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NOTE ON THE IMPACTS OF THE EU BIOFUELS POLICY ON THE RIGHT TO FOOD

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.

The Renewable Energy Directive (2009/28/EC) imposes a number of targets on the EU Member States. Under the Renewable Energy Directive, Member States must derive 20 per cent of overall energy consumption, across all sectors, from renewable sources by 2020; ten per cent of energy consumption within the transport sector must be derived from renewable sources by 2020; and greenhouse gas emission reductions targets are set, amounting to 50 per cent relative to fossil fuels by 2017 and 60 per cent by 2018 for fuels produced in 2017 or later. The Fuel Quality Directive (2009/30/EC) establishes the specifications for transportation fuels to be used across the EU.

The available arable land in the EU is insufficient to produce all the needed feedstocks for biofuels that compliance with the Renewable Energy Directive would require. Consequently, the EU Member States must outsource biofuels production to developing countries in order to meet the targets set. The impacts on these countries are overwhelmingly negative and are alleged to infringe on the realization of the human right to adequate food. The main concerns are as follows:

1. **The cultivation of feedstocks (i.e., agricultural raw materials such as maize, palm oil or sugar cane) to produce biofuels requires large areas of land, thereby creating incentives for the land leases or acquisitions in countries, particularly in Sub-Saharan Africa, where the rights of the current land users are often inadequately protected.** The European Commission estimated that 6.6 million hectares of additional arable land globally was cultivated for biofuels production between 2003 and 2008. This trend has further accelerated with the sharp increase of biofuels production required to meet the EU targets. A broad range of studies, including from the United Nations Food and Agriculture Organization (FAO) and the World Bank, show that the scale of the land acquired to produce biofuels in developing

countries is massive.[1] A World Bank study, based on a review of 405 large-scale agricultural investment projects, showed that 21 per cent of these projects were for the production of energy crops.

Estimates vary as to the areas that could be affected in the future: one report reviews different projections and concludes that ten million hectares of additional land could be needed by 2020, including five million hectares of additional land outside the EU. Another study has found that six million hectares in Africa have been taken over by EU companies for biofuels between 2009 and 2013. Although debate continues on the exact amount of land that is at stake, there is no doubt that the land surfaces concerned are vast, and larger than what food-insecure countries can support. The land and water resources of the countries concerned should serve, in the first instance, the realization of the right to food the local populations; these populations should not be forced to compete against EU consumers, whose purchasing power is vastly higher.

2. **The increased pressure on land and water resources in developing countries extends beyond the areas dedicated to energy crops.** As biofuels are produced in the EU (e.g., from rapeseed or sugar beet), additional land outside the EU is required to help meet its food needs. Palm oil imports to the EU have doubled between 2000 and 2006, mostly to substitute for rapeseed oil diverted from food to fuel uses.[2] This phenomenon, referred to as indirect land-use change (defined as when land previously used to grow food or animal feed is turned over to grow biofuels thereby displacing the original land use into new areas), constrains land use in other countries. Many countries are dedicating an increasing portion of their farmland either to the energy crops production or to food production for the EU. As such, competition is increasing for access to land, water and other resources, with potentially detrimental consequences for food crops production that feed the local communities and thus the enjoyment of the right to food.

3. **The EU biofuels policy is encouraging speculation on arable land, particularly land that is the most fertile and located nearby ports or roads.** By setting mandatory targets and subsidizing biofuels, the EU not only creates a heavily distorted biofuel market, but it also encourages an artificial land market, boosting land values and transforming it into a profitable asset for investors.[3] As noted in a report presented to the United Nations Human Rights Council by the Special Rapporteur, this encourages speculation on farmland, independent from the actual surfaces used for energy crops cultivation or for export crops that substitute for the reduced food crops production in the EU (UN doc. A/HRC/9/23, para. 31). As a result, threats to the security of tenure for smallholders are further increased, with potential negative consequences on the food security of local communities.

4. **Sub-Saharan Africa is a region particularly exposed to negative risks connected to biofuels production.** This region is a particular focus for

[1] FAO. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa; World Bank. 2011. Rising Global Interest in Farmland. Can it Yield Sustainable and Equitable Benefits?
[2] Thoenes, P. 2006. Biofuels and Commodity Markets – Palm Oil Focus. Rome: FAO Commodities and Trade Division.
[3] D. Mitchell. 2011. Biofuels in Africa: Opportunities, Prospects, and Challenges. The World Bank, p. 38.

new land investments for several reasons: land is perceived to be cheap and abundant; enforcement of regulatory frameworks is often weak; and most African countries enjoy trade preferences with the EU. However, targeting countries with weak land governance increases the risk of large-scale land deals turning in to actual "land grabs" where free, prior and informed consent of affected communities is not sought and human rights violations often occur. The risks of forced evictions occurring are not limited to Sub-Saharan Africa; they are becoming a worldwide phenomenon. Data collected by the Land Matrix Project show, based on a sample of 86 projects, that only in six cases were the former land users provided with the opportunity to give their informed consent to the shift in land use. For most projects, investments came as a surprise to the local communities depending on the resources concerned.[4]

5. **Public incentives for biofuels inject significant additional demand into the commodities markets and, therefore, impact prices significantly, both on international markets and on the domestic markets of net-food-importing countries.** According to a 2011 report on price volatility in food commodities jointly prepared by nine international organizations, including UN agencies, "prices [of food commodities] are substantially higher than they would be if no biofuels were produced".[5] The consequences are particularly of concern for low-income countries with few means to shield their populations against price volatility. The EU Joint Research Centre, as well as independent research institutes, shows that by 2020, EU biofuel targets could push up the agricultural price of vegetable oils by 36 per cent, maize by 22 per cent, wheat by 13 per cent and oilseeds by 20 per cent.[6] It is troubling that the broad consensus across both the research and the policy-making communities is currently being either minimized or even ignored.

High food prices on international and domestic markets can put food out of reach for people living in poverty, and are therefore a major threat to the enjoyment of the right to food. This is of serious concern because people living in poverty in developing countries spend a significant proportion of their household income on food; it can be as high as 70 to 80 per cent for the poorest families. Contrary to common perception, smallholder farmers are also negatively affected by high food prices. First, the poorest farmers are often net food buyers and, although they may profit from selling surplus crops on the market, they usually rely on combining different sources of income to feed themselves through the lean season. As such, for smallholders higher retail prices are a problem, not a solution. Second, small-scale farmers are usually in a weak bargaining position and are often forced to sell their crops at low prices even when prices on international markets rise, in part because of a lack of information and a lack of storage facilities, and in part because they face a limited number of dominant commodity buyers, who can dictate relatively low prices to the producers.

6. **The EU biofuels policy is alleged to favour large-scale industrial models of agricultural production that appear to offer limited benefits to local populations.** It is sometimes asserted that the increased importance of

[4] Anseeuw, W. et al. 2012. Transnational Land Deals for Agriculture in the Global South. Analytical Report based on the Land Matrix Database. CDE/CIRAD/GIGA. Bern/Montpellier/Hamburg.
[5] World Bank et al. 2011. Price Volatility in Food and Agricultural Markets: Policy Responses.
[6] IEEP. 2012. EU Biofuel Use and Agricultural Commodity Prices: A Review of the Evidence Base.

energy crops and the market growth for biofuels will benefit rural development and poverty alleviation in the regions from where the feedstock is sourced. However, this is not what typically happens under current conditions. Evidence indicates that biofuels production requires more capital-intensive farming, which favours large agricultural producers who are better connected to the markets.

The United Nations High Level Panel of Experts on Food Security and Nutrition, a body of independent researchers who were commissioned by the Committee on World Food Security to produce a study on this issue, concludes that "the bio-energy market tends to promote large industrial plantations with efficient crop handling and processing".[7] This is also because economies of scale are essential for biofuels production to be profitable, and biofuels production by smallholders does not seem to be economically viable at present.[8] This analysis is supported even by studies that are generally favourable to biofuel development. For instance, a study prepared for the FAO on the prospects of biofuels production in Tanzania, while acknowledging that "small-scale outgrower schemes, especially for typical smallholder crops such as cassava and jatropha, […] are most effective at raising poorer households' incomes," states that "supporting evidence indicates that these mixed systems may reduce the profitability of biofuels in Tanzania and reduce the reliability of feedstock supply for downstream processing".[9] In other terms, involving smallholders in the production of feedstock reduces competitiveness due to the transaction costs involved and to the reduced economies of scale, making it unlikely that the expansion of biofuels production can contribute significantly to the reduction of rural poverty. In various country missions undertaken by the Special Rapporteur it has frequently transpired that the added value of biofuel projects is captured mainly by international investors and local elites, whereas the benefits are minor for the local economy and for people living in poverty. This contradicts the argument that the additional income from biofuels production can compensate for the increased import bills of countries that must procure from international markets the commodities they are not producing to satisfy their domestic needs.

Clearly, additional employment opportunities that the development of energy crops may create cannot be underestimated. Such opportunities are, in principle, one of the most important benefits of biofuels production for local populations.[10] However, evidence shows that few jobs are created by biofuel-related investments relative to other sectors.[11] When an area where small-scale farming was practiced is replaced by large-scale and heavily-mechanized monocultures, many of the former land users end up jobless and landless.[12] For example, the Oakland Institute found that on recently leased land in Mali, which could conservatively sustain 112,537 farming families, the land is concentrated

[7] United Nations High Level Panel of Experts on Food Security and Nutrition. 2011. Land tenure and international investments in agriculture. FAO Committee on World Food Security, p. 23.
[8] A. Eide. 2008. The right to food and the impact of liquid biofuels (agrofuels). FAO, p. 17.
[9] I. Maltsoglou and Y. Khwaja. 2010. The BEFS Analysis for Tanzania, p. 4.
[10] World Bank. 2011. Rising Global Interest in Farmland. Can it Yield Sustainable and Equitable Benefits?, p. 68.
[11] P. B. Matondi and P. Mutopo. 2011. Attracting foreign direct investment in Africa in the context of land grabbing for biofuels and food security. In P. B Matondi, K. Havnenik and A. Beyene (eds), Biofuels, land grabbing and food security in Africa, Zed Books/Uppsala, pp. 72–73.
[12] L. Cotula. 2011. Land deals in Africa: What is in the contracts? International Institute for Environment and Development, p. 35.

in the hands of 22 investors who plan to employ a few thousand plantation workers.[13]

7. **The EU biofuels policy purportedly aims to contribute to the reduction of greenhouse gas emissions but the success of the policy in achieving this aim is ambiguous.** Many experts consider it to be a failure, adopting a product life-cycle approach and taking into account indirect land-use change.[14] Some data found in assessments of the European Commission indicate that biofuels derived from oilseeds will fail to meet EU requirements for greenhouse gas savings in 2020, regardless of the methodology used to calculate the indirect land-use change side-effects, and biofuels derived from palm oil, soybean and rapeseed produce more greenhouse gas emissions than fossil fuels once their indirect land-use change side-effects are taken into account. The current certification criteria listed in article 17 of the Renewable Energy Directive (2009/28/EC) are an inadequate response to these concerns. It is particularly troubling that the current proposals to revise the policy equally fail to include indirect land-use changes in life-cycle analyses, and that progress in assessing these impacts may be further postponed.

In addition to indirect land-use change, other environmental impacts resulting from biofuels production could have been underestimated. The large-scale farming model it favours is generally seen as contributing to environmental degradation given: the heavy reliance on fertilizers; soil erosion and water pollution caused by intensive farming; the consumption of petrol in mechanized farms; and the negative impact of monoculture on biodiversity.[15] In particular, sugarcane, maize and jatropha, which are grown to produce biofuels, heavily rely on water for their production.[16] Biofuels production enters into competition with water needed for food production for local consumption, leading World Bank researchers to state that the effect of biofuels on the availability and quality of water for agriculture is "a major concern";[17] the OECD and FAO came to similar conclusions.[18] The failure of biofuels to deliver on climate change and environment objectives, and possible exacerbation of negative trends, is of direct consequence for the right to food, given that the ability to produce food – a key tenet of the right to food – is so dependent on environmental conditions.

Many of the above considerations, in particular the pressures on land and water resources and the promotion of industrial agricultural models, apply to advanced biofuels produced from dedicated energy crops (i.e., biofuels from cellulosic and lingo-

[13] The Oakland Institute. 2011. The myth of job creation. Land Deal Brief, p. 5.
[14] Fritsche, U.R. and Wiegmann, K. 2011. Indirect Land Use Change and Biofuels. Oeko Institut, Study IP/A/ENVI/ST/2010-15 for the European Parliament, Directorate-General for Internal Policies, Policy Department A: Economic and Scientific Policy.
[15] A. Eide. 2008. The right to food and the impact of liquid biofuels (agrofuels). FAO, p. 19; G. Fischer, E. Hizsnyik, S. Prieler, M. Shah and H.van Velthuizen. 2009. Biofuels and food security, OPEC Fund for International Development (OFID) prepared the International Institute for Applied Systems Analysis (IIASA); S. Bringezu, H. Schütz, M. O´Brien, L. Kauppi, R. W. Howarth, J. McNeely. 2009. Towards sustainable production and use of resources: Assessing Biofuels" United Nations Environment Programme, chap. 4.
[16] The Oakland Institute. 2011. Land grabs leave Africa thirsty. Land deal brief; A. Eide. 2008. The right to food and the impact of liquid biofuels (agrofuels). FAO, p. 18.
[17] E. Cushion, A. Whiteman, and G. Dieterle. 2010. Bioenergy Development: Issues and Impacts for Poverty and Natural Resource Management. World Bank, p. 119.
[18] OECD and FAO. 2011. OECD-FAO Agricultural Outlook 2011–2020, pp. 88–89.

cellulosic feedstocks) as well as agrofuels produced from food crops. Based on these considerations, it can be concluded that the biofuels policy pursued by the EU is in contradiction with the objectives of its own development cooperation. While the Policy Coherence for Development Strategy and the EU Policy Framework to Assist Developing Countries in Addressing Food Security Challenges pledge to support smallholders, its biofuel policy promotes large-scale industrial farming that threatens the right to food. The EU is therefore jeopardizing, on the one hand, what it supports through its development policy, on the other hand. This incoherence also raises questions of a legal nature, as this trajectory runs counter to article 21 of the EU Treaty itself, which includes human rights as an objective of all external EU policies, including in the areas of trade and investment. The EU Member States are all States parties to the International Covenant on Economic, Social and Cultural Rights, which imposes a duty to abstain from measures that could threaten the realization of economic and social rights in other countries.

The sustainability criteria laid out in article 17 of the Renewable Energy Directive to ensure that biofuels produced are counted toward the greenhouse gas emission reductions targets only under certain conditions are purely environmental and do not address social and human rights impacts. Current sustainability criteria are therefore inadequate or non-existent with regard to the interests of smallholder farming, local food security and the enjoyment of the right to food. Although the monitoring and bi-annual reporting on social issues proposed in the Renewable Energy Directive is a useful tool, it is only reactive and cannot prevent violations. The first such Renewable Energy Progress Report (published on 27 March 2013) purportedly examines the sustainability of biofuels. Yet, it fails to account for the full impacts of biofuels on food prices, and, by its own assessment, is unable to take into account impacts on land use rights. The anticipated report from the European Commission's DG Development and Cooperation on biofuels and Policy Coherence for Development must not shy away from these questions. Pending such a report, the European Union is yet to conduct an adequate assessment of the impact of the EU biofuels policy that would take into account social and human rights impacts and, in particular, the impacts of the policy on the realization of the right to food.

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 incentivised. The European Commission’s proposed five per cent cap for counting food crop-based biofuels towards the ten per cent target for renewable energy in transport fuels is therefore a step in the right direction. However, given the array of incentives for biofuels production, and the risk they pose to food security, further measures should be considered, such as equivalent capping of food-based biofuels in meeting the terms of the Fuel Quality Directive (2009/30/EC) and the abolition of national biofuels blending mandates.

All such proposals must address the core problem, namely the very existence of public incentives for biofuels that send a signal to markets that speculation on farmland is bound to continue and that investments in energy crops are worth pursuing.