

Measuring (the Effects of) Measurements: Four Global Legal Indicators in Italy

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Abstract

Taking Italy as a case study, the paper aims to investigate the effects that global legal indicators – that is, quantitative collections of data purporting to compare and rank states' performances with regard to an array of legal issues – might have on domestic legal systems. To this purpose, the paper examines the changes brought to the Italian legal framework by four selected indicators: the 'Freedom in the World' Reports published by Freedom House, the 'Corruption Perceptions Index' annually released by Transparency International, the US Department of State's 'Trafficking in Persons' Reports and the World Bank's 'Doing Business' Reports. As the analysis will show, these indicators have variedly penetrated the Italian legal domain and have concurred with other hard and soft law instruments in promoting reform agendas, sets of arguments and beliefs, as well quantitative approaches to legal phenomena. While more can be done to understand the outcomes of global legal indicators, the study provides an empirical basis for the claim that global indicators have legal strings attached and fully deserve lawyers' attention.

I. Introduction

Global legal indicators may be described as collections of data often in numerical form, purporting to represent, compare, and rank the performance of states with regard to an array of legal issues.¹ These indicators are all around us, providing quantitative measurements in areas as diverse as rule of law, democracy, corruption, anti-trafficking, business-friendliness, human rights and development.

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¹ There is no unanimity on the definition of 'global legal indicators'. For some attempts of defining them, see M. Infantino, *Numera et impera. Gli indicatori giuridici globali e il diritto comparato* (Milano: Franco Angeli, 2019), 81-99; D. Restrepo Amariles and J. McLachlan, 'Legal Indicators in Transnational Law Practice: A Methodological Assessment' 58 *Jurimetrics Journal*, 163-167 (2018); D. Restrepo Amariles, 'Supping with the Devil? Indicators and the rise of managerial rationality in law' 3 *International Journal of Law in Context*, 465- 466 (2017); K.E. Davis, 'Legal Indicators. The Power of Quantitative Measures of Law' 10 *Annual Review of Law & Social Sciences*, 38-39 (2014); T. Krever, 'Quantifying law. Legal indicator projects and the reproduction of neoliberal common sense' 34 *Third World Quarterly*, 131-132 (2013); K.E. Davis, B. Kingsbury, S.E. Merry, 'Introduction: Global Governance by Indicators', in K.E. Davis, A. Fisher, B. Kingsbury and S.E. Merry eds, *Governance by Indicators. Global Power through Quantification and Rankings* (New York: OUP, 2012), 3-6.

The drive for quantification has largely passed unobserved in legal scholarship. Among the many issues that legal scholars have not yet explored, the impact of global legal indicators on domestic systems is one of them. As lawyers, we know that global legal indicators exist; we seldom quote or criticize them; we suspect they play a role in defining agendas for reform and shaping technical and lay opinion on political and legal matters. Yet, we have little empirical evidence supporting such suspicion. Although some studies have been carried out in this regard, very few have focused on the legal consequences of indicators, which are mostly limited to one indicator in one country only.

Against such a context, this paper stands out as an attempt to map the imprints that global legal indicators might leave on domestic legal frameworks. As a case study, the paper will examine the impact of four selected indicators (the 'Freedom in the World' Reports, the 'Corruption Perceptions Index', the 'Trafficking in Persons' Reports and the 'Doing Business' Reports) on the Italian legal system. The paper, therefore, aims to fill a gap in the literature, and to provide an empirical basis for the claim that indicators have legal strings attached.

In order to pursue such aims, the paper first provides a summary of the research on global legal indicators carried out thus far (section II) and of the reasons explaining the lack of empirical analysis of their legal effects (section III). This will set the ground for the paper's core analysis: after outlining the history, context and contents of the four indicators selected for the study in section IV, section V will delve into their concrete effect on the Italian legal system. The survey will allow us to sketch out some preliminary conclusions and hopefully to pave the way for further studies to come (section VI).

II. The State of the Art

Fuelled by a general paradigm shift towards quantification throughout the Twentieth century in management practices, by the globalization of American business-oriented and ranking-prone culture, and by technological advancements in the standardization, collection, and treatment of mass data,² global legal indicators made their appearance in the Seventies.

At the beginning of that decade, legal scholars involved in the Stanford-based Studies in Law and Development (SLADE) project collected a massive amount of empirical data on a small sample of countries in order to investigate the

² On such a paradigm shift, in general, see C. Shore and S. Wright, *Audit Culture and the New World Order: Indicators, Rankings and Governing by Numbers* (London: Pluto Press, forthcoming 2020); M. Strathern ed, *Audit Cultures: Anthropological Studies in Accountability, Ethics, and the Academy* (London: Psychology Press, 2000); A. Desrosières, *La politique des grands nombres. Histoire de la raison statistique* (Paris: La Découverte, 2nd ed, 2000), 26-59; M. Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: University of Chicago Press, 1998); M. Power, *The Audit Society: Rituals of Verification* (Oxford: OUP, 1997).

relationship between law and development.³ The project was swiftly discontinued; the information gathered was too much and too hard to manage. The lack of immediate results rapidly cooled down the enthusiasm of those involved and of the American development agencies that were funding the program.⁴ The failure of an experiment of such a scale, marked the exit of legal scholars from the market of indicators. Yet, as legal scholars went out, new actors came in.

In parallel with the demise of the SLADE project, individuals and non-governmental organizations (NGOs) with an interest in global affairs began to build their own global legal indicators. The success of such experiments encouraged many international organizations and national agencies, especially since the Nineties onwards, to follow suit. For instance, of the four indicators selected for the present study, the first edition of the ‘Freedom in the World’ (FiW) report, assessing the condition of political rights and civil liberties around the world, was published by the New York-based NGO Freedom House (FH) in 1973.⁵ In 1995, the Berlin-based NGO Transparency International (TI) launched its ‘Corruption Perceptions Index’ (CPI), measuring the perceived levels of corruption in countries.⁶ In 2001, the US Department of State started its series of ‘Trafficking in Persons’ (TiP) Reports, tracking the efforts of States and the results in the fight against human trafficking.⁷ In 2003, relying upon the ‘legal origins’ theory developed by a group of economists at the World Bank (the so-called LLSV group),⁸ a team of the World Bank’s Response Unit launched the ‘Doing Business’ (DB) reports to compare the climate for investment and business-friendliness in countries.⁹

The multiplication of quantitative legal measurements has given rise to substantial secondary literature. Secondary literature includes the thousands of works authored by statisticians, political scientists and economists, proposing refinements to this or that indicator or reworking the data they provide.¹⁰ But secondary literature also includes a niche of critical scholarship, mostly led by

³ J.H. Merryman, ‘Law and Development Memoirs II: SLADE’ 48 *American Journal of Comparative Law*, 713-727 (2000).

⁴ D.M. Trubek, ‘Law and Development: 40 Years after Scholars in Self- Estrangement – A Preliminary Review’ 66 *University of Toronto Law Journal*, 301-329 (2016).

⁵ See <https://tinyurl.com/yc5vrfph> (last visited 27 December 2020).

⁶ See <https://tinyurl.com/ybswyxl7> (last visited 27 December 2020).

⁷ See <https://tinyurl.com/y7mdxgqg> (last visited 27 December 2020).

⁸ The acronym LLSV derives from the initials of the proponents of the theory: La Porta, Lopez, Shleifer, Vishny. The ‘legal origins’ theory purported to examine how a country’s legal origin is a determinant of that country’s economic performance: for the first studies in this direction, see R. La Porta et al, ‘Legal Determinants of External Finance’ 52 *Journal of Finance*, 1131-1150 (1997); R. La Porta, F.C. Lopez de Silanes, A. Shleifer, R.W. Vishny, ‘Law and Finance’ 106 *Journal of Political Economy*, 1113-1155 (1998).

⁹ See <https://tinyurl.com/y8ekubgy> (last visited 27 December 2020).

¹⁰ For a brief review of such literature, see J. Snyder and A. Cooley, ‘Rating the ratings craze: From consumer choice to public policy outcomes’, in A. Cooley and J. Snyder eds, *Ranking the World. Grading States as a Tool of Global Governance* (New York: CUP, 2015), 179-180.

political scientists, international relations experts and anthropologists.¹¹ Critical scholarship has highlighted that indicators silently work as technology for knowledge and governance, shaping people's and organizations' expectations, agendas, priorities and patterns of behaviour, and modifying the manner in which problems are framed, approached and answered. A few legal scholars – especially from the fields of law and development,¹² global administrative law¹³ and comparative law¹⁴ – have contributed to this critical strand of research,

¹¹ As to political science, see for instance D.V. Malito, G. Umbach and N. Bhuta eds, *The Palgrave Handbook of Indicators in Global Governance* (London: Palgrave, 2018); A. Broome and J. Quirk, 'The Politics of Numbers: The Normative Agenda of Global Benchmarking' 41 *Review of International Studies*, 5, 813-838 (2015); A. Cooley and J. Snyder, n 10 above; as to international relations, see J. Kelley, *Scorecard Diplomacy. Grading States to Influence their Reputation and Behavior* (New York: CUP, 2017); as to anthropology, see S.E. Merry, *The Seductions of Quantification. Measuring Human Rights, Gender Violence, and Sex Trafficking* (Chicago: University of Chicago Press, 2015).

¹² See for instance M.A. Prada Uribe, 'The Quest for Measuring Development. The Role of the Indicator Bank', in S.E. Merry, K.E. Davis and B. Kingsbury eds, *The Quiet Power of Indicators. Measuring Governance, Corruption, and Rule of Law* (New York: CUP, 2015), 133-155; K. Pistor, 'Re-Construction of Private Indicators for Public Purposes', in K.E. Davis, A. Fisher, B. Kingsbury and S.E. Merry eds, n 1 above, 165-179.

¹³ G. Gilleri, 'How Do You Perform Human Rights? Measurement, Audit and Power Through Global Indicators', in F. Fiorentini and M. Infantino eds, *Mentoring Comparative Lawyers: Methods, Times, and Places. Liber Discipulorum Mauro Bussani* (Cham: Springer, 2020), 175-196; R. Urueña, 'Indicators as Political Spaces. Law, International Organizations, and the Quantitative Challenge in Global Governance' 12 *International Organization Law Review*, 1-18 (2015); M. Riegner, 'Towards an International Institutional Law of Information' 12 *International Organization Law Review*, 50-80 (2015); S. Cassese and L. Casini, 'Public Regulation of Global Indicators', in K.E. Davis, A. Fisher, B. Kingsbury and S.E. Merry eds, n 1 above, 465-474.

¹⁴ Unlike their colleagues, comparativists have mainly focused on the 'legal origins' theory underlying the DB reports, perhaps because the theory had a clear academic format and was more evidently connected to their field of studies. Comparativists' scholarship on indicators has thus disproportionately been devoted to demonstrate how simplistic, biased and untenable are the 'legal origins' theory's methodology, assumptions and conclusions: cf the contributions to special issues on the legal origins theory in 57(4) *American Journal of Comparative Law*, 765-876 (2009); 59(2) *University of Toronto Law Journal*, 179-235 (2009); 6 *Brigham Young University Law Review* 1413-1906 (2009); 166 *Journal of Institutional and Theoretical Economics*, 1-202 (2010); 11 *Annuario di diritto comparato*, 7-353 (2012). See also M. Bussani, 'Deglobalizing Rule of Law and Democracy: Hunting Down Rhetoric Through Comparative Law' 67 *American Journal of Comparative Law*, 701, 718-720 (2019); U. Kischel, *Comparative Law* (Cambridge: CUP, 2019), 134-143; R. Scarciglia, *Metodi e comparazione giuridica* (Padova: CEDAM, 2nd ed, 2018), 113-114; N. Garoupa, C. Gómez Ligüerre and L. Mélon, *Legal Origins and the Efficiency Dilemma* (New York: Routledge, 2016); R. Michaels, "'One size can fit all" – some heretical thoughts on the mass production of legal transplants', in G. Frankenberg ed, *Order from Transfer. Comparative Constitutional Design and Legal Culture* (Cheltenham: EE, 2013), 56-78; M. Bussani and U. Mattei, 'Diapositives versus movies – the inner dynamics of the law and its comparative account', in M. Bussani and U. Mattei eds, *Cambridge Companion to Comparative Law* (Cambridge: CUP, 2012), 3-12; N. Garoupa and C. Gomez Ligüerre, 'The Syndrome of the Efficiency of the Common Law' 29 *Boston University International Law Journal*, 287-335 (2011); H. Spamann, 'The 'Antidirector Rights Index' Revisited' 23 *Review of Financial Studies*, 467-486 (2010); M.M. Siems, 'Legal Origins: Reconciling Law & Finance and Comparative Law' 52 *McGill Law Journal*, 55-81 (2007); Association Henri Capitant des amis de la culture juridique française, *Les droits de tradition civiliste en question. A propos des rapports Doing Business* (2 volumes, Paris: Société de

challenging respectively the assumptions and ideology underpinning such initiatives, their lack of legitimacy and accountability, and the methodological fallacies of their measurements. While the legal status of indicators remains debatable,¹⁵ there is widespread consensus, in the critical perspective, that indicators conflate description with prescription, purporting on the one hand to depict countries' state-of-the-art, but, on the other hand, implicitly choosing one model as the most appropriate and campaigning for worldwide harmonization in that direction. In the legal sector, global indicators' purported description of the legal architecture of countries becomes functional to a neo-colonialist promotion of the superiority of one legal model over others.

Yet, even within critical literature, there has been very little groundwork done on the concrete uses and the practical effects of indicators on legal systems. Much of the evidence collected in this regard concerns scattered overviews of statutory reforms enacted here and there to comply with one indicator's implicit prescriptions.¹⁶ Research devoted to specific legal consequences of global

législation comparée, 2006). There are few exceptions, such as the broader studies on indicators undertaken by M.M. Siems, *Comparative Law* (Cambridge: CUP, 2nd ed, 2018), 180-228; R. Hirschl, *Comparative Matters. The Renaissance of Comparative Constitutional Law* (Oxford: OUP, 2014), 16, 192-193, 288, as well as the author of this paper (see M. Infantino, n 1 above).

¹⁵ Some claims that indicators 'hold an intrinsic normative quality' (D.V. Malito, N. Bhuta and G. Umbach, 'Conclusions: Knowing and Governing', in D.V. Malito, G. Umbach and N. Bhuta eds, n 11 above, 503-507) and might be qualified as 'unconventional transnational norms' (D. Restrepo Amariles, 'Legal indicators, global law and legal pluralism: an introduction' (2015) 47 *Journal of Legal Pluralism & Unofficial Law*, 9-17), while others hold that indicators are 'not legal instruments as such' (M. Riegner, n 13 above, 60).

¹⁶ See for instance S.E. Merry, n 11 above, 150 (on legal reforms adopted in a few countries following the prescriptions of the TiP); A. Cooley, 'The emerging politics of international rankings and ratings. A framework for analysis', in A. Cooley and J. Snyder eds, n 10 above, 1, 34-35 (on legal reforms adopted by Azerbaijan following the DB); T. Besley, 'Law, Regulation, and the Business Climate: The Nature and Influence of the World Bank Doing Business Project' 29 *Journal of Economic Perspectives*, 99, 117 (2015) (on the legal reforms and administrative restructuring undertaken by Rwanda following DB's prescriptions); M. Serban, 'Rule of Law Indicators as a Technology of Power in Romania', in S.E. Merry, K.E. Davis and B. Kingsbury eds, n 12 above, 199-221 (on anti-corruption reforms undertaken in Romania following the CPI); M. Akech, 'Evaluating the impact of corruption (perception) indicators on governance discourses in Kenya' 25 *International Law. Revista Colombiana de Derecho Internacional*, 91-154 (2014) (on the reforms undertaken by the Kenya government to measure corruption following Transparency International's guidelines); M. Zaloznaya and J. Hagan, 'Fighting Human Trafficking or Instituting Authoritarian Control? The Political Co-optation of Human Rights Protection in Belarus', in K.E. Davis, A. Fisher, B. Kingsbury and S.E. Merry eds, n 1 above, 344, 346-361 (on the criminal and administrative measures enforced by Belarus to comply with the TiP); S. Schueth, 'Assembling International Competitiveness. The Republic of Georgia, USAID, and the Doing Business Project' 87 *Economic Geography*, 51-77 (2010) (on the legal reforms enacted by Georgia to improve its DB's ranking); B. Arruñada, 'How Doing Business Jeopardizes Institutional Reform' 10 *European Business Organization Law Review*, 555-562 (2009) (on legal reforms adopted in Afghanistan, Bulgaria, Colombia and El Salvador following the DB). One should also consider that, following the first editions of the DB reports, the French government established the 'Fondation pour le droit continental' (<https://tinyurl.com/y7hpg9yp>, last visited 27 December 2020) with the aim of promoting the civil law tradition in the world and of drafting a French version of the DB indicator.

indicators is still missing. This is a gap worthy of being filled and yet hard to fill for the reasons we are now going to explore.

III. Methodological Challenges

Although critical literature on legal indicators is adamant in stating that indicators act as a technology for global governance, shaping the way in which legal problems, priorities and rules are framed, discussed and dealt with, there is very limited empirical evidence supporting such a claim. Take for instance the Italian case, one might find works attacking the assumptions and methodology of DB reports,¹⁷ eventually highlighting the misconceptions and ill-consequences of the DB approach when applied to the Italian context.¹⁸ None have checked what transformative changes, if any, global legal indicators have triggered in the Italian legal system.

Many reasons might explain such an empirical neglect. Global legal indicators do not present themselves as legal instruments, but rather as quasi-statistical descriptions of legal architecture and performance of countries vis-à-vis benchmarks that are often aligned with more or less binding legal sources, such as international conventions and soft law instruments by international organizations. The majority of legal scholars have therefore either overlooked indicators or simply considered them as quantitative data for their research. Since the legal debate on indicators has been so minimal, the few authors focussing on them have had to spend much of their efforts in explaining what indicators are and in demonstrating their significance. Further, much of the

The first edition of the 'Index de la sécurité juridique' was published in 2015; the second in 2018: B. Deffains and C. Kessedjian eds, *Index de la sécurité juridique. Rapport pour la Fondation pour le droit continental*, 2015, available at <https://tinyurl.com/y76o6sk9> (last visited 27 December 2020); B. Deffains and M. Séjean eds, *L'index de la sécurité juridique ISJ – The Index of Legal Certainty ILC* (Paris: Dalloz, 2018). See also the decision of the Supreme Court of Canada, *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 SCR 87, para 24, referring to the 'Rule of Law Index®' of the World Justice Project to support the claim that 'ordinary Canadians cannot afford to access the adjudication of civil disputes'.

¹⁷ In addition to the contributions to the 11th volume of the *Annuario di diritto comparato*, n 14 above (and in particular those of M. Graziadei, 'Presentazione', 7-16; A. Gambaro, 'Misurare il diritto?', 17-48; S. Cassese and L. Casini, 'La disciplina degli indicatori globali', 97-116; G. Napolitano, 'Le misurazioni nel (e del) diritto amministrativo', 117-138), see L. Antonioli, 'The Magic of Numbers. Elucubrazioni sparse in tema di misurazione del diritto', in A. Candian, U. Mattei and B. Pozzo eds, *Un giurista di successo. Studi in onore di Antonio Gambaro* (Milan: Giuffrè, 2017), I, 37-50.

¹⁸ R. Caponi, '“Doing Business” as a Purpose of Civil Justice? The Impact of World Bank Doing Business Indicators on the Reforms of Civil Justice Systems: Italy as a Case Study', in C. Althammer and H. Roth eds, *Instrumentalisierung von Zivilprozessen* (Tübingen: Mohr Siebeck, 2018), 79-88 (hereinafter '“Doing Business”'); L. Enriques and M. Gargantini, 'Form and Function in Doing Business Rankings: Is Investor Protection in Italy Still so Bad?' 1 *University of Bologna Law Review*, 1, 14-29 (2016); R. Caponi, 'Doing business come scopo del processo civile?' *Foro italiano*, V, 2015, 10-16 (hereinafter 'Doing business').

strength of indicators lies in their ability to frame their users approach to legal problems – that is, something very hard to trace through the methodological tools which lawyers are usually familiar with. The fact that global legal indicators often live in dense legal environments and concur to strengthen the force of other legal sources creates the additional difficulty of distinguishing processes of change driven by indicators from transformations prompted by other sources.

In spite of the obstacles in tracing the effect of global legal indicators, there is nevertheless much that could be done, even with traditional legal research tools, to find evidence of what global legal indicators do. For instance, the findings in this paper are based on a search for textual references to the four selected indicators in parliamentary debates, explanatory memoranda of laws, public administration's documents, judicial decisions, legal literature and NGO pamphlets. Needless to say, textual references to indicators are an imperfect proxy for their relevance. Such a method does not track cases in which indicators play a role that remains un verbalized and unwritten and by contrast places excessive emphasis on rhetorical and pays lip-service to indicators in support of certain arguments or conclusions. The focus on textual recurrences of global legal indicators further fails to consider the significance that indicators might have on legal activities and practices that are not documented, such as patterns of behaviour of bureaucrats and public officials. Moreover, proving correlations (not causation) between textual references to indicators and given legal outcomes is almost impossible, not in the least because indicators often work in combination with stronger legal sources to which the final outcome might also be credited. Nonetheless, in the absence of a better proxy, keeping track of textual references might still tell us something about the extent to which the four selected indicators have impacted the Italian legal system, if at all.¹⁹

Methodologically speaking, the choice of Italy as a case study was obviously dictated by the author's own educational background, while the choice of the relevant indicators was based on their prestige in their respective domains. Before getting to the results, however, some additional information about the history, contexts and contents of the selected indicators is needed. In the next section we will therefore briefly overview the four indicators herein analysed, the order of their appearance arranged from the oldest to the newest. All these indicators have experienced significant changes since they were first published, often as a response to outsiders' critiques;²⁰ the paper will at all times refer to

¹⁹On the limitations and benefits of the search for textual references, see G. Frankenberg, 'Comparing constitutions: Ideas, ideals, and ideology – toward a lawyered narrative' 4 *International Journal of Constitutional Law*, 439-459 (2006) (speaking about the textual study of constitutions).

²⁰For instance, as a reaction to the claim that countries' ratings were not transparent, Freedom House started publishing in 2006 the disaggregated results for each country: N.K. Dutta, 'Accountability in the Generation of Governance Indicators' 22 *Florida Journal of International Law*, 401, 429 (2010). To respond to French critiques to the first edition of the report, the DB team incorporated in the second edition some of the proposed suggestions for improvement: see B.

the latest available edition.

IV. Four Global Indicators: An Outline

The oldest of the four indicators herein surveyed is Freedom House's FiW. The first FiW report was published in 1973 with the aim of evaluating states' performances with respect to democracy, rule of law and protection of political rights and civil liberties, along the lines of (the NGO's pro-US and anti-communist campaigns and) the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR) of 1966.²¹ According to the current version of the reports, each state is given a score between zero and one hundred, with zero being 'least free' and one hundred being 'most free'.²² Countries' scores are determined by FH's in-house and external consultants; approximately one hundred and thirty people participated in the 2020 edition.²³ FH consultants work on the basis of a publicly available questionnaire investigating how each country deals with electoral and political processes, free speech, labour rights, civil justice, protection of property, and freedom of business.²⁴ Consultants answer the questionnaire relying upon their personal knowledge and contacts, media news, official government statements, NGO reports, scientific articles, and local visits. Answers are then translated into points, which are aggregated and determine a country's final score.²⁵ Unsurprisingly, the FiW has been the subject of much criticism, most of which has focused on the Index's restrictive emphasis on civil-political rights, its financial and ideological allegiance with the US government's views, and the obscure and heavily subjective methodology upon which it is based.²⁶ Yet, notwithstanding all these limitations, since its

Fauvarque-Cosson and A.J. Kerhuel, 'Is Law an Economic Contest? French Reactions to the Doing Business World Bank Reports and Economic Analysis of the Law' 57 *American Journal of Comparative Law*, 811, 814-815 (2009). After being subject to an internal review by the WB's Independent Evaluation Group in 2008, the DB team voluntarily underwent in 2013 a process of external review: see T.A. Manuel, 'Independent Panel Review of the Doing Business report' (2013), available at <https://tinyurl.com/ya24u958> (last visited 27 December 2020).

²¹ About the history and the mandate of FH, see for all C.G. Bradley, 'International Organizations and the Production of Indicators. The Case of Freedom House', in S.E. Merry, K.E. Davis and B. Kingsbury eds, n 12 above, 27-74.

²² The final results are shown in a map with green-yellow-purple colors, in which green is good and purple is bad: see <https://tinyurl.com/u8by5pe> (last visited 27 December 2020).

²³ See <https://tinyurl.com/yaf95j73> (last visited 27 December 2020).

²⁴ The full questionnaire underlying the 2020 edition is available at <https://tinyurl.com/y7cm3dhj> (last visited 27 December 2020)

²⁵ n 24 above.

²⁶ See, among many others, S.S. Bush, 'The Politics of Rating Freedom. Ideological Affinity, Private Authority, and the Freedom in the World Ratings' 15 *Perspectives on Politics*, 711-722 (2017); C.G. Bradley, n 21 above, 60; S. Voigt, 'How (Not) to Measure Institutions' 9 *Journal of Institutional Economics*, 1, 20 (2013); W. Merkel, 'Measuring the Quality of Rule of Law. Virtues, Perils, Results', in M. Zürn, A. Nollkaemper and R. Peerenboom eds, *Rule of Law Dynamics in an Era of International and Transnational Governance* (Cambridge: CUP, 2013), 21-24; N.K. Dutta,

launch the FiW has been quoted by a multiplicity of academic articles to support arguments and test theories about democracy, development, economic growth,²⁷ and, most importantly, it has been used by international organizations, such as the World Bank (WB), and international donors, such as the US Millennium Challenge Corporation, as one of the criteria to determine and evaluate aid distribution.²⁸

More than twenty years after the first edition of the FiW, the Berlin-based NGO Transparency International, founded by a German lawyer who had previously worked at the WB, published the CPI, an index measuring perceived levels of corruption in a country. The CPI annually ‘ranks one hundred and eighty countries and territories by their perceived levels of public sector corruption according to experts and businesspeople, and uses a scale of zero to one hundred, where zero is highly corrupt and one hundred is very clean’.²⁹ Scores are determined by TI’s team by aggregating the results of many expert opinion-based indicators on levels of corruption in the public sector and the quality of the institutional and legal framework to fight corruption.³⁰ In other words, CPI is a composite indicator, which mashes up data from thirteen different sources allegedly representing how corrupt experts perceive a country to be. A number of flaws underlying CPI’s conception and structure have been, through time, highlighted by critical scholarship. Critiques are concerned with the unreliability of expert’ opinions, the general weakness of perception-based surveys, and the narrow notion of ‘corruption’ the CPI embraces, chastising petty corruption by officials while turning a blind eye on corrupt activities carried out in connection with or by private businesses,³¹ to mention but a few. Yet, CPI’s success has been far-reaching. It is credited with having solidified in the global agenda the idea that corruption is an obstacle to economic growth³² and having cemented the international consensus in the fight against corruption, paving the way for the adoption of the OECD Convention on Combating Bribery of

n 20 above, 442.

²⁷ Cf the literature mentioned by N.K. Dutta, n 20 above, 429; S. Voigt, n 26 above, 20; C. Arndt and C. Oman, *Uses and Abuses of Governance Indicators* (Paris: OECD, 2007), 23.

²⁸ S.S. Bush, n 26 above, 718-722; N.K. Dutta, n 20 above, 430.

²⁹ See <https://tinyurl.com/yx88hoqq> (last visited 27 December 2020). CPI’s results too are presented in a colored map, with dark red meaning ‘highly corrupt’ and light-yellow meaning ‘highly clean’; a ranking of countries, from the least to the most corrupt, is also available.

³⁰ Cf <https://tinyurl.com/yx88hoqq> (last visited 27 December 2020), under ‘Methodology’.

³¹ R.J. Beschel Jr, ‘Measuring Governance: Revisiting the Uses of Corruption and Transparency Indicators’, in D.V. Malito, N. Bhuta and G. Umbach eds, n 11 above, 161, 166-168; A. Cooley, ‘How International Rankings Constitute and Limit Our Understanding of Global Governance Challenges: The Case of Corruption’, in D.V. Malito, N. Bhuta and G. Umbach eds, n 11 above, 49, 51; M. Bukovansky, ‘Corruption rankings’, in A. Cooley and J. Snyder eds, n 10 above, 60, 73; S. Voigt, n 26 above, 20; T. Ginsburg, ‘Pitfalls of Measuring the Rule of Law’ 3 *Hague Journal on the Rule of Law*, 269, 273 (2011).

³² M. Bukovansky, n 31 above, 73; K. Pistor, ‘Advancing the Rule of Law: Report on the International Rule of Law Symposium’ 25 *Berkeley Journal of International Law*, 7, 25-26 (2007).

Foreign Public Officials in International Business Transactions in 1997 and the UN Convention Against Corruption in 2003.³³ While it is hard to prove a direct causal link between the CPI and specific legal reforms, it is beyond doubt that legislative efforts against corruption (conceived à la CPI) have multiplied worldwide since 1995.³⁴

On October 2000, under the Clinton administration, the U.S. Congress approved the Trafficking Victims Protection Act (TVPA),³⁵ charging a newly established body under the Department of State – the ‘Office to Monitor and Combat Trafficking’ – with the task of reporting yearly on efforts by States in the fight against human trafficking; according to the TVPA, a country’s mis-performance was sanctioned with the withdrawal or cutting off of U.S. economic, humanitarian or military aid. The intense lobbying by the same administration before the UN led the UN General Assembly to adopt, one month later, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.³⁶ In compliance with its institutional assignment, the Office to Monitor and Combat Trafficking published in 2001 the first TiP report.³⁷ Nowadays, TiP reports are prepared every year by around one hundred employees of the Office to Monitor and Combat Trafficking on the basis of the information collected, mostly through US embassies around the world about states’ efforts and performances as to the three ‘Ps’ of the TVPA – prosecution of traffickers, protection of victims and

³³ M. Bukovansky, n 31 above, 72; K. Pistor, n 32 above, 31. In the meantime, following the OECD’s and UN’s example, several other regional conventions against corruption were adopted: see the ‘Convención Interamericana contra la Corrupción’ of the Organization of American States (OAS) of 1996; the ‘Convention pénale sur la corruption’ of the Council of Europe of 1999; the ‘African Union Convention on Preventing and Combating Corruption’ of the African Union of 2003; the ‘Arab Anti-Corruption Convention’ of the League of Arab States of 2010.

³⁴ A. Cooley, n 31 above, 49; R. Urueña, n 13 above, 7; C. Arndt and C. Oman, n 27 above, 48; K. Pistor, n 32 above, 31.

³⁵ Public Law, 106–386, 22 USC 7101.

³⁶ See General Assembly Resolution 55/25 of 15 November 2000. Many related regional acts have followed suit: see ‘Resolution 1948 Fighting the Crime of Trafficking in Persons, especially Women, Adolescents, and Children’ of the Organization of American States of 2003, the ‘Declaration Against Trafficking in Persons Particularly Women and Children’ of the Association of Southeast Asian Nations of 2004, the ‘Convention on Action against Trafficking in Human Beings’ of the Council of Europe of 2005, the ‘Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children’ of the African Union of 2006, the ‘Arab Initiative for Building National Capacities for Combating Human Trafficking’ of the League of the Arab States of 2010. In Europe, one should also add EU’s Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, later replaced by the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

³⁷ US Department of State, Victims of Trafficking and Violence Protection Act of 2000. Trafficking in Persons Report, 2001, available at <https://tinyurl.com/yaweuq3h> (last visited 27 December 2020), 12.

prevention of trafficking –.³⁸ On the basis of such information, the TiP reports divide states into three tiers, devoted to countries fully, partially or not compliant with the TVPA, respectively.³⁹ Many features of the TiP reports have been subject to critique: from assumptions about the causes of, and remedies against, human trafficking, to the opaqueness and unreliability of the reports' sources, from the highly politicized nature of the assignment to tiers to the unilateral character of the countries' assessment.⁴⁰ Nevertheless, in spite of such critiques, the TiP reports have fast become 'the most influential and the most trusted indicator of a country's performance vis-à-vis human trafficking'.⁴¹ Although it is hard to establish a clear correlation between the launch of the TiP and the number of reforms adopted worldwide since the 2000s to criminalize human trafficking, what is undeniable is that at the beginning of the Twenty-first century, less than ten per cent of the states covered by the TiP criminalized human trafficking, while nowadays more than seventy per cent of the world's countries have criminalized human trafficking and have set up specialized units and divisions to combat trafficking and to keep track of the data.⁴²

Our fourth indicator, the DB, is the global legal indicator lawyers know best (although they often conflate it with the 'legal origins' theory it was inspired by). Since the first report in 2003, the DB ranks countries according to the business-friendliness quality of their regulatory environment, on the assumption that 'good' laws are conducive to economic growth. Thanks to the impressive

³⁸ J.G. Kelley, n 11 above, 98-111; J.G. Kelley and B.A. Simmons, 'Politics by Number. Indicators as Social Pressure in International Relations', 59 *American Journal of Political Science*, 55, 61 (2015); A.T. Gallagher, 'Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports' 12 *Human Rights Review*, 381-385 (2011) (for whom the US Department of State has self-proclaimed itself as the 'supervisor and arbiter of a complex international issue that remains both contested and controversial', with the result that '[t]he performance of governments with respect to trafficking is currently being assessed, not with reference to the international rules that states (including the USA) have collectively developed and freely accepted, but against criteria drawn up and imposed by US bureaucrats and politicians'; A.T. Gallagher and J. Chuang, 'The Use of Indicators to Measure Government Responses to Human Trafficking', in K.E. Davis, A. Fisher, B. Kingsbury, S.E. Merry eds, n 1 above, 326, 333-334.

³⁹ Within the second tier of partially compliant states, there is a sub-category (Tier 2 Watch List) referred to states where, notwithstanding the substantial efforts to combat human trafficking, the traffic remains high: U.S. Department of State, Trafficking in Persons Report, 2019, at <https://tinyurl.com/y57hskmy> (last visited 27 December 2020), 48. Tiers are graphically represented in a table and in several colored maps, in which tier 1 is green, tier 2 is yellow and tier 3 is brown.

⁴⁰ J.G. Kelley, n 11 above, especially 124-142, 296-218, 221-227; J.G. Kelley and B.A. Simmons, n 38 above, 68; A.T. Gallagher, n 38 above, 382-384; A.T. Gallagher and J. Chuang, n 38 above, 332-334.

⁴¹ M. Zaloznaya and J. Hagan, n 16 above, 361. One might be tempted to explain the success of the TiP Reports in light of the sanctions established by the TVPA in case of a country's mis-performance. It should however be noted that the US government has rarely made use of the sanctions provided by the TVPA: J.G. Kelley, n 11 above, 91-92.

⁴² See J.G. Kelley, n 11 above 11, Figure 1.1, and 55; J.G. Kelley and B.A. Simmons, n 38 above, 60; see also S.E. Merry, n 11 above, 150; A.T. Gallagher and J. Chuang, n 38 above, 339-340.

resources available to the WB, the DB reports are based upon the answers to a questionnaire drafted by the DB team. The team is made up of roughly sixty people, mostly economists, working at the WB's Washington D.C. headquarters. Every year, the team sends the DB questionnaire to approximately fifteen thousand lawyers and government officials around the world.⁴³ The questionnaire investigates what would happen to a middle-size, nationally-owned enterprise based in the largest business city of a country's economy in a series of circumstances articulated along eleven dimensions – from obtaining a construction permit to getting electricity, from paying taxes to enforcing contracts. Questions range from purely factual, such as 'how many days are needed to get electricity?', to purely legal, such as 'is there a specialized commercial court?'. Responses are evaluated, assembled, weighted, and transformed into numbers by the DB team, producing a country's ranking for each of the eleven dimensions. Ten of these scores⁴⁴ are then aggregated to create the final 'Ease of Doing Business' score. In addition to ranking countries from the most to the least business-friendly, each edition of the DB also identifies the top ten reformers of the year, celebrating the countries which have reformed the most. The limits of DB are well-known. Through time, the DB has been criticized for aspects such as the fragility of the 'legal origins' theory and the US-centered bias of the DB questionnaire,⁴⁵ the emphasis it puts on official and formal law only,⁴⁶ and the unreliability and unrepresentativeness of expert opinions.⁴⁷ Further, many have attacked the simplified assumptions upon which the entire project is based, such as that less regulation is always good, rules can be easily transplanted, there is one 'right' solution to every business's legal problem.⁴⁸ This

⁴³ World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (Washington DC: World Bank, 2019), available at <https://tinyurl.com/y43yrex4> (last visited 27 December 2020), 23.

⁴⁴ The dimension which is left out from the aggregate score is the one on labor market regulations. The DB team stopped using this sub-index as a component of the final score in 2009, following the harsh critiques voiced by the International Trade Union Confederation and the International Labour Organization against the slippery slope towards deregulation that the sub-index favored. On this story, cf D. Collier and P. Benjamin, 'Measuring Labor Market Efficiency. Indicators that Fuel an Ideological War and Undermine Social Concern and Trust in the South African Regulatory Process', in S.E Merry, K.E. Davis and B. Kingsbury eds, n 12 above, 284-316; T. Krever, n 1 above, 134.

⁴⁵ Among the many, T. Besley, n 16 above, 99-120; N. Garoupa and C. Gomez Ligüerre, n 14 above, 304-331; R. Michaels, 'Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law' 57 *American Journal of Comparative Law*, 778, 786-787 (2009); B. Fauvarque-Cosson and A.J. Kerhuel, n 20 above, 821-823; Association Henri Capitant, n 14 above.

⁴⁶ Cf T. Besley, n 16 above, 102, 107; B. Fauvarque-Cosson and A.J. Kerhuel, n 20 above, 814-815; K. Pistor, n 32 above, 26-28.

⁴⁷ See for instance S. Voigt, n 26 above, 19-20; R. Michaels, n 45 above, 778.

⁴⁸ A. Broome, A. Homolar and M. Kranke, 'Bad science: International organizations and the indirect power of global benchmarking' 24 *European Journal of International Relations*, 514, 523 (2018); T. Krever, n 1 above, 132; N. Garoupa and C. Gomez Ligüerre, n 14 above, 304-305; B. Fauvarque-Cosson and A.J. Kerhuel, n 20 above, 823; R. Michaels, n 45 above, 788-789.

notwithstanding, the DB team estimates that, since the first edition of the DB, more than ten thousand articles using the DB data have been published online and in peer-reviewed journals, more than sixty countries have established teams, offices, and even ministries devoted to improving their performances in the DB, and more than one thousand and three hundred legal reforms have been carried out worldwide along the DB's lines.⁴⁹ Well-known are the cases of Georgia, Azerbaijan, and Rwanda, for which the setting up of a national team focused on the DB and the adoption of many DB-driven legal reforms have produced a corresponding jump in the ranking.⁵⁰ Competing in the DB's 'law reform Olympics'⁵¹ has rapidly become a popular sport.

V. The Four Indicators' Journey to Italy

The World Bank's claim that the DB has inspired more than one thousand and three hundred legal reforms since its first edition has up until now gone unchecked. Equally lacking are large-spectrum studies of the legal change brought about in domestic legal systems by the DB and the other three indicators herein analysed. What is available is only some scattered evidence about how, in selected jurisdictions, these indicators – in particular, the CPI, the TiP reports and the DB reports – have prompted the enactment of new laws and reforms of public administration's structures and rules.⁵²

On the basis of such insights, the following analysis aims to verify what effects, if any, the four indicators herein studied have had on the Italian legal system. Rather than focusing only on statutory reforms and rules and decisions of public administrative bodies, the search for textual references is extended to parliamentary debates, courts' judgments and reports, and legal scholarship. In spite of the methodological limits affecting the research, the results collected show that, to different extents, global legal indicators have many strings attached, some of which are quite unexpected. Let us see them in more detail, starting from the oldest indicator to the newest one.

1. The Freedom in the World Reports

At first sight, the FiW ranking and reports seem to have played little role both in parliamentary and academics debates.

Starting from the latter, references to the FiW reports in Italian legal

⁴⁹ World Bank, n 43 above, 25-27.

⁵⁰ See S. Schueth, n 16 above, 63-64 (Georgia); A. Cooley, n 16 above, 34-35 (Azerbaijan); T. Besley, n 16 above, 117 (Rwanda).

⁵¹ V.L. Taylor, 'The Law Reform Olympics: Measuring the Effects of Law Reform in Transition Economies', in T. Linsey ed, *Law Reform in Developing and Transitional States* (New York: Routledge, 2007), 83-105.

⁵² See n 16 above.

scholarship are scant. The FiW reports are seldom mentioned, most of the time uncritically, as an independent, quantitative assessment of political and democratic performance.⁵³ As to parliamentary debates, in the last twenty years of discussions at the Senate,⁵⁴ the FiW Index has been expressly mentioned only once;⁵⁵ of much more interest to senators, especially in the last ten years, has been the FiW's twin (and younger) index, 'Freedom of the Press' (an indicator measuring free speech and journalistic freedom), where Italy has historically scored low, thus fuelling parliamentary discussions about possible reforms and strategies for ranking improvement.⁵⁶

By contrast, the rankings and reports annually published by Freedom House have been repeatedly and consistently used by Italian local asylum commissions and courts when deciding whether to grant refugee status and the right to asylum. Italian immigration legislation, largely inspired by European directives,⁵⁷ requires that the local asylum commissions operating under the Ministry of Interior evaluate the

'general situation of the requerants' country of origin (...) on the basis

⁵³ See for instance M. Volpi, 'Le forme di Stato', in G. Morbidelli, L. Pegoraro, A. Rinella and M. Volpi eds, *Diritto pubblico comparato* (Turin: Giappichelli, 5th ed, 2016), 290; S. Cassese, 'Global Standards for National Democracies' *Rivista trimestrale di diritto pubblico*, 701, fn 14 (2011); L. Bonanate, 'La democrazia nella concezione internazionalistica di Norberto Bobbio', in L. Ferrajoli and P. Di Lucia eds, *Diritto e democrazia nella filosofia di Norberto Bobbio* (Turin: Giappichelli, 1999), 177-182. Journalistic coverage of the FiW Index is also low, although the Index is often quoted by specialistic media and news websites, focusing on economics and geopolitics: among the latest publications, see for instance A. Figoli and M. Taddei, 'Freedom in the World 2020: un mondo sempre meno libero' *Lavoce.info*, 13 March 2020, available at <https://tinyurl.com/y7pqbn9> (last visited 27 December 2020); A. Pezzati, 'Il declino della democrazia: analisi di Freedom in the World 2018' *Geopolitica.info*, 7 March 2019, available at <https://tinyurl.com/ya5tfujo> (last visited 27 December 2020). See also Associazione per i diritti degli utenti e consumatori, 'La libertà nel mondo 2020: una lotta senza leader per la democrazia', 4 March 2020, available at <https://tinyurl.com/yandoeuz> (last visited 27 December 2020).

⁵⁴ All the searches in Parliamentary debates for this paper were carried out as to the XIV-XVIII legislatures (between 2001 and 2020), on the website of the Italian senate, through the search engine 'Lavori – ricerca nell'attività dell'Assemblea', available at <https://tinyurl.com/y7zwpn8j> (last visited 27 December 2020). The results are reported mentioning the surname of the senator(s) referring to the indicator. For the search for the FiW, the keyword was 'Freedom'.

⁵⁵ Transcript no 370 of 1 April 2003 (Vitali).

⁵⁶ See Transcript no 151 of 25 September 2019 (De Bonis); Transcript no 340 of 28 October 2018 (Fucksia); Transcript no 819 of 24 October 2012 (Alberti Casellati); Transcript no 806 of 3 October 2012 (Vita); Transcript no 332 of 10 February 2010 (Lannutti, Belisario, Giambrone); Transcript no 270 of 3 November 2009 (Finocchiatto et alii).

⁵⁷ See Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status, later recasted and repealed by the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [2005] OJ L 326, as well as the European Parliament and Council Directive 2011/95/EU of the of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L 150.

of the data provided by the Office of the United High Commissioner for Refugees (UNHCR), the European Asylum Support Office (EASO), the Italian Ministry of Foreign Affairs, also in collaboration with other international agencies and entities working in the field of human rights protection, or at least on the basis of the data directly acquired by the Commission itself.⁵⁸

The same data are also ‘made available to the courts seized of setting aside the denial of refugee status by the commissions’.⁵⁹ In order to ease the work of commissions and courts, the Ministry of Foreign Affairs regularly publishes a list of countries of origin deemed to be safe, on the basis of the information provided by the national asylum Commission, which in turn relies on ‘information sent by other EU Member States, by the EASO, by the UNHCR, by the Council of Europe and by other competent international organizations’.⁶⁰ Applicants coming from countries of origin included in the Ministry of Foreign Affairs’ list of countries presumed to be safe might still apply for asylum, but they have to demonstrate that there are serious grounds to believe that, in spite of the presumption of safety, the country is not safe due to their particular situation.⁶¹

The assessment of the safety of the applicant’s country of origin is of central significance in the asylum procedure. A Commission’s finding that the country is safe for the applicant implies the denial of international protection.⁶² The Commission’s misvaluation of the situation in the applicant’s country of origin might be a ground for appealing the decision before a civil tribunal, which will then check whether the commission’s conclusions were sound; the civil tribunal’s judgment, in turn, might be further challenged before the Court of Appeal and the Supreme Court.⁶³

For our purpose, what is interesting to note is that the FiW scores and reports figure prominently among the sources used by the National and local asylum commissions and by courts to assess the safety of foreign countries. The National Asylum Commission quotes, *inter alia*, the FiW reports as a basis for its determination of the countries that are presumed to be safe, as if FH were a ‘competent international organization’ as required by Art 2bis, Legislative decree of 28 January 2008, no 25.⁶⁴ The FiW reports also feed the documents available on the UNHCR’s and EASO’s websites, which local asylum commissions

⁵⁸ See Art 8 decreto legislativo 28 January 2008 no 25.

⁵⁹ *ibid.*

⁶⁰ Art 2 bis decreto legislativo 28 January 2008 no 25.

⁶¹ Art 9, section 2 bis, decreto legislativo 28 January 2008 no 25.

⁶² Art 9 decreto legislativo 28 January 2008 no 25.

⁶³ Art 35 decreto legislativo 28 January 2008 no 25.

⁶⁴ National Asylum Commission, ‘List of Safe Countries of Origin’, 31 October 2019, available at <https://tinyurl.com/ybspdxpu> (last visited 27 December 2020) (FiW quoted for Ghana and Ukraine).

are invited to consult when making their evaluation.⁶⁵ Similarly, when required to verify the commissions' assessment of the safety of a foreign country, courts at all levels, including the Supreme Court, often rely on materials available at the UNHCR's and EASO's websites, which include FH's assessments as well as directly on FiW reports and rankings.⁶⁶ Incidentally, such a practice is fully in line with the one adopted by the European Court of Human Rights (ECtHR), which frequently assess the legality of states' decisions as far as immigration and expulsions are concerned taking into consideration the evaluations contained in the FiW reports.⁶⁷

The overall picture emerging from the practices of Italian asylum commissions and courts is that the information and conclusions of the FiW reports are used, in combination with other sources, as reliable evidence of the political and human rights conditions of foreign countries. As a result, the clumsy researches carried out every year in New York by FH's one hundred-and-thirty consultants end up affecting Italian asylum commissions' and courts' determinations and, most importantly, the lives of asylum seekers in Italy.

2. The Corruption Perceptions Index

When assessing a country's safety for granting refugee status, Italian courts seldom rely upon the ranking of concerned countries in the CPI.⁶⁸ Occasional references to the CPI can also be found in the legal literature, with most of Italian authors making reference to the Index to explain the rationale and need

⁶⁵ Suffice it to look for references to the FiW scoring and reports within the materials collected at <https://tinyurl.com/y7ohqjbs> (last visited 27 December 2020) and <https://tinyurl.com/y8765l3z> (last visited 27 December 2020).

⁶⁶ As to first instance courts, see Tribunale di Firenze 5 February 2019 (Senegal); Tribunale di Bari 30 November 2018 (Gambia); Tribunale di Milano 2 October 2018 (Senegal); Tribunale di Perugia 25 July 2018 (Guinea); Tribunale di L'Aquila 10 May 2018 (Nigeria); Tribunale di Brescia 7 January 2018 (Senegal); Tribunale di Ancona 2 December 2017 (Pakistan); Tribunale di Lecce 1 May 2016 (Gambia). As to second instance courts, see Corte d'Appello di Venezia 2 January 2020 no 16 (Gambia); Corte d'Appello di Torino 2 October 2019 no 1592 (Bangladesh); Corte d'Appello di Potenza 11 July 2018 no 476 (Senegal). As to the Court of Cassation, see Corte di Cassazione 27 November 2019 no 30961 (China); Corte di Cassazione 27 November 2019 no 30952 (Guinea Cronacky); Corte di Cassazione 21 October 2019 no 26731 (Senegal). All decisions mentioned here and in the following footnotes are available on the electronic database *dejure*.

⁶⁷ Cf Eur. Court H.R., *Mawaka v the Netherlands* App no 29031/04, Judgment of 1 September 2010 (Democratic Republic of Congo); Eur. Court H.R., *H.S. and Others v Cyprus* App no 41753/10 and 13 other applications, Judgment of 21 July 2015 (Sirya); Eur. Court H.R., *S.H. v the United Kingdom* App no 19956/06, Judgment of 15 June 2010 (Bhutan). See also Eur. Court H.R. (GC), *Catan and Others v Moldova and Russia* App nos 43370/04, 8252/05 and 18454/06, Judgments of 19 October 2012 (where the FiW data about Moldova were used to assess whether there had been a violation of the right to education by Moldova and Russia).

⁶⁸ Corte d'Appello di Torino 13 March 2018 (Bangladesh); Tribunale di Roma 28 July 2018 (Armenia). For a different use of the CPI, as a benchmark to test the constitutionality of an administrative measure taken by Ukraine on the ground of the fight against corruption, see Eur. Court H.R., *Polyakh and Others v Ukraine* App nos 58812/15 and 4 others, Judgment of 24 February 2020 (Ukraine).

for reforms in the public administration sector⁶⁹ (exceptions are as rare as they are authoritative).⁷⁰ But the strongest impact of the CPI is visible, especially in the last decade, on media circles⁷¹ and on parliamentary debates and on legislative measures.

While, before 2010, the CPI was mentioned only four times in the discussions at the Senate,⁷² the use of CPI rankings in political debates at the Senate in the following years has risen enormously. In the decade 2010-2019, thirty-nine (either individual or collective) interventions by senators textually mentioned the CPI as evidence of corruption in Italy. Mentions were made either in support of governments' presentation of their plans, or in the context of a critique of governmental actions, or to provide an empirical basis for proposals of statutory reforms.⁷³ In the years between 2010-2012 in particular, there were as many as

⁶⁹ See for instance A. Pertici and M. Trapani, 'Presentazione', in A. Pertici and M. Trapani eds, *La prevenzione della corruzione. Quadro normativo e strumenti di un sistema in evoluzione* (Torino: Giappichelli, 2019), XI-XII; F. Caringella and R. Cantone, *La corruzione spiegata ai ragazzi che hanno a cuore il futuro del loro paese* (Milano: Mondadori, 2018) ['oracolo']; G. Piperata, 'L'attività di garanzia nel settore dei contratti pubblici tra regolazione, vigilanza e politiche di prevenzione', in F. Mastragostino ed, *Diritto dei contratti pubblici* (Torino: Giappichelli, 2017), 29-32; L. Tria, 'Il dialogo incessante tra le Corti europee e la Corte Suprema di Cassazione sui rapporti privatizzati di lavoro dei dipendenti delle pubbliche amministrazioni: il c.d. danno comunitario', in M. Cerreta and M. Riommi eds, *Le recenti riforme dei rapporti di lavoro delle pubbliche amministrazioni e della scuola pubblica* (Torino: Giappichelli, 2016), 51, 90-92.

⁷⁰ See the analysis of S. Cassese, 'Misurare la corruzione serve per studiare interventi mirati', *Corriere della Sera*, 12 December 2017, available at <https://tinyurl.com/ya5lhamf> (last visited 27 December 2020).

⁷¹ Media coverage of the CPI has always been extensive, with each new edition of the CPI being advertised by the major Italian newspapers. For the 2019 edition of the CPI, see for instance A. Foderi, 'Lo stato della corruzione in Italia non migliora, anzi', *Wired*, 23 January 2020, available at <https://tinyurl.com/y7f5b7f8> (last visited 27 December 2020); F. Pinotti, 'Corruzione, l'Italia al 51mo posto nella classifica di Transparency International', *Corriere della Sera*, 23 January 2020, available at <https://tinyurl.com/yaq5c735> (last visited 27 December 2020); Undisclosed author, 'Corruzione, l'Italia migliora (di poco). Quanti anni ci vogliono per diventare un Paese normale?', *Il Sole24Ore*, 23 January 2020, available at <https://tinyurl.com/y8ky4zuj> (last visited 27 December 2020); Undisclosed author, 'Corruzione: nel 2019 frena il miglioramento dell'Italia', *La Repubblica*, 23 January 2020, available at <https://tinyurl.com/y8u8tkw5> (last visited 27 December 2020).

⁷² The search was carried out on the Senate website mentioned at n 54 above (keyword 'Transparency International' and 'Corruption Perceptions'). See Transcript no 226 of 24 June 2009 (Serra); Transcript no 140 of 3 February 2009 (Biondelli); Transcript no 868 of 22 September 2005 (Drago); Transcript no 231 of 2 August 2002 (Martone et alii); Transcript no 868 of 22 September 2005 (Drago); Transcript no 231 of 2 August 2002 (Martone, Provera, Iovene, De Zulueta).

⁷³ These are the results on the Italian Senate's website with the keywords 'Transparency International' and 'Corruption Perceptions': Transcript no 82 of 23 January 2019 (Bonafede); Transcript no 901 of 18 October 2017 (Ricchiuti); Transcript no 846 of 27 June 2017 (Ricchiuti); Transcript no 800 of 4 April 2017 (Barani); Transcript no 787 of 16 March 2017 (Cotti et alii); Transcript no 785 of 15 March 2017 (Ricchiuti); Transcript no 545 of 1 December 2015 (Romani); Transcript no 436 of 23 April 2015 (Romani et alii); Transcript no 416 of 25 March 2015 (Albani) (Stefani); Transcript no 366 of 16 December 2014 (Airola); Transcript no 287 of 22 July 2014 (Lucidi); Transcript no 168 of 16 January 2014 (Mussini et alii); Transcript no 158 of 28 December 2013 (Nencini et alii); Transcript no 818 of 23 October 2012 (Lannutti); Transcript no 815 of 17 October 2012 (Serra); Transcript no 805 of 2 October 2012 (Giovanardi); Transcript no 778 of 27

twenty-five recurrences of references to the CPI in Senate's transcripts.⁷⁴

As mentioned earlier, many of these references concern cases in which Italy's poor results in the Index were quoted as a reason for the enactment of a new law. In some instances – such as in the context of the adoption of laws ratifying international conventions – the mention of the CPI is nothing more than lip service, insofar as it involves the ratification of a treaty already signed by the Italian state. This is, for instance, the case of references to the CPI supporting the enactment of the Law of 3 August 2009, no 116 (on the ratification of the UN Convention against corruption of 2003)⁷⁵ and of the Law of 28 June 2012, no 110 (on the ratification of the Council of Europe's Criminal law convention on corruption of 1999).⁷⁶ More interesting are the references to the CPI in support of legislative measures not mandated (at least directly) by international legal obligations, such as in the case of reforms aimed at strengthening administrative supervision and accountability and harshening criminal laws on corruption among public officials. For instance, the CPI was mentioned to justify the adoption of the Law of 6 November 2012, no 190 (on the prevention and repression of corruption and illegality in the Public Administration),⁷⁷ which introduced new bribery offences, increased the punishment for already existing offences, and, most importantly, established the Anti-Corruption National Authority (ANAC), an agency charged with substantial powers to prevent, investigate and sanction instances of corruption in the public administration and to enact rules for the improvement of transparency in decision-making and the avoidance of conflicts of interests.⁷⁸ Similar references to the CPI in parliamentary debates supported the adoption of the Law of 27 May 2015, no 69 (on crimes against the Public Administration,

July 2012 (Pedica); Transcript no 731 of 24 May 2012 (Lannutti); Transcript no 718 of 8 May 2012 (Lannutti); Transcript no 705 of 4 April 2012 (Lannutti); Transcript no 691 of 14 March 2012 (Baio); Transcript no 567 of 15 June 2011 (Rutelli et alii); Transcript no 566 of 14 June 2011 (Giaretta); Transcript no 562 of 7 June 2011 (D'Ambrosio Lettieri), (Baio), (Vallardi); Transcript no 488 of 19 January 2011 (Finocchiaro et alii); Transcript no 487 of 18 January 2011 (Finocchiaro et alii); Transcript no 446 of 27 October 2010 (Perduca); Transcript no 358 of 14 April 2010 (Rutelli et alii), (Finocchiaro et alii), (D'Alia et alii); Transcript no 357 of 13 April 2010 (Belisario et alii), (Mazzatorta et alii), (Rutelli et alii), (D'Alia et alii), (Finocchiaro et alii); Transcript no 338 of 18 February 2010 (Belisario et alii).

⁷⁴ n 73 above.

⁷⁵ Transcript no 226 of 24 June 2009 (Serra). See also Transcript no 446 of 27 October 2010 (Perduca), referring to the CPI to support the enactment of the Law of 19 November 2010, no 209, on the ratification of the bilateral investment treaty between Italy and Malawi, made in Blantyre on 28 August 2003.

⁷⁶ Transcript no 691 of 14 March 2012 (Baio).

⁷⁷ Transcript no 815 of 17 October 2012 (Serra); Transcript no 566 of 14 June 2011 (Giaretta); Transcript no 562 of 7 June 2011 (D'Ambrosio Lettieri).

⁷⁸ For a description of the contents of such reform in English, see Roberto Pisano, *Bribery & Corruption 2020 – Italy*, Global Legal Insights, available at <https://tinyurl.com/yaxqultg> (last visited 27 December 2020). ANAC's powers are described (in English) on ANAC's website, available at <https://tinyurl.com/y8zwlkkl> (last visited 27 December 2020).

on Mafia organizations and on fraudulent accounting practices),⁷⁹ of the Law of 17 October 2017, no 161 (modifying the anti-Mafia code and establishing new prevention measures),⁸⁰ of the Law of 30 November 2017, no 179 (on the protection of whistleblowers in private and public employment)⁸¹ and of the Law of 9 January 2019, no 3 (establishing measures to prevent crimes against the public administration and to improve transparency in the funding of political parties and movements – the so-called ‘bribe-destroyer’ Act).⁸²

Reading an excerpt of the Minister of Justice’s speech before the Senate presenting the text of the latter Act is illustrative of the role played by the CPI in the context of legal reforms.

‘In the latest available ranking from Transparency International, Italy ranks 69th, and 85 percent of Italians are persuaded that institutions and politicians are corrupted. This is not an opinion: this is a fact. The circumstance that Transparency International deals with perceived corruption does not lessen the significance of its findings, because foreign investors who perceive a high level of corruption will refuse to enter a market that appears to be infiltrated by corruption and criminal networks. Fighting the social evil of corruption is at the same time a moral imperative and a crucial mission for any political action aiming to provide citizens with the perception of an efficient and functional public administration, in full compliance with Art 97 of the Constitution’.⁸³

In the Minister’s words, combating (the perception of) corruption becomes a moral imperative and a constitutional mission whose fulfilment (or not) is certified by CPI’s scores. The CPI’s aggregate of a plurality of indicators measuring business perception of the efficiency of public services thus silently becomes the benchmark for testing the health of the Italian state’s public administration.

3. The Trafficking in Persons Reports

The Italian legislative framework on human trafficking has consistently grown in the last fifteen years. Following the adoption of the UN protocol against human trafficking of 2000, the EU’ Council Framework Decision 2002/629/JHA and following Acts, as well as the 2005 Council of Europe’s

⁷⁹ Transcript no 416 of 25 March 2015 (Albani).

⁸⁰ Transcript no 846 of 27 June 2017 (Ricchiuti).

⁸¹ Transcript no 901 of 18 October 2017 (Ricchiuti).

⁸² Transcript no 82 of 23 January 2019 (Bonafede); Transcript no 785 of 15 March 2017 (Ricchiuti). One should add to the list in the text the Legislative Decree of 25 May 2016, no 97 (modifying and simplifying dispositions on corruption prevention, openness and transparency), whose explanatory memorandum explicitly quoted Italy’s ranking in the CPI: see *Relazione illustrativa*, available at <https://tinyurl.com/yangrjx5> (last visited 27 December 2020).

⁸³ Transcript no 82 of 23 January 2019 (Bonafede), author’s translation.

Convention on Action against Trafficking in Human Beings, Italy adopted several laws regarding the criminalization of human trafficking and the protection of trafficked victims.⁸⁴ Yet, neither the official explanatory memoranda accompanying such legislation, nor the parliamentary debate about them ever mention the US Department of State's TiP reports.⁸⁵

Such limited attention devoted to TiP Reports seems to be confirmed by judicial practice and legal scholarship. Judicial databases only report one tribunal's decision-making reference to (only) the TiP reports in the context of judicial review of an asylum commission's denial of the status of refugee, in order to support the conclusion that the applicant's country of origin was unsafe.⁸⁶ As in the case of the FiW, instances of judicial use of the TiP reports can also be found before the ECtHR, which has, for instance, referred to the TiP findings, in combination with other data sources, to assess the legality of Italy's push-back policies on illegal immigrants⁸⁷ and the appropriateness of the protection provided by Croatia and Austria to victims of human trafficking.⁸⁸ As to scholars, citations of the TiP reports sometimes recur in Italian literature on migration law, prostitution and crimes against women, in which authors praise the TiP reports for the 'extensive research and expert opinions'⁸⁹ on which they are (allegedly) based and for the 'level of detail of the information they provide'.⁹⁰

⁸⁴ See for instance the Law of 11 August 2003, no 228 (on measures against human trafficking), the Law of 16 March 2006, no 146 (ratifying the UN Convention and Protocols against transnational organized crime of 2000), the Law of 2 July 2010, no 108 (ratifying the Council of Europe's Convention on Action against Trafficking in Human Beings of 2005) and the Legislative Decree of 4 March 2014, no 24 (implementing the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims).

⁸⁵ This is curious, considering the TiP have been covered by media (and that the case of the CPI seems to suggest that media coverage goes hand in hand with attention in the political debate): see A. La Mattina and P. Mastrolilli, 'Gli Usa all'Italia: "Fate troppo poco contro i trafficanti"', *La Stampa*, 4 July 2019, available at <https://tinyurl.com/y7jf8alk> (last visited 27 December 2020); Undisclosed author, 'Migranti, Usa declassano l'Italia: "Meno arresti e indagini, Roma fa poco contro traffico di esseri umani"', *Il Fatto Quotidiano*, 20 June 2019, available at <https://tinyurl.com/yble7zaj> (last visited 27 December 2020); P. Bricco, 'La silenziosa lotta alla schiavitù di strada di suor Rita, Sorella Africa', *Il Sole24Ore*, 23 July 2018, available at <https://tinyurl.com/y7lul2ns> (last visited 27 December 2020); F. Polese, 'Rohingya, senza diritti e protezione. Ecco gli ultimi della terra', *Corriere della Sera*, 11 March 2015, available at <https://tinyurl.com/y8xswz2c> (last visited 27 December 2020).

⁸⁶ Tribunal of Bologna, 17 July 2019.

⁸⁷ Eur. Court H.R. (GC), *Hirsi Jamaa and Others v Italy*, App no 27765/09, concurring opinion of Judge Pinto de Albuquerque, fn 37 (on the TiP's findings about Italy).

⁸⁸ Eur. Court H.R., *S.M. v Croatia*, Judgment of 19 July 2018, App no 60561/14, § 45; Eur. Court H.R., *J. and Others v Austria*, Judgment of 17 January 2017, App no 58216/12, Concurring Opinion of Judge Pinto De Albuquerque, joined by Judge Tsotsoria, fn 178 (on the TiP's findings about Austria).

⁸⁹ G. Campani and T. Chiappelli, 'Trafficking and Women's Migration in the Global Context', in F. Anthias, M. Kontos, M. Morokvasic-Müller eds, *Paradoxes of Integration: Female Migrants in Europe* (Cham: Springer, 2013), 173.

⁹⁰ V. Biscotti and M. Tenca, *La tutela della vittima del reato* (Padua: Primiceri Editore, 2018), 85. See also, in equally uncritical terms, F. Resta, *Vecchie e nuove schiavitù* (Milano: Giuffrè, 2008),

Before concluding that TiP reports have had little impact on the Italian legal system, however, one should consider that the tier-grouping and the suggestions elaborated by the U.S. Department of State appear in the information webpage of the Parliamentary Bi-Cameral Anti-Mafia Commission,⁹¹ in the National Anti-Mafia and Anti-Terrorism Authority's yearly reports about its activity,⁹² in the Ministry of Interior's guidelines to Prefects about how to educate operators and civil society about human trafficking,⁹³ in the Ministry of Labour and Social Policies' annual reports on unaccompanied migrant minors,⁹⁴ and in the National Asylum Commission's explanations for the list of foreign countries of origins presumed to be safe.⁹⁵ In these documents, the quotation of the TiP reports is generally accompanied by the reference to other global reports, and above all to the Global Report on Trafficking in Persons yearly published by the United Nations Office on Drugs and Crime (UNODC).⁹⁶ While the TiP reports are rarely the only source of evidence and inspiration for administrative guidelines and policies, they undoubtedly contribute to the development of the vocabulary and informative background for public action. Interestingly this is mirrored in the private sector by the many references to the TiP reports that emerge from union syndicates' and NGOs' working documents and pamphlets promoting the cause of protection of migrant workers and victims of sexual exploitation.⁹⁷ It goes without saying that neither public

199; A. Annoni, 'L'attuazione dell'obbligo internazionale di reprimere la tratta degli esseri umani', in *Rivista di diritto internazionale*, 2006, 405, fn 2. Non-legal scholarship has been more critical: see D. Pangerc, 'Migrazioni illegali e traffico di esseri umani: le rotte balcaniche – il caso Bosnia', Università degli Studi di Bergamo, Scuola di dottorato in Antropologia ed Epistemologia della Complessità, a.y. 2009/2010, available at <https://tinyurl.com/ybeay5ah> (last visited 27 December 2020), 212-215; see also D. Pangerc, *Il traffico degli invisibili. Migrazioni illegali lungo le rotte balcaniche* (Catania: Bonanno, 2012).

⁹¹ Parliamentary Bi-Cameral Anti-Mafia Commission, 'Traffico esseri umani e nuove schiavitù' (undated), available at <https://tinyurl.com/y8y25q7j> (last visited 27 December 2020).

⁹² National Anti-Mafia and Anti-Terrorism Authority, 'Annual Report' (period 1 July 2015-30 June 2016), available at <https://tinyurl.com/y7wf43ep> (last visited 27 December 2020), 357-359.

⁹³ Ministry of the Interior, Department for civil liberties and immigration, 'Communication of 31 August 2007', available at <https://tinyurl.com/y9o6wllj> (last visited 27 December 2020), 13.

⁹⁴ Ministry of Labor and Social Policies, General Directorate for Immigration and Integration Policies, 'Report di Monitoraggio. I minori stranieri non accompagnati (MSNA) in Italia', 31 December 2019, available at <https://tinyurl.com/ybxp2jkn> (last visited 27 December 2020), 42 (on Serbia).

⁹⁵ National Asylum Commission, 'List of Safe Countries of Origin', 31 October 2019, available at <https://tinyurl.com/ybspdxpu> (TiP quoted for Ghana) (last visited 27 December 2020).

⁹⁶ <https://tinyurl.com/y7b4osl5> (last visited 27 December 2020).

⁹⁷ See for instance B. O'Neill and A. Vicini, 'La tratta delle persone e la dignità del lavoro', available at www.laciviltacattolica.it, (last visited 27 December 2020), 455-466; Osservatorio interventi tratta, 'Dipartimento di Stato degli Stati Uniti d'America – Rapporto sulla tratta di esseri umani 2019', 24 September 2019, available at <https://tinyurl.com/ybae8u6l> (last visited 27 December 2020); Si.Cobas, 'Il decreto-Salvini bis è un attacco frontale alle lotte. E dà il via libera alle aggressioni poliziesche, padronali e fasciste. A quando la risposta che merita?', 27 June 2019, available at <https://tinyurl.com/ydxhpxa3> (last visited 27 December 2020); Centro Studi Gruppo Abele, 'Prostituzione e tratta delle persone', January 2019, available at <https://tinyurl.com/y8jznmxx> (last

administration documents, nor private ones, ever acknowledge that the TiP reports are the unilateral and highly politicized by-product of the US federal department responsible for carrying out US foreign policy. Quite the contrary, in these documents the TiP reports are rather depicted as a neutral and reliable resource for information and technical analysis of both human trafficking data and states' performances in fighting trafficking.

4. The Doing Business Reports

Much more evident has been the transformative impact of the DB reports, which have rapidly become authoritative in Italian academic and political circles, prompting the enactment of several reforms and a deep restructuring of rules on business registration, security rights, competition, public procurement, administrative supervision of enterprises, and civil procedure.⁹⁸ As we will see, although there are no decisions quoting the DB reports, the latter played an indirect role in the management and organization of courts.

Let us start with legal scholarship. The DB reports have attracted considerable attention by Italian legal scholars in a variety of different areas, mostly concerning civil procedure and administrative law, but also including labour law and company law.⁹⁹ While the majority of such scholarship relies on the DB reports

visited 27 December 2020); ActionAid, 'Mondi connessi. La migrazione femminile dalla Nigeria all'Italia e la sorte delle donne rimpatriate', June 2018, available at <https://tinyurl.com/ydbbvwnb> (last visited 27 December 2020), 23; Caritas, 'Lavoro dignitoso per tutti. Dossier con documentazioni e testimonianze', no 4, May 2015, 25-26; Human Rights Watch, 'Italia/Libia. Scacciati e Schiacciati', September 2009, available at <https://tinyurl.com/y6whmex9> (last visited 27 December 2020), 17; A. Pozzi and E. Bonetti, *Schiave: trafficate, vendute, prostitute, usate, gettate: donne* (Milano: San Paolo, 2010), 39; Gioventù per i diritti umani, 'Sensibilizzazione sulla tratta degli esseri umani', undated, available at <https://tinyurl.com/y7ptnol3> (last visited 27 December 2020).

⁹⁸ The academic and political attention devoted to the DB reports has corresponded the attention devoted to the same reports by media: see, with regard to the latest edition of the DB, F. Sabahi, 'Uzbekistan-Italia: "Una partnership strategica lungo la via della Seta"', *Corriere della sera*, 13 February 2020, available at <https://tinyurl.com/y855mbhw> (last visited 27 December 2020); C. Arena, 'L'Africa continua a crescere: nel 2020 il Pil salirà del 4%', *L'Avenire*, 31 January 2020, available at <https://tinyurl.com/ya68mgas> (last visited 27 December 2020); F. Gambarini, 'Le imprese italiane? Pagano quasi il doppio delle tasse rispetto ai giganti del web', *Corriere della Sera*, 4 January 2020, available at <https://tinyurl.com/ya7xefvn> (last visited 27 December 2020); Infodata, 'Imprenditori, la Cina nella top 10. Chi sono i nuovi miliardari?', *Il Sole24ore*, 1 January 2020, available at <https://tinyurl.com/yarqzok7> (last visited 27 December 2020); Unnamed author, 'Anche il World Bank Group certifica il fallimento gialloverde', *Il Foglio*, 25 October 2019, available at <https://tinyurl.com/y8tc37ub> (last visited 27 December 2020).

⁹⁹ As to civil procedure, cf R. Caponi, 'Doing Business' n 18 above; P. Biavati, 'Le categorie del processo civile alla luce del diritto europeo' *Rivista trimestrale del diritto e procedura civile*, 1323, fns 23 and 28 (2018) (hereinafter Biavati, 'Le categorie'); V. Mirra, 'Il nuovo sistema ADR in ambito Consob: l'Arbitro per le Controversie Finanziarie, tra alte aspettative e primi riscontri operativi' *Rivista dell'arbitrato*, 615, fn 7 (2018); G. Alpa, 'Arbitration and ADR Reforms in Italy' *Diritto del commercio internazionale*, 259-270 (2017) (hereinafter Alpa, 'Arbitration'); Id, 'Commissione di studio per l'elaborazione di una organica disciplina volta alla « degiurisdizionalizzazione »' *Rivista trimestrale del diritto e procedura civile*, 793-813 (2017) (hereinafter Alpa, 'Commissione'); V. Mirra, 'I sistemi di Alternative Dispute Resolution trovano nuovo vigore: il recepimento della

as a source for information or as fact, a minority of legal scholars has either taken a cautiously critical stance against the DB reports or has explicitly focused on unveiling the biases and fallacies affecting the underlying methodology.¹⁰⁰

The strongest effect of the DB reports has however taken the form of statutory reforms. In parliamentary debates, there is no mention of the DB reports in the Senate's transcripts until 2009. From that year onwards, the visibility of the DB rankings in discussions at the Senate has risen exponentially. Between 2009 and 2019, forty-nine (either individual or collective) interventions at the Senate have mentioned the DB reports (often in combination with other international quantitative sources, such as the OECD statistics on economic

Direttiva ADR e l'introduzione del nuovo "Arbitro per le Controversie Finanziarie" *Rivista dell'arbitrato*, 693, fn 6 (2016); P. Biavati, 'Note sullo schema di disegno di legge delega di riforma del processo civile' *Rivista trimestrale del diritto e procedura civile*, 209, fns 4 and 5 (2015) (hereinafter Biavati, 'Note'); R. Caponi, 'Doing business' n 18 above; S. Lucattini, *Modelli di giustizia per i mercati* (Torino: Giappichelli, 2013), 40-41; L. Panzani, 'Le sezioni specializzate in materia d'impresa' *Giurisprudenza di merito*, 1785B-1794B (2012). As to administrative law, cf N. Rangone, 'Semplificazione ed effettività dei controlli sulle imprese' *Rivista trimestrale di diritto pubblico*, 882, fn 14 (2019); F. Costantino, 'Lampi. Nuove frontiere delle decisioni amministrative tra open e big data' *Diritto Amministrativo*, 799, fn 6 (2017); G. Napolitano, 'The Transformation of Comparative Administrative Laws' *Rivista trimestrale di diritto pubblico*, 997 (2017) (hereinafter 'The Transformation'); F. Costantino, 'Semplificazione e lotta alla corruzione nella Legge 241 del 1990' *Diritto Amministrativo*, 623, fns 44-53 (2016); M. Pilade Chiti, 'Evoluzioni dell'economia e riassetto delle giurisdizioni' *Rivista italiana di diritto pubblico comunitario*, 713, § 3.2 (2015); F. Basilica and F. Barazzon, *Diritto amministrativo e politiche di semplificazione* (Rimini: Maggioli, 2nd ed, 2014), 151-152; M. Clarich, 'Profili giuridici della "sicurezza economica" nell'età della crisi' *Giurisprudenza commerciale*, 346 (2012); G. Napolitano, 'I grandi sistemi del diritto amministrativo', in Id ed, *Diritto amministrativo comparato* (Milano: Giuffrè, 2007), 1, 54 (hereinafter 'I grandi sistemi'). As to labor law, cf V. Brino and A. Perulli, *Manuale di diritto internazionale del lavoro* (Torino: Giappichelli, 2nd ed, 2015), 3; C. De Martino, 'La dimensione dell'impresa nella disciplina dei licenziamenti individuali' *Rivista italiana di diritto del lavoro*, 652, fn 13 (2014); M. Tiraboschi, 'La disoccupazione giovanile in tempo di crisi: un monito all'Europa (continentale) per rifondare il diritto del lavoro?' *Diritto delle relazioni industriali*, 414-438 (2012); as to company law, cf L. Enriques and M. Gargantini, n 18 above; M. Cian, 'S.r.l., s.r.l. semplificata, s.r.l. a capitale ridotto. Una nuova geometria del sistema o un sistema disarticolato?' *Rivista delle società*, 1101, fn 3 (2012); P. Santella, 'La società privata europea', in G. Ferri jr and M. Stella Richter jr eds, *Profili attuali di diritto societario europeo* (Milano: Giuffrè, 2010), 290, 317-318; L. Enriques, 'Capitale sociale, informazione contabile e sistema del netto: una risposta a Francesco Denozza' *Giurisprudenza commerciale*, 607 (2005). See also C. Licini and G. Liotta, 'Utilità macroeconomica (ma non solo) dell'istituzione notariato' *Rivista del notariato*, 117-142 (2017); D. Siclari, 'European Capital Markets Union e ordinamento nazionale' *Banca, borsa e titoli di credito*, 481, fn 81 (2016); C. Licini, 'Utilità macroeconomica dell'istituzione-notariato. "Il valore netto dell'intervento notarile per l'intero sistema è superiore a zero"' *Rivista del notariato*, 1-12 (2015).

¹⁰⁰ See in particular, as to civil procedure, R. Caponi, 'Doing Business' n 18 above; P. Biavati, 'Le categorie' n 99 above; Id, 'Note' n 99 above; G. Alpa, 'Arbitration' n 99 above; Id, 'Commissione' n 99 above; R. Caponi, 'Doing business' n 18 above; in the field of administrative law, G. Napolitano, 'The Transformation' n 99 above; Id, 'I grandi sistemi' n 99 above; M. Clarich, n 99 above; as to labor law, V. Brino and A. Perulli, n 99 above; C. De Martino, n 99 above; on company law, L. Enriques and M. Gargantini, n 18 above; see also C. Licini and G. Liotta, n 99 above; C. Licini, n 99 above.

performance¹⁰¹ and the World Economic Forum's Global Competitiveness Report),¹⁰² with a peak of ten references both in 2012 and in 2014.¹⁰³ As in the case of CPI, the rationale and context of such citations vary; the most interesting references for our purposes are those made by government representatives to praise their own work or to set out their agenda, and those put forward to promote proposed statutory reforms.

As to the self-congratulatory statements, one can find a Minister of Justice reminding the Senate that

‘the newly established rules electronic civil trials have produced a significant improvement of civil justice. It is not only me who says so. It is the Doing Business Report which says so, making Italy jump thirteen positions up as compared to last year’.¹⁰⁴

Setting the government's agenda in light of the DB reports led a Prime Minister to state that

‘we want to realize as soon as possible a reform of public management, in order to strengthen the competence of and incentives for an efficient administration. (...) This is the big goal we have to pursue. According to the latest Doing Business Report, Italy ranks 138th on fiscal complications’.¹⁰⁵

¹⁰¹ See <https://tinyurl.com/y73abzyz> (last visited 27 December 2020).

¹⁰² See <https://tinyurl.com/sbwsxjo> (last visited 27 December 2020).

¹⁰³ These are the results of the search on the Italian Senate's website, between 2001-2020, with the keyword ‘Doing Business’: Transcript no 110 of 18 April 2019 (Bernini et alii); Transcript no 816 of 3 May 2017 (Buccarella); Transcript no 742 of 18 January 2017 (Buccarella), (Orlando), (Stefani et alii), (Giarrusso et alii); Transcript no 615 of 27 April 2016 (Comaroli et alii); Transcript no 616 of 27 April 2016 (Comaroli et alii); Transcript no 564 of 21 January 2016 (Albertini), (Orlando); Transcript no 496 of 3 August 2015 (Scalia); Transcript no 425 of 8 April 2015 (Torrise); Transcript no 379 of 20 January 2015 (Stefani et alii); Transcript no 378 of 19 January 2015 (Stefani), (Stefani et alii); Transcript no 364 of 3 December 2014 (Munerato et alii); Transcript no 344 of 30 October 2014 (Lucherini et alii); Transcript no 333 of 16 October 2014 (Ginetti); Transcript no 291 of 24 July 2014 (Galimberti); Transcript no 219 of 1 April 2014 (Stefani); Transcript no 197 of 24 February 2014 (Renzi), (Fucksia); Transcript no 195 of 19 February 2014 (Giacobbe); Transcript no 172 of 22 January 2014 (Mattesini et alii); Transcript no 171 of 21 January 2014 (Buemi); Transcript no 150 of 11 December 2013 (Letta); Transcript no 62 of 9 July 2013 (Casellati); Transcript no 833 of 8 November 2012 (Passera); Transcript no 815 of 17 October 2012 (Patroni Griffi); Transcript no 786 of 3 August 2012 (Bubbico et alii); Transcript no 764 of 12 July 2012 (Perduca et alii); Transcript no 701 of 28 March 2012 (Del Pennino); Transcript no 693 of 15 March 2012 (Mazzatorta); Transcript no 674 of 14 February 2012 (D'Alia et alii); Transcript no 672 of 8 February 2012 (Poretti); Transcript no 658 of 18 January 2012 (Bonino et alii); Transcript no 657 of 17 January 2012 (Severino di Benedetto), (Bonino et alii); Transcript no 488 of 19 January 2011 (Saia); Transcript no 487 of 18 January 2011 (Bugnano); Transcript no 468 of 6 December 2010 (Della Monica); Transcript no 317 of 20 January 2010 (Alfano); Transcript no 317 of 20 January 2010 (Galperti); Transcript no 216 of 26 May 2009 (Peterlini); Transcript no 215 of 26 May 2009 (D'Ambrosio).

¹⁰⁴ Transcript no 564 of 21 January 2016 (Orlando) (author's translation).

¹⁰⁵ Transcript no 150 of 31 December 2013 (Letta) (author's translation).

A year later, another Prime Minister put the same goal in a different way:

[t]he national interest of this country is to improve its position in international rankings. (...) We rank 126th in the Doing Business Index of the World Bank. This leads us to be perceived by foreigners only as a wonderful place to go to on holiday. But is there a country potentially more attractive than us? Is there any other country where one can enjoy a high quality of life and at the same time benefit from the genius, creativity and innovation of workers of all genders?¹⁰⁶

References to the DB reports in the context of supporting or criticizing proposals for statutory reforms are even more abundant. The DB reports are, for instance, quoted in the parliamentary debates on approval of the Law of 18 June 2009, no 69 (on economic development, simplification, competitiveness and civil procedure),¹⁰⁷ of the Law of 4 April 2012, no 35 (converting into law the law-decree of 9 February 2012, no 5, on simplification and development),¹⁰⁸ of the already mentioned Law of 6 November 2012, no 190 (on fighting corruption),¹⁰⁹ of the Law of 21 February 2014, no 9 (converting into law the law-decree of 23 December 2013, no 145, on the ‘Destination Italy’ plan and on the internationalisation, the development and the digitalisation of enterprises),¹¹⁰ and of the Law of 4 August 2017, no 124 (an act for market and competition).¹¹¹

To the above list of statutory enactments somehow related to the DB reports, one should add the acts as regard to which the inspirational or aspirational value played by the reports is not evident from parliamentary debates, and yet clearly emerge from the explanatory memoranda accompanying the acts. For instance, the explanatory memorandum of the President of the Republic’s Decree of 13 March 2013, no 59 (establishing a unified environmental authorization and simplifying the administrative process in the environmental sector for small and medium-sized enterprises) states that the introduction of a unified environmental authorization and the reduction of the administrative burdens in the environmental field are meant ‘to contribute to the improvement of Italy’s competitiveness and attractiveness for investment and to overcome some of the obstacles in doing business that justify our country’s 87th place in the Doing Business ranking’.¹¹² A similar explanation is to be found in the explanatory

¹⁰⁶ Transcript no 197 of 24 February 2014 (Renzi) (author’s translation).

¹⁰⁷ Transcript no 216 of 26 May 2009 (Peterlini); Transcript no 215 of 26 May 2009 (D’Ambrosio).

¹⁰⁸ Transcript no 701 of 28 March 2012 (Del Pennino).

¹⁰⁹ Transcript no 815 of 17 October 2012 (Patroni Griffi).

¹¹⁰ Transcript no 195 of 19 February 2014 (Giacobbe).

¹¹¹ Transcript no 816 of 3 May 2017 (Buccarella).

¹¹² Explanatory memorandum of the President of the Republic’s Decree of 13 March 2013, no 59, available at <https://tinyurl.com/ybcxlnr6> (last visited 27 December 2020), sub ‘article 9’ and sub ‘section VI’.

memorandum of the Law of 24 March 2012, no 27 (converting into law the law-decree of 24 January 2012, no 1, on competition, infrastructures development and competitiveness), which, *inter alia*, established the ordinary tribunals specialized section for merchants' disputes,¹¹³ as well as in the explanatory memorandum of the Law of 10 November 2014, no 162 (converting into law the law-decree of 12 September 2014, no 132, adopting measures for alleviating the workload of the courts and reducing caseload pendency), which tried to facilitate the transfer of cases from courts to arbitral tribunals and the use of alternate dispute resolution mechanisms before judges¹¹⁴ – all in conformity with the DB reports' suggestions. Finally, the reference to the need of aligning Italy with the 'most recent development in (...) the international domain (such as those suggested by UNCITRAL)',¹¹⁵ contained in the explanatory memorandum of the Law of 30 June 2016, no 119 (converting into law the law-decree of 3 May 2016, no 59, on individual and collective enforcement procedures), which introduced in the Italian legal system non-possessory security rights for merchants, might very well include an implicit allusion to the DB reports as well.¹¹⁶

The overview of the reforms prompted by the DB reports would not be complete without considering how the reports have affected government political action. For instance, in the 'Plan for simplification' adopted in 2007, the government expressed the intention of

'establishing a path of measurable actions (...) converging to a unified and strategic goal, whose attainment could be easily measured. Our strategic goal is, inasmuch as enterprises are concerned, the improvement of the country's international competitiveness; its attainment will be assessed by the country's substantial improvement in international rankings (for instance, the 'Doing Business' reports of the World Bank)'.¹¹⁷

In 2012, the government initiated the setting up of a permanent roundtable on 'Doing Business: Regulatory Profiles', under the guidance of Professor Andrea Zoppini, which should have provided a forum for dialogue and exchange between the government and the public officials and lawyers involved in answering the

¹¹³ Explanatory memorandum of the Law of 24 March 2012, no 27, available at <https://tinyurl.com/ycss842z> (last visited 27 December 2020).

¹¹⁴ Explanatory memorandum of the Law of 10 November 2014, no 162, available at <https://tinyurl.com/y7pe8482> (last visited 27 December 2020).

¹¹⁵ Explanatory memorandum of the Law of 30 June 2016, no 119, available at <https://tinyurl.com/y8p7g7x5> (last visited 27 December 2020). The United Nations Commission on International Trade Law (UNCITRAL) has notoriously promoted the establishment of non-possessory security rights: see for instance UNCITRAL Legislative Guide on Secured Transactions of 2010, available at <https://tinyurl.com/ycgpfpat> (last visited 27 December 2020).

¹¹⁶ D. Siclari, n 99 above, fn 81.

¹¹⁷ Presidency of the Council of Ministers, 'Action plan for simplifying and enhancing the quality of regulation', 20 July 2007, available at <https://tinyurl.com/y834y785> (last visited 27 December 2020), 10.

World Bank's questionnaire, with the aim of making Italian law better understood by the World Bank.¹¹⁸ The project, however, was soon discontinued. In 2016, the then Minister of Justice conferred to a Commission, directed by Professor Guido Alpa, the task of drafting a proposal for the reform of arbitration and alternate dispute resolution mechanisms, in order to promote Italy's ranking in the DB category, 'enforcing contracts'¹¹⁹ (it should be noted that the DB equates contract institutions with the existence and effectiveness of mechanisms to enforce promises, with the result that the quality of contract law is measured in terms of the duration and cost of enforcing promises before courts¹²⁰). In line with the government's request and the DB reports' prescriptions, the Commission issued a series of proposals favouring quasi-judicial dispute resolution processes, but also took quite a critical stance against the reports. According to the Commission's proposals,

[t]he DB's positions and judgments should be taken with caution: for instance, the 2015 report states that the Democratic Republic of Congo is a country respecting parties' freedom of contract to the greatest extent, essentially without any limit; yet, it is easy to counterargue that the limits to freedom of contract we have in Italy, which are tied to the protection of public order and fundamental rights and to the need of fighting crime, tax evasion and money laundering, are more than justified even though they imply a cost for business'.¹²¹

As many of the above statutory measures and governmental actions show, one of the main concerns raised by the DB reports in Italy has always been the excessive length of civil proceedings and the efficiency of civil justice, also because these aspects were already perceived as being highly problematic both inside and outside the country.¹²² Italy's low score in the DB category on 'enforcing

¹¹⁸ See Communication of the Justice under-secretary Andrea Zoppini about the establishment before the Ministry of Justice of a permanent roundtable on «Doing business: regulatory profiles», 2nd Justice Commission, Transcript no 17 of 17 April 2012, available at <https://tinyurl.com/ybef3usv> (last visited 27 December 2020).

¹¹⁹ Decree of the Ministry of Justice of 7 March 2016 on the establishment of a Commission for the reform of arbitration and alternative dispute resolution mechanisms, available at <https://tinyurl.com/y8eopzya> (last visited 27 December 2020).

¹²⁰ For such an explanation (and its critique), see M. Parglender, 'Comparative Contract Law and Development: The Missing Link?' 85 *George Washington Law Review*, 1717, 1719-1720 (2017).

¹²¹ Ministry of Justice, 'Commission for the reform of arbitration and alternative dispute resolution mechanisms' (under the Presidency of Prof. G. Alpa), Regulatory Proposal and Explanatory Notes, 2017, available at <https://tinyurl.com/y7233vxn> (last visited 27 December 2020).

¹²² At the domestical level, the history of Italian civil procedure has always been intertwined with critical complaints and proposals for reform: see V. Ansanelli, *Contributo allo studio della trattazione nella storia del processo civile italiano: 1815-1942* (Torino: Giappichelli, 2017), 17-30; B. Sassani, 'Il codice di procedura civile e il mito della riforma perenne' *Rivista di diritto processuale*, 1429-1449 (2012); F. Cipriani, 'Il processo civile in Italia dal codice napoleonico al 1942' *Rivista di diritto civile*, 67-88 (1996); M. Taruffo, *La giustizia civile in Italia dal '700 ad oggi*

contracts' has, thus, not only fuelled scholarly debates and made room for legislative interventions,¹²³ but also provided the judiciary with further occasions for reflection on the courts' own way of working. It is not by chance that data from the DB reports figure, alongside the statistics provided by the '*Commission européenne pour l'efficacité de la justice*' (CEPEJ), in almost every report of the First President of the Court of Cassation on the occasion of the opening of the Italian judicial year, as the starting point for assessing Italian courts' past performances and for setting future goals.¹²⁴ In the eyes of the First President(s) of the Court of Cassation, there is clearly little difference between the cautiously crafted CEPEJ data and the biased outcomes conveyed by the DB reports.

The only sector in which the DB has passed largely unobserved is litigation itself, with only one curious exception. Electronic databases report a decision by the Plenary of the highest administrative court – the Italian Council of State – making reference to the DB in the context of a request for judicial review of the award of a public contract. The Plenary of the Council of State was in particular asked to decide whether, in dealing with the challenges raised by the losing party against the award, the administrative tribunal was bound to follow the order of the challenges adopted by the applicant. In answering the question, the Council of State in 2015 noted that

‘a widespread view maintains that, in determining the order of analysis of the claims, the court should take into the utmost account the satisfaction of the applicant's interests, especially when the latter is an entrepreneur. Such a view aims to protect the supranational and national principles of freedom of economic activity and fair competition, and suggests considering these principles as the (only or dominant) parameters for the regulation and management of the judicial process, along the lines of the yearly Doing

(il Mulino: Bologna, 1980), especially, 151-193. From an outer perspective, Italy has been chastised a number of times by the Eur. Court H.R. for the lengthiness of domestic civil proceedings: see the decisions against Italy cited by the Eur. Court H.R., Guide on Article 6 of the Convention – Right to a fair trial (civil limb), 31 August 2019, available at <https://tinyurl.com/yb7unda6> (last visited 27 December 2020), 79-85. See also Italy's bad performance as to the disposition time of civil and commercial proceedings in the latest edition of the statistics collected by the Commission européenne pour l'efficacité de la justice (CEPEJ) under the Council of Europe: CEPEJ, European judicial systems Efficiency and quality of justice. CEPEJ Studies No 26, 2018 Edition (2016 data), available at <https://tinyurl.com/y6v4jgtr> (last visited 27 December 2020), 245-271.

¹²³ See the legal scholarship quoted at n 99 above and the legal reforms mentioned at n 113 and 114 above.

¹²⁴ See for instance G. Mammone, 'Relazione sull'amministrazione della giustizia nell'anno 2018', 25 January 2019, available at <https://tinyurl.com/y9tk8n92> (last visited 27 December 2020), 20-21; G. Canzio, 'Relazione del primo presidente della Corte di Cassazione per l'apertura dell'anno giudiziario' *Cassazione penale*, 454B (2017); E. Lupo, 'Relazione sull'amministrazione della giustizia nell'anno 2011' *Giustizia civile*, 321 (2012); V. Carbone, 'Relazione sull'amministrazione della giustizia nell'anno 2009' *Giustizia civile*, 335 (2010); V. Carbone, 'Relazione sull'amministrazione della giustizia nell'anno 2008' *Giustizia civile*, 181 (2009); V. Carbone, 'Relazione sull'amministrazione della giustizia nell'anno 2007' *Giustizia civile*, 109 (2008).

Business Reports of the World Bank (...) that since 2003 publishes indicators of national justice systems' performances. An uncritical adhesion to such an opinion, however, (...) would place excessive emphasis on economic indicators in the interpretation of procedural rules and would result in a reading of such rules as being too subservient to economic policy goals. (...) Viewing the administrative judicial process as a conflict between 'a private claimant versus the public administration' or 'a private interest versus the public interest', fails to consider that the administrative judicial process is meant to serve the general interest of civil society for the fair management of public affairs and of administrative procedure, also considering the latter's costs for the collectivity (...) In conclusion, it should be held that (...) it is for the administrative judge to determine the order of examination of the plaintiff's claims'.¹²⁵

The highest judicial authority in administrative matters thus expressed its hostility for the business-oriented view embraced by the DB reports, rightly pointing out that the reports fail to consider the role played in the economy by administrative justice and by administrative law in general.¹²⁶ Yet, as the above illustrations about the pervasiveness of the DB reports in the legal literature, political debates and ordinary courts' self-reflection about their activity, such a critical stance has largely remained a cry in the dark.

VI. Preliminary Conclusions and Further Directions

In spite of its methodological limitations, the above research allows us to draw some preliminary conclusions.

First of all, the survey shows that the four selected global indicators herein analysed have had an impact on the Italian legal system. The FiW reports have become a primary source of information for local asylum commissions' and courts' assessments of the safety of countries of origin in the immigration context.¹²⁷ The CPI and the DB reports have provided a quantitative basis in support of legal reforms in the fields of public administration, criminal law, business law and civil procedure.¹²⁸ Less evident is the legal impact of the TiP reports, which however have played a role in shaping (the advocacy work of union and NGOs, and) administrative measures and practices in the immigration

¹²⁵ Consiglio di Stato 27 April 2015 no 5, § 9.2.

¹²⁶ Cf, along the same lines, N. Garoupa, C. Gómez Ligüerre, L. Mélon, n 14 above, 59-90; N. Garoupa and C. Gomez Ligüerre, n 14 above, 304-331; T. Krever, n 1 above, 134; S. Schueth, n 16 above, 59; D. Sokol, 'Competition Policy and Comparative Corporate Governance of State Owned Enterprises' 6 *Brigham Young University Law Review*, 1713, 1753-1800 (2009).

¹²⁷ See above, section V.1.

¹²⁸ See above, section V.2 and V.4.

and criminal sector.¹²⁹

A second research outcome is that the effect of global legal indicators is much varied. The empirical evidence provided in the scanty literature about the transformative changes promoted by these indicators has already documented, although fragmentarily, that indicators can frame political expectations and drive reform agendas.¹³⁰ The impact of the CPI and the DB reports in Italy fully confirms this. However, the case of the FiW and TiP reports also show that global legal indicators might have more nuanced and unexpected results. Italian administrative and judicial bodies in the context of immigration routinely resort to the FiW and TiP reports as sources for user-friendly and updated data about, and as evidence of, the political conditions and human rights performances of foreign countries. The FiW and TiP reports' influence on the Italian legal system is thus indirect; yet, the evidentiary use of the FiW and TiP reports by asylum commissions and courts has a direct impact on applicants' lives.

Thirdly, the research also demonstrates that global indicators rarely operate in isolation and most often concur with other hard and soft law instruments in support of given arguments, approaches and reforms. We saw for instance that the FiW's focus on civil and political rights largely mirrors the contents of the UN ICCPR; further, the FiW reports are often quoted by asylum commissions and courts in combination with other similarly themed sources, such as those provided by the UNHCR and the EASO.¹³¹ The CPI is the quantitative predecessor of a plethora of global and regional international treaties obliging signatory states to strengthen the criminal penalty for petty corruption in the public sector.¹³² The TiP reports have developed in parallel with the multiplication of global and regional international conventions and measures on human trafficking, and their results are often associated with those offered by other data-providers in the field, such as the UNODC.¹³³ Even the DB reports, which under many points of view are an original product of the World Bank, have gained traction thanks to their alignment and combination with other initiatives – such as the OECD statistics, CEPEJ's results, and UNCITRAL's suggestions.¹³⁴

All this calls for further research. Instances of the legal impact of indicators might be searched on a wider range of documents, including, for instance, materials from independent agencies and local authorities. The textual enquiry might be complemented by non-textual tools of inquiry (such as surveys and interviews) in order to test the undocumented effects of indicators, if any, on people's expectations, ways of thinking, practices and behaviours. More can be done to understand the varied outcomes of global legal indicators and the reasons

¹²⁹ See above, section V.3.

¹³⁰ n 16 above.

¹³¹ See above, section V.1.

¹³² See above, section V.2.

¹³³ See above, section V.3.

¹³⁴ See above, section V.4.

why some of them are able to penetrate the legal domain more deeply than others. It would also be interesting to take into account the transformative changes associated with indicators other than the four herein considered, as well as to enlarge the study to other countries, examining how different jurisdictions have reacted to the rise of global quantitative instruments. On a more theoretical level, empirical findings might help in understanding whether indicators could be classified as a source of global soft law and with what consequences in terms of their legitimacy, review and accountability. As this sketchy list makes it clear, the directions of possible research engagements with global legal indicators is wide; I hope this paper acts as a stimulus for further research in this area.