these products earned me about \pounds 1,400 every week. I took \pounds 500 and the rest I gave to my boss. Adding other \pounds 40/50 a day from my own harvest work, I had \pounds 3000/3500 per month. A huge figure for a foreigner like me. I belonged to the group of both caporali and workers, but there are caporali that not only take care of recruitment and transport but also perform other illegal activities.

This is what pushed me out of the loop. These are violent and aggressive men, who use their power to enrich themselves selling also drugs and bringing women into prostitution. They have relationships with local crime, asking workers to pay for every "service", saying they will not work anymore if they do not accept their conditions.⁵

Italian *caporali* earn much more than the foreign ones since they are able to negotiate with the employer on the price of harvesting and pay the labourers less. Those at the summit of this system can reportedly earn up to 200 thousand euros per month. The different forms of *caporalato* identified by Osservatorio Placido Rizzotto are:

- Caporale worker (Caponero): organises teams and takes care of transportation, in some cases also works with the team.
- Caporale taxi driver: manages only transport and that is his only source of income.
- Caporale seller: organises teams and the sale of essential goods, in some cases providing lodging.
- Caporale tormentor: uses systematic violence, confiscation of documents and imposes unacceptable housing conditions.
- Caporale CEO: manages on behalf of the entrepreneur the entire harvesting with the goal of maximising profits through illegal practices.
- The collective Corporal (new caporalato): known as *cooperative senza terra*, these use apparently legal means and employment agencies to mask illicit labour brokering.⁶
- Caporale mafioso: colluding with organised crime, caporalato is only one of his many activities (as well as activities such as human smuggling, fraud and false documents for INPS⁷, extortion, money laundering, etc.). In some cases, he will also victimise the employer by extortion. Caporalato mafioso manage thousands of people and fleets of van and are considered the most dangerous. Often field owners are too scared to find alternative ways to recruit workers (see Box 2).

Box 2: Agriculture and organised crime

"Agromafie" 2017 Report: Eurispes (Istituto di Studi Politici Economici e Sociali), Coldiretti, and Osservatorio sulla criminalità nell'agricoltura e sul sistema agroalimentare (Observatory on agricultural crime), in which it is noted a growth of 30% in *agromafie*-related business, with a conservatively estimated €21.8 billion total turnover. This figure is calculated province by province based on the actions

⁵ M. Sasso. Il caporalato e l'agromafia, un'economia illegale da 17 miliardi di euro, 13.05.2016, L'Espresso.

⁶ This term translates as "cooperatives without land" and is a new form of caporalato. The only purpose of these cooperatives is to find cheap seasonal labourers for large farms, take them to Italy, and provide them room and board. They find the workers mainly in Eastern European countries, especially Romania and Poland; but also in South Africa and Asia. "Instead of paying workers 80-90 euro - as provided in the national contract - cooperatives give them 25 euro" says Fulvia Colombini, regional secretary of the CGIL (The Italian General Confederation of Labour). ⁷ National Institute of Public Welfare.

carried out by different police forces to counteract this particular criminal aspect.

The estimate incorporates not only labour exploitation but also everyday phenomena such as theft of tractors, mowers and other agricultural vehicles, diesel oil, copper, products (i.e. lemon, hazelnuts, oil, and wine) and animals (there is a great return of rustling). These crimes are flanked by racketeering, usury, corruption, and illegal grazing.

Exploitation does not just take place in Puglia or for tomato harvesting. While this document focuses on tomatoes, similar forms of exploitation take place in other parts of the agricultural sector, which has the highest incidence of irregular labour of any sector in Italy. The report "Agromafie e caporalato" by Osservatorio Placido Rizzotto, for example, reveals 80 agricultural districts spread throughout Italy with the same exploitative practices. Reports estimate that there are: 5000 women working in Vittoria's (Ragusa) greenhouses where they live segregated and in total isolation experiencing sexual violence; 13,000 Indians living in the Agropontino (Lazio), picking fruit for 400 euros per month; and many others working as virtual slaves in the wine harvest from the north to the south.⁸ In another Italian region, Calabria - the *caporali* use the same system in relation to the orange harvest: labourers work for 10 hours and are paid just 25 euros.

The fake labourer system

Casual agricultural workers are paid in two ways: (1) by the day with a regular contract; or (2) under a regular contract for just a few of the days worked, then paid under the table at a piece rate for the remaining days. For a day of work with a regular contract, the typical rate is about 45 euros. At the piece rate, it is possible to earn up to 80 euros, collecting 20 caissons at 4 euros each. In theory, this system benefits everyone: the labourer earns more and the farmer is not afraid that workers "do nothing, since they are paid by the day". In practice, however, the lack of documentation and the involvement of a *caporale* opens the workers up to be exploited.

This lack of documentation also facilitates the fake labourers' system, which is widespread in southern Italy. Under this system, the agricultural entrepreneur registers contracts for Italian daily-wage labourers who have actually never worked. In this way they can get unemployment benefits, family allowances, and maternity subsidy from the State. In exchange, the fake farmhand will pay contributions plus a small fee for "the trouble" to the farmer. The practice is facilitated by the particular functioning of DMAG (declaration of agricultural labour), which provides for the employer to report the worked days *a posteriori*, at the end of each quarter.⁹

The actual migrant labourers are only registered on the days for which there are controls, while the rest of the work is, on paper, done by the fake labourers. In other words, the employer registers the days of the false labourers depending on the inspections undertaken by the Labour inspectorate. This makes it appear as labourers are being formally recruited on a fixed contract with appropriate protections. In reality, even labourers holding a regular residence permit are employed casually at a piece rate. This practice is known to everybody. Indeed, by reading the worker logs, it is easy to see how many Italian labourers have "worked" precisely 102 days, which is the minimum number to be able to get unemployment benefits, be eligible for payment of annual contributions, and receive the child benefit. According to estimates provided by INPS (Istituto Nazionale della Previdenza Sociale - National Institute of Public Welfare), the scam involves 50,000 fake labourers for a total amount of 400 million euros.

⁸ The Indian community in the province of Latina represents 90 percent of the total workforce in some areas. They receive paychecks of just 400 euro as they are reported to work only 14 days a month for \leq 3.50 euro per hour.

⁹ This applied only to agricultural labourers and has recently been changed to monthly as a result of a successful campaign.

Use of child labour

The case of Centro Agroalimentare di Roma (CAR). Covering an area of about 140 hectares, CAR is a wholesale market that manages the annual handling of 8,500,000 tonnes of goods from the vegetable sector and 500,000 tonnes of goods related to the fishing industry, with a turnover of one billion euros. It relies for its operation on approximately 2000 employees. In addition to the economic activities that take place on the CAR premises, activities take place in the square opposite the entrance. Every day, groups of immigrants load and unload untraceable boxes of produce which are then marketed in the CAR and thus enter the legal supply system.

These workers are without identity documents and accreditation badges for entry to the centre. Many of these workers are minors. Recent investigations undertaken by the Prosecutor's office indicate that the organisation that manages the minor workers has as a "starting point" the Tiburtina station, where the buses arrive from Sicily. From here children are directed to the CAR. The child's labour is used to pay off the debt contracted by families for the trip to Italy. The trip costs an average of $\leq 10,000$ and this amount has to be returned before reaching the age of eighteen. From the statements of working children it has been found that the weekly pay fluctuates from ≤ 150 to ≤ 250 . Identity documents of minors are taken, which impedes them from moving away from reception centres where they stay. Minors in these facilities have been caught working at CAR by security staff at all times of the day or night, on weekends and during holidays. The reception centres where they reside do not seem to be able to operate effective supervision. In fact, the children are quoted as saying they not afraid of being stopped by the surveillance service because when this happens, they are simply returned by the police to the reception centres that host them and then can return to work outside the CAR.

2. Formal labour recruitment in Italy

Recruitment agencies

In Italy, there are two types of recruitment agencies: public ones called *Centri per l'Impiego* (CPI), or employment centres; and private ones formerly known *Agenzie per il Lavoro* (APL) or work agencies, having been formerly called "interim agencies".¹⁰ About 4.6 million people a year use job agency services: 54% (2.5 million) use only CPI, 21% (1 million) use only APL, while 25% (1.1 million) use both public and private operators.¹¹ The main differences between these agencies are described in Table 1:

	Centri per l'Impiego (CPI), public	Agenzie per il Lavoro (APL), private	
Registration	Registration is limited to the CPI where the user	Each individual has the opportunity to enrol	
	is resident.	simultaneously in many employment agencies.	
Services offered	CPIs do not just offer job-matching services, but also take care of career counselling to understand the most appropriate professions based on studies and previous work experience, if any. They also give advice on resumes and job interviews. In addition, job-centre staff can provide a list of companies looking to recruit personnel, public tender lists, and waiting lists for public sector jobs.	Private agencies offer outsourced labour that is temporary and provisional, usually work-for-hire or fixed-term.	

Table 1: Differences between private and public recruiters

¹⁰ Among the most well-known private agencies are Adecco, GiGroup, KellyServices, Manpower, Metis, PagePersonnel and Umana.

¹¹ R. Landi, E. Mandrone, M. Marocco, D. Radicchia, "Canali di intermediazione e i servizi per il lavoro", Isfol, 2016.

Users	CPI typically deals with less skilled workers,	The majority of those who use APL are already	
	mainly long-term unemployed, with a medium-	employed, with a medium-high level of	
	low level of education and resident in Southern	education and resident in Northern Italy. ¹²	
	Italy.		

Only one-third of CPI users and 40% of APL's receive a job offer or a training course or a job interview within four months. The public centres are basically ignored by private Italian companies, only 2.2% using them to recruit staff.¹³ The majority of private firms prefer to use other channels such as APL, website ads, and most of all, personal and family connections.

In Italy, in fact, the most commonly used recruitment channel is the informal one, involving family and friends and used by about 60% of current employees. Although this method can be very efficient at the individual level as it allows rapid placements, its widespread use reduces the work opportunities available to everyone, hampering those who do not have adequate networks in finding a job. This contributes to the *caporalato* system, where migrants – not having a network of family and friends – seek the help of a *caporale* to connect them with the employers that will not reach them through CPI or APL.

The agricultural sector is particularly fertile ground for meeting its supply and demand outside official circuits also since, in order to be recruited, there is no need to be registered in the CPI. It is instructive that even an institutional site of the municipality of Rome advises young people seeking seasonal work experience in agriculture "to propose their candidacy turning up directly to individual farms. The ideal would be to hand over the CV personally."

The *TerraInGiusta Report* - *data and analysis for human rights at the end of the citrus fruit season 2016-17,* produced by MEDU (doctors for human rights) highlights a clear link between the weakness of the job suppliers system in Italy and the strengths of *caporalato*:¹⁴ "There is no doubt that implementing a public transport network and giving back a central role to public employment centres would be a strong disincentive to recourse to *caporali* who provide exactly what is missing: the meeting between supply and demand and the transport of workforce in the fields." MEDU makes the following recommendations:

- 1. Provide adequate resources to public employment centres to make them again the central places for meeting demand and job supply.
- 2. Activate a public transport system that can benefit all the inhabitants of agricultural areas.
- 3. Initiate a monitoring system of farms and hectares cultivated and introduce matching indices that allow a macroscopic control of recruitment data.
- 4. Enhance the work of the Labour Inspectorate through the recruitment of cultural mediators to better identify real conditions of employment and remuneration.
- 5. Develop widespread information activities with regard to the rights and labour laws, targeting workers who live in extreme precariousness and isolation.

The reference in the MEDU report about providing more resources to CPI reflects the situation of public job suppliers centres in Italy, As seen in Table 2 information from Eurostat highlights the comparatively low level of job centre staff in relation to other European countries. Italian employment centres are, in

¹² Ibid.

¹³ "Centro per l'Impiego e Agenzie del Lavoro: quali differenze ci sono?", 18.02.2016, available from:

https://www.vincerealcolloquiodiselezione.it/centro-per-limpiego-e-agenzie-del-lavoro-quali-differenze-ci-sono/. ¹⁴ MEDU, "TerraInGiusta Report 2016-17", available from:

http://www.mediciperidirittiumani.org/pdf/RAPPORTO_MEDU_GIOIA_TAURO_APRILE_2017.pdf

particular, currently not equipped to meet agricultural sector demands, considering the perishable nature of the products and atmospheric events that require speed and flexibility.

Country	Public job centre staff	Numbers of job centres	Unemployed (000s)
Germany	74099	838	2316
Spain	7996	826	5769
France	28459	2374	3002
Italy	9989	539	2744
Sweden	10284	325	403
United Kingdom	67110	1012	2511

 Table 2: Number of public job centre staff and unemployed by country

In parallel to the call for empowering and improving public job supplier performance, there are the private sector proposals on this matter. Assolavoro – the National Association of private work agencies, and the Italian member of the World Employers Confederation (formerly CIETT) – published a position paper on caporalato in October 2016, highlighting how the Association's low presence in the agricultural sector with only 1.2% of total hires, is helpful to the *caporali*'s monopoly.¹⁵ Some of Assolavoro's proposals for addressing this situation appear to be in line with statements by Unions, NGO and other stakeholders:

- Creating an *ad hoc* authorisation system for the transport of agricultural workers, to be issued after verifying that there is evidence of no criminal convictions or fines on labour issues, and requiring monthly communication of the lists of people transported and of destination companies.
- Introducing criminal penalties in case of unauthorised transport of workers, which include: mandatory vehicle seizure, driver's driving license suspension from six months to one year, and economic and administrative fines.
- Giving the APLs the opportunity to join the Rete del Lavoro Agricolo di Qualità (see below), a proposal that in the meantime has become reality.
- Increasing the work of the National Labour Inspectorate, focusing control activities on those entities not certified as "quality" companies and in those areas where the use of caporalato is most frequent.

Some of the other proposals by Assolavoro appear more related to subsidising private job suppliers to compete with public sector suppliers. Suggestions include: (1) to make available to the APLs the national databases containing the names of agricultural workers divided by territories with personal data, contact details and professional profiles; (2) to provide economic incentives for agricultural entrepreneurs who hire through Assolavoro members, and (3) to make specific arrangements with the APLs on the management of foreign entry procedures in the country in order to help with the issue of seasonal permits for workers. Based on these suggestions, Assolavoro proposes to offer the services of its members as "actors able to certify the food chain from 'fruit to finished product' assuring the compliance with current labour legislation."

In conclusion, several of the recommendations about addressing the *caporalato* recur frequently, suggesting that there is growing consensus on the steps that need to be taken towards an appropriate solution. Some questions remain, however, as underlined by the case study on Quanta Agricoltura (Box 3).

¹⁵ Assolavoro, "Position Paper sul fenomeno del caporalato e proposte su come contrastarlo", 2016. Available from: <u>http://www.assolavoro.eu/sites/default/files/article/Position%20Paper%20su%20Caporalato.pdf</u>.

Box 3: Quanta Agrigoltura – a private job agency for agriculture

Quanta Agricoltura is the first private agency for agricultural work in Italy. It offers its services in a sector where demand is linked to seasonality and working peaks, so outsourced labor can be the ideal solution. According to its website, "Utilizing the services provided by Quanta Agricoltura, the company gains concrete benefits, thanks to the possibility to completely outsource resource management, especially from an administrative point of view, fully respecting the rules."

In 2015, however, the company's Bari office was at the centre of scandal. It came to light that many workers who received pay slips on behalf of Quanta Agricoltura were recruited by *caporali*, and had never visited the temp agency, Quanta reponded by removing the local management team and paying "hundreds of thousands of euros" in penalties to the State. They then signed a Memorandum of Understanding with trade unions (Cgil, Cisl and Uil) to combat the *caporalato* system, where it's stated that booking lists will be used and that "a free of charge transport to reach the job place will be guaranteed in accordance with the contract".

Quanta Agricoltura states that responsibility for the scandal lies entirely with the two former mangers of the Bari branch who have now been dismissed. "These two employees, to make their life easier, used *caporali* to create the teams". This event once again underscores how difficult it is, even for those who have strong organisational backing, to recruit the workforce in a legal way without *caporali*.

3. Price setting in the agriculture sector

According to a recent study by Confagricoltura, Cia, and Copagri "on average for every euro spent by the final consumer, only 15 cents go into the farmer's pocket". To give a few examples:

- The price for oranges paid to farmers is 40% less than a year ago 18 cents per kilo. In the supermarket the price averages €2, with a more than 10-fold rise from farm-gate to table.
- The farmer receives 26 cents per kg for eggplant (down 61% in one year), while the consumer pays €1.90 per kg, more than seven times that much.
- Milk: farmers receive 33 cents per litre, while consumers pay €1,70, a mark-up of over 500%.
- Apples and pears in supermarkets cost on average €2 per kg, while the farm-gate price is 60 cents per kg for apples and 88 cents per kg for pears.

One of the reasons suggested for such a disparity is the "aste al ribasso", online auction process, described below.

Price-setting through double-down auctions

Major retailers play a major role in the setting of agricultural prices since a large part of Italian production is sold to them as *private label*. A common purchase method involves large-scale distributors sending an e-mail to all producers announcing an online auction. The auction lasts 15 days and in that time companies have to propose a price for peeled tomatoes, tomato sauce, etc. (note that production at that time has not yet started, so it is a proposal sight unseen). After 15 days, the auction is closed and the retailer takes the lowest proposal as a reference. Then the retailer reopens the online auction, using as a base the lowest price offered in the first auction. Companies have three minutes to make a lower proposal. This creates a situation that producers describe as "gambling" in which they have to decide within few minutes on the future of the entire season yet to begin. Some producers, for fear of losing the commission, have been

known to lower the price they had offered in the first auction by up to 30%, with consequent repercussions on the entire supply chain. The wages of workers is one of the main areas likely to be squeezed.

How the online auctions work

"You get an email asking at what price you are willing to sell a batch of your product, for example a million boxes of tomato sauce. You make an offer. The client collects bids and then convenes a new auction. The lowest bid becomes the starting price." In its factory in Buccino - in the province of Salerno - where it produces peeled tomatoes, tomato sauce and roasted peppers, Francesco Franzese tells the details of what he calls "by far the most unfair practice of the large-scale distribution". Franzese tells how other entrepreneurs have lowered their offer, below any acceptable limit, in order to win the contract. "They got caught by the fever of the game and they really hurt themselves".

The only constraint on this process is that it is forbidden <u>to sell below the price of production</u>, indicated in column at the top of the excel sheet within which the auction takes place. "But it often happens that buyers just ask us to change that figure downward so that everything appears perfectly legal" says Franzese. "So in many cases my colleagues have sold goods below the cost of production".

The entity selling below cost will then lean on the farmer that provides the raw material. In the case of tomatoes, the auctions are done in spring, before there is the actual product and most importantly before the representatives of the processing industry and the representatives of the farmers have closed the agreement setting out the selling price. So, the processing company sells a product when it still does not know what it will pay. At that point, the company will try to close the contract at the price that the big supermarket chains have already established in advance with auctions, without taking into account the real situation on the ground. "In a sense, with online auctions, the industry put farmers' skin at stake".

The "reverse" or "double down" auction process, is spreading as an increasingly common practice of large retailers – and even by the government – for different product types. It is very popular in the food industry in many European countries and in North America. With a little delay, it is also breaking through in Italy. Today, it is used for several packaged products in addition to tomatoes: olive oil, coffee, legumes and canned vegetables. Brought in by big foreign convenience stores – initially Lidl and then French operators, Carrefour and Auchan – it is now common practice.

According to a study presented at the Bologna Marca Fair in January 2017, "these auctions are used by around 50% of convenient stores and slightly smaller proportion of classic supermarket chains." The newspaper *Internazionale* recently undertook an investigation into auction practices. They asked all the main actors to provide information about the auctions but many chose not to reply. Eurospin confined its answer to a terse "we are not interested to join this initiative." Lidl and Carrefour left unanswered questions even after an initial telephone contact and follow-up.

In contrast, Coop Italy, the largest Italian group of supermarkets, stated that "the online auction is not a widespread practice in Coop, it's adopted only in exceptional cases - appropriately selected - and only for the supply of product "primo prezzo", products with the lowest price in their category". This practice, according to Coop, provides "a sense of the market prices in a short time, thanks to the speed of collection of the information necessary for evaluating the offer of product, in quality and price terms". In conclusion, the group admits some negative aspects of the instrument and is committed "to share this issue with other

European partners of large retailers". Conad, Esselunga, and Unes also consider the reverse auction practice not in line with their principles.¹⁶

As a business-to-business transition rather than business-to-consumer, no legislative mechanism regulates this process. Many in the industry, even those most affected by this type of electronic trading, believe that any regulation would be rejected by anti-trust authorities, because it would violate the rules of the free market. Yet, regulation is already in place in France. In August 2005, following a debate that involved public opinion immediately after the appearance of this method, the National Assembly passed a law (the Jacob Law) intended to regulate the "enchères électroniques inversées" (reverse electronic auctions).¹⁷ The text sets out certain rules that increase transparency in trading, and adds sanctions for introducing false participants to reduce prices. Most importantly, the law establishes that online auctions cannot be a tool to find more competitive prices to those offered by long-standing suppliers, who must be given an appropriate period of notice about the end of the contractual relationship.

Campaign against the double-down auction process

On 25 March 2017, a new campaign, **#ASTEnetevi¹⁸** was launched by Terra! Onlus and Flai CGIL, for the elimination of the reverse auction process and below-cost pricing in supermarkets. The organisers of the campaign sent a letter to the Minister of Agriculture and the heads of the major supermarket chains (Auchan Italy, Carrefour Italy, Conad, Coop Italy, Crai, Despar, Esselunga, Eurospin, Interdis, Lidl Italy, Gruppo Pam Panorama, Selex, Sigma, Sisa, Sma Italy): "We ask Minister Martina and broad scale distribution to ban the reverse auction process and stop the below-cost phenomenon that destroys agriculture and workers' rights".

The campaign also called for citizens and consumers to take action by (1) writing to request that big distributers renounce the practice of online double-down auctions in the purchase of food products, and (2) advocate to the Ministry of Agricultural, Forestry and Agrifood sectors to issue decree that regulates this mechanism in a stringent manner. Those behind the #ASTEnetevi campaign have had previous success in lobbying the government to change labour reporting systems in agriculture from three months to one month, to help address the fake labourer system described above (see Footnote 9).

¹⁶ F. Ciconte; S. Liberti. Con le aste online i supermercati rovinano gli agricoltori, 13.03.2017, Internazionale.

¹⁷ Auction services are formal pricing procedures on a commercial internet platform where auctions are initiated <u>by a vendor</u> to sell products or services at the highest possible price. Reverse auctions are initiated <u>by the buyer</u> to obtain products and services at the lowest possible price. ¹⁸ A wordplay on astenetevi (abstain yourself) and aste (auction).

4. Combatting exploitative labour practice

There are a number of initiatives target exploitative labour practice and the *caporalato* system, including:

- A new law on illegal intermediation and labour exploitation;
- The network of high-quality agricultural work;
- Establishment of shelters for homeless workers; and
- Regional initiatives on the creation of waiting lists to facilitate the legal recruitment of workers.

Italian law on illegal intermediation and labour exploitation

As already mentioned, Italy banned the *caporalato* system in 2011. Most recently, a law approved in October 2016 by Parliament provides for strong sanctions not only for the *caporale*, but also for companies that take advantage of the services of a *caporale*. The law substantially changes Article 603bis of the Criminal Code on illegal intermediation and labour exploitation (see informal translation in Annex 1). In addition to reformulating the offence of *caporalato*, the law widens responsibility to any employer that "subjects the workers to conditions of exploitation and taking advantage of their state of need". In other words, involvement of a *caporale* or a criminal organisation involved is not required for a breach of the law. The new law also provides for the confiscation of the property, while adopting measures that ensure the continuing functioning of the company and, consequently, the employment of workers.

Six people were arrested under the new law on 23 February 2017 in connection with the death for exhaustion of a woman who worked doing "acinellatura".¹⁹ This is hard work without adequate remuneration. It is among the lowest paid jobs in agriculture: 27-30 euros per day, despite the provincial authorities establishing a minimum wage of 52 euros. Among those arrested were: a *caposquadra*; the owner of the transport company, which carried the labourers by bus to the fields; the director of the temp agency that employed the victim; two accountants and one woman responsible for the managing of the fake labourers system. The charges are fraud against the State, illicit brokering, and labour exploitation. The responsibilities relating to the woman's death are being investigated by an occupational physician.

Supporters have highlighted the law's strong penalties. The President of the Italian Chamber of Deputies (House of Representatives), Laura Boldrini, hopes that the new law on *caporalato* "proves to be an effective response to eradicate a form of intolerable slavery", while judges have said that the improved definition of the offence makes the law easier to implement.

The new law, however, leaves three key issues unaddressed for an effective fight against *caporalato* and exploitation.

1. *Management of migration:* as long as migrants are vulnerable on the labour market, the *caporali* will have great power. The Italian law, in making it difficult to obtain residence permits, contributes to this vulnerability. Making easier to get and keep a residence permit of some kind, even while moving from region to region following the seasonal harvest, would be a major step in reducing potential exploitation of seasonal labourers.

¹⁹ This is a technique done usually by women sparing the grape nuts, to make the nicest bunches of grapes, discarding the small grapes that prevent others from growing. It is done in a marquee on the fields, under the sun.

- 2. Policies of large retail chains, which push powerfully in the direction of lowering costs. The law does not affect the balance of power within the chain, and the role that the "Rete del Lavoro Agricolo di Qualità" could have remains unclear (see below).
- 3. Probably the most important issue is the absence of feasible legal alternatives for worker recruitment. The government offers no help to landowners who have to find workers. The available workers are generally foreigners, many who do not speak Italian and have no fixed abode. The only option available is to call a *caporale* who can find the workforce and transport them in the workplace, this practice does not mean necessary that the employer will not regularise such contracts, just that he has used an intermediary to employ workers (see discussion in first paper).

Rete del Lavoro Agricolo di Qualità - Network of high-quality agricultural work

The new law regulates the "Rete del Lavoro Agricolo di Qualità" (Network of the high-quality agricultural work). Since 4 November 2016, the network only accepts farms that:

- Have not been convicted for violations of the law on employment, for crimes against public administration, crimes against public safety, crimes against the public economy, industry and commerce, crimes against animals;
- Have not been recipients of administrative penalties for labour violations and for the payment of taxes and duties in the last three years. The provision does not apply where the offender regularises the position before the issuance of the final order;
- Are in good standing with the payment of social security contributions;
- Applies collective agreements for workers in line with State policy.

The network can be joined by: "one stop shops" for immigration, local institutions, employment centres, bilateral bodies made up of the organisations of employers, and employees in agriculture. It can also be joined by both temp agencies and other authorised entities for brokerage. The network is open to those with a license to carry persons (transport of agricultural workers to the fields). Local authorities may decide that the signing of the Convention for the Network is a necessary condition to obtain State contributions for the transportation of agricultural workers.

The Rete del Lavoro Agricolo di Qualità was established by the government to improve management of work in the agriculture sector and as it March 2017, it has reached 2,300 members. The Minister of Agriculture, Maurizio Martina, announced that:

There was growth, thankfully. The numbers rose after the simplification of procedures for membership. The network has also expanded. As requested by the unions, charitable institutions, schools and associations can now apply for membership. With this law, therefore, the network grows stronger thanks to a local branching and so I disagree with those who say that it is a failure. We are trying to combat the exploitation even with this lever, which is currently still in the embryonic stage.²⁰

As this quote indicates, there is still strong criticism of the network. The number of subscribers covers less than 0.5% of possible members and there remain several difficulties in obtaining membership:

• Procedures are very bureaucratic and take a long time;

²⁰ Source: <u>http://www.ansa.it/legalita/notizie/regioni/calabria/2016/10/06/caporalato-martina-ddl-migliora-contestazioni-reato_8acc7107-6308-49f9-a3fc-07f88c60d4a1.html</u>.

- The requirements concern the last three years, excluding companies that may have initially been ineligible but have become more ethical in the intervening period; and
- The requirements also cover administrative and fiscal aspects that have nothing to do with the exploitation of workers.

In addition, monitoring of compliance is limited, meaning that membership of the network is no guarantee against exploitative practice. Further, production needs to stop during the monitoring process, which carries an economic cost. The president of Confagricoltura (Italian General Confederation of Agriculture), Mario Guidi, has been particularly outspoken about the value that some traders are attributing to enrolment to the network, considering it as a prerequisite for doing business with these companies. According to Guidi:

Allowing a market outlet only to agricultural businesses registered to the network is a restriction to free competition. Especially when you consider that exclusion is not synonymous with irregular employment because the law denies registration in the presence of minor administrative violations which may have nothing to do with the regularity of the work. Without forgetting that to get registration it is necessary to wait several months because of the inefficiencies of the public administration. If this is not remedied, Confagricoltura will be forced to remove its support for the Network, and I myself will ask that my company, one of the first members, is cancelled. I'm also curious to know if foreign agricultural producers are required to provide the same guarantees when importing their products.

A contrasting view is presented by Mutti, which is the leading premium packaged tomato brand in Italy, covering 40% of the market, Although Mutti operates mainly in the north (where the *caporalato* system is much rarer), it also has a plant in Salerno in the south. Mutti requires 100% of mechanical harvesting in the north, while in the south it allows suppliers to use manual harvesting for certain types of tomatoes, or in contingent situations, such as the presence of stones on the field (amounting to about 20% of production). In cases of manual harvest, Mutti asks agricultural suppliers to demonstrate the existence of regular contracts and that everything is done within the law. According to the agricultural manager of Mutti: "We met all of our suppliers, from the north and the south, asking them to join the Rete del Lavoro Agricolo di Qualità. The reaction has been positive and we are awaiting a response."

Relevant associations

Sustainable supply chains have to date not been a strong focus by many stakeholders: "Several of our customers never ask questions related to ethical trading or the conditions for the workers.", according to one anonymous Italian processing factory. However, some new entities are bringing fresh perspectives to the industry:

Funky Tomato produces through a legal and transparent supply chain in South Italy.²¹ The tomatoes are grown by a network of small farmers in respect of the "Declaration of Intent Funky Tomato", i.e. using environmentally friendly craft techniques, protecting workers' rights and working for the emancipation of the labourers.

The SfruttaZero project runs two associations that produce tomato sauce distributing it throughout Italy, ensuring a fair salary for workers.

²¹ <u>http://www.funkytomato.it/</u>.

#FilieraSporca is a section of the NGO *Terra!* that aims to trace the entire food production chain, from field to shelf, identifying the responsibilities of transnational corporations, large-scale distribution, producer organisations, transport companies, and international temporary employment agencies.²² On 17 November 2016, the Chamber of Deputies was presented with the third report #FilieraSporca "Spolpati - The crisis in the tomatoes industry due to exploitation and unsustainability" produced by Terra! Onlus. This 50-page report results from a 5-month research conducted in Puglia, Campania and Emilia, and also China, with the aim of tracing back the system of production, processing and marketing of tomatoes.

Shelters/reception centres for workers

Another attempt to reduce the vulnerability of migrants has been through providing them with shelters. However, existing attempts highlight that these are unlikely to be successful unless integrated with employment and transport services. This is well illustrated by the words of two workers from Burkina Faso: "In the reception centre there's no work offer, and there are no buses to go to work. The bosses are afraid to approach us and the Italians do not come to take you to work. The transport from there costs ≤ 10 , twice as much as the cost of living in abandoned houses." Another issue raised was whether the funding of shelters was more efficient than renting of existing vacant houses (see case study in Annex 2).

There may be still scope for the shelter model but with the presence of an office overseeing seasonal employment, which not only manages the waiting list but also acts as a point of information and support to workers. It also seems essential to guarantee a transport service (which is actually required by the Provincial Contract Labour²³), and the presence of cultural mediators and operators able to offer a sociolegal guidance to workers.

Another initiative, **Sindacato di Strada** (union on the road) and the **Camper dei diritti** FLAI-CGIL (Campervan for rights) operates a widespread campaign against illegal work and *caporalato* in the more exposed areas, to reach out to workers in the workplace or meeting places, in squares, in ghettos or in the roundabouts where they are "hired" by the *caporali*. ²⁴ Since 2011, Sindacato di Strada has become a reference point for the affirmation of the rights of thousands of farm workers.

Online recruitment

In April 2017 the website "Agrorà - La piazza per i lavoratori agricoli" (the meeting place for agricultural workers) <u>www.agrora.distrettoagrumidisicilia.it</u> was launched. This platform is intended as a meeting point between the demand and supply of labour in the Sicilian citrus' supply chain, and brings together industry entrepreneurs with specialised expertise in the care of the citrus groves. The platform is an integral part of the project "Social Farming for the Sicilian citrus industry" organised by Distretto Agrumi Sicilia e Alta Scuola Arces, with the support of The Coca-Cola Foundation.

The website is open to receive CVs of potential candidates to work in agriculture and specifically in the citrus industry, from labourer to pruner, from agronomist to food technologist. The platform enables companies to conduct research in an agile and fast way, thanks to an internal search engine based on two primary queries (keyword chosen by the company and location). It is also possible to see one by one the profiles of all registered workers on the platform. The registration and search of the profiles are free.

²² <u>http://www.filierasporca.org/</u>.

²³ The C.P.L. (2012-2015 Potenza's Provincial Labor Agreement) provides in Art. 13 and 14, that is possible "to activate on all the territory agreements with the Basilicata Region to program relevant agricultural labor flows" and where it is not possible to use public transport and the company is unable to provide a suitable means of transport for workers to travel from the places of residence, "to the company is recognised a benefit to cover expenses amounting to 2ε from 4 to 12km, 3ε for more than 12km and up to 20Km, 4ε for more than 20 Km."

⁴ See: http://www.flai.it/campagne/sindacato-di-strada/.

According to promoters, "the aim is to offer a tool to support workforce recruitment, in a cheerful and transparent way, in a 'square' in which everything happens out in the open. In this virtual marketplace, companies seeking staff for its activities, from cultivation to the maintenance of fields, processing to reception, can tap into a database of skilled workers and with specific experience." In a region that produces 60% of the citrus fruit of the peninsula, but in which there is no agreed strategy between the various components of the supply chain, the Social Farming project marks a significant step towards making the sector more competitive.

5. Concluding comments and consolidated recommendations

The Italian tomato-growing sector brings together demand for cheap, flexible low-skilled labour with a large supply of vulnerable foreign workers. Combined with ineffective compliance systems, this has resulted in long-standing exploitative practice, underpinned by the *caporalato* system. The 2016 law banning the use of *caporali* in agricultural labour recruitment was intended to reduce exploitative practice. While the law has been widely praised as allowing effective action against those guilty of the worst abuses, it has also left unanswered the question of how the demand for casual labour can be effectively filled. Farmers have repeatedly highlighted the lack of alternatives to the use of *caporali*, who do not just recruit workers but also provide transport and interpretation.

Apart from the law, the government's primary solution to this problem has been the promotion of the Rete del Lavoro Agricolo di Qualità. Unfortunately, available information and feedback from interviewees suggest that the network does not, at least in its current form, provide a viable way forward. The network is seen as very bureaucratic and unduly restrictive, adding additional costs onto members without providing solutions to the underlying issues.

One of these underlying issues is the double-down auction process that seeks to get the lowest possible price for agricultural products. The timing and method of the auction places huge pressure on producers, who in turn will seek concessions from farmers. Farmers are thus incentivised to reduce worker costs. Feedback from one source suggests some buyers may be actively encouraging sellers to misrepresent their costs. A campaign has recently been initiated against this auction process.

Another new development is the development of an online recruitment market place. This is very much a pilot initiative but will help shed light on the potential role that technology may play in filling the current gap in labour provision. Private sector agencies have also expressed an interest in becoming more active in the agricultural sector although this interest appears to be based on the fulfillment by government of various conditions, the viability of which is currently unclear. Against this background, the primary stakeholder recommendations occurring throughout the research are:

- The government should consider whether should regulate the "double down" auction process.
- Recruitment, language and transport should be considered as a package when developing alternatives to *caporalato*.
- Workers need a safe place to report abuse: there should be trained staff at community level to which they can report violations.
- There appears value in piloting different recruitment options (e.g. public / private / online) instead of trying to implement large-scale solutions from the outset.

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Annex 1: Italian law on illegal intermediation and labour exploitation

Italian text (English translation below)

«Art. 603-*bis. – (Intermediazione illecita e sfruttamento del lavoro). –* Salvo che il fatto costituisca più grave reato, è punito con la reclusione da uno a sei anni e con la multa da 500 a 1.000 euro per ciascun lavoratore reclutato, chiunque:

1) recluta manodopera allo scopo di destinarla al lavoro presso terzi in condizioni di sfruttamento, approfittando dello stato di bisogno dei lavoratori;

2) utilizza, assume o impiega manodopera, anche mediante l'attività di intermediazione di cui al numero 1), sottoponendo i lavoratori a condizioni di sfruttamento ed approfittando del loro stato di bisogno.

Se i fatti sono commessi mediante violenza o minaccia, si applica la pena della reclusione da cinque a otto anni e la multa da 1.000 a 2.000 euro per ciascun lavoratore reclutato.

Ai fini del presente articolo, costituisce indice di sfruttamento la sussistenza di una o più delle seguenti condizioni:

1) la reiterata corresponsione di retribuzioni in modo palesemente difforme dai contratti collettivi nazionali o territoriali stipulati dalle organizzazioni sindacali più rappresentative a livello nazionale, o comunque sproporzionato rispetto alla quantità e qualità del lavoro prestato;

2) la reiterata violazione della normativa relativa all'orario di lavoro, ai periodi di riposo, al riposo settimanale, all'aspettativa obbligatoria, alle ferie;

3) la sussistenza di violazioni delle norme in materia di sicurezza e igiene nei luoghi di lavoro;

4) la sottoposizione del lavoratore a condizioni di lavoro, a metodi di sorveglianza o a situazioni alloggiative degradanti.

Costituiscono aggravante specifica e comportano l'aumento della pena da un terzo alla metà:

1) il fatto che il numero di lavoratori reclutati sia superiore a tre;

2) il fatto che uno o più dei soggetti reclutati siano minori in età non lavorativa;

3) l'aver commesso il fatto esponendo i lavoratori sfruttati a situazioni di grave pericolo, avuto riguardo alle caratteristiche delle prestazioni da svolgere e delle condizioni di lavoro».

English text (unofficial translation)

"Art. 603-bis. - (Illegal intermediation, and labour exploitation). - Unless the act constitutes a more serious crime, it shall be punished with imprisonment from one to six years and with a fine of 500 to 1,000 euros for each recruited worker, whoever:

1) recruits workers in order to assign them to work with third parties under exploitative conditions, taking advantage of the state of need of workers;

2) uses, hires or uses manpower, including through the brokering activities referred to in number 1), subjecting workers to exploitative conditions and taking advantage of their state of need.

If the offenses were committed using violence or threat, punishment of imprisonment from five to eight years shall be applied together with a fine of 1,000 to 2,000 euros for each worker recruited. For the purposes of this Article, the existence of one or more of the following conditions constitutes exploitation:

1) repeated payment of wages manifestly different from national or territorial collective agreements concluded by the most representative trade unions at national level, or otherwise disproportionate to the amount and quality of work performed;

2) repeated violation of the rules on working hours, rest periods, weekly rest, mandatory leave of absence, holiday entitlement;

3) the existence of violations of the rules of safety and hygiene in the workplace;

4) subjecting the worker to degrading working conditions, surveillance methods or housing.

Constituting specific aggravating circumstances and involving the increase of the penalty by one third to a half:

1) the fact that the number of recruited workers is greater than three;

2) the fact that one or more of the recruited subjects are minors, under working age;

3) to have committed the act exposing the exploited workers to situations of danger, having regard to the characteristics of the services to be performed and the working conditions. "

Annex 2: Migrant worker shelters – lessons learned

The provision of shelters for migrant workers is seen as one avenue to reduce the vulnerablity of migrant workers, providing alternative to living in temporary slums with the accompanying security risks and general uncertainty. In this context, the experience of one pilot to provide shelter for migrants, the laboratorio Basilicata, highlights important lessons. Despite the opening of two reception centres, protection services for workers remain deficient and transportation to and from the workplace is non-existent. The problem is well illustrated by the words of two workers from Burkina Faso: "In the reception center there's no work offer, and there are no buses to go to work. The bosses are afraid to approach us and the Italians did not come to take you to work. The transport from there costs €10, twice as much as pays who live in abandoned houses."

In 2016 the management of shelters was assigned for the third year by the Basilicata Region to the Italian Red Cross. The centers - the former paper mill in Venosa and the former tobacco factory in Palazzo San Gervasio - were opened respectively in mid-May and mid-August until late October and have hosted a total of 390 people. This year, as in the previous, only workers with a residence permit could access the shelter upon registration on booking lists. The maximum capacity of each centre is 150 units and consists of a single zone that acts as a dormitory and kitchen. The dorm consists of small rooms with up to four beds, made from separé and furnished exclusively with folding beds and fireproof mattresses donated by Caritas. The kitchen is equipped with two-three electric hotplates and in the centre of Venosa there were no tables and chairs for dining. Outside there are the bathrooms and showers - four in Venosa, five in Palazzo San Gervasio - and two tents for socialisation and to accommodate visitors or other possible projects.²⁵

The staff do not have among their ranks any cultural mediators nor social workers with specialised knowledge of immigration and work, as would be strongly recommended in this context. Since transport to and from the workplace is not provided, the use of *caporale* continue to be the only possibility to reach the fields. For the third year, therefore, the centres operated as just dorms with insufficient standards, instead of fulfilling the function for which they were conceived, that is to offer services to protect workers and to facilitate meeting with possible employers. According to data provided by administrators of Venosa and Palazzo San Gervasio municipalities in 2014 the opening and equipping of the two centers costed about €400,000.

If these funds were invested directly in the historical centers of the municipalities involved in the harvesting season, with an average rent of \leq 300 for four people, it would have been possible to rent more than 1.000 homes, favoring the autonomy of workers and supporting a small income for the local population. In the medium term and with the appropriate involvement of the population, to reception centers it is surely preferable to adopt a housing-policy based on (1) a widespread admission plan within towns, providing a contribution to the lease of empty dwellings and (2) the establishment of a seasonal information desk that allows the meeting of supply and demand for both working and housing, alongside the employment centers.

²⁵ See pictures: <u>https://www.flickr.com/photos/mediciperidirittiumani/sets/72157672239354743</u>.