



Elements Paper

KEY ELEMENTS IN REGULATORY FRAMEWORKS
TO BAN HIGHLY HAZARDOUS PESTICIDES,
PHASE OUT OTHER PESTICIDES, AND FACILITATE
THE TRANSITION TO AGROECOLOGY



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1. OBJECTIVES

The use of pesticides¹, including Highly Hazardous Pesticides (HHPs) affect the RTFN in all its dimensions². The Special Rapporteur on the right to food in collaboration with the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes presented a [report on the impacts of pesticides on the enjoyment of the right to adequate food in 2017](#). This report underscores that “pesticides are responsible for an estimated 200,000 acute poisoning deaths each year, 99% of which occur in developing countries”. Both Special Rapporteurs indicated that current regulatory standards are failing to protect humans and the environment from hazardous pesticides and that a lack of implementation, enforcement, as well as coverage gaps further exacerbate the situation. Current regulations do not effectively address the cross-border nature of the global pesticide market. Therefore, these gaps and inadequacies should be tackled through human rights mechanisms³.

In this context, binding rules to prohibit HHPs and phase out specifically those pesticides with known harmful effects on human, environmental, and ecosystem health, or more broadly prohibiting the packages related to them (monocultures, GMOs, synthetic fertilizers, genetic sequencing) are a highly relevant step to transforming food systems in order to realize human rights, preserve the planet, and guarantee food sovereignty for all.

The Special Rapporteurs on toxic substances and food have stated that: “While efforts to ban and appropriately regulate the use of pesticides are a necessary step in the right direction, the most effective, long-term method to reduce exposure to these toxic chemicals is to move away from industrial agriculture.”⁴

The aim of this paper is to provide an initial set of elements for regulatory processes to those groups or individuals advocating for the transformation of food systems in general, or specifically against agro-toxics and for pesticide-free food systems. For the purposes of this paper, when we use the word “pesticides”, we are referring to those pesticides with known harmful effects on human, environmental, and ecosystem health, but we are not including organic or biological pesticides that have no known harmful effects on human health, the environment, or ecosystem services, especially those used in agroecology.

This paper draws upon FIAN’s experience and work with organizations of people in rural areas, especially those of small-scale food producers and Indigenous Peoples, as

¹ In the international debate on banning pesticides there are three recognized conceptual categories: Highly Hazardous Pesticides (officially defined in the WHO-FAO [International Code of Conduct on Pesticide Management, Guidelines on Highly Hazardous Pesticides](#)), banned pesticides (those prohibited in specific national contexts), and pesticides (all others). In the present document, when we use the word “pesticides”, we are referring to those pesticides with known harmful effects on human, environmental, and ecosystem health, but we are **not** including organic or biological pesticides that have no known harmful effects on human health, the environment, or ecosystem services, especially those used in agroecology.

² For more information on human rights obligations regarding pesticides and on the impact of pesticides on the RTFN, please read FIAN’s regional report [Pesticides in Latin America: Report about violations against the right to adequate food and nutrition](#)

³ Report on the impacts of pesticides on the enjoyment of the right to adequate food, 2017. Par. 101

⁴ Ibid., par. 104

well as FIAN's experience in the area of corporate accountability regulations. The proposed elements are grounded in a progressive interpretation of international human rights law, including relevant reports by the UN Special Rapporteurs on toxic substances and on the right to food. This paper has also drawn inspiration from the study Transitioning Towards Pesticide-free Food Systems: People's Struggles and Imagination, as well as the report Pesticides in Latin America: Violations Against the Right to Adequate Food and Nutrition.

This paper includes detailed recommendations for advocacy processes, based on an expanded analysis of the necessary law and policy changes at the local, national and international level. These recommended changes are founded in state obligations recognized in human rights standards. The suggested elements aim to achieve a pesticide-free planet, therefore some of them may be considered difficult to achieve in the current political atmosphere. Nonetheless, we believe that having a clear direction can help guide our advocacy work for regulatory processes and to support people's struggles. This is a living document and it is our hope that it serves to foster discussion and critical reflection that lead to action.

2. LATEST DEVELOPMENTS RELATED TO PESTICIDES UNDER THE UNITED NATIONS DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS (»UNDROP«)

The impacts of pesticides on human rights and the environment show that states are frequently in breach of their obligations to respect, protect, and fulfill human rights. Bearing in mind those legally binding instruments developed in areas other than human rights (for instance environmental law), states' obligations under international human rights law derive from the international human rights covenants (ICESCR and ICCPR), and have been detailed more recently in »UNDROP«⁵ specifically for the case of peasants and other people working in rural areas. »UNDROP« recognizes general obligations to respect, protect, and fulfill (»UNDROP«, Art.2). Furthermore, it recognizes states' obligations to protect, respect, and fulfill specific peasants' rights violated by pesticide manufacturing, trade, and use, including the rights to a healthy environment (»UNDROP«, Art. 18), not to be exposed to hazardous substances and toxic chemicals (»UNDROP«, Art. 14.2), to healthy work conditions (»UNDROP«, Art. 14: ILO Conventions), adequate food (CESCR, GC 12, Art. 11; UNDROP, Art. 15), clean water (CESCR, GC 15; »UNDROP«, Art. 21), the right to health (ICESCR, Art. 12; CESCR, GC 12: »UNDROP«, Art. 23), environmental rights and protection of biodiversity (»UNDROP« Art. 18 and 19.6), the right to seeds (»UNDROP« Art. 20), the right to dignified life (ICCPR Art.6 Committee on Human Rights General Comment 36), rights of Indigenous peoples (»UNDROP«, ILO Convention 169), rights of women, including those of rural women (CEDAW GC 34) and the rights of rural workers (»UNDROP«, Art. 1.4).

Therefore, if states are truly committed to the protection and fulfillment of human rights, and especially those of peasants in rural areas, in »UNDROP« they have a clear

⁵ For a further analysis of states' human rights obligations as detailed in UNDROP, please see the study Transitioning Towards Pesticide-free Food Systems: People's Struggles and Imagination. Section 3. A path forward grounded in human rights: implementation of the International Covenants as detailed by »UNDROP«.

legal basis for adopting laws designed to ban the manufacturing, commercialization, and use of pesticides: by establishing pesticide-free zones and regulating the use and commercialization of pesticides (Art. 14.4). The obligation to protect also means that administrative and judicial authorities shall give priority to right holders in rural areas covered by »UNDROP«⁶ when deciding on complaints filed to challenge protective regulations, for instance to defend the freedom of enterprise or apply trade and commercial laws (»UNDROP«, Art. 2.4, 2.5 and 12). Also in accordance with their obligation to protect, states should eliminate double standards. Home states of pesticide producers should ban the export of HHPs and recipient countries should prohibit their import.

According to »UNDROP«, states shall give priority to laws protecting peasants' rights over laws favoring corporations and other non-state actors dealing with pesticides that effectively nullify or impair the realization of peasants' rights (»UNDROP«, Art. 2.5 and 18.5).

3. PROPOSED REGULATORY ELEMENTS FOR ADVOCACY

This section presents regulatory elements organized according to states' human rights obligations to respect, protect, fulfill, promote; and progressively realize economic, social, and cultural rights, as well as elements related to non-discrimination, and the extraterritorial obligations of states, including cooperation.

3.1. ELEMENTS UNDER THE OBLIGATION TO RESPECT

- States shall abstain from producing or distributing pesticides through their public institutions or state-run companies, beginning with HHPs and banned pesticides but aiming to cover all pesticides with known harmful effects on human, environmental, and ecosystem health.
- States shall abstain from importing pesticides with known harmful effects on human, environmental, and ecosystem health through its public institutions or public companies, beginning with HHPs and banned pesticides.
- States shall stop subsidizing the production and use of pesticides with known harmful effects on human, environmental, and ecosystem health, beginning with HHPs.
- States shall abstain from preferential treatment for corporations manufacturing, commercializing, distributing and using pesticides.

⁶ See »UNDROP«, Art. 1 including a comprehensive definition of peasants.

3.2. ELEMENTS UNDER THE OBLIGATION TO PROTECT

- States shall prohibit the production, commercialization, and use (including import and export) of pesticides by non-state actors, including corporations under their jurisdiction. A period of transition can begin with the prohibition of HHPs and then expand to other pesticides with known harmful effects on human, environmental, and ecosystem health.
- Since overnight changes can negatively impact the rights of small-scale food producers, banning regulations shall include specific transition plans towards agro-ecological or equivalent regenerative practices of food production consistent with human and environmental rights. (See elements suggested under the obligation to fulfill).
- States shall utilize participatory monitoring mechanisms that allow people and authorities to identify adverse impacts of pesticides and adopt corrective measures to impede their use or to regulate them during the transitional phase.
- Establish monitoring mechanisms to identify non-state actors infringing upon regulations banning HHPs and other pesticides, or rules regulating the manufacturing, commercialization, and use of pesticides during transitional periods within their territory or jurisdiction.
- Establish investigation mechanisms to deal with reports of lack of compliance with the provisions regulating or banning the use of HHPs and other pesticides.
- Establish civil, administrative, and criminal liability mechanisms to hold accountable non-state actors who infringe regulations banning HHPs and other pesticides or regulating their manufacturing, commercialization, and use during transitional periods within their territory or jurisdiction, including for their operations throughout their value chain and in their business relationships.
- Adopt regulations to ensure joint civil and criminal liability among all non-state actors and states involved in human rights abuses derived from the manufacturing, commercialization, distribution, and use of HHPs and other pesticides.
- Establish strict liability mechanisms for all state and non-state actors involved in human rights violations and abuses derived from the manufacturing, commercialization, distribution, and use of HHPs and pesticides with known harmful effects on human, environmental, and ecosystem health throughout their value chain or in their business relationships.
- Establish adequate and effective prevention mechanisms, both for states and corporations, including the duty of care for companies in their operations throughout their value chains and in business relationships.
- Ensure effective and prompt access to justice for individuals and communities affected by the manufacturing, commercialization, distribution, and use of pesticides.

⁷ For further details please see “Principles on human rights and the protection of workers from exposure to toxic substances” in the report by the Special Rapporteur on toxic substances.

In order to ensure access to justice for communities affected by the ban or during transitional periods, states should consider establishing legal aid and other mechanisms of support for affected individuals and communities.

- Ensure access to information for users or other people affected by pesticides including labeling, public campaigns, electronic means, etc. Including information on the following:
 - The impact of authorized pesticides on water, air, crop yields, food, seeds, and human beings' physical health, inter alia
 - The components of pesticides or pesticides mixes and the quantities of those components
 - The safest ways of to use pesticides during transitional periods and equipment required to minimize risks
 - The companies or other state and non-state actors involved in the respective value chain or businesses relationships of authorized pesticides with known harmful effects on human, environmental, and ecosystem health during transition processes, their commercial networks, or economic groups or holdings
 - The available prevention and remedy mechanisms
 - State authorities' competence to support individuals and communities affected by the use of HHPs and other pesticides
- States shall include in their national legal systems mechanisms to ensure the reversal of the burden of proof for cases in which the affected individuals and communities do not have easy access to the information required to demand protective measures or to access justice and remedy. This includes, inter alia, lack of access to information because access requires specific scientific knowledge or because the involved businesses or governments do not provide access to such information.
- Statutes of limitation shall take into account eventual long-term impacts of HHPs and other pesticides with known harmful effects on human, environmental, and ecosystem health, including for future generations. The starting point to calculate the statute of limitations should begin once the affected individuals or communities perceive the impact of the pesticides.
- Prior to, during, and after the adoption of bans on the use of HHPs and other pesticides, states shall protect human rights defenders, environmental activists, social movements, and others calling for the ban of HHPs and other pesticides, an adequate transition to agroecology, or similar measures.
- States shall safeguard democratic governance spaces where decisions are made on the regulation and ban of HHPs and other pesticides and on transition measures from the influence of companies or other non-state actors with vested interests in these issues. To this end, parliaments and other governing authorities should consider restricting the participation of such actors in the respective democratic processes and establish clear rules on conflicts of interest to protect the duty of democratic public institutions to legislate, their administrative power, and justice for the common good and not for private profit.

3.3. ELEMENTS UNDER THE OBLIGATION TO FULFILL

- States shall adopt measures to ensure the adequate transition from HHPs and other pesticide-based food systems to pesticide-free food systems, including the best-case scenario of transitioning to agroecology.
- Prohibition and transition plans can begin with the prohibition of HHPs according to the most expansive lists available, but local and national governments can decide to continue the transition by prohibiting all pesticides with known harmful effects on human, environmental, and ecosystem health.
- Transition processes require tackling the whole framework around the dominant industrial food system, which may require regulations to eliminate monocultures, prohibition of other agro-toxics, including toxic fertilizers and prohibiting the use of genetically modified seeds or other developments achieved through genetic sequencing.
- In order to ensure the fulfilment of rights of small-scale food producers during transitional periods, states shall conduct prior and informed consultations, in good faith, to examine how to carry out a fair transition, according to the specific local, national, or regional context.
- States shall establish adequate participation channels or mechanisms that allow social movements and civil society groups to meaningfully participate in the preparation of prohibition processes and transition plans.
- Transition programs may require:
 - Measures to ensure support for small-scale food producers using agroecology or similar production methods
 - Measures to ensure knowledge exchange among diverse small-scale food producing communities and groups transitioning from conventional production methods to agroecology or similar production methods
 - Measures to raise awareness among consumers on the benefits of agro-ecologically or equivalently produced food
 - e food producers can access the market at fair prices
 - Support local markets and circular economies making food production less dependent on the global value chain and therefore contributing to food sovereignty and resilience, as well as strengthening the local social fabric
 - In case of required certification methods, the competent authorities shall recognize the right of small-scale food producers to create their own certification systems or to have an effective right to participation in other established certification systems.
- In order to achieve a prompt transition, states shall establish a clear action plan with deadlines, incentives, and sanctions to ensure the required conditions for a prompt transition that is respectful of the rights of small-scale food producers.

- Transition plans may initially include establishing some HHP and other pesticide-free zones, which can serve as pilot projects until the entire national territory can be transitioned to prohibiting all pesticides with known harmful effects on human, environmental, and ecosystem health.
- During the transitional period, clear rules shall be adopted to ensure the prevention and mitigation of impacts of authorized pesticides, including:
 - Clear information on the impacts of the pesticides, pesticide mixes, or a lack of certainty about possible eventual impacts
 - Permitted quantities of specific pesticides or within pesticide mixes, which should be progressively reduced
 - Rules on the manufacturing, commercialization, use, and distribution of pesticides according to the specific phases of the transition plan
 - Regulations on the use of pesticides, including safety corridors and bans for special vulnerable sectors of the population, such as neighboring peasant communities, schools, hospitals, etc., according to the specific context
 - Regulations to best safeguard the health of agricultural workers exposed to pesticides
 - Mechanisms to ensure agricultural workers' access to healthcare or other necessary support
 - Regulation on equipment to protect the health of agricultural workers⁷.
- States shall support scientific research done by indigenous peoples and peasant communities and recognize peasants' scientific innovations relevant to ensuring the transition to pesticide-free food systems.
- All budgetary measures in the short, middle, and long term shall be adopted to ensure adequate funding for the transition process. To this end, states could redirect resources subsidizing manufacturers, commercializers, distributors, and users of pesticides to agroecological or equivalent production, to small-scale food producers and their organizations who produce agroecologically or are transitioning to agroecology.

3.4. ELEMENTS UNDER THE OBLIGATION TO PROMOTE

- States shall inform small-scale food producers, people using water and soil in areas affected by pesticides, food consumers, and others about pesticide bans and transition plans.
- States shall develop communication and education campaigns to raise awareness among all people potentially affected by pesticides about the impacts of pesticides, especially during the transition period.
- States shall inform the general population about the liability and remedy mechanisms available for cases of non-compliance with the ban or transition regulations, or for those affected by the use of pesticides, including HHPs.

⁷ For further details please see “Principles on human rights and the protection of workers from exposure to toxic substances” in the report by the Special Rapporteur on toxic substances-

3.5. ELEMENTS UNDER THE OBLIGATION TO PROVIDE (FOR EXAMPLE, EXTENSION SERVICES IN LINE WITH AGROECOLOGY)

- During the transitional period, states shall provide small-scale food producers with all the support and extension services necessary to ensure long-term sustainable agroecological or similar production.

3.6. ELEMENTS UNDER THE OBLIGATION TO PROGRESSIVELY REALIZE ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

- To ensure that the transition to agroecology is sustainable in the middle and long term, and to avoid retrogressive measures or non-completion of the transition plans, states shall ensure that the action plan provides the necessary support until agroecological or equivalent production is sustainable for the involved small-scale food producers.
- In order to impede negative effects of the ban and transition plan on agricultural workers, states shall adopt measures to ensure the respect of their human rights in general, and especially their labor rights.
- National authorities shall foresee regulatory changes necessary to avoid national regulations reversing the positive impact of locally adopted measures towards HHP and other pesticide-free food systems.
- In cases submitted to courts dealing with conflicts of competences between local and national authorities involving HHPs and other pesticide regulations or prohibitions, states shall ensure that states can concede priority to human rights and nature.
- In order to impede retrogressive measures regarding protection from harm produced by HHPs and other pesticides, states can appeal to international cooperation supporting the transition to agroecology or equivalent food production systems.

3.7. ELEMENTS UNDER THE OBLIGATION OF NON-DISCRIMINATION

- In the adoption of regulations prohibiting HHPs and other pesticides and transition plans, states shall assess, ex-ante and ex-post, measures to ensure that the regulations do not create discriminatory impacts, especially for small-scale food producers.
- In cases in which the prohibition of HHPs and other pesticides may have a short or mid-term differential negative impacts on small-scale food producers or specific groups of them, including Indigenous People, peasants, agricultural workers, women, specific ethnic groups, or disadvantaged socioeconomic sectors of society, states shall adopt affirmative measures to correct discriminatory impacts and ensure substantial equality, including intersectional approaches.

3.8. ELEMENTS UNDER EXTRATERRITORIAL OBLIGATIONS OF STATES, INCLUDING COOPERATION

- States shall respect the decision of other states to ban HHPs and other pesticides and commence transition processes towards pesticide-free food systems and/or communities.
- States shall regulate non-state actors in their territory or jurisdiction manufacturing, commercializing, distributing, or using HHPs and pesticides in other states, to prevent the abuse of human rights through these activities, including in their value chains, economic groups, corporate networks, and in their business relationships in general.
- States shall prohibit the export of HHPs and other pesticides, especially those prohibited within their territory or jurisdictions, to other states and adopt all measures necessary to impede black market trade (prohibition of double standards).
- States shall adopt the necessary regulatory measures to ensure access to justice for individuals and communities beyond their borders threatened and/or harmed by HHPs or other pesticides manufactured, commercialized, distributed, or used by transnational corporations and other businesses based in or that conduct relevant businesses activities in their territory or jurisdiction, or by those with which they maintain businesses relationships. To this end, states shall ensure that their judiciary does not apply forum non-conveniens.
- States shall cooperate in regulating companies manufacturing, commercializing, distributing, and using HHPs and other pesticides with the aim of advancing towards a global prohibition of HHPs and other pesticides, including a genuine transition towards pesticide-free food systems based on agroecology.
- States shall adopt and/or implement the relevant concurrence law to avoid the perpetuation or creation of oligopolies manufacturing, commercializing, distributing, or using HHPs and other pesticides and foresee all necessary regulatory and policy measures to stop abuses of power by such oligopolies.
- States with experience prohibiting HHPs and other pesticides and transition processes should cooperate and assist other states or local communities interested in advancing in the same direction, for example, by facilitating exchanges among local communities and peasant organizations.



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