



30.1.2013

Comments on the zero-draft consultation paper submitted by the HLPE „Biofuels and Food Security“

By FIAN International and EuropAfrica

FIAN is an international human rights organization that has advocated for the realization of the right to adequate food for more than 25 years. FIAN has its International Secretariat in Heidelberg (Germany) and exercises its consultative status with the United Nations through its permanent representation in Geneva.

EuropAfrica – Towards Food Sovereignty is a campaign which brings African farmers' organizations platforms (from West, Central and East) Africa and European civil society together. The aim of this initiative is to address the most important challenges in the field of food governance and international cooperation by facilitating several opportunities for reflection and joint action.

Introductory comment

We congratulate the HLPE for its work and in particular welcome the work accomplished for the zero draft of the report on *Biofuels and Food Security*. The current expansion of agrofuel production has considerable impacts all over the world. FIAN has documented several cases of violations of the right to adequate food, especially of small-scale food producers, in many countries around the world, linked to agrofuel expansion. In the context of ongoing debates on the subject, we welcome the HLPE's efforts to produce an assessment of the impacts of agrofuels on food security and nutrition.

We especially welcome the insights of the present zero draft on the technological development as they are highly relevant for future food security, the right to food and related needs for global governance. This includes both the discussion on flexible crops and the second generation agrofuels. At the same time, we are concerned that the zero draft does not apply a human rights framework, and especially a right to food framework. This is in contrast to the

fact that the human rights framework has (a) informed the agrofuel debate on national and global level and contributed to gain substantive insights on the linkages between agrofuel expansion and food security. In addition, we would like to remind the HLPE that (b) the CFS is founded on the human right to food. In its reform document, it is clearly stated that the CFS vision is based on the progressive realization of the right to adequate food. The overarching goal of the progressive realization of the right to adequate food has recently been reaffirmed in the Global Strategic Framework on Food Security and Nutrition (GSF), adopted by the CFS in its 39th session in 2012.

Based on this overall perspective, FIAN and EuropAfrica would like to recommend considering the following aspects:

Include the human right to adequate food in its analysis and recommendations

This allows identifying concrete human rights violations and related responsibilities according to international human rights law.

In particular, we recommend the following elements:

- 1 We recommend including the **human right to adequate food framework** in the discussion on food security (in the summary and introduction).
- 2 The study should refer to core **human rights treaties** (inter alia the Universal Declaration of Human Rights (UDHR), the International Covenant in Economic, Social and Cultural Rights (ICESCR), the International Covenant on Political and Civil Rights (ICPCR), conventions of the International Labor Organization (ILO)) and substantially include **core human rights documents, including:**
 - 2.1 The Voluntary Guidelines for the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (especially Guideline 8).
 - 2.2 The Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT). These Guidelines should not only be a check list for single cases of land grabs for agrofuel production, they should be used for the elaboration, assessment and revision of agrofuel policies.
 - 2.3 The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.
 - 2.4 In the Context of the EU, identified as one of the main actors in the fields of agrofuels, we would recommend to include the Treaty on the Functioning of the European Union (Art. 208 on the policy coherence for development). The social effects of the EU agrofuel policy in Africa (as the report highlighted in point 3 shows) contradict the objective of the EU development cooperation.

- 3 The report should further include documented **violations of the right to food** related to land conflicts linked to agrofuel production/ expansion. The zero draft is focussing on (global) price effects, while there is a need to address on an equal level human rights violations fuelled by agrofuel expansion – forced evictions, loss of access to land, criminalization of human rights defenders among them (see for example *EuropAfrica, 2012, (Bio)fueling injustice? Europe’s responsibility to counter climate change without provoking land grabbing and compounding food insecurity in Africa*, which includes case studies from Kenya, Mali and Senegal, pp. 37-48. Available at: <http://www.europafrika.info/en/publications/biofueling-injustice>).
- 4 The above referred report of EuropAfrica is one of the most comprehensive reports on the role of the EU agrofuel policies and one of the most inclusive ones. It has been elaborated in a joint effort with African farmer organisations. The analysis in this report is based on a human rights framework and formulates detailed policy recommendations towards the EU and its member states. These recommendations could have relevance for the policy recommendations of the HLPE.
- 5 We would recommend identifying in a more precise way the responsibilities of different actors and related existing human rights obligations of states. Such a human rights based analysis would help identifying recommendations.
 - 5.1 This would include a stronger **human rights perspective on Biofuels and Land** (Chapter 4), as access to land is a core element for the realization of the right to adequate food (references could be made to the General Comment Nr.12 of the UN Committee on Economic, Social and Cultural Rights (CESCR) and the VGGT, endorsed by the CFS).
 - 5.2 Violations of the right to food should also be made explicit in the highly welcomed discussion on “mixed farming systems” as a key source of **micro-nutrients**. This should be done by including the human rights dimension of **adequacy** in the analysis.
- 6 Based on international human rights law, clear **obligations of states** to respect, protect and fulfil the human right to food including extraterritorial obligations should be identified. These legal dimensions should substantially inform the recommendations.
 - 6.1 This should include recommendations to put in place legally binding measures to regulate financial and other actors active in agrofuel/ flexcrop investment with a view to preventing, and, if it takes place, remedying human rights abuses by those actors.
 - 6.2 It also includes assessing and revising existing agrofuel policies to ensure that these policies do no harm to poor people and small scale food producers.
- 7 We welcome the clear emphasis of the **water dimensions of agrofuel production**. Linked the points mentioned above, we recommend that a right to water framework should inform this debate, as the right to water has been formally adopted by the United Nations General Assembly in

2010. The right to water has been interpreted by the CESCR in its General Comment 15.

- 8 We welcome the insights provided on the role of **flexible crops** in this framework. Nevertheless we believe that the HLPE report should include and strongly emphasize the following consideration about the linkages between global food security, the right to food and the evolving flex crops market: A national and global flex crop market bears the substantive danger that due to „market signals“ vast volumes of agricultural products will be shifted from the food market towards the fuels (energy) and fibre market in shortest time (and vice versa). In simpler words, **food can disappear in seconds**. This might lead to substantive price responses and – linked to the analysis as contained in chapter 3 – to massive violations of the right to food. This aspect is contained implicitly in some of the consideration of the zero draft, but should be highlighted in a more explicit way. We would thus strongly recommend including this real and substantive risk to the human right to food into the report.
- 9 Similar to the global debates, we see that the zero draft is based on a too narrow approach on **ILUC**, which is based mainly on the GHG debate. However, ILUC has also a substantive relevance for the access to land and water of rural communities. An example of global scale may illustrate this: In 2012 German newspapers reported that for the first time in 25 years, Germany had to import wheat again. One central reason for this has to be seen in the substantive boom in maize monocultures (for which the German neologism “Vermaisung” (i.e. “maizazation”) has been created) for bioenergy (mainly biogas). Germany’s need to import wheat from other countries is thus rising as a direct consequence of the national bioenergy development, and so are its “virtual land imports”.
- 10 The discussion of the **EU RED and certification schemes** (RSB etc.) should include a human rights based assessment. The absence of human rights criteria (not only linked to access to land and food prices, but also linked to lacking and/or intransparent accountability and remedy mechanisms to comply with human rights obligations) is not mentioned in the present draft. Overall, market-based certification schemes could be complementary to a regulatory framework but should not replace monitoring and accountability mechanisms based on states’ obligations under international human rights law. This should be pointed out clearly.
- 11 Based on the experience of CFS and the CSM, national and multilateral agrofuel policies should be assessed and **monitored in a transparent and inclusive way**. The experience from the CSM could inform such multi-stakeholder processes on national and international level. In particular, small scale food producers as the most affected by land grabs for agrofules / flex crops should have a substantive role in such monitoring activities.
- 12 Regarding principles for responsible agricultural investments, we would like to emphasize to not confuse the “Principles on Responsible Agricultural Investment in Farmland” – often referred to as PRAI –

proposed by World Bank, FAO, IFAD and UNCTAD in 2009 with the on-going consultation process on responsible agricultural investments in an open-ended working group of the CFS. The CFS in its 36th session decided not to endorse the principles as suggested by the agencies named above, and has instead started an inclusive consultation process. The HLPE report should therefore distinguish more clearly these two things and underline in particular in recommendation no. 5 that the adherence to principles of responsible agricultural investments should refer to the outcome of the on-going CFS process.

We stay at your disposal for any other bibliographic reference. Looking forward to the next draft for other comments.