



ORGANISATION INTERNATIONALE DE DROITS DE L'HOMME  
COMBATTRE LA FAIM AVEC LES DROITS HUMAINS

FIAN-Belgium asbl.  
Rue Van Elewyckstraat 35  
1050 Brussel/Bruxelles  
Tel/Fax + 32 2 640 84 17  
[www.fian.be](http://www.fian.be) - [fian@fian.be](mailto:fian@fian.be)

[fian@fian.be](mailto:fian@fian.be)

**Response of FIAN Belgium (FoodFirst Information and Action Network)  
to Committee members' questions  
related to FIAN Belgium's Statement on Belgium's fourth report to the UN Committee on  
Economic, Social and Cultural Rights (pre- Sessional Working group of the Committee on  
Economic, Social and Cultural Rights – 21<sup>st</sup> of May 2013)**

**September 2013**

Honorable Committee members:

Please find below the responses to the **questions of the Committee members following FIAN's Statement during the last pre-session group meeting:**

**1. Question of M. RIBEIRO related to the negative impact of Belgian and European agrofuels policies**

**⌘ Do you have studies on the negative impact of Belgian and European agrofuels policies?**

We can rely today on a plethora of academic, scientific and social movements' studies documenting the negative impact of EU agrofuels policies. Without intending to be comprehensive, we can highlight some particularly pertinent studies or extracts regarding the impact of Belgian and/or EU agrofuels policies on human rights, particularly on the right to food.

**1. Studies documenting negative impacts on EU agrofuels policies on the right to food**

a. "Note on the impacts of the EU biofuels policy" – Olivier De Schutter (April 2013)

The introduction of this recent note, written by the UN Special Rapporteur on the Right to Food, summarizes the purpose and conclusions of the study:

*"This note expresses the deep concerns of the Special Rapporteur in regard to European Union (EU) biofuels policy and the considerable negative impacts this policy is having on the enjoyment of the right to food in a number of developing countries. The key recommendation is for incentives for*

*the production of biofuels that threaten the right to food, such as the binding EU targets for renewable energy in transport and national biofuel mandates, to be reduced and eventually removed” (Note, p. 1).*

The reports analyzes seven main concerns justifying its conclusion in these terms: *“Taking into account the available evidence, and with a view to avoiding negative impacts on the right to food, the direction in which biofuel policy must go is clear. Public incentives for the production of food crop-based biofuels must be reduced and eventually removed, while only those advanced biofuels that do not compete with food production for land or other resources should be incentivized” (Note, p. 6).*

For further details:

[http://www.srfood.org/images/stories/pdf/otherdocuments/20130423\\_biofuelsstatement\\_en.pdf](http://www.srfood.org/images/stories/pdf/otherdocuments/20130423_biofuelsstatement_en.pdf)

- b. “Understanding the Biofuel Trade-offs between Indirect land use change (ILUC), Hunger and Poverty” - Timothy Searchinger (July 2013)<sup>1</sup>

In his recent paper, Timothy Searchinger (Princeton University) proves that biofuels basically force people to eat less food.

*“So what do these analyses mean for biofuels and hunger? Many models, such as the IFPRI model, are predicting that even in the long run, much of the food diverted to biofuels will not be replaced. Although food prices should come down if governments slow down their push for biofuels, that still means many people will be eating less. Yet in the shorter run, the situation is probably worse. In the short-term, farmers have less ability to boost food production, so more of the crops diverted to biofuels must come from the food eaten by people. These even greater impacts on hunger are likely to continue if governments continue to demand that biofuel production grow at a rate faster than farmers can fully match” (report, p. 8).*

For further details:

[https://www.foeeurope.org/sites/default/files/press\\_releases/searchinger\\_paper\\_foee\\_briefing\\_understanding\\_biofuel\\_trade-offs\\_july2013.pdf](https://www.foeeurope.org/sites/default/files/press_releases/searchinger_paper_foee_briefing_understanding_biofuel_trade-offs_july2013.pdf)

- c. “(Bio)fueling injustice: Europe’s responsibility to counter climate change without provoking land grabbing and compounding food insecurity in Africa” – Sylvain Aubry (2011)

Another study that merits to be mentioned because of its clear human rights approach in analyzing the impact of biofuels policies, is one published as part of the EuropAfrica campaign. The report, based on concrete cases of violations of the right to food abroad, demonstrates that *“The ETO Principles, as a codification of general international law, constitute the basis to review the impact of the EU biofuel policy and EU and its Member States’ respect responsibilities. Based on these Principles, it can be concluded that the EU and its Member States violate or could violate human rights law in at least **four respects**” (Report, p. 89):*

- **Policy planning and impact assessment:** *{...} a State or an institution cannot claim that one of its policies will not violate human rights if it did not make all reasonable efforts to assess its likely impact on human rights. {...} The facts described above lead to conclude that the*

---

<sup>1</sup> T. SEARCHINGER, *Understanding the Biofuel Trade-offs between Indirect land use change (ILUC), Hunger and Poverty*, July 2013,  
[https://www.foeeurope.org/sites/default/files/press\\_releases/searchinger\\_paper\\_foee\\_briefing\\_understanding\\_biofuel\\_trade-offs\\_july2013.pdf](https://www.foeeurope.org/sites/default/files/press_releases/searchinger_paper_foee_briefing_understanding_biofuel_trade-offs_july2013.pdf)

*EU and its Member States have violated human rights by not conducting adequate HRIAs (pp. 90-91).*

- **Obligation to respect – to avoid causing harm:** {...} *The negative impact of a biofuel policy on food prices “could only be justified under international law if very strong arguments are offered, showing that the benefits from agrofuels outweigh the negative impacts”, otherwise it could be considered as a retrogressive measure {...} it can be concluded that the EU and its Member States have violated human rights by impairing the enjoyment of human rights in third countries (pp. 91-92).*
- **Obligation to protect:** {...} *Human rights norms also require taking measures to ensure that enterprises or individuals do not harm human rights {...} It includes situations where a non-State actor has the nationality of the State concerned, where a corporation is domiciled in the State concerned, and where there is a reasonable link between the State concerned and the wrongful conduct. States should also make all efforts to influence non-State actors which they regulate (ETO Principle 26). {...} As a result, the EU and EU Member States have violated human rights by not taking the necessary measures to protect human rights extraterritorially (p. 92).*
- **Access to remedies:** {...} *However, most if not all victims of human rights violations in Africa have not had access to an effective remedy (p. 93).*

For further details:

<http://www.europafrika.info/en/publications/biofueling-injustice>

## **2. Studies documenting negative impacts on Belgian agrofuels policies on the right to food**

- a. “Impact de l’expansion des cultures pour biocarburants dans les pays en développement”, Etude commanditée par le SPF Environnement” – CETRI (Décembre 2010)

At the Belgian level, the most relevant study is, by far, the study mentioned in the contribution of FIAN Belgium in March 2013 (p. 10) in these terms: « Les conclusions de cette étude ne laissent aucune équivoque : « Il ressort de ce qui précède que, à ce jour, l’expansion des agrocarburants a eu des impacts essentiellement négatifs. La gravité des situations décrites et leur très large prévalence relèvent du non-respect des droits humains fondamentaux (...). Ils vont à l’encontre des engagements de la Belgique en matière de biodiversité, d’environnement et de climat ». C’est donc en connaissance de cause que la Belgique a violé ses obligations internationales ».

As highlighted, this study was expressly commissioned by the Federal Public Service (FPS) Health, Food Chain Safety and Environment, in order to provide inputs to decision makers in charge of the national transposal of the EU Directive (2009/28/CE) on the promotion of the use of energy from renewable sources.

Analyzing Belgium’s obligations under international human rights law, the study states that: *Production which does not meet elementary environmental and human rights criteria should not be certified as ‘sustainable’. To be certified as ‘sustainable’, imported agrofuels must at the very least have been produced respecting the commitments of Belgium and other European countries in the field of biodiversity, the environment, human rights and economic and social rights as they are spelt out in the declarations, conventions and international pacts to which they are signatories, in particular the Universal Declaration of Human Rights, the International Covenant of Economic, Social and Cultural Rights and its additional protocols, the Rio Conventions and the Protocol of Kyoto.*

*Given the weak sustainability criteria and the total absence of binding requirements in the social field and regarding human rights, aid may under the present conditions be granted to economic actors and productions associated with serious human rights violations. This is not acceptable (p. xli).*

For further details:

<http://www.health.belgium.be/eportal/Environment/19067348>

- b. "Ruée vers les terres : Quelles complicités belges dans le nouveau Far West mondial ?" Les responsabilités belges dans les acquisitions de terre à l'étranger" - FIAN Belgium, SOS Faim, CNCN-11.11.11, AEFJN, Oxfam Solidarité et Entraide et Fraternité (juin 2013)

We invite the committee to read this very recent publication launched by a consortium of Belgian civil society organizations, focused on Belgian responsibilities in land grabbing cases abroad. The chapter referring to agrofuels clearly reveals Belgian responsibilities in land grabbing cases related to agrofuels policies. The report specially highlights: *« D'une part, ne se contentant pas seulement d'ouvrir le marché des agrocarburants, les pouvoirs publics ont pris des mesures volontaristes pour soutenir le développement du secteur en Belgique : réduction du taux d'accises et avantages fiscaux sur les agrocarburants mis à la consommation (exemption d'accises sur l'agroéthanol et l'agrodiesel, respectivement pour des montants annuels d'environ 70 et 150 millions d'euros)<sup>2</sup>; aides à l'investissement pour les entreprises d'agrocarburants qui s'installent en Belgique<sup>3</sup>; subsides aux institutions chargées de promouvoir les agrocarburants en Belgique<sup>4</sup>, etc.*

*D'autre part, conscients de notre dépendance extérieure, les pouvoirs publics ont également financé directement des projets d'agrocarburants dans les pays en développement à travers les budgets de recherche et développement<sup>5</sup>, voire en puisant dans les caisses de la coopération au développement ».*

As mentioned in our last statement, it is particularly worrying that even official development aid funds have been used to support foreign investment projects oriented towards export crops for agrofuel production in developing countries. To give one dramatic example: regarding the 10-million-euro loan from the Belgium investment company BIO (Société belge d'Investissement pour les Pays en Développement) to the ADDAX-Bioenergy's sugar-cane monocultures project, the negative impacts on the right to food of local populations have been well documented. In this illustrative case, the Belgian State has violated its extraterritorial obligations regarding human rights.

The Addax case has been documented by various reports during the last 3 years. A summary focusing on Belgian responsibilities can be found in the above mentioned report. Some of the negative impacts on human rights of the local communities are listed: *"Pourtant, les rapports des organisations locales et internationales se sont succédé dès le début du projet pour dénoncer les impacts négatifs auprès des communautés locales<sup>6</sup>. Les rapports mettent notamment en évidence les*

---

<sup>2</sup> Inter Environnement Wallonie, L'Europe dépense 10 milliards d'euros/an pour soutenir les agrocarburants !, communiqué de presse, 17 avril 2013.

<sup>3</sup> Exemple : l'unité de production de BIOWANZE a bénéficié d'une aide à l'investissement de la Région wallonne de 10 millions d'euros.

<sup>4</sup> Par exemple, l'association Valbiom subsidiée pour « aider au développement harmonieux des projets de production et d'utilisation de biocarburants en Wallonie ». Voir le site de <http://www.valbiom.be>

<sup>5</sup> L'entreprise de Biotech Quinvita a reçu un financement de 715.000 euros de l'IWT (agentschap voor Innovatie door Wetenschap en Technologie van Vlaanderen) pour un projet de recherche – en partenariat avec la K.U.L – sur le Jatropa.

<sup>6</sup> Oakland Institute, SiLNoRF (SL) & Bread for All (CH, DE) & Evangelisher-EED (DE), Independent Study Report of the Addax Bioenergy Sugarcane-to-ethanol project in the Makeni Region in Sierra Leone, Juin 2011, p. 66.; BFA-

aspects suivants :

- *manque de concertation claire et transparente avec les communautés lors de la conclusion de l'accord,*
- *manque de compensation adéquate,*
- *diminution de l'accès à la nourriture (notamment les cultures de riz),*
- *pollution des sols et des ressources d'eau suite à l'utilisation d'engrais et pesticides,*
- *utilisation intensive des réserves d'eau,*
- *etc."*

For further details about this specific publication<sup>7</sup>:

<http://www.fian.be/infotheque/publications/article/rapport-ruee-vers-la-terre-queelles-494>

Two other specific studies on the Addax case can be consulted:

- Oakland Institute, Understanding Land Investment Deals in Africa. Country report: Sierra Leone, Oakland (US), 2011,  
[http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_SierraLeone\\_Land\\_Investment\\_report\\_0.pdf](http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf)
- ActionAid, "Broken promises - The impacts of Addax Bioenergy in Sierra Leone on hunger and livelihoods", September 2013,  
[http://www.actionaid.org.uk/sites/default/files/publications/brokenpromises\\_0.pdf](http://www.actionaid.org.uk/sites/default/files/publications/brokenpromises_0.pdf)

Important extract:

*"The Addax Bioenergy project is important for a number of reasons: {...} It is funded by the African Development Bank (AfDB), five European bilateral institutions and two other donors." The report then names the European bilateral institutions, recognizing the implication of Belgium: "The five European development funds are: The Netherlands Development Finance Company (FMO); the Belgian Investment Company; the Emerging Africa Infrastructure Fund (UK DFID); Deutsche Investitions- und Entwicklungsgesellschaft mbH (DEG) and Swedfund; the two other donors are the South African Industrial Development Corporation and the Infrastructure Crisis Facility Debt Pool, managed by Cordiant (Canada)."*

*{...} "Since Addax came we are presently experiencing hunger, so we don't have enough food to eat, presently our children are crying for food but we don't have food to give them' Edriam Gulama (alias), female with three children, interview with ActionAid in January 2013."*

### **3. New developments in Belgian legislation regarding agrofuels policies since March 2013**

Regardless of official promises by the government and declarations recognizing the lack of coherence between policies promoting agrofuels production and human rights existing obligations, on the 10<sup>th</sup> of June 2013, the government made use of an express procedure to propose the vote to the Federal Parliament of the *Loi relative aux volumes nominaux minimaux de biocarburants durables qui doivent être incorporés dans les volumes de carburants fossiles mis annuellement à la consommation.*

---

PPP (novembre 2011), p. 15

<sup>7</sup> Involved third parties mentioned in the report, (such ADDAX) have been informed about the referred publication. In order to read about their reactions, please visit the special webpage:  
<http://www.fian.be/infotheque/publications/article/rapport-ruee-vers-la-terre-queelles>

As denounced by civil society organizations, notably FIAN Belgium, the day after “Le Parlement a voté ce mardi en urgence une proposition de loi qui vise à doubler le pourcentage minimum d’agrocarburant incorporé dans l’essence (jusqu’à 9%) et le diesel (jusqu’à 6%). Les ONG dénoncent l’hypocrisie des partis de la majorité et les conséquences néfastes de cette décision sur l’environnement et la sécurité alimentaire tant européenne que des pays du Sud.”<sup>8</sup>

By adopting this new law (17 JUILLET 2013. - Loi relative aux volumes nominaux minimaux de biocarburants durables qui doivent être incorporés dans les volumes de carburants fossiles mis annuellement à la consommation), Belgium did not respect its obligations under international human rights law. This case is particularly obvious in the sense that, at the very same moment, a legislative procedure is pending in front of the European institutions that will lead to a new European regulation on agrofuels. Amongst others, the proposal published by the European Commission in October of 2012 deals with this specific issue of “integration quotas” by proposing that food-crop fuel quotas should be capped at only 5% of transport fuel by 2020 (half of the 10% renewables target). The new Belgian law goes far beyond this proposal without any human rights based impact assessments on the impacts of such measures on the realization of the human right to food abroad.

### ***QUESTIONS SUGGESTED TO THE BELGIAN STATE:***

How will Belgium ensure that its legislation on the use of agrofuels is in line with its obligations to respect and protect people’s right to food in third countries (and especially in Sierra Leone)?

What remedies are available to victims of human rights violations in third countries because of Belgian policies?

Which human rights impact assessments are implemented to ensure that the provisions of the Covenant are given due attention in all legislative and administrative policy and decision making processes related to agrofuels policies?

Please comment on allegations that local communities affected by the Addax project in northern Sierra Leone are suffering right to food violations.

### ***ADVISED RECOMMENDATIONS:***

We ask the Committee to recommend to the state party to consider the establishment of systematic human rights impact assessments when public funds are invested in companies operating abroad in the energy and food sector.

Furthermore, in relation to Belgium’s extraterritorial obligations, we ask the Committee to recommend to the state party to adopt a rights-based approach to its agrofuels policy at home and abroad.

We also ask the Committee to recommend to the state party to revise its current legislation regarding agrofuels in order to guarantee its consistency in law and practice with the provisions of Article 11 and others of the Covenant.

---

<sup>8</sup> CNCD-11.11.11, Inter Environnement Wallonie, SOS Faim, CETRI, Associations 21, Entraide et Fraternité, FIAN Belgique, Oxfam Solidarité, CRIOC, « La Belgique veut plus d’agrocarburants. Inacceptable ! », 12 juillet 2013, <http://www.fian.be/infotheque/communiqués-de-presse/article/la-belgique-veut-plus-d>

## **2. Question of MR. TIRADO MEJIA on the Optional Protocol ratification**

### **¿ At which level is the OP ratification stuck?**

The Chair (Ms. Bras Gomes) responded that the Belgium representative present in New York for the Optional Protocol (OP) celebration said it was almost completed and that the country will ratify soon! She asked if FIAN Belgium had any news on that matter?

Since the initiation of the discussion in Belgium on the OP ratification in December of 2008, the government of Belgium has indeed always expressed his willingness to sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Nevertheless, almost 5 years have now passed and Belgium is still not a party to the OP.

Some progresses have been made since March 2013. According to official representatives:

- A proposal of law has been approved by the federal government (in June of 2013). But it is again stuck at this stage because it still has not been presented to the Federal Parliament.
- Similar decrees have been approved by federated entities governments (that have not begun the process since then). But it is also stuck at this stage because they still have not been presented to the parliaments.

In light of previous developments, lack of political will and unjustified delay, we are convinced that it is necessary to remind the government of their obligation to act in good faith in order to implement the ratification procedure in an adequate time.

### ***SUGGESTED QUESTION TO BELGIAN STATE:***

Taking into account the legislative framework of the ratification of international treaties, which measures are considered by the state party to accelerate the ratification procedure of “mixed treaties” (Traités mixtes)?

### ***ADVISED RECOMMENDATION:***

We ask the Committee to urge the state party to accelerate and complete the ratification procedure of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in order for the Protocol to enter into force for Belgium as soon as possible.

## **3. Question of MS. BRAS GOMES about national measures to secure peasants’ rights and compatibility with European law**

### **¿ Which measures do you think of? Maybe national ones, but you have to follow EU rules/directives if agreed before, no?**

Each European member state has, of course, the obligation to respect and implement the EU regulation that is adopted at European level. It is the same for the directives constituting the Common Agricultural Policy. Since its creation in 1962, the CAP has been reformed several times and every reform has offer greater flexibility for member state to incorporate the policy into national law.

Moreover, “contrary to general opinion as set out in the doctrine and by the legal services of the Commission [SEC (1992) 1990, 27.10.1992], which have hitherto regarded policy on markets (first

pillar of the CAP) as an exclusive competence of the Union,”<sup>9</sup> the Treaty on the Functioning of the European Union (TFEU) now stipulates in its Article 4(2)(d) that agriculture is recognized as a competence shared between the Union and its member states.

If it is true that the implementation of the first pillar, as stipulated by Article 40 TFEU and Council Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007) and Regulation (EC) No 73/2009 (Regulation that becomes a type of single and comprehensive code for direct farm support) do not leave member states much flexibility in the use of funds for single payment. Member states have a much greater flexibility in the implementation of the second pillar related to rural development.<sup>10</sup>

Despite the wide latitude available to member states for the use of funds for rural development or the implementation of specific programs on their own budgets to the extent that these programs do not violate the rules of competition, Belgium has not developed a policy explicitly devoted to supporting small farms and promoting access to land for small farmers and sustainable agriculture.

As recalled in the *Voluntary guidelines on the responsible governance of tenure of land fisheries and forests in the context of national security*, sustainable use of lands and fair distribution of property rights are crucial for the realization of the right to food. Likewise, states’ support to local small-scale farming directly contributes to securing public access to high-quality products and thus to protect the right to adequate food of the Belgian population. Consequently, the state should boost its primary sector at the local scale.

Furthermore, a lot of specific policies of other member states likewise to secure peasants' rights, access to land to small farmers and to support peasant and sustainable agriculture existed and are positively evaluated. We can mention the creation of the SAFER in France as a public institution controlling the allocation of land, or the “Opportunities for Farm Families Program” in Ireland, which has the objective of assisting farm families to encourage, stimulate and proactively support farm families in achieving a certain viability.<sup>11</sup>

### ***SUGGESTED QUESTION TO BELGIAN STATE:***

Knowing that the new reform of the CAP allows even more flexibility for member states’ implementation measures, which measures will the state party take at the national level to secure peasants' rights and to promote access to land to small farmers?

Walloon government (executive branch of the Walloon Region) adopted a draft decree of the new Walloon Code of Agriculture to be placed before the Walloon Parliament for adoption: did the state party adopt a human right based approach by referring to the right to food? Which measures guarantee that the executive measures will support peasant and family farms and secure access to land for small farmers?

### ***ADVISED RECOMMENDATION:***

---

<sup>9</sup> A. MASSOT, “The Common Agricultural Policy (CAP) and the Treaty”, *Fact Sheets on the European Union*, 2013, p. 1, [http://www.europarl.europa.eu/ftu/pdf/en/FTU\\_4.2.1.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_4.2.1.pdf)

<sup>10</sup> Articles 38 to 44 of the Treaty on the Functioning of the European Union (TFEU), Council Regulation (EC) No 1698/2005 (OJ L 277, 21.10.2005), Council Regulation (EC) No 473/2009 (OJ L 144, 9.6.2009), Council Decision 2006/144/EC (OJ L 55, 25.2.2006) and Council Decision 2009/61/EC (OJ L 30, 31.1.2009)

<sup>11</sup> G. DEBAILLEUL, « Politiques agricoles et mesures de soutien à l’agriculture familiale dans les principaux pays de l’OCDE », Université Laval, Quebec, 2007, pp. 21-25, <http://www.caaag.qc.ca/userfiles/File/Mandats%20etude/Debailleul.Guy.pdf>



We ask the Committee to urge the state party to base its new regional legislation regarding agriculture on the right to adequate food and to take the necessary executive measures that guarantee that small farmers and sustainable agricultural farm are prioritized in the allocation of land in the region.

We also ask the Committee to recommend that the state party make sure that its future position in the next EU CAP reform debate gives due attention to right to food in Europe and in developing countries.