

**Response to the call for inputs on “Healthy ecosystems and human rights: sustaining the foundations of life”, issued by the UN Special Rapporteur on human rights and the environment.**

FIAN International is pleased to submit the following input to the Special Rapporteur’s report. FIAN is an international organization with more than thirty years of experience in the defense and promotion of the human right to food and nutrition. FIAN operates through its international secretariat, which is based in Heidelberg (Germany) and Geneva (Switzerland), as well as its national sections in 20 countries in Africa, Asia, Europe and Latin America. For more information, please see www.fian.org.

1. *Please provide examples of ways in which declining biodiversity and degraded ecosystems are already having adverse impacts on human rights. Adversely affected rights could include, among others, the rights to life, health, water, food, culture, non-discrimination, a safe, clean, healthy and sustainable environment, and Indigenous rights.*

Over more than 30 years, FIAN has documented many cases of violations of the human right to food and nutrition (HRtFN) around the world. A large number of these cases include aspects related to declining biodiversity and ecosystem destruction. Based on FIAN’s work, we would like to highlight the following factors leading to adverse human rights impacts:

* Deforestation and destruction of ecosystems through the expansion of industrial agriculture, in particular monoculture plantations of cash crops such as soy, sugar cane, maize etc. (example cases: [MATOPIBA](https://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/The_Human_and_Environmental_Cost_of_Land_Business-The_case_of_MATOPIBA_240818.pdf), Brazil; [Guarani and Kaiowá](https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Health/FIAN.pdf), Brazil; [Niassa](http://www.fian.org/fileadmin/media/publications_2015/PR_-_2012.10.16_-_Tree_plantations_Niassa_Mozambique.pdf), Mozambique)
* Conversion of forests, grasslands and arable land as well as destruction of water bodies for industrial projects (e.g., mining, oil and gas, manufacturing). (Example cases: [Essakane](https://www.fian.org/files/files/Essakane.pdf), Burkina Faso; [El Hatillo](http://www.fiancolombia.org/fian-en-el-mundo/derecho-a-defender-los-derechos/), Colombia)
* Pollution of water, soils, air by industrial activities, including use of pesticides, industrial runoff etc. (Example cases: [MATOPIBA](https://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/The_Human_and_Environmental_Cost_of_Land_Business-The_case_of_MATOPIBA_240818.pdf), Brazil; [Tea plantations](https://www.fian.org/fileadmin/media/publications_2016/Reports_and_guidelines/FFMReport_June_2016.pdf), India)
* Destruction of land and water ecosystems as well as loss of land and housing due to large-scale infrastructure projects, such as dams, large ports. (Example cases: [Laxmanpur](https://www.fian.org/en/news/article/india-nepal-border-research-visit-on-extra-territorial-state-obligations-1915), Nepal; [Colombo International Financial City](https://panap.net/2017/10/debt-destruction-china-funded-projects-sri-lanka-stir-controversy-conflict/), Sri Lanka)
* Reduction of agricultural biodiversity through the push for industrial seeds and genetically modified organisms (GMOs), accompanied by the expansion of intellectual property rights (IPR) regimes. (Example case: [Transformation of seed systems](http://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/180329_FIAN_FFM_BurkinaFaso_EN_Web.pdf), Burkina Faso; [gene drives](https://www.fian.org/fileadmin/media/publications_2018/Letters_and_statements/A_human_rights_analysis_of_gene_drives_final_EN_updated.pdf)).

FIAN would like to highlight that these adverse impacts are mostly linked to the expansion of industrial agriculture, mining, monocultures, large-scale infrastructure, and other industrial activities as well as increasing commodification of nature. These need to be understood in a context of increasing financialization of the economy, which entails increasing power of financial markets and new forms of wealth extraction. Financialization has further increased pressure on natural resources and ecosystems, has accelerated global warming and has exacerbated human rights violations and abuses (more information can be found [here](https://citizensforfinancialjustice.org/download/spotlight-on-financial-justice-food-and-land/)).

1. *To protect a wide range of human rights, what are the specific obligations of States and responsibilities of businesses in terms of addressing the main direct drivers of harm to biodiversity and ecosystems (e.g. land conversion, loss and degradation of habitat, climate change, overexploitation, pollution, invasive species) and the indirect drivers (unsustainable production and consumption, rapid human population growth, trade, conflict and inequality)?*

FIAN’s work in support of individuals and communities has focused on the HRtFN. As all human rights, this right is closely connected to all other human rights, including in particular the rights, to health, water, housing, and work. States’ human rights obligations include addressing adverse impacts on biodiversity and ecosystems. Based on our experience and focus of work, we would like to highlight the following measures:

* Respecting, protecting and guaranteeing the right to land, especially of indigenous peoples, small-scale food producers (peasants, small-scale fishers, pastoralists, forest dwellers, among others) and other people living in rural areas is a key issue. Agreat number of cases resulting in ecosystem destruction and biodiversity loss is linked to land and resource grabbing, be it for industrial agriculture, tree plantations, large-scale infrastructure projects, mining or other industrial activities. These activities destroy local people’s and communities’ control over land and related natural resources as well as their capacity to manage and use ecosystems in a sustainable way.

Respecting and protecting tenure rights and tenure systems – including, in particular, those based on collective, customary rights – is therefore a key component of states’ obligations to protect ecosystems and biodiversity. This includes ensuring equitable control over land and related natural resources through measures such as restitution and redistribution.

The right to land is a core component of the right to food and nutrition and has been reaffirmed in a number of international human rights instruments, including the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, as well as ILO Convention NO. 169.

* The industrial food system is one of the most important drivers of global warming and ecosystem destruction. It is also a main driver of human rights violations and abuses, because of its role in land grabbing, the large-scale use of agro-toxins as well as due to widespread bad working conditions. Therefore, states are required to take concrete measures to reorient food systems, supporting the sustainable production and management practices of small-scale food producers as well as adequate nutrition.

As documented by the former Special Rapporteur on the Right to Food agroecology secures respect for human rights, including good and diversified nutrition, while ensuring healthy ecosystems. Furthermore, an increasing body of scientific literature and policy documents show how agroecology considerably reduces greenhouse gas emissions. Article 20.2 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas further underscores states’ obligation to promote and protect “agroecological systems relevant to the conservation and sustainable use of biological diversity.”

* The aggressive promotion of industrial seed and GMOs is one of the main factors driving the decline of agricultural biodiversity. Technological barriers limiting the selection of seeds by peasant farmers (seeds of commercial/industrial varieties have limited reproducibility, and hybrid seeds cannot be replicated at all) as well as legal barriers in the form of intellectual property rights restrict peasants’ and indigenous peoples’ seed systems, which they use to exercise their rights to save, use, exchange and sell seeds, to feed themselves and to preserve biodiversity.

The effective respect and protection of peasants’ and indigenous peoples’ rights over seeds is therefore a key issue. As pointed out by the UNDROP, this includes states’ obligation to support peasant seed systems (art. 19.6) as well as to ensure that their seed policies, intellectual property laws, certification schemes and seed marketing laws respect the rights, needs and realities of rural people (art. 19.8). States also have the obligation to ensure that peasants and other people working in rural areas have the right to decide on the crops and species that they wish to grow (UNDROP, art. 19.5), which includes the obligation to effectively protect them from contamination of GMOs wherever these are permitted. Effective regulation based on the precautionary principle is required for the use of GMOs, including products of new biotechnologies (so-called “New Breeding/Genetic Techniques”, such as cell fusion and mutagenesis, among others). States should further prohibit extinction technologies such as gene drives.

* Given that many of the harmful and destructive practices leading to biodiversity loss and ecosystem destruction are to a large extent related to activities of companies, the effective regulation of corporations is a key component of states’ obligations in these areas. It is critical that such regulation covers both national as well as transnational operations and includes all involved actors, including financiers and all entities associated with a given project/activity throughout the supply/value chain. Such regulation needs to include mandatory provisions regarding prior and independent impact assessments, monitoring as well as effective accountability mechanisms that ensure remedy in the case of harm.
1. *Please provide specific examples of constitutional provisions, legislation, regulations, policies, programs or other measures that employ a rights-based approach to prevent, reduce, or eliminate harm to biodiversity and ecosystems or to restore and rehabilitate biodiversity and ecosystems.*

Recent international instruments have clarified the rights of indigenous peoples as well as rural people and communities, including small-scale food producers, in respect of biodiversity and ecosystems. The UNDROP and UNDRIP in particular recognize the crucial contributions of nature-dependent groups to maintain healthy ecosystems. FIAN further recalls CEDAW’s General Recommendation No. 34 on the rights of rural women as well as the adoption of international standards regarding the governance of natural resources, including the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries.

At regional and national level, FIAN would like to point out some concrete experiences that provide useful elements to ensure protection of biodiversity and ecosystems, based on a human rights-based approach:

* In 2017, the government of Mali approved a new Law on Agricultural Lands (*Loi sur le foncier agricole*, LFA) in 2017.[[1]](#footnote-1) This law provides legal recognition to customary tenure rights. By protecting collective, customary tenure systems, it creates a space for communities for the self-management of their resources, based on collective rights and according to rules defined by each community. This protects rural people from land grabs and land speculation, and opens up spaces for agroecological production. Social movements and civil society organizations are currently supporting the implementation of the law, in particular by supporting the establishment of village commissions in rural communities and the process of agreeing on collective rules of community land governance.
* South Africa’s small-scale fisheries policy, which was adopted in 2012, applies a focus on collective rights that focuses on improving the livelihoods of fishers and fishing communities as well as their management practices. Among other things, it sets aside preferential fishing zones for small-scale fishers, which are out of bounds for big commercial fishing. The policy also foresees the establishment of a community-based legal entity, through which fishing communities can operate to manage fishing and related activities in a way that is conducive for the rights of small-scale fishers as well as the preservation of marine ecosystems.
* Burkina Faso approved a law on the “Access to plant genetic resources for food and agriculture and the sharing of benefits arising out of their use” in May 2019. The law contains a chapter 5 on farmers’ rights, which explicitly recognizes farming communities’ rights over seeds as enshrined in the International Treaty on Plant Genetic Resources for Food and Agriculture as well as the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.
* The government of Mali is in the process of developing a new national seed policy. This process has included the participation of peasant organizations and CSOs through a multi-actor platform on peasant seeds. An advanced draft policy recognizes the importance of peasant seed systems and calls for legal provisions to effectively protect peasants’ rights over seeds.
* An important [ruling](https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-07/cp180111en.pdf) of the Court of Justice of the European Union from 2018 establishes that new biotechnologies (so-called new “New Breeding/Genetic Techniques”) need to be regulated according to the EU’s GMO legislation. The ruling clarified that such techniques need to be considered as GMOs and that existing legislation to protect human and animal health, as well as the environment need to be applied.
1. *Please provide specific examples of good practices in preventing, reducing, or eliminating harm to biodiversity and ecosystems, or restoring and rehabilitating biodiversity and ecosystems. These examples may occur at the international, national, sub-national, or local level. Where possible, please provide evidence related to the implementation, enforcement, and effectiveness of the good practices (e.g. measurable outcomes such as increases in terrestrial and marine protected areas, increases in Indigenous and Community Conserved Areas, declining rates of deforestation and poaching, or progress in the recovery of species that were previously threatened or endangered).*

FIAN supports peasants’ and indigenous peoples’ organizations to maintain their seed systems, which are critical to preserve and further develop agricultural biodiversity and sustainably manage agricultural ecosystems. Farming communities’ seed management practices are central elements of more sustainable food systems that are based on agroecology. Peasant women’s organizations in Mali have, for instance, developed drought-resistant varieties of sorghum and a local CSO in Benin is carrying out action research on cowpea diversity in peasant agroecology.

Control over land and related natural resources is critical in order to ensure sustainable management of ecosystems by local communities, and Mali’s Law on Agricultural Lands (*Loi sur le foncier agricole*, LFA) protects rural people from land grabs and land speculation, and opens up spaces for agroecological production.

1. *Please identify specific gaps, challenges and barriers that your government, business, or organization has faced in attempting to employ a rights-based approach to preventing, reducing, or eliminating harm to biodiversity and ecosystems.*

The underlining factors driving biodiversity loss and ecosystems destruction mentioned in response to question 1 are deeply rooted in contemporary capitalism, which is marked, among others, by financialization (i.e. the increasing power of financial markets over the economy) and increasing power of transnational corporations. The economic interests of powerful actors are a big barrier towards the fundamental transformations that are needed to preserve biodiversity and healthy ecosystems. In the context of food systems, agribusiness and some governments, for instance, are promoting “climate-smart agriculture” as a somewhat “softened” version of agribusiness, instead of supporting agroecology as a truly transformative approach towards more sustainable food systems.

Based on our work, FIAN would like to point out the following obstacles and challenges in particular:

* Prevailing approaches to land and natural resource governance consider land and related natural resources as a globalized economic and financial asset, rather than a natural good with a strong local component. The creation of land markets and financialization of natural resources dispossesses local communities and are often linked to environmental destruction. (More information can be found [here](https://www.fian.org/fileadmin/media/publications_2017/Reports_and_Guidelines/FIAN_Position_paper_on_the_Human_Right_to_Land_en_061117web.pdf)).
* Ongoing push for the transformation of seed systems to increase the use of industrial seeds and GMOs, combined with restrictive IPR regimes. This undermines peasants’ and indigenous peoples’ seed systems and their management practices. (More information can be found [here](http://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/180329_FIAN_FFM_BurkinaFaso_EN_Web.pdf)).
* New threats posed by digitalization, which are exemplified by the increasing use of digitalized genetic sequences (digital sequence information, DSI). DSI in combination with patents over genetic sequences could be used as a new way to privatize and commercialize all of nature. (More information can be found [here](http://www.fao.org/3/ca4668en/ca4668en.pdf)).
* Market mechanisms to mitigate climate change impacts and biodiversity loss, which commodify nature, transforming it into a set of “ecosystem services” to which monetary value is attributed and which become new targets of speculation. (More information can be found [here](https://www.rosalux.de/fileadmin/rls_uploads/pdfs/sonst_publikationen/Economic-Valuation-of-Nature.pdf))

Despite important advances in international law as well as in some national and regional policies, a major gap is that these have not yet been translated into an effective protection of the rights of local communities, in particular of indigenous peoples and small-scale food producers.

1. *Please specify ways in which additional protection is provided (or should be provided) for populations who may be particularly vulnerable to declining biodiversity and degraded ecosystems (e.g. women, children, persons living in poverty, members of Indigenous peoples and local communities, older persons, persons with disabilities, ethnic, racial or other minorities and displaced persons). How can these populations be empowered to protect and restore declining biodiversity and degraded ecosystems?*

As stated above, the recognition and effective protection of the rights of rural people, as recognized in the UNDRIP as well as the UNDROP are critical measures to address environmental destruction. This refers particularly to their rights to land, fisheries and forests, and their rights to seeds and biodiversity. Providing legal protection to communities’ tenure rights and systems, including those based on customary, collective rights, as well as peasant seed systems is central to enable communities to act as stewards of local ecosystems. In the light of land grabs and high levels of land concentration in several countries, proactive measures to ensure more equitable distribution of land can be a powerful means to promote more sustainable use of natural resources.

Another core element of strategies to protect and restore biodiversity and ecosystems, and to protect marginalized communities is the effective regulation of corporations, concerning both their national as well as transnational operations. Such regulation needs to cover all involved actors, including financiers and all entities associated with a given project/activity throughout the supply/value chain. FIAN would like to refer to the ongoing process at the UN Human Rights Council to develop a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business entities.

FIAN considers that rural people need to be considered as rights holders and that adequate accountability mechanisms need to be put in place in order to remedy harm. Such mechanisms need to accessible, transparent and effective.

1. *How do you safeguard the rights of individuals and communities working on biodiversity issues (potentially identified as environmental human rights defenders or land defenders)? What efforts has your Government made to create a safe environment for them to freely exercise their rights without fear of violence, intimidation, or reprisal?*

Human rights defenders working on land and environmental issues (EHRDs) are severely affected by violence, as shown by a number of studies and reports. It is important to emphasize that EHRDs often operate in remote areas, meaning that they have more difficult access to protection mechanisms and justice. They are often disconnected from traditional human rights organisations and, as a consequence, also less frequently resorting to international and regional protection mechanisms for human rights defenders. In many cases, they are members of already marginalised groups, including ethnic minorities. Individuals and communities opposing ecosystem destruction also frequently face risks linked to the existence of significant power imbalances (land conflicts, for instance, often involve high financial stakes).

It is therefore crucial that states and international institutions scale up their efforts to ensure effective protection of EHRDS in the context of biodiversity loss and ecosystem destruction. Given that state authorities are, in many cases, involved or complicit in violence against EHRDS, international cooperation is crucial. It is therefore critical that states take active steps for the protection of EHRDS, by, among others:

* issuing public statements supporting HRDs and organisations that support them;
* proactively making direct contact with HRDs;
* making visits to HRDs as well as their organisations; making visits to communities of HRDs, especially in remote and rural areas;
* following up on specific cases of violence against and criminalisation of HRDs and speaking out publicly on them;
* assisting as observers at hearings in cases of HRDs that are prosecuted and/or arbitrarily arrested, and visit detainees in prison, urging for their release.

States should further:

1. Insist on the cancellation, repeal or amendment of rules allowing the criminalisation of the defence of human rights and whose application contravenes international and regional state obligations in this matter;
2. Include in the cooperation programs aimed at strengthening the juridical systems the training of national human rights institutions and institutions for legal defence and designate sufficient resources for monitoring of the proper and equal application of justice, respect for the presumption of innocence and the right to a fair trial and to the competent authority;
3. Identify, support and urge governments to implement existing recommendations related to the criminalisation of human rights defenders, such as those issued by: a) regional human rights systems; b) special mechanisms of the United Nations (Committees and Rapporteurs) and c) the United Nations Human Rights Council’s Universal Periodic Review;
4. base their activities to protect human rights defenders on states’ human rights obligations in this regard, which includes to not promote business involvement in dialogues with communities or their participation in institutions for the protection of human rights defenders.
5. *There is substantial evidence that consumption in high-income States is adversely affecting biodiversity and ecosystems in low and middle-income States. What are ways in which high-income States should assist low-income States in responding to biodiversity loss and ecosystem degradation, while simultaneously contributing to sustainable development in those low-income States?*

FIAN would like to emphasize that international human rights law imposes both domestic and extraterritorial obligations on States. This entails that states are accountable for the impairment of human rights in other countries that are caused by their acts and omissions. This includes impairments of human rights that are caused by biodiversity loss and ecosystem destruction. States’ extraterritorial human rights obligations (ETOs) require them to ensure that their acts and omissions, including policies, do not cause harm in other countries and are conducive to the universal realisation of human rights. They further require states to put in place the necessary regulatory mechanisms to ensure that private corporations, including transnational corporations, and other non-state actors that they are in a position to regulate do not impair the enjoyment of human rights in other countries, including through environmental destruction. This means concretely that member states must adopt and enforce measures to protect human rights from abuses by corporations involved in activities that are detrimental to biodiversity and healthy ecosystems wherever a corporation has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned. ETOs also require states to establish accountability mechanisms in order to ensure that individuals and communities affected by biodiversity and/or ecosystem destruction have access to effective remedies, including judicial remedies where necessary.

We consider that international cooperation to address the current challenges of biodiversity loss and ecosystem destruction needs to be solidly anchored in the human rights framework. This also means that high-income countries are required to revise policies that contribute to biodiversity loss and ecosystem destruction domestically and/or abroad, including policies in the areas of food, trade, investment, development cooperation, and industry.

1. www.farmlandgrab.org/post/view/27237-communique-de-la-cmat-sur-la-loi-fonciere-agricole. [↑](#footnote-ref-1)