

SEVEN STEPS FOR RIGHTS-BASED IMPLEMENTATION

The Right to Food Unit in FAO suggests the following seven steps to help design sound bioenergy policies or projects from a rights-perspective. The different steps do not represent a standard menu, nor would they have to be realized simultaneously. Rather, they highlight the various aspects of rights-based actions:

1. Identify the food insecure

Food insecurity is often the result of marginalization or specific vulnerability. Many people are vulnerable due to geographic, economic or social factors. Assessing the socio-economic impacts of increased bioenergy through a "rights lens" requires that those vulnerabilities are addressed in policy design and that action is taken to seek to overcome man-made discrimination and marginalization. (Guideline 13, 14)

2. Assess policies, institutions and laws

The rights-based approach institutionalizes participatory decision-making and back cross-sectoral policy coordination in bioenergy promotion and anchors potential government policies in law. Awareness of the distinction between rights-holders and duty-bearers may also increase government responsiveness. (Guidelines 1, 5, 7, 11, 18)

3. A rights-based food security strategy

The Right to Food Guidelines add weight to national priority-setting for food security. In light of the diverse competing interests between energy and food security a biofuels strategy based on human rights will help set the focus on household, intra-household and individual food security. (Guideline 3)

4. Assigning roles and responsibilities

The rights-based approach leads towards a clear and transparent assignment of roles and responsibilities of the various ministries and institutions involved in securing food security amidst the booming biofuel market. The human right will serve as a guiding principle. (Guideline 3)

5. Legal framework

Ideally, the right to food will be incorporated into national constitutions, framework laws or amendments to existing laws. Detailed implementing instruments can spell out the precise obligations of every government entity and the rights and remedies available to individuals and groups. It can also establish or strengthen institutions charged with implementing or monitoring the right to food. If the right is justiciable, courts can address cases brought to them. (Guideline 7)

6. Monitoring

The sixth step is to ensure effective monitoring of programmes and policies which is key to their success. Right to food monitoring pays special attention to the human rights aspects and should also itself be carried out in ways that are consistent with human rights, i.e. with full and meaningful participation of the communities concerned and serving to empower individuals. (Guideline 17)

7. Recourse

When the rights of individuals or groups are not respected, protected or fulfilled, adequate recourse must be afforded. This enhances government's accountability and increases rights-holders' access to justice. Such access should be facilitated at international and local level. Judges and lawyers must be trained to handle cases involving the right to food. Finally, individuals must be informed about their rights and the available remedies. (Guidelines 7, 11, 18)



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RIGHT TO FOOD AND BIOENERGY

Traditional bioenergy is the dominant source of energy for about half of the world's population and it is used mainly for cooking. This in itself makes access to bioenergy a right to food issue. Increasingly though, modern bioenergy is becoming prominent with a different kind of land-use, based on cash crops and plantations and with the use of technologically advanced processing of biomass into liquid biofuels. The name agrofuels might therefore describe the issue more aptly. In recent years, agrofuels have been seen as part of the solution in combating climate change. They are a renewable source of energy and provide new employment and income opportunities for rural populations. In fact, for the first time in many decades, agricultural commodity prices are stabilizing at higher levels. In principle, this could benefit the masses of poor small-scale farmers.

New hopes, new risks

At the same time, however, poor and landless people are consumers themselves and marginal price increases may ruin the livelihoods of those who spend up to 80 percent of their income on food. Statistical evidence shows that world caloric consumption typically declines as prices rise by a ratio of 1:2. If the trend continues, with every one percent rise in the cost of food, a new 16 million people would be made food insecure. FAO research shows that food prices will be increasingly linked to oil prices. As most of the 82 low-income countries with food deficits are also net oil importers, the competing pressure on crop use will increase. Moreover, the expansion of land used for the production of biomass feedstock raises more and more concerns. As countries set well-intended and ambitious blending targets for the proportion of agrofuels to be reached in coming years, the socio-economic impact on food security is often neglected. Targets far exceed the agricultural capacities of developed countries in Europe and North America. Thus, new potentials for North-South trade are opening while distorting measures in the North persist or are being created. Simultaneously, the detrimental effects of rapid trade increase such as deforestation, loss of crop diversity, livelihoods and changing land use, can be observed.

In addition, some of the major energy crop cultivations, such as soy beans and corn require a disproportional increase in the use of pesticides and fertilizers and often lead to soil erosion, and water pollution. The monoculture agro-industrial production mode of most of the biomass feedstock may also disappoint many high hopes in the overall energy and environmental balance of bioenergy systems. With expected returns on a steep rise, the concentration of a few large corporations on the agricultural commodity market may be aggravated to the detriment of smallholders. Albeit contributing mostly towards food security, small-holders may, when it comes to bioenergy, again be excluded from the benefits of a farming activity. Hunger and malnutrition arise mostly due to lack of access to food. Typically, access is infringed upon in those segments of the population that are geographically, politically, socially or ethnically marginalized. Increases in cash-intensive agriculture have, for instance, discriminatory effects on gender relations. Women and female-headed households (up to 30 percent in sub-Saharan Africa) are more likely to be forced to make adjustments in cropping patterns and farming systems due to lack of access to land, capital, credit and labour. Similarly, forest dwelling or indigenous communities' livelihoods are put at high risk by the repercussions of large-scale bioenergy plantations which include deforestation and the

THE RIGHT TO FOOD – BINDING INTERNATIONAL LAW

Under human rights law, governments and government actors are called duty-bearers whereas individuals in the country are rights-holders. In order to realize the right to food, states have a legal obligation to implement what FAO calls a “twin-track approach to food security”: (1) an enabling environment for every person to feed him- or herself with dignity and (2) safety nets where no other remedy exists. The Right to Food Guidelines, negotiated by all FAO members, give practical guidance to the implementation of this dual approach.

The scope of states’ obligations to realize the right to food has been interpreted to encompass the duty to respect, protect and fulfil the right.. The obligation to respect requires the duty-bearer to refrain from interfering directly or indirectly with the enjoyment of the right. The obligation to protect requires the duty-bearer to take measures that prevent third parties from interfering with the enjoyment of the right. The obligation to fulfil requires duty-bearers to adopt appropriate legislative, administrative, budgetary, judicial and other measures to facilitate the full realization of the right. In cases where rights-holders are not able to enjoy their right to food for reasons beyond their control, fulfilling the obligation also requires providing direct assistance or services in times of need.

loss of biodiversity. The food security of marginalized highly food insecure groups is under increasing stress. The right to food must prevent new driving forces in world agriculture such as bioenergy from additionally harming the weakest. Rather, it must ensure that first and foremost, those who are excluded benefit from rising farming opportunities. The problem has been highlighted by FAO, the OECD, and many other UN organizations including the UN Special Rapporteur on the Right to Food.

Biggest Right to Food challenge

The sustainable use of bioenergy requires careful balancing of many factors, including the possible competition between food security and energy security, the competing uses of water resources, effects on rural development, agricultural markets and food prices, as well as the impacts on the environment, biodiversity and others (see Right to Food Guideline 8, in particular). These factors appear to make bioenergy development one of the biggest right to food issues in the years to come. This is the right moment to help a booming market go in the right direction. As in all cases of technological innovation or nascent markets, it is important to set out core directional principles from the beginning, to ensure that food security, social, environmental and human rights concerns will be taken into account. Not only will technical regulation for bioenergy itself have to be fair and sound, but international and national rules will also be needed to internalize external costs and concerns such as food security, rural employment and environmental sustainability. If biofuels are to deliver on the huge promises in terms of rural development and the environment, there is a pressing need for transparent and internationally agreed governance. Guiding biofuel development will require the right policy mix of economic incentives and legal safeguards.

Reconciling the right to food and energy security

What can guide bioenergy better in benefitting people if not a “people-centered approach to regulation”, in other words, human rights? Human rights-based bioenergy governance will have to consider the effects and interactions of the relevant policy domains at different levels; international, national and sub-national, and will be guided by human rights.

1. On the international level, the right to food and the right to food guidelines constitute widely agreed regulatory principles of food security governance. Binding international law for 156 countries and enshrined in numerous national constitutions, the right requires states to respect the ability of all individuals to feed themselves in dignity. New discussions on biofuel standards and certification as well as existing trade and energy laws will have to integrate right to food concerns. Simultaneously, rights-based biofuel development will have to be mainstreamed throughout international aid, agriculture, trade, environment and other policies. To this end, the horizontal function of the right to food, e.g. the impact of the human right on other bodies of international law such as trade, finance and environmental protection

will have to be further explored. Also, the vertical function, i.e. the possibility for individuals to seek redress has to be developed.

2. On the national level, a right to food compliance check of existing and planned bioenergy regulation will have to be carried out. The screening may encompass the following areas typically covered by bioenergy regulation which have been put in place until the present time: definitions of biofuels, mandatory blending targets, implementing authorities, tax incentives to the production of biofuels, administrative requirements for biofuel producers, requirements for technical specifications and regime of sanctions. Moreover, biofuel governance is complex considering the number of stakeholders involved. Quite often, rural development or agriculture ministries are not (or not solely) in charge. Instead, ministries of energy, environment, industry, commerce or trade are designated the lead. Without intervention, this may lead to even lesser emphasis on food security considerations. As the missing link, the rights-based approach can establish credible and legally binding inter-sectoral umbrella principles. Ideally, land planning bodies, law enforcement and the judiciary will pick up the right to food and use it in guiding and prioritizing their actions. Expanded use of non-food crops, such as jatropha, grown on marginal lands, should be promoted and research into other alternatives intensified.

Not only will energy and traditional food farming have to coexist, but incentives will also have to be set to aim for higher end products to be manufactured in the rural space. Finally, an ex-ante right to food impact assessment may have to be introduced to assess the socio-economic impact of ambitious bioenergy policies. This could be followed by continuous rights-based monitoring. On the sub-national, community or project level the rights-based approach to food security will help shape an effective policy-making process. It will not suffice to secure food security merely at an aggregate level or by relying on abstract overall welfare gains and food import/export balances. Instead, through the right to food, rights-holders are being enabled to demand food security in the context of their specific livelihoods. This may include the right to preserve the use of their land, their cropping pattern or traditional food which may only be available from a specific farming activity at a given place. Government responsiveness will be enhanced by a clearer allocation of rights and responsibilities as required by human rights law. Non-discriminatory access to food for excluded and marginalized groups will have to be addressed most urgently. Potentially negative effects of biofuel production will be avoided or mitigated by setting up legal or administrative procedures aimed at the inclusion of affected people, eliminating discrimination on the basis of gender, ethnic or religious origin, geographic remoteness, poverty (and the associated diseases of poverty). Ex-ante needs assessments may be made mandatory. They would have to be based on data disaggregated according to the needs of the specific food insecurity situations of the communities at stake.

The right to food dimensions

The right to food can contribute to the following dimensions of mitigating harmful effects of bioenergy expansion:

1. The safeguard dimension aimed at resolving trade-offs between food security and energy needs and establishing thresholds for a specific land use, the allowed amount of mono-cropping or the percentage point of blending targets.
2. The fair process dimension entailing ownership, empowerment, participation, non-discrimination at country- and project-level and directing attention to food insecure, vulnerable and marginalized segments of population, minorities, and remote areas.
3. The accountability dimension enhancing good governance through increased government responsiveness due to recourse mechanisms for right-holders against government decisions.
4. The advocacy dimension expanding support in the fight against food insecurity amidst a highly lucrative and competitive energy market through the inclusion of new partners such as justice, health, or education ministries, human rights commissions and ombudspersons, police and justice sector, human rights movements, lawyer’s associations, legal aid clinics and others.

