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**Requests addressed to the Advisory Committee
stemming from Human Rights Council resolutions:**

**Reports currently under consideration by the
Advisory Committee: Right to food**

**Update on the preliminary study of the Human Rights
Council Advisory Committee on the advancement of the
rights of peasants and other people working in rural areas
(A/HRC/16/63)**

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to food of the Advisory Committee of the Human Rights Council¹**

¹ Jean Ziegler thanks Christophe Golay of the Geneva Academy of International Humanitarian Law and Human Rights for his important input during the drafting of this document.

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I. Introduction

1. In its resolution 13/4, the Human Rights Council mandated the Advisory Committee to undertake a preliminary study on ways and means to further advance the rights of people working in rural areas, including women, in particular smallholders engaged in the production of food and/or other agricultural products, including from directly working the land, traditional fishing, hunting and herding activities (hereafter Preliminary study), and to report thereon to the Council at its 16th session.
2. The Preliminary study was prepared by the drafting group on the right to food, established by the Advisory Committee at its first session and composed of José Bengoa Cabello, Chinsung Chung, Latif Hüseyinov, Jean Ziegler and Mona Zulficar. It was adopted by the Advisory Committee at its sixth session and submitted to the Human Rights Council at its 16th session, in March 2011 (A/HRC/16/63).
3. States and other stakeholders had two opportunities to present their views and comments on the Preliminary study during the 16th session of the Human Rights Council. On 9 March 2011, a side-event on “The need of increased protection of human rights of peasants” was organized by La Via Campesina, FoodFirst Information and Action Network (FIAN) International and the Center Europe-Third World (CETIM). The side-event was chaired by His Excellency the Ambassador of Luxemburg, Jean Feyder, and presentations were given by His Excellency the Ambassador of Indonesia, Dian Triansyah Djani, His Excellency the Ambassador of Ecuador, Mauricio Montalvo, and the Chief Director of Human Rights and Humanitarian Affairs at the Department of International Relations and Cooperation of the Government of South Africa, Pitso Montwedi, as well as by the UN Special Rapporteur on the right to food, Olivier de Schutter, a member of the Advisory Committee, Jean Ziegler, and representatives of La Via Campesina and FIAN International. Other States and stakeholders also took the floor, including Cuba, CETIM and the Foundation Danielle Mitterrand France Libertés. On 15 March 2011, States and other stakeholders had a second opportunity to comment on the Preliminary study when the work of the Advisory Committee was presented by its Chair, Ms. Purificacion V. Quisumbing, at the Human Rights Council. Cuba, Ecuador, Luxemburg, FIAN International, the Mouvement contre le Racisme et pour l’Amitiés entre les Peuples (MRAP) and the Centre for Human Rights and Peace Advocacy took the floor and gave substantial comments on the Preliminary study at this occasion. Nigeria, on behalf of the African Group, welcomed the Preliminary study, the European Union took note of it and Ghana thanked the Advisory Committee for its submission.
4. In its resolution on “The right to food” of 21 March 2011 (A/HRC/RES/16/27), the Human Rights Council requested the Office of the High Commissioner for Human Rights (OHCHR) to collect the views and comments of all Member States and other stakeholders on the Preliminary study so that the Advisory Committee may take them into account in the preparation of the final study to be presented to the 19th session of the Council in March 2012. A Note verbale was sent by the OHCHR on 6 April 2011 to all Permanent Missions to the United Nations Office at Geneva and other stakeholders in response to this request. Ecuador, Germany, the Republic of Korea, Switzerland and CETIM sent their views and comments on the Preliminary study.
5. This background paper summarizes the views and comments of States and other stakeholders on the Preliminary study (II). It also presents the most recent developments on the issue (III) and makes recommendations for the final study to be submitted to the Human Rights Council at its 19th session in March 2012 (III).

II. Views and comments of States and other stakeholders

6. The States and other stakeholders that have taken the floor to give substantive comments at the side-event on 9 March 2011 and at the Human Rights Council on 15 March 2011 have all supported the main conclusions and recommendations of the Preliminary study of the Advisory Committee. In their responses to the request for comments by OHCHR, two States supported the recommendations of the Advisory Committee and only one State – Germany – expressed concern about the need to recognize the right to land and to elaborate a new international human rights instrument to better protect the rights of peasants and other people working in rural areas.

7. At three occasions – at the side-event organized on 9 March, at the Human Rights Council on 15 March and in its response to the request by OHCHR – Ecuador praised the Committee for its work on the right of peasants. The rights of peasants are recognized in the new Constitution adopted by Ecuador in 2008 and their implementation at the national level is among the first priorities of the Government.² Ecuador also stated that it supports the view of the Advisory Committee on the need to adopt a new human rights instrument to improve the protection at the international level.³

8. South Africa also supported the conclusions of the Advisory Committee and it underlined that the protection of the rights of peasants, required by the Constitution of the country adopted in 1996, is a priority of the Government. To make these rights real, the Government is implementing a wide range of laws and policies to improve rural development and land reform and the protection of labour rights of poor people working in rural areas.⁴

9. Luxemburg supported the recommendations of the Advisory Committee on the need to draft a new instrument to protect the rights of peasants and other people working in rural areas in its presentation at the side-event on 9 March and it underlined the main causes of the vulnerability and discrimination of rural communities in its declaration at the Human Rights Council on 15 March.⁵ Cuba also supported the work of the Advisory Committee in its declaration at the Human Rights Council on 15 March 2011⁶ and in its intervention at the side-event on 9 March, it underlined the need to elaborate a new human rights instrument. At the same occasion, Indonesia reaffirmed the need to protect the rights of peasants, and it said that their protection is one of the first responsibilities of Governments.

10. Only one State expressed concerns on the main conclusions and recommendations of the Preliminary study of the Advisory Committee. Germany wrote that it cannot support the view of the Advisory Committee on the need to elaborate a new international human right instrument regarding the rights of peasants and other people working in rural areas, because there is no legal foundation in international law to recognize the rights to land, seeds and means of production. For Germany, it would be better to focus on the implementation of the voluntary guidelines on the right to food adopted within the FAO in 2004 and on the negotiation of new voluntary guidelines on land tenure (currently negotiated at the FAO). Germany also wrote that it disagrees with the Advisory Committee on the fact that the “right to food” as outlined in Article 11 of the International Covenant on Economic, Social

² Response of Ecuador to the request for comments by the OHCHR, 6 May 2011.

³ Declaration of Ecuador at the 16th session of the Human Rights Council, 15 March 2011.

⁴ Response of South Africa to the request for comments by the OHCHR, 18 May 2011.

⁵ Declaration of Luxemburg at the 16th session of the Human Rights Council, 15 March 2011.

⁶ Declaration of Cuba at the 16th session of the Human Rights Council, 15 March 2011.

and Cultural Rights (CESC) includes a “right to land” and that the demand of the Advisory Committee to recognize a “right to land” has therefore no foundation in international law.⁷

11. Switzerland asked the Advisory Committee to focus in its final study on the need to improve the implementation of existing human rights instruments in order to better protect peasants and other people working in rural areas. It also underlined that Switzerland was engaged in a wide range of development projects at the regional and international levels to protect the rights of poor rural communities. Switzerland also noted that the role of intellectual property should not be underestimated to improve food security, and that the reasons why the owners of intellectual property rights over improved or genetically modified seeds can threaten the liberty of peasants to use their traditional seeds should be better explained in the final study.⁸

12. The Republic of Korea noted that two factual errors and misrepresentations with regard to the Republic of Korea appeared in the paragraphs 24 and 40 of the Preliminary study and should be removed.⁹

13. All other stakeholders taking the floor at the side-event on 9 March or at the Human Rights Council on 15 March, including FIAN International, MRAP and La Via Campesina, supported the work of the Advisory Committee and its main conclusions and recommendations on the need to adopt a new international human rights instrument on the rights of peasants and other people working in rural areas. CETIM arrived at the same conclusion in its response to the request for comments by the OHCHR.¹⁰

14. Finally, it is important to underline that in his presentation at the side-event on “The need of increased protection of human rights of peasants”, the UN Special Rapporteur on the right to food, Olivier de Schutter, identified four main reasons for adopting a new international human rights instrument on the rights of peasants and other people working in rural areas: it is needed in international law; it will improve the fight against hunger; it is one of the best ways to ensure that subsistence agriculture will not be replaced by industrial agriculture; and it will increase access to the means of production in rural areas. The Special Rapporteur also underlined that the adoption of a Declaration on the rights of peasants and other people working in rural areas would increase visibility on the rights that are already recognized in international law, and help to recognize new rights, such as the rights to land, to seeds and to compensation for the losses due to food subsidies given to farmers in other countries.

III. New developments in 2011

15. In its Preliminary study submitted to the Human Rights Council at its 16th session in March 2011, the Advisory Committee identified five main causes of discrimination and vulnerability of peasants and other people working in rural areas: expropriation of land, forced evictions and displacement (a), gender discrimination (b), the absence of agrarian reform and rural development policies, including irrigation and seeds (c), the lack of a minimum wage and social protection (d), and repression and criminalization of movements protecting the rights of people working in rural areas (e). In the last months, these causes were exacerbated or exemplified by two main events: the acceleration of the global race for

⁷ Response of Germany to the request for comments by the OHCHR.

⁸ Response of Switzerland to the request for comments by the OHCHR, 9 May 2011.

⁹ Response of the Republic of Korea to the request for comments by the OHCHR.

¹⁰ Response of CETIM to the request for comments by the OHCHR.

land and water (1), and the deterioration of the food security situation and the occurrence of famine in East Africa (2).

A. Acceleration of the global race for land

16. In its Preliminary study, the Advisory Committee underlined that with the expansion of biofuels production since 2003 and the global food crisis in 2008, the revival of the strategy of foreign investors, both Governments and companies, to buy or secure long-term leases of productive land in other countries can have detrimental effects on local farmers if the land they use is sold or leased to foreign investors. (A/HRC/16/63, par. 23-24). The global race for land continued to accelerate in 2011, leading to an unprecedented level of land expropriation, forced evictions and displacements of rural communities.

17. In June 2001, the Oakland Institute released a collection of new reports examining the consequences of “land grab” on rural communities in several African countries, including Ethiopia, Mali, Sierra Leone, Mozambique, Tanzania and South Sudan.¹¹ Among others, the Oakland Institute describes the land deals of Addax & Oryx Group Bioenergy Investment in Sierra Leone, AgriSol Energy and Pharos Global Agriculture’s Land Deal in Tanzania, Deciphering Emergent’s Investments in Africa, Emvest Asset Management in Mattuba, Mozambique, Malibya in Mali, Nile Trading and Development, Inc. in South Sudan, Quifel International Holdings in Sierra Leone, and Saudi Star in Ethiopia. These reports demonstrate the rapid acceleration of the phenomenon of “land grab” across Africa and conclude that “these largely unregulated land purchases are resulting in virtually none of the promised benefits for native populations, but instead are forcing millions of small farmers off ancestral lands and small, local food farms in order to make room for export commodities, including biofuels and cut flowers”.¹²

18. The expanding interest of the financial firms on land acquisitions and leases was attested by the organization of the second JetFin AGRO Conference in Geneva in June 2011, presented as the place where “investors meet with the best performing fund managers in Agriculture”.¹³ Several NGOs denounced the impact of “land grab” on the right to food and the right to water of rural communities in the South at the occasion of this conference.¹⁴ For Anura dha Mittal, Executive Director of the Oakland Institute, speaking when the reports of the Oakland Institute were released:

“The same financial firms that drove us into a global recession by inflating the real estate bubble through risky financial maneuvers are now doing the same with the world's food supply (...) In Africa this is resulting in the displacement of small farmers, environmental devastation, water loss and further political instability such as the food riots that preceded the Tunisian and Egyptian revolutions.”¹⁵

19. The phenomenon of the global “land grab” and its consequences were among the main issues discussed at the World Social Forum in Dakar in February 2011. During the World Social Forum, La Via Campesina and the West African Network of Peasants and Agricultural Producers (ROPPA), with the support of other organizations, including FIAN

¹¹ Oakland Institute, *Understanding Land Investment Deals in Africa*, 2011, reports available online at <http://media.oaklandinstitute.org/special-investigation-understanding-land-investment-deals-africa>.

¹² Oakland Institute, “Hedge Funds Create Volatility in Global Food Supply with Land Grabs Across Africa”, Press release, 8 June 2011.

¹³ See www.jetfin.com.

¹⁴ Uniterre and al., “Pas d'accapareurs de terres, ni à Genève ni ailleurs !”, Press release, 31 May 2011.

¹⁵ Oakland Institute, “Hedge Funds Create Volatility in Global Food Supply with Land Grabs Across Africa”, Press release, 8 June 2011.

International, facilitated the adoption of the Dakar Appeal Against the Land Grab.¹⁶ By signing the Dakar Appeal between February and June 2001, more than 500 civil society organizations have recalled that “recent massive land grabs targeting tens of millions of acres for the benefit of private interests or third states - whether for reasons of food, energy, mining, environment, tourism, speculation or geopolitics - violate human rights by depriving local, indigenous, peasants, pastoralists and fisher communities of their livelihoods, by restricting their access to natural resources or by removing their freedom to produce as they wish, and exacerbate the inequalities of women in access and control of land”. They have also called on governments to immediately cease all massive land grabs, current or future, and return the plundered land, and they have asked “states, regional organizations and international institutions (to) guarantee people's right to land and support family farming and agro-ecology”.¹⁷

20. The Dakar Appeal Against the Land Grab was sent to the participants of the meeting of G20 Agricultural Ministers, which took place in Paris on 23 June 2011. But the appeal of civil society organizations was not heard. In response to the positions taken by the G20 Ministers of Agriculture at this meeting, the UN Special Rapporteur on the right to food, Olivier de Schutter, regretted that the G20 Ministers of Agriculture took no decision to stop incentives and subsidies for biofuels production and found “troubling that biofuels are mentioned as a source of rural development, when in practice, up to now at least, the production of biofuels primarily benefits large agro-export companies and use the natural resources from the South to feed the thirst for renewable energies in the North”.¹⁸

B. Recurrence of famine in East Africa

21. In July 2011, the food security situation of million of people living in East Africa severely deteriorated and famine occurred in parts of the region, due to a combination of several factors, including drought, increase in food prices, conflict, and lack of structural rural development. According to the World Food Programme (WFP), the Food and Agriculture Organization (FAO) and Oxfam Great Britain, the number of people requiring emergency assistance had grown from 6.3 million in early 2011 to 10 million in July 2011 in Djibouti, Ehtiopia, Kenya, Somalia and Uganda.¹⁹ Thousands of Somali were crossing the Kenyan border to join Dadaab, the already largest refugee settlement in the world, with 367,000 residents.²⁰ But the largest number of affected persons was composed of pastoralists from the north-eastern Kenya²¹, who are among the most vulnerable and marginalized groups in their country.²²

22. On 12 July 2011, the UN Independent Expert on the situation of human rights in Somalia, Shamsul Bari, and the UN Special Rapporteur on the right to food, Olivier de Schutter, urged the international community to step up efforts and take immediate concerted measures to address the food crisis in East Africa:

¹⁶ The Dakar Appeal Against the Land Grab is available online, at www.fian.org/news/press-releases/dakar-appeal-against-the-land-grab/pdf.

¹⁷ Ibid.

¹⁸ Olivier de Schutter, UN Special Rapporteur on the right to food, “G20 Action Plan addresses the symptoms, not the causes of the problem”, Bruxelles, 23 June 2011.

¹⁹ Joint FAO/WFP/Oxfam Statement, “Stepping Up To The Horn”, 8 July 2011.

²⁰ See The Guardian, “Horn of Africa: From one drought to another”, 8 July 2011.

²¹ Ibid.

²² See Réseau africain pour le droit à l'alimentation (RAPDA) and FIAN International, *Kenya's Hunger Crisis. The Result of Right to Food Violations*, 2010.

“We solemnly appeal to the International community, including the UN, to take concerted and urgent measures to increase access to food, nutrition, clean water and health protection for these very vulnerable people.”²³

23. In a joint statement issued on 8 July 2011, the Director General of the FAO, Jacques Diouf, the Executive Director of the WFP, Josette Sheeran, and the Chief Executive of Oxfam Great Britain, Barbara Stocking, underlined the need to delivery emergency food aid as well as investing in long-term solutions to hunger in East Africa.²⁴ They identified three sets of measures that should be taken to break the chronic cycle of food insecurity in the region: emergency and sustainable food assistance, support to small farmers, and policies with investments to reduce the vulnerability of rural communities.²⁵

24. The occurrence of famine in East Africa in July 2011 reveals once again the need to take structural measures to overcome the extreme vulnerability and marginalization of rural communities in this region, and the urgent need to better protect their rights over productive resources, including land, seeds, water and livestock.

IV. Proposals for the final study to be submitted to the Human Rights Council at its 19th session in March 2012

25. The main recommendations of the Preliminary study submitted to the Human Rights Council in March 2011 should not be changed. In their views and comments on this Preliminary study, the great majority of States and all other stakeholders, including the UN Special Rapporteur on the right to food, Olivier de Schutter, supported the conclusions and recommendations of the Advisory Committee. Developments on the issue in the last months also confirm that peasants and other people working in rural areas continue to be among the first victims of hunger and human rights violations, and that existing international human rights instruments are clearly insufficient to ensure their protection. Rural communities continue to be left without protection in the global race for land and they are the first victims of famine going on in East Africa. The following recommendations of the Preliminary study should therefore remain unchanged in the final study to be presented to the Human Rights Council at its 19th session in March 2012:

- a) More attention should be given to agrarian reforms that benefit small-scale land holders and promote security of tenure and access to land, in particular for women.
- b) Government policies should be sufficiently well formulated in order to address the needs of the most vulnerable people working in rural areas.
- c) Human rights instruments protecting the rights of peasants and other people working in rural areas, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the United Nations Declaration on the Rights of Indigenous People, should be better implemented.
- d) The right to land should be recognized in international human rights law.

²³ Olivier de Schutter and Shamsul Bari, “10 million people at risk of starvation in East Africa”, Geneva, 12 July 2011.

²⁴ Joint FAO/WFP/Oxfam Statement, “Stepping Up To The Horn”, 8 July 2011. See also WFP, “Statement By The World Food Programme Executive Director Josette Sheeran On Hunger In The Horn Of Africa”, 12 July 2011.

²⁵ Ibid.

e) The above measures represent important ways and means to further advance the rights of peasants and other people working in rural areas. But they will not be sufficient. A new international human rights instrument on the rights of peasants and other people working in rural areas should be elaborated. Such an instrument – initially, a declaration – should recognize in a single instrument the rights enshrined in other international instruments, to increase coherence and visibility. It should also recognize new rights of peasants and other people working in rural areas, such as the rights to land, seeds and the means of production. The elaboration of this instrument, with the full participation of peasant farmers, small landholders, landless workers, fisher-folk, hunters and gatherers and all other stakeholders represents one of the best ways to overcome centuries of discrimination against the most vulnerable groups working in rural areas.

26. Finally, to respond to requests presented by Ecuador²⁶ and by a member of the Advisory Committee during the sixth session of the Advisory Committee in January 2011, other human rights, in particular the right to education and the right to water and sanitation, should be added in the final study of the Advisory Committee, in the part on the protection of the rights of peasants and other people working in rural areas under the International Covenant on Economic, Social and Cultural Rights.

²⁶ Response of Ecuador to the request for comments by the OHCHR, 6 May 2011.