

**Sustainability criteria in the *RED*:
the EU policy toward agrofuels and
its impacts on human rights**

Federica Napolitano

E.MA 2009-2010

Supervisor: Pablo Gutiérrez Vega

University of Seville

Abstract

This paper is aimed at evaluating the accountability of the European Union policy on agrofuels from a human rights perspective. The analysis is focused on the sustainability criteria established by the Renewable Energy Directive (RED) of 23 April 2009. These criteria establish standards for the production and use of agrofuels in order to avoid environmental and social damages that agrofuels have caused so far. Nevertheless this paper gives evidences that these criteria are not adequate to address the real impacts that agrofuels have on human rights at the local and global level. The right to food, the right to water, labour rights, and the rights of indigenous peoples are particularly affected. The inadequacy of the sustainability criteria is not consistent with international human rights law and with the obligations which bound EU and its Member States. Given, on one side, the influence that the EU demand for agrofuels has at the global level and, on the other, the very limited standards established in the RED, the EU is accomplice of grave human rights violations. The RED should be urgently amended; for this reason, this paper also proposes alternative criteria to guarantee a more accountable framework as to agrofuels.

Table of abbreviations

BIOFRAC - Biofuels Research Advisory Council

CBD - Convention on Biological Diversity

CEO - Corporate Europe Observatory

CFI - Court of First Instance

CIL - Customary International Law

EBFTP - European Biofuels Technology Platform

ECHR - European Convention for the Protection of Human Rights and Fundamental Freedoms

ECJ - European Court of Justice

ECOSOC - Economic and Social Council of United Nations

ECtHR - European Court of Human Rights

EESC - European Economic and Social Committee

EEB - European Environment Bureau

EP - European Parliament

EU - European Union

FAO - Food and Agricultural Organisation

FoE - Friends of the Earth

FPIC - Free Prior and Informed Consent

GHG - Greenhouse Gas

GMO - Genetic Modified Organism

GPS - Generalised Preference System

HCV - High Conservation Value

HRBA - Human Rights Based Approach

IACtHR - Inter-American Court of Human Rights

ICESCR - International Covenant on Economic Social and Cultural Rights

ICJ - International Court of Justice

IEA - International Energy Agency

IFPRI - International Food Policy Research Institute

IHRL - International Human Rights Law

ILUC Indirect Land Use Change
IO - International Organisation
IPCC - International Panel on Climate Change
ITRE - Committee on Industry, Research and Energy of the European Parliament
MDGs - Millennium Development Goals
NGO - Non-Governmental Organisation
OECD - Organisation for Economic Co-operation and Development
OHCHR - Office of the High Commissioner for Human Rights
PCD - Policy Coherence for Development
PPT - Permanent Peoples' Tribunal
RED - Renewable Energy Directive
SR - Special Rapporteur
TEC - Treaty establishing the European Community
TEU Treaty establishing the European Union
TFEU - Treaty on the Functioning of European Union
UDHR - Universal Declaration of Human Rights
UN - United Nations
UNDP - United Nations Development Programme
UNDRIP - United Nation Declaration on the Rights of Indigenous Peoples
UNGA - United Nations General Assembly
UNHRC - United Nations Human Rights Council
UNPFII - United Nations Permanent Forum on Indigenous Issues

Table of contents

Introduction	7
Chapter 1	
The EU's role in promoting the production and use of agrofuels	13
1. The European strategy	14
2. The sustainability criteria for the production and use of agrofuels	16
2.1 The failures of the RED in establishing sustainability criteria for agrofuels .	19
3. The monitoring systems	22
3.1 Bilateral and multilateral agreements containing provisions on sustainability criteria	24
4. The debate during the co-decision procedure.....	25
4.1 The Turmes Report.....	26
4.2 The opinion of the European Economic and Social Committee (EESC).....	29
5. The consultation phase: the role of companies in the decision-making process	31
6. The false conflict between the environmental protection and the respect for human rights	35
Chapter 2	
The real impacts of agrofuels on human rights	37
1. The impact on land demand and natural resources.....	38
2. The right to food and food security	41
2.1 The food sovereignty	45
3. The right to water	46
4. The inhuman working conditions as new forms of slavery.....	49
5. The impacts of agrofuels on indigenous peoples' rights	51
5.1 The indigenous peoples' right to lands and territories	52
5.1.1 The right not to be forcibly removed from their lands or territories	54
5.2 The indigenous peoples' right to free, prior and informed consent (FPIC) ...	56
5.3 The indigenous peoples' right to freely choose the economic, social and cultural development.....	57
5.4 The relationship between indigenous peoples and forest	58
5.5 The indigenous peoples' right to natural resources	59

5.6 The right to a safe environment and the role of indigenous peoples in the conservation of biodiversity	61
6. Agrofuels and climate change: a false solution	63
Chapter 3	
The human rights obligations of the European Union.....	66
1. The human rights obligations of EU under international law	66
2. The human rights obligations of EU stemming from its internal law	69
2.1 Human rights standards in EU's external relations	71
3. The imperative to apply a human rights approach	73
4. The commitment of EU towards the indigenous peoples' rights	75
4.1 Obligations stemming from international treaties	79
Conclusions	82
Alternative sustainability criteria.....	85
Bibliography	91
Table of cases	114
List of international Treaties and Conventions.....	116